DGI - Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR
F-67075 Strasbourg Cedex France
E-mail: dgI-execution@coe.int

17 January 2025

Rule 9.2 submission to the Committee of Ministers by the Turkey Human Rights Litigation Support Project, and Human Rights Watch on the measures required for the implementation of the *Selahattin Demirtaş (no. 2) v Turkey* (Application no. 14305/17) group of cases[1]

I. INTRODUCTION

1. The implementation of the European Court of Human Rights ("the Court" or "the ECtHR") *Selahattin Demirtaş (no. 2) v Turkey* [GC] (Application no. 14305/17, 22 December 2020) and *Yüksekdağ Şenoğlu and others v Turkey* (Application no. 14332/17, 8 November 2022, final on 3 April 2023) judgments are supervised by the Committee of Ministers ("the Committee") within the same group of cases. This communication, submitted by the Turkey Human Rights Litigation Support Project, and Human Rights Watch ("the NGOs") pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments, provides updates on developments relevant to the state of implementation of individual and general measures required by these two judgments. It offers recommendations to the Committee, building on previous submissions jointly made by the NGOs, the International Commission of Jurists, and the International Federation for Human Rights.[2]
2. The two cases concern the detention of and criminal proceedings against 14 Members of Parliament ("MPs") belonging to the Peoples' Democratic Party ("the HDP", a pro-Kurdish and minority rights opposition party), including its co-leaders Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu. The applicants were charged with terrorism-related offences on account of their political speeches and activities, following the targeted lifting of their parliamentary immunity through a constitutional amendment adopted on 20 May 2016.
3. The ECtHR found that the criminal proceedings against the applicants and their detention violated their right to freedom of expression under Article 10 of the European Convention on Human Rights ("the ECHR" or "the Convention"). It found that domestic courts failed to give specific facts or information giving rise to a reasonable suspicion that they had committed the alleged offences and justifying their arrest and pre-trial detention (violations of Article 5 § 1 and §3). The Court held that the applicants' right to sit as MPs (under Article 3 of Protocol no. 1) had been violated. It also found that their detention aimed to prevent them from carrying out their political activities and had pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate (violation of Article 18 in conjunction with Article 5).
4. Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu have remained in pre-trial detention since November 2016, that is for over eight years. The group of cases is under enhanced supervision before the Committee.

[1] https://hudoc.exec.coe.int/ENG?i=CM/Del/Dec(2024)1514/H46-38E.

[2] Rule 9.2 submission by the Turkey Human Rights Litigation Support Project (TLSP), Human Rights Watch (HRW), the International Commission of Jurists (ICJ) and the International Federation for Human Rights (FIDH) concerning the group of cases *Selahattin Demirtaş (No. 2) v Turkey* (Application No. 14305/17), 12 February 2024, 1492nd meeting of the Committee of Ministers (March 2024) (DH), DH-DD(2024)216, (https://hudoc.exec.coe.int/ENG?i=DH-DD(2024)216E).

II. INDIVIDUAL MEASURES

Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu's continued detention

5. The Court has held in clear and unambiguous terms that ending the violation of Article 18 in conjunction with Article 5 against the applicants requires securing their immediate release.[3]

6. However, in its most recent Action Plan, the Turkish Government claims that the applicants' ongoing detention no longer amounts to pre-trial detention, as they can be considered convicted persons.[4] It suggests once again that the applicants' current detention falls outside of the scope of the Court's judgments, and that the judgments of the ECtHR (with respect to Selahattin Demirtaş) and the Constitutional Court (with respect to Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu) regarding the applicants' pending applications should be awaited in this regard.[5]

7. The NGOs maintain that the continued detention of Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu on the same factual and legal basis as already examined by the Court falls squarely within its judgments.[6] The applicants' current detention and conviction are based on the unlawful constitutional amendment lifting the applicants' parliamentary immunity. The Court has found this amendment and measures taken on this basis violate Article 10 of the Convention (right to freedom of expression). The applicants' current detention thus amounts to a continuing violation of Article 10 of the Convention.

8. The applicants' excessively prolonged pre-trial detention, despite the Court's finding that their detention violated the Convention and pursued ulterior political motives, has struck at the very core of the prohibition on arbitrary detention under Article 5 of the Convention.[7] Turkish authorities are seeking to secure and legitimise the applicants' continued detention, aimed at preventing them from exercising their legitimate political activities, through their conviction.[8] Accepting the Government's position would authorise the deepening of the violation of the applicants' rights under Article 5 and Article 3 of Protocol no. 1 through judicial tactics designed to evade the implementation of Türkiye's Convention obligations; particularly in light of the Court's clear order to take "all necessary measures" to ensure the applicants' "immediate release".

