

TURKEY

- **TUR-55:** Mehmet Sincar
- **TUR-COLL-02:** 64 parliamentarians



Inter-Parliamentary Union

For democracy. For everyone.

Turkey

TK/41 - Hatip Dicle
TK/67 - Mustafa Balbay
TK/68 - Mehmet Haberal
TK/69 - Gülser Yildirim (Ms.)
TK/70 - Selma Irmak (Ms.)
TK/71 - Faysal Sariyildiz
TK/72 - Ibrahim Ayhan
TK/73 - Kemal Aktas
TK/74 - Engin Alan
TK/55 - Mehmet Sinçar

Decision adopted unanimously by the IPU Governing Council at its 195th session (Geneva, 16 October 2014)

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of the above-mentioned parliamentarians and to the resolution adopted at its 194th session (March 2014),

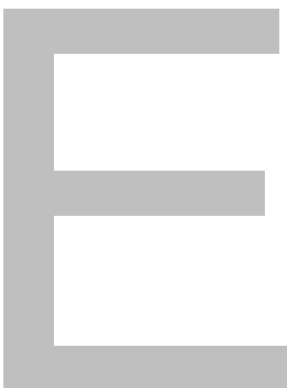
Referring to the full report on the mission conducted to Turkey by two members of the IPU Committee on the Human Rights Parliamentarians, Vice-President of the Committee, Ms. Ann Clwyd and Ms. Margaret Kiener Nellen, from 24 to 27 February 2014 (CL/195/11(b)-R.1),

Recalling that the nine parliamentarians above were all elected in June 2011 while in prison and are being prosecuted for destabilizing or overthrowing the constitutional order, including by being members of terrorist organizations, in three complex cases known as the “Sledgehammer/Balyoz case”, the “Ergenekon case” and the “KCK case”,

Considering that the nine parliamentarians have now been released pending the completion of ongoing proceedings following groundbreaking decisions of the Constitutional Court of Turkey on the excessive length of pretrial detention, the right of elected parliamentarians to sit in Parliament and the need to respect international fair-trial guarantees; Mr. Alan and Mr. Dicle were granted provisional release on 19 and 28 June 2014, respectively,

Considering that they are now able to exercise their parliamentary mandate with the exception of Mr. Dicle, who lost his parliamentary status at the time of his invalidation; Mr. Balbay’s and Mr. Haberal’s restrictions on the freedom of movement have been lifted,

Recalling that Mr. Mehmet Sinçar, a former member of the Grand National Assembly of Turkey, of Kurdish origin, was assassinated in September 1993 in Batman (south-eastern Turkey),



Considering that the appeal in Mr. Sinçar's case was concluded in January 2011; the decision does not make any specific reference to the murder of Mr. Sinçar, to the appeal lodged by his family or to any of the arguments raised by their lawyers; it does not indicate that the judicial process effectively probed the political and security context prevailing at the time of the murder and the possible responsibility of the chain of command of the Turkish intelligence and security officers, in particular existing information implicating five agents in planning and executing the crime,

Considering that the mission concluded and observed the following:

- With regard to freedom of expression:
 - The protection of freedom of expression in Turkey has been a long-standing issue of concern in prior cases before the Committee on the Human Rights of Parliamentarians which, since 1992, has repeatedly called on the Turkish authorities to take action to enhance respect for this fundamental right;
 - Peaceful and legal political activities of the parliamentarians concerned have been regarded as evidence of criminal and terrorist acts by the prosecution and the courts, and that despite progress made in legislative reforms; the Turkish legal framework and judicial practice continue to largely fail to distinguish between peaceful protest and dissenting opinions on the one hand, and violent activities pursuant to the same goals on the other;
 - In the case of Mr. Dicle, his statement publicly expressing a non-violent opinion supportive of the PKK fell within the scope of freedom of speech; he was therefore convicted in violation of his right to freedom of expression and that, as a consequence, his parliamentary mandate was arbitrarily invalidated,
- With regard to fair-trial guarantees:
 - In light of the information and documentation reviewed during and after the mission, the delegation has concluded that the judicial process under which the parliamentarians concerned have been, and continue to be, tried is not in compliance with international standards of due process, that justice was neither achieved nor perceived to have been achieved, and that the large scope of the proceedings and the broader context lend weight to the allegations that the judicial proceedings may have been politically motivated,

