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Executive Committee Committee on the Human Rights of Parliamentarians

Report on their joint mission to Turkey (10–13 June 2019)



Pictures of Selahattin Demirtas and Figen Yüksekdağ, jailed leaders of the Pro-Kurdish opposition Peoples' Democratic Party, are seen on a flag as supporters of the pro-Kurdish opposition Peoples' Democratic Party (HDP) and of the 'Hayir' ('No') campaign attend a rally for the upcoming referendum in Istanbul, on 8 April 2017. On 16 April 2017, Turkey voted on whether to change the current parliamentary system into an executive presidency. ©YASIN AKGUL / AFP

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Executive Summary

From 10 to 13 June 2019, a delegation of the IPU Executive Committee and the Committee on the Human Rights of Parliamentarians conducted an on-site mission to Turkey to gain a better understanding of the political and security environment inasmuch as it affects the work and functioning of the Turkish Parliament, and to gather first-hand information on the concerns identified by the Committee on the Human Rights of Parliamentarians in the cases of 57 former and current members of parliament, all members of the opposition belonging to the People's Democratic Party (HDP). These concerns are primarily related to the alleged failure to respect the rights to freedom of expression, assembly and association, parliamentary immunity, alleged lack of fair trial proceedings, excessive delays, alleged arbitrary arrest and detention.

The delegation deeply appreciates that the Turkish Parliament, thanks to the involvement of its Speaker as well as the President of the Turkish IPU Group, went to great lengths to ensure the smooth conduct of the mission.

Although the delegation did not receive concrete information during the mission regarding the individual cases before the Committee, it was pleased to receive assurances from the Turkish authorities, including the Ministry of Justice, that information on the legal basis and the facts adduced to support the accusations with regard to each former and current HDP member of parliament would be made available to the Committee to allow it to make its own informed assessment.

The mission to Turkey enabled the delegation to understand better the security situation in the country. Although the delegation considers that the Turkish authorities have faced formidable security challenges, it is nevertheless concerned about the heavy-handed approach that they have adopted in response. It considers in this regard that the massive and summary decisions taken in the aftermath of the coup attempt in 2016, in particular the dismissal of thousands of civil servants, judges, prosecutors and mayors, raise serious questions about due process. The delegation calls on the Government to address these concerns and to offer an effective remedy to those who may have been wronged.

The delegation condemns all forms of terrorism and firmly believes that everything should be done to hold the culprits to account. The delegation considers at the same time that security operations by the Turkish authorities in response to terrorist acts or threats need to be proportionate and in compliance with applicable human rights standards and that any transgressions need to be properly investigated and punished. In this regard, the delegation

is concerned about the reported lack of effective investigations and the immunity granted to security forces even when credible evidence of violations is available.

The delegation received systematic and detailed reports on the alleged lack of independence of the judiciary and executive interference in Turkey. The delegation calls on the authorities to take effective measures to restore legal guarantees to ensure the independence of the judiciary from the executive and to strengthen the Council of Judges and Prosecutors. Such steps will not only offer better guarantees that the trials against current and former parliamentarians from the HDP are held with respect for due process but also enhance the public's confidence in the judiciary. The delegation is keen to hear from the Government if it aims to address these matters through its latest judicial reform.

The delegation is aware that much progress has been achieved over the years in promoting demands for Kurdish rights. Nevertheless, the period following the coup attempt has seen a backlash in this regard and lessened the prospects for the resolution of pending issues. The delegation calls on the Turkish authorities to pursue an effective reform agenda in this area, which should also look at issues such as decentralization and extended mother-tongue education in line with good practice on such matters. The delegation also calls on Kurdish political organizations and civil society to take meaningful steps to engage on these issues with the authorities in the context of Turkey's constitutional and legal framework.

The delegation regrets that there appears to be no meaningful dialogue between the AKP and HDP and believes that such exchanges are essential, not only to help revive the peace talks, but also to promote better mutual understanding and cooperation. The delegation is concerned about the steps reportedly taken to curtail the Grand National Assembly's legislative and oversight functions. The delegation suggests that the IPU lend its support, should that be considered useful, to promote better dialogue in parliament and to examine ways to bolster the work of the institution of parliament.

The delegation is deeply concerned that the authorities systematically present the PKK and the HDP as one and the same. It is clear that both organizations draw in large part on the same support base and pursue similar objectives. However, the HDP is a legal political party that in no way espouses violence to reach its aims. In fact, on several occasions, the HDP has criticized specific acts of violence by the PKK. Even if one acknowledges that the HDP could be more systematic in its public disapproval of PKK violence, this does not mean that, by failing to do so, it is acting in alliance with or supporting the PKK. The delegation considers in this regard that one should make a clear distinction between criminal responsibility, on the one hand, and moral and political responsibility, on the other. In a similar vein, the delegation believes that invoking anti-terrorism laws is not the way to proceed in response to decisions by HDP MPs to attend funerals of PKK members, however morally and politically reprehensible such attendance may be.

The delegation is concerned about the existing legal framework in the area of freedom of expression in Turkey and how it is used. The delegation acknowledges that some advances were made in 2013. It considers, however, that previous long-standing concerns, expressed by the IPU as well as UN special rapporteurs on human rights and international organizations such as the Venice Commission and the European Union, about the vagueness and breadth of anti-terrorism provisions ought to be addressed. The delegation therefore recommends that the Turkish authorities review and modify its existing legislation in this light and to ensure its uniform, fair and predictable application.

The delegation regrets that it was not allowed to visit any of the current and former HDP MPs in detention, despite the fact that its request was made well in advance. The delegation points out that such access, albeit in a limited form and at the very last minute, was provided on the occasion of an earlier IPU mission to Turkey which shows that the Turkish authorities could have shown flexibility on this matter.

The delegation appreciated the discussion with the Vice Minister of Justice about foreign trial observers, but regrets that it appears that, even though trials are public in Turkey, the Turkish authorities are not able to guarantee court access to such observers. In this regard, the delegation considers that, given the significant expenses and time invested by foreign trial observers to come to Turkey, the authorities should act more swiftly and decisively to accommodate timely requests for trial observations, including by ensuring a larger court room and stronger security arrangements if need be, and to communicate a definite and positive answer to foreign trial observers well in advance.

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A. Origin and conduct of the mission

1. The cases of 57 individuals – 17 current parliamentarians and 40 former members of parliament, all members of the opposition belonging to the People's Democratic Party (HDP) – are currently under examination before the IPU Committee on the Human Rights of Parliamentarians. The alleged human rights violations in these cases refer to the failure to respect parliamentary immunity, lack of due process at the investigation stage, lack of fair trial proceedings and excessive delays, failure to respect the rights to freedom of expression, assembly and association, arbitrary arrest and detention, ill-treatment and the abusive revocation or suspension of the parliamentary mandate.

2. It was in its decision adopted in February 2017 that the Committee on the Human Rights of Parliamentarians first suggested sending a delegation to Turkey to obtain detailed information on the issues of concern and to contribute to facilitating a comprehensive solution to the cases at hand, particularly through direct discussions with all relevant authorities and other stakeholders. The Turkish authorities subsequently rejected the Committee's request for a mission on two occasions on the grounds that it "could negatively affect the judicial process" and was not considered "appropriate". The Turkish authorities, however, subsequently approved the mission during the 138th IPU Assembly (April 2018) on the condition that the delegation would not seek to meet the detained members of parliament or the judicial authorities. In May 2018, however, the authorities cancelled the Committee's mission, leaving open the possibility of organizing it at a later date, following the announcement of early elections in June that year. In October 2018, the IPU governing bodies reframed the purpose and format of the mission: it would be a hybrid mission to both look at the overall political and security environment and address the specific concerns identified by the Committee on the Human Rights of Parliamentarians. For this purpose, the delegation would comprise members of both the Committee on the Human Rights of Parliamentarians and the IPU Executive Committee.

3. In December 2018, the President of the Turkish IPU Group confirmed in writing that an IPU delegation was welcome to come to Turkey, once local elections scheduled for 31 March 2019 had been held, to meet with the judicial and executive authorities, but that prison visits would not be possible. The President of the IPU, who was going to lead the delegation, and the President of the Committee on the Human Rights of Parliamentarians continued the discussion regarding the mission with the President of the Turkish IPU Group during the 140th IPU Assembly (April 2019). On that occasion, the President of the Turkish IPU Group asked to receive a road map listing details of all the authorities and persons that the delegation wished to meet as well as the places it wished to visit. After this information was provided by the IPU Secretary General, an agreement was reached that the mission would take place from 10 to 13 June 2019.

4. Following consultations with all the members of the Executive Committee and the Committee on the Human Rights of Parliamentarians, the composition of the delegation, led by IPU President Ms. G. Cuevas Barron (Mexico), was determined as follows: President of the Committee on the Human Rights of Parliamentarians Ms. A. Jerkov (Serbia), Executive Committee member Ms. A.D. Mergane Kanouté (Senegal) and members of the Committee on the Human Rights of Parliamentarians, Mr. N. Bako-Arifari (Benin) and Mr. D. Carter (New Zealand). The delegation was accompanied by Mr. R. Huizenga, Manager of the IPU human rights programme and Secretary of the Committee on the Human Rights of Parliamentarians. Four locally hired interpreters accompanied the delegation to ensure interpretation from and into English, French and Turkish.

5. The delegation wishes to thank the host authorities for their cooperation. Special thanks go to the Speaker of the Grand National Assembly of Turkey and the President of the Turkish IPU Group for their efforts to ensure the smooth conduct of the mission, which entailed meetings in Ankara (10–11 June), Diyarbakır (12 June) and Istanbul (13 June). The delegation nevertheless regretted that it was not possible to meet with some of the current and former HDP parliamentarians in detention, as repeatedly requested, and to meet the Minister of Foreign Affairs and the Minister of Justice.

6. The delegation met with the following people:

- Parliamentary authorities
- Mr. Mustafa Şentop, Speaker of the Grand National Assembly of Turkey
- Ms. Ravza Kavakci Kan, member of parliament, President of the Turkish IPU Group
- Ms. Arife Duzgun Polat, member of parliament, member of Turkish IPU Group*
- Ms. Zeynep Yildiz, member of parliament, member of Turkish IPU Group*

- Executive authorities
 - Mr. Cengiz Öner, Vice Minister of Justice
 - Mr. Hasan Basri Güzeloğlu, Governor of Diyarbakır
 - Mr. Selçuk Mızraklı, Mayor of Diyarbakır Metropolitan Municipality
- Judicial authorities
 - Mr. Engin Yıldırım, Vice President of the Constitutional Court
- Political parties
 - Members of parliament belonging to the Justice and Development Party (AKP), including the Deputy Chairwoman of the AK Party group in Parliament, Ms. Özlem Zengin, Ms. Oya Eronat, Ms. Zehra Taşkesenlioğlu Ban, Mr. Ebubekir Bal, Mr. Burhan Kayatürk and Mr. Şeyhmus Dinçel (former MP)
 - Members of parliament belonging to the Republican People's Party (CHP), including the Deputy Chairman of the CHP Group in Parliament, Mr. Engin Özkoç, and Mr. Utku Çakırözer
 - Members of parliament belonging to the Peoples' Democratic Party (HDP), including the co-Chair of the HDP Group in Parliament, Ms. Pervin Buldan, and Mr. Hişyar Özsoy
 - Members of parliaments belonging to the Nationalist Movement Party (MHP), including the Vice President of the MHP Group in Parliament, Mr. Muhammed Levent Bülbül, and Mr. Erkan Akçay
- Members of parliament concerned, their lawyers and family members
 - Ms. Pervin Buldan, member of parliament
 - Mr. Garo Paylan, member of parliament
 - Ms. Ayşe Acar Başaran, member of parliament
 - Mr. Hişyar Özsoy, member of parliament
 - Mr. Berdan Öztürk, member of parliament
- Civil society representatives and others
 - Mr. Öztürk Türkdoğan, Chair of the Human Rights Association
 - Mr. Kerem Altıparmak, lawyer and faculty member at Ankara University, Faculty of Political Science
 - Other civil society representatives in Diyarbakır and Ankara
 - Family members of victims killed in terrorist attacks

B. Outline of the cases and the Committee's concerns before the mission

7. Over 600 criminal and terrorism charges have been brought against the members of parliament of the HDP since 15 December 2015, when the Constitution was amended to authorize the wholesale lifting of parliamentary immunity. Hundreds of trial proceedings are ongoing against HDP parliamentarians, and former parliamentarians, throughout Turkey. Some of them also continue to face older charges in relation to the Kurdistan Communities Union (KCK) first-instance trial that has been ongoing for more than eight years, while others face more recent charges. In these cases, their parliamentary immunity was allegedly not lifted.

