23 October 2023

Submission by the Turkey Human Rights Litigation Support Project, Human Rights Watch, the International Commission of Jurists, and the International Federation for Human Rights pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments providing initial observations on the implementation of *Yüksekdağ Şenoğlu and Others v. Türkiye* (Application no. 14332/17 and 12 other applications)

Summary

In *Yüksekdağ Şenoğlu and Others v. Türkiye* (Application no. 14332/17 and 12 other applications), the ECtHR found, on 8 November 2022, in the applicant Figen Yüksekdağ Şenoğlu's case, violations of Article 10 (freedom of expression), Article 5(1) (right to liberty and security), 5(3) (right to trial within a reasonable time or to be released pending trial) and 5(4) (right to have lawfulness of detention speedily examined by a court), Article 18 (limitation on use of restrictions on rights) taken together with Article 5, and Article 3 of Protocol No. 1 (right to free elections) of the Convention. The Court held that to implement its judgment, in accordance with Article 46 of the Convention (obligation to execute the Court's judgments), Türkiye should take all necessary measures to secure the immediate release of all the applicants still detained at the time of the judgment, which included Ms. Yüksekdağ Şenoğlu. The judgment became final on 3 April 2023. Having classified the judgment as a repetitive case under the Grand Chamber judgment of *Selahattin Demirtaş v. Turkey (No. 2)*, the Committee of Ministers called on Türkiye to secure the immediate release of Ms. Yüksekdağ Şenoğlu and Mr. Demirtaş in June and September 2023.

Ms. Yüksekdağ Şenoğlu was co-chair of the Peoples' Democratic Party ("HDP") from 2014 to 2017 and an elected member of the Turkish Parliament from 2015 to 2017. She has been detained in Kocaeli Kandıra F-type Prison since November 2016 based on political speeches in which she discussed the Kurdish issue and criticized the Government's policies towards the Kurds. Her arrest and detention along with the other HDP co-chair, Selahattin Demirtaş, and several other HDP MPs, followed a constitutional amendment proposed by the Government in May 2016 lifting their parliamentary immunities.

Analysing the criminal proceedings against Ms. Yüksekdağ Şenoğlu, the NGOs' submission underlines that since the ECtHR judgment became final on 3 April 2023: i) the Ankara 22nd Assize Court issued repeated orders for the continuation of Ms. Yüksekdağ Şenoğlu's detention in the ongoing case concerning the 6-8 October 2014 events[1] (merging multiple cases used to justify her detention at different stages of the proceedings); ii) the Ankara public prosecutor in the same case requested, on 14 April 2023, her – as well as Mr. Demirtaş's and 34 other defendants' – conviction on multiple counts, including "undermining the unity and territorial

[1] Countrywide demonstrations which took place in Türkiye in October 2014 to protest the siege of Daesh in Kobané/Syria and Türkiye's action of closing border with Syria from its side in order to prevent volunteers from leaving to protect Kobané (see *Yüksekdağ Şenoğlu and Others v. Türkiye,* paras 5-7).

integrity of the State" which requires an aggravated life sentence; and iii) in a number of other criminal proceedings against Ms. Yüksekdağ Şenoğlu similarly targeting her political speech, the domestic prosecutorial and judicial authorities continued to remain silent about or undermine the ECtHR's findings.

The recent developments in these criminal proceedings and the political scene in Türkiye confirm that the Turkish authorities have failed to carry out a genuine assessment of the ECtHR's findings with a view to implementing it in five main ways:

- First, the facts of the case which formed the basis of the ECtHR's findings and the facts relied on by domestic prosecutorial or judicial authorities in their actions against Ms. Yüksekdağ Şenoğlu – including the prolongation of her detention by the Ankara 22nd Assize Court and the request of the Ankara public prosecutor for her conviction – are identical or similar;
- Second, the criminal proceedings initiated against Ms. Yüksekdağ Şenoğlu pursuant to the May 2016 constitutional amendment, which was found by the ECtHR to have failed to meet the legality standard of the Convention (paras. 506-508 of the *Yüksekdağ Şenoğlu and Others* judgment), have not been halted;
- Third, in their deliberations, domestic prosecutorial or judicial authorities have not fulfilled their obligation to assess if Ms. Yüksekdağ Şenoğlu's statements were protected by parliamentary non-liability under Article 83(1) of Türkiye's Constitution (para. 509);
- Fourth, the evidence used by the domestic authorities has solely been limited to statements and acts that were manifestly non-violent and should in principle be protected by Article 10 of the Convention (para. 509);
- Fifth, the elements that led the ECtHR to find a political purpose behind the actions of the local authorities against Ms. Yüksekdağ Şenoğlu have remained intact (paras. 636 – 639), as evident in the continued public targeting of the HDP and its politicians by the Government officials, and developments in the criminal proceedings against them corresponding to this, including the initiation of a proceeding for the dissolution of the HDP.