9. The NGOs welcome the Committee's decision at its last meeting to urge Turkish authorities once more to ensure the immediate release of the applicants pending the determination of the applicants' appeals and applications to the Constitutional Court.[9] They consider that the Court's finding under Article 18 in conjunction with Article 5 vitiates any action resulting from the charges related to the "Kobani events".[10] This implies that, irrespective of the pending Constitutional Court and ECtHR cases, Turkish authorities must secure the immediate release of Selahattin Demirtaş

[3] ECtHR, *Demirtaş (no.2)* [GC], para. 442 and *Yüksekdağ Şenoğlu and others*, para. 655.
[4] Action Plan of 12 July 2024, para. 8 (https://hudoc.exec.coe.int/ENG?i=DH-DD(2024)812E).
[5] Ibid., paras. 16, paras. 16-18, and 29.
[6] See Rule 9.2 Submission of 12 February 2024 by the TLSP, Human Rights Watch, the ICJ and FIDH concerning the group of cases *Selahattin Demirtaş (No. 2) v Turkey* (supra n 2), paras. 14-15.
[7] Ibid., paras. 9-11.
[8] On the Government's influence over the applicants' continued detention as well as domestic courts' partisan attitude and breaches of due process, see Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases *Selahattin Demirtaş (No. 2) v Turkey* (supra n 2), para. 10.
[9] Committee of Ministers, 1514th meeting, 3-5 December 2024 (DH), H46-38 Selahattin Demirtaş (No. 2) group v. Turkey (Application No. 14305/17), Decision of 5 December 2024, CM/Del/Dec(2024)1514/H46-38 (https://search.coe.int/cm?i=0900001680b296a2).
[10] See findings to this effect by the Court in relation to Osman Kavala in *Proceedings under Article 46§4 in the case of Kavala v Türkiye* [GC] (Application no. 28749/18, 11 July 2022), at para. 145 and para. 172.

and Figen Yüksekdağ Şenoğlu and, in the case of a final conviction, a re-trial compliant with the Court's judgments and Convention standards.[11]

Ongoing criminal proceedings in the "Kobani case"

10. As the Government highlights, the applicants were convicted on 16 May 2024, as part of the criminal proceedings connected to the "Kobani events" ("Kobani trial"), of multiple alleged "terrorism" and "national security" related offences.[12] Selahattin Demirtaş was sentenced to 37 years and 60 months' imprisonment, and Figen Yüksekdağ Şenoğlu to 30 years and 33 months' imprisonment. The reasoned judgment is yet to be issued; however, the applicants have appealed their conviction, and their appeal remains pending both the reasoned decision of the first-instance court and the subsequent submission of their reasoned grounds for appeal.

11. The NGOs recall that the Court has found that the judicial authorities in criminal proceedings against the applicants in relation to the "Kobani events", based on the lifting of their parliamentary immunity through an unforeseeable constitutional amendment, have failed to uphold the constitutional principle of non-liability, and their arbitrary interpretation and application of anti-terrorism legislation to have violated Article 10 of the Convention.[13] The Government does not contest that the applicants' recent conviction was based on these unlawful proceedings, on the same factual context as already examined by the Court and found not to warrant a reasonable suspicion that they had committed an offence.

12. The NGOs also reiterate that the Court's finding under Article 18 in conjunction with Article 5 must be considered as vitiating any action resulting from the charges related to the "Kobani events". Turkish authorities must ensure that the judicial decision based on the applicants' appeal is compliant with the Court's judgments. If it is not, they must ensure a Convention compliant re-trial and release pending trial.

Impact on the applicants' legitimate political activities

13. In the judgments under supervision, the Court found a violation of the applicants' right to sit as MPs (under Article 3 of Protocol no. 1) and ruled that the applicants' detention pursued the illegitimate ulterior purpose of stifling pluralism and limiting freedom of political debate (Article 18 in conjunction with Article 5). The NGOs stress in this respect that the continued unwarranted restriction of the applicants' activities as democratically elected MPs and co-leaders of one of the two main opposition parties in Türkiye has very serious consequences on democracy and the rule of law in Türkiye. The applicants have been sentenced to excessively long terms in prison for their legitimate political activities, despite the Court's findings regarding the measures taken against them in the context of the "Kobani events". They have thereby been excluded from Turkish politics: this sits within the broader targeting of the HDP, its individual members and supporters, as part of an intensifying crackdown on political opposition over the past decade.[14] It has a profoundly chilling effect on political opposition and dissent.

