

TURKEY

- **TUR-COLL-02:** 66 parliamentarians
- **TUR-55:** Mehmet Sincar



Inter-Parliamentary Union

For democracy. For everyone.

Turkey

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 167th session (virtual session, 30 January to 11 February 2022)



A supporter of the pro-Kurdish Peoples' Democratic Party (HDP) holds up pictures of jailed former party leader Selahattin Demirtaş during a 'Peace and Justice' rally in Istanbul on 3 February 2019. Yasin AKGÜL / AFP

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

TUR-101 - Behçet Yıldırım
TUR-102 - Berdan Öztürk
TUR-105 - Erol Dora

TUR-138 - Kemal Bulbul
TUR-140 - Gülşan Kışanak (Ms.)
TUR-141 - Semra Guzel (Ms.)

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 20 May 2016, 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. Eleven parliamentarians are currently in prison, namely the former HDP co-chairs, Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ, as well as Ms. Gülser Yıldırım, Mr. Idris Baluken, Ms. Leyla Güven, Mr. Musa Farisoğulları, Ms. Gülşan Kışanak, Mr. Sebahat Tuncel, Ms. Aysel Tuğluk, Ms. Ayla Akat Ata and Mr. Nazmi Gür. Some of them were arrested in September 2020, although the accusations against them relate to the events in the distant past 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 being prosecuted with terrorism-related charges. According to the complainant, Ms. Aysel Tuğluk is suffering from dementia and her health is getting worse by the day.

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: 66 opposition members of parliament (33 men and 33 women)

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

Submission of complaint: June 2016

Recent IPU decision: March 2021

IPU mission: June 2019

Recent Committee hearings: Hearings 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 (January 2022)
- Communication from the complainant: January 2022
- Communication to the authorities: Letter to the Speaker of the Turkish Parliament (December 2021)
- Communication to the complainant: January 2022

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 offences 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), and 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. Since then, Mr. Demirtaş has been sentenced to prison terms in other criminal cases, reportedly most recently on 24 January 2022 with regard to public criticism voiced in February 2016 against the then Prime Minister, Mr. Ahmet Davutoğlu, during a rally held in Mersin.

On 1 February 2022, the European Court of Human Rights ruled that the lifting of the parliamentary immunity of 40 Peoples' Democratic Party (HDP) lawmakers, who had brought their case to the European Court following the constitutional amendment in May 2016, had violated their right to freedom of expression. In so doing, the Court responded to their assertion that the lifting of their immunity came in response to their political opinions and drew for its conclusions on this point on its rulings in the cases of *Demirtaş v. Turkey and Demir v. Turkey*.

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. According to the official information note dated 7 January 2022, provided by the President of the Turkish IPU Group, with regard to the 542 criminal files against 52 HDP parliamentarians (out of the 64 that are the subject of the present case), 33 rulings were issued concluding that there was no room for prosecution and 126 merger/postponement/administrative sanction decisions were made. Moreover, legal proceedings were launched in 352 files, 51 of which are still pending, while convictions have been handed down in 76 files against 37 HDP parliamentarians. Moreover, 242 files, closed through resolutions, indicate that there is no room for acquittal/punishment/postponement of the prosecution. The note specifies in this regard that 31 files were sent to parliament with a decision to stop after the relevant person was elected as a member of parliament while the trial was still ongoing, and after these files were returned to their place; that a conviction decision was given for three members of parliament in three files; that, with regard to 20 files, there is no room for acquittal/punishment/postponement of prosecution and that they were closed through resolutions; and that nine files are still pending/ongoing.

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.

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. On 21 June 2022, the Constitutional Court accepted the indictment presented by the chief prosecutor. In early September 2021, the Constitutional Court granted the HDP's request for more time to prepare its defence. On 5 November 2021, the HDP presented its preliminary defence.

In January 2022, the complainant stated that photos that had been leaked with regard to current HDP parliamentarian Ms. Semra Guzel, showing her together with PKK fighter Mr. Volkan Bora, whom she had known from their time at Harran University, were being used to criminalize her and to strengthen the push for the closure of the HDP. The complainant asserts that the photos were taken in 2014 during the peace process when the HDP was interacting directly with the PKK on behalf of the Turkish Government. Ms. Guzel was not involved with the HDP at that time. According to the complainant, at the time the Government also actively encouraged Kurdish families to meet their children in the mountains as part of an effort to convince them to contribute to a peaceful settlement and to return home. According to the complainant, even though the photos showing Ms. Guzel were reportedly taken by the authorities in 2017, she was never investigated or questioned until these photos were leaked to the press a few weeks ago. According to the complainant, parliament is apparently in the process of lifting the immunity of Ms. Guzel and 14 other HDP parliamentarians.

B. Decision

The Committee on the Human Rights of Parliamentarians

1. *Thanks* the President of the Turkish IPU Group for her latest communication 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. Gültan Kışanak and Ms. Semra Guzel, 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 two 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, which are 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. *Remains deeply alarmed* at the prospect of the dissolution of the HDP party, also bearing in mind that its predecessors were dissolved by court order; *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 right to 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; and *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. *Notes with concern* in this regard, also, that the European Court of Human Rights' latest rulings in cases affecting several of the HDP parliamentarians underscore that the legal steps to which

they have been subjected come in direct response to the exercise of their freedom of expression and, as determined in the case of Mr. Demirtaş, were aimed at stifling the opposition;

5. *Reaffirms its long-standing view* that, in their legitimate fight against terrorism, 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;
6. *Is deeply concerned* in this regard that 11 parliamentarians continue to languish in prison; *considers* that the latest extensive information provided by the Turkish Parliament does nothing to dispel the doubts that the HDP parliamentarians have been targeted in connection with the legitimate exercise of their political rights; *urges*, therefore, the Turkish authorities to review their situation and, where possible, release them and terminate the criminal proceedings; and *calls on* the authorities to release Ms. Aysel Tuğluk forthwith in light of her poor health;
7. *Expresses grave concern over* a new wave of legal proceedings that are reportedly 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 of immunity is carefully analysed with regard to each parliamentarian concerned and only lifted if the legal proceedings are founded in law and do not run counter to basic human rights; and *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.



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),

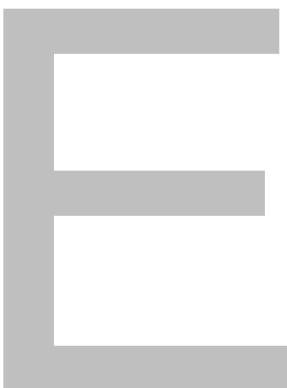
Referring to the full report on the mission conducted to Turkey by two members of the IPU Committee on the Human Rights Parliamentarians, Vice-President of the Committee, Ms. Ann Clwyd and Ms. Margaret Kiener Nellen, from 24 to 27 February 2014 (CL/195/11(b)-R.1),

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.