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## Committee on the Human Rights of Parliamentarians

### Turkey

TK82 - Figen Yüksekdağ - Turkey  
TK119 - Selahattin Demirtaş - Turkey

**Report on the observation of the court hearings held on 18 September 2017, 6 December 2017, 20 February 2018, 17 May 2018 and 24 September 2018 in the case of Ms. Figen Yüksekdağ and of the court hearing held on 7 December 2017 in the case of Mr. Selahattin Demirtaş**

#### Executive summary

#### Background

The IPU Committee on the Human Rights of Parliamentarians has been examining the cases of Turkish parliamentarians belonging to the People's Democratic Party, HDP (*Halkların Demokratik Partisi*), including the cases of Ms. Figen Yüksekdağ and Mr. Selahattin Demirtaş since June 2016. At the Committee's request, I travelled to Ankara in September and December 2017, February, May and September 2018 to observe five hearings in the case of Ms. Yüksekdağ and one hearing in the case of Mr. Demirtaş.

Mr. Demirtaş and Ms. Yüksekdağ were elected to the Grand National Assembly of Turkey in the legislative elections held in June 2015, and subsequently re-elected in the November 2015 elections. They were both arrested on 4 November 2016. Over 20 terrorism-related charges have been subsequently brought against both Mr. Demirtaş and Ms. Yüksekdağ, with prosecutors initially seeking an 83-year prison term for Ms. Yüksekdağ in the main case brought against her, and a prison term of over 100 years for Mr. Demirtaş.<sup>1</sup> Ms. Yüksekdağ lost her parliamentary mandate in February 2017 after being sentenced to a 10-month prison term on charges of making terrorist propaganda, a case which had been brought against her before her election to the Grand National Assembly. She was also stripped of her position as co-chair of HDP and her membership thereof by the Court of Cassation.

<sup>1</sup> I have been informed that prosecutors are seeking a prison sentence of 486 years, combined with two aggravated life sentences, if all of the pending cases brought against him are added together.

Mr. Demirtaş stood as a candidate in the presidential elections held in August 2014 and June 2018, contesting the latter from prison. He came third in both elections. His parliamentary mandate ended in June 2018. He did not stand for re-election as a HDP co-chair in February 2018.

### **Observation missions**

Several cases are pending against both former parliamentarians at different courts throughout Turkey. The hearings that I was requested to observe were all held in the court complex at the high-security prison in Sincan, Ankara Province, and relating to the main pending cases brought against them involving terrorism-related charges. In regard to the hearings held on 6 and 7 December 2017 in the cases of Ms. Yüksekdağ and Mr. Demirtaş, respectively, all international observers, including myself, were denied admission to the courtrooms. I was the only international observer authorized to attend the other hearings held on 18 September 2017, 20 February 2018, 17 May 2018 and 24 September 2018 in the case of Ms. Yüksekdağ. The report focuses on her case.

The Court systematically rejected the demands from the defence team to release Ms. Yüksekdağ pending trial, to authorize foreign observers to attend, to hold the proceedings at the courthouse complex in central Ankara, and to have the question of parliamentary immunity examined by the Constitutional Court. However, the Court accepted the demands from the defence team on the merger of pending cases and the presentation of certain material evidence. The number of charges brought against Ms. Yüksekdağ increased between September 2017 and September 2018, as the prosecution brought new cases against Ms. Yüksekdağ and mergers between the present case and other pending cases were decided.

### **Conclusion**

Considering the prevailing political situation in Turkey, the near suppression of all dissent in the country and heavy government interference in the judiciary, the prospect for former parliamentarians Mr. Demirtaş and Ms. Yüksekdağ to receive a fair trial is remote. The political nature of both prosecutions is evident and has been widely denounced. What is at stake here, is freedom of expression and the prosecution is not about combating terrorism, but combating a political vision and a political programme different from the current government's one. In its judgment handed down in November 2018 on Mr. Demirtaş application for release pending trial which is also relevant for Ms. Yüksekdağ, the European Court of Human Rights concluded that the ulterior purpose of Mr Demirtaş' detention was to stifle pluralism and limit freedom of political debate. My experience in Ankara has highlighted the interference on the part of the executive on the judiciary, especially in regard to executive orders contradicting the decision of the Court and preventing international observers from being admitted to the courtroom. 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 a judicial process. While a correct conduct was maintained during the hearings, with the defendant and the lawyers for the defence being able to speak out freely, this appears to be a mere façade behind which the Government of Turkey is pulling the strings. Thus, the indictment has continuously changed during the 12 months I followed the proceedings, new cases were being added or mergers decided, the court followed systematically prosecution recommendations on decisive matters, such as release pending trial and did not take into account the arguments put forward by the defence. It would require particularly courageous judges prepared to put their career and possibly their own and their family's well-being at stake to ignore injunctions from the executive and instead abide by the country's national and international human rights obligations.

Despite, or even perhaps because of this situation, it seems important to me that the IPU, as a guardian of the human rights of parliamentarians and democracy, stands in solidarity with the aforementioned parliamentarians by continuing to observe the proceedings in the aforementioned cases as much as possible.

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## 1. Preparation of the three missions

1. At the request of the IPU, I travelled to Ankara to observe the hearings held on 18 September 2017, 6 December 2017, 20 February 2018, 17 May 2018 and 24 September 2018 before Serious Crimes Court No. 16 (Assize Court No. 16), in the case of Ms. Figen Yüksekdağ, a former parliamentarian and co-chair of the People's Democratic Party, HDP (*Halkların Demokratik Partisi*). I also observed the hearing held on 7 December 2017 before Serious Crimes Court No. 19, in the case of Mr. Selahattin Demirtaş, who was leader and co-chair of HDP.<sup>2</sup> I was also requested to gather other relevant information.

2. In preparing for the first mission, the IPU sought to obtain an official visa for me, which was not granted. However, the Consul and the Permanent Representative of Turkey to the United Nations Office at Geneva assured the IPU that a normal tourist visa would be sufficient to enter the country and observe the hearing. They stressed that while the trial was public and open to observers, only the Court was competent to grant leave to attend the hearings and reserved the right at any moment to hold the hearings "*in camera*".

3. In addition to the parliamentary authorities, the IPU informed the Turkish Minister of Justice, the Minister of Foreign Affairs and the Prosecutor General of my observer missions. It requested the President of Serious Crimes Court No. 16 of- who is also the Presiding Judge in the case of Ms. Yüksekdağ – not only to grant me and my interpreter leave to attend the hearings, but also to allow me to meet with him and the prosecutor in Ms. Yüksekdağ's case. No response was received to these communications.

4. In regard to the three last missions, the IPU decided to comply with the official accreditation procedure for international observers introduced in December 2017, which comprised of seeking accreditation from one of the aforementioned executive authorities. It was understood that a confirmation letter in Turkish from at least one of these authorities would be required to be granted admission to the courtrooms. Despite initial efforts made by the IPU through the Permanent Representative of Turkey to the United Nations Office at Geneva to obtain such a letter, no response was received. However, I was nevertheless granted admission to the subsequent hearings. I understood that it was seemingly sufficient that the letters from the IPU addressed to the executive authorities be forwarded to the Court.

## 2. Course of the five missions

### 2.1. First mission (17–19 September 2017)

5. Accompanied by my interpreter, I was admitted to the court hearing held on 18 September 2017 in the case of Ms. Yüksekdağ. It took place in the court complex located within Sincan high security prison where all subsequent hearings I attended with my interpreter took place. The hearing was scheduled for 9.30 a.m., but started at 10.40 a.m. It lasted until 2.50 p.m., with a lunch break of approximately 1 hour. At the end of the morning sitting, I took the opportunity to introduce myself to the Presiding Judge. It was impossible to arrange a separate meeting with either him or the prosecutor.

6. During the afternoon, I had the opportunity to meet with three individuals: one of the main lawyers for the defence, Ms. Sezin Uçar, who is currently being held in detention; parliamentarian, HDP deputy co-chair and HDP spokesperson for foreign affairs, Mr. Hişyar Özsoy; and a female HDP official.

7. Some eight other observers from France, Italy, Norway and United Kingdom of Great Britain and Northern Ireland had also travelled to Ankara to observe the hearing, but no one was admitted to the courtroom. Unfortunately, owing to time constraints, I was unable to meet with them.

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<sup>2</sup> Mr. Demirtaş did not stand as a candidate as a co-chair of HDP during the elections held at the Third HDP Congress held on 11 February 2018.

## 2.2. Second mission (5–8 December 2017)

8. The hearings held on 6 and 7 December 2017 in the cases of Ms. Yüksekdağ and Mr. Demirtaş took place in one of the big courtrooms at Sincan court complex that had been specifically built for the hearings in the cases of suspects of the failed coup attempt of July 2016, which is known as the *Fethullahçı Terör Örgüt* (Gülenist Terror Organization, FETÖ). Initially the hearing in the case of Mr. Demirtaş was to be held at the courthouse complex in central Ankara. The many international observers who had travelled to observe the hearings, including myself, were not admitted to the courtroom. However, some Turkish nationals were admitted. HDP organized two briefings for the observer delegations and a press conference. During the latter, a joint statement was adopted.<sup>3</sup> As an IPU observer, I was not in a position to sign the document. I had the opportunity to converse with other international observers, but unfortunately, there was no opportunity to meet separately with either of the lawyers of Mr. Demirtaş or Ms. Yüksekdağ.

## 2.3. Third mission (19–21 February 2018)

9. During this mission, I was admitted to the courtroom. However, the hearing was short as Ms. Yüksekdağ was absent and no material evidence was examined. Fortunately, I had the opportunity to meet with one of the lawyers for the defence in the afternoon and to visit the courthouse complex in central Ankara.

## 2.4. Fourth and fifth missions (May and September 2018)

10. My interpreter and I were admitted to both hearings. In the court minutes of the hearing held on 17 May 2018, my name and that of my interpreter are mentioned as having been accredited to the proceedings and to all future hearings in this case, which facilitated admission to the hearing held on 24 September 2018.

11. This report provides an account of the hearings held on 18 September 2017, 20 February 2018, 17 May 2018 and 24 September 2018, which I was able to attend in person. I received written notes from an observer on the hearing held on 6 December 2017.

## 2.5 Admission to the court: Norwegian Bar Association report on the hearing held on 4 July 2017 in the case of Ms. Yüksekdağ

12. In regard to being granted admission to the court, it is interesting to note that the international observers who had travelled to Ankara to observe the first hearing held on 4 July 2017 in the case of Ms. Yüksekdağ held in the courthouse complex in central Ankara, were denied admission to the courtroom. According to the observer report of the Norwegian Bar Association<sup>4</sup>, the prosecutor had requested that the judge deny admission for the observers owing to the fact that they had failed to apply for accreditation with the Turkish Ministry of Foreign Affairs, and subsequently that they had failed to apply to the Turkish Ministry of Justice. However, the Presiding Judge decided that five observers should be admitted to the courtroom. The observers chose these five persons who were then placed on benches to the rear of the courtroom. However, shortly after the judges had re-entered the room, they were all requested to leave the courtroom.

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<sup>3</sup> See Annex 1.

<sup>4</sup> *Observation of the Ankara 16th Penal Court hearing of case against former co-leader of People's Democratic Party (HDP) Figen Yüksekdağ, July 4th 2017*, Oslo, Norway, *Advokatforeningen* (Norwegian Bar Association), <https://www.hdp.org.tr/images/UserFiles/Documents/Editor/Norwegian%20Bar%20Association.pdf>

### **3. Hearings in the case of Ms. Yüksekdağ**

#### **3.1 The hearing held on 18 September 2017**

##### **3.1.1 *Arrival at the high-security prison in Sincan, Ankara Province, and admission to the courtroom***

13. The hearing was held in a small courtroom within the court complex located inside Sincan high-security prison, which also hosts several large courtrooms. Sincan prison is located approximately 60 km away from the city of Ankara, in an isolated and barren place near the town of Sincan and is surrounded by a tall concrete barbed-wire wall.

14. It took me and my interpreter some time to locate the entrance gate to the premises surrounding the small courtroom in which the hearing was to be held. There we met an HDP official who told us that Ms. Yüksekdağ's lawyers were still negotiating with the Court in regard to my attendance at the hearing. After waiting for some time, our first attempt to enter the premises was unsuccessful. During our second attempt to enter that area, a security officer told us that no foreigners had been authorized to attend the hearing, which seemed to be confirmed when a representative from the Embassy of Canada was refused entry. During our third attempt to enter, a security officer found my name on a list of persons that he had with him, and we were allowed to enter the premises surrounding the court building. We had to wait once again in this space, as over 20 people had already gathered on and around the stairs leading to the small entrance hall, and which was more than the number of seats that were said to be available in the courtroom. I was briefly introduced to Ms. Besime Konca (HDP parliamentarian for Siirt) and Ms. Mizgin Irgat (HDP parliamentarian for Bitlis). After some time, a person unknown to me and my interpreter ushered us into the entrance hall where the security check took place. We subsequently entered the courtroom. Many other persons were left waiting outside the courtroom or left the premises.

