



Inter-Parliamentary Union

For democracy. For everyone.

## Turkey

TK69 - Gülser Yıldırım (Ms.)	TK98 - Alican Önlü
TK70 - Selma Irmak (Ms.)	TK99 - Altan Tan
TK71 - Faysal Sariyildiz	TK100 - Ayhan Bilgen
TK72 - Ibrahim Ayhan	TK101 - Behçet Yıldırım
TK73 - Kemal Aktas	TK102 - Berdan Öztürk
TK75 - Bedia Özgökçe Ertan (Ms.)	TK103 - Dengir Mir Mehmet Fırat
TK76 - Besime Konca (Ms.)	TK104 - Erdal Ataş
TK77 - Burcu Çelik Özkan (Ms.)	TK105 - Erol Dora
TK78 - Çağlar Demirel (Ms.)	TK106 - Ertuğrul Kürkcü
TK79 - Dilek Öcalan (Ms.)	TK107 - Ferhat Encü
TK80 - Dilan Dirayet Taşdemir (Ms.)	TK108 - Hişyar Özsoy
TK81 - Feleknas Uca (Ms.)	TK109 - Idris Baluken
TK82 - Figen Yüksekdağ (Ms.)	TK110 - Imam Taşçier
TK83 - Filiz Kerestecioğlu (Ms.)	TK111 - Kadri Yıldırım
TK84 - Hüda Kaya (Ms.)	TK112 - Lezgin Botan
TK85 - Leyla Birlik (Ms.)	TK113 - Mehmet Ali Aslan
TK86 - Leyla Zana (Ms.)	TK114 - Mehmet Emin Adiyaman
TK87 - Meral Daniş Beştaş (Ms.)	TK115 - Nadir Yıldırım
TK88 - Mizgin Irgat (Ms.)	TK116 - Nihat Akdoğan
TK89 - Nursel Aydoğan (Ms.)	TK117 - Nimetullah Erdoğan
TK90 - Pervin Buldan (Ms.)	TK118 - Osman Baydemir
TK91 - Saadet Becerikli (Ms.)	TK119 - Selahattin Demirtaş
TK92 - Sibel Yiğitalp (Ms.)	TK120 - Sirri Süreyya Önder
TK93 - Tuğba Hezer Öztürk (Ms.)	TK121 - Ziya Pir
TK94 - Abdullah Zeydan	TK122 - Mithat Sancar
TK95 - Adem Geveri	TK123 - Mahmut Toğrul
TK96 - Ahmet Yıldırım	TK124 - Aycan Irmez (Ms.)
TK97 - Ali Atalan	TK125 - Ayşe Acar Başaran (Ms.)

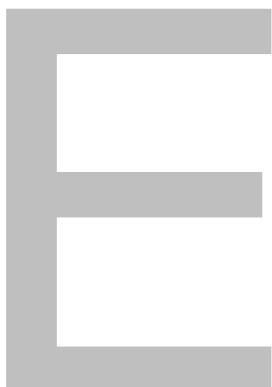
***Decision adopted unanimously by the IPU Governing Council at its 201<sup>st</sup> session (St. Petersburg, 18 October 2017)***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the cases of the above-mentioned parliamentarians and to the decision it adopted at its 199<sup>th</sup> session (October 2016), as well as the decision adopted by the Committee on the Human Rights of Parliamentarians at its 152<sup>nd</sup> session (January 2017),

*Referring* to the letters of 28 September, 29 March and 25 January 2017 from the President of the Turkish IPU Group, and to the information and new allegations submitted by the complainant,

*Referring* to the report on the mission conducted to Turkey by the Committee in February 2014 (CL/195/11(b)-R.1),



*Recalling* that the case concerns 56 parliamentarians and former parliamentarians of the total of 58 parliamentarians in the People's Democratic Party (HDP); that they face over 500 terrorism and criminal charges after the Constitution was amended to authorize a wholesale lifting of parliamentary immunity in May 2016,

*Considering* that the following information is not disputed by the parties:

