TURKEY

- **TUR-COLL-02**: 67 parliamentarians
- **TUR-55**: Mehmet Sincar
Türkiye

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 170th session (Geneva, 21 January to 2 February 2023)

Aysel Tuğluk during an interview with AFP in Diyarbakir, 17 July 2007. AFP

PHOTO/STR STR/AFP

TUR-69 - Gülser Yıldırim (Ms.)
TUR-70 - Selma İrmak (Ms.)
TUR-71 - Faysal Sarıyıldız
TUR-73 - Kemal Aktas
TUR-75 - Bedia Ö zgökçe Ertan (Ms.)
TUR-76 - Besime Konca (Ms.)
TUR-77 - Burcu Çelik Özkın (Ms.)
TUR-78 - Çağlar Demirel (Ms.)
TUR-79 - Dilek Ocalan (Ms.)
TUR-80 - Dilan Dirayet Taşdemir (Ms.)
TUR-81 - Feleknas Uca (Ms.)
TUR-82 - Figen Yüksekdag (Ms.)
TUR-83 - Filiz Kerestecioglu (Ms.)
TUR-84 - Hüda Kaya (Ms.)
TUR-85 - Leyla Birlik (Ms.)
TUR-86 - Leyla Zana (Ms.)
TUR-87 - Meral Danış Beştaş (Ms.)
TUR-88 - Mizgin Irgat (Ms.)
TUR-89 - Nurşen Aydoğan (Ms.)
TUR-90 - Pervin Buldan (Ms.)
TUR-91 - Saadet Becerikli (Ms.)
TUR-92 - Sibel Yiğitalp (Ms.)
TUR-93 - Tuğba Hezer Öztürk (Ms.)
TUR-94 - Abdullah Zeydan
TUR-95 - Adem Geveri
TUR-96 - Ahmet Yıldırım
TUR-97 - Ali Atalan
TUR-98 - Figen Yüksekdağ (Ms.)
TUR-99 - İhana Karakaya (Ms.)
TUR-100 - İsmail Hamalçı (Ms.)
TUR-101 - İsmail Uyar (Ms.)
TUR-102 - İsmail Yıldırım (Ms.)
TUR-103 - İsmet Kılıç (Ms.)
TUR-104 - İsmet Orman (Ms.)
TUR-105 - İsmet Türk (Ms.)
TUR-106 - İlhan Kılıç (Ms.)
TUR-107 - Fevzipa Öztürk (Ms.)
TUR-108 - Huisar Özsoy
TUR-109 - İdris Baluken
TUR-110 - İsmet Kılıç (Ms.)
TUR-111 - Kadri Yıldırım
TUR-112 - Lezgin Botan
TUR-113 - Mehmet Ali Aslan
TUR-114 - Mehmet Emin Adıyaman
TUR-115 - Nihat Yıldırım
TUR-116 - Nihat Akdoğan
TUR-117 - Osman Baydemir
TUR-118 - Selahattin Demirtaş
TUR-119 - Sirri Süreyya Önder
TUR-120 - Sirri Süreyya Önder
TUR-121 - Ziya Pir
TUR-122 - Mithat Sancar
TUR-123 - Mahmut Toğrul
TUR-124 - Aycan İrmez (Ms.)
TUR-125 - Ayşe Acar Başaran (Ms.)
TUR-126 - Garo Paylan
TUR-127 - Aysel Tuğluk (Ms.)
TUR-128 - Ayşe Acar Başaran (Ms.)
TUR-129 - Sebahat Tuncel (Ms.)
TUR-130 - Leyla Guven (Ms.)
TUR-131 - Ayşe Sürück (Ms.)
TUR-132 - Musa Farsogullari
TUR-133 - Emine Ayn (Ms.)
TUR-134 - Nazmi Gür
TUR-135 - Ayla Akat Ata (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. They are being tried on terrorism-related charges and charges of defamation of the President, Government or State of Türkiye. Some of them also face older charges in relation to the Kurdish 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 prison terms. Since 4 November 2016, scores of parliamentarians have been detained and others have gone into exile. Nine current and former parliamentarians are in prison, namely the former HDP co-chairs, Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ, as well as Mr. Idris Baluken, Ms. Leyla Güven, Ms. Semra Güzel, Ms. Gültan Kışanak, Mr. Sebahat Tuncel, Ms. Ayla Akat Ata and Mr. Nazmi Gur. 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. Fourteen HDP members of parliament have lost their parliamentary mandates in recent years, largely as a result of their criminal convictions. On 27 October 2022, former parliamentarian Ms. Aysel Tuğluk was released from prison following a forensic medicine institution report citing health concerns.

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 (Partîya 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 southeastern Türkiye 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 do 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 concluded in 2018 that the prospects for Ms. Yüksekdağ and Mr. Demirtaş receiving fair trials were remote and that the political nature of both prosecutions was evident. It should be noted that, on 17 July 2022, the Constitutional Court ruled in one of the cases against Ms. Yüksekdağ that her rights to freedom of thought and expression, as well as to be elected, were violated when she was stripped of her parliamentary immunity in 2016.