Considering that the Constitutional Court ruling of 18 June 2014 concluded that fair-trial violations occurred in the Sledgehammer case, which will pave the way for a retrial of Mr. Alan and other defendants in the case,

Considering that, in their observations on the mission report, the parliamentary authorities have stated that:

- They did not have any general objections to the findings of the delegation;
 - Further legislative reforms were completed with the amendments made by Law No. 6526 of 21 February 2014, known as the Fifth Judicial Reform Package;
 - The first hearing of the retrial of the persons accused in the Sledgehammer case, including Mr. Alan is scheduled for 3 November 2014,
1. *Thanks* the Turkish authorities for their observations and *notes with interest* that they generally share the findings of the mission;
 2. *Further thanks* the mission delegation for the work done and endorses its overall conclusions; and *trusts* that the Turkish authorities will implement its recommendations promptly;
 3. *Notes with satisfaction* that all parliamentarians have been released pending the completion of the ongoing proceedings and, with the exception of Mr. Dicle, are now able to exercise their parliamentary mandate; *also notes with interest* that the travel

restrictions on Mr. Balbay and Mr. Haberal have been lifted; *welcomes* the legislative reforms undertaken by the authorities;

4. *Deeply regrets*, however, that the parliamentarians concerned spent over half of their parliamentary term and an average of four years in detention before a solution was found; and *urges* the Turkish authorities to adopt appropriate constitutional and legislative amendments to fully implement the rulings of the Constitutional Court as regards the pretrial detention of parliamentarians;
5. *Is deeply concerned* that the peaceful and legal activities of the parliamentarians concerned were regarded as evidence of criminal and terrorist acts by the prosecution and the courts, and *calls on* the authorities to urgently strengthen freedom of expression and association, in particular concerning anti-terrorist legislation and the offence of membership of a criminal organization; *wishes* to be kept informed about legislative reform envisaged on these issues;
6. *Expects* that the judicial proceedings will provide appropriate redress for the acknowledged violations of due process and will be completed swiftly in compliance with international standards; *wishes* to be regularly apprised of their status and outcome;
7. *Urges* the Turkish authorities to pursue further investigations in the case of Mr. Sinçar and fully take into account existing information implicating five agents of the Turkish intelligence Services in planning and executing the crimes; *further invites* the parliamentary authorities to consider establishing a parliamentary commission to investigate the murder, together with other human rights violations committed in the 1990s in south-eastern Turkey, including abuses by State perpetrators;
8. *Trusts* that the parliamentary authorities will liaise with the competent executive and judicial authorities to keep the Committee apprised of any future developments, so as to facilitate a dialogue conducive to a satisfactory settlement of the cases under examination;
9. *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;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.



Inter-Parliamentary Union

For democracy. For everyone.

Turkey

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 164th session (virtual session, 8 to 20 March 2021)



A supporter of the pro-Kurdish People's Democratic Party (HDP) holds pictures of jailed former party leader, Mr. Selahattin Demirtaş, during a 'peace and justice' rally in Istanbul on 3 February 2019. Yasin AKGUL / AFP