- On 20 May 2016, the Grand National Assembly of Turkey (GNAT) amended the Turkish Constitution by voting an immunity bill to strip over a quarter of the country's members of parliament of their immunity; pursuant to the constitutional amendment adopted, the requests for the lifting of parliamentary immunity that were pending at that time were not processed under the ordinary constitutional procedure; instead, they were sent back to the executive for immediate implementation, without prior review and approval by parliament or hearings of the members of parliament concerned; the Constitutional Court rejected, on procedural grounds, the petitions of 70 members of parliament seeking annulment of the amendment; fifty HDP parliamentarians subsequently lodged applications to the European Court of Human Rights;
- Dozens of trial proceedings are ongoing against HDP members of parliament in various courts scattered all over Turkey,

*Considering* that, according to the complainant, the current overall situation of the 56 members is as follows:

- Turkish courts have delivered at least 17 convictions against 12 HDP MPs in recent months;
- Nine members of parliament continued to be held in detention by early October 2017;
- The other MPs are free but face restrictions of their freedom of movement, as they have been placed under judicial control and banned from travelling abroad (three MPs have sought refuge abroad and will be detained if they return to Turkey). This, together with the multitude of trials ongoing against them throughout Turkey, has restricted their ability to devote themselves meaningfully to the exercise of their parliamentary mandate;
- Five MPs have had their mandates revoked (including four women MPs): two for their prolonged absence from parliament and three following final convictions. These convictions are at least partly related to older charges not covered by the blanket immunity constitutional amendment and for which the concerned MPs' parliamentary immunity was therefore not lifted, according to the complainant. The complainant fears that two additional MPs will have their mandate revoked soon given new recent convictions and the continuing trial proceedings. Two of the MPs have allegedly been further deprived of their citizenship;
- The Vice Chair of the HDP, Ms. Figen Yüksekdağ, has also been deprived of her party membership and executive position and banned by court decision from exercising any political activities, according to the complainant;
- Some members of parliament have been physically and verbally abused, including three female members of parliament, Ms. Feleknaş Uca - whose son was also reportedly tortured - Ms. Besime Konca, Women's Assembly spokesperson, and Ms. Sibel Yiğitalp; they were physically assaulted by the police during a protest in Diyarbakir in October 2016; Ms. Uca's arm was allegedly badly injured by the police and she had to be hospitalized, according to the complainant; Ms. Konca was also physically harassed during her detention on 12 December 2016; physical attacks (punches in the face) also allegedly took place in parliament during the budget debate in early December 2016; Mr. Mehmet Adiyaman and Mr. Behçet Yildirim were subsequently hospitalized; further, female HDP members of parliament were exposed to sexist swear words from AKP members of parliament during the same debate, according to the complainant,

*Considering* that there are divergences in the information and views provided by the authorities and by the complainant on the following issues of concern:

- **Parliamentary immunity**

- The complainant alleges that the Constitution has been violated by the procedure used, as relevant constitutional provisions on parliamentary immunity were suspended and disregarded; it observes that the normal procedure pursuant to Article 83 of the Turkish Constitution should have been a case-by-case review of the charges and evidence brought against each member of parliament, including the conduct of a hearing with each incriminated member of parliament to hear his or her version of the facts and defence arguments before the relevant GNAT commission and before the plenary; the complainant alleges that the GNAT has failed to protect the fundamental rights of its members;
- The complainant alleges that the wholesale lifting of the immunity of most HDP parliamentarians was “*an administrative coup to exclude the Kurds and other marginalized peoples represented by the HDP from the Parliament of Turkey*”; it claims that the overwhelming majority of members of parliament affected belonged to the two main opposition parties (CHP and HDP) and that this measure was part of a broader effort to silence and sideline the most vocal critics of President Erdoğan’s agenda and to ensure full executive control over a subservient parliament;
- The parliamentary authorities have consistently maintained that the Constitution was strictly adhered to when adopting the amendment; they point out that amending the Constitution is a right explicitly granted to the GNAT by the Turkish Constitution and that “*the latest amendment purely reflect[ed] the discretion of the legislative authority*”; they note that the critical importance and sanctity of the principle of parliamentary immunity have been fully acknowledged; again according to the authorities, the opposition parties were not specifically targeted; at the time of adoption of the amendment, many judicial files against members of parliament from all political parties, including the AKP, were waiting to be processed; the authorities indicate that the lifting of immunity involved 518 files relating to 55 members of parliament from the HDP, 215 files relating to 59 members of parliament from the Republican’s People’s Party (CHP), 23 files relating to 10 members of parliament from the Nationalist Movement Party and 50 files relating to 29 members of parliament from the Justice and Development Party (AKP) – a total of 733 files for 114 opposition members of parliament and 73 files for 39 members of parliament from the majority; different numbers have been provided in the various communications received both from the authorities and the complainant,

