EN BANC

G.R. No. 197930 – EFRAIM C. GENUINO, *et al.*, *Petitioners*, v. HON. LEILA M. DE LIMA, in her capacity as Secretary of Justice, *et al.*, *Respondents*; G.R. No. 199034 – MA. GLORIA MACAPAGAL-ARROYO, *Petitioner*, v. HON. LEILA M. DE LIMA, in her capacity as Secretary of Department of Justice, *et al.*, *Respondents*; G.R. No. 199046 – JOSE MIGUEL T. ARROYO, *Petitioner*, v. HON. LEILA M. DE LIMA, in her capacity as Secretary, Department of Justice, *et al.*, *Respondents.*

Promulgated:

April 17, 2018

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CONCURRING OPINION

CARPIO, *Acting C.J.*:

I concur.

The constitutionality of the assailed administrative circular remains justiciable.

Preliminarily, the consolidated petitions continue to present a justiciable controversy. Neither the expiration of the watchlist orders issued by Leila M. De Lima (respondent) as former Secretary of Justice nor the filing of Information for electoral sabotage against petitioner Gloria Macapagal-Arroyo (GMA) rendered the cases moot.

A case becomes moot when it ceases to present a justiciable controversy such that its adjudication would not yield any practical value or use.[1] Where the petition is one for *certiorari* seeking the nullification of an administrative issuance for having been issued with grave abuse of discretion, obtaining the other reliefs prayed for in the course of the proceedings will **not** render the entire petition moot altogether. In *COCOFED-Philippine Coconut Producers Federation, Inc. v. Commission on Elections (COMELEC)*,[2] the Court thus explained:

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1 *Osmeña III v. Social Security System of the Philippines*, 559 Phil. 723, 735 (2007), citing *Governor Mandanas v. Honorable Romulo*, 473 Phil. 806, 827-828 (2004); *Olanolan v. COMELEC*, 494 Phil. 749, 759 (2005); *Paloma v. Court of Appeals*, 461 Phil. 269, 276-277 (2003).

2 716 Phil. 19 (2013).

> A moot and academic case is one that ceases to present a justiciable controversy because of supervening events so that a declaration thereon would be of no practical use or value.
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> In the present case, while the COMELEC counted and tallied the votes in favor of COCOFED showing that it failed to obtain the required number of votes, participation in the 2013 elections was merely one of the reliefs COCOFED prayed for. The validity of the COMELEC's resolution, cancelling COCOFED's registration, remains a very live issue that is not dependent on the outcome of the elections.[3] (Citations omitted)

Similarly, where an accused assails via *certiorari* the judgment of conviction rendered by the trial court, his subsequent release on parole will **not** render the petition academic.[4] Precisely, if the sentence imposed upon him is void for lack of jurisdiction, the accused should not have been paroled, but unconditionally released since his detention was illegal.[5] In the same vein, even when the certification election sought to be enjoined went on as scheduled, a petition for *certiorari* does not become moot considering that the petition raises jurisdictional errors that strike at the very heart of the validity of the certification election itself.[6] Indeed, an allegation of a jurisdictional error is a justiciable controversy that would prevent the mootness of a special civil action for *certiorari*.[7]

Here, the consolidated petitions for *certiorari* and prohibition assail the constitutionality of Department of Justice (DOJ) Circular No. 041-10,[8] on which respondent based her issuance of watchlist and hold-departure orders against petitioners. Notably, DOJ Circular No. 041-10 was not issued by respondent herself, but by Alberto C. Agra as then Acting Secretary of Justice during the Arroyo Administration. It became effective on 2 July 2010.[9] In fact, the assailed issuance **remains in effect**. To be sure, whether the watchlist and hold-departure orders issued by respondent against petitioners subsequently expired or were lifted is not determinative of the constitutionality of the circular. Hence, the Court is duty-bound to pass upon the constitutionality of DOJ Circular No. 041-10, being a justiciable issue rather than an exception to the doctrine of mootness.

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3 Id. at 28-29.

4 *Castrodes v. Cubelo*, 173 Phil. 86 (1978).

5 Id. at 91.

6 *Cooperative Rural Bank of Davao City, Inc. v. Ferrer-Calleja*, 248 Phil. 169 (1988).

7 *Regulus Development, Inc. v. Dela Cruz*, G.R. No. 198172, 25 January 2016, 781 SCRA 607, 619.

