



Inter-Parliamentary Union

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Turkey

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TK88 - Mizgin Irgat (Ms.)	TK116 - Nihat Akdoğan
TK89 - Nursel Aydoğan (Ms.)	TK117 - Nimetullah Erdoğan
TK90 - Pervin Buldan (Ms.)	TK118 - Osman Baydemir
TK91 - Saadet Becerikli (Ms.)	TK119 - Selahattin Demirtaş
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TK94 - Abdullah Zeydan	TK122 - Mithat Sancar
TK95 - Adem Geveri	TK123 - Mahmut Toğrul
TK96 - Ahmet Yıldırım	TK124 - Aycan Irmez (Ms.)
TK97 - Ali Atalan	TK125 - Ayşe Acar Başaran (Ms.)
TK98 - Alican Önlü	

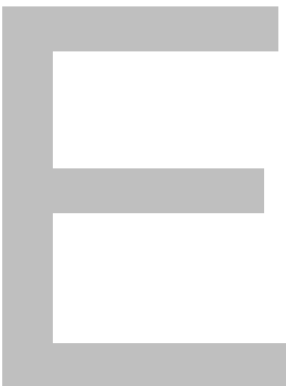
Decision adopted by the Committee on the Human Rights of Parliamentarians at its 152nd session (Geneva, 23 January to 3 February 2017)

The Committee,

Referring to the cases of the above-mentioned parliamentarians and to the decision adopted by the IPU Governing Council at its 199th session (October 2016),

Taking into account the letters of 13 October and 21 November 2016 and 25 January 2017 from the President of the Turkish IPU Group, the information notes of 4, 6 and 21 November 2016 provided by the Permanent Mission of Turkey to the United Nations Office and other International Organizations in Geneva (thereafter designated as “the Permanent Mission”) and the information and new allegations submitted by the complainant,

Referring to the hearing held with the complainant during the 135th IPU Assembly (Geneva, October 2016) and *recalling* that the possibility of a hearing was also offered to the Turkish delegation at that time,



Referring to the report on the mission conducted to Turkey by the Committee in February 2014 (CL/195/11(b)-R.1),

Recalling that the case concerns 55 of the 58 parliamentarians of the People's Democratic Party (HDP), who face over 500 terrorism and criminal charges after the Constitution was amended to authorize a wholesale lifting of parliamentary immunity in May 2016,

Considering that the following information is not disputed by the parties:

- On 20 May 2016, the Grand National Assembly of Turkey (GNAT) amended the Turkish Constitution by voting an immunity bill to strip over a quarter of the country's members of parliament of their immunity; pursuant to the constitutional amendment adopted, the requests for the lifting of parliamentary immunity that were pending at that time were not processed under the ordinary constitutional procedure; instead, they were sent back to the executive for immediate implementation without prior review and approval of parliament, or hearing of the members of parliament concerned; the Constitutional Court rejected, on procedural grounds, the petitions of 70 members of parliament seeking the annulment of the amendment; fifty HDP parliamentarians subsequently lodged applications to the European Court of Human Rights;
- Trial proceedings have started against the HDP members of parliament; several of them have been detained since November 2016, following their refusal to appear for questioning, while others have been placed under judicial control and can no longer travel,

Considering that there are divergences in the information and views provided by the authorities and by the complainant on the following issues of concern:

- **Parliamentary immunity**

- The complainant alleges that the Constitution has been violated by the procedure followed, as relevant constitutional provisions on parliamentary immunity were suspended and disregarded; it observes that the normal procedure pursuant to Article 83 of the Turkish Constitution should have been a case-by-case review of the charges and evidence brought against each member of parliament, including the conduct of a hearing with each incriminated member of parliament to hear his version of the facts and arguments for his defence before the relevant GNAT commission and before the plenary; the complainant alleges that the GNAT has failed to protect the fundamental rights of its members;
- The complainant alleges that the wholesale lifting of immunity of most HDP parliamentarians was "*an administrative coup to exclude the Kurds and other marginalized peoples represented by the HDP from the Parliament of Turkey*"; it claims that the overwhelming majority of the members of parliament affected were from the two main opposition parties (CHP and HDP) and that this measure was part of a broader effort to silence and sideline the most vocal critics of President Erdogan's agenda and to ensure full executive control over a subservient parliament;
- The parliamentary authorities have consistently maintained that the Constitution had been strictly adhered to when adopting the amendment; they pointed out that amending the Constitution is a right explicitly granted to the GNAT by the Turkish Constitution and that "*the latest amendment purely reflect[ed] the discretion of the legislative authority*"; they noted that the critical importance and the sanctity of the principle of parliamentary immunity had been fully acknowledged; according to the authorities, the opposition parties were not specifically targeted; at the time of the adoption of the amendment, many judicial files were waiting to be processed against members of parliament from all political parties in parliament, including the AKP; the authorities indicated that the lifting of the immunity covered 518 files for 55 members of parliament from the HDP, 215 files for 59 members of parliament from the Republican's People's Party (CHP) and 23 files for 10 members of parliament from the Nationalist Movement Party and 50 files for 29 members of parliament from the Justice and Development Party (AKP) – hence a total of 733 files for 114 members of parliament from the opposition and 73 files for 39 members of parliament from the majority; different numbers have been provided in the various communications received both from the authorities and the complainant,