- **Arrests, pre-trial detention and other restrictions imposed on HDP parliamentarians; allegations of arbitrary detention, solitary confinement and obstruction of prison visits**

- According to the authorities, the courts are required to ensure compulsory attendance at interrogations and to prevent obstruction of justice, particularly in terrorism cases; arrest warrants were issued only for those members of parliament who had repeatedly refused to respond to calls for questioning (an affirmation contested by the complainant); pre-trial detention was ordered on the grounds that “*calling for violence and creating propaganda in favour of terrorist organizations are not considered within the scope of freedom of expression*”, that “*detention orders are appropriate, necessary and proportionate to the aim pursued with a view to protection of national security, territorial integrity and public safety*”, and in view of the nature of the offences and the evidence available;
- According to the complainant, the courts’ practices decisions to arrest parliamentarians and maintain them in pre-trial decision have been arbitrary and inconsistent. The complainant further claims that there are no factual and legal grounds to justify the detention of some MPs and the release of others. Many MPs were allegedly not summoned to provide their testimony but arrested directly without being given a chance to appear voluntarily. They never refused to appear for questioning according to the complainant. On the other hand, other MPs were summoned, refused to appear for questioning and were arrested and forcefully brought before court. According to the complainant, some of them were nevertheless granted release, such as Mr. Ziya Pir. The complainant further alleges that the Turkish Criminal Code provides that, if a person does not answer a prosecutor’s summons, the police may take them to the prosecutor’s office by force, for the sole purpose of ensuring that they give testimony. Pre-trial detention orders are based on specific criteria, of which failure to respond to a summons is not one,

according to the complainant. The complainant has pointed out that none of the pre-trial detention orders issued referred to the fact that the MPs had not answered a court summons, or to legal provisions that might justify pre-trial detention on such grounds. Summary translations of the detention orders provided by the complainant have corroborated this allegation;

- The complainant alleges that most of the detained members of parliament have been held in solitary confinement in remote high-security prisons throughout Turkey, far away from their homes and from the courts where they are being tried; they have allegedly been denied prison visits; no foreign delegation has been granted access to them to date, according to the complainant; three of them, including Mr. Demirtaş and Mr. Zeydan were transferred to cells with co-detainees in January 2017; in response to these allegations, the authorities have indicated that the primary criterion when placing prisoners in penitentiary institutions is “*existing physical conditions*”; they state that prison visits can only be authorized by the Ministry of Justice pursuant to the legislation in force and that no one has the right to “directly” undertake visits; no information has been provided on the detention conditions of the other parliamentarians,
- **Judicial proceedings - alleged violations of the right to a fair trial and to freedom of expression, assembly and association**
  - The complainant has claimed that the arrests of the members of parliament were arbitrary and that the proceedings were politically motivated to prevent them from continuing their work in parliament and politics, including in the lead-up to the April 2017 constitutional referendum;
  - The complainant alleges that fair-trial and due process guarantees, starting with the presumption of innocence, have been disregarded; the judicial process is not being administered in a fair, independent and impartial manner according to the complainant; the detained members of parliament have faced restrictions on their rights to legal counsel which have seriously undermined their ability to prepare a defence, including surveillance of their legal counsels’ visits and communications, seizure and censorship of documents and intimidation against their counsels; the Government has allegedly banned the associations of lawyers representing most of the HDP parliamentarians and has intimidated, detained and pressed charges against many HDP lawyers, accusing them of complicity and membership of a terrorism organization for the mere fact that they have agreed to defend the parliamentarians; the Turkish authorities have cited the need to respond to security/terrorism threats and invoked legislation adopted under the state of emergency such as Decree 675 No. of 29 October 2016 and Decree No. 667 of 23 July 2016 to justify the legality of the measures taken;
  - The complainant further alleges that the charges against the 56 HDP members of parliament are baseless and infringe their rights to freedom of expression, assembly and association; no serious and credible evidence has been adduced to support the hundreds of criminal and terrorism charges brought against them, according to the complainant; the complainant claims that the evidence relates to public statements, rallies and other peaceful political activities that they carried out 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 the crimes committed by the Turkish security forces in that context); the complainant claims that such statements, rallies and activities are not constitutive of any offence and fall under the clear scope and protection of the fundamental rights of the members of parliament; it therefore alleges that proper standards of due process have been disregarded at the investigation stage; it also does not believe that the judicial process is being administered in a fair, independent and impartial manner at the trial stage, given the political dimension of the cases and the politicization of the Turkish judiciary; in the trials that have already started or been completed, the complainants have alleged restrictions and violations of the right of defence;
  - The parliamentary authorities have consistently reaffirmed that the HDP parliamentarians were accused of siding with the PKK terrorist organization because of their remarks and