8 Otherwise known as Consolidated Rules and Regulations Governing the Issuances and Implementing of Hold Departure Orders, Watchlist Orders and Allow Departure Orders.

9 DOJ Circular No. 041-10 was published in The Philippine Star on 17 June 2010. Under Art. 2 of the Civil Code, as interpreted by the Court in *Tañada v. Tuvera*, 230 Phil. 528, 533-534 (1986), DOJ Circular No. 041-10 shall take effect after 15 days from the date of its publication.

DOJ Circular No. 041-10 is an invalid impairment of the right to travel, and therefore, unconstitutional.

Proceeding now to the substantive issue, I agree that DOJ Circular No. 041-10 violates the constitutional right to travel.

Section 6, Article III of the Constitution reads:

> SEC. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired **except in the interest of national security, public safety, or public health, as may be provided by law.** (Emphasis supplied)

As above-quoted, the right to travel is not absolute. However, while it can be restricted, the only permissible grounds for restriction are national security, public safety, and public health, which grounds must at least be prescribed by an act of Congress. In only two instances can the right to travel be validly impaired even without a statutory authorization. The first is when a court forbids the accused from leaving Philippine jurisdiction in connection with a pending criminal case.[10] The second is when Congress, pursuant to its power of legislative inquiry, issues a subpoena or arrest order against a person.[11]

The necessity for a legislative enactment expressly providing for a valid impairment of the right to travel finds basis in no less than the fundamental law of the land. Under Section 1, Article VI of the Constitution, the legislative power is vested in Congress. Hence, only Congress, and no other entity or office, may wield the power to make, amend, or repeal laws.[12]

Accordingly, whenever confronted with provisions interspersed with phrases like "in accordance with law" or "as may be provided by law," the Court turns to acts of Congress for a holistic constitutional construction. To illustrate, in interpreting the clause "subject to such limitations as may be provided by law" in relation to the right to information, the Court held in *Gonzales v. Narvasa*[13] that it is Congress that will prescribe these reasonable conditions upon the access to information:

> The right to information is enshrined in Section 7 of the Bill of Rights which provides that —

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10 *Dr. Cruz v. Judge Iturralde*, 450 Phil. 77, 86 (2003); *Hold-Departure Order issued by Judge Occiano*, 431 Phil. 408, 411-412 (2002); *Silverio v. Court of Appeals*, 273 Phil. 128, 134-135 (1991).

11 See *Arnault v. Nazareno*, 87 Phil. 29, 45 (1950). See also my dissenting opinion in *Leave Division, Office of Administrative Services-OCA v. Heusdens*, 678 Phil. 328, 355 (2011).

12 See *Belgica v. Ochoa*, 721 Phil. 416, 546 (2013).

13 392 Phil. 518 (2000).

> The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, **subject to such limitations as may be provided by law**.

Under both the 1973 and 1987 Constitution, this is a self-executory provision which can be invoked by any citizen before the courts. This was our ruling in *Legaspi v. Civil Service Commission*, wherein the Court classified the right to information as a public right and "when a mandamus proceeding involves the assertion of a public right, the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and therefore, part of the general 'public' which possesses the right." However, **Congress may provide for reasonable conditions upon the access to information**. Such limitations were embodied in Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees," which took effect on March 25, 1989. This law provides that, in the performance of their duties, all public officials and employees are obliged to respond to letters sent by the public within fifteen (15) working days from receipt thereof and to ensure the accessibility of all public documents for inspection by the public within reasonable working hours, subject to the reasonable claims of confidentiality.[14] (Emphasis supplied; Citations omitted)

In *Tondo Medical Center Employees Association v. Court of Appeals*,[15] the Court made a jurisprudential survey on the interpretation of constitutional provisions that are not self-executory and held that it is Congress that will breathe life into these provisions:

> As a general rule, the provisions of the Constitution are considered self-executing, and do not require future legislation for their enforcement. For if they are not treated as self-executing, the mandate of the fundamental law can be easily nullified by the inaction of Congress. However, some provisions have already been categorically declared by this Court as non self-executing.
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> In *Tañada v. Angara*, the Court specifically set apart the sections found under Article II of the 1987 Constitution as non self-executing and ruled that such broad principles need legislative enactments before they can be implemented:
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> > By its very title, Article II of the Constitution is a "declaration of principles and state policies." x x x These **principles in Article II are not intended to be self-executing** principles ready for enforcement through the courts. They are **used** by the judiciary as aids or as guides in the exercise of its power of judicial review, and **by the legislature in its enactment of laws**.