8. As of early April 2019, 10 former members of parliament continue to be held in detention under restrictive conditions applicable to terrorism suspects and convicts. According to the information provided by the complainant, Turkish courts have delivered around 10 new prison sentences against former and current MPs since the 139th IPU Assembly (Geneva, October 2018). The parliamentary authorities have stated that they were not able to confirm this number and have asked for additional information to help them to undertake verifications with the relevant authorities.

9. According to the complainant, the charges against HDP members of parliament are groundless and violate their rights to freedom of expression, assembly and association. The complainant claims that the evidence adduced to support the charges against the members of parliament relates to public statements, rallies and other peaceful political activities carried out in furtherance of their parliamentary duties and their political party programme. Such activities include mediating between the Kurdistan Workers' Party (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 Erdoğan in relation to the current conflict in south-eastern Turkey and at the border with Syria (including denouncing the crimes committed by the Turkish security forces in that context). The complainant alleges that such statements, rallies and activities

did not constitute any offence, and that they fall under the clear scope and protection of the fundamental rights of members of parliament.

10. The most prominent cases concern the two former co-Chairs of the HDP, Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ, who remain in detention. On 20 November 2018, the European Court of Human Rights (ECtHR) ordered the immediate release of Mr. Demirtaş after finding violations of his fundamental rights. The ECtHR concluded that the extensions of Mr. Demirtaş' pretrial detention and his subsequent inability to take part in parliamentary activities "constituted an unjustified interference with the free expression of the opinion of the people and with the applicant's right to be elected and to sit in Parliament" and that it had "pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate". The Turkish authorities have not implemented the ECtHR's decision because it is not yet final, as it was appealed by both parties to the Grand Chamber of the Court.

11. Ms. Yüksekdağ was sentenced in a number of cases and continues to face multiple charges and proceedings. She was deprived of her HDP membership and banned from exercising any political activities pursuant to a court conviction. The IPU trial observer submitted her final report on the hearings she attended in Ms. Yüksekdağ's trial from September 2017 until September 2018 (and one hearing in the case of Mr. Demirtaş in December 2017). Having reviewed a translation of the incriminating statements made by Ms. Yüksekdağ, the IPU trial observer found that the prosecution's evidence put forward against Ms. Yüksekdağ "appears to fall squarely within her legitimate right to express her opinions, discharging her duty to draw attention to the concerns of those she represents". The report concluded that the prospect for Ms. Yüksekdağ – and Mr. Demirtaş – to receive a fair trial was remote and that the political nature of both prosecutions was evident. The observer recommended that the IPU stand in solidarity with the former MPs and remain informed by continuing to observe the proceedings as much as possible.

12. An internal review of 12 court decisions issued against HDP members reached similar conclusions. It concluded that the judiciary in Turkey, from the first instance courts to the Constitutional Court level, completely disregarded the case law of the ECtHR and the main judgment of the Turkish Constitutional Court in relation to freedom of expression when evaluating whether an expression was constitutive of incitement to violence or of one of the other crimes the members of parliament were charged with. The review found that a presumption of guilt was used by the courts and that harsher restrictions and punishment were applied to the members of parliament because of their particular duties and influence, contrary to the special protection afforded under international law to political expression by public and political figures. The review further found that the interpretation of anti-terror laws by Turkish courts was arbitrary and unpredictable. Similar speeches and acts were interpreted completely differently by different courts or even in the same decision by the same court.

13. The Turkish authorities firmly deny all these allegations. They have invoked the independence of the judiciary and the need to respond to security/terrorism threats and legislation adopted under the state of emergency to justify the legality of the measures taken. They have provided detailed information on the "provisional constitutional amendment" made by parliament in relation to parliamentary immunity in May 2016 to prosecute parliamentarians from all parties. They have asserted that there is no "HDP witch-hunt" in Turkey; that women parliamentarians are not specifically targeted; that there is no Kurdish issue in Turkey and no current conflict in south-eastern Turkey; that Turkey is, however, facing a terrorism issue at multiple levels involving the PKK and its "extensions"; that the HDP never publicly denounced the violent activities of the PKK; that its members, including members of parliament, made many statements in support of the PKK and their "extensions"; that they attended funerals of PKK suicide bombers and called for people to take to the streets, which resulted in violent incidents with civilian casualties; that this does not fall within the acceptable limits of freedom of expression; that the Constitutional Court has reached such conclusions in three cases and that, in other cases, domestic remedies have not yet been exhausted; that the independence of the judiciary and the rule of law in Turkey must be respected.

C. Information gathered during the mission

1. The peace talks, their breakdown and renewed violence

14. The IPU delegation was repeatedly told by the Turkish authorities that the Government had been waging a battle against terrorists, namely the PKK, which it held responsible for tremendous acts of violence in the last 35 years in the course of which some 50,000 people lost their lives. Ms. Oya Eronat, a member of the AKP, gave the delegation a moving account of how her son was killed in 2008 in a PKK attack in Diyarbakir.

Ms. Arife Polat Düzgün, also a parliamentarian from the AKP, told the delegation how she witnessed a massacre perpetrated by the PKK. Both members of parliament said that in south-eastern Turkey the PKK forcibly took children from their families and trained them to become part of the organization. If a child was killed in combat, their family would become an enemy of the Government, hence setting in a motion a cycle of hatred and violence. Several AKP members of parliament from south-east Turkey underscored that they themselves have been threatened by the PKK in their constituencies and hindered in their political work.

15. Between 2013 and 2015 there were direct and indirect talks between Turkish state officials and the PKK leader, Mr. Abdullah Öcalan. The talks continued until 5 April 2015 in the form of meetings of the "Imrah Delegation", which included, among others, Mr. Selahattin Demirtaş and Ms. Pervin Buldan (both of whom were first members of the BDP then the HDP). The talks, which took place with the agreement of the Turkish Government, provided a platform for dialogue to discuss the steps needed to end the armed conflict and to promote a new constitutional and legislative framework for Turkey. As part of the peace process, the Government created the Council of Wise Persons and established the Commission on the Negotiation Process under the auspices of the Grand National Assembly. During the peace process, the PKK declared a ceasefire and the Turkish Government suspended its security operations against the PKK.

16. Although all interlocutors underscored the importance of the talks themselves, both sides offered very different reasons for their breakdown. Those aligned with the Government affirmed that the PKK had taken up arms again and hence violated the spirit of the talks. In this regard, the President of the Turkish IPU Group stated that the peace process had constituted a great opportunity and that the authorities had taken very promising steps. However, the PKK, in alliance with the HDP, had put an end to the negotiations by resorting to violence. She said that the picture presented by the HDP and the reality on the ground were often very different. In contrast, the HDP interlocutors told the delegation that the talks had only served as a way for President Erdoğan to obtain the support of Turks of Kurdish origin, but that when he realised that the HDP was getting significant credit for the progress made he decided to withdraw his support from the process. In this regard, the HDP told the delegation that the June 2015 parliamentary elections were a watershed because the HDP passed the significant 10 per cent threshold to enter into the Grand National Assembly, obtaining some 13 per cent of the overall seats.

17. Since the end of the peace process, violence has flared up again, leaving – according to the International Crisis Group – some 2,400 people dead, with both sides trading blame. Frustrated with the end of the peace talks, in August 2015, Kurdish supporters announced local administrative autonomy for Sur, a historic district in Diyarbakır, one of several attempts at self-rule in cities and towns across the region. The delegation was told by representatives from civil society and the HDP that the Turkish Government responded with a violent crackdown. Blanket curfews were imposed on several towns and districts in the region, with much of Sur on lockdown as Turkish security forces attempted to flush Kurdish militants from urban areas. The Governor of Diyarbakır stated that the State had to intervene because PKK terrorists had attempted to start a civil war in Sur by setting up trenches and barricades. As a result of their actions hundreds of security officers and civilians were killed. The Governor said that those responsible were being held to account. He also said that the HDP members of parliament did not criticize the PKK's actions, but rather sanctioned them, including through press statements.

18. Many interlocutors referred to the start of the siege of Kobane in Syria by Islamic State in Iraq and the Levant (ISIL) in September 2014 as a turning point, and the likely endpoint of the negotiations. The city of Kobane is very close to the Turkish border and most of its population is Kurdish. The People's Protection Units (YPG), which are made up primarily of ethnic Kurds and considered by the Turkish authorities as a terrorist organization for allegedly supporting the PKK, took over control of the city in July 2012 during the civil war in Syria. The start of the siege of Kobane by ISIL triggered calls of solidarity by different international organizations and civil society organizations across a number of Turkish cities in order to protect the civilian population and to prevent a humanitarian disaster. Amongst the various calls, the following tweet was sent from the HDP Headquarters' Twitter account on 6 October 2014: "Urgent call to our peoples! An urgent call for our peoples from the HDP's Central Executive Committee, which is currently in session! The situation in Kobanê is very dire. We call on our people to go to streets and to support those who are already on the streets in protest against ISIL attacks and the AKP government's embargo against Kobanê." It is understood that similar calls were also made by the PKK and its reported urban wing, the KCK. On 7 October 2014, the KCK Council issued a statement calling for resistance. Civil society representatives and elected politicians from Diyarbakır stated that the Turkish population of Kurdish origin had expected President Erdoğan to come to the rescue of the Kurdish population in Kobane or at least to allow Kurdish supporters to cross into Syria to offer help themselves. However, President Erdoğan blocked the border, did not intervene as requested, and on 7 October 2014 announced that Kobane was about to fall. Over the following days, in the course of

the events in Diyarbakır that, according to civil society representatives and the HDP, started in a peaceful manner, Islamic groups (namely the "Kurdish" or "Turkish Hezbollah") infiltrated the protests and resorted to violence. Some 50 people were killed, many others were injured and much property was destroyed. The HDP and civil society representatives told the delegation that many of the victims were HDP supporters.

19. The Turkish authorities told the delegation that the HDP's call was an incitement to violence, which explains what ensued in Diyarbakır. Many civil society representatives and HDP parliamentarians disagree. They told the delegation that indictments and court decisions against Mr. Demirtaş, in his then capacity as HDP co-Chair, and others presented the aforementioned tweet from HDP headquarters as evidence of membership of the accused persons in the PKK/KCK and proof of the accusation that the suspects acted on their orders, considering that the HDP's call mirrored the one made by the KCK and PKK. Nevertheless, it seems that the prosecution did not prove any causal link between the KCK's statement and the HDP's call for solidarity with Kobane in any of the cases. The courts did not seek concrete evidence to prove that members of the HDP's Central Executive Committee were informed of and adhered to the KCK's call.

20. The Turkish parliamentary authorities organized a meeting in Diyarbakır between the delegation and several families who had lost members due to violence, in particular in relation to the events in Diyarbakır in October 2014. The families stated that they had been receiving threats since the deaths of their loved ones. They blamed these killings on the HDP and PKK, considering them one and the same and ready to kill innocent bystanders and supporters of the AKP.

21. The HDP MPs told the delegation that their party had submitted to the Grand National Assembly five separate motions to establish a parliamentary investigation committee in order to investigate and elucidate the Kobane incidents. These motions were reportedly all rejected by the Grand National Assembly. Moreover, they alleged that the government had not replied to any of the 11 HDP parliamentary queries filed since 2014 concerning the incidents.

22. The HDP also told the delegation that there had been hundreds of attacks against HDP election offices in the run-up to the national elections of June and November 2015 and that more than one thousand of its members had been detained in the latter half of 2015 after the Government's crackdown in response to the Suruç bombing of July 2015, which was believed to have been carried out by a Turkish citizen of Kurdish origin with reported links to ISIL, and the collapse of the ceasefire between the Government and the PKK. On 18 May 2015, there were simultaneous bomb attacks on the HDP's bureaus in the cities of Adana and Mersin. It is unclear who was responsible for these attacks, but some have suggested that Turkish far-right nationalist groups may have been involved, while others claim that President Erdoğan and other senior members of the Government may have provided partial incitement with public statements conflating the HDP with the PKK. A number of the attacks appeared to be in retaliation for PKK actions. On 5 June 2015, there was a bomb attack on the HDP's final election rally in Diyarbakır and this was followed by a further bomb attack on 10 October 2015 at a peace rally in Ankara, which was attended by the HDP.