- | | |
|---------------------------------------|-----------------------------------|
| TUR-69 - Gülser Yıldırım (Ms.) | TUR-105 - Erol Dora |
| TUR-70 - Selma Irmak (Ms.) | TUR-106 - Ertuğrul Kürkcü |
| TUR-71 - Faysal Sariyildiz | TUR-107 - Ferhat Encü |
| TUR-73 - Kemal Aktas | TUR-108 - Hişyar Özsoy |
| TUR-75 - Bedia Özgökçe Ertan (Ms.) | TUR-109 - Idris Baluken |
| TUR-76 - Besime Konca (Ms.) | TUR-110 - Imam Taşçier |
| TUR-77 - Burcu Çelik Özkan (Ms.) | TUR-111 - Kadri Yıldırım |
| TUR-78 - Çağlar Demirel (Ms.) | TUR-112 - Lezgin Botan |
| TUR-79 - Dilek Öcalan (Ms.) | TUR-113 - Mehmet Ali Aslan |
| TUR-80 - Dilan Dirayet Taşdemir (Ms.) | TUR-114 - Mehmet Emin Adiyaman |
| TUR-81 - Feleknas Uca (Ms.) | TUR-115 - Nadir Yıldırım |
| TUR-82 - Figen Yüksekdağ (Ms.) | TUR-116 - Nihat Akdoğan |
| TUR-83 - Filiz Kerestecioğlu (Ms.) | TUR-118 - Osman Baydemir |
| TUR-84 - Hüda Kaya (Ms.) | TUR-119 - Selahattin Demirtaş |
| TUR-85 - Leyla Birlik (Ms.) | TUR-120 - Sirri Süreyya Önder |
| TUR-86 - Leyla Zana (Ms.) | TUR-121 - Ziya Pir |
| TUR-87 - Meral Daniş Beştaş (Ms.) | TUR-122 - Mithat Sancar |
| TUR-88 - Mizgin Irgat (Ms.) | TUR-123 - Mahmut Toğrul |
| TUR-89 - Nursel Aydoğan (Ms.) | TUR-124 - Aycan Irmez (Ms.) |
| TUR-90 - Pervin Buldan (Ms.) | TUR-125 - Ayşe Acar Başaran (Ms.) |
| TUR-91 - Saadet Becerikli (Ms.) | TUR-126 - Garo Paylan |
| TUR-92 - Sibel Yiğitalp (Ms.) | TUR-128 - Aysel Tuğluk (Ms.) |
| TUR-93 - Tuğba Hezer Öztürk (Ms.) | TUR-129 - Sebahat Tuncel (Ms.) |
| TUR-94 - Abdullah Zeydan | TUR-130 - Leyla Guven (Ms.) |
| TUR-95 - Adem Geveri | TUR-131 - Ayşe Sürücü (Ms.) |
| TUR-96 - Ahmet Yıldırım | TUR-132 - Musa Farisogullari |
| TUR-97 - Ali Atalan | TUR-133 - Emine Ayna (Ms) |
| TUR-98 - Alican Önlü | TUR-134 - Nazmi Gür |
| TUR-99 - Altan Tan | TUR-135 - Ayla Akat Ata (Ms) |
| TUR-100 - Ayhan Bilgen | TUR-136 - Beyza Üstün (Ms) |
| TUR-101 - Behçet Yıldırım | TUR-137 - Remziye Tosun (Ms) |
| TUR-102 - Berdan Öztürk | TUR-138 - Kemal Bulbul |

Alleged human rights violations

- ✓ Failure to respect parliamentary immunity
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ 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 Kurdistan Communities Union (*Koma Civakên Kurdistan* – KCK) first-instance trial that has been ongoing since 2011, while others face more recent charges. In these cases, their parliamentary immunity was allegedly not lifted.

Since 2018, over 30 parliamentarians have been sentenced to terms of imprisonment. Since 4 November 2016, scores of parliamentarians have been detained and others have gone into exile. Thirteen parliamentarians are currently in prison, including the former HDP co-chairs, Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ, as well as Mr. Abdullah Zeydan, Ms. Çağlar Demirel, Ms. Gülser Yıldırım, Mr. Idris Baluken, Ms. Leyla Güven, and Mr. Musa Farisoğulları. In September 2020, former members of parliament Mr. Nazmi Gür, Ms. Ayla Akat Ata, Mr. Ayhan Bilgen, Ms. Beyza Üstün, and Ms. Emine Ayna were arrested, although the accusations against them relate to the distant events that unfolded soon after the siege of Kobane in Syria in 2014. Thirteen HDP members of parliament have lost their parliamentary mandates in recent years, largely due to the fact that their prison sentences became final, most recently in the cases of Ms. Leyla Güven and Mr. Musa Farisoğulları in June 2020. If their sentence is confirmed by the Supreme Court, the same fate is said to await Ms. Remziye Tosun and Mr. Kemal Bulbul. The four last mentioned individuals all gained parliamentary immunity after being elected in parliamentary elections in June 2018, but the criminal cases against them were reportedly not suspended, with the justification that they were prosecuted with terrorism-related charges.