14 Id. at 529-530.

15 554 Phil. 609 (2007).

> In *Basco v. Philippine Amusement and Gaming Corporation*, this Court declared that Sections 11, 12, and 13 of Article II; Section 13 of Article XIII; and Section 2 of Article XIV of the 1987 Constitution are not self-executing provisions. In *Tolentino v. Secretary of Finance*, the Court referred to Section 1 of Article XIII and Section 2 of Article XIV of the Constitution as **moral incentives to legislation**, not as judicially enforceable rights. These provisions, which merely lay down a general principle, are distinguished from other constitutional provisions as non self-executing and, therefore, cannot give rise to a cause of action in the courts; they do not embody judicially enforceable constitutional rights.
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> Some of the constitutional provisions invoked in the present case were taken from Article II of the Constitution — specifically, Sections 5, 9, 10, 11, 13, 15 and 18 — the provisions of which the Court categorically ruled to be non self-executing in the aforecited case of *Tañada v. Angara*.[16] (Emphasis supplied; citations omitted)

In *Ang Bagong Bayani-OFW Labor Party v. COMELEC*,[17] the Court construed the constitutional provisions on the party-list system and held that the phrases "in accordance with law" and "as may be provided by law" authorized Congress "to sculpt in granite the lofty objective of the Constitution," to wit:

> That political parties may participate in the party-list elections does not mean, however, that any political party — or any organization or group for that matter — may do so. The requisite character of these parties or organizations must be consistent with the purpose of the party-list system, as laid down in the Constitution and RA 7941. Section 5, Article VI of the Constitution, provides as follows:
>
> > "(1) The House of Representatives shall be composed of not more than two hundred and fifty members, *unless otherwise fixed by law*, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, *as provided by law*, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.
> >
> > (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, *as provided by law*, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors *as may be provided by law*, except the religious sector."

16 Id. at 625-626.
17 412 Phil. 308 (2001).

x x x x

> The foregoing provision on the party-list system is **not self-executory. It is, in fact, interspersed with phrases like "in accordance with law" or "as may be provided by law"; it was thus up to Congress to sculpt in granite the lofty objective of the Constitution.** x x x.[18] (Italicization in the original; boldfacing supplied)

Unable to cite any specific law on which DOJ Circular No. 041-10 is based, respondent invokes Executive Order No. 292, otherwise known as the Revised Administrative Code of 1987. In particular, respondent cites the DOJ's mandate to "investigate the commission of crimes" and "provide immigration x x x regulatory services," as well as the DOJ Secretary's rule-making power.[19]

I disagree.

In the landmark case of *Ople v. Torres*,[20] an administrative order was promulgated restricting the right to privacy without a specific law authorizing the restriction. The Office of the President justified its legality by invoking the Revised Administrative Code of 1987. The Court rejected the argument and nullified the assailed issuance for being unconstitutional as the Revised Administrative Code of 1987 was too general a law to serve as basis for the curtailment of the right to privacy, thus:

> We now come to the core issues. Petitioner claims that A.O. No. 308 is not a mere administrative order but a law and hence, beyond the power of the President to issue. He alleges that A.O. No. 308 establishes a system of identification that is all-encompassing in scope, affects the life and liberty of every Filipino citizen and foreign resident, and more particularly, violates their right to privacy.
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> Petitioner's sedulous concern for the Executive not to trespass on the lawmaking domain of Congress is understandable. The blurring of the demarcation line between the power of the Legislature to make laws and the power of the Executive to execute laws will disturb their delicate balance of power and cannot be allowed. Hence, the exercise by one branch of government of power belonging to another will be given a stricter scrutiny by this Court.
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> x x x x
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> Prescinding from these precepts, we hold that A.O. No. 308 involves a subject that is not appropriate to be covered by an administrative order. An administrative order is:
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> "Sec. 3. *Administrative Orders.* — Acts of the President which relate to particular aspects of governmental