15. A plain-clothes security officer was filming everyone entering and leaving the court building.

##### **3.1.2 *The courtroom setting***

16. We took seats in the public gallery, which comprised three rows to the rear of the courtroom, separated from the rest of the courtroom by a barrier. Each row had approximately 15 to 20 seats. During the hearing, two police officers sat at the end of each row. There were also officers sitting on a bench immediately in front of the public gallery so that, at times, more than 20 police officers were present. In addition to the numerous parliamentarians in attendance, there were at the most 25 members of the public in the room.

17. The dock for the defendants, comprising of approximately 20 seats, was located in the centre of the courtroom separated by railings. Along each side of the railings were chairs, some of which were occupied by lawyers. Most of the lawyers and all the parliamentarians present were seated on benches along the side walls of the room.

##### **3.1.3 *Morning court session: 10.40 a.m. to 12.45 p.m.***

18. The three-judge panel entered the courtroom, accompanied by the prosecutor, at 10.40 a.m. The Presiding Judge<sup>5</sup> began by reading aloud the names of the approximately 30 lawyers present in order to check their attendance. One of the lawyers interrupted him to protest about the late start. The Presiding Judge did not respond.

19. The Presiding Judge subsequently read out the reasons for the defendant's absence: Ms. Yüksekdağ had declined to participate either in person or via SEGBIS (the audioconferencing system used in Turkish courts) because of the small courtroom chosen and the limited space for the public as a result. Ms. Yüksekdağ's lawyers had previously petitioned the Court to hold the hearing in

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<sup>5</sup> The Presiding Judge at all hearings in the case of Ms. Yüksekdağ was Mr. Sabahattin Sarıdoğan. The prosecutor and the two judges changed at the hearings held in May and September 2018.

a bigger room. The Court subsequently contacted the prison administration service to propose virtual attendance via SEGBIS. No official response to the aforementioned proposal had been received by the time the Court was informed that the defendant had also declined attending the hearing via SEGBIS.

20. Another lawyer for the defence subsequently petitioned the Court to adjourn the hearing, owing to the absence of the defendant, and to arrange for the hearing to be held in a larger room. The Presiding Judge did not respond and continued to read aloud the names from the aforementioned list of attending lawyers. I heard my name called as a representative of the European Parliament. He subsequently began reading aloud the indictment from a computer located next to him. Unfortunately, it was impossible for the interpreter to understand him.

21. The lawyers for the defence, during their subsequent interventions, all reiterated the defence team's petition to the Court to adjourn the hearing, to arrange for the hearing to be held in a larger room and to grant admission to the other foreign observers who were still waiting outside. At one point, the Presiding Judge asked for the opinion of the prosecutor, who denied the defence team's petition for the foreign observers to be granted admission and seemed to indicate that the Presiding Judge would justify the decision. This caused a clamour in the courtroom.

22. After correcting the name of the organization that had mandated me to observe the hearing, the Presiding Judge then confirmed that I had been authorized to attend, as the Court had been informed of my mandate. I was therefore granted accreditation, whereas the defence team's petition for the other foreign observers, who had made no application to the court, to be granted admission was denied.

23. One of the lawyers for the defence noted that the prosecutor had not given any justification for his opinion on the aforementioned matter and had simply stated that the Presiding Judge would provide a justification. In response, the prosecutor specified that he had said that "perhaps the Presiding Judge would accept that petition". The lawyer for the defence insisted on the original words being entered into the record. The Presiding Judge assured the lawyer for the defence that everything had been recorded accordingly.

24. The Court unanimously rejected the petition to hold the hearing in a larger room, on the grounds that the current courtroom was large enough to guarantee the right to a fair trial, and that it was not appropriate to allow the public to sit in the section reserved for defendants.

25. Another lawyer for the defence subsequently recalled the history of Ms. Yüksekdağ's prosecution, citing the many constitutional articles that had been violated, in particular the question of parliamentary immunity and the loss of her parliamentary mandate. She referred to Ms. Yüksekdağ's statement at the first hearing held on 4 July 2017, stressing the subsequent decision by the defence team not to discuss the charges brought against Ms. Yüksekdağ in Ms. Yüksekdağ's absence. The lawyer for the defence subsequently stressed both the need for prosecutors to provide justifications for their decisions and the principle of equality of arms, which had not been respected in the present case. In particular, she illustrated how conversations between Ms. Yüksekdağ and her lawyers had been recorded, documents had not been forwarded and how police officers had stopped a car belonging to one of the lawyers for the defence. She stated that two judges from the bench that had sentenced Ms. Yüksekdağ's to a 10-month prison term, as well as the prosecutor who had prepared the indictment, had meanwhile been arrested and were being prosecuted for alleged membership of FETÖ.<sup>6</sup> She said that this matter alone should have constituted sufficient grounds to stop the proceedings. The lawyer stressed the importance of a public hearing and the fact that, on many occasions, admission by members of the public had been obstructed.

26. Her plea was followed by some 20 others, with the Presiding Judge intervening only once, to state: "we are repeating the same things as in the first hearing". Time and again, these defence statements related to both Ms. Yüksekdağ and overarching political themes, such as the current situation regarding respect for the rule of law and the judiciary in general.

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<sup>6</sup> FETÖ is fundamentally hostile to the HDP.



27. The lawyers for the defence raised the following matters in relation to the case itself:
- Holding hearings in a prison complex was not appropriate, given the accompanying restrictions, including tighter security screening of the lawyers for the defence. By holding the hearings in a prison, Ms. Yüksekdağ's trial itself had undeniably been placed in detention.
  - The courtroom at the prison complex had been chosen as the venue for this hearing only five days in advance. The lawyers had first petitioned the Court to choose another room. As no response was received in this regard, Ms. Yüksekdağ herself petitioned the Court, and some 20 minutes later, her request had been denied.
  - No valid justification had been received for Ms. Yüksekdağ's prosecution, which therefore justified an acquittal and Ms. Yüksekdağ being released from prison. The decision to hold her in detention was not justified, as there was no risk of escape and no potential risk that evidence could be altered, as it was of a factual nature.
  - Before Ms. Yüksekdağ's appearance at the hearing held on 4 July 2017, Ms. Yüksekdağ had spent seven months in prison before appearing before a judge.
  - In the judgment handed down on 2 December 2014 in the case of *Güler and Uğur v. Turkey*, the ECHR<sup>7</sup> ruled that participation in a religious ceremony (*mevlut*)<sup>8</sup> did not constitute terrorist propaganda.<sup>9</sup>
  - At least one petition concerned the merger of other cases with the present case.
28. The lawyers for the defence raised the following overarching political themes:
- The judiciary in Turkey has increasingly fallen short of all guarantees of its independence, as political interference in judicial proceedings has increased. Between 4,000 and 5,000 judges and prosecutors have either been dismissed, transferred or arrested, and many have being prosecuted. The lawyers for the defence cited numerous examples of transferred cases or judges. The lawyers for the defence stressed that lawyers in general could also be arrested when leaving courtrooms. They stated that there was a need for courts to be more courageous, and they expected a judgment that respected the constitutional framework of Turkey and international legal norms.
  - The principle of equality of arms is paramount, and in this regard, the unequal treatment between the prosecutor and the lawyers for the defence in the Court was denounced. The lawyers for the defence said that they had been searched and screened while the prosecutor had looked down at them from his box placed at the same level as the bench.
  - In order to illustrate discriminatory treatment against political opponents, reference was made to an attack organized by a fascist group on mourners who were burying the mother of a HDP deputy co-chair, Ms. Aysel Tuğluk, in an Ankara cemetery. Although police officers had intervened later and some attackers were arrested, they were quickly released and no one was charged.
  - The judiciary in Turkey had no longer merely been politicized, as judges had in fact become servile. It therefore fell upon the lawyers to uphold human and professional dignity, despite the risks incurred.
29. At 12.45 p.m. the Presiding Judge closed the morning's sitting. The bench left the courtroom, accompanied by the prosecutor. Numerous lawyers and some members of the public left the complex and did not attend the afternoon's hearing.

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<sup>7</sup> Judgment in the case of *Güler and Uğur v. Turkey* (Second Section) (Application Nos. 31706/10 and 33088/10), Strasbourg, European Court of Human Rights, 2 December 2014. <http://hudoc.echr.coe.int/eng?i=001-148610>

<sup>8</sup> *Mevlut* is a common religious ceremony of Muslims in Turkey. It consists mainly in the reading of poetry concerning the birth of the Prophet during a funeral and/or a remembrance ceremony.

<sup>9</sup> This concerns the case mentioned in paragraph 5.4 of the present trial observation report.

3.1.4. *Afternoon court session: 2 to 2.50 p.m.*

30. The Presiding Judge started the afternoon session by asking the prosecutor for his opinion on the petitions that the lawyers had made during the morning's session.

31. The prosecutor rejected the request for the next hearing to be held in larger premises, as the large courtroom in the prison complex was needed for a case involving 600 suspects (the FETÖ case). The prosecutor also rejected the request to hold the hearing at the courthouse complex in central Ankara. The prosecutor accepted the request to merge cases. He suggested that Ms. Yüksekdağ be brought forcibly to the next hearing and called for Ms. Yüksekdağ's detention to be prolonged owing to the risk of escape.

3.1.5. *The decisions of the Court*

32. The Presiding Judge then read aloud the decisions of the Court:

- (a) The Court denied the request to hold hearings at the courthouse complex in central Ankara on the following grounds: (i) renovation works were under way at the site at the time; (ii) security issues had arisen at the first hearing held at the courthouse complex in central Ankara on 4 July 2017; and (iii) the aforementioned security issues had created obstacles for others, i.e. staff, at the aforementioned courthouse. The Court decided that the next hearing would be held in a suitable room at the high-security prison in Sincan, Ankara Province. The Presiding Judge stated that as the present court was sitting as an assize court, the jurisdiction of which covered provincial borders, the Court was competent to decide on the location for the hearings. Moreover, hearings in Sincan prison, were not held inside the prison, but in a separate place with its own security staff.
- (b) The Court denied the request for foreign observers to attend the hearings, on the grounds that a single suspect was being defended by a team of more than three lawyers; between 40 and 50 members of the public were in the courtroom; and members of the press were entitled to follow the hearings.
- (c) The Presiding Judge stated that Ms. Yüksekdağ was obliged to participate in the hearings and that no decision exempting her from that obligation had been taken. To date, the Court had not received any petition for her to be granted leave not to attend the hearings. The Court had decided that Ms. Yüksekdağ was to be brought forcibly to the next hearing in the event that it had not received notification of possible grounds for her absence.
- (d) The Court granted the request to merge the present trial with: (1) a trial pending at the Fifth Assize Court (Sanliurfa), in which Ms. Yüksekdağ was accused of making propaganda for a terrorist organization and of being a member of an armed terrorist organization (Kurdistan Workers' Party, PKK), for which the sentence was an 8.5-year prison sentence; and (2) the case pending at the Second Assize Court (Van), in which she was accused of making propaganda for a terrorist organization and of disrupting the unity and integrity of the State (article 302 of the Turkish Penal Code), punishable by aggravated life imprisonment. The Presiding Judge stated that a letter would be written to both courts seeking their approval for the merger and that the relevant files would be forwarded once the courts had accepted the merger.
- (e) The Court decided to keep Ms. Yüksekdağ in detention in the light of the quality of the evidence collection, the duration of her detention, the catalogue crimes<sup>10</sup> involved and the potential risk of Ms. Yüksekdağ escaping.

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<sup>10</sup> Catalogue crimes is a technical term used to refer to a list of crimes in the Code of Criminal Procedure that include crimes against the security of the State and the constitutional order, in respect to which detention can be ordered solely on the basis of the existence of a strong suspicion against the person without the requirement to assess other conditions for detention. In practice, this legal presumption results in the almost automatic issuance of detention orders by the prosecution for the enlisted crimes. See: *Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights (CommDH(2017)29)*, Strasbourg, France, 10 October 2017, Commissioner for Human Rights, Council of Europe. <https://rm.coe.int/third-party-intervention-10-cases-v-turkey-on-freedom-of-expression-an/168075f48f>

33. The Presiding Judge stated that the minutes of the hearing would be forwarded to the defendant. The Presiding Judge subsequently set the date for the next hearing as 6 December 2017 and closed the session.

### 3.1.6 *Public statement after the closure of the hearing*

34. After the hearing, a crowd of between 30 and 40 people was waiting outside, while armed police officers stood opposite, to the right and to the left of the entrance. A vehement discussion took place in front of the building between a plain-clothes security officer and an HDP parliamentarian and another woman. My interpreter understood that the security forces did not wish the defence team to make a statement while being surrounded by the crowd, and instead had offered another place for a statement to be made. The security officers nevertheless allowed the parliamentarian to say that the defence was not being allowed to make a statement. In the end, she used the opportunity to denounce the political nature of the proceedings brought against Ms. Yüksekdağ.

35. Riot police with riot control vehicles were located outside the Court complex, but no incidents occurred and everyone walked away quietly.