2. The situation of the Kurds in Turkey

23. The parliamentarians from the AKP and MHP told the delegation that before the AKP came to power, it was not possible to say in parliament "I am Kurdish" or to use the Kurdish language. Now there was freedom to speak and learn Kurdish and there were Kurdish TV channels, all of which enabled the Kurds to freely express Kurdish identity. The Governor of Diyarbakır added that Kurdish could even be used in election campaigns and for media purposes. AKP representatives were also quick to point out that their party was receiving the highest number of votes from Kurds but that the AKP was a party for all Turks. They also emphasized that in the recent local elections the HDP received the most votes from western provinces not the south-east. In their belief, this showed that the people who were suffering from terrorism saw that the HDP was not making a positive difference, contrary to the AKP which was providing development and the effective delivery of public services.

24. The authorities referred to "Turkishness" as a crucial driver in building the Turkish nation and held the view that the issue of "ethnic identities" was divisive and weakened the unified nation. In response to queries from the delegation, the authorities all underscored that there was no "Kurdish question", that the Constitution did not discriminate, that all Turkish citizens were treated equally and that the almost 83 million people in Turkey formed a single nation. The MHP representatives underscored that nobody was getting instruction in their mother tongue, with all school education being in Turkish, and that this was a reality for all linguistic communities in the country and therefore did not target the Kurds in any way.

3. The failed coup attempt in July 2016, its aftermath and repercussions

25. On 15 July 2016, a group of military officials, allegedly affiliated with the Gülen movement, carried out a failed coup to overthrow the Turkish Government. Numerous buildings, including the Grand National Assembly and the presidential building, were bombed, and roads and bridges were blocked. During the attempted coup, which lasted less than 24 hours, some 250 civilians were killed and many were injured. After the suppression of the coup, a large number of people were arrested and detained. On 20 July 2016, the Turkish Council of Ministers, headed by the President, declared a state of emergency. On 21 and 22 July 2016, the Turkish authorities notified the United Nations and the Council of Europe that Turkey had derogated from certain of their obligations under the European Convention on Human Rights and the International Covenant on Civil and Political Rights. Under the state of emergency, a total of 32 decree laws were subsequently issued.

26. The delegation was repeatedly told of the massive consequences of the implementation of the state of emergency and the decrees, which had led to the dismissal of over 135,000 public sector workers and of close to 4,400 judges and public prosecutors and the closure of many important media outlets. A State of Emergency Procedures Investigation Commission, created in May 2017 to examine complaints regarding implementation of these measures, had been largely ineffective, according to those directly affected, who all emphasized the arbitrariness of the procedure. Although the state of emergency was lifted on 18 July 2018, the Turkish Parliament adopted on 25 July 2018 Law No. 7145, "Amendments to Some Laws and Decree Laws", that stated that significant practices implemented during the state of emergency would remain in force for at least another three years. This included the extension of police custody to 12 days, the powers of governors to ban specific persons from specific places, to declare curfews and restrict protests, restrictions to fair trial guarantees and the possibility for further dismissals of civil servants.

27. The Turkish authorities repeatedly spoke of the impact of the failed coup, in terms of both the immediate victims and the repercussions for Turkish state institutions, which they believed had been largely infiltrated by the Gülen movement. The HDP and others told the delegation that everyone had taken an immediate stance against the failed coup. They pointed out that the failed coup had been thwarted in the course of the same evening, only involved a small group of officers and that the state of emergency and subsequent decrees were a completely disproportionate and largely arbitrary reaction, primarily used to settle scores and to submit the Turkish state institutions to the will of President Erdoğan and the AKP. Some of the civil society representatives highlighted that within less than 12 hours of the failed coup, 2,500 judges were suspended and that, at first, under the state of emergency, new judges no longer needed to pass the previously required exam. The Vice Minister of Justice told the delegation that it was a challenge to replace the dismissed judges and prosecutors, but highlighted that the authorities were doing everything possible to properly train their replacements. The HDP and others told the delegation that many of the new judges and prosecutors were AKP members and pointed out that all the members of Court of Cassation and Council of State had been dismissed. They held that no judge would ever go against President Erdoğan. The fact that the Constitutional Court had found in favour of two journalists in 2016 (the cases of Mr. Can Dündar and Mr. Erdem Gül) was just to please the Council of Europe and therefore did not have, in their belief, any substantive long-term consequence. They pointed out that the Constitutional Court's decision was publicly and harshly criticized shortly after by the Minister of Justice and the President, the latter stating that he did not "accept or respect" the Constitutional Court's decision. Subsequently, the first instance court criticized the Constitutional Court for overstepping its jurisdictional limits, in words that seemed to evoke the observations made earlier by the President and the Minister of Justice. This was just one of several examples mentioned to show that there was executive interference in the work of the courts.

28. Several representatives of civil society organizations affirmed that, in no small part thanks to the constitutional changes following the April 2017 referendum, Turkey had become an authoritarian regime, placing all power in the hands of President Erdoğan, who was also the leader of the ruling AKP. They stated that the European Commission for Democracy through Law, also known as the Venice Commission, and the European Union had repeatedly expressed concern about respect for the rule of law in Turkey. They also affirmed that the Grand National Assembly was dysfunctional: not only had the new presidential system curtailed the parliament's oversight and legislative functions, but the Grand National Assembly had also adopted changes to its rules of procedure whereby ministers would no longer appear before it and civil society organizations were excluded from the legislative consultation process at the parliamentary committee level.

29. The Vice Minister of Justice told the delegation that in May 2019 President Erdoğan had announced a judicial reform package aimed, among other things, at simplifying and increasing transparency

in legal proceedings, simplifying procedures, facilitating access to justice, including through the use of alternative dispute settlement, and enhancing respect for fair trial guarantees.

30. Civil society representatives and the HDP told the delegation that they were sceptical about the reform, seriously questioning, in light of earlier judicial reforms, whether this one would entail any much-needed changes to existing anti-terrorism legislation as well as constitutional changes to promote better respect for the rule of law, in particular given what they believed to be the strong executive interference in the judiciary.

31. Several HDP interlocutors, in particular in Diyarbakır, highlighted the system of government-appointed trustees, known as the *kayyum*, which had been in place in the region since 2016 to replace duly elected HDP mayors. The delegation was told that in total the Government replaced 95 municipalities and arrested 100 mayors on suspicion of links with the PKK. While pro-Kurdish politicians had been imprisoned on terrorism-related charges before, the instalment of the *kayyum* in 2016 was unprecedented in that it targeted local representation directly. The Government claims the *kayyum* policy was necessary after the urban clashes between PKK-linked militants and security forces swept the region following the breakdown of peace talks in 2015. The Government alleged that the HDP-run councils lent support to the PKK and that fighters used municipal diggers to build defences. Furthermore, the Government maintained that the *kayyum* administration brought much-needed services and greater security to the region, which the HDP contests, saying that the *kayyum* cared little about representing local concerns and simply behaved like Governors. The authorities, including the Governor of Diyarbakır, also told the delegation that the dismissal of mayors targeted not only the HDP but also the AKP, and that the only consideration for dismissal was whether a mayor had acted against the law. Others confirmed that some AKP mayors had also been affected, but only because they decided to no longer follow President Erdoğan's orders, without committing any crime.

32. On 31 March 2019, new local elections were held in Turkey and many voters voted to replace the government-appointed trustees. However, in the south-east, while the HDP increased its vote in some provinces, it also lost the key provinces of Şırnak, Ağrı and Tunceli. The HDP still managed to retain control of the majority of provinces in the region, securing eight provinces including the all-important metropolitan areas of Diyarbakır, Mardin and Van. However, several of the HDP interlocutors shared their concern with the delegation as to whether the HDP would be allowed to continue running the municipalities that they won on 31 March 2019. Their fears turned out to be justified when, on 19 August 2019, the Ministry of the Interior decided to dismiss three HDP mayors in the region, including the HDP Mayor of Diyarbakır, whom the delegation met. The Government-appointed Governor of Diyarbakır, whom the delegation met as well, was subsequently appointed as trustee.

4. The relationship between the HDP and the PKK

33. The HDP is a legal party and was formed in 2013 as an alliance of Kurds, other national minorities, women's and green groups and others on the political left. The HDP has tried to appeal to all Turks, besides its traditional Kurdish base in the south and south-east of Turkey, and has fielded several ethnic minority candidates in national legislative elections since its creation. The HDP party platform perceives human history as a "history of struggles" in the "search for equality, freedom and justice" and urges society to struggle against "racist, nationalist, militarist, sexist, conservative and pro-market forces". A special section in the party platform is dedicated to the "Kurdish question" and minority rights in general. The HDP's manifesto in no way condones or calls for the use of violence. The HDP aims to prevent the State from imposing an identity and supports the right of the individual to develop their own identity, culture and most of all their mother tongue "within a framework of autonomy". While the HDP's manifesto is relatively silent on how to realize Kurdish aspirations for self-rule (through independence, autonomy or at least a strong decentralization) it mentions empowering local governments. The manifesto also calls for the ratification of the European Charter for Local Self-Government.

34. Several Turkish authorities told the delegation that it was Mr. Öcalan who had the idea for the creation of a Kurdish political party. In their view, the HDP and the PKK had organic ties, with the former being the political wing of the latter. It was therefore said that HDP MPs always had the PKK on their minds and that HDP political candidates were not deciding on their own. In this regard, several official interlocutors said that the HDP was afraid of the PKK and obliged to follow its orders. Moreover, they said that there were strong cross-organizational family links and hence loyalties, as members of the same family could be working for either the HDP or the PKK.

35. The current co-Chair of the HDP party group was asked by the delegation if she would define the PKK as a terrorist organization. She answered that looking at what is happening in Turkey purely from a security lens and identifying the PKK as terrorists would not solve the problem related to the protection of the rights and identity of the Kurdish population. She hastened to add that a refusal to qualify the PKK as terrorists was often presented by the authorities as proof that you were supporting terrorism. She said that the HDP had no connection with the PKK and that the "Kurdish question" could be resolved by talking to Mr. Öcalan.

36. The Speaker of the Grand National Assembly highlighted that all members of parliament took an oath to abide by the Constitution and the laws of the land. He underscored in this regard that it was important that politicians set the right example and convey a message of peace to young generations. The Turkish authorities' common position was that the PKK was increasingly working in political ways, through the HDP, to get more support for its agenda, including from the international community. In this regard, they highlighted the extent to which both the PKK and HDP were able to manipulate international public opinion and international organizations. The Speaker said that all the Turkish cases before the IPU Committee on the Human Rights of Parliamentarians concerned members of the HDP even though other members of parliament were allegedly also victims of human rights violations. He pointed out that they, however, had not reached out to the Committee. He said that the fact that the HDP cases had been submitted by the HDP leadership to the Committee as a single package showed that it was a party decision, not a decision by the individuals concerned. He believed that this approach attested to the party's efforts to use all available international platforms for political mileage.

37. In response to a question from the delegation as to why the authorities were not closing down the HDP if they believed that it was working with the PKK, they answered that the HDP's predecessors had been closed for that reason but that they now considered that it was more appropriate to focus on the individual responsibility of party members in the event of a violation of the law. In this regard, they also mentioned that individual HDP members of parliament were sometimes heard and seen making statements that went beyond their party's manifesto.

5. Different interpretations of the scope of freedom of expression

• Introduction

38. The Turkish authorities stated that it was necessary to protect the human rights of parliamentarians but that it was equally, if not more, important to protect citizens' right to life. Some Turkish authorities drew a parallel with the terrorist acts committed by ISIL in the Western world in order to seek greater understanding and support from the delegation for their view that terrorism posed a serious threat to Turkish society and had to be fiercely fought. Several of the Turkish authorities, including the Speaker of the Grand National Assembly, highlighted that Turkey found itself at the centre of a zone of instability, in particular due to the ongoing war in Syria and the emergence of new terrorist organizations, such as the People's Protection Units (YPG), the PKK's alleged Syrian wing, and the arrival of 3.5 million Syrian refugees in Turkey. The Speaker stated that Turkey was promoting peace in his country, the region and the world as a whole, by fighting terrorism and using the channels of multilateral diplomacy to find concrete and long-term solutions. Some AKP members of parliament also said that, at a time when AKP female members were not allowed to wear a headscarf, they would disagree with their treatment, but always peacefully, unlike the HDP which was resorting to violence.

39. The Turkish authorities stated that accusations of terrorism against HDP members of parliament could be based on a variety of activities, such as speeches, attendance of funerals and concrete help to PKK members. HDP MPs told the delegation that HDP members of parliament were facing charges and prosecution for defending their political views, for instance for simply saying "Kurdistan" or "esteemed Öcalan" or for protesting the latter's isolation in prison.