III. GENERAL MEASURES

Circumvention of parliamentary immunity (inviolability and non-liability)

14. Despite the Committee's repeated calls, the Turkish authorities have failed to ensure that procedural safeguards protecting parliamentary speech are effective in practice. As confirmed by the ECtHR's findings under Article 10, the applicants' prosecution was based on the unforeseeable

[11] See, in the case of Osman Kavala, Notes on the Agenda for the Committee of Ministers' 1514th meeting, 3-5 December 2024 (DH), H46-37 Kavala v. Türkiye (Application No. 28749/18), CM/Notes/1514/H46-37 (https://hudoc.exec.coe.int/ENG?i=CM/Notes/1514/H46-37E).

[12] Action Plan of 12 July 2024, paras. 8, 14 and 27 (https://hudoc.exec.coe.int/ENG?i=DH-DD(2024)812E).

[13] See ECtHR, *Demirtaş (no.2)* [GC], paras. 247 and 281; ECtHR, *Yüksekdağ Şenoğlu and others,* paras. 506-510.

[14] See Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases *Selahattin Demirtaş (No. 2) v Turkey* (supra n 2).

ad hominem exception to parliamentary inviolability (Article 83(2) of the Constitution) by the constitutional amendment of May 2016, and the domestic courts had failed to carry out an assessment of parliamentary non-liability under Article 83 of the Constitution.[15] Consequently, any criminal proceedings initiated during an MP's term in office based on the constitutional amendment of 2016 are not prescribed by law for the purposes of the Convention and are therefore unlawful and in breach of the Convention. As with individual measures, general measures in the *Demirtaş (no. 2) group* must therefore include halting these proceedings and eliminating any resulting convictions.[16]

15. The Government maintains that it is not possible to take a general measure in this group of cases, stating that the constitutional amendment was an exception for parliamentary inviolability with a temporary effect and did not affect parliamentary non-liability.[17] However, the NGOs underline that many of 154 MPs targeted by the amendment continue to be subjected to criminal proceedings, detention, and convictions on this basis, including several of the defendants in the "Kobani trial".[18] Considering the continuing unlawful effects of the May 2016 constitutional amendment, Turkish authorities should take general measures to remedy violations similar to those suffered by the applicants in the *Demirtaş (no. 2) group*.

16. Moreover, some domestic court practices in recent years have also showed that the Constitutional amendment of May 2016 has not been the only exception for parliamentary inviolability. The domestic courts themselves have also unlawfully set aside parliamentary inviolability in relation to MPs elected in 2018 and 2023. Several judicial decisions resulted in MPs accused of terrorism-related offences being stripped of their inviolability, as domestic courts interpret that Article 14 of the Constitution (abuse of rights to disrupt the integrity of the territory or nation or to destroy fundamental rights) encompasses terrorism-related offences. Although the Constitutional Court has found that the judiciary's interpretation of Article 14 of the Constitution failed to meet the necessary certainty and foreseeability for restricting the applicants' electoral rights under Article 67 of the Constitution, the lower domestic courts have refused to abide by its jurisprudence. Most notably, in the conviction of MP Can Atalay as part of the Gezi Park trial, the Court of Cassation explicitly rejected the Constitutional Court's findings in the Gergerlioğlu and Güven cases. It upheld Mr. Atalay's conviction despite his election as an MP in May 2023, asserting that the crime of "attempting to overthrow the Government" -of which he was convicted- fell within the scope of Article 14 of the Constitution and was therefore excluded from parliamentary inviolability.[19] Subsequently, lower courts also failed to implement the Constitutional Court's rulings on Mr. Atalay's individual applications.[20] NGOs submit that this judicial practice, like the May 2016 constitutional amendment, circumvents legal safeguards protecting parliamentary speech by allowing parliamentary inviolability to be lifted without Parliament's decision, in circumstances defined arbitrarily, retroactively, and unforeseeably based on the extremely vague notion of "abuse of rights" under Article 14 of the Constitution.

17. Another common practice that has significantly hindered MPs' ability to fulfill their elected mandate and exercise their freedom of political speech involves Parliament lifting their

[15] Ibid., para. 25.
[16] Ibid. para. 26.
[17] Action Plan of 12 July 2024, para. 94 (https://hudoc.exec.coe.int/ENG?i=DH-DD(2024)812E).
[18] Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases Selahattin Demirtaş (No. 2) v Turkey (supra n 2), para. 27. Another example concerns former HDP MP Osman Baydemir, who lost his parliamentary mandate due to his conviction after the removal of his immunity by the constitutional amendment. Mr. Baydemir appealed against the conviction in 2019, yet his case remains pending before the Court of Cassation.
[19] Court of Cassation, File no. 2023/12611, Judgment of 28 September 2023, pp. 47-50.
[20] Court of Cassation, File no. 2023/12611, Decision of 8 November 2023; Court of Cassation, File no. 2023/12611, Decision of 3 January 2024; Constitutional Court, Can Atalay (2) [Plenary Assembly], App no. 2023/53898, Judgment of 25 October 2023 (https://kararlarbilgibankasi.anayasa.gov.tr/BB/2023/53898); Constitutional Court, Can Atalay (3) [Plenary Assembly], App. no. 2023/99744, 21 December 2023 (https://kararlarbilgibankasi.anayasa.gov.tr/BB/2023/99744).