In light of the factual and legal similarities between the *Selahattin Demirtaş (No. 2)* and *Yüksekdağ Şenoğlu and Others* judgments, the NGOs invite the Committee to adopt a common approach to implementation, assessing the Turkish authorities' response as a whole in relation to this group of cases. Emphasising the key importance of ensuring the release of Ms. Yüksekdağ Şenoğlu and Mr. Demirtaş, in the context of the upcoming March 2024 local elections, the NGOs invite the Committee to consider adopting the following recommendations:

i. Call for the immediate release of Ms. Yüksekdağ Şenoğlu, as required by the ECtHR judgment;
ii. Underline that the Court's judgment applies to any ongoing or future proceedings or detention in which the factual or legal basis is substantially similar to that already addressed and found by the ECtHR to violate her Convention rights;

iii. Use all legal, political, and diplomatic tools designated in the Convention system to ensure the immediate release of Ms. Yüksekdağ Şenoğlu, including the triggering of infringement proceedings against Türkiye under Article 46(4) of the Convention in the event that she remains in detention.

Further recommendations by the NGOs focus on the halt of criminal proceedings initiated against Ms. Yüksekdağ Şenoğlu following the constitutional amendment lifting her immunity; authorities ending her persecution through abusive criminal proceedings based solely on her political activities and speech, which have pursued a political purpose; and the Government refraining from interfering in the pending case against Ms. Yüksekdağ Şenoğlu.

I. Introduction

1. In line with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, the Turkey Human Rights Litigation Support Project, Human Rights Watch, the International Commission of Jurists, and the International Federation for Human Rights ("the NGOs") hereby present a communication regarding the execution of the European Court of Human Rights ("the Court" or "ECtHR") judgment in the case of *Yüksekdağ Şenoğlu and Others v. Türkiye* (Application no. 14332/17 and 12 other applications).

2. This submission focuses on the individual measures Türkiye is required to take to comply with the Court's findings concerning the applicant Figen Yüksekdağ Şenoğlu, and, in this connection, the ongoing failure of Türkiye to ensure her immediate release. It addresses the Turkish authorities' claims regarding the state of domestic proceedings against Ms. Yüksekdağ Şenoğlu and draws the Committee of Ministers' ("the Committee" or "CM") attention to the arbitrary criminal proceedings -both pending and concluded- against her. The submission draws attention to the similarities between the Turkish authorities' actions in her case and other cases under the Committee's supervision, including those of Selahattin Demirtaş and Osman Kavala. It maintains that the scope of the ECtHR's judgment necessarily encompasses Ms. Yüksekdağ Şenoğlu's continuing detention. Following an analysis of Türkiye's actions constituting an ongoing violation of Ms. Yüksekdağ Şenoğlu's Convention rights, the submission concludes by offering concrete recommendations to the CM including the need to initiate infringement proceedings in view of the Turkish Government's refusal to implement the measures mandated by the Court.

II. The ECtHR Judgment and Procedure Before the Committee of Ministers

3. Ms. Yüksekdağ Şenoğlu is a prominent politician who was co-chair of the Peoples' Democratic Party ("HDP") between 2014-17 and an elected member of the Turkish Grand National Assembly ("the Parliament") from November 2015 until February 2017. Her MP status was revoked by the Parliament following her conviction for "disseminating propaganda in support of a terrorist organisation" (as upheld by the Supreme Court) (see para. 29 below).

4. She was placed in pre-trial detention on 4 November 2016 along with the other HDP co-chair, Mr. Selahattin Demirtaş, and several other HDP MPs. She has been held in Kocaeli Kandıra F-type Prison since that date. She is currently being tried before the Ankara 22nd Assize Court on several counts, including "undermining the unity and territorial integrity of the State". The charges against Ms. Yüksekdağ Şenoğlu are, according to the allegations provided by the prosecution, based on political speeches on public matters she delivered in her capacity as an HDP MP and co-chair on the Kurdish issue, which included criticism of the Government's policies in relation to the Kurds.