40. The Turkish authorities referred to the concrete case of HDP member of parliament Mr. Sarıyıldız, who had been charged with "supplying arms to a terrorist organization" on the basis of reports that in January 2015 it was allegedly established that he had intended to send weapons to the YPG, and had driven to Ceylanpınar in a vehicle he bought from two suspects and then registered in his name. However, the HDP MPs told the delegation that there was nothing in the indictment against Mr. Sarıyıldız pointing to him having allegedly transported guns for PKK fighters or the YPG.

- Alleged failure to condemn PKK violence

41. A recurrent observation made by the authorities was that the HDP did not condemn PKK actions. The HDP has, however, made available documents that show that on several occasions the party denounced specific acts of violence by the PKK. The co-Chair of the HDP party group told the delegation that the HDP condemned all violence, including by the PKK and against Turkish soldiers.

- Attendance of funerals of PKK members

42. Throughout the mission, the Turkish authorities emphasized that HDP members had attended funerals of "PKK terrorists" and that this clearly showed that there was strong convergence between the two organizations. The authorities referred to several concrete examples, such as the case of HDP member of parliament Tuğba Hezer, who on 22 February 2016 attended the funeral of a PKK member who perpetrated the Ankara car bombing days before, on 17 February, leaving 39 people dead. The suicide attack targeted buses carrying military personnel as they waited in traffic at a busy street in the heart of the government district of Çankaya, minutes away from the Grand National Assembly. The Kurdistan Freedom Hawks (TAK), a group associated with the PKK, claimed responsibility for the attack days later, calling it a retaliatory attack for the killing of citizens in the south-eastern Turkish province of Cizre. The public was reportedly outraged at Ms. Hezer's decision to attend the funeral. In addition to this and other specific examples, several of the authorities said that in October 2015 the then HDP co-Chair Mr. Demirtaş threatened party members who did not attend the funerals of PKK members with an investigation and potential disciplinary charges.

43. The HDP members of parliament told the delegation that attendance of these funerals was justified, or even required, in order to share the pain suffered by the families of the deceased, irrespective of their deeds, on the understanding that the "verdict on dead people is abolished". Attendance was therefore not meant to serve as a justification for their actions, as the HDP was against the use of any form of violence. The HDP MPs affirmed that AKP MPs also presented their condolences to the families of those who died in their constituencies. The HDP MPs also pointed out that the European Court of Human Rights has stated that attendance of such funerals is not a crime.

- Legislative framework

44. The Head of the Ministry of Justice's Human Rights Department told the delegation that Turkey did not have different legislation from European countries when it came to freedom of expression and that this essential right was fully protected in Turkey.

45. At present, Turkey's anti-terrorism legislation consists of two separate laws: the Turkish Penal Code (Law No. 5237) and the Anti-Terrorism Law (No. 3713). The delegation was informed about the precise contents of the laws inasmuch as they have an impact on freedom of expression. The delegation was clearly and repeatedly told by human rights lawyers and civil society organizations that article 1 of the Anti-Terror Law defines terrorism in a broad and vague way, without including the component of violence. Article 2 of the same law is also very vaguely worded and provides an indirect definition of membership in an illegal organization. Similarly problematic is article 7(2), which proscribes the dissemination of propaganda for a terrorist organization. The same interlocutors also told the delegation that the Penal Code (Law No. 5237) had been drafted in such a way that the Anti-Terrorism Law was actually superfluous, with Penal Code articles 220(6-8) and 314(3) about (indirect) membership of an illegal organization being of particular concern.

46. In 2013, Turkey amended some of its laws with the stated aim of ensuring better respect for freedom of expression. However, many interlocutors shared their concern with the delegation that Penal Code article 301 on denigration of the Turkish nation, despite jurisprudence from the European Court of Human Rights, and article 125 on criminal defamation were still in force, and that several other amended Penal Code articles could still be open to abuse and hence lead to possible further violations of the right to freedom of expression. These included article 215 on praising a crime or a criminal and article 318 on discouraging the public from military service. The amendments to Anti-Terrorism Law articles 6(2) on printing or publishing declarations or statements of terrorist organizations and 7(2) on making propaganda for a terrorist organization ensured that only statements constituting coercion, violence or threats would be subject to prosecution under these provisions. However, although the amendments narrowed the offences, the new text was seen as still too broad in that it includes the vague concepts of coercion and threat without specifying a link to violence.

47. The 2013 amendments also prevented the use of these articles and some offences under the Law on Meetings and Demonstrations to be used in conjunction with article 220(6) of the Penal Code on committing a crime in the name of a terrorist organization, which allowed persons to be punished as if they were a member of a terrorist organization. Although this amendment was welcomed, it did not address the broader problem of prosecutions being brought for membership of a terrorist organization under article 314 of the Penal Code or other related provisions. Many interlocutors told the delegation that the Turkish Penal Code contained neither a legal definition of what constitutes armed organizations and armed groups nor the offence of membership. They affirmed that the lack of legal definitions opened the door to arbitrariness and abuse and that the vague formulation of the criminal provisions regarding State security and terrorism and their overly broad interpretation by Turkish judges and prosecutors made all critics of the Government potential victims of judicial harassment.

48. In this regard, civil society representatives, human rights lawyers, and members of the political opposition told the delegation that the current limitations on freedom of expression were a real threat to democracy in Turkey, with the authorities relying for instance on legislation that unduly restricts meetings and punishes insults to the Turkish nation and the President and the dissemination of terrorist propaganda. According to one human rights lawyer, the vagueness of Turkish criminal law was one of the biggest culprits. A study on the implementation (1992–2007) in Turkey of the jurisprudence of the European Court of Human Rights in the area of freedom of expression showed that domestic legal provisions somewhat improved, including following amendments passed in 2013, notably in the Penal Code and Anti-Terrorism Law, but that the judiciary had found other ways, drawing on other laws, to punish the legitimate exercise of freedom of expression. He said that it was often very difficult in advance to know what speech would lead to criminal action and under which legal provisions. He also pointed out in this regard that what you say today may get you in prison six years from now and that, likewise, you may be arrested now for something you said six years ago. Similarly, there was great variety in sentences, with similar facts and circumstances leading to very different judicial outcomes. He told the delegation that in 2016 alone 468,000 people were investigated under article 214 of the Penal Code for participating in a terrorist organization, 38,000 people for insulting the President and 214,000 people for making terrorist propaganda. The human rights lawyer emphasized the case of Mr. Demirtaş, who had not been subject to any legal proceedings at first and then suddenly, within four months, faced tens of criminal cases. Although none of them were about leadership or membership of a terrorist group, the authorities had compiled 31 of the files to make the argument that, when taken together, they showed such membership.

49. The delegation was told on several occasions about the peace petition "We Will Not Be a Party to This Crime", which was initially signed by 1,128 academics and grew to 2,020 in the weeks after it was released in January 2016. The petition denounced the alleged human rights violations committed by the Government in the Kurdish regions of Turkey, demanded access to these areas for independent national and international observers and called for lasting peace. Since then, the signatories had been subject to a series of actions, including criminal and administrative investigations, detention, dismissals and revocation of their passports.

50. The CHP MPs told the delegation that limitations to freedom of expression did not specifically target HDP MPs, and that CHP MPs, and more generally anyone opposing the Government, were facing reprisals. They mentioned the case of former CHP member of parliament Eren Erdem, who had been arrested in June 2018 on terrorism charges in connection with his alleged involvement with the Gülen movement. According to the CHP MPs, he had been kept in isolation for a long time. He was immediately re-arrested at the request of the Public Prosecutor after the court decided in January 2019 to release him pending trial. According to the CHP, their former colleague was in detention in the absence of any serious concrete proof, given that the authorities had relied on an anonymous witness who had said that his statement had been made under duress. They also pointed out that the accusations were illogical as Mr. Erdem had written a book in 2016 criticizing the ideology and activities of the Gülen movement.

51. The delegation also spoke about cases in which freedom of expression was at issue with the Constitutional Court. The delegation was told that the Court took full account of the relevant jurisprudence of the European Court of Human Rights. The Constitutional Court's general approach was that only statements that incited to violence were punishable. HDP MPs were free to support the same ideas as the PKK; the main question was whether they were going to resort to violence. The Court emphasized that the cases before it were often complex. In the specific case of Mr. Demirtaş, the Court had found that his actions were beyond the scope of protection as he had incited to violence, with particular reference to the tweet sent from HDP Headquarters in October 2014. On the other hand, the Court had found that the ban of Mr. Öcalan's book constituted a violation of his freedom of expression, as its main message was focused on a peaceful

solution. Similarly, in several other cases where there was no incitement to violence, the Court held that restrictions imposed on the right to freedom of expression were unacceptable.

52. The AKP MPs stated that the opposition fully enjoyed their freedom of expression in the Grand National Assembly and that they were often seriously attacking the Government and AKP MPs, referring to them as "so-called" President, MPs and law enforcement agencies. However, the AKP MPs also stated that freedom of expression in parliament was not absolute. For instance, a remark by an opposition member of parliament saying that "the most effective supporter of Gülen is the Speaker of Parliament" led to a disciplinary sanction. In response to the specific case of HDP member of parliament Garo Paylan and his claim that he was penalized in parliament for exercising his freedom of expression, the President of the Turkish IPU Group said that the use of swear words and expressions denigrating the nation were not tolerated. Mr. Paylan disputed this reading of the events in parliament. He also told the delegation that he was facing 14 unjustified legal cases regarding his legitimate exercise of his freedom of expression. He still enjoyed parliamentary immunity but feared that he would be prosecuted after the end of his mandate, if not before.

6. Freedom of assembly

53. In the course of the mission, the issue of freedom of assembly came up several times. Several civil society representatives and HDP MPs highlighted that, in the face of State repression, demonstrations had become a thing of the past. According to them, they had only been allowed to hold one proper demonstration, namely on 1 May 2019, since the lifting of the state of emergency in July 2018. They said that the situation was even worse in Diyarbakır, where for instance the "Saturday Mothers" were no longer able to meet. Although protestors did not need authorization to assemble, but only had to inform the authorities, the reality was that permission was always required and systematically refused.

54. The Governor of Diyarbakır stated, however, that there were no undue limitations to the right to freedom of assembly. He added that this did not mean that any assembly was allowed. He stated that "just because I am a member of parliament does that entitle me to walk through a dense traffic lane or just in front of a court building, hence preventing legal work from being carried out?" He also pointed to demonstrations that started lawfully, but then became violent, drawing parallels to what was happening in Paris.

7. Lack of dialogue between political stakeholders in and outside Parliament

55. The delegation was repeatedly told that there was little dialogue between the majority and opposition parties. This applied to both the situation in the Grand National Assembly and relations at the more local level. For instance, during the delegation's visit to Diyarbakır, it emerged that the HDP Mayor of Diyarbakır and the Government-appointed Governor did not hold regular meetings.

8. The lifting of parliamentary immunity

56. At some moments during the mission, interlocutors referred to the wholesale lifting on 20 May 2016 by the Grand National Assembly of the parliamentary immunity of over a quarter of its members, which has been a matter of great concern to the IPU. The parliamentary authorities repeated their long-standing stance that the measure was in no way targeting HDP MPs, but also targeted others, including parliamentarians from the AKP. However, the HDP stated in response that, while others may have been affected, with one exception only HDP members had been detained subsequently and had received punishment. Moreover, in their view the same arbitrariness prevailed in cases where HDP MPs saw their immunity lifted for having allegedly insulted the President, while similar remarks by other MPs did not lead to a reaction.

9. Access to prisons

57. The delegation enquired into the reasons for the Turkish authorities' rejection of its request to visit several of the detained current and former HDP MPs. The Vice Minister of Justice explained that family members and lawyers of detainees had full access to the prison. However, Turkey only granted prison visits to international organizations when it had a legal obligation in this regard. He understood the delegation's request, however, and undertook to put it to the Minister urgently. However, the delegation did not receive any response in this regard during the mission.

10. Foreign trial observations

58. In the meeting with the Vice Minister of Justice, the delegation sought further details on the arrangements in place to facilitate access for foreign trial observers to the trial of the current and former HDP

MPs. The Head of the Ministry of Justice's Human Rights Department said that trials were open to the public but that security reasons or physical constraints could be a reason to limit attendance. He suggested that, although there was no need for foreigners to obtain prior permission, it was best to notify the Ministry in advance of a planned trial observation so that the Ministry could in turn inform the court to ensure priority access in case of physical constraints related to the court room. In this regard, he ended by saying that the best approach would be for the IPU to go through the Permanent Mission of Turkey in Geneva and, for others, directly through the Turkish Ministry of Foreign Affairs. He also suggested that the IPU and others interested in attending trials refer to their observers in their correspondence with the Turkish authorities as "visitors".