inviolability in response to unwarranted and abusive requests for criminal investigations (*fezleke* or summaries of proceedings) submitted by prosecutors or courts.[21]

18. Lastly, in the Demirtaş group, the Court held that the applicants had been detained and prosecuted mainly on account of their political speeches, without any assessment of whether these statements were protected by the constitutional safeguard of parliamentary non-liability (*Demirtaş (no. 2),* para. 263 and *Yüksekdağ Şenoğlu and others*, para. 509).[22] This problematic judicial practice has been adopted by the judicial authorities in other cases of opposition MPs as well.[23]

19. While the Government maintains in its latest Action Plan that the Constitution provides for necessary procedural safeguards against applications to lift a MP's immunity, the practices cited above show the authorities' failure to protect and uphold parliamentary immunity.[24]

20. The NGOs stress that these practices have had extremely adverse consequences for political pluralism in Türkiye. Notably, a total of 17 MPs' mandates were revoked between 2015 and 2023 (fifteen belonging to the HDP, one to the Republican People's Party, CHP, and one to the Workers' Party of Turkey, TIP, all prominent opposition political parties).[25] Moreover, a final conviction for certain offences, including alleged terrorism offences, entails a ban on membership of parliament and on running as a candidate in local elections. Ongoing criminal proceedings have also been a factor that prevented a significant number of MPs from running for re-election in 2018 and 2023. Therefore, violations of Article 3 of Protocol no. 1, similar to those identified in relation the *Demirtaş (no. 2) group*, have and are continuing to occur against many other MPs. Implementing these judgments requires putting an end to the circumvention of parliamentary immunity and adequately remedying breaches of this constitutional safeguard.

"Judicial harassment" of elected representatives and opposition politicians

21. In the *Demirtaş (no. 2) group* judgments, the Court found that judicial authorities' interpretation and application of criminal legislation had constituted an arbitrary interference with the applicants' right to freedom of expression under Article 10 of the Convention and that the criminal provisions relied on did not offer sufficient guarantees against such arbitrariness (*Demirtaş (no. 2) [GC]*, paras. 280-281 and *Yüksekdağ Şenoğlu and others*, para. 509). Furthermore, the Court found under Article 18 that the motives put forward for the applicants' detention – namely, alleged involvement in terrorism offences – had merely been a cover for the ulterior purpose of stifling pluralism and limiting freedom of political debate (*Demirtaş (no. 2)* [GC], paras. 423-438 and *Yüksekdağ Şenoğlu and others*, paras. 637-639).

22. In *Demirtaş (no. 2) [GC],* the legislation in question was the offence of "establishing, leading or being a member of an armed organisation" under Article 314 §§ 1 and 2 of the Criminal Code. In *Yüksekdağ Şenoğlu and others*, the applicants were prosecuted and detained in relation to a range of alleged offences, including "establishing or leading a terrorist organisation" and "membership of an armed organisation" (Article 314 of the Criminal Code), "propaganda on behalf of a terrorist organisation" (Article 7 § 2 of the Antiterrorism Law no. 3713), and "incitement to commit an offence" (Article 214 § 1 of the Criminal Code) (see paras. 10-305).

---

[21] Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases Selahattin Demirtaş (No. 2) v Turkey (supra n 2), paras. 31-32.

[22] Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases Selahattin Demirtaş (No. 2) v Turkey (supra n 2), para. 33. Under Article 83(1) of the Turkish Constitution, non-liability is "absolute, permits of no exception, does not allow any investigative measures, […] continues to protect members of parliament even after the end of their term of office" (*Demirtaş (no. 2)* [GC], para. 259).

[23] Ibid. para. 34 (e.g. former MPs Ayla Akat Ata and Emine Ayna).

[24] Action Plan of 12 July 2024, paras. 79-96 (https://hudoc.exec.coe.int/ENG?i=DH-DD(2024)812E).

[25] In comparison, only three MPs had lost their seats in the preceding 95 years of the Parliament's history (either for absenteeism or due to a criminal conviction).