5. The Grand Chamber of the ECtHR delivered its judgment in the case of *Selahattin Demirtaş v. Turkey (No. 2)* in December 2020.[2] The judgment concerning Ms. Yüksekdağ Şenoğlu and 12 other HDP politicians was published in November 2022.[3] Relying largely on the same grounds set out in the *Selahattin Demirtaş v. Turkey (No. 2)* judgment, the Court in the applicant's case found several violations of the European Convention on Human Rights ("the Convention" or "ECHR"): Article 10 (freedom of expression), Article 5(1), 5(3) and 5(4) (right to liberty and security), Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5, and Article 3 of Protocol No. 1 (right to free elections).[4]

6. Referring to the State parties' obligation to abide by final Court judgments, in accordance with Article 46 of the Convention, the ECtHR held that the Government must "take all necessary measures to secure the immediate release of" the applicants who were still in detention at the time of the judgment, including Ms. Yüksekdağ Şenoğlu. This was based on the premise that "[d]ans ces conditions, s'agissant des requérants toujours privés de leur liberté, le maintien en détention, pour des motifs relatifs au même contexte factuel, impliquerait une prolongation de la violation de leurs droits ainsi qu'un manquement à l'obligation qui incombe à l'État défendeur au titre de l'article 46 § 1 de la Convention de se conformer à l'arrêt de la Cour" (para. 655 of the judgment).[5] The judgment became final on 3 April 2023.

7. The CM then classified the judgment as a repetitive case following from the leading case of *Selahattin Demirtaş (No. 2),* during its June 2023 DH meeting, where the Committee also recalled the Court's Article 46 order and called for Ms. Yüksekdağ Şenoğlu's

[2] ECtHR, *Selahattin Demirtaş v. Turkey (No. 2),* App No. 14305/17, 22 December 2020.
[3] ECtHR, *Yüksekdağ Şenoğlu and Others v. Türkiye*, App No. 14332/17, 8 November 2022.
[4] For a detailed summary of the Grand Chamber's findings in the *Selahattin Demirtaş (No. 2) v. Turkey* judgment which have been used as grounds by the ECtHR to find similar violations in *Yüksekdağ Şenoğlu and Others,* see Communication from NGOs (ARTICLE 19, Human Rights Watch, International Commission of Jurists, International Federation for Human Rights and Turkey Human Rights Litigation Support Project) in the case of Selahattin Demirtaş v. Turkey (No. 2) (Application No. 14305/17), 7 February 2021, paras. 9-24, https://hudoc.exec.coe.int/ENG?i=DH-DD(2021)192revE; in addition, in *Yüksekdağ Şenoğlu and Others v. Türkiye,* the Court found a violation of the right to a speedy decision on the lawfulness of detention on account of the applicant's lack of access to the investigation file (Article 5§4).
[5] "[i]n these circumstances, as regards the applicants who are still deprived of their liberty, continuing detention on grounds related to the same factual context would entail the prolongation of the violation of their rights as well as a breach of the respondent State's obligation to abide by the Court's judgment under Article 46 (1) of the Convention." (unofficial translation).

immediate release.[6] The Turkish Government responded to this decision with an Action Plan dated 7 July 2023, which asserted that as the Ankara 22nd Assize Court had decided to keep the applicant in pre-trial detention, the conclusion of these domestic proceedings against the applicant "should be awaited" by the Committee.[7]

8. As is evident from the Court's findings, the factual and legal grounds in the cases of Ms. Yüksekdağ Şenoğlu and Mr. Demirtaş are strikingly similar:

- Both applicants were co-chairs of the HDP at the time they were taken into custody;
- They were arrested and detained on the same day (4 November 2016) as part of a simultaneous operation targeting a number of HDP MPs;
- Their arrest and detention followed a controversial constitutional amendment proposed by the Government on 20 May 2016 lifting their parliamentary immunities;
- They were both targeted publicly by Government officials prior to and during their arrest and detention;
- They have remained in prison since their initial arrest on 4 November 2016 clearly for political purposes (paras. 636-640 of *Yüksekdağ Şenoğlu and Others* judgment and paras. 423-438 of the *Selahattin Demirtaş (No. 2)* judgment) even after the ECtHR strongly condemned the unlawful actions taken against them in its judgments;
- They have been subjected to a cluster of criminal proceedings targeting political speech and activities protected under the Convention;
- They are currently being held in detention in relation to the same criminal case pending before the Ankara 22nd Assize Court which concerns the 6-8 October 2014 events and consists of several merged cases that had been used by the Turkish Government to seek to justify their detention during different stages of the proceedings; and
- The Government has refused to take measures to secure their release despite the judgments of the ECtHR and the steps taken by the Committee in its efforts to ensure implementation.