D. Findings and recommendations

59. The delegation deeply appreciates that the Turkish Parliament, thanks to the involvement of its Speaker as well as the President of the Turkish Group, went to great lengths to ensure the smooth conduct of the mission.

60. The delegation is fully aware of the formidable security challenges that Turkey faces. This includes the deadly attacks which the PKK has carried out since the official breakdown of the peace talks in July 2015. The spillover of the war in Syria has further heightened the already complex security context for Turkey and has since 2015 led to a series of large-scale horrific terrorist attacks mostly targeting Turkey's big cities. Several of these attacks, allegedly carried out by ISIL, have targeted pro-Kurdish activists. Moreover, the attempted coup in 2016 rocked the nation to its core and presented a direct attack on Turkey's constitutional order.

61. Although these complex and significant security challenges warrant decisive action, the delegation is concerned about the heavy-handed approach which the Government of Turkey has adopted in response. The massive and summary decisions taken in the aftermath of the coup attempt not only raise serious questions about due process but also cast doubt on the authorities' genuine intentions in taking these steps. The delegation calls on the Government to address these concerns, including by modifying the relevant parts of Law No. 7145 (*Amendments to Some Laws and Decree Laws*) that provides for significant practices implemented during the state of emergency to remain in force for at least another three years, and by ensuring that the State of Emergency Procedures Investigation Commission offers an effective remedy to complainants.

62. The delegation condemns all forms of terrorism, including the deadly attacks carried out in Turkey by ISIL, the PKK and others, and firmly believes that everything should be done to identify, apprehend and hold accountable in a court of law the culprits of such violence. The delegation stresses, however, that security operations by the Turkish authorities in response to terrorist acts or threats need to be proportionate and in compliance with applicable human rights standards; any transgressions need to be properly investigated and punished. In this regard, as mentioned in the report of the Office of the United Nations High Commissioner for Human Rights of March 2018, as well as by others, there is concern about the lack of effective investigations and the immunity granted to security forces even when credible evidence of violations is available – a situation that the authorities need to address properly. Where views differ on the facts of and responsibility for violent acts, the delegation believes that everything should be done to establish full clarity. In this regard, the delegation regrets that requests made by the HDP in the Grand National Assembly to establish a parliamentary committee of enquiry regarding the events in October 2014 in the context of the siege of Kobane appear to have gone unheeded.

63. The delegation received systematic and detailed reports about the lack of independence of the judiciary and executive interference in Turkey. The delegation considers that these references echo detailed reports and findings presented by UN special rapporteurs on human rights, the Venice Commission and the European Union as well as previous IPU reports. The delegation therefore calls on the authorities to take effective measures to restore legal guarantees to ensure the independence of the judiciary from the executive and to strengthen the Council of Judges and Prosecutors. Such steps will not only offer better guarantees that the trials against current and former parliamentarians from the HDP are held with respect for due process but also enhance the public's confidence in the judiciary. The delegation is keen to hear from the Government if it aims to address these matters through its latest judicial reform.

64. The delegation is aware that much progress has been achieved over the years in promoting demands for Kurdish rights. Nevertheless, the period following the coup attempt has seen a backlash in this regard and lessened the prospect for the resolution of pending issues. The delegation calls on the Turkish

authorities to pursue an effective reform agenda in this area, which should also look at issues such as decentralization and extended mother-tongue education in line with good practice on such matters. The delegation also calls on Kurdish political organizations and civil society to take meaningful steps to engage on these issues with the authorities in the context of Turkey's constitutional and legal framework.

65. The delegation regrets that there appears to be no meaningful dialogue between the AKP and HDP and believes that such exchanges are essential, not only to help revive these talks, but also to promote better mutual understanding and a readiness to work together to find common solutions to Turkey's challenges. The delegation is also concerned about steps reportedly taken to curtail the Grand National Assembly's inclusive legislative and oversight functions. The delegation suggests that the IPU lend its support, should that be considered useful, to promote better dialogue in parliament and to examine ways to bolster the work of the institution of parliament.

66. The delegation is deeply concerned that the authorities systematically present the PKK and the HDP as one and the same. It is clear that both organizations draw in large part on the same support base and pursue similar objectives. However, in contrast, the HDP is a legal political party that in no way espouses violence to reach its aims. In fact, on several occasions, the HDP has criticized specific acts of violence by the PKK. Even if one accepts the argument that the HDP could be more systematic in its public disapproval of PKK violence, this does not mean that, by failing to do so, it is acting in alliance with or supporting the PKK. The delegation considers in this regard that one should make a clear distinction between criminal responsibility, on the one hand, and moral and political responsibility, on the other. It is also in this vein that the delegation believes that invoking anti-terrorism laws is not the way to proceed in response to decisions by HDP MPs to attend funeral of PKK members, however morally and politically reprehensible such attendance may be. In a similar vein, the delegation is concerned about the procedure that continues to be used to dismiss duly elected mayors belonging to the HDP on the strength of accusations that they are allied with the PKK.

67. The delegation is deeply concerned about the existing legal framework governing freedom of expression in Turkey and how it is used. The delegation acknowledges that some advances were made in 2013. It considers, however, that previous long-standing concerns, expressed by the IPU as well as UN special rapporteurs on human rights and international organizations such as the Venice Commission and the European Union, about the vagueness and breadth of anti-terrorism provisions ought to be addressed. The delegation points out that much more needs to be done to ensure that legislation is formulated with sufficient precision to enable Turkish citizens to predict, to a degree that is reasonable in the circumstances, the legal consequences of their actions. Existing legislation must thus be reviewed and the notions used should be more clearly defined. The delegation recalls in this regard that under international law any restriction on freedom of expression must be strictly necessary to protect national security and proportionate to the legitimate aim pursued. Anti-terror legislation should only apply to content or activities which necessarily and directly imply the use or threat of violence with the intention to spread fear and provoke terror. The delegation therefore calls on the Turkish authorities to review and modify its legislation in this light and to ensure its uniform, fair and predictable application.

68. The delegation considers that Turkey is being pulled in very different directions by regional and world powers while simultaneously using its own leverage to advance Turkish interests. This situation has arisen due to Turkey's weight and strategic location, the tensions and conflicts in the region, and intensified regional and global power struggles. The delegation believes that, as a result of these external factors and its own political situation (including the issues presented in this report), Turkey stands at a crossroads with potentially significant ramifications for the future of democracy in the country. The delegation considers that it is now crucial that the international community comes out in support of democratic forces in Turkey.

69. With regard to the situation of the current and former HDP MPs whose cases are before the IPU Committee on the Human Rights of Parliamentarians, the delegation did not receive any concrete information indicating that the legal actions taken against these individuals were justified. The delegation was, however, pleased to receive assurances from the Turkish authorities, including the Ministry of Justice, that all the necessary information on the legal basis and the facts adduced to support the accusations against the current and former HDP MPs would be made available to the Committee to allow it to make its own informed assessment. The delegation notes in this regard that the Turkish IPU Group has a copy of the full report with all the allegations made to the Committee by the complainants regarding the violations of the human rights of each of the current and former HDP MPs. The delegation trusts that the Turkish IPU Group will share this report with all the relevant national authorities and requests their assistance to make available to the Committee the specific information referred to above. In this regard, the delegation points out that the

Committee is very keen to close cases, as it did in April 2019, when it believed that, on the basis of concrete information provided by the Turkish authorities, no further examination was needed with regard to certain cases.

70. The delegation regrets that it was not allowed to visit the current and former HDP MPs in detention, despite the fact that its request was made well in advance. The delegation points out that such access, albeit in a limited form and at the very last minute, was provided on the occasion of an IPU mission to Turkey in 2014 and hence demonstrates that the Turkish authorities could have shown flexibility on this matter.

71. The delegation appreciated the discussion with the Vice Minister of Justice about foreign trial observers, but regrets that it appears that, even though trials are public in Turkey, the Turkish authorities are not able to guarantee court access to such observers. In this regard, the delegation considers that, given the significant expenses and time invested by foreign trial observers to come to Turkey, the authorities should act more swiftly and decisively to accommodate timely requests for trial observations, including by ensuring a larger court room if need be, and to communicate a definite and positive answer to foreign trial observers well in advance. The delegation noted the Vice Minister of Justice's commitment to facilitating the entry of observers to attend the various trials, provided that the requests were made through the appropriate diplomatic channels.

Geneva, August 2019

E. Observations provided by the authorities

- **Responses to the Executive Committee-Committee on the Human Rights of Parliamentarians Report on the Joint Mission to Turkey by the President of Turkish IPU Group (10 October 2019)**

Turkey, which is one of the oldest democracies in the world, has been continuing its democratization process with great dedication for years. Since 2002, the reform process to enhance democracy has accelerated significantly and until recently, the reforms were welcomed and praised by the international community, especially the European Union and many international institutions.

Rule of law, democracy and human rights are the fundamental principles of the State of the Republic of Turkey. As a sovereign country and as a democratic state system based on the rule of law, Turkey is well aware of the fact that the government has the duty and obligation to take necessary measures to protect its citizens against terrorism and to establish public order in its territory in line with its constitutional order and international norms.

With a view to reform our norms and institutions in line with the universal principles of democracy, human rights and the rule of law, Turkey is keen to work together with international organizations. In this regard, as the Grand National Assembly of Turkey we give utmost importance to all parliamentary diplomacy channels, especially to our relations with the IPU, which is one of the most prominent international parliamentary platforms. Welcoming the IPU Delegation's visit to Turkey, we are committed to maintaining the close cooperation with the IPU and its mechanisms as well as upholding the values of the organization.

After carefully examining the mission report of the delegation and discussing it with the relevant state authorities, we would like to clarify several issues. In addition, we are providing enclosed, detailed information regarding the individual cases mentioned in the report.

Before going into the discussion, it is important to note that detailed information in relation to the progress of the cases as well as the conditions of the prosecuted and the detained have been presented to the Committee of the Human Rights of the Parliamentarians during the 139th and 140th General Assembly of the Inter-Parliamentary Union.

The Turkish IPU Group is pleased with the successful completion of the Joint Mission of the Executive Committee and the Committee of the Human Rights of the Parliamentarians led by the IPU President. As members of the Turkish IPU Group we did our best to host the IPU delegation with the support of the office of the Speaker of the Grand National Assembly of Turkey.

On the issue of prosecution of parliamentarians and the arrest of the HDP Co-Presidents; these are decisions taken solely by the independent and impartial Turkish judiciary. Following the necessary investigation of the alleged or learned crimes of deputies before or after their election, the summary of proceedings is transmitted to the Ministry of Justice with the request to remove the immunity of these deputies. These files are forwarded to the Presidency of the Turkish Grand National Assembly for the removal of immunity without being subject to any processing by the Ministry of Justice. Files of the deputies, who were subjected to trial before being elected, are also sent to the Turkish Grand National Assembly through the Ministry of Justice, with the request to lift parliamentary immunity for the continuation of the proceedings.

In this framework, a total of 810 summaries about 154 deputies were transferred to the Ministry of Justice by the chief public prosecutors of the Republic in order to remove their immunities on various dates:

- 518 summaries about 55 deputies from the People's Democratic Party,
- 215 summaries about 59 deputies from the Republican People's Party,
- 23 summaries about 10 deputies from the Nationalist Movement Party,
- 50 summaries about 29 deputies from the Justice and Development Party and
- 5 summaries about an independent deputy.

By the provisional article amended to the Constitution, regarding the summaries that have been referred to the concerned authorities until May 20, 2016; the immunities of the accused deputies, regardless of political party memberships, have been lifted for one time, exclusively in relation to the existing cases. This is the consequence of the decision adopted with a majority of the members in the General Assembly, with support of the opposition parties. Subsequently, with the provisional article going into effect, all immunity files at the

Prime Ministry and the Grand National Assembly of Turkey were forwarded to the Ministry of Justice and these files were sent to the Offices of Chief Public Prosecutor of the Republic and to the courts by the Ministry of Justice.

Regardless of political party membership, summons for interviews were sent to the deputies, by the Offices of Chief Public Prosecutor of the Republic and the courts, and the deputies of the three parties, including the CHP and MHP leaders, have accepted these summons as a requirement of law and gave their testimonies to the investigation and prosecution authorities. However, HDP deputies and executives, in addition to not obeying the summons of courts and prosecutors, explicitly declared to public that they would not accept the summons and invitations of the judicial authorities. Moreover, they continued to praise terror. We would like to underline that The Committee, while writing its report, should have paid more attention to the fact that HDP members' refusal to give testimonies is unlawful and unacceptable in a country where rule of law is at the core of its democratic political system.