action; they have observed that freedom of expression has its limits, as set out in relevant international conventions; they point out that article 7 of the anti-terrorism law provides that “*expressions which justify, praise or promote the use of methods by terrorist organizations involving coercion, violence or threats*” are punishable; the authorities affirm that the parliamentarians have justified and promoted the violent acts of the PKK terrorist organization; they acknowledge that the judicial authorities have yet to deliver final decisions on most of the charges levelled against the members of parliament and emphasize that all appropriate judicial remedies exist under domestic law; a series of court convictions have been delivered in 2017 but no detailed information has been provided by the authorities on the evidence relied upon by the courts to reach their verdicts or the manner in which respect for freedom of expression was taken into account by the courts,

Considering that, in its opinion of 14 October 2016, the European Commission for Democracy through Law (Venice Commission) called for the restoration of the parliamentary inviolability of all 139 members of parliament, as an essential guarantee of the functioning of parliament in Turkey, on the basis of the following conclusions:

- The procedure followed was a misuse of the constitutional amendment procedure because it concerned 139 identified individuals and, in substance, constituted a sum of decisions on the lifting of immunity, whereas the decisions should have been taken individually and subject to the specific guarantees of the suspended Article 83 of the Constitution; the National Assembly, instead of seeking a milder solution, pursued the most radical measure of complete removal of immunity for the 139 members of parliament and deprived them of an appeal to the Constitutional Court, in violation of the principle of proportionality;
- The situation in the Turkish judiciary made it the worst possible moment to abolish inviolability, and most of the files concerned related to freedom of expression; there were serious doubts about the independence and impartiality of the Turkish judiciary; the Commission was informed (but was unable to confirm) that a considerable number of the files against the 139 members of parliament were prepared by prosecutors who had been imprisoned and/or dismissed after the failed coup of 2016;
- Moreover, “[F]reedom of expression of members of parliament is an essential part of democracy. Their freedom of speech has to be a wide one and should be protected also when they speak outside parliament. The non-violent pursuit of non-violent political goals such as regional autonomy cannot be the subject of criminal prosecution. Expression that annoys (speech directed against the President, public officials, the Nation and the Republic, etc.) must be tolerated in general but especially when it is uttered by members of parliament. Restrictions of the freedom of expression have to be narrowly construed. Only speech that calls for violence or directly supports the perpetrators of violence can lead to criminal prosecution. The case law of the European Court of Human Rights shows that Turkey has a problem with safeguarding freedom of expression, not least with respect to cases considered as propaganda for terrorism. This is partly due to the fact that [...] the scope of the Criminal Code is too wide”,

Recalling the following conclusions and recommendations reached by the IPU Governing Council after the mission conducted to Turkey in 2014 in relation to cases raising similar concerns of freedom of expression:

- Peaceful and legal political activities of parliamentarians have been construed as evidence of criminal and terrorist acts by the prosecution and the courts on repeated occasions in the past, particularly in relation to the situation in south-eastern Turkey; the protection of freedom of expression in Turkey has been a long-standing issue of concern in prior cases brought before the Committee, which has repeatedly called on the Turkish authorities since 1992 to take action to enhance respect for this fundamental right;
- Legislative reforms undertaken have not addressed the long-standing concerns – and calls for reform – of international and regional human rights bodies regarding the use of broad anti-terrorism and criminal legislative provisions (particularly the offence of “membership of a criminal organization”) to criminalize conduct that is protected under international human rights law;

- The Turkish legal framework and judicial practice have continued largely to fail to distinguish between peaceful protests and dissenting opinions, on the one hand, and violent activities pursuant to the same goals on the other,

*Considering* that, on 29 March 2017, the Turkish authorities rejected the Committee's request to conduct a mission to Turkey and to visit the detained parliamentarians on the grounds that it "could negatively affect the judicial process"; in a letter of 28 September 2017, the President of the Turkish IPU Group shared some information on the status of ongoing proceedings against the two co-chairs of the HDP, Mr. Demirtaş and Ms. Yüksedag, and stated that he had no additional comments to share; detailed information on the specific facts and evidence adduced to support the charges against the HDP parliamentarians has not been provided despite repeated requests to that end; the Turkish IPU Group declined the Committee's invitation to a hearing to discuss the concerns at hand during the 137<sup>th</sup> IPU Assembly,

*Further considering* that the Committee on the Human Rights of Parliamentarians mandated an independent trial observer to attend the hearing of Ms. Figen Yüksekdağ on 18 September 2017, and that:

- In these latest proceedings against her, which started on 4 July 2017, Ms. Yüksekdağ faces 83 years of jail on accusations of "managing a terrorist organisation", "making terrorist propaganda", "inciting violence" and "violating the law on demonstrations and gatherings";
- The facts and evidence supporting the accusations have not yet been examined by the court; they relate to (i) speeches Ms. Yüksedag gave on different occasions, (ii) a tweet from the HDP's Executive Board (of which Ms. Yüksedag was a member) calling on people to protest against the 2014 siege of Kobane by ISIS and the inaction of the Turkish Government, and denouncing excessive use of force by the police against protesters that led to many deaths, (iii) Ms. Yüksedag's participation and activities in the Democratic Society Congress - a legally recognized umbrella organisation of about 700 NGOs and political parties, including the HDP – which played a major role during the peace process but is now considered a criminal organization, being part of the PKK since the 2015 suspension of the peace process;
- Ms Yüksedag was not present at the hearing, in protest at the fact that a small court room in the precincts of Sincan prison complex had been chosen as the venue rather than an ordinary courtroom open to the public; she further objected to the fact that international and domestic observers were barred from entering the courtroom, with the sole exception of the IPU observer. She considered this a violation of her right to a public hearing; her defence lawyers also raised concerns about the lack of equality of arms and of a fair trial; the presiding judge systematically followed the prosecutor's opinion and rejected all petitions lodged by defence lawyers during the 18 September hearing; the court decided to continue hearing the case in the same premises and to maintain Ms. Yüksedag in detention; it further decided to bring her by force to the next hearing, which was set for 6 December 2017;
- A full trial observation report will be submitted to the Committee at a later stage and shared with the Turkish authorities for their comments and observations,

*Considering* that, on 25 September 2017, the IPU lodged a further submission with the European Court of Human Rights as a third-party intervener in relation to the case; the aim of the submission was to inform the Court of the work and decisions of the IPU Committee on the Human Rights of Parliamentarians,

*Bearing in mind* Turkey's international obligations to respect, protect and promote fundamental human rights, particularly as a Party to the International Covenant on Civil and Political Rights (ICCPR) and to the European Convention on Human Rights (ECHR),

*Considering* that, since the failed coup of 15 July 2016, the Turkish Government has officially invoked derogations related to the state of emergency to its obligations under articles 2/3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27 of the ICCPR and similar derogations from the ECHR,

