

## Turkey

**Decision adopted by consensus by the IPU Governing Council at its 205<sup>th</sup> session (Belgrade, 17 October 2019) <sup>1</sup>**



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

TUR-69 - Gülser Yildirim (Ms.)	TUR-100 - Ayhan Bilgen
TUR-70 - Selma Irmak (Ms.)	TUR-101 - Behçet Yıldırım
TUR-71 - Faysal Sariyıldız	TUR-102 - Berdan Öztürk
TUR-73 - Kemal Aktas	TUR-105 - Erol Dora
TUR-75 - Bediye Özgökçe Ertan (Ms.)	TUR-106 - Ertuğrul Kürkcü
TUR-76 - Besime Konca (Ms.)	TUR-107 - Ferhat Encü
TUR-77 - Burcu Çelik Özkan (Ms.)	TUR-108 - Hışyar Özsoy
TUR-78 - Çağlar Demirel (Ms.)	TUR-109 - Idris Baluken
TUR-79 - Dilek Öcalan (Ms.)	TUR-110 - Imam Taşçier
TUR-80 - Dilan Dirayet Taşdemir (Ms.)	TUR-111 - Kadri Yıldırım
TUR-81 - Feleknaş Uca (Ms.)	TUR-112 - Lezgin Botan
TUR-82 - Figen Yüksekdağ (Ms.)	TUR-113 - Mehmet Ali Aslan
TUR-83 - Filiz Kerestecioğlu (Ms.)	TUR-114 - Mehmet Emin Adıyaman
TUR-84 - Hüda Kaya (Ms.)	TUR-115 - Nadir Yıldırım
TUR-85 - Leyla Birlik (Ms.)	TUR-116 - Nihat Akdoğan
TUR-86 - Leyla Zana (Ms.)	TUR-118 - Osman Baydemir
TUR-87 - Meral Daniş Beştaş (Ms.)	TUR-119 - Selahattin Demirtaş
TUR-88 - Mizgin Irgat (Ms.)	TUR-120 - Sirri Süreyya Önder

TUR-89 - Nursel Aydoğan (Ms.)	TUR-121 - Ziya Pir
TUR-90 - Pervin Buldan (Ms.)	TUR-122 - Mithat Sancar
TUR-91 - Saadet Becerikli (Ms.)	TUR-123 - Mahmut Toğrul
TUR-92 - Sibel Yiğitalp (Ms.)	TUR-124 - Aycan Irmez (Ms.)
TUR-93 - Tuğba Hezer Öztürk (Ms.)	TUR-125 - Ayşe Acar Başaran (Ms.)
TUR-94 - Abdullah Zeydan	TUR-126 - Garo Paylan
TUR-95 - Adem Geveri	TUR-128 - Aysel Tuğluk (Ms.)
TUR-96 - Ahmet Yildirim	TUR-129 - Sebahat Tuncel (Ms.)
TUR-97 - Ali Atalan	TUR-130 - Leyla Guven (Ms.)
TUR-98 - Alican Önlü	TUR-131 - Ayşe Sürücü (Ms.)
TUR-99 - Altan Tan	

### Alleged human rights violations

- ✓ Failure to respect parliamentary immunity
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings and excessive delays
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Arbitrary arrest and detention
- ✓ Ill-treatment
- ✓ Abusive revocation or suspension of the parliamentary mandate

#### A. Summary of the case

Over 600 criminal and terrorism charges have been brought against the members of parliament of the People's Democratic Party (HDP) since 15 December 2015, when the Constitution was amended to authorize the wholesale lifting of parliamentary immunity. As a result, hundreds of trial proceedings are ongoing throughout the country against HDP parliamentarians and former parliamentarians. They are being tried on terrorism-related charges and charges of defamation of the President, Government or State of Turkey. Some of them also face older charges in relation to the KCK first-instance trial that has been ongoing for more than eight years, while others face more recent charges. In these cases, their parliamentary immunity was allegedly not lifted.

Since 2018, 29 current and former parliamentarians have been sentenced to terms of imprisonment. Eight current and former parliamentarians are either in pretrial detention or serving prison sentences, including the former HDP co-chairs, Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ. Others have gone into exile.