According to the complainant, the charges against HDP members of parliament are groundless and violate their rights to freedom of opinion and expression, and freedom of 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 Kurdistan Workers' Party (*Partiya Karkerên Kurdistanê* – 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.

Case TUR-COLL-02

Turkey: Parliament affiliated to the IPU

Victims: 64 opposition members of parliament (34 men and 30 women)

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

Submission of complaint: June 2016

Recent IPU decision: May 2020

IPU mission: June 2019

Recent Committee hearings: Hearing with the Turkish delegation and the complainant at the 141st 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 (January 2020); letter from the President of the IPU Group (March 2021)
- Communication from the complainant: March 2021
- Communication addressed to the authorities: Letter to the Speaker of the Turkish Parliament (January 2021)
- Communication to the complainant: March 2021

An IPU trial observer concluded in 2018 that the prospects of Ms. Yüksekdağ and Mr. Demirtaş receiving fair trials were remote and that the political nature of both prosecutions was evident. A 2018 IPU review of 12 court decisions issued against HDP members reached similar conclusions. It concluded, *inter alia*, 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.

On 22 December 2020, the Grand Chamber of the European Court of Human Rights delivered its judgment in the case of *Demirtaş v. Turkey* (No. 2) (Application No. 14305/17), which concerned the former's detention on 4 November 2016 on the basis of accusations made in the context of street demonstrations that turned violent in Turkey in October 2014, allegedly resulting in 37 deaths in 32 cities across the country, in protest against the lack of government action by the Turkish Government following the Islamic State's attack on the Kurdish town of Kobane, located over the border in Syria. The accusations against Mr. Demirtaş were based on certain tweets issued from the HDP Twitter account in October 2014, as well as public speeches by him, which called for people to attend the demonstrations. The Grand Chamber of the European Court held that there had been violations of his rights to freedom of expression, to liberty and security, to a speedy decision on the lawfulness of detention and to free elections. The Court also found that Mr. Demirtaş' detention, especially during two crucial campaigns relating to the referendum of 16 April 2017 and the presidential elections of 24 June 2018, had pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate, which was at the very core of the concept of a democratic society. The Court held that the respondent state was to take all necessary measures to secure his immediate release. Since then, European parliamentary and executive institutions have called on the Turkish authorities to implement the judgment without delay. On 7 January 2021, the Ankara 22nd Assizes Court accepted a 3,500-page indictment against Mr. Demirtaş and 107 other defendants, issued by the Ankara public prosecutor on 30 December 2020, regarding the same protests that took place in October 2014, this time charging Mr. Demirtaş with 30 new offences.

The Turkish authorities have provided extensive information on the legal status of the criminal proceedings against the HDP parliamentarians, without, however, providing information on the precise facts to support the charges or convictions. The Turkish authorities have repeatedly justified the legality of the measures taken against the HDP parliamentarians, and invoked the independence of the judiciary, the need to respond to security and terrorism threats, and legislation adopted under the state of emergency. The authorities 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; 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.

According to the complainant, the legal harassment of the HDP continues to this date: as of 1 March 2021, a total of 1,267 summaries of proceedings are under the review of the joint parliamentary, constitutional and justice Committees, of which 955 (75 per cent) have reportedly been prepared against 59 HDP parliamentarians (who comprise around 10 per cent of the Turkish Parliament).

In March 2021, the Turkish authorities launched Turkey's Human Rights Action Plan, the drafting of which has been guided by the standards and norms of the United Nations, the Council of Europe and the European Union. According to the authorities, the main goal of this initiative is to reorganize the Turkish judicial system and to amend relevant laws and regulations in order to promote the effective protection of fundamental freedoms. These reform processes have already resulted in certain progress, especially by strengthening freedom of expression and victims' rights, as well as the introduction of limitations to the length of pretrial detention.

On 17 March 2021, the chief prosecutor of the Turkish Court of Cassation referred a request for the dissolution of the HDP to the Constitutional Court, accusing the HDP of terrorist activities.