In order to overcome this obstacle to the manifestation of justice, a decision was made to forcefully bring these deputies for interview on the files containing the terrorism-related crime accusations. There has been no arrest warrant for all deputies, including an HDP deputy, who accepted the aforementioned invitation.

In the Republic of Turkey, it is beyond discussion that no one is above the law. The principle of equality before the law is an essential and indispensable aspect of our political system. The judicial authorities are responsible for fulfilling their duties within this principle. I would like to draw your attention once more that this is a judicial process which does not let any interference from neither the legislature nor the executive branch. Any kind of action and/or statement that would interfere with judicial independence is strictly unacceptable.

It is important to remind that application of law is irrelevant to one's occupation. Today there is no politician, journalist, academic, doctor, teacher, engineer, artist, etc. arrested solely on the grounds of expressing his or her opinion in Turkey. However, it is a crime in Turkey, as elsewhere in the world, to praise terrorism, to use hate speech, to sanctify terrorism, to encourage violence and to call for violence causing chaos, leading to injury or death of civilians. As these run counter to the values of the Council of Europe, these also constitute a crime according to the penal codes of all civilized nations and Turkish Penal Code is not an exception.

In a nutshell, the members of parliament that have been indicted, convicted, or arrested have been accused of serious terrorism linked crimes, and the courts have based their decisions upon the presence of tangible evidence. The lifting of immunity does not undermine the democratic functioning and position of the parliament. The parliamentarians are arrested because of the judgement made by the independent and impartial courts, not by any other unauthorized institution or on any kind of political grounds. Any kind of statement that undermines the independence of judiciary and the process of a fair trial is unacceptable.

Turkey has a legal system which considers the international law including the European Convention on Human Rights and the case-law of the European Court of Human Rights as a guide. Accordingly, among other fundamental human rights, freedom of expression, assembly and association, and right to a fair trial are safeguarded by the Constitution. Turkey attaches utmost importance to the maintenance of vibrant and pluralistic nature of Turkish civil society. Comprehensive reform process over the last fifteen years has greatly contributed to the enabling environment for the civil society. Freedom of expression and free media constitutes one of the foundations of Turkish democracy. The Constitution guarantees right to express and disseminate thoughts without any interference. Thus, it is fair to argue that the report of the Committee fails to acknowledge the actual human rights situation of Turkey and misinform the international community.

Turkish nation continues to fight against terrorism at all levels within its borders and in the region. We are conducting our fight against the PKK, a notorious terrorist organization and internationally recognized as such, which poses a threat to our state, unity of our nation and democracy at an unprecedented scale, as well as the FETÖ/PDY, DEASH and other terrorist organizations in line with our international obligations. The principles of proportionality and necessity are taken into consideration in the measures taken. All of the regulations taken in fight against terrorism have been in line with international law and the recommendations of international organizations, obligatory, urgent and proportionate measures which have been taken within the scope of the positive obligations of the State. The statements that argue otherwise are far from factual and therefore untrue.

It should always be kept in mind that PKK is a vicious terrorist organization, which is included in the lists of terrorist entities of the EU as well as USA and many other countries. For decades, Turkey has been countering PKK terrorism, which has claimed thousands of lives of innocent people and led to the violations

of the fundamental rights and freedoms of people; first and foremost, right to life. While Turkish security authorities have been conducting counter-terrorism efforts in line with legal principles as well as norms and standards enshrined in human rights instruments, Turkey has been targeted by ungrounded allegations, mostly as a result of PKK propaganda.

Turkey is also fighting against terrorist organizations that has been attacking its territory from neighboring countries. In addition to DEASH, PYD/YPG which is the Syrian extension of PKK has been attacking Turkish civilians. Turkey has taken a humanitarian stand and continues to host 3.5 million Syrians (Arabs, Kurds, Yazidis, Turkmens and other various ethnic and religious groups) without the support of international community.

We would like to reiterate that we give great importance to the findings and recommendations of the IPU delegation. Nevertheless, the fact that the delegation, whose mandate is just to investigate the allegations of human rights violations of HDP members, has made some unfounded claims regarding Turkey's democracy and human rights situation leaving the impression that this constitutes an ultra vires act by the Committee.

Here are a few examples that might be useful in better explaining this argument:

- First of all, the claims stated in the "Findings and recommendations" part of the report; regarding State of Emergency measures in paragraph 61, the idea of "decentralization" in paragraph 64, comments about Turkish foreign policy in paragraph 68 have no place to be in this report and these are in no way related to the mission of the delegation. These are only a few examples related to statements that are far from the facts, but based on personal opinions and are beyond the scope of authority of the Committee. Unfortunately, in many cases the Committee Report bases its recommendations on the complaints, accepting them as sheer truth.
- On the issue of state of Emergency, following the principles of proportionality and necessity, the measures were taken within the limits of the rule of law and international obligations, first and foremost, the European Convention on Human Rights. They included only the necessary measures to be taken within the context of the coup attempt as well as the combat against terrorism. The scope of the emergency measures was defined in the notification of derogation submitted by Turkey to the Secretary General of the Council of Europe; stating that "The coup attempt and its aftermath together with other terrorist acts have posed severe dangers to public security and order, amounting to a threat to the life of the nation in the meaning of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms". With respect to these measures, legal remedies continue to be available under the Turkish legal system, including individual application to the Turkish Constitutional Court. The supervision of the European Court of Human Rights naturally continues as usual.
- With regard to the suggestions made in paragraph 64 about decentralization, this is definitely unrelated to the delegation's duty and beyond the scope of its authority; we believe that the delegation should be aware of the fact that they are not in a position to make such policy recommendations. Turkey is a constitutionally centralized state and any decision on this matter is, no doubt, an issue of national sovereignty. This statement is completely unacceptable.
- With regards to Turkey's foreign policy, and the course of international relations of Turkey, the delegation's claims in paragraph 68 are completely irrelevant to the rights of the parliamentarians in Turkey, let alone the lack of factual basis.
- The language employed throughout the report regarding Turkish citizens of Kurdish origin is discriminatory which disregards equal rights that have been granted all our citizens in the Turkish Constitution. Besides, the paragraph 17 refers to PKK terrorists as "*Kurdish militants*", which is completely unacceptable, misrepresents the reality and is an insult to the Turkish citizens of Kurdish origin to equate them with PKK terrorist organization. We expect from all IPU members and its organs that terrorists are treated as such. Otherwise, IPU will face, willingly or unwillingly, the risk of legitimizing the terrorists or trivializing the grave human rights violations committed by the terror organization.
- It is important to remind that the report (page ii), as well as the other previous correspondence argues that "concrete information regarding the individual cases before the Committee" was not presented is incorrect. The President of the Turkish IPU Group has personally presented detailed information about each HDP Member of Parliament during the meetings with the Committee at 139th and 140th sessions of the IPU General Assembly.

- Another argument that is repeated in the report is in relation to the demand for guarantee for court access. In the Conclusion section of the Trial Observation Report adopted in Doha (8CL/204/9(b)-R.1), the observer states that "I was admitted to the hearings because the IPU had followed a procedure requiring the consent of government authorities, which alone is evidence of the interference on the part of the executive in the judicial process. While a correct conduct was maintained during the hearings, with the defendant and the lawyers for the defense being able to speak out freely, this appears to be a mere façade behind which the Government of Turkey is pulling strings." (Trial Observation Report, p.2)." Each one of these two sentences unfortunately makes one question the impartiality of the Committee. It feels like rapporteur has already passed the ruling and the result will never change no matter what. With all due respect to all the work the Committee does as well as the difference IPU makes in the international community in a multitude of areas, it is natural for the Committee to be expected to pass its decisions based on objective analysis of the facts.
- Finally, we believe that this exchange of information and views will present significant contributions to the relations between GNAT and the IPU that are conducted in a transparent dialogue and mutual understanding. We hope that our comments on the report and the documents with full of concrete and unchallengeable information presented to the Committee shall help the Committee to reach fair and unbiased conclusions on the above-mentioned speculative allegations about Turkey. We also hope that the very detailed information that has been and is being provided will be put to use.
- **Responses of the Government as regards the joint report of the Executive Committee and the Committee on the Human Rights of the Parliamentarians of the Inter-Parliamentary Union (10 October 2019)**

The observations of the Government have been sought on the report of the joint mission of the Executive Committee and the Committee on the Human Rights of the Parliamentarians of Inter-Parliamentary Union conducted from 10 to 13 June 2019 to Turkey as regards the complaints of a certain number of Members of Parliament (MPs) previously submitted to the Committee on the Human Rights of the Parliamentarians. Our observations addressing the issues in the mentioned report in so far as they fall within the remit of our Government are as follows.

1. At the outset, our Government would like to indicate the inconsistency between the number of MPs set out in the very first page of the report with their application numbers, which is 61 and that indicated in the content of the report, which is 57.

2. In fact, our Government would like to indicate that it has not been provided with the documents concerning the complaints of 5 parliamentarians, namely, Kemal Aktaş, Aysel Tuğluk, Sebahat Tuncel, Leyla Güven and Ayşe Sürücü and has been provided with that of Garo Paylan regarding only his complaint on a disciplinary sanction imposed on him by the Parliament, which is therefore out of the scope of our Government's authority.

3. Our Government would like to point out that, after the constitutional amendment of 20 May 2016, the number of the HDP MPs whose dossiers have been treated within the scope of the exemption to the first sentence of the second paragraph of Article 83 of the Constitution was 55. Accordingly, only 55 MPs HDP have been affected by the constitutional amendment, therefore, the cases of other 6 parliamentarians (current or former parliamentarians) enumerated on the first page of the report are out of the scope of the original complaints and therefore should be dealt separately.

4. Within this scope, our Government has the honour to submit the comprehensive information notes on 55 parliamentarians as annexes to its observations.

5. Our Government will firstly put forward the closure request for the cases of 11 claimants (Part 1). Subsequently, our Government's observations will mainly focus on the process as regards the amendment to the Turkish Constitution which brings a temporary exemption to the first sentence of the second paragraph of Article 83 regarding the files submitted to the National Assembly and to the relevant intermediary authorities until the date of the adoption of the amendment and set out that the temporary exemption is not related anyhow to the peaceful exercise of the political activities of the MPs (Part 2). Additionally, and most importantly, our observations will show that the constitutional amendment provides for far more stringent

procedural safeguards for MPs of the opposition compared to that provided by the ordinary procedure of the lifting of immunities (Part 3). Lastly, our Government will touch on some issues submitted in the report which are deemed necessary to be addressed (Part 4).

I. Requests for closure of the cases of 11 claimants

6. As the information notes annexed to our observations show explicitly, Filiz Kerestecioğlu, Mizgin Irgat, Ali Atalan, Erdal Ataş, Nimetullah Erdoğan, Mithat Sancar have been acquitted of all charges. The judicial proceedings have been suspended as regards Leyla Zana, and the sentences have been suspended as regards Adem Geve, Dengir Mir Mehmet Fırat and Hişyar Özsoy which means that no sanctions have been imposed on them. And the Government regrettably inform that İbrahim Ayhan passed away. Accordingly, the Government invite the Committee to close the cases concerning these 11 MPs and former MPs pursuant to Article 25 of its procedure.

II. Background of the Constitutional Amendment of 20 May 2016 and examples of MPs' impugned acts

7. There have always been concerns about the wide scope of parliamentary inviolability in Turkey¹. Indeed in its judgement on the case of *Kart v. Turkey*, the European Court of Human Rights (ECtHR) held that Turkish inviolability is unusually broad in that it applies to both criminal and civil proceedings and covers acts committed before the election of a member. It also observed that under Turkish law the decision whether or not inviolability is to be lifted need not to be substantiated by any argument, that there is no time limit for this decision and that inviolability, if upheld, inevitably leads to a long-time lapse before a criminal trial can commence or be resumed. Finally, the ECtHR stated that it [could not] ignore that parliamentary 'inviolability' in Turkey was a controversial subject and [...] had been identified as one of the main problem areas in the context of corruption².

8. For these reasons, for many years, there has been a vivid debate in Turkey on the need to limit parliamentary inviolability. There have even been proposals to abolish it altogether, while retaining parliamentary non-liability. In this respect, there have been two unsuccessful attempts to amend the Constitution in 1997 and in 2001.