## 3.2 The hearing held on 6 December 2017

### 3.2.1 *Admission to the court building*

36. Accompanied by my interpreter, I arrived early at the prison. We waited for some time before the security officers informed us that the hearing would be held in the large courtroom for the FETÖ case, the entrance to which was adjacent to the main prison entrance. We were then taken to the antechamber, which lead onto the courtroom, where the cloakroom was located and the first passport control took place. This was of some importance as temperatures outside were very low. Other observers subsequently arrived, but many were not admitted and were forced to wait at the barbed-wire gates outside. After approximately one hour, several lawyers, Turkish parliamentarians and other members of the public entered the antechamber. There was palpable tension in the room. We were subsequently ordered by the security officers to leave the antechamber and wait outside in the cold. After approximately one hour, several defence lawyers came to inform us that the Court would allow the foreign observers to attend the hearing, which itself had been suspended for some time. Despite the Court's decision, the security officers did not allow us to re-enter the antechamber. Police officers were subsequently deployed and barricaded the entrance to the antechamber with batons and riot shields. Information circulated that accreditation from the Ministry of Justice, or the, Ministry of Foreign Affairs was required in order to be granted entry. After more time of waiting, it became clear that we would not be granted admission. Only a German parliamentarian of Turkish origin was finally admitted to the courtroom.

37. At the afternoon briefing, we were informed that HDP had submitted a list of observers to the Court, which the Presiding Judge had denied having received. The list was subsequently resubmitted to the Presiding Judge who decided to admit the international observers. The prosecutor opposed such a decision and the hearing was suspended. Thereafter, the prosecutor recommended that the international observers be denied admission to the courtroom owing to security reasons. The aforementioned recommendation was registered as a decision in the Court's minutes. It was reported that the police had received well in advance an order to prevent any international observers from attending the hearing. .

### 3.2.2 *Courtroom setting*<sup>11</sup>

38. The hearing was held in the courtroom for the FETÖ case, which was the approximate size of two basketball courts. Approximately 20 Turkish Gendarmerie officers were stationed behind Ms. Yüksekdağ, who was seated in the defendant's dock in front of the bench. In addition to the numerous parliamentarians in attendance, including parliamentarians from the ruling party, seated on the benches to the left wall of the courtroom, and the lawyers on the right wall of the courtroom. There

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<sup>11</sup> The following paragraphs (39-44) are based on written notes from an observer attending the hearing. See also para.11.

were approximately 50 to 60 members of the public in the public gallery located to the rear of the courtroom. The regional prosecutor for Ankara was reportedly among them. There were approximately 20 journalists, but no representatives of opposition media had reportedly been admitted. Approximately 20 police officers were placed at the end of each of the wall-side benches.

### 3.2.3 Summary of proceedings

39. In her plea, Ms. Yüksekdağ called into question the independence and impartiality of the judiciary and respect for fair trial guarantees, especially in relation to the public nature of trials. She stated that her trial had been politicized, with newspapers having reported her arrest before it had in fact taken place. She requested that the Court hand down its judgment now. Referring to the political events that had taken place since the legislative elections held in June 2015 – when the HDP had become the second largest opposition party – and their subsequent re-run held in November 2015, she stated that the aim of the proceedings brought against HDP parliamentarians and other HDP officials was to eliminate the party, and with it, all political opposition, with a view to instituting a single government and a single-party system. In relation to the peace process, she stressed that the process had been interrupted by the Government of Turkey just as an atmosphere of trust had almost been achieved. She stated that the judgment of the Constitutional Court on article 83 of the Constitution of Turkey had read like a political statement, and that the President of the Court had also bowed his head before the President of Turkey, Mr. Recep Tayyip Erdoğan, on the occasion of the Victory Day celebrations held at the Presidential Palace on 30 August 2017. Noting the corruption affair involving Mr. Reza Zarrab in the United States of America, she called on the authorities to prosecute those who had robbed the country instead. She stressed that she and her colleagues were being prosecuted for playing their role as an opposition watchdog by warning and criticizing the Government of Turkey. She and her colleagues had been performing their duty to denounce the many civilian deaths that had occurred in Turkey since the breakdown of the peace process, and in particular the failed coup attempt of July 2016, the use of excessive police force, and the lack of genuine investigations into killings attributed to security forces.<sup>12</sup> She insisted that there was not a single piece of evidence that would establish an organic link between HDP and PKK. Having been interrupted on two occasions by the Presiding Judge, who had asked Ms. Yüksekdağ to respond to the accusations, Ms. Yüksekdağ became irritated and highlighted that the hearing was the only opportunity to make herself heard publicly and that it was necessary for her to set out the basis of the case brought against her. She admitted having spoken words attributed to her in the indictment, but accused the prosecution of resorting to distorted interpretations.<sup>13</sup> Ms. Yüksekdağ stated that she would present her defence in writing at a later stage. .

40. One of the lawyers for the defence took the floor and responded to the Presiding Judge's criticism of the defence repeating the same arguments. The lawyer underlined the obligation of the defence to repeat its arguments multiple times, as it was evident that their arguments were not being taken into consideration. The subsequent interventions by the lawyers for the defence denounced the lack of fair trial guarantees, the violation of parliamentary immunity and the illegality of Ms. Yüksekdağ's continued detention. The defence demanded that Ms. Yüksekdağ be released in accordance with the decision that had been handed down in the case of Mr. Mustafa Balbay<sup>14</sup> (IPU Case No. TK/67). With regard to Ms. Yüksekdağ's incriminating contacts with the Democratic Society

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<sup>12</sup> In February 2017, the Office of the United Nations High Commissioner for Human Rights (OHCHR) published its report on the human rights situation in South-East Turkey for the period between July 2015 and December 2016. OHCHR had expressed its concerns at the hundreds of alleged unlawful killings perpetrated during that period in the course of security operations and at the absence of any investigations. See: *Report on the Human Rights Situation in South-East Turkey, July 2015 to December 2016*, Geneva, Switzerland, Office of the United Nations High Commissioner for Human Rights, February 2017, [https://www.ohchr.org/documents/countries/tr/ohchr\\_south-east\\_turkeyreport\\_10march2017.pdf](https://www.ohchr.org/documents/countries/tr/ohchr_south-east_turkeyreport_10march2017.pdf)

<sup>13</sup> The following quote in the indictment of the speech she held in December 2015 in Dagkapi is, in my view, an example of such distortion. Referring to the State violence following the imposition of curfews in 2015, she said: "... If there is an empire of fear trying to be established, if the houses are aflame, if young people are being massacred, if life becomes a "life and death" situation, this flame will engulf everyone. This flame will engulf Istanbul, Ankara, Izmir, Manisa, Mugla, Denizli and Antalya and everywhere. Because this pressure and this authoritarian understanding will not tolerate any opposition or opposing group ..." While FY clearly means that the State violence will spread also to other places and crush all opposition, the prosecution interprets these words as a "clear sign of inciting people to commit violence".

<sup>14</sup> In its decision No. 2012/1272 of 4 December 2014, the Constitutional Court held that the lengthy detention on remand period of an opposition parliamentarian constituted a violation of his right to liberty and of the voters' will under the right to the holding of free elections.

Congress, DTK/KCD), the lawyers for the defence stated that the Government of Turkey had had itself contact with the Congress, with the Democratic Union Party, PYD and with the armed wing of PYD, the People's Protection Units, YPG. The lawyer also referred to the decision of the Sixteenth Criminal Chamber of the Court of Cassation, in which the Court had set out the criteria to classify terrorist activity, in particular incitement to violence. The file did not provide any evidence in this respect. One of the lawyers told the Court that police officers had stopped his car in which he was travelling together with a parliamentarian to attend the hearing. The police officers had informed them that all gatherings linked to the hearing had been prohibited by the Office of the Governor of Ankara.

41. The Presiding Judge then gave the floor to the prosecutor, who proposed that the Court should again contact the Second Assize Court in Van, as no response had been received on the request to merge cases. Referring to the lawyers' petitions, in particular on the question of parliamentary immunity, the prosecutor stated that there was no need for a decision to be taken in this regard and rejected the petitions as those matters had already been decided upon. He recommended that Ms. Yüksekdağ's detention be prolonged.

### 3.2.4 *The decisions of the Court*

42. The Court decided to once again contact the Second Assize Court in Van regarding the requested merger, and to request a merger with a number of other cases pending at courts in Sırnak; Batman; Agri and Van, all of them concerning accusations of making propaganda for a terrorist organization (Article 7 para.2 of the Ant-Terrorism Act).<sup>15</sup> The Court refused to dismiss the present case pursuant to article 83 of the Constitution of Turkey, as a judgment had already been handed down in this regard. It decided to hold the next hearing in the same premises, for the reasons set out in its ruling of 18 September 2017. Noting that foreign observers had not been authorized to attend the hearing because of a lack of accreditation and for security reasons, the Court decided to re-evaluate the matter in the future if foreign observers had received accreditation with either the Ministry of Foreign Affairs, the Ministry of Justice or the Prosecutor General's Office (see section 3.3.2). The Court refused to release Ms. Yüksekdağ pending trial for the same reasons stated in its ruling of 18 September. The Court informed the lawyers for the defence that they were entitled to file an official complaint regarding the behaviour of the security officers outside the courtroom, and assured them that their complaint had been added to the Court's minutes.<sup>16</sup>

43. The Court set the date for the next hearing as 20 February 2018.

### 3.3. The hearing held on 20 February 2018

#### 3.3.1. *Admission to the courtroom*

44. Upon our arrival at Sincan prison, my interpreter and I were informed by the security officers that, in accordance with a decision taken by the Governor of Ankara, no international observers would be admitted to the courtroom, notwithstanding compliance with the prescribed accreditation procedure. Nevertheless, we decided to wait, and we relied on the lawyers for the defence and arriving HDP parliamentarians to obtain information directly from the Court. We learned that the other international observers, two persons from France and diplomatic personnel from the embassies of France, Norway, Sweden and Switzerland, had been stopped at a police checkpoint located at the start of the road leading to the prison entrance. . After approximately one hour of waiting, a security officer asked the group of people who were waiting in front of the court entrance gate if there was someone among us who had a name that sounded like mine. My interpreter gave him my name and passport. I was indeed the person who he was seeking. Shortly afterwards, the lawyers for the defence informed us that the Court had allowed me to attend the hearing and had been waiting for me to enter the courtroom so that the hearing could begin. However, after another hour had gone by, with different security officers checking my passport multiple times and s making phone calls, my interpreter and I were able to pass through the entrance gate and into the courtroom.

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<sup>15</sup> Act No. 3713 on the Fight Against Terrorism.

<sup>16</sup> In February 2018, I was informed that the defence team had not filed such a complaint.

45. That courtroom was the approximate size of a basketball court and the same setting as described earlier in this report. As it was known that Ms. Yüksekdağ would not be present, only a handful of people had come to attend the hearing. There were only two other people seated in the public gallery, in addition to myself and my interpreter. Several parliamentarians, a journalist from the Turkish Radio and Radio Television Corporation, TRT, many police officers and 11 lawyers for the defence were in attendance. The journalist sat next to the police officers. The bench was the same as in the previous hearings.

### 3.3.2 *Summary of the proceedings*

46. Recalling the accreditation procedure for the attendance of international trial observers that the Court had ruled on at the previous hearing (see section 3.2.4), the Presiding Judge noted that no information on accreditation had been conveyed to the Court by the delegations that were now seeking admission. Their requests had therefore been denied. In regard to my accreditation request, the Court had evaluated the request and I was authorized, with my interpreter, to follow the proceedings of future hearings as a visitor and not an observer.<sup>17</sup>

47. The Presiding Judge noted that the Fifth Assize Court in Sanliurfa had denied the request for a merger, as the charge of insulting the President of Turkey in this case was of a different nature than the charges in the present case. He further noted that the Second Assize Court in Van and the First Assize Court in Agri had agreed to the requested merger of cases concerning charges of disseminating terrorist propaganda. The Presiding Judge also stated that requests for mergers had been received regarding a new case pending before the Twenty-Seventh Assize Court in Ankara, and cases pending before the Third Assize Court in Sirnak, Third Assize Court in Batman, the Fifth Assize Court in Sanliurfa, the Second Assize Court in Izmir and the Fourth Assize Court in Van, all of which related to making terrorist propaganda.

48. Three lawyers for the defence subsequently took the floor. The first lawyer made a political plea and stressed the role of the courts and judges as representatives of humanity and conscience, using the sword of justice. However, the courts and judges were now intent on satisfying the Government of Turkey. He stressed the priority of law and justice over security concerns and fear, and deplored the transformation of Turkey into a fascist State, as all opposition voices had been silenced. The lawyer expressed his conviction that those responsible for this state of affairs would one day be held accountable for their actions.

49. Referring to the new case brought before the Twenty-Seventh Assize Court in Ankara, the second lawyer stated that the indictment in this case should never have been accepted. The lawyer requested that the full indictment in the present case, containing all merged case files, be forwarded to the defence so as to enable them to fully prepare the arguments for the defence.