A 2018 IPU review of 12 court decisions issued against HDP members reached similar conclusions. It concluded, *inter alia*, that the judiciary in Türkiye, 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. Türkiye* (No. 2) (Application No. 14305/17), and held that there had been violations of his rights to freedom of expression, to freedom 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 motive 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. The Turkish authorities have stated that the ruling of the European Court of Human Rights could not be implemented, given that Mr. Demirtaş’ ongoing detention was related to new evidence that is substantially different from that examined by the Court. Similarly, on 8 November 2022, the European Court of Human Rights ruled that Türkiye had violated Articles 10 (freedom of expression) and 5 (subparagraphs 1, 3 and 4 concerning the right to freedom and security) of the European Convention regarding the pretrial detention of 13 HDP parliamentarians elected to parliament in November 2015, namely Ms. Figen Yüksekdağ, Mr. İdris Baluken, Ms. Besime Konca, Mr. Abdullah Zeydan, Mr. Nihat Akdoğan, Ms. Selma İrmak, Mr. Ferhat Encu, Ms. Gülsen Yıldırım, Mr. Nursel Aydoğan, Ms. Çağlar Demirel, Mr. Ayhan Bilgen, Ms. Burcu Çelik Özkan, and Ms. Leyla Birlik.

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. Türkiye and Demir v. Türkiye*.

On 19 October 2021, in the landmark decision *Vedat Şorli v. Turkey*, the European Court of Human Rights found that Article 299 of the Turkish Criminal Code, which criminalizes insulting the President, was incompatible with the right to freedom of expression, and urged the Government to align legislation with Article 10 of the European Convention on Human Rights.

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 21 September 2022, provided by the President of the Turkish IPU Group, with regard to the 531 criminal files against 51 HDP parliamentarians (out of the 66 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 349 files, 51 of which are still pending, while convictions have been handed down in 79 files against 38 HDP parliamentarians. Moreover, 230 files, closed through resolutions, indicate that there is no room for acquittal/punishment/postponement of the prosecution. The note specifies in this regard that 23 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 11 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 Türkiye; that women parliamentarians are not being specifically targeted; that there is no Kurdish issue in Türkiye and no current conflict in south-eastern Türkiye; that Türkiye is facing a terrorism issue on many 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 Türkiye 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. It appears that the prosecution is drawing heavily on the ongoing proceedings against several HDP politicians in the 2014 Kobane case referred to earlier, which is ongoing. On 5 January 2022, the Constitutional Court agreed to a request by the chief prosecutor of the Court of Cassation for the interim measure of freezing the HDP’s bank accounts containing state treasury support, which political party groups in parliament are entitled to receive. Parliamentary and presidential elections are due to take place on 18 June 2023. It is said that, without public funding, running an election campaign is quite impossible. On 10 January 2023, the chief prosecutor gave an oral presentation of the case against the HDP to the Constitutional Court, which the HDP will respond to later before the Court convenes to deliberate and issue a final ruling. It is feared that the HDP will be banned before the general elections of 14 May 2023.

In response to the proposed return of a Committee delegation to Türkiye, the President of the Turkish IPU Group stated in a letter of 13 January 2023 that, given that “presidential and parliamentary elections will be held in the spring of this year in Türkiye, we will not be able to host the Committee in our country during the election process”.

B. Decision

The Committee on the Human Rights of Parliamentarians

1. Thanks the President of the Turkish IPU Group for her latest communication;

2. Is deeply alarmed at the ever more likely 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 would prevent candidates from the HDP from running for office in the forthcoming elections and hence prevent the party’s electorate from exercising their right to seek representation in the Turkish Parliament; requests assurances that the HDP will continue to be allowed to exist and function; underlines in this regard also 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 Türkiye, 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;
3. **Notes with concern** in this regard, also, that in recent years the number and scope of the rulings from the European Court of Human Rights underscore that the legal steps to which the HDP parliamentarians have been subjected did not follow due process and came 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;

4. **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;

5. **Remains deeply concerned** in this regard that nine current and former parliamentarians continue to languish in prison; **considers**, once more, that the 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; **decides** to send a trial observer to the criminal proceedings in the 2014 Kobane case, given the existing fair trial concerns and the potentially decisive impact that the outcome of these proceedings may have on the request for the dissolution of the HDP;

6. **Considers** that, in light of all the aforesaid concerns and the forthcoming elections in Türkiye, a mission to that country to discuss the issues at hand directly with all the relevant authorities and other stakeholders would be extremely timely now; **strongly encourages**, therefore, the parliamentary authorities, despite their busy schedule, to help facilitate the organization of this mission as soon as possible;

7. **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;

8. **Decides** to continue examining this case.
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),

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