9. The NGOs submit that these similarities between Ms. Yüksekdağ Şenoğlu's and Mr. Demirtaş's cases effectively require that the Committee adopt a common approach in carrying out its role as the supervisory body of the judgment implementation process. In this vein and in the interests of consistency, we consider that the *Selahattin Demirtaş (No. 2)* and *Yüksekdağ Şenoğlu and Others* judgments should be applied, analysed, and

[6] See the CM Decision, 1468th meeting (DH), 5-7 June 2023 - H46-33 Selahattin Demirtaş (No. 2) group v. Turkey (Application No. 14305/17), CM/Del/Dec(2023)1468/H46-33. The Committee repeated its call for Ms. Yüksekdağ Şenoğlu's and Mr. Demirtaş's immediate release during its September 2023 DH meeting, see 1475th meeting (DH), 19-21 September 2023 - H46-38 Selahattin Demirtaş (No. 2) group v. Turkey (Application No. 14305/17), CM/Del/Dec(2023)1468/H46-38.

[7] Updated Action Plan of the Turkish Government, Selahattin Demirtaş (No. 2) group v. Turkey, 7 July 2023, para. 28, https://hudoc.exec.coe.int/ENG?i=DH-DD(2023)847E.

addressed together and the Turkish authorities' actions - and inactions - should inform the Committee's subsequent steps in relation to the group of cases as a whole.

III. Non-implementation of Urgent Individual Measures: The Continuing Detention of Figen Yüksekdağ Şenoğlu

10. Despite the ECtHR's binding order and the Committee's call for her immediate release, Ms. Yüksekdağ Şenoğlu remained in detention as of the date of this communication. The NGOs submit that the scope of the ECtHR judgment fully encompasses her ongoing detention. This analysis is in accordance with the Court's own assessment, as it has determined the case before the Ankara 22nd Assize Court among the criminal proceedings pending against her (paras. 35-38) and ordered Türkiye, in the operative part of the judgment, to "prendre toutes les mesures nécessaires pour mettre fin à la détention provisoire des requérants" (para. 15).[8] Reflecting on this, the CM urged the Turkish authorities in June 2023 to ensure Ms. Yüksekdağ Şenoğlu's immediate release "in view of the urgency of the individual measures required for … *the only applicant still detained in this case* [emphasis added]".[9]

11. The NGOs further draw the Committee's attention to the blatant refusal by the Turkish Government to comply with the Court's judgment, which is part of a pattern that the Committee has witnessed in other similar cases, including those of Selahattin Demirtaş and Osman Kavala. As underlined by the NGOs in a number of previous submissions made on these cases, the continuing detention of Ms. Yüksekdağ Şenoğlu and the ongoing abuse of criminal proceedings against her constitute continuing violations of her rights under Articles 5(1) (3), 10, 18 (in conjunction with Article 5) and Protocol No. 1 Article 3 of the Convention.[10]

12. In order to determine whether the *Yüksekdağ Şenoğlu and Others* judgment has been implemented by Türkiye, it is necessary for the Committee to examine the domestic proceedings subsequent to the ECtHR judgment in the light of the core elements the judgment embodies. These include:

- First, whether the facts of the case which formed the basis of the ECtHR's findings and the facts, relied on by the domestic prosecutorial or judicial authorities in their actions against Ms. Yüksekdağ Şenoğlu -e.g. the prolongation of her detention or her conviction- subsequent to the ECtHR decision, are identical or similar;
- Second, whether the criminal proceedings brought against Ms. Yüksekdağ Şenoğlu were initiated pursuant to the May 2016 constitutional amendment found by the ECtHR to have failed to comply with the legality standard required under the Convention (paras. 506-508 of the *Yüksekdağ Şenoğlu and Others* judgment);

[8] "take all necessary measures to put an end to the pretrial detention of the applicants." (unofficial translation).
[9] CM Decision (n. 6), para. 4.
[10] Communications from NGOs in the case of Selahattin Demirtaş v. Turkey (No. 2) (Application No. 14305/17), 7 February 2021, 23 July 2021, 24 May 2022, and 4 November 2022; and Communications from NGOs (Human Rights Watch, International Commission of Jurists and Turkey Human Rights Litigation Support Project) in the case of Osman Kavala v. Turkey (Application No. 28749/18), 29 May 2020, 2 November 2020, 7 February 2021, 18 August 2021, and 1 September 2022.