50. The third lawyer objected to Ms. Yüksekdağ's detention on remand being prolonged and stressed that the Court's previous decisions had all lacked a valid justification and had been handed down owing to the political nature of the case. She highlighted the fact that Ms. Yüksekdağ's speeches were protected by parliamentary immunity and, moreover, fell within her right to freedom of expression citing several ECHR judgments in this regard. She stated that there was no proof of a link between PKK and Ms. Yüksekdağ, and any such assumptions should not be accepted. She appealed to the Court to take an independent and impartial stance and to release Ms. Yüksekdağ, as in the case of the German journalist Mr. Deniz Yücel, who had been released on 16 February 2018 pending trial.<sup>18</sup>

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<sup>17</sup> The minutes of the hearing reveal that the Court had received letters from the Office of the Chief Public Prosecutor of Ankara, the General Directorate for International Law and Foreign Relations of the Ministry of Justice and the Ministry of Foreign Affairs. The first two letters had conveyed the request for me and my interpreter to attend the hearings. The Court had evaluated these requests with regard to: (a) the power of the Presiding Judge to issue orders pertaining to participation in hearings so as to ensure order and discipline; (b) the possibility of the prosecution to impose security measures of an administrative nature to guarantee the security of the courthouse; (c) the fact that the IPU is not a state but an international organization, so the principle of reciprocity did not apply and no compulsory obligations were applicable for the State of Turkey; and (d) that the visitor status for me and my interpreter on behalf of the IPU was a matter to be evaluated by the Court.

<sup>18</sup> Mr. Yücel was released from prison the days after the then Turkish Prime Minister, Mr. Binali Yıldırım, had stated at a press conference with the Chancellor of Germany, Ms. Angela Merkel, that he might be released. This was seen as additional evidence of the influence of the executive branch over the judiciary.

51. The Presiding Judge then gave the floor to the Public Prosecutor (PP) who demanded that the transfer of the files pending before the Twenty-Seventh Assize Court in Ankara to the present court be approved; that the Court request the Second Assize Court in Van to transfer the two case files regarding terrorist propaganda to the present court; that the request to reconsider the question of parliamentary immunity be denied; and that Ms. Yüksekdağ detention be prolonged, owing to the fact that there was sufficient evidence in the case, that the accusation concerned catalogue crimes, as set out in article 100/3 of the Turkish Criminal Procedure Code, and that the defence of the suspect had not been completed.

### 3.3.3. *The decisions of the Court*

52. The Court accepted the proposed merger of cases and the transfer of the new case brought before the Twenty-Seventh Assize Court in Ankara to the present court. It decided to prolong Ms. Yüksekdağ's detention. The Presiding Judge stated that the defence team was expected to present its arguments on the merits at the next hearing, which had been set to be held on 17 May 2018.

53. At the end of the hearing, I introduced myself to the Presiding Judge and I asked him if I could meet with him briefly. While this was not possible, he reaffirmed that I was permitted to attend future hearings. He also informed the security officers that had accompanied me and my interpreter that they should allow us entry into the Court at the next hearing so that the Court would not need to wait.

### 3.4. The hearing held on 17 May 2018

#### 3.4.1. *Admission to the courtroom*

54. Arriving in a taxi, the police officers at the first checkpoint allowed my interpreter and me to continue to the main prison entrance. However, security officers denied us entry into the court complex, and it was only on the insistence of my interpreter and the lawyers for the defence that we were finally admitted to the courtroom. The other international observers had been stopped at the first police checkpoint and were denied entry. Approximately 20 to 30 Turkish nationals, including Ms. Yüksekdağ's husband, attended the trial in the morning.

55. Ms. Yüksekdağ entered the courtroom accompanied by approximately 20 Gendarmerie officers who sat behind her during the hearing. At the start of the hearing, the Presiding Judge allowed some parliamentarians to talk to Ms. Yüksekdağ. At the end of the hearing, however, the Presiding Judge did not allow Ms. Yüksekdağ to have additional contact with her friends and fellow parliamentarians. Following vehement protests by Ms. Yüksekdağ's friends and fellow parliamentarians, the Presiding Judge conceded.

#### 3.4.2. *Summary of proceedings*

56. Noting that the merged files had arrived and had been copied onto a compact disc, the Presiding Judge asked the defence team whether they had received a copy of it. Responding to this, one of the defence lawyers petitioned the Court to allow the foreign observers into the courtroom and stressed that no accreditation procedure was in place. When asked by the Presiding Judge to provide his opinion, the PP stated that accreditation from the Ministry of Foreign Affairs was required. The Presiding Judge subsequently recalled the procedure set out in the previous hearings and denied the lawyer's petition, as no documentation had been received from the Ministry. He then gave the floor to the defence team.

57. Before Ms. Yüksekdağ began her plea, one of the lawyers for the defence recalled that Ms. Yüksekdağ's prosecution had now been under way for one year and a half, and that the court process was floundering. While the initial indictment comprised eight files (investigations), all of which were in regard to speeches made in the National Assembly or were protected by parliamentary immunity, the indictment now comprised 30 files, some of which had only been forwarded to



Ms. Yüksekdağ the day before the present hearing. The lawyer requested additional time to adequately prepare Ms. Yüksekdağ's defence.

58. Noting that the compact disc in question had been forwarded to her the day before the hearing, Ms. Yüksekdağ stated that she had therefore been unable to prepare her defence adequately. She once again denounced the political nature of the trial and stressed that the six million people who had voted for HDP could not be silenced. A significant part of her speech was dedicated to the forthcoming legislative elections, which were to be held under a state of emergency, with one candidate, Mr. Demirtaş currently in prison, which she denounced as not being fair.<sup>19</sup> She called for Mr. Demirtaş' release. With regard to the present trial, Ms. Yüksekdağ highlighted numerous contradictions, including the fact that others being prosecuted under similar charges had not been kept in detention and that judicial procedures were being used as a bargaining chip, as might have been the case for Mr. Yücel. She highlighted that it was, in fact, HDP that was being prosecuted. Her political acts, all of which had been made in public, were being criminalized. Although she was being prosecuted as an individual, she was the representative of the collective, and her prosecution was therefore a crime against society.

59. The Presiding Judge subsequently gave the floor to the defence team. Five lawyers for the defence took the floor. In addition to reiterating the political arguments, the team of lawyers insisted that the lifting of Ms. Yüksekdağ's parliamentary immunity was unconstitutional. Citing paragraphs 1 and 2 of article 152 of the Constitution of Turkey and numerous ECHR judgments, the team of lawyers petitioned the Court to suspend the proceedings so as to allow the Constitutional Court to examine the case.<sup>20</sup> The team also requested that a case pending before a court in Diyarbakir regarding events that took place in October 2014 and several terrorism-related cases pending against Mr. Demirtaş be merged with the present case. Denouncing the fact that the Court had not provided a compelling justification for Ms. Yüksekdağ's continued detention, the lawyers stressed that there was no possibility for her to tamper with the evidence produced and that the risk of her fleeing was an erroneous assumption. Highlighting the fact that continued detention should only be applied in cases of absolute necessity, the team of lawyers requested that the Court release Ms. Yüksekdağ.

60. Without providing any justifications, the PP requested that Ms. Yüksekdağ's detention be prolonged and recommended that the request from the defence team to submit the case to the Constitutional Court be rejected.

### 3.4.3. *The decisions of the Court*

61. The Court decided to merge a case pending before a court in Diyarbakir with the present case, but refused to merge the present case with cases pending against Mr. Demirtaş, owing to the different individuals involved. The Court rejected the demand by the defence team to submit the question of the unconstitutional lifting of Ms. Yüksekdağ's parliamentary immunity to the Constitutional Court, as it was not convinced of the seriousness of the claim of unconstitutionality. The Court extended Ms. Yüksekdağ's detention because of the heavy sentences in cases of catalogue crimes and the fact that it had not been possible to examine the defence evidence. The Court set the date of the next hearing as 6 July 2018.<sup>21</sup>

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<sup>19</sup> "These early elections took place under the state of emergency. The state of emergency is not, per se, an insurmountable obstacle to holding a vote. However, the way in which the state of emergency has been implemented in Turkey has greatly limited the space for democratic debate and the expression of pluralism, let alone political dissent". See: *Observation of the early presidential and parliamentary elections in Turkey (24 June 2018)*, Strasbourg, France, 3 September 2018, Ms. Olena Sotnyk (Ukraine), Parliamentary Assembly of the Council of Europe. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25031&lang=en>

<sup>20</sup> See the first and second paragraphs of article 152 of the Constitution of Turkey.

<sup>21</sup> We were informed that Ms. Yüksekdağ did not attend this hearing as she had not been able to prepare adequately for her defence and that she had stated that her right to defence was being restricted. The hearing was adjourned to September and her detention extended.



### 3.5. The hearing held on 24 September 2018

#### 3.5.1. *Admission to the courtroom*

62. It is stated in the minutes of the hearing held on 15 May 2018 that the Court had received requests for my accreditation and that of my interpreter which had been included in the case file.<sup>22</sup> Showing a copy of the minutes to the police officers present greatly facilitated admission to the courtroom. Before the hearing began, the Presiding Judge asked the courtroom whether I was present. At the end of the hearing he wished to talk to me. While thanking me for my politeness, he stated that I no longer was required to write letters requesting leave to attend the hearings.

#### 3.5.2. *Summary of proceedings*

63. The hearing started at 10.30 a.m. and finished at approximately 6.30 p.m. There was a short lunch break at 1.15 p.m. and a ten-minute break at 3.40 p.m.

64. During this hearing, no other international observers were in attendance. The public gallery comprised HDP parliamentarians and between 15 and 20 other people, including Ms. Yüksekdağ's husband. Once again, there was a significant police presence. Ms. Yüksekdağ entered the courtroom surrounded by approximately 20 Gendarmerie officers who the Presiding Judge ordered to sit down as they were blocking the defence team's view of Ms. Yüksekdağ in the dock. One of the lawyers talked to Ms. Yüksekdağ before the Presiding Judge began the hearing.

65. After the Presiding Judge asked Ms. Yüksekdağ if she was ready to present her defence on the merged file, and ordering that a table be brought into the courtroom on which Ms. Yüksekdağ could place the papers that she carried with her, Ms. Yüksekdağ stated that her defence would focus on three points: (1) the Democratic Society Congress DTK/CKD; (2) the events that took place between 6 and 8 October 2014 relating to the siege of Kobane and subsequent marches and violence by the local population; and (3) the speech that she gave in Suruc, Sanliurfa Province in 2015. While making several comments about the general political and economic situation in Turkey, Ms. Yüksekdağ stressed that the judiciary had become a bargaining chip and a toy in the hands of the Government of Turkey, and that confidence in the judiciary was now as low as 20 per cent. She also denounced the continuing persecution of HDP. Citing the cases of parliamentarians Mr. Enis Berberoğlu (Republican People's Party, CHP) and Ms. Leyla Güven (HDP), Ms. Yüksekdağ stated that both parliamentarians had been convicted and were serving their sentences, both had been re-elected in the legislative elections of July 2018. While Mr. Berberoğlu had been released from prison to exercise his mandate, Ms. Güven was still in prison, despite an application for her release.<sup>23</sup> Ms. Yüksekdağ highlighted the fact that there were many such inconsistencies and she did not trust the judiciary to obtain justice in her case.

66. In regard to her first point, Ms. Yüksekdağ stated that the Democratic Society Congress (DTK/CKD) was a lawful organization that was set up in 2007 as a platform to facilitate the peace process and to resolve the Kurdish question. DTK/CKD was a regional mass organization with a democratic, horizontally organized structure and had never resorted to or called for violence. DTK/CKD was a counterpart to the Grand National Assembly of Turkey during the peace process. Ms. Yüksekdağ said that members of the ruling Justice and Development Party, AKP had participated in the Congress, and that meetings with government officials, including with President Erdoğan, had also taken place. Ms. Yüksekdağ said that state officials had also met with Mr. Abdullah Öcalan.<sup>24</sup> In short, DTK/CKD was facilitating democratization and providing hope. After the Government of Turkey

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<sup>22</sup> The non-official translation of the relevant paragraph of the minutes reads as follows: "Between the hearings, an official letter from the Ministry of Foreign Affairs Directorate of Multilateral Political Affairs stating a request for accreditation of Ms. Schwarz-Zuppiroli and her interpreter Ms. Seher Türkaslan to follow the trial of HDP-co-chair Figen Yüksekdağ on 17/05/2018 on behalf of the IPU Committee was received along with copies of three letters in English addressed to Presiding Judge Sabahattin Saridogan transmitted by the Permanent Representative of Turkey to the UN Geneva Office, the letters were read and included in the file".