- **Arrests, pretrial detention and other restrictions imposed on HDP parliamentarians – allegations of arbitrary detention, solitary confinement and obstruction of prison visits**
 - According to the complainant, a total of 20 members of parliament were detained between November 2016 and January 2017, following their refusal to appear for questioning (in a bid to contest the legitimacy of the proceedings); by 20 January 2017, eleven remained in pretrial detention, while nine had been released pending completion of the criminal proceedings; travel restrictions were ordered for a number of them; the complainant expressed the fear that other HDP members of parliament would be arrested in the near future;
 - According to the authorities, the courts were required to ensure compulsory attendance at interrogations and to prevent obstruction of justice, particularly in terrorism cases; arrest warrants were issued only to those members of parliament who had repeatedly refused to respond to calls for questioning, according to the authorities (an affirmation contested by the complainant); pretrial detention was ordered on the grounds that “*calling for violence and creating propaganda in favour of terrorist organizations are not considered within the scope of freedom of expression*”, that “*detention orders are appropriate, necessary and proportionate to the aim pursued with a view to protection of national security, territorial integrity and public safety*”, and given the nature of the offences and of the evidence available;
 - The complainant alleged that the detained members of parliament had been held in solitary confinement in remote high-security prisons throughout Turkey, located far away from their homes and the courts where they were being tried; they had allegedly been denied prison visits; no foreign delegation has been granted access to them to date, according to the complainant; three of them, including Mr. Demirtaş, were transferred to cells with co-detainees in January 2017, according to the complainant; in response to these allegations, the authorities have indicated that the primary criterion when placing prisoners in penitentiary institutions was “*existing physical conditions*”; they stated that prison visits could only be authorized by the Ministry of Justice pursuant to the legislation in force and that no one had the right to “directly” undertake visits; they provided the list of persons who had been allowed to visit Mr. Zeydan, which included other HDP members; they denied that Mr. Demirtaş and Mr. Zeydan were placed in solitary confinement and noted that they shared a cell for three persons and had been allowed to benefit from social facilities, according to a decision dated 30 November 2016 by the prison management and monitoring board; no information was provided on the detention conditions of the other parliamentarians,
- **Judicial proceedings – alleged violations of the right to a fair trial and to freedom of expression, assembly and association**
 - The complainant has claimed that the arrests of the members of parliament were arbitrary and that the proceedings were politically motivated to prevent the members of parliament from continuing their work in parliament and politics, including in the lead-up to the April 2017 constitutional referendum;
 - The complainant alleged that fair trial and due process guarantees, starting with the presumption of innocence, have been disregarded; it claimed that all detained members of parliament have faced restrictions in prison to their rights to legal counsel, which have seriously undermined their ability to prepare a legal defence, including surveillance of their legal counsel’s visits and communications, seizure and censorship of documents and intimidation against their counsels;
 - The complainant further alleged that the charges against the 55 HDP members of parliament were baseless and infringed their rights to freedom of expression, assembly and association; no serious and credible evidence had been adduced to support over 600 criminal and terrorism charges brought against the HDP members of parliament in more than 500 separate cases since 15 December 2015, according to the complainant; the complainant claims that the evidence adduced to support the charges against the 55 members of parliament relates to public statements, rallies and other peaceful political activities that they carried out in furtherance of their parliamentary duties and their political party programme such as mediating between the PKK and the Turkish

Government as part of the peace process between 2013 and 2015, advocating publicly in favour of political autonomy, and criticizing the policies of President Erdogan in relation to the current conflict in south-eastern Turkey (including denouncing the crimes committed by the Turkish security forces in that context); the complainant claims that such statements, rallies and activities are not constitutive of any offence and fall under the clear scope and protection of the fundamental rights of the members of parliament; it therefore alleges that proper standards of due process have been disregarded at the investigation stage; it does not believe that the judicial process will be administered in a fair, independent and impartial manner at the trial stage, given the political dimension of the cases and the politicization of the Turkish judiciary;

