

TURKEY

- **TUR-55:** Mehmet Sincar
- **TUR-COLL-02:** 57 parliamentarians



Inter-Parliamentary Union

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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),

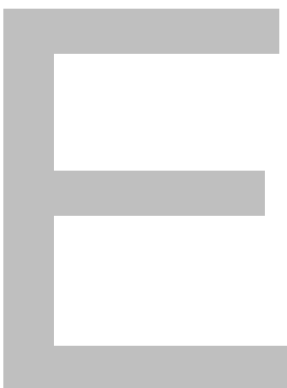
Referring to the full report on the mission conducted to Turkey by two members of the IPU Committee on the Human Rights Parliamentarians, Vice-President of the Committee, Ms. Ann Clwyd and Ms. Margaret Kiener Nellen, from 24 to 27 February 2014 (CL/195/11(b)-R.1),

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. Sınar 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
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Turkey

Decision adopted by the Committee on the Human Rights of Parliamentarians under Rule 12(4) of its Rules and Practices (29 May 2020)



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

TUR-69 - Gülser Yildirim (Ms.)
TUR-70 - Selma Irmak (Ms.)
TUR-71 - Faysal Sariyildiz
TUR-73 - Kemal Aktas
TUR-75 - Bedia Özgökçe Ertan (Ms.)
TUR-76 - Besime Konca (Ms.)
TUR-77 - Burcu Çelik Özkan (Ms.)
TUR-78 - Çağlar Demirel (Ms.)
TUR-79 - Dilek Öcalan (Ms.)
TUR-80 - Dilan Dirayet Taşdemir (Ms.)
TUR-81 - Feleknaş Uca (Ms.)
TUR-82 - Figen Yüksekdağ (Ms.)
TUR-83 - Filiz Kerestecioğlu (Ms.)
TUR-84 - Hüda Kaya (Ms.)
TUR-85 - Leyla Birlik (Ms.)
TUR-86 - Leyla Zana (Ms.)
TUR-87 - Meral Daniş Beştaş (Ms.)
TUR-88 - Mizgin Irgat (Ms.)
TUR-89 - Nursel 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 Yildirim
TUR-97 - Ali Atalan
TUR-98 - Alican Önlü
TUR-99 - Altan Tan

TUR-100 - Ayhan Bilgen
TUR-101 - Behçet Yildirim
TUR-102 - Berdan Öztürk
TUR-105 - Erol Dora
TUR-106 - Ertuğrul Kürkcü
TUR-107 - Ferhat Encü
TUR-108 - Hişyar Özsoy
TUR-109 - Idris Baluken
TUR-110 - Imam Taşçier
TUR-111 - Kadri Yildirim
TUR-112 - Lezgin Botan
TUR-113 - Mehmet Ali Aslan
TUR-114 - Mehmet Emin Adiyaman
TUR-115 - Nadir Yildirim
TUR-116 - Nihat Akdoğan
TUR-118 - Osman Baydemir
TUR-119 - Selahattin Demirtaş
TUR-120 - Sirri Süreyya Önder
TUR-121 - Ziya Pir
TUR-122 - Mithat Sancar
TUR-123 - Mahmut Toğrul
TUR-124 - Aycan Irmez (Ms.)
TUR-125 - Ayşe Acar Başaran (Ms.)
TUR-126 - Garo Paylan
TUR-128 - Aysel Tugluk (Ms.)
TUR-129 - Sebahat Tuncel (Ms.)
TUR-130 - Leyla Guven (Ms.)
TUR-131 - Ayşe Sürücü (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 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. Since 4 November 2016, 16 current and former parliamentarians have been detained.

Seven of them are currently still in prison, 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 opinion and 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 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.

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

Case TUR-COLL-02

Turkey: Parliament affiliated to the IPU

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

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

Submission of complaint: June 2016

Recent IPU decision: October 2019

IPU mission: June 2019

Recent Committee hearing: 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)
- Communication from the complainant: May 2020
- Communication addressed to the authorities: Letter to the President of the Turkish IPU Group (March 2020)
- Communications to the complainant: April and May 2020

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 unpredictable. 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; 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.

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.

Since the mission, most recently in January 2020, the Turkish authorities provided further extensive information on the legal status of criminal proceedings against current and former HDP parliamentarians. The complainant considers, however, that this information is often not complete and points out that several of the individuals concerned are in addition subject to other criminal actions, including the filing of a "summary of proceedings" (*fezleke*), which is a formal request by a prosecutor that briefly summarizes the alleged crime and the charges raised and requests parliament to lift immunity. However, even where parliament does not discuss – or rejects – the request for lifting immunity, the complainant points out that when a parliamentarian's mandate ends, along with his/her immunity, almost all of the "summary of proceedings" actions turn into legal investigations and then court cases. The complainant emphasizes that a "summary of proceedings" action is tantamount to an investigation suspended until the end of the parliamentary mandate, after which the individuals concerned have to respond to dozens of court cases for activities carried out and words spoken while in parliamentary office.

On 14 April 2020, the Turkish Parliament adopted Law No. 7242 amending Law No. 5275 on the Execution of Penal and Security Measures. The amendments reportedly include provisions aimed at reducing the prison population in general and, in response to COVID-19, a temporary release provision for convicts that are serving or have the right to serve time in a minimum-security institution and those under supervised release. Law No. 7242 amends the supervised freedom and parole provisions of Law No. 5275 by reducing the amount of time a convict must serve in a correctional institution before being considered for supervised freedom or parole. However, persons convicted of certain crimes, such as terrorism-related charges, are excluded from these amendments. In the belief that the amendments are discriminatory, a petition challenging their lawfulness is currently before the Constitutional Court.

B. Decision

Pursuant to Rule 12(4) of its Rules and Practices, the Committee on the Human Rights of Parliamentarians

1. *Thanks* the Turkish authorities for their cooperation and extensive reply; *is concerned*, however, that, according to the complainant, several of the individuals concerned are said to be subject to many other criminal actions, in particular investigations that – although suspended now – can be reactivated in the future; and *wishes* to receive the official views on this serious allegation along with specific information on any such legal procedures that may exist;

2. *Also wishes* to receive official information on the facts that support pending and past charges – primarily presented as terrorism-related offences – against current and former HDP parliamentarians; *notes with regret* in this regard that, although the Turkish authorities' recent reply includes abundant information on the legal status of the criminal actions against these individuals, it does not provide – despite previous requests – any concrete information on the facts justifying the charges;
3. *Reaffirms its view* that the information it has thus far been able to obtain over the years – 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; and *remains convinced* that this situation is largely the result – as spelt out in the report of the IPU mission to Turkey in June 2019 – of the systematic and sweeping 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;
4. *Remains convinced*, bearing in mind also the recommendations made in the 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;
5. *Remains concerned*, in light of the aforesaid considerations and in view of the COVID-19 pandemic – which makes people in prison and other confined places of detention more vulnerable to the disease – about the continued detention of seven current and former HDP parliamentarians, including the two former HDP co-chairs; *calls on* the authorities to give serious consideration to the possibility of releasing them when reviewing prisoner release; *also eagerly awaits* in this regard the ruling of the Constitutional Court on the petition challenging the amendments contained in Law No. 7242;
6. *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;
7. *Decides* to continue examining these cases.