18 Id. at 331-332.
19 Consolidated Comment, p. 36.
20 354 Phil. 948 (1998).

> operation in pursuance of his duties as administrative head shall be promulgated in administrative orders."
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> An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of government. It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy. **We reject the argument that A.O. No. 308 implements the legislative policy of the Administrative Code of 1987. The Code is a general law and "incorporates in a unified document the major structural, functional and procedural principles of governance" and "embodies changes in administrative structures and procedures designed to serve the people."** The Code is divided into seven (7) Books: Book I deals with Sovereignty and General Administration, Book II with the Distribution of Powers of the three branches of Government, Book III on the Office of the President, Book IV on the Executive Branch, Book V on the Constitutional Commissions, Book VI on .National Government Budgeting, and Book VII on Administrative Procedure. These Books contain provisions on the organization, powers and general administration of the executive, legislative and judicial branches of government, the organization and administration of departments, bureaus and offices under the executive branch, the organization and functions of the Constitutional Commissions and other constitutional bodies, the rules on the national government budget, as well as guidelines for the exercise by administrative agencies of quasi-legislative and quasi-judicial powers. The Code covers both the internal administration of government, *i.e.*, internal organization, personnel and recruitment, supervision and discipline, and the effects of the functions performed by administrative officials on private individuals or parties outside government.[21] (Citations omitted)

Indeed, EO 292 is a law of general application.[22] Pushed to the hilt, the argument of respondent will grant carte blanche to the Executive in promulgating rules that curtail the enjoyment of constitutional rights even without the sanction of Congress. To repeat, the Executive is limited to executing the law. It cannot make, amend or repeal a law, much less a constitutional provision.

For the same reason, in the Court's jurisprudence concerning the overseas travel of court personnel during their approved leaves of absence and with no pending criminal case before any court, I have consistently maintained that only a law, not administrative rules, can authorize the Court to impose administrative sanctions for the employee's failure to obtain a travel permit:

> Although the constitutional right to travel is not absolute, it can only be restricted in the interest of national security, public safety, or public health, as may be provided by law. As held in *Silverio v. Court of Appeals*:

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21 Id. at 966, 968-969.

22 *Office of the Solicitor General v. Court of Appeals*, 735 Phil. 622, 630 (2014); *Calingin v. Court of Appeals*, 478 Phil. 231, 236-237 (2004); *Government Service Insurance System v. Civil Service Commission*, 307 Phil. 836, 846 (1994).

> Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without court order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "national security, public safety, or public health" and "as may be provided by law," a limitive phrase which did not appear in the 1973 text x x x. Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party x x x.
>
> The constitutional right to travel cannot be impaired without due process of law. Here, due process of law requires the existence of a law regulating travel abroad, in the interest of national security, public safety or public health. There is no such law applicable to the travel abroad of respondent. Neither the OCA nor the majority can point to the existence of such a law. In the absence of such a law, the denial of respondent's right to travel abroad is a gross violation of a fundamental constitutional right.
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> x x x x
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> Furthermore, respondent's travel abroad, during her approved leave, did not require approval from anyone because respondent, like any other citizen, enjoys the constitutional right to travel within the Philippines or abroad. Respondent's right to travel abroad, during her approved leave, cannot be impaired "except in the interest of national security, public safety, or public health, as may be provided by law." Not one of these grounds is present in this case.[23] (Citations omitted)

While the Revised Administrative Code of 1987 cannot lend credence to a valid impairment of the right to travel, Republic Act No. (RA) 8239, otherwise known as the Philippine Passport Act of 1996, expressly allows the **Secretary of Foreign Affairs or any of the authorized consular officers** to cancel the passport of a citizen. Section 4 of RA 8239 reads:

> SEC. 4. *Authority to Issue, Deny, Restrict or Cancel.* — Upon the application of any qualified Filipino citizen, the Secretary of Foreign Affairs or any of his authorized consular officer may issue passports in accordance with this Act.
>
> Philippine consular officers in a foreign country shall be authorized by the Secretary to issue, verify, restrict, cancel or refuse a passport in the area of jurisdiction of the Post in accordance with the provisions of this Act.
>
> In the interest of national security, public safety and public health, the Secretary or any of the authorized consular officers may, after due

23 See my dissenting opinion in *Leave Division, Office of Administrative Services-OCA v. Heusdens*, supra note 11, at 354-356.

> hearing and in their proper discretion, refuse to issue a passport, or restrict its use or withdraw or cancel a passport: *Provided, however,* That such act shall not mean a loss or doubt on the person's citizenship: *Provided, further,* That the issuance of a passport may not be denied if the safety and interest of the Filipino citizen is at stake: *Provided, finally,* That refusal or cancellation of a passport would not prevent the issuance of a Travel Document to allow for a safe return journey by a Filipino to the Philippines.