9. After these many failed attempts to limit the inviolability, Turkey left aside this problem for a while to focus on more important issues. The government took significant steps in the search for solutions to prevent terrorism in Turkey and then it initiated a "solution process" named as a "Democratic Initiative" and later named as "National Unity and Solidarity Project".

10. Indeed, Turkey started the "solution process" with the aim of finding a sustainable and peaceful solution to the terrorism. However, PKK used the atmosphere of the solution process in order to gain time and strengthen its capacity to conduct terrorist attacks instead of laying down arms for enabling a conclusive solution.

11. Encouraged by its Syrian wing YPG's actions in Syria, PKK tried to apply a similar strategy in Turkey. It tried to take cities under its control by using trenches and conducting attacks to security forces. The terrorist organisation proclaimed so-called self-administration and self-defence units in cities such as Diyarbakır, Cizre, İdil, Sur, Şırnak, Yüksekova, İdil. PKK declared that these units would administer themselves and would not respect the Turkish legal order. It was an attempt for an uprising against the legitimate government authorities.

12. With the peace process ending, an atmosphere of intense clashes began once again. The PKK digging trenches in the Silopi and Cizre districts of Şırnak in this intense conflict climate was an intolerable situation for Turkey. Unfortunately, the conflicts reached the peak as some Members of Parliament declared self-government by relying on the PKK digging trenches. These unlawful attacks causing the deaths of many people were supported by some members of parliament and local politicians. Vehicles of municipalities such as caterpillars were used by terrorists to dig trenches and construct barricades on roads and vehicles of municipalities were used to carry arms and bombs to PKK. Furthermore, the members of parliament showed explicitly their support to these terrorist activities in public by their acts and statements. For instance, in June 2015, MP Selahattin Demirtaş threatened democratically elected then-prime minister Erdoğan by saying "We

¹ See for ex. European Commission's 2014 Progress Report on Turkey, p. 7; Greco's Fourth Round Compliance Report on Turkey, para. 30.

² *Kart v. Turkey*, ECHR 8 July 2008, App. No. 8917/05, para. 92.

will not hang you. You will stand trial" (*Seni asmayacağız, yargılanacaksın*). MP Burcu Çelik Özkan said "You will be pushed off this land," (*Bu memleketten defolup gideceksiniz*) referring to village guards (köy korucuları) and added "We know very well how to target you with the Kalashnikovs you are extending towards us" (*Bize uzattığınız o keleş size çevirmesini iyi biliriz*); in July 2015, MP Ferhat Encu insulted soldiers who were conducting legitimate fight against terrorism by saying "You are infamous. Get the hell out!" (*Siz lekeleniniz, defolun gidin!*); MP Figen Yüksekdağ stated "We lean on the YPJ, the YPG, and the PYD" (*Sırtımızı YPJ'ye, YPG'ye, PYD'ye yaslıyoruz*) -the YPJ, the YPG and the PYD are affiliates of the terrorist organisation PKK; on July 21, 2015, "Our people should take their own security measures," (*Halkımız kendi güvenlik tedbirlerini alsın*) said MP Selahattin Demirtaş calling for a civil war. On July 25, 2015, MP Faysal Sarıyıldız was caught supplying guns to the terrorist organisation with his vehicle. As he enjoyed the parliamentary immunity, he was not arrested. On July 27, 2015, MP Abdullah Zeydan made a statement full of threats by saying "The PKK would drown you in its spits" (*PKK sizi tükürüğüyle boğar*). In August 2015, Leyla İmret, the mayor of Cizre said "we are conducting a civil war in Cizre against Turkey" (*Cizre'de Türkiye'ye karşı iç savaş yürütüyoruz*).

13. The reaction among people vis-à-vis these clear supports-both material and moral- intensified with the feeling of degradation and abasement in the victims of terrorism triggered by these very acts of MPs and the people started once again to question the scope of inviolability in Turkish Constitutional Law.

14. On 29 July 2015, all HDP deputies in the Parliament submitted a petition to the Bureau of Assembly -signed by all its administrators as well as by the claimants- requesting the lifting of the immunities of the HDP group as a whole.

15. On 3 August 2015, the Bureau of the Assembly informed the HDP Group Presidency that according to Rule 134 of the Rules of Procedure, "the mere fact that a member requests permission to waive his or her immunity shall not suffice." and that as the members of the Constitution Committee and Justice Committee had not been elected yet, the joint committee could not be formed in order to assess the waiving requests, and that therefore there was not any further step to be taken by the Bureau at that stage.

16. After the failed attempt of the MPs to waive their immunities, some MPs and politicians' acts to support to the terrorism and to denigrate the victims of terrorism became even worse under the pretext of their parliamentary inviolability. While the terrorist organization was committing murders of both civilians and security forces, in August 2015, a vehicle of the municipality of Suruç (Şanlıurfa) was caught loaded with bombs. In September 2015, İbrahim Ayhan, MP, shared photos of PKK terrorists died during the attack to security forces, by adding the note "I bow in front of you with respect" (*önünüzde saygıyla eğiliyorum*). Nihat Akdoğan, another MP, visited a PKK graveyard, and Pervin Buldan, MP, paid a visit to the family of a terrorist to express her condolences, who died in air operations against the terrorist organisation. Burcu Çelik Özcan, another MP, attended the funeral of a terrorist who died in operations. Furthermore, Selahaddin Demirtaş, leader of HDP, said in October 2015 that investigations would start if HDP deputies did not attend funerals of terrorists.

17. In fact, the PKK was conducting a heavy campaign of terrorist attacks against both civilians and security forces. Between August 2015 and August 2016, the PKK committed 11 attacks with car bombs. As result of these terrorist attacks, 62 security forces members and 45 civilians lost their lives and hundreds were injured.

18. One of the most devastating of these attacks was the one realised on 17 February 2016, in the centre of Ankara where a suicide bomber affiliated to the terrorist organisation PKK attacked with a car bomb personnel services of the military carrying both military and civilian personnel to their homes after the end of the working hours. The result was 29 dead and 61 injured. 18 people of 29 dead were civilians. Subsequent to this attack, Tuğba Hezer, an MP offered condolences for the suicide bomber despite the latter's traumatic attack which would cause a feeling of repugnance in every human being except those who are supporters of terrorism. Indeed, it is unacceptable in a democratic society to express support to a terrorist suicide attack and to the ones who commit it. Unfortunately, this was not the last shock the people of the Capital would face at that time. The pain had not come to an end. Only one month later, on 13 March 2016, the PKK attacked civilians in Kızılay, the very centre of Ankara for leisure, shopping or cultural activities for both locals and tourists. 36 civilians died in this attack and 344 people were injured. Many people have been exposed directly to this traumatic event. Turkey once again was shot in the heart, Ankara, by an odious terrorist attack.

19. Against this background, a feeling of indignation was caused among the whole nation because of seeing those who are elected by their votes and who are paid by their taxes, to support the horrible acts of terrorism by despising the pains of the victims of terrorism, and to insult, to threaten those who were

conducting legitimate fight against terrorism. These acts of MPs had caused very deep pain beyond description within the hearths of millions, but they were untouchable because of their immunities.

20. Accordingly, the scope of parliamentary inviolability has become a matter of intense constitutional debate in Turkey.

21. The proposition of amending the Constitution in order to lift parliamentary immunities came to the fore under this context. This was a demand of the public opinion and it is the principal duty of a parliament to answer the demands of a nation.

22. However, the GNAT has reacted wisely and it did not make a limited lifting of immunities only focussing on terror-related crimes but, profited of this occasion to make a general and impersonal amendment. It provided that the principle of parliamentary inviolability is not applicable to files against Members of Parliament, which were pending at the moment and which had been transmitted to the relevant departments of Ministry of Justice, of the Prime Ministry, to the Bureau of the Grand National Assembly of Turkey and to the Joint Committee consisting of the members of Constitution and Justice Committees when the amendment was adopted. The amendment included all offenses such as violation of constitutional order, membership in and aid to a terrorist organization, counterfeiting, wounding, insult and no distinction has been made in terms of lifting of immunity for the alleged offenses.

23. The amendment did not affect non-liability. The principle of parliamentary non-liability is maintained intact.

24. The exemption to the inviolability did only affect the files which had already been transmitted to the relevant authorities *at the time of the adoption of the amendment*. The amendment did neither abolish as a whole the parliamentary immunity nor had the effects on the future acts of the MPs.

25. Indeed, when the denigration of victims of terrorism is at stake while there were serious acts of terrorism taking place in the country, the reasonable response should be bringing the ones supporting, aiding or committing these acts before the law in a democratic society where the rule of law reigns. For instance, a similar situation has been occurred in France regarding the immunity of Marine Le Pen, Member of the European Parliament and Chair of the Front National (FN) party which has been waived in connection with proceedings relating to the posting on her Twitter account, on 16 December 2015, of violent images showing the murder of three hostages by the terrorist group Daesh, together with the comment '*This is Daesh*', following an interview broadcast on RMC in which a comparison was drawn between the rise of the FN and the activities of Daesh.

26. As in the document entitled « Parliamentary immunity in a European context ³» it has been adequately observed that «the interesting facet of the ECtHR's approach to the question of freedom of expression of members of parliament [is that] the quality of being a parliamentarian does not attenuate a person's responsibility – id est, provide him with a wider freedom of expression – but even leads to a greater duty of care. Politicians (thus also parliamentarians) must be 'particularly attentive in terms of the defence of democracy and its principles', since their aim is to come into power." It has been also observed that considering the ECtHR's *Keller* judgment, "being a parliamentarian alone does not confer upon an individual a greater freedom of expression⁴". Indeed, incitement to the violence, threatening those fighting against terrorists, denigrate victims of terrorism, carrying guns for terrorist groups constitute a 'fundamental attack on the rights of persons', so it justifies 'particular precautions' including against politicians (see *mutatis mutandis Féret v. Belgium*, no. 15615/07 16 July 2009, *Keller v. Hungary*, no. 33352/02 4 April 2006, *Ollinger v. Austria*, no. 74245/01, 13 May 2004).

27. Consequently, no peaceful enjoyment of political rights of the MPs had been targeted by the constitutional amendment or by the investigations carried out by the independent and impartial judicial authorities.

³ This in-depth analysis was commissioned by the policy department on citizens' rights and constitutional affairs at the request of the JURI committee. It examines the case law of the European Court of Human Rights and the Court of Justice of the European Union on the matter of parliamentary immunity. It is authored by Sascha Hardt, Assistant Professor of comparative constitutional law, Maastricht University, in September 2015. See p. 19.

⁴ *Ibid*, p. 22

III. Procedural Safeguards

28. Article 175 of the Constitution, and Rules 93 and 94 of the Rules of Procedure set out the procedure to be followed to amend the Constitution. According to these provisions; 1-The constitutional amendment shall be proposed in writing by at least one-third of the total number of members of the Turkish Grand National Assembly (which is equal to 184 MPs at the time of events). 2-Proposals to amend the Constitution shall be debated twice in the Plenary Session 3- The second debate shall not begin unless forty-eight hours elapses after the first debate which is called « cooling-off period » in order to direct the MPs to think carefully about the important change they are about to make. In fact, it should be underlined that it is prohibited to held debates on constitutional amendment proposals under urgent procedure (*ivedi görüşme yasağı*). 4-The adoption of a proposal for an amendment shall require a three-fifths majority of the total number of members of the Assembly by a secret ballot (330 MPs at that time). 5-A law on the Constitutional amendment adopted by a two-thirds majority of the total number of members of the Turkish Grand National Assembly (being 367 out of 550 MPs) may be submitted to a referendum by the President. 5-If not submitted to referendum, the amendment law shall be published in the Official Gazette.

29. In this respect, our Government insist on the far more stringent procedural safeguards afforded by the Constitution and the Rules of Procedure when a constitutional amendment is at stake than those afforded in the procedures to lift the immunity. To say the least, the constitutional amendment include supermajorities in the legislature, secret ballot, prohibition of urgent procedure and obligation of two-times debate; however, the lifting of immunity is voted by show of hands and only the vote of the majority equal to one plus a quarter of the total number of members of the Assembly does suffice. Accordingly, lifting the immunity of a parliamentarian by a constitutional amendment provide for more safeguards than the usual process to be followed.

30. On 20 May 2016, the Plenary voted in secret ballot on the text as a whole of the bill amending the Constitution. Out of 531 deputies who attended the final vote, 376 MPs approved the proposal. Only 140 MPs voted against. Accordingly, the law proposal has been adopted. This process shows how the demand of the public to limit the inviolability of the MPs was shared by the overwhelming majority of the National Assembly including the deputies of the opposition.