<sup>23</sup> At the time of writing, Ms. Güven was still in prison and had been on a hunger strike for 37 days, with real fears for her life. See: *Hunger striking Kurdish MP Leyla Guven [sic] now critical*, London, Mark Campbell (Morning Star), 14 December 2018. <https://morningstaronline.co.uk/article/hunger-striking-kurdish-mp-leyla-quven-now-critical>

<sup>24</sup> One of the founding members of PKK.

put an end to the peace process in 2015, the Government classified DTK/CKD as a terrorist organization and an extension of PKK. It was from that point onwards that HDP members had been prosecuted. In the indictment, she was depicted as a leader of DTK/CKD, however, as a HDP co-chair, she was simply a DTK/CKD delegate. Not a single AKP parliamentarian or government official, or DTK/CKD overall, were being investigated and prosecuted. If the Government of Turkey was serious about the terrorist nature of DTK/CKD, it would be forced to investigate and prosecute thousands of individuals who had participated in its meetings. On the issue of the preparations of the investigation file, Ms. Yüksekdağ stated that a police officer, who was accused of belonging to FETÖ, had stated in his testimony six months previous that the Government of Turkey had asked him in 2015 and 2016 to prepare documents on DTK/CKD, and he had done so accordingly. The police officer had prepared approximately 20,000 pages and fabricated evidence. Other proof to this effect existed, but this was the most striking one. Referring to the cases of Mr. Demirtaş and of other HDP members, Ms. Yüksekdağ said that the charges had been drafted by police officers who were themselves being prosecuted on charges of belonging to FETÖ, along with many judges and prosecutors. HDP parliamentarians and members could not expect a fair trial from prosecutors presenting such evidence and therefore needed to fight for the truth. Ms. Yüksekdağ asked the Court if there were any questions – there were none.

67. Referring to the events that took place between 6 and 8 October 2014, Ms. Yüksekdağ stressed that the accusation of inciting an armed rebellion and provoking violence by misusing the attack by Islamic State in Iraq and the Levant (ISIL) in Kobane was a manipulation of the truth in order to attack HDP and lacked any legal basis. Ms. Yüksekdağ subsequently described the events that took place before the events of 6 to 8 October 2014, the strategic depth policy of the Government at the time and its support for ISIL. She stressed that the failure of the Government of Turkey to fulfil its promise to send food trucks to Kobane and the invitation by President Erdoğan to the Kobane population “to go under the protection of ISIS and Turkey” had resulted in a sense of deep anger. Referring to an item of evidence put forward by the prosecution, a tweet of the HDP’s Executive Board, which she had signed as a Board member, calling on people to protest against the 2014 siege of Kobane by ISIS and the inaction of the Government of Turkey, she said that the tweet did not incite violence, but invited people to exercise their democratic rights; one had to imagine that people had knives against their throats. The events that took place in October were the fault of the Government of Turkey, because it had the responsibility to prevent the massacres, but instead attributed blame to HDP and used the party as a scapegoat. Stressing the fact that no independent investigation into the killings had been carried out and that HDP parliamentary motions in this regard had all been rejected, she said that the truth had so far remained hidden.

68. Ms. Yüksekdağ then referred to the broadcasted speech that she had made in 2015 in Suruc, Sanliurfa Province, in which she had said that HDP was backing PYD and YPG. She stressed to the Court that HDP’s backing was not unlawful as PYD and YPG were not included on the list of terrorist organizations at the time and that the Government of Turkey had a relationship with them. She clarified to the Court that what she meant by her speech was that rather than cooperating with ISIL, Turkey should cooperate with PYD, as it had done in the past when the tomb of Süleyman Şah was moved and when a crisis centre had been set up.<sup>25</sup> PYD was represented in this centre by its co-chair, Mr. Salih Muslim. Ms. Yüksekdağ also highlighted the fact that the Government of Turkey had not reacted to her speech and that no investigation into the speech had been launched at the time. She recalled that the speech was held during a transition phase following the legislative elections of June 2015 and the success of HDP, when the Prime Minister had attempted to form a coalition, something that President Erdoğan did not want. She said that the speech also took place after several police officers were killed; the murders were not carried out by PKK.<sup>26</sup> The Government was preparing a new strategy “while we could have established a historical cooperation”. Referring to the Treaty of Lausanne of 1923, she said that the Treaty had created artificial borders 100 years ago, and now the Government of Turkey was repeating the same mistakes by adopting anti-Kurdish politics and ideology.

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<sup>25</sup> Süleyman Şah (1178–1236) was the grandfather of the founder of the Ottoman Empire, Osman I. His tomb was located in a Turkish enclave in Syria. In February 2015, the Turkish army removed his remains and buried them at a site closer to the Turkish border after ISIL militants had threatened to attack his tomb.

<sup>26</sup> On 22 July 2015, two police officers were killed in a terrorist attack in Ceylanpinar. The murders, allegedly committed by PKK members, resulted in the de facto end of the peace process, also known as the solution process.

69. Four lawyers for the defence subsequently intervened. The lawyers stated that Ms. Yüksekdağ's parliamentary immunity covered not only the speeches made inside but also outside the Grand National Assembly, because, under Turkish law, if speeches made outside the Grand National Assembly contained similar content as those speeches made inside, they were covered by parliamentary immunity. The lawyers asked the Court to request that Ms. Yüksekdağ's parliamentary speeches and correspondence be forwarded to the Court. The lawyers highlighted that the issue of autonomy, discussed at the Democratic Society Congress, was set out in article 2, para. of the HDP statute, which had been approved by the Cassation Court, and asked that the relevant Cassation Court decision be produced before the Court. The defence provided additional examples of AKP parliamentarians participating in DTK/CKD activities, including President Erdoğan's visit to Diyarbakir on 16 November 2013, where he met, among others, the Mayor of Diyarbakir, Mr. Osman Baydemir, and DTK/CKD co-chair, Mr. Ahmet Türk. The lawyers for the defence also cited examples of the dystopian use of the law by the judiciary, such as the incommunicado detention for three days of airport construction workers who had only requested better working conditions, and the trial of 17 lawyers in Istanbul where the same court that had ordered their release annulled its decision at 8 a.m. the morning after having received the prosecutors' objection to the release. Condemning the legal uncertainty created by the fact that there were many definitions of terrorism in Turkey, the lawyers called for Turkey to adopt the European definition of terrorism. They also referred to the reply that the authorities had given on 8 September 2015 to the question put forward by the First Assize Court of Gaziantep as to whether PYD was a terrorist organization. It was stated in the response that PYD was not classified as a terrorist organization by the Ministry of Foreign Affairs or in the National Action Plan against Financing of Terrorism. The lawyers requested that the interview broadcast on Özgür Gün TV, as cited on page 70 of the indictment, should be transcribed and analysed by independent legal experts, as the defence team had noted several times that the police had made errors when transcribing or quoting texts, and which therefore called into question the impartiality of the police when transcribing and attributing quotes. Drawing a parallel between the novel *The Iron Heel*<sup>27</sup> written by Jack London and the persecution of HDP parliamentarians, the lawyers criticized the indictment as containing various allegations and references to other investigations and prosecutions, with no consideration for anything to the advantage of the accused. Referring to the events that took place between 6 and 8 October 2014, the lawyers stressed that Ms. Yüksekdağ's prosecution was against the principle of individualization of crimes, as one individual could not be prosecuted for another person's actions. The lawyers for the defence also stated that there was no connection between the leaders of HDP and the events in question, and any such correlation was a perception created by the media. The lawyers requested that the Court analyse the documents and exclude all those that did not have any relation to this case.

70. All of the lawyers requested that Ms. Yüksekdağ be released.

### 3.5.3. *The decisions of the Court*

71. After the Public Prosecutor had demanded that Ms. Yüksekdağ's detention be extended, the Court decided to request Ms. Yüksekdağ's speeches from the Grand National Assembly; to request that the Cassation Court forward the HDP statutes onto the Court; to have the compact discs supporting the indictment examined by a legal expert; to reject the argument for a re-examination of parliamentary immunity as this question had already been decided upon; for Ms. Yüksekdağ to continue her defence in line with the indictment; to extend Ms. Yüksekdağ's detention; and to set the next hearing as 5 November 2018 (thereby acceding to the demand of the defence team for sufficient time to prepare itself).<sup>28</sup>

## 4. **The hearing held on 7 December 2017 in the case of Mr. Demirtaş**

72. The hearing in this case was initially set to be held in the main courthouse complex in central Ankara in the Ankara Sıhhiye district. On 4 December 2017, the IPU was informed that, for security reasons, the hearing had been moved to the high-security prison complex in Sincan, Ankara Province. When I arrived at the prison with my interpreter, we noted the presence of many police officers

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<sup>27</sup> The Iron Heel chronicles the rise of oligarchic tyranny in the U.S.A. and the arrest and imprisonment of socialist parliamentarians.

<sup>28</sup> This hearing has been adjourned until January 2019.

dressed in riot gear and vehicles with a water cannon mounted on them and one tank with a machine gun mounted on it. More police officers arrived later on during the day. Opposite the prison, on a hill, between 300 and 400 people had gathered, and an impressive crowd was beginning to gather in front of the entrance gate to the courtroom. There were more international observers present than during the hearing of Ms. Yüksekdağ held the day before, in addition to many representatives from numerous European embassies, the Embassy of Canada and the Delegation of the European Union to Turkey.

73. We had already been informed that Mr. Demirtaş would not be present as he had refused to attend the hearing via SEGBIS. Despite the fact that it soon became clear that no international observers or diplomatic staff would be admitted to the courtroom, we all waited for several hours in the cold.

74. Those who had gathered on the hill lit numerous fires to warm up, while others began to do a traditional dance; police officers subsequently ordered them to stop dancing. The attitude of the police officers caused some tension. The international observers, including myself, were ultimately advised to leave the premises. No incidents occurred and the crowd dispersed later on.

75. At the HDP briefing, it was confirmed that the Governor of Ankara had prohibited all gatherings linked to the hearing, and buses transporting people from far away to the hearing had been turned back at the entrances to the city.

## **5. Summary of information gathered at meetings with defence lawyers and at the HDP briefings for the international observers**

### **5.1. Situation of the judiciary**

76. The lawyers for the defence and others recalled that prior to current legislation coming into force, the High Council of Judges and Prosecutors had appointed judges and prosecutors, whereas now the competent body was the Council of Judges and Prosecutors. The Council is led by the Minister of Justice, and the Undersecretary to the Ministry is a member of the Council. The remaining members are selected by the President of Turkey and elected by the Grand National Assembly, resulting in the ruling party largely determining the composition of the organizations. The lawyers said that academic training for both judges and prosecutors was identical, and judges were therefore entitled to become prosecutors and vice versa.

### **5.2. State of emergency laws**

77. In regard to the effect of the state of emergency laws – which were introduced in July 2016 and subsequently extended until July 2018<sup>29</sup> – on the judicial branch and on the present cases, I was told that they allowed for extended custody periods; increased authority for the recently established criminal judgeships of the peace, otherwise known as peace judges; the virtual (video) presence of defendants at court hearings, which was not previously possible<sup>30</sup>; and limitations to be placed on any meetings that are held with lawyers (see section 5.8).<sup>31</sup>

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<sup>29</sup> Serious doubts have, however, been raised as to the lifting of the state of emergency in real terms. See, for example, <http://www.hurriyetdailynews.com/eu-reaction-mixed-as-turkey-lifts-state-of-emergency-134751>.

<sup>30</sup> Lawyers do not agree with the principle of video appearances as they believe that it deprives the public and the court of direct contact with the defendant, and deprives the defendant of direct contact with the evidence.

<sup>31</sup> The courts of criminal judgeships of peace (criminal judges of peace), set up in June 2014, have the power to issue search, arrest and detention warrants and are entitled to review the decisions of public prosecutors on non-prosecution. Criminal judges of the peace are perceived to be closely allied to the Government. See: *Turkey: the Judicial System in Peril, a briefing paper*, Geneva, Switzerland, International Commission of Jurists, June 2016. <https://www.ici.org/wp-content/uploads/2016/07/Turkey-Judiciary-in-Peril-Publications-Reports-Fact-Findings-Mission-Reports-2016-ENG.pdf>

This institution has been heavily criticised by many institutions, inter alia, the special rapporteur on the promotion and protection of the right to freedom of opinion and expression. See: *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey (HRC/35/22/Add.3)*, United Nations Human Rights Council, 21 June 2017.

### 5.3 Compulsory attendance of defendants at trials

78. In regard to the compulsory presence of defendants at trials, as envisaged by the Court in the hearing held on 18 September 2017 in the case of Ms. Yüksekdağ, I was told that defendants were entitled to waive their right to participate in the proceedings against them, but needed to petition the applicable court to that effect. Moreover, the applicable court was entitled to hand down a ruling in the absence of the defendants and their lawyers, and could use force to bring them before the Court. In short, the courts had multiple powers at their disposal.

