



Inter-Parliamentary Union

For democracy. For everyone.

## Turkey

**Decision adopted by consensus by the IPU Governing Council at its 204<sup>th</sup> session (Doha, 10 April 2019) <sup>1</sup>**



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

TUR-69 - Gülser Yildirim (Ms.)  
TUR-70 - Selma Irmak (Ms.)  
TUR-71 - Faysal Sariyildiz  
TUR-72 - Ibrahim Ayhan  
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-103 - Dengir Mir Mehmet Firat  
TUR-104 - Erdal Ataş  
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-117 - Nimetullah Erdoğan  
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 Tuğluk (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<sup>2</sup>
- ✓ Torture, ill-treatment and other acts of violence<sup>3</sup>
- ✓ Abusive revocation or suspension of the parliamentary mandate<sup>4</sup>

#### 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. Hundreds of trial proceedings are ongoing against HDP parliamentarians, and former parliamentarians, throughout Turkey. Some of them also continue to face older charges in relation to the Kurdish Communities Union (KCK) first-instance trial that has been ongoing for eight years, while others face more recent charges. In these cases, their parliamentary immunity has allegedly not been lifted.

As of early April 2019, 10 former members of parliament continue to be held in detention under restrictive conditions applicable to terrorism suspects and convicts. According to the information provided by the complainant, Turkish courts have delivered around 10 new prison sentences against former and current members of parliament since the 139<sup>th</sup> IPU Assembly (Geneva, October 2018). The parliamentary authorities have stated that they were not able to confirm this number and have requested to be provided with additional information to help them to undertake verifications with the relevant authorities.

The complainant maintains its initial allegations that the charges against HDP members of parliament are groundless and violate their rights to freedom of expression, assembly and association. The complainant claims that the evidence adduced to support the charges against the members of parliament relates to public statements, rallies and other peaceful political activities carried out in furtherance of their parliamentary duties and their political party programme. Such activities include mediating between the Kurdistan Workers Party (PKK) and the Turkish Government as part of the peace process between 2013 and 2015, advocating publicly in favour of political autonomy, and criticizing the policies of President Erdoğan in relation to the current situation in south-eastern Turkey and at the border with Syria (including denouncing 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.

The most prominent cases concern the two former co-chairs of the HDP, Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ, who remain in detention. On 20 November 2018, the European Court of Human Rights ordered the immediate release of Mr. Demirtaş after finding violations of his fundamental rights. The Court found that most of the accusations brought against Mr. Demirtaş related directly to his

#### Case TUR-COLL-02

**Turkey:** Parliament affiliated to the IPU

**Victim(s):** 61 individuals (18 parliamentarians and 43 former members of parliament, all members of the opposition (34 men and 27 women)

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

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

**Recent IPU decision:** [October 2018](#)

**IPU mission:** [February 2014](#)

**Recent Committee hearing(s):** Hearing with the Turkish delegation and the complainant at the 140<sup>th</sup> IPU Assembly (April 2019)

#### Recent follow-up:

- Communication from the authorities: Letters from the President of the Turkish IPU Group (March 2019); observations of the authorities to the Committee case report (March, April 2019)
- Communication from the complainant: March 2019
- Communication addressed to the authorities: Letter to the President of the Turkish IPU Group (March 2019)
- Communication addressed to the complainant: March 2019

<sup>2</sup> Concerns only the members of parliament placed in detention, as listed in the case report (section on detention).

<sup>3</sup> Concerns only three male members of parliament (Mr. Adiyaman - TK/114; Mr. Behçet Yıldırım - TK/101; Mr. Mahmut Tođrul - TK/123) and three women members of parliament (Ms. Feleknaş Uca - TK/81, Ms. Besime Konca - TK/76 and Ms. Sibel Yigitalp - TK/92).

