



Inter-Parliamentary Union  
For democracy. For everyone.

## Turkey

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

***Decision adopted by the Committee on the Human Rights of Parliamentarians at its 152<sup>nd</sup> session (Geneva, 23 January to 3 February 2017)***

The Committee,

*Referring* to the cases of the above-mentioned five parliamentarians and two former parliamentarians and to the decision it adopted at its 149<sup>th</sup> session (January 2016),

*Referring* to the information provided by the complainants in January 2017,

*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 seven parliamentarians and former 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 complex cases known as the “Ergenekon case” and the “KCK case”;
- With the exception of Mr. Haberal, who was released in October 2013 for time served, all the parliamentarians concerned were granted pretrial release in December 2013 and January 2014, following ground-breaking 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;
- In the Ergenekon case, an appeal trial took place in October 2015, with 14 hearings held throughout the month; Mr. Haberal and Mr. Balbay were able to present their defence;
- The KCK first-instance trial was briefly suspended following a complaint to the Constitutional Court but resumed; the Constitutional Court had not yet delivered a ruling on a petition lodged by the defendants claiming that the transfer of the case to the 3<sup>rd</sup> Heavy Penal Court in Istanbul following the abolishment of the Specially Authorized Courts was unconstitutional;
- Following the 2015 elections, the parliamentarians concerned have remained in parliament, with the exception of Mr. Haberal and Mr. Aktas;

E

- No further constitutional or legislative reforms have taken place to strengthen the protection of members of parliament or freedom of expression,

*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 has been repeatedly calling on the Turkish authorities since 1992 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; despite long-standing concerns of international and regional human rights bodies – and calls for reform – 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 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,

- **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,

*Considering* the following new information provided by the complainants:

- In the Ergenekon case, Mr. Haberal and Mr. Balbay saw their convictions overturned by the appeals court on 21 April 2016; this ended the Ergenekon trial to the satisfaction of the members of parliament concerned;
- The KCK first-instance proceedings are still ongoing after eight years; the five parliamentarians of Kurdish origin have joined the HDP party, which is the successor of the former BDP; in 2016, their immunity was lifted and additional charges were brought against them and 50 other parliamentarians of the HDP in a separate case brought before the Committee; five other HDP members of parliament who were elected during the last elections (and whose cases are before the Committee as part of this new case) are also being prosecuted in the context of the KCK case,

1. *Thanks* the Turkish authorities for the information provided;
2. *Expresses its satisfaction* that the appeal court provided appropriate redress to Mr. Haberal and Mr. Balbay, and *decides* to close their case following this satisfactory settlement, in line with article 25 of its Procedure for the examination and treatment of complaints;
3. *Reiterates its regret* that Mr. Haberal and Mr. Balbay spent over half of their parliamentary term and an average of four years in detention for being considered terrorists until their name was eventually cleared in appeals; *cannot but consider* that the presumption of innocence was not respected and that, as a result, the people who elected them were deprived of representation in parliament;

4. *Urges once again* 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; *wishes to know* whether any amendment to that end has been considered as part of the ongoing constitutional reform;
5. *Is troubled* that, after eight years, the first instance KCK trial has not yet been concluded and that no action appears to have been taken by the relevant authorities to remedy the serious concerns that have been repeatedly expressed and provide appropriate redress to the members of parliament concerned; *wishes to know* whether the Constitutional Court delivered its decision on the constitutionality of the transfer of the case from the specially authorized courts to the 3<sup>rd</sup> Heavy Penal Court of Istanbul;
6. *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 – all the more so in light of the additional charges recently brought against the members of parliament concerned, involving a total of 55 HDP parliamentarians; *decides* to continue examining the case and to merge it with the case concerning the 55 HDP parliamentarians, given the similarity of the concerns alleged by the complainants;
7. *Renews its call on* the authorities to urgently 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;
8. *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;
9. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainants and any third parties likely to be in a position to supply relevant information.