### 5.4. Loss of party membership in the case of Ms. Yüksekdağ

79. At our meeting in September 2017, defence lawyer Ms. Uçar recalled that the loss of Ms. Yüksekdağ's status as a parliamentarian was due to her being sentenced to a ten-month prison term prior to her election. Serious Crime Court No. 7 of Adana found Ms. Yüksekdağ guilty of making propaganda on behalf of a terrorist organization on account of having attended the funeral of a young female revolutionary in Adana. An appeal was filed with the Court of Cassation, which did not hand down any rulings until the debate on parliamentary immunity was held in the Grand National Assembly, whereupon the Court swiftly denied the appeal and approved the prison sentence. However, in order to be stripped of a parliamentary mandate, an individual must be sentenced to a one-year prison sentence. In any case, the prosecution against Ms. Yüksekdağ should have been suspended at the time of her election to the Grand National Assembly. Moreover, Ms. Yüksekdağ had already served a ten-month prison sentence in relation to another case involving her attendance at a funeral in Ankara. The aforementioned case was ultimately dismissed. In this regard, Ms. Uçar stated that the Court of Cassation had cancelled Ms. Yüksekdağ's HDP membership, despite not having competence to do so, and it being the exclusive right of HDP.

### 5.5. Cases pending against Ms. Yüksekdağ

80. According to the information received during my mission in December 2017, about 21 cases were pending at that time against Ms. Yüksekdağ at different courts around the country, including in Adana, Ankara, Istanbul, Kayseri, Mersin, Sanliurfa and Van. I was informed that she was sentenced in six separate cases. In two of the aforementioned cases, Ms. Yüksekdağ was found guilty on appeal, namely in the case discussed in section 5.4., leading to the loss of her parliamentary mandate; and in a case regarding an accusation of making terrorist propaganda by participating in a protest march, leading to a one-year prison sentence. The remaining four cases on appeal were in regard to: (a) a 1-year prison sentence handed down by Criminal Court No. 11 in Adana, which found Ms. Yüksekdağ guilty of publicly insulting the Turkish State, on account of her speech referring to the Government's responsibility in the Ankara massacre of 10 October 2015;<sup>32</sup> (b) an 18-month prison sentence handed down by Serious Criminal Court No. 13 in Ankara for having made terrorist propaganda, on account of an interview she had given to the German news agency Deutsche Welle; (c) a prison sentence of 11 months and 20 days, later converted into a fine of 7,000 Turkish lira for insulting the President of Turkey; and (d) a prison sentence of 1 year and 15 days handed down by Serious Criminal Court No. 2 in Mersin for insulting the Government of Turkey and for making propaganda for a terrorist organization.

81. During my third mission, I was informed that a total of 10 cases with accusations of insulting the President and numerous other cases with accusations of violating electoral laws were currently pending against Ms. Yüksekdağ. It is not quite clear whether the total number is 21, as mentioned early.

### 5.6 Charges in the present case against Ms. Yüksekdağ and applicable evidence

82. The indictment in this case initially comprised a total of 169 pages. The merges with other cases, as decided by the Court, have not yet been included. Of those 169 pages, about 22 pages at most reproduce the incriminating speeches, interviews or statements, the remaining pages comprise

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<sup>32</sup> On 10 October 2015, two explosions were detonated at a peace rally in the centre of Ankara, claiming the lives of 102 people and wounding many more.

information relating to the formation of PKK, the organizational structure of PKK, quotations from PKK statements on autonomy and self-rule, a description of the events that took place on 31 December 2015 in Diyarbakir, a description of the events that took place between 6 and 8 October 2014 relating to the ISIL siege of Kobane and a list of those killed and wounded during the siege, the material damage caused, and about 20 pages containing a legal analysis of the incriminating speeches. I have not been provided with copies of the case files that have been subsequently merged with the present case and that are all reportedly only in regard to other speeches or statements made by Ms. Yüksekdağ.

83. The charges brought against Ms. Yüksekdağ include: having established or commanded an armed organization (pursuant to article 314(1) of the Turkish Penal Code); provoking hatred or hostility in one section of the public against another section (pursuant to article 216(1) of the Turkish Penal Code); participating in unlawful assemblies or demonstrations (first paragraph of article 32 of Act No. 2911 on Meetings and Demonstrations); and making propaganda for a terrorist organization (second paragraph of article 7 of the Act No. 3713 on the Fight Against Terrorism). The prosecutor is seeking a prison term of 83 years.

84. The evidence put forward to substantiate these charges is as follows:

- Ms. Yüksekdağ's participation and activities within DTK/KCD, a legally recognized umbrella organization of about 700 non-governmental organizations and political parties, including HDP. DTK/KCD had played a major role during the peace process, and was even invited to the Grand National Assembly, however, as the peace process effectively ended in 2015, attempts have been made to reclassify this organization and some of its members, and to consider it a part of PKK and therefore a terrorist organization. In the indictment, DTK/KCD is considered to be the third pillar of the organizational structure of PKK and the *Koma Civakên Kurdistan* (Kurdistan Communities Union, KCK).
- A multitude of speeches and interviews that Ms. Yüksekdağ has given on different occasions.
- The tweet of the HDP's Executive Board, which she signed as a Board member, calling on people to protest against the 2014 siege of Kobane by ISIS and the inaction of the Turkish Government. Violent clashes between protesters and the police had claimed many deaths.
- The aforementioned evidence is also being used to substantiate the charge of Ms. Yüksekdağ holding an executive function in a terrorist organization.

85. I was informed that the defence team decided to only present material evidence in Court when Ms. Yüksekdağ was present in the courtroom. Ms. Yüksekdağ has referred to facts disproving accusations during her statements to the Court. During the hearing held on 28 September 2018 such evidence was produced in a more systematic manner.

86. I was told that a significant amount of evidence, limited not just to this case, was gathered by prosecutors or judges who currently find themselves on trial for reportedly being members of FETÖ, which is an organization hostile to HDP. The accusation of making terrorist propaganda on account of an interview with the news agency Deutsche Welle relies on e-mails dated 9, 10 and 13 August 2015 sent by three individuals (Mr. Cengiz Uçar, Mr. Ahmet Ziya Gökçe and Mr. Mehmet Gederet). In other instances, the originals of the incriminating speeches reportedly no longer exist, with only police transcripts now available. Moreover, the same evidence is reportedly being used in different cases, such as the interview with Deutsche Welle, on the basis of which Ms. Yüksekdağ was sentenced to a 10-month prison sentence. It is also being used as evidence in the present case. Two different court cases have been brought against Ms. Yüksekdağ on account of a speech that she had made on 19 March 2016, with Serious Crimes Court No. 7 in Mersin charging Ms. Yüksekdağ with insulting the President of Turkey, and Serious Crimes Court No. 2 in Mersin charging her with making terrorist propaganda and insulting the Government of Turkey. These different cases would seemingly indicate that the prosecutors are selecting different sentences from the same speech and opening different cases.

87. A copy of the initial indictment has been provided. An English translation of Ms. Yüksekdağ's speeches quoted in the indictment has also been produced to assist me in my trial observation mission.

5.7. Charges brought against Mr. Demirtaş

88. I was informed that when Mr. Demirtaş' parliamentary immunity was lifted, 96 investigations (summary of proceedings) against him had been launched. Some 31 investigations were in regard to political activities and speeches, and these investigations had been merged into a single case file, leading to the charge of being an executive member of a terrorist organization (PKK) and to his subsequent detention.<sup>33</sup> The indictment in this case comprises 580 pages. I was informed that 29 investigations had been conducted by a prosecutor who was subsequently arrested after the failed coup attempt in July 2016. Mr. Demirtaş is reportedly facing charges totalling a 486-year prison sentence, in addition to two aggravated life sentences.

89. The remaining investigations were either dropped, postponed or did not turn into a legal case. There are therefore 20 cases pending against him, in addition to one case pending at a local court of appeal and three cases for which Mr. Demirtaş was acquitted in November 2017 and January 2018. These three cases were in regard to charges of provoking hatred or hostility, insulting either the Government or the President of Turkey, and insulting the Minister of the Interior.

5.8. Conditions of detention

90. Mr. Demirtaş was held in solitary confinement for 24 days. The defence lawyers I met informed me that, during the first three months of Ms. Yüksekdağ's detention, their meetings with her were recorded, they were not allowed to take notes (and any notes taken were confiscated) and forwarding of files to Ms. Yüksekdağ was prohibited.<sup>34</sup> They told me that they were now experiencing no problems to meet both Ms. Yüksekdağ and Mr. Demirtaş and to consult the relevant prosecution case files.

91. Ms. Yüksekdağ is currently being detained in Kocaeli prison, with two other inmates, Ms. Tuğluk and Ms. Sebahat Tuncel. In May 2018, I was informed by her husband that she was entitled to see him every two weeks in person family visit, and each week in a closed visit, i.e. prisoner and visitor prevented from having any physical contact. I was told that prior to May 2018, Ms. Yüksekdağ was only entitled to one monthly family visit in person.

92. Mr. Demirtaş is currently being detained, with Mr. Abdullah Zeydan, the parliamentarian for Hakkari (see IPU case TK94), in a high-security (F-type) prison in Edirne.

93. No international delegations have so far been authorized to visit them.

94. While no other particular concerns regarding the present conditions of detention of Mr. Demirtaş and Ms. Yüksekdağ were mentioned to me, the international observers were informed at one of the briefings that since the arrests of both co-chairs, many HDP parliamentarians had been submitting petitions to visit Ms. Yüksekdağ, Mr. Demirtaş and other HDP parliamentarians on a weekly basis to the Minister of Justice. One such parliamentarian had even submitted approximately 400 petitions since the arrests of Mr. Demirtaş and Ms. Yüksekdağ. To date, only a handful of HDP parliamentarians have been granted the right to visit Mr. Demirtaş and Ms. Yüksekdağ. Decisions in this regard are largely arbitrary depending on the mood of the competent officials. However, parliamentarians from the main opposition, CHP, have reportedly been easily able to obtain permission from the Ministry and visit detained HDP parliamentarians.

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<sup>33</sup> The initial reason for the detention of both Ms. Yüksekdağ and Mr. Demirtaş, as given by the authorities, was their refusal to comply with the summons to appear before the public prosecutor.

<sup>34</sup> According to the court minutes of the hearing held on 20 February 2018, the Court acknowledged receipt of the file on the appeal of the defence team against a decision of the Diyarbakir Criminal Court of Peace handed down 15 November 2016 that ordered the close surveillance of any contact that Ms. Yüksekdağ's had with her lawyers. The appeal was rejected in March 2017.

95. I also learned that in some prisons, HDP detainees have been ordered to wear a badge with the inscription of 'member of a terrorist organization'. Should the detainees in question refuse to wear this badge, they are deprived of family visits. It was reported that attempts have been made to make HDP detainees wear uniforms, such as those worn by detainees in the Guantanamo Bay detention camp. I was also informed that intensive body searches before and after meetings, and before re-entering their cells, was another form of harassment and means of exerting psychological pressure on the detainees.

96. During my February 2018 mission, I learned that the Government of Turkey had issued a decree in December 2017 that required suspects in terrorism-related cases to wear a uniform of a specific colour during court appearances. Mr. Demirtaş has stated that he would refuse to wear such a uniform.

#### 5.9. Situation of the lawyers for the defence

97. There are hundreds of lawyers who have volunteered to take on the defence of Mr. Demirtaş and Ms. Yüksekdağ. A small core team of lawyers is closely following each case. Others come in whenever there is the need and plead at the various hearings.

98. When asked about their security situation, the lawyers for the defence replied that their security situation was dire and that they could be arrested at any time. Unfortunately, this has come to fruition, and I was dismayed to learn that Ms. Uçar, with whom I had met during my first mission, was arrested on 26 October 2017, along with another member of the defence team, Ms. Özlem Gümüştas. Both lawyers were charged with being members of a terrorist organization, the Socialist Party of the Oppressed, ESP/PSB and are still in detention. In September 2018, I learned that yet another member of the defence team, Pan Tombul, had been arrested.

99. Among the lawyers who are part of the core defence teams, nine are being prosecuted, with some having been arrested earlier for short periods of time.

#### 5.10 Cases pending before the European Court of Human Rights (ECHR)

100. Applications regarding several HDP parliamentarians being held on remand have been brought before the ECHR. On 20 November 2018,<sup>35</sup> the Court handed down its judgment on Mr Demirtaş' application regarding his detention. The Court held that there had been violations of article 5(3), of article 3 of protocol No. 1, and of article 18 in conjunction with article 5(3) of the European Convention of Human Rights. The Court affirmed that a mandatory detention on remand was per se incompatible with article 5(3) of the Convention, and that Mr. Demirtaş' detention on remand 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 the Grand National Assembly. The ulterior purpose of Mr Demirtaş' detention was to stifle pluralism and limit freedom of political debate, which are at the very core of a democratic society. The Court held unanimously, that Turkey was to take all necessary measures to put an end to Mr. Demirtaş' pre-trial detention.

101. Two other applications, brought by HDP, as a party, and by individual parliamentarians regarding the lifting of parliamentary immunity, are currently pending before the Court.