<sup>4</sup> Concerns 11 members of parliament (Ms. Selma İrmak - TK/70; Mr. Faysal Sariyıldız - TK/71; Mr. İbrahim Ayhan - TK/72; Ms. Besime Konca - TK/76; Ms. Figen Yüksekdağ - TK/82; Ms. Leyla Birlik - TK/85; Ms. Nursel Aydoğan - TK/89; Ms. Tuğba Hezer Öztürk - TK/93; Mr. Ahmet Yıldırım - TK/96; Mr. Ferhat Encü - TK/107; and Mr. Osman Baydemir - TK/118).

“expressive political activity” and that a proper examination could not be detached from the general political and social background to the facts of the case and from the sequence of events emerging from the case files. The Court found that, in performing their balancing exercise, the national courts (including the Constitutional Court) did not pay sufficient regard to the fact that he was a member of parliament, but also one of the leaders of the political opposition, whose performance of his parliamentary duties required a high level of protection. The Court concluded that the extensions of Mr. Demirtaş’ pretrial detention and his subsequent inability to take part in parliamentary activities “constitutes an unjustified interference with the free expression of the opinion of the people and with applicant’s right to be elected and to sit in Parliament” and that it had been “established beyond reasonable doubt that the extensions of the applicant’s detention, especially during two crucial campaigns, namely the referendum and the presidential election, pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society”. The Turkish authorities have not implemented the Court’s decision because it is not yet final, as it was appealed by both parties to the Grand Chamber of the Court.

Ms. Yüksekdağ was sentenced in a number of cases and continues to face multiple additional charges and proceedings. She was deprived of her HDP membership and banned from exercising any political activities pursuant to a court conviction. The IPU trial observer submitted her final report on the hearings she attended in Ms. Yüksekdağ’s trial from September 2017 until September 2018 (and one hearing in the case of Mr. Demirtaş in December 2017). Having reviewed a translation of the incriminated 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 prospect for Ms. Yüksekdağ – and Mr. Demirtaş - to receive a fair trial was remote and that the political nature of both prosecutions was evident. The observer recommended that the IPU stands in solidarity with the former members of parliament and remains informed by continuing to observe the proceedings as much as possible.

Twelve court decisions, including two Constitutional Court decisions, issued against HDP members were translated and reviewed closely by the Committee on the Human Rights of Parliamentarians. The latter found that they showed no legal consistency. Similar speeches and acts were interpreted completely differently by different courts, or even differently in the same decision by the same court. Similar lack of consistency was found with respect to the manner in which public speeches and statements made by the members of parliament were evaluated (when such evaluation took place). The case law of the European Court of Human Rights appears to have been disregarded 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. Harsher restrictions and punishment were applied 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. It is also the view of the Committee that the courts made their decisions on the basis of a presumption of guilt based on the assumption that the HDP, a political party authorized by the authorities of Turkey, and the PKK, an internationally recognized terrorist group, are one single organization.

The Turkish authorities firmly deny all the allegations made by the complainant. They have invoked the independence of the judiciary and the need to respond to security/terrorism threats and legislation adopted under the state of emergency to justify the legality of the measures taken. They have provided detailed information on the “provisional constitutional amendment” made by parliament in relation to parliamentary immunity in May 2016 to prosecute parliamentarians from all parties. They have asserted: that there is no “HDP witch-hunt” in Turkey; that women parliamentarians are not specifically targeted; that there is no Kurdish issue in Turkey and no current conflict in south-eastern Turkey; that Turkey is, however, facing serious terrorism threats and attacks at multiple levels involving the PKK and its “extensions”; that the HDP never publicly denounced the violent activities of the PKK; that its members, including members of parliament, made many statements in support of the PKK and their “extensions”; that they attended funerals of PKK suicide bombers and called for people to take to the streets, which 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 three cases and that, in other cases, domestic remedies have not yet been exhausted; that the independence of the judiciary and the rule of law in Turkey must be respected; and that the European Court of Human Rights has not made any final decision about these issues.