According to the complainant, the charges against HDP members of parliament are groundless and violate their rights to freedom of expression, assembly and association. The complainant claims that the evidence adduced to support the charges against the members of parliament relates to public statements, rallies and other peaceful political activities carried out in furtherance of their parliamentary duties and political party programme. Such activities include mediating between the PKK and the Turkish Government as part of the peace process between 2013 and 2015, publicly advocating political autonomy, and criticizing the policies of President Erdoğan in relation to the current conflict in south-eastern Turkey and at the border with Syria (including denouncing the alleged crimes committed by the Turkish security forces in that context). The complainant alleges that such statements, rallies and activities did not constitute any offence, and that they fall under the clear scope and protection of the fundamental rights of members of parliament.

An IPU trial observer attended and reported on one court hearing in the case of Mr. Demirtaş in December 2017, and several hearings held in 2017 and 2018 in criminal proceedings against former HDP co-Chair Ms. Yüksekdağ. Having reviewed a translation of the allegedly incriminating statements

#### Case TUR-COLL-02

**Turkey:** Parliament affiliated to the IPU

**Victim(s):** 57 individuals  
(17 parliamentarians and 40 former members of parliament, all members of the opposition (30 men and 27 women))

**Qualified complainant(s):** Section I (1) (c) of the [Committee Procedure](#) (Annex I)

**Submission of complaint(s):** June 2016

**Recent IPU decision(s):** [April 2019](#)

**IPU mission(s):** June 2019

**Recent Committee hearing:** Hearing with the Turkish delegation and the complainant at the 141<sup>st</sup> IPU Assembly (October 2019)

#### Recent follow-up:

- Communications from the authorities: Responses from the President of the Turkish IPU Group and the Government of Turkey to the Joint Meeting of the Executive Committee and Committee on the Human Rights of Parliamentarians about the mission report (October 2019)
- Communication from the complainant: October 2019
- Communication to the authorities: Letter to the Speaker of the Turkish Parliament (September 2019)
- Communication to the complainant: October 2019

made by Ms. Yüksekdağ, the IPU trial observer found that the prosecution's evidence put forward against Ms. Yüksekdağ "appears to fall squarely within her legitimate right to express her opinions, discharging her duty to draw attention to the concerns of those she represents". The report concluded that the prospects of Ms. Yüksekdağ and Mr. Demirtaş receiving fair trials were remote and that the political nature of both prosecutions was evident. The observer recommended that the IPU stand in solidarity with the former members of parliament and remain informed by continuing to observe proceedings as much as possible.

A 2018 internal IPU review of 12 court decisions issued against HDP members reached similar conclusions. It concluded that the judiciary in Turkey, from the first instance courts to the Constitutional Court, completely disregarded the case law of the European Court of Human Rights and the main judgment of the Turkish Constitutional Court in relation to freedom of expression when evaluating whether an expression constituted incitement to violence or one of the other crimes with which the members of parliament were charged. The review found that the courts presumed guilt and applied harsher restrictions and punishments to the members of parliament because of their particular duties and influence, contrary to the special protection afforded under international law to political expression by public and political figures. The review further found that the interpretation of anti-terror laws by Turkish courts was arbitrary and unforeseeable. Similar speeches and acts were interpreted completely differently by different courts; sometimes interpretations were different in the same decision by the same court.

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

After lengthy consultations with the Turkish authorities, an IPU delegation comprising members of the IPU Executive Committee and the Committee on the Human Rights of Parliamentarians went to Turkey in June 2019 to obtain first-hand information on the issues that have arisen in this case, as well as on the general political and security situation in Turkey. The Turkish authorities provided extensive comments on the report, explicitly rejecting several of the report's findings and recommendations (Turkey's comments are annexed to the mission report). Since the mission, the Turkish authorities have also provided extensive information on the legal status of and grounds invoked in many of the criminal proceedings against current and former HDP parliamentarians. The complainant has also commented on the mission report and, with the exception of some points, largely agrees with the IPU delegation's assessment and recommendations.