23. The NGOs reiterate that judicial authorities in Türkiye give a broad, selective, and unforeseeable interpretation to various criminal provisions to issue politically motivated summaries of proceedings requesting the removal of opposition MPs' immunity, and to repress their political statements or non- violent political activities.[26] The NGOs observe that, at the time of the writing, 776 summaries of proceedings are pending before the Joint Committee, with 530 of them targeting MPs from the Peoples' Equality and Democracy Party ("DEM Party"), which succeeded the HDP following a dissolution case brought before the Constitutional Court. The majority of these proceedings are based on alleged "terrorist propaganda".[27]

24. Furthermore, the judicial authorities have repeatedly disregarded ECtHR judgments finding violations of Article 10 of the Convention by Türkiye due to their unforeseeable and unreasonable application of criminal law against perceived political dissenters. In fact, the prosecutorial and judicial authorities resort to terrorism-related offences and other grave crimes to punish political statements and activities, leads to hefty prison sentences, ignoring ECtHR jurisprudence, with the aim of permanently incapacitating politically disfavoured expressions of opinion on matters of public interest like "the Kurdish issue". The conviction and 22-year prison sentence of former HDP MP Leyla Güven for alleged "membership of an armed organisation" and "terrorist propaganda", based on her participation in the activities of the Democratic Society Congress, or the convictions of human rights defender Osman Kavala, MP Can Atalay, and three other Gezi Park case defendants, despite the ECtHR's *Demirtaş (n. 2), Yüksekdağ Şenoğlu and others v Turkey* and *Kavala* judgments, are striking examples of this practice.

25. The NGOs stress that the interpretation and application of several provisions of anti-terrorism legislation have been very problematic and not in line with Article 10 ECHR, as also underlined by the Venice Commission.[28] These provisions have also been under the scrutiny of the Committee in its supervision of the implementation of the *Öner and Türk* group, *Işıkırık* group, *Altuğ Taner Akçam* group, and *Altun and Güvener* group, among other cases.[29] However, despite the Committee's recommendations, the Government has failed to amend the problematic legislation and take measures to prevent their arbitrary application.

26. In this connection, the NGOs submit that legislative amendments to anti-terrorism laws alone are insufficient to implement the *Demirtaş (no. 2)* group of judgments. What is needed is a fundamental shift in Türkiye's judicial system, culture and practice to ensure the systematic, adequate, and consistent application of Convention standards and case law on freedom of expression in decisions related to criminal prosecution, detention, and convictions.[30]

27. This fundamental shift also requires effective remedies and safeguards against the "judicial harassment" of elected opposition politicians. However, certain judicial practices concerning fair trial rights, individual application process to the Constitutional Court, and non-implementation of Constitutional Court decisions remain very concerning in this regard.

28. Firstly, the NGOs observe that since the state of emergency of 2016, the arbitrary restriction of access to investigation files has become common in cases where individuals are under

[26] Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases Selahattin Demirtaş (No. 2) v Turkey (supra n 2), para. 39.

[27] https://gazeteoksijen.com/turkiye/meclis-gundeminde-dokunulmazlik-fezlekesi-var-227050. See also Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases Selahattin Demirtaş (No. 2) v Turkey (supra n 2), para. 39 for more detail.

[28] Article 216 (provoking the public to hatred, hostility or degrading), Article 299 (insulting the president of the republic), Article 301 (degrading Turkish nation, State of Turkish Republic, the organs and institutions of the State), and Article 314 (membership of a terrorist organisation) of the Turkish Criminal Code (TCC). See Venice Commission, Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey (March 2016), CDL-AD(2016)002, §123.

[29] See https://hudoc.exec.coe.int/?i=004-37296 .

[30] Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases Selahattin Demirtaş (No. 2) v Turkey (supra n 2), para. 47.

investigation for alleged terrorism offences.[31] In these cases, lawyers have been prevented from any access to, or have limited access to, their clients during police custody.[32] More broadly, the NGOs stress that there is a lack of core safe trial guarantees in terrorism-related cases.[33]

29. Secondly, several problematic issues cast doubt on the effectiveness of the individual application process to the Constitutional Court against arbitrary restrictions on parliamentarians' and opposition politicians' exercise of their functions.[34] At the outset, the NGOs observe that the Constitutional Court times its decisions strategically to avoid undermining the ruling coalition's interests.[35] Thus, applications concerning the detention of and criminal proceedings against opposition politicians have tactically remained pending for several years longer than the maximum acceptable period under the ECtHR's case-law,[36] while MPs challenging the suspension of their mandate on alleged terrorism-related grounds have obtained review by the Constitutional Court only once their mandate had lapsed or after they have been barred from running for office due to a conviction.[37] It should be noted that Mr. Demirtaş's application before the Constitutional Court has been pending for more than four years and a decision by the Constitutional Court after this long time period does not allow the timely cessation of arbitrary restrictions on MPs' exercise of their functions as elected representatives, including through arbitrary detention and conviction, and on their ability to take part in parliamentary elections at the beginning of a new term.