- Third, whether in their deliberations the domestic prosecutorial or judicial authorities fulfilled their obligation to assess whether Ms. Yüksekdağ Şenoğlu's statements were protected by parliamentary non-liability under Article 83(1) of Türkiye's Constitution (para. 509); [11]
- Fourth, whether the evidence used by the domestic authorities was solely limited to statements and acts that were manifestly non-violent and should in principle be protected by Article 10 of the Convention (para. 509);[12]
- Fifth, whether the elements that led the ECtHR to find a political purpose behind the actions of the local authorities against Ms. Yüksekdağ Şenoğlu have remained intact (paras. 636 – 639).

13. Recent developments in the case before the Ankara 22nd Assize Court, which is the main basis for Ms. Yüksekdağ Şenoğlu's continuing detention, and other arbitrary criminal proceedings against her, lead to the conclusion that the Turkish authorities have failed in at least one or more of these elements and by doing so they prolonged the violation of Ms. Yüksekdağ Şenoğlu's Convention rights. They are also in breach of the State's obligation to abide by the Court's judgment, under Article 46(1) of the Convention. Therefore, the Government's claim that the offence for which Yüksekdağ Şenoğlu is currently detained is not related to the case decided by the ECtHR is incorrect, as is its claim that the ECtHR judgement has been implemented.

a. Subsequent decisions by the Ankara 22nd Assize Court since April 2023 refusing to release Figen Yüksekdağ Şenoğlu

14. After the ECtHR judgment became final in April 2023 and the CM adopted its June 2023 decision requesting her immediate release, the Ankara 22nd Assize Court issued six orders for the continuation of Ms. Yüksekdağ Şenoğlu's detention: Decisions dated 14 April 2023, 10 May 2023, 8 June 2023, 5 July 2023, 28 July 2023, 18 August 2023, and 15 September 2023 (Annex I).

15. In each of these decisions, the Ankara 22nd Assize Court uses an identical language and relies on two grounds: the statements of witnesses and the risk of flight. The Government also refers to the witness statements in its 7 July 2023 Action Plan as a ground justifying the applicant's ongoing detention.[13] The issue of witness statements, purported to be 'new' evidence, as a means to justify the prolongation of detention by the Turkish authorities came up, was dealt with and refuted by the Committee previously in relation to Mr.

[11] ECtHR, *Yüksekdağ Şenoğlu and Others v. Türkiye*, para. 509: "Ainsi, rappelant les observations de la Commissaire aux droits de l'homme qui signale qu'il est de plus en plus fréquent en Türkiye que les éléments de preuve utilisés pour justifier les détentions se limitent exclusivement à des déclarations et à des actes qui sont manifestement non violents et qui devraient a priori être protégés par l'article 10 de la Convention et qui considère cette situation comme une omission systématique des parquets et tribunaux turcs de procéder à une analyse contextuelle appropriée et de filtrer les éléments de preuve à la lumière de la jurisprudence bien établie de la Cour concernant l'article 10 de la Convention, la Cour estime que la législation pénale utilisée pour incriminer les requérants en l'occurrence n'offrait pas une protection adéquate contre les ingérences arbitraires des autorités nationales"

[12] Ibid.

[13] Updated Action Plan of the Turkish Government (n. 7), para. 27.

