



Inter-Parliamentary Union
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Turkey

Decision adopted by consensus by the IPU Governing Council at its 207th session (Virtual session, 25 May 2021) ¹



Mr. Gergerlioğlu (centre) reacts as he is surrounded by fellow members of parliament applauding and brandishing placards after he was dismissed following a vote at the Turkish Parliament on 17 March 2021 | Adem ALTAN/AFP

TUR-139 - Ömer Faruk Gergerlioğlu

Alleged human rights violations

- ✓ Torture, ill-treatment and other acts of violence
- ✓ Lack of fair trial proceedings
- ✓ Violation of freedom of opinion and expression
- ✓ Arbitrary arrest and detention
- ✓ Abusive revocation or suspension of the parliamentary mandate
- ✓ Failure to respect parliamentary immunity

A. Summary of the case

According to the complainant, Mr. Ömer Faruk Gergerlioğlu, a member of the Turkish Parliament belonging to the Peoples' Democratic Party (HDP), has been a staunch critic of the Turkish Government and its policies and has faced reprisals due to his criticism.

Mr. Gergerlioğlu was subjected to a criminal investigation based on his Facebook and Twitter posts in 2016. One of his social media posts was reportedly regarded as terrorist propaganda. It related to a news report from a national media organization containing a statement by the Kurdistan Workers' Party (PKK), declared by the Turkish Government and others as a terrorist organization, indicating that if the Government was in favour of taking steps, a resolution to the conflict could be found within a month. Mr. Gergerlioğlu shared the news report with a message stating that, "this call should be evaluated properly, there is no end to this!"

On 21 February 2018, the Kocaeli 2nd Assizes Court, acting as the court of first instance, sentenced

Case TUR-139

Turkey: Parliament affiliated to the IPU

Victim: Male opposition member of parliament

Qualified complainant(s): Section I.(1)(d) of the Committee Procedure (Annex I)

Submission of complaint: March 2021

Recent IPU decision(s): - - -

Recent IPU mission(s): - - -

Recent Committee hearing(s): - - -

Recent follow-up:

- Communication from the authorities: Letter from the President of the Turkish IPU Group (May 2021)
- Communication from the complainant: April 2021
- Communication addressed to the authorities: Letter to the Speaker of the Turkish Parliament (April 2021)
- Communication addressed to the complainant: April 2021

Mr. Gergerlioğlu to two years and six months' imprisonment on the grounds of spreading PKK/KCK terrorist organization propaganda by including photographs of armed members of the terrorist organization in a way that praises and encourages methods involving violence and force, and thus committing the crime of spreading propaganda about the illegal, armed PKK terrorist organization.

The complainant claims that the appeal proceedings against Mr. Gergerlioğlu, who was elected a member of parliament in June 2018, continued despite him having parliamentary immunity. On 7 December 2018, Mr. Gergerlioğlu's conviction and sentence were confirmed on appeal by the 3rd Criminal Chamber of the Istanbul Regional Court of Justice. On 28 January 2021, the 16th Criminal Chamber of the Court of Cassation rejected Mr. Gergerlioğlu's final appeal for the conviction to be set aside. According to the complainant, Mr. Gergerlioğlu's prosecution and conviction were politically motivated and violated his right to freedom of expression.

The parliamentary authorities have emphasized that, on 7 December 2018, the court of appeal ruled decisively on the issue of parliamentary immunity, concluding that Mr. Gergerlioğlu did not enjoy parliamentary immunity under Article 83(2) of the Constitution. This article excludes immunity in situations where parliamentarians are prosecuted for offences that are covered by Article 14 of the Constitution, which stipulates that, "none of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights". The parliamentary authorities also state that the same court also notified the Speaker of Parliament that implementation of the sentence against Mr. Gergerlioğlu had been suspended until he ceased to be a parliamentarian. The parliamentary authorities stated furthermore that Turkish law is clear, as confirmed by the Constitutional Court, that the loss of parliamentary membership due to a final judicial sentence is automatic upon the final court decision being notified to the plenary of the Turkish Parliament, which occurred on 17 March 2021.

According to the complainant, on 2 April 2021 the police raided the home of Mr. Gergerlioğlu, during which he was physically assaulted and, as a result, he had to be briefly hospitalized. He is currently serving his prison sentence at Ankara's Sincan Prison.

Two separate individual applications filed to the Constitutional Court by Mr. Gergerlioğlu are still pending.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the parliamentary authorities for the information they have provided and for their spirit of cooperation;
2. *Notes* that the complaint concerning the case of Mr. Ömer Faruk Gergerlioğlu is admissible, considering that the complaint: (i) was submitted in due form by a qualified complainant under section I.1 (d) of the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns an incumbent member of parliament at the time of the initial allegations; and (iii) concerns allegations of torture, ill-treatment and other acts of violence, lack of fair trial proceedings, violation of freedom of opinion and expression, arbitrary arrest and detention, abusive revocation or suspension of the parliamentary mandate and failure to respect parliamentary immunity, allegations that fall under the Committee's mandate;
3. *Is profoundly concerned* that Mr. Gergerlioğlu was deprived of his parliamentary mandate and is serving a harsh prison term as a result of the legitimate use of his right to freedom of expression; *notes* that he simply sent a tweet in which he forwarded an existing news report and included an implicit call for peace negotiations to take place; *considers* that, in light of the information on file, Mr. Gergerlioğlu's continued detention is arbitrary and should be immediately ended; *sincerely hopes* that available legal avenues can still bring this about; and *is eager*, therefore, to learn what progress is being made in the consideration of the applications that are pending before the Constitutional Court;

4. *Considers* that this case constitutes further proof that the Turkish authorities have not been striking the right balance between their legitimate fight against terrorism and respect for the human rights of opposition members of parliament, in particular their freedom of expression; *reaffirms its view* in this regard that the information it has thus far been able to obtain over the years – particularly several court decisions and their analysis – confirms that HDP parliamentarians have been charged and convicted primarily for making critical public statements, issuing tweets, participating in organizing or calling for rallies and protests, and conducting political activities in furtherance of their parliamentary duties and political party programme, such as mediating between the PKK and the Turkish Government as part of the peace process between 2013 and 2015, publicly advocating political autonomy, and criticizing the policies of President Erdoğan relating to the current conflict in south-eastern Turkey; *remains convinced* that this situation is largely the result – as spelled out in the report of the IPU mission to Turkey in June 2019 – of the systematic and sweeping affirmation by the Turkish authorities that the HDP, a legally authorized political party in Turkey, and the PKK are one and the same, or at least working closely together;
5. *Calls on* the Turkish authorities once more, in line with the recommendations made in the 2019 IPU mission report, to take more decisive action to ensure that current national legislation and its application are in line with international and regional standards on freedom of opinion and expression, assembly and association, and on the independence of the judiciary; *looks forward*, therefore, to hearing about concrete steps taken to this end, including through the implementation of the recently adopted Human Rights Action Plan by the Turkish authorities;
6. *Requests* the Secretary General to convey this decision to the relevant authorities, including the Constitutional Court, the complainants and any third party likely to be in a position to supply relevant information;
7. *Requests* the Committee to continue examining this case and to report back to it in due course.