30. Furthermore, the NGOs note a pattern within the Constitutional Court of either issuing inadmissibility decisions to avoid ruling on the merits of cases involving restrictions on the rights of opposition politicians or determining that no violations of their rights have occurred. Most notably, the Constitutional Court found no violation of the rights of a group of HDP politicians, who were indicted with more than 100 others, including Mr. Demirtaş and Ms. Yüksekdağ Şenoğlu, under the "Kobani case", while relying on facts and grounds that the ECtHR deemed insufficient to justify interference with the applicants' rights in its *Demirtaş no. 2* and *Yüksekdağ Şenoğlu and others* judgments, all without any references to the ECtHR's findings.[38]

31. Thirdly, as discussed in detail in the NGOs' previous Rule 9.2 submission, domestic courts have openly refused to implement Constitutional Court judgments concerning opposition parliamentarians Kadri Enis Berberoğlu and Can Atalay.[39] Furthermore, the Constitutional Court has been targeted by powerful political actors, including the President, due to its rulings identifying rights violations in Mr. Atalay's case.[40]

---

[31] Human Rights Watch, "Lawyers on Trial: Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey", 2019, pp. 19-20. Rule 9.2 para. 49.

[32] Ibid, p. 20.

[33] See for example ECtHR, ECtHR, *Yüksel Yalçınkaya v Türkiye* [GC], App no. 15669/20, Judgment of 26 September 2023, §341.

[34] See in detail Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases *Selahattin Demirtaş (No. 2) v Turkey* (supra n 2), paras. 51-55.

[35] Ibid. para. 52 (underlining the absence of any publicly available information regarding the Constitutional Court's priority criteria and how the sequencing of individual application examinations remains uncertain, selective, and inconsistent).

[36] Rule 9.2 submission by the TLSP, HRW, and the ICJ concerning the case of Kavala v. Türkiye (Application No. 28749/18), 26 January 2024, 1492nd meeting of the Committee of Ministers (March 2024) (DH), DH-DD(2024)263, para. 20. See also Commissioner for Human Rights of the Council of Europe, Report Following Her Visit to Turkey From 1 to 5 July 2019, CommDH(2020)1, paras. 93-105 (mentioning serious delays in the Constitutional Court's handling of applications related to violations of HDP politicians' rights and a notable departure from an approach aligned with Convention standards and the ECtHR case-law on those standards).

[37] Third Party Intervention by the TLSP, HRW, and the ICJ in *Kavala v Türkiye (no.2)* (App no. No. 2170/24), para. 20 (https://www.turkeylitigationsupport.com/s/Kavala-v-Turkiye-2-Third-Part-Intervention-by-TLSP-HRW-ICJ.pdf).

[38] Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases *Selahattin Demirtaş (No. 2) v Turkey* (supra n 2*),* para. 54

[39] Ibid. paras. 56-60.

[40] Rule 9.2 submission by the TLSP, HRW, and the ICJ concerning the case of Kavala v. Türkiye (Application No. 28749/18), 26 January 2024, 1492nd meeting of the Committee of Ministers (March 2024) (DH), DH-DD(2024)263 paras. 48-49.

32. Fourthly, the persistent failure of domestic authorities to implement the ECtHR judgments in *Demirtaş (no. 2)*, *Yüksekdağ Şenoğlu and others*, and *Kavala,* including their refusal to release the applicants from detention, underscores the erosion of this "last resort" remedy, particularly in cases involving human rights violations against opposition politicians and other critical voices.

33. Finally, the judicial and prosecutorial practices discussed above, alongside the ECtHR's exceptional Article 18 findings in these cases, highlight an urgent need for substantial reforms to restore judicial independence from the executive, in accordance with the recommendations of various international bodies.[41] While the monitoring of general measures in this group initially included measures to strengthen the judicial independence, the Committee decided in March 2023 to continue examining these measures in the *Kavala* case.[42] The NGOs address this issue in detail in their submissions to the Committee regarding the *Kavala* case, including one ahead of its March 2025 session. They stress that the lack of judicial independence in Türkiye enables arbitrary detentions, politically motivated prosecutions against the opposition politicians, and broader erosion of human rights protections. In this connection, the NGOs draw the Committee's attention to the Venice Commission's December 2024 opinion on the composition of the Council of Judges and prosecutors and the procedure for the election of its members, and the NGOs' submissions to the Committee on this issue.[43]

Other obstacles to opposition politicians' exercise of elected mandates in a free and safe environment

34. The NGOs emphasise that opposition politicians —particularly those advocating for pro-Kurdish and minority rights— have been subjected to political persecution, preventing them from freely fulfilling their essential role in a democratic society based on human rights, pluralism, and the rule of law. This persecution extends beyond "judicial harassment" and involves a range of measures and policies cited below. Without decisive action to end these practices, the meaningful implementation of the *Demirtaş (no. 2)* group judgments remains unattainable.[44]