Demirtaş's case.[14] The NGOs made two detailed submissions on 24 May 2022 and 4 November 2022 analysing the Government's arguments on this matter in light of the Court's judgment and domestic proceedings.[15]

16. In line with their arguments in these submissions, the NGOs draw the CM's attention to the Government's established "track record of relying on judicial tactics that have been developed to avoid releasing the applicants from detention and thereby evading the obligation to implement the ECtHR judgments" in the emblematic Demirtaş and Kavala cases.[16] Reliance on purported 'witness statements' in Ms. Yüksekdağ Şenoğlu's case is a further example of these bad faith tactics which aim at circumventing the Government's obligation to implement the judgment and ensure that Ms. Yüksekdağ Şenoğlu remains behind bars.

b. The public prosecutor's submission on the merits (14 April 2023)

17. The public prosecutor lodged his submission on the merits of the case (*esas hakkında mütalaa)* to the Ankara 22nd Assize Court on 14 April 2023. This is a 5,268-page document which largely relies on the same office's December 2020 indictment. In it, the prosecutor seeks Ms. Yüksekdağ Şenoğlu's conviction for alleged offences committed in more than 30 cities during the 6-8 October 2014 events (Annex II).[17]According to the prosecutor, every single defendant who was present before the Ankara 22nd Assize Court during the proceedings -namely Ms. Yüksekdağ Şenoğlu, Mr. Demirtaş and 34 other defendants[18]- committed, among other alleged offences, the crime of "undermining the unity and territorial integrity of the State" (Article 302 of the Criminal Code) requiring them to be sentenced to aggravated life imprisonment.

18. In their Rule 9.2 submission in the *Demirtaş* case*,* the NGOs provided to the Committee a detailed legal analysis of the indictment in light of the ECtHR's findings.*[19]* The NGOs reiterate their main conclusion from that submission and apply it to the Ankara public prosecutor's 14 April 2023 submission which adopts his office's December 2020 indictment as the main basis, namely that the prosecutor profoundly fails to take into

[14] CM Decision, 1451st meeting, 6-8 December 2022 (DH) H46-39 Selahattin Demirtaş (No. 2) group v. Turkey (Application No. 14305/17) ; and CM Notes CM/Notes/1451/H46-39.
[15] Communications from NGOs in the case of Selahattin Demirtaş v. Turkey (No. 2) (Application No. 14305/17), 24 May, paras. 20-32 and 2022 and 4 November 2022, paras. 14-15.
[16] Communication from NGOs in the case of Selahattin Demirtaş v. Turkey (No. 2) (Application No. 14305/17), 4 November 2022, para. 9.
[17] An information note prepared by the defendants' lawyers the NGOs had access to indicates that while 108 defendants were indicted under this case, 72 of them absconded or were not in the country during the trial. Accordingly, the prosecutor requests the conviction of all remaining 36 defendants who have been present for the trial before the Ankara 22nd Assize Court.
[18] Defendants Ahmet Türk, Bircan Yorulmaz, Ali Ürküt, Alp Altınörs, Altan Tan, Ayhan Bilgen, Ayla Akat Ata, Aynur Aşan, Aysel Tuğluk, Ayşe Yağcı, Berfin Özgü Köse, Bircan Yorulmaz, Bülent Barmaksız, Can Memiş, Cihan Erdal, Dilek Yağlı, Emine Ayna, Emine Beyza Üstün, Gülfer Akkaya, Gülser Yıldırım, Gültan Kışanak, Günay Kubilay, İbrahim Binici, İsmail Şengül, Meryem Adıbelli, Mesut Bağcık, Nazmi Gür, Nezir Çakan, Pervin Oduncu, Sebahat Tuncel, Sırrı Süreyya Önder, Sibel Akdeniz, Zeki Çelik, and Zeynep Karaman.
[19] Communication from NGOs in the case of Selahattin Demirtaş v. Turkey (No. 2) (Application No. 14305/17), (n. 4), 7 February 2021, paras. 33-46.

account the ECtHR's authoritative findings in *Yüksekdağ Şenoğlu and Others* and S*elahattin Demirtaş (No. 2)*.

19. First, the prosecutor makes no reference to the ECtHR's *Yüksekdağ Şenoğlu and Others* judgment in his submission, nor does he provide an analysis or treatment of the Court's findings in *Selahattin Demirtaş (No. 2)* concerning Articles 5, 10, 18 (taken together with 5) and Article 3 Protocol No. 1 of the Convention which are directly applicable to the case. The prosecutor touches on the *Selahattin Demirtaş (No. 2)* and *Encü and Others*[20] judgments only under the heading 'parliamentary non-liability and immunity'[21] by reference to Mr. Demirtaş's lawyers' defence submissions requesting the Ankara 22nd Assize Court to conclude the proceedings in line with the ECtHR's rulings and the subsequent CM decisions.[22]

