



Inter-Parliamentary Union
For democracy. For everyone.

Turkey

TK/41 - Hatip Dicle
TK/67 - Mustafa Balbay
TK/68 - Mehmet Haberal
TK/69 - Gülser Yildirim (Ms.)
TK/70 - Selma Irmak (Ms.)
TK/71 - Faysal Sariyildiz
TK/72 - Ibrahim Ayhan
TK/73 - Kemal Aktas
TK/74 - Engin Alan

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 149th session (Geneva, 15-25 January 2016)

The Committee,

Referring to the cases of the above-mentioned parliamentarians and to the decision adopted by the Governing Council at its 195th session (October 2014),

Referring also to the information provided by the parliamentary authorities and the Ministry of Justice on 15 January 2016, as well as updated information shared by the complainants and other sources of information,

Further referring to the report on the mission conducted to Turkey in February 2014 (CL/195/11(b)-R.1),

Recalling the following information on file:

- The nine parliamentarians concerned were all elected in June 2011 while in prison and were 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”;
- The parliamentarians concerned have all 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; following their release, they were able to exercise their parliamentary mandate until the end of their term in 2015, with the exception of Mr. Dicle, who lost his parliamentary status when his mandate was invalidated;
- The Constitutional Court ruling of 18 June 2014 concluded that fair-trial violations occurred in the Sledgehammer case and paved the way for a retrial of Mr. Alan and other defendants in the case; in the Ergenekon case, an appeal had been lodged against the first-instance verdict and the appeal trial was pending; the KCK first-instance trial had been suspended following a complaint to the Constitutional Court,

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Recalling the following conclusions of the mission it conducted to Turkey,

- 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, despite progress made in legislative reforms; the Turkish legal framework and judicial practice continue largely to 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, 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 concluded that the judicial process under which the parliamentarians concerned had been, and continued to be, tried was 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,

Further recalling that the parliamentary authorities have not made any general objections to the findings of the delegation and that they have pointed out that significant legislative reform has taken place in recent years in Turkey in an attempt to bring legislation in line with European standards; several amendments were made by successive judicial and democratization reform packages, the most recent of which were completed in December 2014,

Considering that the authorities and the complainants have confirmed the following recent developments:

- Following the 2015 elections, Mr. Balbay, Ms. Irmak, Mr. Sariyildiz, Ms. Yildirim, Mr. Aktas and Mr. Ayhan were re-elected and are currently still members of parliament; Mr. Alan, Mr. Haberal and Mr. Dicle did not run again;
- The retrial in the Sledgehammer/Balyoz case was completed in March 2015 and all the accused, including Mr. Alan, were subsequently acquitted; in December 2015, Mr. Alan was reportedly granted a significant amount of compensation;
- The appeal trial in the Ergenekon trial took place in October 2015, with 14 hearings held throughout the month; Mr. Haberal and Mr. Balay were able to present their defence; the court is expected to deliver its decision on 21 April 2016;
- The first-instance trial in the KCK case is still ongoing to date; the Constitutional Court has not yet delivered a ruling on a petition lodged by the defendants claiming that the transfer of the case to the 3rd Heavy Penal Court in Istanbul following the abolishment of the Specially Authorized Courts was unconstitutional;
- No further constitutional or legislative reforms have taken place in 2015 to strengthen the protection of members of parliaments or freedom of expression,

Considering further, as regards Mr. Dicle, that the European Court of Human Rights (ECHR) ruled against Turkey in a case related to the rejection of his candidacy in the 2007 legislative elections, as had happened in 2011; it concluded that there had been violations of the right to a fair trial, particularly concerning the presumption of innocence and the right to stand in elections; Mr. Dicle had been prevented from standing in elections following a criminal conviction of 15 years'

imprisonment for membership in an illegal organization; the ECHR had previously found violations of a right to a fair trial in those proceedings, which were subsequently reopened and were still ongoing at the time of the elections,

1. *Thanks* the Turkish authorities for the information provided;
2. *Expresses its satisfaction* that the retrial proceedings have been completed swiftly; *notes with interest* that the Court concluded that there was no concrete and substantive proof against Mr. Alan, who was subsequently acquitted and awarded significant compensation; *highly values* the efforts undertaken by the Turkish judicial authorities to bring this case to a satisfactory settlement; and *decides* to close the case of Mr. Alan;
3. *Trusts* that justice will also be rendered promptly and fairly in the remaining cases; and *wishes to be kept informed* of new developments, particularly as regards the rulings to be delivered in the coming months on the Ergenekon appeal case and the KCK constitutional case, as well as progress in the KCK first-instance proceedings related to the parliamentarians concerned;
4. *Reiterates its regret* that all the parliamentarians concerned spent over half of their parliamentary term and an average of four years in detention; and *urges* the Turkish authorities to adopt appropriate constitutional and legislative amendments to implement the rulings of the Constitutional Court fully as regards the pretrial detention of parliamentarians, so as to avoid the reoccurrence of similar situations in the future;
5. *Remains 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 *renews its call on* the authorities to pursue the legislative reform efforts undertaken and urgently to address concerns over freedom of expression and association related to anti-terrorist legislation and the offence of membership of a criminal organization; *wishes* to be kept informed about the progress made on these issues;
6. *Concludes* that Mr. Dicle was convicted in violation of his right to freedom of expression and *considers* that, as a consequence, his parliamentary mandate was arbitrarily invalidated; *deeply regrets* that the case could not be satisfactorily resolved and *decides* to close the case, as Mr. Dicle has not been a member of parliament since 2011 and that the complainant has not provided updated information on his situation, in spite of repeated requests to that end;
7. *Trusts* that the parliamentary authorities will continue to 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 that remain under examination;
8. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
9. *Decides* to continue examining the cases, with the exception of the cases of Mr. Alan and Mr. Dicle, which are now closed.