- The parliamentary authorities have consistently reaffirmed that the HDP parliamentarians were accused of siding with the PKK terrorist organization because of their remarks and action; they have observed that freedom of expression has its limits, as set out in relevant international conventions; they pointed out that article 7 of the anti-terrorism law provides that "*expressions which justify, praise or promote the use of methods by terrorist organizations involving coercion, violence or threats*" are punishable; in this case, the authorities affirm that the parliamentarians have justified and promoted the violent acts of the PKK terrorist organization; they acknowledged that the judicial authorities had yet to examine the charges levelled against the members of parliament and emphasized that all appropriate judicial remedies existed under domestic law;
- As regards restrictions on attorney-client prison visits and communications, the parliamentary authorities confirmed the existence of restrictions with regard to a number of specific examples concerning Mr. Demirtaş and Ms. Yüksekdağ; in these instances, decisions of the court or of the public prosecutor had justified the restrictions; these restrictions were legal pursuant to Law No. 2935 on the state of emergency and of decree-laws issued to implement it such as decree-law No. 667; the authorities have confirmed that such legislation derogates their fundamental rights, as allowed in times of emergency, but have asserted that the principle of proportionality is being respected in the restrictions introduced,

Further considering the following new information and allegations submitted by the complainant:

- On 13 January 2017, Ms. Nursel Aydoğan (TK/89) was convicted to almost five years of prison in five of the 44 files pending against her; the same day, life imprisonment was requested by the prosecution against Mr. Encü;
- Some members of parliament were physically and verbally abused, including three female members of parliament, Ms. Feleknaş Uca (TK/81) – whose son was also reportedly tortured – Ms. Besime Konca, Women's Assembly Spokesperson (TK/76) and Ms. Sibel Yiğitalp (TK/92); they were physically assaulted by the police during a protest in Diyarbakir in October 2016; Ms. Uca's arm was allegedly badly injured by the police and she had to be hospitalized, according to the complainant; Ms. Konca was also physically harassed during her detention on 12 December 2016; physical attacks (punches in the face) also allegedly took place in parliament during the budget debate in early December 2016; Mr. Adıyaman (TK/114) and Mr. Behçet Yıldırım (TK/101) were subsequently hospitalized; female HDP members of parliament were further exposed to sexist swear words from AKP members of parliament during the same debate, according to the complainant,

Considering that, in its opinion of 14 October 2016, the European Commission for Democracy through Law (Venice Commission) called for the restoration of the parliamentary inviolability of all 139 members of parliament, as it is an essential guarantee for the functioning of parliament in Turkey, on the basis of the following conclusions:

- The procedure followed was a misuse of the constitutional amendment procedure because it concerned 139 identified individuals and its substance amounted to a sum of decisions on the lifting of immunity, decisions which should have been taken individually and subject to the specific guarantees of the suspended Article 83 of the Constitution; the National Assembly, instead of seeking a milder solution, proceeded with the most radical measure of complete removal of immunity for the 139 members of parliament and

deprived them of an appeal to the Constitutional Court in violation of the principle of proportionality;

- The situation in the Turkish judiciary made it the worst possible moment to abolish inviolability and most of the files concerned related to freedom of expression; there were serious doubts about the independence and impartiality of the Turkish judiciary; it was informed (but was unable to confirm) that a considerable number of the files against the 139 members of parliament were prepared by prosecutors who had been imprisoned and/or dismissed after the failed coup of 2016;
- “[F]reedom of expression of members of parliament is an essential part of democracy. Their freedom of speech has to be a wide one and should be protected also when they speak outside parliament. The non-violent pursuit of non-violent political goals such as regional autonomy cannot be the subject of criminal prosecution. Expression that annoys (speech directed against the President, public officials, the Nation and the Republic, etc.) must be tolerated in general but especially when it is uttered by members of parliament. Restrictions of the freedom of expression have to be narrowly construed. Only speech that calls for violence or directly supports the perpetrators of violence can lead to criminal prosecution. The case law of the European Court of Human Rights shows that Turkey has a problem with safeguarding freedom of expression, not least with respect to cases considered as propaganda for terrorism. This is partly due to the fact that [...] the scope of the Criminal Code is too wide”;

Recalling the following conclusions and recommendations reached by the IPU Governing Council after the mission conducted to Turkey in 2014 in relation to cases with similar concerns with regard to freedom of expression:

- Peaceful and legal political activities of parliamentarians have been regarded as evidence of criminal and terrorist acts by the prosecution and the courts on repeated occasions in the past, particularly in relation to the situation in south-eastern Turkey; the protection of freedom of expression in Turkey has been a long-standing issue of concern in prior cases brought before the Committee, which has been repeatedly calling on the Turkish authorities since 1992 to take action to enhance respect for this fundamental right;
- Legislative reforms undertaken had not addressed the long-standing concerns – and calls for reform – of international and regional human rights bodies regarding the use of broad anti-terrorism and criminal legislative provisions (particularly the offence of “membership of a criminal organization”) to criminalize conduct that is protected under international human rights law;
- The Turkish legal framework and judicial practice continued largely to fail to distinguish between peaceful protests and dissenting opinions, on the one hand, and violent activities pursuant to the same goals on the other,

Bearing in mind Turkey’s international obligations to respect, protect and promote fundamental human rights, particularly as a party to the International Covenant on Civil and Political Rights (ICCPR) and to the European Convention on Human Rights (ECHR),

Considering that the Turkish Government has officially invoked derogations related to the state of emergency to its obligations under articles 2/3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27 of the ICCPR and similar derogations from the ECHR since the failed coup of 15 July 2016,

Further considering that a group of United Nations human rights Special Rapporteurs issued a public statement on 19 August 2016 noting that “*the invocation of Article 4 [of the ICCPR] is lawful only if there is a threat to the life of the nation, a condition that arguably is not met in this case*”. The experts underscored that “*one cannot avoid, even in times of emergency, obligations to protect the right to life, prohibit torture, adhere to fundamental elements of due process and non-discrimination, and protect everyone’s right to belief and opinion*” and that “*even where derogation is permitted, the Government has a legal obligation to limit such measures to those that are strictly required by the needs of the situation*”; they have urged the Turkish Government to uphold the rule of law in times of crisis, voicing their concern about the use of emergency measures to target dissent and criticism and warning that derogation measures should not be used in a way that would push the country deeper into crisis,

1. *Thanks* the parliamentary authorities and the Permanent Mission for the information provided;
2. *Remains concerned* by the situation of the 55 parliamentarians of the People's Democratic Party (HDP), given their recent arrests and detention; *notes with interest* that Mr. Demirtaş and Mr. Zeydan are no longer held in solitary confinement, but *remains deeply concerned* at the conditions of detention of all other detained members of parliament, given that the parliamentary authorities have failed to offer any information on their situation and that requests by foreign delegations to visit them have reportedly all been denied; *wishes* to receive this information urgently, as well as on the new allegations of physical and verbal abuse, particularly against female HDP parliamentarians;
3. *Takes due note* of the divergence of views that exists between the complainant and the authorities on the serious allegations at hand, particularly in respect of whether the factual evidence adduced to launch terrorism and criminal charges against the members of parliament pertains to peaceful political statements and activities of the members of parliament that fall within the scope of their rights to freedom of expression, assembly and association; *observes* that the information provided by the authorities to date only partially responds to the allegations and lacks specific details in comparison to the information provided by the complainant; given the complexity and magnitude of the case, *wishes* therefore to receive detailed information on the specific grounds and evidence underlying the charges brought against the 55 HDP members of parliament in the various files against them, as well as to be kept informed of the status of the ongoing judicial proceedings; *would further be grateful* to receive more information from the relevant authorities on the recent conviction of Ms. Nursel Aydoğan and any other verdicts delivered of relevance to the case;
4. *Expresses the wish*, in addition to its request for written information, to send a delegation to Turkey to gain a better understanding of the situation, particularly through direct discussions with all relevant authorities and other stakeholders; *trusts* that such a mission will enable it to obtain detailed information on the issues of concern and contribute to facilitating a comprehensive solution in the cases at hand; *expects* to be granted authorization to visit the parliamentarians held in detention in the course of its mission;
5. *Reaffirms its prior concerns* that the legal action taken against 55 of the 58 parliamentarians of the People's Democratic Party (HDP) make it impossible for these members of parliament to devote themselves meaningfully to their parliamentary responsibilities, all the more so at such a crucial time when significant constitutional reform is ongoing and the security situation in their constituencies in south-eastern Turkey remains tense and precarious; *is worried* that the limited possibility for representation in parliament of the populations affected may contribute to the further deterioration of the political and security situation prevailing in Turkey, as well as weaken the independence of the institution of parliament as a whole; *calls for* the release of all parliamentarians pending completion of the ongoing judicial proceedings;
6. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be in a position to supply relevant information, as well as to proceed with all necessary arrangements to organize the requested mission by a Committee delegation;
7. *Decides* to continue examining this case.