20. On the issue of the May 2016 constitutional amendment lifting Ms. Yüksekdağ Şenoğlu's, Mr. Demirtaş's and several other defendants' parliamentary immunity, which the ECtHR found to have failed to meet the legality standard of the Convention (paras. 506-508 of the *Yüksekdağ Şenoğlu and Others* judgment), the prosecutor summarily concludes: "While the ECtHR found a violation of right … in relation to this [constitutional] amendment, there is no action that the [local] court could take at this stage" on the ground that the alleged acts constituted crimes against the unity of the State and that the proceedings against the HDP MPs were initiated and carried out in accordance with the amendment.[23]

21. The prosecutor goes on to argue on the question of parliamentary non-liability provided under Article 83(1) of the Turkish Constitution that "the acts for which the defendants' conviction is sought cannot benefit from the parliamentary non-liability," stating that the nature of the crimes attributed to the defendants had multiple elements and that the speeches used as evidence of criminal conduct were different from those made in the Parliament.[24] The ECtHR, however, found that parliamentary non-liability in its function as a form of protection for freedom of expression of the MPs 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" and extends to statements and views parliamentarians repeat or reveal outside the Parliament (*Demirtaş (2),* paras. 259 and 263).

22. Second, in his submission, the prosecutor calls for Ms. Yüksekdağ Şenoğlu's conviction for all offences allegedly committed during the series of protests that took place from 6-8 October 2014 in a number of cities across Türkiye. According to the prosecutor, Ms. Yüksekdağ Şenoğlu - and other HDP politicians - should be held criminally responsible for these offences because of their alleged participation in the organization of the protests through their political statements, press releases, and interviews, which are lengthily cited

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[20] ECtHR, *Encü and Others v. Turkey*, App Nos. 56543/16 and 39 others, 1 February 2022.
[21] "Y*asama sorumsuzluğu ve dokunulmazlığı*", pages 505-530.
[22] Pages 505-506.
[23] "*AIHM tarafından bu değişiklikle ilgili olarak yukarıda verilen hak ihlali tespit etmiş ise de bu aşamada mahkemece yapacak bir işlem olmadığı",* pages 529-530.
[24] "*sanıkların cezalandırılmaları istenen eylemleri açısından yasama sorumsuzluğundan faydalanmaları imkanı bulunmadığından*", page 543.

by the prosecutor.[25] However, the ECtHR unambiguously determined these statements to have been non-violent and falling within the limits of political expression protected under Article 10 of the Convention.

23. Third, relying on the voluminous and distorted allegations set out in the December 2020 indictment, the prosecutor claims that the 6-8 October 2014 events were orchestrated by - and served the purposes of - the PKK (Kurdistan Workers' Party)/KCK (Kurdistan Communities Union). However, the prosecutor fails to provide any concrete evidence linking Ms. Yüksekdağ Şenoğlu with the proscribed organization or any of the alleged offences, nor does he present any plausible grounds for her ongoing detention. Continuing the serious deficiencies of the indictment, the prosecutor's submission on the merits of the case profoundly undermines the clear findings of the ECtHR and Türkiye's obligation to execute the Court's judgments.

24. Fourth, in direct contravention of the ECtHR's findings in relation to Articles 5 and 18 - together with Article 5- of the Convention and its order for Ms. Yüksekdağ Şenoğlu's immediate release, the prosecutor seeks the continuation of her detention. The alleged crimes for which the prosecutor is seeking a conviction by the Ankara 22nd Assize Court Ms. Yüksekdağ Şenoğlu, and by which to extend her detention, include: "undermining the unity and territorial integrity of the State" (Article 302 of the Criminal Code, requiring aggravated life imprisonment); "homicide" (six counts, Article 82 of the Criminal Code, requiring aggravated life imprisonment); and several counts of "attempted murder", "robbery", and "damage to property". If she were convicted of the first or several of these offences, Ms. Yüksekdağ Şenoğlu, who has been in detention for almost seven years at the time of this submission, would face a lifetime in prison.