#### 5.11. Visit to the courthouse complex in central Ankara

102. During my mission of February 2018, I had the opportunity to visit the Ankara courthouse complex in which the proceedings in both cases were initially to be held. This visit illustrated the stark contrast between the court proceedings held within a prison complex in an isolated place, and court proceedings held in a normal court building. The Ankara courthouse complex is a huge building located in the centre of Ankara, an area that is bustling with people. My interpreter and I did not encounter any problems while entering the building. Security was limited to just security screening at

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<sup>35</sup> Judgment in the case of *Selahattin Demirtaş v. Turkey No. 2* (Second Section) (Application No. 14305/17), Strasbourg, European Court of Human Rights, 20 November 2018, <http://hudoc.echr.coe.int/eng?i=001-187961>



the entrance; there were no officers checking passports or other identity documents, or checking our reasons for entering the court building. Even though strict security controls, such as those set up for the first hearing in Ms. Yüksekdağ case held in July 2017 change the overall situation, the urban environment alone makes a big difference.<sup>36</sup>

## 6. Concluding observations and recommendation

### • Preliminary remarks

103. Since President Erdoğan's victory in the presidential elections of 2014, and in particular since the failed coup d'état of July 2016 and the introduction of the state of emergency, new legislation, decrees and restrictive practices have had a hugely detrimental effect on the capacity of the Turkish judicial system to dispense justice. Executive interference in the judiciary has become commonplace, while the ability of defence lawyers to perform their professional duties has been considerably restricted. This development has been widely and heavily criticized at the international and European levels. Robust recommendations having been made to the Turkish authorities to ensure that Turkish legislation and practices are consistent with international standards. Turkey is a party to, and has pledged to respect, both the International Covenant on Civil and Political Rights and the European Convention on Human Rights. For the time being, these recommendations have not led to action by the Government of Turkey. The aforementioned cases must be seen against this backdrop.

### • Parliamentary immunity and freedom of expression

104. The evidence put forward in the initial indictment concerning Ms. Yüksekdağ, a copy of which was provided, comprises only speeches, statements and interviews. (An unofficial translation thereof was prepared by the IPU). In short, these expressions of views were made primarily while she was a parliamentarian and therefore protected by parliamentary immunity. The same is true in the case of Mr. Demirtaş. However, the parliamentary immunity of Mr. Demirtaş and Ms. Yüksekdağ was lifted, along with that of the great majority of HDP parliamentarians (55 out of 59) following the approval of provisional article 20 to the Constitution of Turkey by the Grand National Assembly, which was described as an ad hoc, one-shot and ad hominem measure, that allowed for derogation from the procedure laid down in article 83 of the Constitution of Turkey. In addition to the IPU, the Parliamentary Assembly of the Council of Europe and the European Commissioner for Human Rights of the Council of Europe, numerous human rights organizations have strongly criticized this amendment as undermining the democratic functioning and position of the Grand National Assembly.

105. The purpose of parliamentary immunity is the protection of freedom of speech in parliament and hence of democratic debate. Having read a translation of the incriminating statements in the case of Ms. Yüksekdağ, I cannot find any incitement or encouragement of violence, let alone armed resistance. However, I find criticism of violence employed by the State, support for democratic structures at the local level and appeals for peaceful solutions of the Kurdish question. The ECtHR has on many occasions stressed the importance of freedom of expression for a democratic society, and in particular for members of parliament<sup>37</sup>. In its judgment in the case of *Party for a Democratic Society (DTP)<sup>38</sup> and Others versus Turkey (2016)<sup>39</sup>*, which is of particular relevance in both cases in question, the ECtHR had held that it "was of the essence of democracy to allow diverse political programmes to be proposed and debated. Even those that called into question the way a State was currently organised, provided that they did not harm democracy itself". Referring to the alleged parallelism between the principles supported by the DTP and the PKK, the Court held that "if merely by advocating those principles a political group were held to be supporting terrorism, that would

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<sup>36</sup> *Observation of the Ankara 16th Penal Court hearing of case against former co-leader of People's Democratic Party (HDP) Figen Yüksekdağ, July 4th 2017*, Oslo, Norway, Advokatforeningen (Norwegian Bar Association), <https://www.hdp.org.tr/images/UserFiles/Documents/Editor/Norwegian%20Bar%20Association.pdf>

<sup>37</sup> For example, in its judgment of 23 April 1992 in the case of *Castells v. Spain* <https://hudoc.echr.coe.int/tur#%22itemid%22:%22001-57772%22>;

<sup>38</sup> The Party for a Democratic Society (the "DTP", *Demokratik Toplum Partisi*) was one of the predecessor political parties of the HDP, dissolved in December 2009 by the Turkish Constitutional Court.

<sup>39</sup> Judgment in the case of *Party for a Democratic Society (DTP) and Others v. Turkey* (Second Section) (Application Nos. 3840/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 and 37272/10), Strasbourg, European Court of Human Rights, 12 January 2016, <http://hudoc.echr.coe.int/eng?i=001-160074>

reduce the possibility of dealing with related issues in the context of a democratic debate and would allow armed movements to monopolise support for the principles in question.” It held also that robust criticism of the struggle conducted by the security forces against terrorism in south-eastern Turkey could not be considered as support for or approval of the PKK’s actions<sup>40</sup>. Clearly, in the light of these judgments, the prosecution evidence put forward in Ms. Yüksekdağ’s case 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.

106. Lastly, in its judgment of November 2018 in the case of Mr. Demirtaş, the ECHR found that it had been established beyond reasonable doubt that the extensions of Mr. Demirtaş detention had pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate, which was at the very core of the concept of a democratic society.<sup>41</sup> The Court concluded that there had therefore been a violation of article 18 of the European Convention of Human Rights in conjunction with article 5(3) and held unanimously that Turkey was to take all necessary measures to put an end to Mr. Demirtaş’ pre-trial detention. It goes without saying that the same reasoning applies also to the case of Ms. Yüksekdağ.

- **Procedural aspects**

6.1. A public hearing

107. The Permanent Mission of Turkey to the United Nations Office at Geneva and the Turkish Embassy in Paris, France, to which the French observers had submitted a request for accreditation to the hearings held in December in the cases of Ms. Yüksekdağ and Mr. Demirtaş, respectively, stated that there was no such thing as an accreditation procedure with Turkish ministries, as the courts alone had authority over proceedings, and that article 182 of the Criminal Procedure Code of Turkish guaranteed an open trial. However, the reality of this was different. Suffice to mention the hearings held on 6 and 7 December 2017 in the cases of Ms. Yüksekdağ and Mr. Demirtaş: while the courts had decided to admit foreign observers, police officers had prevented us from entering the courtroom. Apart from absurd security reasons - was our personal security at stake or did we pose a threat to the courts? Accreditation with government authorities was now required. The observers from the Norwegian Bar Association at the first hearing held on 4 July 2017 in the case of Ms. Yüksekdağ’s had made the same experience, namely a court decision admitting them to the hearing being overturned following the objection of the prosecutor.<sup>42</sup> The Presiding Judge in the case of Ms. Yüksekdağ had been informed personally by the IPU of my observer mission and requested to grant me leave to attend. The requirement of a letter from a government authority can only mean that the Presiding Judge required approval from a government authority. Such involvement of executive authorities in court proceedings is incompatible with the independence and integrity of the judiciary and the requirement of an open hearing.

108. Numerous international standards expressly stipulate the right of foreign observers to attend court hearings. The United Nations Declaration on Human Rights Defenders<sup>43</sup> stipulates that, in the exercise of human rights and fundamental freedoms, “everyone has the right, individually or in association with others ... [t]o attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments” (article 9(3)(b)).<sup>44</sup> The same right is guaranteed in paragraph 12 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, under which all participating States, including Turkey, have committed to accepting observers sent by participating States, representatives of non-governmental organizations and other

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<sup>40</sup> See Press release issued by the Registrar of the Court, ECHR 395 (2018), 20.11.2018

<sup>41</sup> Judgment in the case of *Selahattin Demirtaş v. Turkey No. 2* (Second Section) (Application No. 14305/17), Strasbourg, European Court of Human Rights, 20 November 2018, <http://hudoc.echr.coe.int/eng?i=001-187961>

<sup>42</sup> See page 15: *Observation of the Ankara 16th Penal Court hearing of case against former co-leader of People’s Democratic Party (HDP) Figen Yüksekdağ, July 4th 2017*, Oslo, Norway, Advokatforeningen (Norwegian Bar Association), <https://www.hdp.org.tr/images/UserFiles/Documents/Editor/Norwegian%20Bar%20Association.pdf>

<sup>43</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

<sup>44</sup> A/RES/53/144.

interested persons at proceedings before courts.<sup>45</sup> Lastly, the European Union agreed that European Union missions, i.e. embassies of European Union member states and European Commission delegations, could “[attend] and [observe], where appropriate, trials of human rights defenders” (paragraph 10).<sup>46</sup> The Lawyers Committee for Human Rights has stated that, read together, these international legal standards mean that “the practice of sending and receiving trial observers is today so widespread and accepted that it may already constitute a norm of international law”.<sup>47</sup> The exclusion of the international observers in the aforementioned cases contravened these standards.<sup>48</sup>

109. While Turkish nationals were admitted to the hearings, not all of those who sought admission were granted access to the courtroom, despite the necessary space being available, in particular at the hearings held in the large courtroom reserved for the FETÖ case. It would seem that people are granted entry at random and in an arbitrary manner, although, as I was told, representatives of the media are chosen. Representatives of opposition media, for example, were reportedly not granted admission to the hearings held on 6 and 7 December 2017 in the cases of Ms. Yüksekdağ and Mr. Demirtaş, respectively, and I was told that no representatives of opposition media were present at the other hearings.

110. Most importantly, the hearings I attended were held in a court complex located within a high-security prison, which raises the question of the real purpose of choosing this location. The high-security prison in Sincan is situated in an easy-to-control isolated area, surrounded by a large barbed-wired wall, with a significant number of security personal and security materials at its disposal. The choice of courtrooms within prisons can only be understood as an attempt to exclude the general public as much as possible from attending the hearings, and thereby infringing the right to an open public hearing.

## 6.2. Right to liberty and release

111. Mr. Demirtaş and Ms. Yüksekdağ have now been in detention for more than two years. The Court has routinely rejected their applications for release without providing any kind of examination or justification as to the grounds for such continued detention, neglecting the defence’s consistent insistence on the need for such justification. I have witnessed such practices at all the hearings that I attended. The ECHR, in its judgment of 20 November 2018 on Mr. Demirtaş’ application, reaffirmed that any system of mandatory detention on remand was per se incompatible with article 5(3) of the European Convention on Human Rights.<sup>49</sup> Where the law provides for a presumption concerning the grounds for pre-trial detention, it must nevertheless be convincingly demonstrated that there are concrete facts warranting a departure from the rule of respect for individual liberty. The European Court of Human Rights was especially struck by the lack of a thorough analysis of the arguments in favour of releasing Mr. Demirtaş. In the Court’s view, decisions worded in formulaic terms could on no account be regarded as sufficient to justify a person’s initial and continued detention on remand. The Court found that there had been a violation of article 5(3) of the European Convention on Human Rights. Mr. Demirtaş should consequently be released at the earliest possible opportunity. The reasoning of the Court applies without any doubt to the case of Ms. Yüksekdağ, who finds herself in the same situation as Mr. Demirtaş. She should therefore likewise be released.

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<sup>45</sup> *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe*, Copenhagen, Denmark, Organization for Security and Co-operation in Europe, 29 June 1990, <https://www.osce.org/odihr/elections/14304?download=true>

<sup>46</sup> *Ensuring Protection – European Union Guidelines on Human Rights Defenders*, Council of the EU (Foreign Affairs), 2008, [https://eeas.europa.eu/sites/eeas/files/european\\_union\\_guidelines\\_on\\_human\\_rights\\_defenders.pdf](https://eeas.europa.eu/sites/eeas/files/european_union_guidelines_on_human_rights_defenders.pdf)

<sup>47</sup> See page 27: *What is a Fair Trial? A Basic Guide to Legal Standards and Practice*, Washington, USA, Lawyers Committee for Human Rights, March 2000.

<sup>48</sup> In other similar cases, for example the cases of the President and Director of the Turkish section of Amnesty International held before an Istanbul court, international delegations encountered no problem in accessing the courtrooms and attending hearings.

<sup>49</sup> Judgment in the case of *Selahattin Demirtaş v. Turkey No. 2* (Second Section) (Application No. 14305/17), Strasbourg, European Court of Human Rights, 20 November 2018, <http://hudoc.echr.coe.int/eng?i=001-187961>

### 6.3. Conduct of the hearings<sup>50</sup>

112. The hearings that I observed, i.e. those in the case of Ms. Yüksekdağ, were conducted normally in the sense that the judge gave the floor to Ms. Yüksekdağ and her defence team when requested, and she and her lawyers were able to plea freely. The Presiding Judge only once interrupted Ms. Yüksekdağ for a short period, namely during her plea in December 2017 when he asked her to respond to the accusations. The prosecutor intervened when asked by the Presiding Judge about his opinion on the defence applications. The Court endorsed his opinion in all cases except one: whereas in September 2017, the Public Prosecutor objected to the defence team's application for the hearing to be held in a bigger room, the Court decided otherwise, making arrangements for it to be held in a suitable room within the court complex in Sincan prison. All subsequent hearings were indeed held in a much bigger courtroom where the minutes of the hearings and decisions were projected onto a screen. There was a heavy police presence at all times, inside and outside the courtroom, with Ms. Yüksekdağ being accompanied by an excessive number of Gendarmerie officers. From time to time, a police officer or soldier patrolled with a machine gun around the large corridor with the entrances to the different courtrooms.