35. First, especially in the predominantly Kurdish south-east of Türkiye, elected mayors are systemically removed purportedly based on suspicion of "terrorism", pursuant to Emergency Decree Law no. 674 of 2016 (amending the Municipality Law) and have been replaced by unelected, government-appointed officials (so-called "trustees"). Although the state of emergency ended in 2018, the Government has continued to resort to the "trustee" system. Before the March 2024 local elections, of the 65 municipalities won by the HDP in the 2019 local elections, only six were not currently run by "trustees".[45] After the March 2024 elections, the Turkish authorities dismissed again the elected mayors of Mardin, Batman, Halfeti, Dersim (DEM Party), Esenyurt and Ovacık (CHP), and replaced them with governors appointed by the Ministry of Interior. As also underlined by the Venice Commission and the Council of Europe Congress of

[41] As underlined by the Court's findings under Article 18 in the *Demirtaş (no. 2)* group, the prosecutorial and judicial authorities' abuse of criminal law has served as a basis for the arbitrary detention and thereby silencing HDP politicians at key political moments.

[42] 1459th meeting (DH), March 2023 - H46-26 Selahattin Demirtaş (No. 2) group v. Turkey (Application No. 14305/17), CM/Del/Dec(2023)1459/H46-26, §4.

[43] Venice Commission, Türkiye, Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, 141st Plenary Session (Venice, 6-7 December 2024),CDL-AD(2024)041; Rule 9.2 submission by the TLSP, HRW, and the ICJ concerning the case of Kavala v. Türkiye (Application No. 28749/18), 17 January 2025, 1521st meeting of the Committee of Ministers; See also Rule 9.2 submission by the TLSP, HRW, and the ICJ concerning the case of Kavala v. Türkiye (Application No. 28749/18), 26 January 2024, 1492nd meeting of the Committee of Ministers (March 2024) (DH), DH-DD(2024)263.

[44] Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases Selahattin Demirtaş (No. 2) v Turkey (supra n 2), para. 62.

[45] Ibid. para. 63.

Local and Regional Authorities, this long-standing practice of appointing trustees undermine the very nature of local democracy.[46]

36. Second, there is a pending case before the Constitutional Court seeking the closure of the HDP, the ban of 451 politicians and party members from organised political activity or membership of political parties for a period of five years and forfeiture of the party's assets. The indictment for the case relies on accusations brought against Ms. Yüksekdağ Şenoğlu, Mr. Demirtaş, and other HDP politicians similar to those examined by the ECtHR and found to violate the Convention, such as evidence linked to the "Kobani trial".[47]

37. Third, administrative sanctions imposed in Parliament against opposition MPs for their non-violent political statements have also undermined the ability of opposition politicians to freely engage in political debate.[48]

38. Fourth, the President, the members of his political party AKP and allied parties frequently attack opposition politicians, accusing them of being "terrorists", and "enemies of the nation", undermining the very essence of human rights and the separation of powers, as well as interfering in judicial proceedings against them.[49] These practices contribute to a climate of hatred, discrimination, and impunity, and has a powerful chilling effect on free speech by politicians belonging to pro-Kurdish and minority rights parties.[50]

IV. RECOMMENDATIONS

Regarding individual measures, the NGOs urge the Committee of Ministers to:

i. Call once again for the immediate release of Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu in line with the ECtHR's *Selahattin Demirtaş (no. 2)* and *Yüksekdağ Şenoğlu and others* judgments and its finding of a violation of 18 in conjunction with Article 5;

ii. Continue to disregard the unsubstantiated and misleading arguments made by the Turkish Government, including those relating to the purported 'new' evidence, and firmly condemn Türkiye's ongoing attempts to avoid executing the judgments;

iii. Highlight that Türkiye's sustained failure to implement these judgments, the arbitrary detention of Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu for over eight years, and their convictions and sentences are contrary to the values of pluralism and freedom of political debate underpinning the Convention;

iv. Use all legal, political, and diplomatic tools designated in the Convention system to ensure their immediate release, including the initiation of infringement proceedings against Türkiye under Article 46(4) of the Convention in the event that they remain in detention, as well as efforts to ensure the direct and continuing engagement, through all

[46] Council of Europe, 'Dismissals of mayors in Türkiye: Statement by the Congress President', 4 November 2024 (https://www.coe.int/en/web/portal/-/dismissals-of-mayors-in-t%C3%BCrkiye-statement-by-the-congress-president); Venice Commission, Turkey – Opinion on the replacement of elected candidates and mayors - approved by the Council for Democratic Elections at its 68th meeting (online, 15 June 2020) and adopted by the Venice Commission on 18 June 2020 by a written procedure replacing the 123rd Plenary Session, CDL-AD(2020)011; CoE, Congress of Local and Regional Authorities, 'Local elections in Turkey and Mayoral re-run in Istanbul (31 March and 23 June 2019)', 31 October 2019, CG37(2019)14final.