31. Consequently, on the date of adoption, the provisional article concerned 154 MPs in total and the distribution among the political parties was 29 MPs from AK Party, 59 MPs from CHP, 55 MPs from HDP, 10 from MHP and one independent member of Parliament. As the numeric data shows there is no targeting the MPs of the HDP even though the complainants alleged the contrary. To make it clear, on the date when the proposal was submitted to the Assembly, the number of the HDP deputies who had dossiers was 49 and this number rose to 55, which means that there is approximately an increase of 12 per cent. However, the number of the CHP deputies grew from 51 to 59 which means a growth of more than 15 per cent and more dramatically, the increase in the number of MHP's deputies reaches approximately 43 per cent. Consequently, the Government opposes to the allegations claiming that "the HDP" was targeted by the constitutional amendment and that "the HDP" was the most affected party by the constitutional amendment. Au contraire, as the data show, the HDP is the least affected party among the opposition.

32. As regards the criticism that the MPs were deprived of submit their defence before the parliament, it should be noted that both during the process before the Joint Commission and during the deliberations of the GNAT which lasted two whole sessions, all parliamentarians were entitled to participate to the debate, to table motions of amendments, to speak and express their views, their concerns about the lifting of their inviolabilities. The procedure to amend the constitution did not deprive them to express their thoughts freely on the lifting the inviolability as the minutes of the 90th and 91st sessions of the Plenary show explicitly.

33. Furthermore, it should be underlined that the National Assembly does not give a judicial decision, therefore the MPs' right to defence is always intact, they have never been deprived of giving their defence submissions on the acts they are investigated by judicial authorities. In that connection, it should be noted that in the Report on the Scope and Lifting of Parliamentary Immunities of the Venice Commission, the Commission held: "The criteria for the lifting of parliamentary immunity also vary a lot [among countries]. In many countries this is in principle seen and treated as a mainly political decision, on which parliament has wide discretionary powers, and which cannot be overruled by any other institution." The Commission then refers to a study on parliamentary immunity in the national parliaments of the member states of the European Union carried out by the Directorate-General for Research of the European Parliament where it is noted that there is "an extreme diversity of criteria and interpretations used in making decisions on immunity" and that, "In some cases, the absence of fixed criteria is even presented as a demonstration of the sovereignty of parliament, which is thus

seen as entitled to look at each specific case on a discretionary basis, without being subject to rigid, predetermined principles". Hence, it is not the practice of all countries, for the parliamentarian in question to be heard before a recommendation is made or the vote is taken by the parliament⁵.

34. Furthermore, at the European level, there can be cases where the parliamentary immunity may be lifted on a general basis, in advance of any specific cases, and with effect for all parliamentarians for a given period of time. This is an established practice in the German Bundestag, which regularly passes a decision at the start of each parliamentary period to partially lift the immunity of all members for the entire electoral period for any kind of criminal investigation and proceedings for all alleged crimes and offences, except for defamations of a political character⁶. According to the Venice Commission's report, « The stated purpose of this practice is to protect the reputation of the individual members of parliament, as it is considered that this might be negatively affected if each case of potential lifting of immunity has to be assessed on the merits of the case. »

35. It should be further underlined that, in most States, parliament or a parliamentary body has a discretionary power to lift inviolability without the possibility to appeal this decision in court⁷. Thus, Turkey is one of the few countries which provides for an appeal to the Parliamentary resolution on the lifting of the immunity. Accordingly, there is no European consensus or a "common European standard" on that matter.

36. As stated above several times, the provisional article 20 has limited nature both in time and in scope. The provisional article 20 only brings a temporary exemption to the first sentence of the second paragraph of Article 83 regarding the files submitted to the National Assembly and to the relevant intermediary authorities prior to the date of the adoption of the amendment.

37. It should be further noted that during the Constitution Committee's negotiations, the members of the ruling party submitted an amendment to the proposal which subsequently was accepted as a result of a vote in the Commission. Accordingly, the scope of the exemption to the first sentence of the second paragraph of Article 83 of the Constitution has been limited in time and has been narrowed to a period until the adoption of amendment which meant that the relevant sentence of Article 83 would not apply to the files which would have been submitted to the relevant authorities until the adoption of the amendment instead of the latter's entry into force in order to protect of the MPs any attempt of "*fumus persecutionis*". Indeed, the latter would have been more likely to occur, if there had been a period when the files requesting immunity would have been accepted between the adoption and the entry into force of the amendment, the latter having been certainly enacted by the Plenary.

38. Additionally, the provisional article only concerns inviolability (not the whole immunity) of a parliamentarian. The non-liability which provides for absolute and permanent protection to a member of the Assembly stays intact.

39. Thus, the constitutional amendment affects neither the initiation of any investigation against the applicant nor its outcome, all decisional power regarding these matters is assumed by the independent and impartial judicial authorities.

IV. Additional Remarks

40. In the light of the foregoing, the Government would like to insist that all cases of the complainants before the Committee are being or have been treated by the independent and impartial judicial authorities. The national authorities apply standards which are in conformity with international, regional and national human rights standards and, moreover, while deciding they base themselves on an acceptable assessment of the relevant facts.

41. In this respect, the Government would like to underline that right to freedom of expression is enjoyed without exception and without unduly interference on behalf of national authorities by all human beings in Turkey. The right is effectively protected, all violation allegations being under the scrutiny of both the Constitutional Court and the ECtHR. The Constitutional Court is accepted as a national instance to be applied prior to lodge an application with the ECtHR. As accepted by the latter, it offers accessible, effective

⁵ "Parliamentary Immunity" (Background Paper prepared by the Inter-Parliamentary Union in cooperation with the UNDP 2006), pp. 17-18.

⁶ CDL-AD(2014)011, p. 23

⁷ Sascha Hardt, Parliamentary Immunity. A Comprehensive Study of the Systems of Parliamentary Immunity in the United Kingdom, France, and the Netherlands in a European Context (2013) p. 42.

and adequate remedies for all violations of the rights protected within the scope of the European Convention on Human Rights and the Protocols thereto which have been ratified by Turkey. Accordingly, the standards followed by the ordinary courts and that during the review of the Constitutional Court are both comparable to that offered by the ECtHR, therefore they afford similar protection compared to that offered by the ECtHR.

42. It should be moreover noted that although the Turkish Criminal Code does not contain a definition of an armed organisation or an armed group the scope of these concepts are specified through the well-established case-law of the Court of Cassation. In its judgment E. 2006/10-253 K. 2007/80 of 3 April 2007, the General Criminal Board of the Court of Cassation listed the main criteria that a criminal organisation – for the purposes of Article 220 of the Criminal Code – should display. The group has to have at least three members; there should be a tight or loose hierarchical connection between the members of the group and an “abstract link” between the members is not sufficient; the members should have a common intention to commit crimes (even though no crime has yet been committed); the group has to present continuity in time; and the structure of the group, the number of its members, tools and equipment at the disposal of the group should be sufficient/appropriate for the commission of the envisaged crimes. Additionally, in order for an organisation to be considered as “armed” under Article 314, the arms at the disposal of the organisation should also be sufficient and appropriate to the commission of crimes concerning offences against Nation and State (Chapter IV – parts 4 and 5 of the Criminal Code).

43. There is a rich case-law of the Court of Cassation in which the high court developed the criterion of “membership” in an armed organisation. The Court of Cassation examines different acts of the suspect concerned, taking account of their “continuity, diversity and intensity” in order to see whether those acts prove that the suspect has any “organic relationship” with the organisation or whether his or her acts may be considered as committed knowingly and wilfully within the “hierarchical structure” of the organisation.

44. In this respect, the Government would like to state that in a number of admissibility decisions concerning applicants who were convicted for membership of an armed organisation, the ECtHR observed that the applicants had not been convicted for having expressed their opinions or for having participated in a meeting, but for membership of an armed organisation and concluded that there was no interference with the right of the applicants to freedom of expression⁸.

45. Consequently, the Government would like to state that the terrorism-related offences are sufficiently specified under the Turkish law and the Turkish Judiciary affords sufficient protection for the individuals’ human rights irrespective of their titles and does not treat anyone above the rule of law.

46. Before terminating its observations, our Government would like to rectify some misinformation figuring in the report. First, the examination-both written and oral- that the candidates have to take to become a judge trainee and then fully-qualified judge have always been obligatory and have never been abolished even after the coup attempt. Additionally, the information as regards the total dismissal of the all members of the Court of Cassation and the Supreme Administrative Court and the fact that the judges are also members of a certain political party do not reflect the truth. It should be set out that the judges in Turkey are independent and impartial and also, it is of crucial importance for judges to be perceived as being independent and impartial adjudicators free from undue influence, especially from political influence both under their ethical duty and by virtue of the professional rules they must abide by. Accordingly, in Turkey, being a judge is irreconcilable with being member of a certain political party. Consequently, our Government request the rectification of the mentioned mistakes in the report.

47. In conclusion, as per your request, please accept the above-stated observations submitted by our Government as our responses to the report of the joint mission of the Executive Committee and the Committee on the Human Rights of the Parliamentarians of Inter-Parliamentary Union.

⁸ Sirin v. Turkey (admissibility decision), Application No. 47328/99; Kılıç v. Turkey (admissibility decision), Application No. 40498/98; Siz v. Turkey (admissibility decision), Application No. 895/02; Turan v. Turkey (admissibility decision), Application No. 879/02; Arslan v. Turkey (admissibility decision), Application No. 31320/02; Kızılöz v. Turkey (admissibility decision), Application No. 32962/96.

F. Observations provided by the complainant (7 October 2019)

- **Executive Summary: Paragraph 7**

I would suggest to replace "much progress" with "some progress," as using "much" would overemphasize the changes that actually did happen. There were some reforms with respect to the use of linguistic rights in the process of accession to the EU, but no progress with respect to the main Kurdish demands of administrative and political decentralization as well as collective cultural rights - first and foremost mother tongue education.

- **Executive Summary: Paragraph 9**

I suggest to replace this phrase with "however morally and politically reprehensible Turkish authorities may view such attendance." This is a culturally and religiously very delicate issue for the Kurdish community; in fact not visiting families of the deceased is seen by many Kurds as a culturally and morally reprehensible behaviour. That is why I think the IPU may refrain from taking a stance on this culturally and religiously complex issue, which the European Court of Human Rights views as the exercise of a religious freedom. The text reads as the IPU may find this cultural practice as reprehensible; which would be an ethnocentric assumption from the perspective of an outsider.

- **Paragraph 7 of the report:**

In late September 2019, the Supreme Court upheld various sentences for this case. The sentences of two current HDP deputies were also upheld. These deputies are Ms. Leyla Guven and Mr. Musa Farisogullari. If their sentences are read out in the parliament, they will lose their parliamentary mandates.

- **Paragraph 8 of the report**

As of October 2019, eight former members of parliament continue to be held in prison. Mr. Ferhat Encü and Mr. Sirri Süreyya Önder, two former HDP MPs, were released. Those who remain in prison are Mr. Selahattin Demirtaş, Ms. Figen Yüksekdağ, Mr. Idris Baluken, Ms. Selma Irmak, Ms. Çağlar Demirel, Ms. Gülser Yıldırım, Ms. Burcu Çelik Özkan of the HDP, and Mr Eren Erdem of the main opposition party CHP.

- **Paragraph 40 of the report:**

This is a really absurd case, because contrary to what the spokespersons of the Turkish government keep repeating, the official indictment itself clearly states that although the prosecution could not find any evidence regarding the guns and their transport to the PKK, it still demanded the lifting of his parliamentary immunity.

- **Paragraph 64 of the report**

I would suggest to replace "much progress" with "some progress," as using "much" would overemphasize the changes that actually did happen. There were some reforms with respect to the use of linguistic rights in the process of accession to the EU, but no progress with respect to the main Kurdish demands of administrative and political decentralization as well as collective cultural rights - first and foremost mother tongue education.

- **Paragraph 66 of the report**

I suggest to replace this phrase with "however morally and politically reprehensible Turkish authorities may view such attendance." This is a culturally and religiously very delicate issue for the Kurdish community; in fact not visiting families of the deceased is seen by many Kurds as a culturally and morally reprehensible behaviour. That is why I think the IPU may refrain from taking a stance on this culturally and religiously complex issue, which the European Court of Human Rights views as the exercise of a religious freedom. The text reads as the IPU may find this cultural practice as reprehensible; which would be an ethnocentric assumption from the perspective of an outsider.