113. While it is true that the defence team could speak up and did so accordingly, it does not mean that the bench listens and takes any arguments put forward into consideration. The Court did not consider the many well-founded applications for release or the admittance of foreign observers and followed the prosecutions recommendations almost systematically.

### 6.4. Situation of the defence and equality of arms

114. Although at present, the lawyers for the defence have stated that they have not encountered any difficulties while visiting their clients and have had access to the prosecution files, they did have limited or no access during the first months of detention of their clients, when their conversations were also being recorded. This limited access may have had a detrimental effect on their ability to mount a robust defence. The lawyers for the defence now work under extremely difficult circumstances, with the constant threat of arrest or prosecution hanging over them. Three members of the core teams are currently in detention and I was informed that others are being prosecuted.

115. Moreover, the indictment in the case of Ms. Yüksekdağ is a very "dynamic" one, as described by one lawyer of the defence team: her case has been merged over the last 12 months with a large number of other cases that had been pending in various other Turkish courts. These mergers and new cases that have been brought against Ms. Yüksekdağ have created a situation of uncertainty for the defence team, which has found itself with an ever-increasing and unpredictable number of summary proceedings being added to the indictment, and an increased level of difficulty to mount the defence as regards the new prosecution evidence. Defence work under these circumstances is an uphill struggle and runs counter to the principle of equality of arms.

### 6.5 Examination of evidence

116. During the hearings which I observed, the defence focused on arguments revealing the political nature of the prosecution, such as the political context leading to the prosecution, the lifting of immunity, fabrication of evidence, distorted reproduction of statements and speeches and their distorted interpretation such as mentioned in footnote 10 of the report, the fact that prosecutors mounting the case were themselves being prosecuted on account of being members of FETÖ (hostile to the HDP). The examination of material evidence put forward by the defence, started in fact at the September 2018 hearing. At that hearing, the court accepted the defence applications to order the production of certain documents and of independent expert examination of prosecution evidence.

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<sup>50</sup> The Assize Courts which hear the cases in question are no doubt competent tribunals established under law as required under human rights law. However, in the case of Ms. Yüksekdağ, the bench hearing her case changed twice: while the presiding judge remained the same, the two other judges on the panel changed on two occasions. This raises the question as to the reason for this change; in principle, Article 6 of the ECHR encompasses also the right to one's legal judge, which implies that the competent panel of judges in a given case is determined in advance according to general rules. Article 37 of the Turkish Constitution appears to guarantee this right. However, the defense has raised no objection to these changes of the bench.

## **7. Summary and Recommendation**

117. Considering the prevailing political situation in Turkey, the near suppression of all dissent in the country and heavy government interference in the judiciary, the prospect for former parliamentarians Mr. Demirtaş and Ms. Yüksekdağ to receive a fair trial is remote. The political nature of both prosecutions is evident and has been widely denounced. What is at stake here, is freedom of expression and the prosecution is not about combating terrorism, but combating a political vision and a political programme different from the current government's one. In its judgment handed down in November 2018 on Mr. Demirtaş application for release pending trial which is also relevant for Ms. Yüksekdağ, the European Court of Human Rights concluded that the ulterior purpose of Mr Demirtaş' detention was to stifle pluralism and limit freedom of political debate. My experience in Ankara has highlighted the interference on the part of the executive on the judiciary, especially in regard to executive orders contradicting the decision of the Court and preventing international observers from being admitted to the courtroom. 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 a judicial process. While correct conduct was maintained during the hearings, with the defendant and the lawyers for the defence being able to speak out freely, this appears to be a mere façade behind which the Government of Turkey is pulling the strings. Thus, the indictment has continuously changed during the 12 months I followed the proceedings, new cases were being added or mergers decided, the court followed systematically prosecution recommendations on decisive matters, such as release pending trial and did not take into account of the arguments put forward by the defence. It would require particularly courageous judges prepared to put their career and possibly their own and their family's wellbeing, at stake to ignore injunctions from the executive and instead abide by the country's national and international human rights obligations.

118. Despite, or even perhaps because of this situation, it seems important to me that the IPU, as a guardian of the human rights of parliamentarians and democracy, stands in solidarity with the aforementioned parliamentarians by continuing to observe the proceedings in the aforementioned cases as much as possible.

**Dr. Ingeborg Schwarz-Zuppiroli**  
**December 2018**

- **Observations provided by the Turkish authorities (7 April 2019)**

The Turkish IPU Group was provided with the report on 6 March 2019 and invited to submit official observations ahead of the 140<sup>th</sup> IPU Assembly (Doha, 6–10 April 2019) pursuant to the Rules of the Committee. However, it presented oral observations instead when meeting with the Committee during the Assembly. The Turkish delegation has informed the Committee that it rejected significant parts of the trial observation report on the grounds that it included partial value judgments and false factual information.

The Committee was informed during the 140<sup>th</sup> IPU Assembly that detailed written observations would be provided by the Turkish authorities after the IPU Assembly. The Turkish delegation was asked by the Committee to provide a short preliminary summary of its main observations during the Assembly so that it could be included in the present report initially in order to reflect its views until more detailed observations were forthcoming. The Turkish delegation, however, declined to do so. Official observations from the Turkish authorities will therefore follow in due time and will then be presented to the Governing Council.

- **Observations provided by the complainant (7 April 2019)**

I would like to thank the Committee for arranging formal missions to Turkey to observe court hearings of HDP's former co-chairs Ms Figen Yüksekdağ and Mr Selahattin Demirtaş, who have been in prison since November 4, 2016.

I have read the observations of various court hearings, which are objective and capture well the arbitrary decisions and political motivations that shape the legal proceedings against our former co-chairs.

The report confirms our argument that the co-chairs and deputies of HDP are in prison not because they had committed some crime, but because they have promoted a political program and agenda that differs from and is critical of the government's – particularly with respect to the prolonged conflict in the context of repressed Kurdish cultural and political rights in Turkey.

I would like to urge the Committee to continue with the mission of trial observation. These trials are very important for a peaceful resolution of the Kurdish conflict as well as the future of parliamentary democracy and pluralism in Turkey.

## ANNEX

### Joint statement on behalf of the delegation of international observers to the trials of Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ<sup>51</sup> (6–7 December 2017)

We the undersigned make this declaration to serve as a joint statement on behalf of all members of the international observers delegation that have arrived here in Ankara to observe and objectively report on the trial of the two HDP (Peoples Democratic Party's) Co-Chair's Selahattin Demirtaş and Figen Yüksekdağ.

Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ were arrested and detained in prison since last November, 2016. Numerous charges have been brought against them relating to alleged "terrorism" activities. The particulars and evidence of the charges they face however emanate from their parliamentary activities and the responsibility they must uphold on behalf of the millions of voters that have elected them as their parliamentary representatives. These include; their speeches in Parliament, speeches at political rallies, party meetings, press statements and general and legitimate opposition party activities.

The HDP through the rigorous leadership and opposition of Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ has seen the party gain considerable momentum and significantly increase its votes so that it became the third largest party in Turkey and the second largest opposition party in the Turkish Parliament in 2015. This historical achievement had in turn led to the cancellation of the general election of June 2015 for a re-run in November 2015, which produced a not so dissimilar result.

Against this back drop of political developments new laws were rushed through Parliament that stripped elected members of parliament of their parliamentary immunity and led to the subsequent arrest and detention of 13 HDP members of parliament including the two co-chairs, the trials of whom we are here to observe. Indeed, although the alleged evidence currently presented against Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ relate to dates between 2011 and 2013 it is telling in our view that the charges and statements are dated within the first four months of 2016.

It is undoubtable that these allegations and cases are politically motivated and designed to silence the growing threat of legitimate opposition. Moreover, political motivation is also evident in the manner in which the legal proceedings have been handled which in our view defy any resemblance of a fair trial.

We, the international observers, protest that the arbitrary manner in which we were denied access to the hearings to be in direct conflict with Turkish constitutional rights, (right to a public hearing) and a blatant portrayal of the lack of judicial integrity and independence of the Court. Indeed, despite the fact that the Presiding Judge ruling in favour for our access into the Court, we were denied access by police offices outside the Court house, who had barricaded us with batons and riot shields. The appearance and events leading up to our denied access can only be described as that of a "police state" and leads us to fear and question the fairness of the proceedings let alone integrity impartiality of the Court.

Our denial was based on a last-minute requirement that we must be "accredited" which is itself against Turkish constitutional laws and procedure. Our findings have revealed that there is in fact no "accreditation" requirement and or procedure for such accreditation. Indeed when this was challenged in open Court, the Court's fall back justification for refusing us access was that there were "security" concerns, which we are informed is a term coined whenever any arbitrary decision needs justification.

Our fears for the lack of fairness and judicial independence was heightened when we discovered that the regional prosecutor for Ankara was watching the proceedings in the public gallery. We regard his presence as yet another example of undue pressure being exerted on the presiding judges with a view to attaining a favourable outcome. We were similarly concerned see that members of the ruling party could freely enter the Court without any obstacles.

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<sup>51</sup> *Joint statement on behalf of the delegation of international observers to the trials of Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ, Halkların Demokratik Partisi (People's Democratic Party, HDP), Ankara, Turkey, 6–7 December 2017, <http://en.hdpeurope.com/?p=3351>*



The conditions within which the hearings are being held are also in our view a great cause for concern. The hearings should have been held within the Ankara regional court, they were moved to the specially built court house within the high-security prison complex in Sincan, Ankara Province, the location of which is remote and does not have any proper public access. The complex is surrounded with tall barbed-wired gates, and armed riot police. The public is under constant intimidation, with the threat of water cannons and constant video recording by police officers.

The basic principles of the rule of law require that it is not for the ruling elite or political institutions that change within the conjunctural dynamics of a country that should dictate what an offence is or not but rather that this is set within statutes and constitutions. Accordingly, while an alleged act cannot be regarded as a crime without there being statutory backing, it is equally unacceptable that alleged offences, which are in fact guaranteed as rights and freedoms under the Constitution cannot be regarded as evidence of membership to a "terror" or "illegal" organization.

We as the international observers delegation have been denied the right to watch observe the hearings that have taken place over the past two days. Justice cannot be done behind closed doors. It must also be seen to be done. We feel therefore that the conditions within which the hearings were conducted, our arbitrary denial of access to the hearings, and general disregard to basic legal principles and norms removes these proceedings from the remit of fairness and places them firmly within the framework of politically motivated show trials, without any regard for the rule of law. In the midst of a broken judicial system, we are deeply concerned that the ability of the co-chairs being able to have fair trial is simply not possible under these conditions.

#### Signed

- **Steve Sweeney** – Journalist
- **Corinne Morel Darleux** – National Executive Secretary/Regional Deputy – Left Party, France
- **Jean-Christophe Sellin** – Regional Deputy – Left Party, France
- **Jean-Paul Lecoq** – MP French Communist Party
- **Sylvie Jean** – Member of French Communist Party
- **Michel Laurent** – Member of French Communist Party
- **Arturo Scotto** – MP – Progress and Democratic Movement
- **Alessio Arconzo** – Adviser to Progress and Democratic Movement
- **Tommaso Sasso** – Representative of Leftist Youth of Progress and Democratic Movement  
Progress and Democratic Movement
- **Yilmaz Kerimo** – MP Swedish Social Democrat Party/PES
- **Eva-Lena Jansson** – MP Swedish Social Democrat Party/PES
- **Mari Eifring** – Deputy MP Norwegian Red Party
- **OBE Margaret Owen** – Lawyer, Director at Widows for Peace through Democracy
- **Ali Has** – Solicitor-Advocate, Law Society of England and Wales / Member of the Law Society's  
International Human Rights Group
- **Hakan Taş** – MP – German Left Party, Die Linke
- **Fabio Amato** – Adviser to GUE/NGL In European Parliament
- **Eleonora Forenza** – MEP GUE/NGL In European Parliament
- **Paul Maskey** – MP Sinn Fein
- **OBE Jennette Arnold** – London Assembly, Labour Party Member – UK/PES
- **Unmesh Desai** – London Assembly, Labour Party Member – UK/PES
- **Ali Gul Ozbek** – Labour Party Member UK
- **Dennis McNulty** – GMB Union Representative
- **Jonas Sjöstedt** – President of the Swedish Left Party
- **Yasmine Posio Nilsson** – MP Swedish Left Party
- **Lord Maurice Glassman** – House of Lords UK
- **Lord David Watts** – House of Lords UK
- **Afroditi Stampouli** – MP Syriza (Greece)
- **Turid Thomassen** – Member of Solidarity with Kurdistan –Norway
- **Beth Hart** – Member of Solidarity with Kurdistan