[47] Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases Selahattin Demirtaş (No. 2) v Turkey (supra n 2), para. 64.

[48] See ECtHR, *Baydemir v. Türkiye*, App. no. 23445/18, Judgment of 13 June 2023. An unlawful discriplinary sanction was imposed on the former HDP MP Osman Baydemir for his statement deemed incompatible with the administrative structure of Turkish republic.

[49] Rule 9.2 Submission of 12 February 2024 by the TLSP, HRW, the ICJ and FIDH concerning the group of cases Selahattin Demirtaş (No. 2) v Turkey (supra n 2), para. 65.

[50] Ibid., para. 66.

available channels, by member states, the Secretary General, the PACE, and all other Council of Europe institutions;

v. Call for the speedy examination of the appeal by Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu of their convictions and sentences, as well as their applications to the Constitutional Court;

vi. Call for a Convention-compliant decision concerning their appeal and, failing this, for domestic authorities to provide a procedural possibility for a retrial and acquittal in line with the ECtHR's judgments;

vii. Emphasise that *restitutio in integrum* requires:

- Annulling criminal proceedings initiated during the applicants' terms in office pursuant to the constitutional amendment of 2016 lifting their parliamentary immunity, or based on the same or a similar context as examined by the Court;

- Annulling new sets of proceedings based on these proceedings; and

- Annulling other criminal proceedings based on the applicants' political activities and speeches, where these relate to the same factual or a similar context as examined by the Court, including the "Kobani trial".

Regarding general measures the NGOs call on the Committee of Ministers to urge the Government to:

i. Secure the annulment of criminal proceedings initiated during all other parliamentarians' terms in office based on the unforeseeable and arbitrary lifting of their parliamentary immunity by the constitutional amendment of May 2016 or by the judicial authorities;

ii. Ensure that the judicial authorities implement the jurisprudence of the Constitutional Court precluding decisions by the judiciary to set aside parliamentary inviolability;

iii. End the judicial authorities' widespread practice of issuing summaries of proceedings (*fezleke*) requesting Parliament to lift parliamentarians' inviolability based on their exercise of Convention rights;

iv. Take concrete steps to ensure that the legal safeguards protecting opposition politicians' freedom of expression, particularly parliamentary non-liability under Article 83(2) of the Constitution and the ECtHR jurisprudence on freedom of expression, are genuinely and effectively applied by judicial – including prosecutorial – authorities in the application and interpretation of anti-terrorism legislation (including Articles 216, 299, 301, and 314 of the Turkish Criminal Code and Articles 6 and 7 of the Anti-Terror Law), and secure the implementation of the Committee's and Venice Commission's recommendations on this issue;

v. Ensure that remedies and safeguards against arbitrary interferences with the rights of elected representatives and other opposition politicians are effective in practice, including access to the investigation file to challenge pre-trial detention, respect for fair trial rights, implementation of Constitutional Court judgments on parliamentary immunity, and protection of the authority and legitimacy of the Constitutional Court against attacks;

vi. Address other obstacles to opposition politicians' exercise of their elected mandates in a free and safe environment, in line with the "conclusions and spirit" of the *Demirtaş (no. 2) group* judgments, in particular:

- Provide the Committee with information on the steps envisaged to end the "trustee" system, such as repealing Article 38 of Decree Law no. 674 on the appointment of

trustees, and to allow elected local representatives to freely exercise their functions after the March 2024 local elections;

- Ensure the cessation of the proceedings seeking the closure of the HDP and a political ban on hundreds of its members, which rely on the legitimate exercise by HDP politicians of their Convention rights, on their lawful and non-violent political activities, and on evidence already examined by the ECtHR in the *Demirtaş (no. 2)* group judgments and found to be protected under the Convention;
- Amend Article 16 of the rules of the National Assembly to bring it in line with Convention obligations on freedom of expression, by ensuring that parliamentarians may not be sanctioned for their political statements unless these statements constitute incitement to hatred, violence, or intolerance, within the meaning of the ECtHR's jurisprudence;
- Refrain from ad hominem verbal attacks, threats, or intimidation against opposition politicians and from exercising covert or overt influence over criminal proceedings, including through public comments designating named politicians as "terrorists" who must be "punished" based on their expression of political opinion, including that consisting of criticism of state policies; and
- Conduct independent, impartial and thorough investigations into any verbal or physical violence against Kurdish politicians and their families, as well as other opposition politicians, in line with the authorities' positive obligations under the Convention, and provide information to the Committee of Ministers on investigations, prosecutions, and convictions in this respect.