In her December 2018 letter, the President of the Turkish IPU Group confirmed that an IPU delegation was welcome to come to Turkey after the local elections scheduled on 31 March 2019 to meet with the judicial and executive authorities but that prison visits would not be possible. Discussions to support the

conduct of a joint mission of the IPU Executive Committee and the Committee on the Human Rights of Parliamentarians, led by the IPU President, have continued throughout the 140<sup>th</sup> IPU Assembly, and the Turkish authorities have asked to receive a detailed road map listing details of all the authorities and persons that the delegation wishes to meet and places that it wishes to visit after the Assembly.

## B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the President of the Turkish IPU Group for her cooperation and for meeting with the Committee on the Human Rights of Parliamentarians during the 140<sup>th</sup> IPU Assembly to discuss the cases and concerns at hand, and for the information, documentation and video materials provided on that occasion; *takes due note* that the Turkish authorities have made a commitment to submit detailed information at a later stage;
2. *Continues to believe* that a mission to Turkey would help the IPU and its Committee on the Human Rights of Parliamentarians gain a better understanding of the situation of the HDP parliamentarians and former parliamentarians, but also of the broader political, security and human rights situation, including in south-eastern Turkey; *still firmly believes* that it is important that the IPU delegation is allowed to meet with some of the former parliamentarians in prison in addition to the meetings with all relevant authorities and other stakeholders; *urges once more* the Turkish authorities to grant permission to the IPU to meet with some of the prisoners and *calls on* the parliamentary authorities to endorse this request when resubmitting it to the Minister of Justice; *continues to hope* that the mission will take place soon;
3. *Observes with deep regret* that the parties continue to hold opposite positions and views about the factual allegations as well as about the underlying issues of concern and their causes, particularly as regards the situation in south-eastern Turkey; *notes* that a sticking point in the discussions is that this situation is viewed by one side as a conflict bred by unjust, discriminatory and violent state policies against the Turkish population of Kurdish origin and its representatives (otherwise referred to as the “Kurdish issue”), and by the other side as a serious terrorism issue warranting strict repression to preserve national security; *is convinced* that the resumption of a constructive political dialogue between the Turkish Government and the HDP – but also more broadly between the majority coalition and all opposition parties – is critical to support significant progress in the cases at hand given their background; *points out* that it is crucial to create an enabling environment, with sufficient space allowed to express political dissent and criticism of government policies, in order to ensure the success of any political dialogue; also *continues to firmly believe* that legislative reform to bring anti-terrorism legislation into line with international human rights standards would constitute a positive and long-awaited step forward that could help resolve the cases at hand; *decides* to consider ways for the IPU to act as a mediator to facilitate and support the resumption of such political dialogue and to promote legislative reform;
4. *Decides* to close the four cases pursuant to section 25(a) of its 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) of Mr. Dengir Mir Mehmet, Mr. Erdal Ataş and Mr. Nimetullah Erdoğan, in light of the information recently provided by both parties that there are no longer any files or prosecutions pending against them following final acquittals, and of Mr. Ibrahim Ayhan, because he is deceased; *also decides* to declare admissible the new case of Ms. Ayşe Sürücü, and *requests* the Secretary General to submit the allegations to the Turkish authorities so that they can provide their observations; *further requests* the Committee to continue its factual verifications upon receipt of appropriate additional information from the parties, so that progress can be made towards closing cases when the Committee is able to conclude their satisfactory resolution;
5. *Notes however with deep concern* that the information received so far by the Committee, particularly court decisions, confirms to a large extent that HDP parliamentarians have been charged and convicted primarily for making critical public statements, issuing tweets, participating, organizing or calling for rallies and protests, and political activities in furtherance of their parliamentary duties and their 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 (including denouncing crimes committed by the Turkish security forces in that context); *also points out with alarm* that an automatic assumption appears to have been made that members of the HDP, a legally-authorized political party, are members and supporters of the PKK terrorist group, which amounts to a presumption of guilt; *recalls* its long-standing concerns and recommendations, particularly those reflected in the IPU 2014 mission report in relation to similar patterns of political repression in the past on the basis of the anti-terrorism legislation;