The identical language between the grounds to cancel passports under the above-quoted provision and the grounds to impair the right to travel under Section 6, Article III of the Constitution is **not** by accident cognizant of the fact that passport cancellations necessarily entail an impairment of the right. Congress intentionally copied the latter to obviate expanding the grounds for restricting the right to travel.

Can the DFA Secretary, under Section 4 of RA 8239, cancel the passports of persons under preliminary investigation? The answer depends on the nature of the crime for which the passport holders are being investigated on. If the crime affects national security and public safety, the cancellation squarely falls within the ambit of Section 4. Thus, passport holders facing preliminary investigation for the following crimes are subject to the DFA Secretary's power under Section 4:

(1) Title One, (Crimes Against National Security and the Law of Nations), Title Three (Crimes Against Public Order), Title Eight (Crimes Against Persons), Title Nine (Crimes Against Liberty), Title Ten (Crimes Against Property) and Title Eleven (Crimes Against Chastity), Book II of the Revised Penal Code;

(2) Section 261 (Prohibited Acts), paragraphs (e),[24] (f),[25] (p),[26] (q),[27] (s),[28] and (u)[29] of the Omnibus Election Code;[30] and

(3) Other related election laws such as Section 27(b) of RA 7874, as amended by RA 9369.[31]

Indeed, the phrases "national security" and "public safety," which recur in the text of the Constitution as grounds for the exercise of powers or curtailment of rights,[32] are intentionally broad to allow interpretative

24 "Threats, intimidation, terrorism, use of fraudulent device or other forms of coercion."
25 "Coercion of election officials and employees."
26 " [Carrying of] deadly weapons in prohibited areas."
27 "Carrying of firearms outside residence or place of business."
28 "Wearing of uniforms and bearing arms."
29 "Organization or maintenance of reaction forces, strike forces, or other similar forces."
30 Batas Pambansa Blg. 881, as amended.
31 Defining the offense of Electoral Sabotage.
32 *E.g.*, (1) Art. III, Sec. 3(1) ["The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when ***public safety*** or order requires otherwise, as prescribed by law."]; Sec. 6 ["The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of ***national security***, ***public safety***, or public

flexibility, but circumscribed at the same time to prevent limitless application. At their core, these concepts embrace acts undermining the State's existence or public security. At their fringes, they cover acts disrupting individual or communal tranquility. Either way, violence or potential of violence features prominently.

Thus understood, the "public safety" ground under Section 4 of RA 8239 unquestionably includes violation of election-related offenses carrying the potential of disrupting the peace, such as electoral sabotage which involves massive tampering of votes (in excess of 10,000 votes). Not only does electoral sabotage desecrate electoral processes, but it also arouses heated passion among the citizenry, driving some to engage in mass actions and others to commit acts of violence. The cancellation of passports of individuals investigated for this crime undoubtedly serves the interest of public safety, much like individuals under investigation for robbery, kidnapping, and homicide, among others.[33]

As to whether respondent must be cited in contempt for allegedly defying the Temporary Restraining Order issued by the Court, I agree that it cannot be resolved simultaneously with these consolidated petitions. Until the contempt charge is threshed out in a separate and proper proceeding, I defer expressing my view on this issue.

Accordingly, I vote to **GRANT** the petitions and to declare DOJ Circular No. 041-10, and the assailed Watchlist Orders issued pursuant to the circular, **UNCONSTITUTIONAL** for being contrary to Section 6, Article III of the Constitution. As regards the contempt charge against respondent, I **DEFER** any opinion on this issue until it is raised in a separate and proper proceeding.

ANTONIO T. CARPIO
Acting Chief Justice

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health, as may be provided by law."]; Sec. 15 ["The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion, when the ***public safety*** requires it."]); and (2) Art. VII, Sec. 15 ["Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger ***public safety***."]; Sec. 18, par. 2 ["In case of invasion or rebellion, when the ***public safety*** requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. x x x. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and ***public safety*** requires it."] (Emphasis supplied)

33 It is not farfetched to link election laws with public safety. The European Court of Human Rights considers the forced abolition of a political party espousing violent and extreme views as permissible in the interest of public safety, even though this impairs the party members' right to association. See *Refah Partisi v. Turkey*, 13 February 2003, Application Nos. 41340/98, 41342/98, 41343/98 and 41344/9837. (www.echr.coe.int/Documents/Reports_Recueil_2003-II.pdf, accessed on 18 January 2018)