B. Decision

The Committee on the Human Rights of Parliamentarians

1. *Thanks* the President of the Turkish IPU Group for her latest communication of 5 February 2021 and for her continuous cooperation and spirit of dialogue;
2. *Notes* that the current case also includes a new complaint regarding the situation of Ms. Remziye Tosun, Mr. Kemal Bulbul, Mr. Musa Farisoğulları, Mr. Nazmi Gur, Ms. Ayla Akat Ata, Ms. Beyza Üstün and Ms. Emine Ayna, and that: (i) the complaint was submitted in due form by a qualified complainant under section I.1(a) of the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) the complaint concerns seven individuals who are, or were, members of parliament at the time of the alleged violations of their human rights and/or of the alleged events that form the basis for the legal proceedings brought against them; and (iii) the complaint concerns allegations of arbitrary arrest and detention, violations of the right to freedom of expression and the right to a fair trial, and failure to respect parliamentary immunity, allegations that fall within the Committee's mandate; *considers* that the complaint is therefore admissible under the provisions of section IV of the Procedure; and *declares itself* competent to examine the case;
3. *Is alarmed* by the recent demand for the dissolution of the HDP party; *considers* that this step shows once again that the authorities continue to view, wrongly, the PKK and the HDP as one and the same entity; *recalls* in this regard that, while recognizing that the two organizations rely largely on the same support base and pursue similar objectives, the HDP is a legal political party that does not in any way advocate violence to achieve its goals; *is concerned* that its dissolution will deprive not only HDP parliamentarians of their right to participate in public life, but also their electorate of their representation in the Turkish parliament; *underlines* that the European Court of Human Rights has ruled that the dissolution or ban of a party is an extreme measure only justified as a last resort, in very exceptional circumstances, and that it has already handed down several rulings, notably against Turkey, in which the ban on a political party had been considered a human rights violation; *urges* the Turkish authorities, therefore, to do their utmost to comply with its obligations under the European Convention on Human Rights in this area;
4. *Is deeply concerned* at the conclusions of the Grand Chamber of the European Court of Human Rights according to which Mr. Demirtaş' first detention order not only violated his own basic human rights but was aimed at stifling the opposition; *is alarmed* that, 10 days after the judgment of the Grand Chamber of the European Court, a new indictment was brought against Mr. Demirtaş with regard to the same protests that took place in October 2014; *considers* that both the timing of this indictment and the fact that they represent a reclassification of the same set of facts and incidents can only give further weight to the European Court's conclusions that "*Mr. Demirtaş pretrial detention has merely been cover for an ulterior political purpose*"; *calls on* the Turkish authorities to release him forthwith and to drop the related old and new charges against him;
5. *Is deeply concerned* also that five former parliamentarians have recently been detained in connection with the aforesaid protests of October 2014; *considers* that the European Court's judgment also provides an important analysis of what transpired during those events to the point that it is very difficult to understand that the prosecution of these five individuals could be justified; *wishes* to receive official clarifications on this point;
6. *Considers* that the judgment in the case of Mr. Demirtaş is yet further proof that the Turkish authorities have not been striking the right balance between their legitimate fight against terrorism and respect for the human rights of opposition members of parliament, in particular their freedom of expression; *welcomes*, therefore, the launch by the Turkish authorities of their Human Rights Action Plan, which provides for additional steps to promote respect for basic human rights; *sincerely hopes* that they will indeed take the necessary measures to this end; *recalls* in this regard the recommendations made in the 2019 IPU mission report 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 opinion

and 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; and *looks forward to* hearing about concrete steps taken to this end;

7. *Notes* that reports are indicating that a new wave of legal proceedings are being prepared or brought against current HDP parliamentarians; *calls on* the Turkish Parliament to ensure that their parliamentary immunity is scrupulously protected, that any requests made for the lifting immunity is carefully analysed with regard to each parliamentarian concerned, and only lifted if the legal proceedings appear to be founded in law and do not run counter to basic human rights; *wishes* to receive detailed information from the authorities on these points;
8. *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;
9. *Decides* to continue examining these cases.