6. *Considers therefore*, based on the information it has obtained so far, that many of the statements made by the HDP parliamentarians and the acts that were incriminated as acts of terrorism were political statements and activities that fall squarely under the scope of the right to freedom of expression, freedom of peaceful assembly and freedom of association, and should have been protected as such by Turkey despite their critical content and occasional harsh tone; *acknowledges nevertheless* that each individual case may differ and that a careful and objective evaluation is required on a case-by-case approach on the basis of clearly established jurisprudence of the European Court of Human Rights; *reiterates* its prior requests to the Turkish authorities to share information on the specific facts and evidence adduced to support the charges and convictions against all HDP members before it so that the Committee is in a position to review the files and make further assessments as appropriate; *notes with satisfaction* that some of this information has been forthcoming during the 140<sup>th</sup> IPU Assembly and *hopes* to receive more in the near future;
7. *Thanks* the IPU trial observer for the report; *points out* that: the Turkish IPU Group and the complainant were provided with the report on 6 March 2019 and asked to submit official observations ahead of the IPU Assembly; the complainant submitted observations in writing and found that the report was “objective and captures well the arbitrary decisions and political motivations that shape the legal proceedings” and urged the Committee to continue trial observations; the Turkish delegation to the 140<sup>th</sup> IPU Assembly only presented oral observations when meeting with the Committee and stated that written observations would be forthcoming at a later stage; the Turkish delegation informed the Committee orally that it rejects significant parts of the trial observation report on the grounds that it includes partial value judgements and false factual information; *notes with regret* that the Turkish delegation declined to provide a short preliminary summary of its main observations during the 140<sup>th</sup> IPU Assembly, although it was invited to do so in order to have them initially included in the present report so as to reflect the views of the Turkish delegation until more detailed observations were provided; *therefore takes due consideration* of the wish of the Turkish delegation to delay the presentation of the report to the Governing Council but *considers* that the Turkish authorities were given sufficient notice and opportunities to share their views in a timely manner; *hopes* that the Committee will soon receive the detailed observations of the Turkish authorities and *wishes* to be kept informed in that regard;
8. *Expresses deep concern* at the findings of the trial observation report in light of all the available information; *urges* the Turkish authorities to grant unrestricted access to observers to all public trials in strict compliance with the Turkish Constitution and laws and *expects* the Turkish Parliament to ensure that foreign observers mandated by the IPU and by its Member Parliaments are granted systematic access in the future; *expresses deep concern* in this regard at the information received from the Danish Parliament that, out of nine trial observation missions it officially sent to Turkey, only two were granted access to the courtroom and that Danish parliamentarians were systematically denied access to all hearings related to the former HDP Co-Chairs, Mr. Demirtaş and Ms. Yüksekdağ, on various inconsistent and highly contestable grounds and practices; *notes* that this information lends further weight to the conclusions of the IPU trial observer, given their similarities; *is concerned* that the prospect of HDP members receiving a fair trial before independent courts may indeed be remote if all trial proceedings are conducted in such a way; *requests* the Committee to consider sending other trial observers to hearings in the future, and the IPU Secretariat to act as a facilitator to ensure the unrestricted access of any parliamentary delegation wishing to send trial observers to Turkey; *requests* such parliamentary delegations to keep it informed of the outcome of their missions;
9. *Renews its call* on all IPU Member Parliaments to take concrete actions in support of the urgent resolution of this case; and *hopes* to be able to rely on the assistance of all relevant regional and international organizations;

10. *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, and to pursue his efforts to organize an IPU mission to Turkey that meets all appropriate requirements from a human rights perspective;
11. *Requests* the Committee to continue examining this case and to report back to it in due course.