## **B. Decision**

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Turkish authorities for their extensive efforts to receive the IPU delegation and to allow it to fulfil its mandate, including by facilitating a visit to south-eastern Turkey; *regrets* nevertheless that the delegation was not allowed to meet with the current and former parliamentarians in detention; *considers* in this regard that the Ministry of Justice could have shown more flexibility to facilitate prison visits;
2. *Also thanks* the Turkish Government and the President of the Turkish IPU Group for their detailed comments on the mission report, as well as the complainant for its observations;

3. *Further thanks* the IPU delegation for carrying out the mission and for its report; and *fully endorses* its findings and recommendations;
4. *Considers* in this regard that the extensive comments from the Turkish authorities do not dispel the serious concerns in the mission report about the systematic affirmation by the Turkish authorities that the HDP, a legally authorized political party in Turkey, and the PKK are one and the same, or at least working closely together, and about the multiple criminal proceedings that have been – and continue to be – brought as a result of this assertion against current and former HDP parliamentarians;
5. *Reaffirms* its views that parliamentarians are not above the law and should not be shielded from prosecution if they directly commit or incite violence, or are in any other way involved in the commission of crimes; *considers*, however, that it has yet to receive information from the Turkish authorities that clearly points to concrete and convincing evidence to sustain the serious terrorism charges brought against the current and former parliamentarians; *notes* in this regard that the extensive information provided most recently by the authorities, except for a casual reference to specific incidents, does not provide details on the facts that form the basis of the charges laid against those being prosecuted; *understands* that it may be difficult to make these details available for all the cases at hand, but nevertheless hopes that the Turkish authorities can provide as much information as possible; *appreciates* in this regard the commitment made by the President of the Turkish IPU Group;
6. *Remains concerned* in the meantime that the information currently on file, particularly several court decisions and their analysis, confirms that HDP parliamentarians have been charged and convicted primarily for making critical public statements, issuing tweets, participating in organizing or calling for rallies and protests, and conducting political activities in furtherance of their parliamentary duties and political party programme, such as mediating between the PKK and the Turkish Government as part of the peace process between 2013 and 2015, publicly advocating political autonomy, and criticizing the policies of President Erdoğan in relation to the current conflict in south-eastern Turkey;
7. *Considers* that the prosecution for these statements and activities, despite their critical content and occasional harsh tone, runs counter to the parliamentarians' rights to freedom of expression, peaceful assembly and association, all of which should have been protected by Turkey; *points out* in this regard that several current and former HDP parliamentarians have been prosecuted or sentenced to hefty prison terms for insulting the President, Government or State of Turkey, contrary to the jurisprudence of the European Court of Human Rights and the UN Human Rights Committee; *considers* that the prosecution of the HDP parliamentarians has to be seen in the context of the concerns expressed in the mission report about the independence of the judiciary in Turkey;
8. *Is convinced*, in light of the aforesaid considerations, that the Turkish authorities need to take more decisive action to ensure that current national legislation and its application are in line with international and regional standards on freedom of expression, assembly and association, and on the independence of the judiciary, as well as to ensure that ongoing criminal proceedings are freshly and critically reviewed with this perspective in mind; *looks forward* to hearing about concrete steps taken to this end;
9. *Notes* that the Turkish authorities have requested the Committee on the Human Rights of Parliamentarians to close several cases, arguing that the current and former parliamentarians concerned are no longer being prosecuted and that the complainant is contesting that their prosecution has been terminated; *sincerely hopes* that the Committee will soon receive clarity on these matters so that it can fully review these files and make appropriate recommendations;
10. *Requests* the Committee to explore further options to attend ongoing trial proceedings in the cases at hand; *trusts* that the Turkish authorities will grant unrestricted access to international observers to these proceedings, it being understood that it should be quite feasible for the authorities to do so, including by providing a larger court room, if need be, and without having to compromise on any security requirements;

11. *Renews its call* on all IPU Member Parliaments to take concrete actions in support of the urgent resolution of the Turkish cases, including by considering the dispatch of trial observers;  
*requests* Member Parliaments to keep the IPU informed of the outcome of their initiatives;
12. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
13. *Requests* the Committee to continue examining these cases and to report back to it in due course.