Further considering that a group of United Nations human rights special rapporteurs issued a public statement on 19 August 2016 noting that “*the invocation of Article 4 [of the ICCPR] is lawful only if there is a threat to the life of the nation, a condition that arguably is not met in this case*”. The experts underscored that “*one cannot avoid, even in times of emergency, obligations to protect the right to life, prohibit torture, adhere to fundamental elements of due process and non-discrimination, and protect everyone’s right to belief and opinion*” and that “*even where derogation is permitted, the Government has a legal obligation to limit such measures to those that are strictly required by the needs of the situation*”; they have urged the Turkish Government to uphold the rule of law in times of crisis, voicing their concern about the use of emergency measures to target dissent and criticism and warning that derogation measures should not be used in a way that would push the country deeper into crisis,

Taking into account the letter of 22 September 2017 from the national delegations of the parliaments of Denmark, Finland, Iceland, Norway and Sweden, expressing their deepest concern at the violations of the human rights of the Turkish parliamentarians and encouraging the Committee on the Human Rights of Parliamentarians to continue its efforts to support and defend them,

1. *Thanks* the Turkish IPU Group for the information provided and *notes with interest* that the trial observer mandated by the IPU was the only foreign observer allowed to attend the hearing of Ms. Yüksekdağ on 18 September 2017; *expresses the wish* that the trial observation continue at the next hearing on 6 December 2017 and *awaits* the completion of the observer’s mandate to receive a final report on the hearings;
2. *Notes with consternation*, however, that the authorities have not authorized the Committee to conduct its mission to Turkey and *is appalled* at the persisting allegations of solitary confinement of the detained MPs and the fact that no foreign delegation appears to have been allowed to visit them in detention;
3. *Remains convinced* that it is essential for the Committee mission to take place and *urges* the parliamentary authorities to grant it access; *requests* therefore the Secretary General to continue exploring with the Turkish authorities the possibility of sending a mission to Turkey; also *renews its call on* the authorities to share information on the current conditions of detention of the detained MPs and to grant immediate access to them to the Committee mission;
4. *Remains deeply concerned*, in light of the verdicts delivered in recent months, that the peaceful public statements and legal political activities of members of parliament that fall within the scope of their rights to freedom of expression, assembly and association may have been regarded as evidence of criminal and terrorist acts committed in violation of Turkey’s international human rights obligations;
5. *Recalls* its long-standing concerns over freedom of expression and association related to anti-terrorist legislation and the offence of membership of a criminal organization and *reiterates* its prior recommendations to the Turkish authorities to urgently address these concerns in an appropriate manner; *urges* the Turkish authorities to share the information requested on the specific facts and evidence adduced to support the charges and convictions against the concerned parliamentarians, including relevant excerpts of all court decisions, *also wishes* to be kept informed of new developments in the proceedings, particularly when verdicts are delivered;
6. *Cautions* that recent developments and the lack of progress towards resolution of the case seem to lend significant weight to fears that the ongoing proceedings may be aimed at depriving the People’s Democratic Party (HDP) of effective representation in parliament, at weakening the opposition parties in parliament and in the broader political arena, and therefore at silencing the populations they represent; *reaffirms its concerns* that the limited possibility of parliamentary representation for the populations affected may contribute to further deterioration of the political and security situation prevailing in south-eastern Turkey, as well as weaken the independence of the institution of parliament as a whole;

7. *Notes with particular concern* that a large number of women parliamentarians are affected by the current situation, as they represent 50 per cent of the concerned HDP parliamentarians, that half of the HDP parliamentarians who have been detained, and four out of the five MPs whose parliamentary mandates have been revoked, are women; *laments* that this may result in disproportionately affecting women's representation in the Grand National Assembly of Turkey and *further notes with concern* that the authorities have provided no information on the alleged incidents of physical and verbal assaults committed against at least three women parliamentarians;
8. *Sincerely thanks* the Nordic parliaments for their joint action calling for respect of the fundamental rights of the Turkish parliamentarians concerned and renews its call to all IPU members to translate the principle of parliamentary solidarity into concrete actions in support of the urgent resolution of this case;
9. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainant and any third party likely to be in a position to supply relevant information and to proceed with all necessary arrangements to organize the requested mission by a Committee delegation and any future trial observation missions;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.