25. The NGOs submit that Ms. Yüksekdağ Şenoğlu's continuing detention based on the same set of alleged facts and incidents that the ECtHR has already found to be insufficient grounds for her detention, and the latest request by the public prosecutor for her conviction on numerous counts of alleged offences concerning political speech protected under the Convention, in order to prolong her incarceration, constitute a continuing violation of her rights, including Articles 5(1), 10 and 18 in conjunction with 5. The prosecutor's submission is another striking example of the attempt to criminalise non-violent acts and speeches that are *a priori* protected under the Convention (para. 509 of the judgment). It is also a further example of the pattern of systematic omission of any reference to, or reliance on, the ECtHR jurisprudence by the prosecutorial and judicial authorities in Türkiye. These omissions constitute a complete failure to acknowledge that they are bound to comply with Article 46 of the Convention together with Article 90 of Türkiye's Constitution, which provides that all international treaties duly ratified by Türkiye are binding and that where there is a conflict between an international human rights treaty and domestic law, international human rights treaties prevail. Indeed, recently the Grand Chamber stated that "the domestic courts are required to take due account of the relevant Convention standards as interpreted and applied in the [Court's] judgment. The Court underlines in this

[25] The prosecutor dedicated more than 250 pages to Ms. Yüksekdağ Şenoğlu, largely including the texts of her speeches and evaluation reports by the security forces on her political activities, pages 2664-2917.

respect that Article 46 of the Convention has the force of a constitutional rule in Türkiye in accordance with Article 90 § 5 of the Turkish Constitution, according to which international agreements duly put into effect have the force of law and no appeal lies to the Constitutional Court to challenge their constitutionality".[26]

IV. The Ongoing Abuse of Criminal Proceedings against Figen Yüksekdağ Şenoğlu

26. The NGOs reiterate that the ECtHR judgment does not only concern the violation of Article 5(1), nor are the individual measures required by the judgment only limited to ending the applicant's unlawful incarceration. The national authorities are under an obligation to implement the ruling *in its entirety*, and to ensure that all measures taken are "compatible with the conclusions and spirit of the judgment", particularly in light of the Court's findings in respect of Articles 5, 10, and 18 of the Convention in conjunction with Article 5 (para. 654 of the judgment).

27. To this end, the NGOs draw the Committee's attention to the plethora of criminal proceedings that have been brought against the applicant targeting her political speech and activities which have been found by the Court to have been protected under the Convention (paras. 509 and 545 of the judgment). In its judgment the ECtHR refers to multiple criminal proceedings brought against Ms. Yüksekdağ Şenoğlu at the time her application was still pending before the Court (paras. 10-38 of the judgment). While achieving *restitutio in integrum* in Ms. Yüksekdağ Şenoğlu's case requires the discontinuation of these criminal proceedings against her, the developments in some of these cases, as well as other similar arbitrary proceedings brought against, her illustrate that these prosecutions continued, some resulting in her conviction.

a. Applicant's conviction by the Mersin 2nd Assize Court

28. Ms. Yüksekdağ Şenoğlu was convicted by the Mersin 2nd Assize Court on 4 December 2017 for alleged "dissemination of propaganda in support of a terrorist organisation" (Article 7 of Anti-Terror Law No. 3713) on account of two speeches she made in Mersin province on 13 and 19 March 2016, while she was an MP. In her speeches, she criticised the security operations by Türkiye in the Kurdish region in 2015 and extended respect to people who lost their lives during these operations. This case was initiated on 16 August 2016, after Ms. Yüksekdağ Şenoğlu's parliamentary immunity was lifted on 20 May 2016. The local court handed down a sentence of one year and 15 days imprisonment. The Supreme Court upheld this judgment on 30 March 2023. The Court contended that the ECtHR's *Yüksekdağ Şenoğlu and Others* judgment was not relevant to the case before the Supreme Court, the speeches had not been made in the Parliament, and Ms. Yüksekdağ Şenoğlu was not in detention for her speeches (Annex III).[27]

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[26] ECtHR, *Yüksel Yalçınkaya v. Türkiye*, App No. 15669/20, 26 September 2023, para. 418.

[27] "*Sanık müdafiinin 15.02.2023 tarihli dilekçesi ile sanık hakkında ihlal kararı verilen Avrupa İnsan Hakları Mahkemesinin 08.11.2022 tarihli Yüksekdağ Şenoğlu ve Diğerleri/Türkiye kararını UYAP üzerinden dosyaya sunmuş ise de, anılan ihlal kararının iş bu dosya ile ilgili olmadığı, söz konusu somut olaya ilişkin eylemlerin Türkiye Büyük Millet Meclisi'nde gerçekleştirilmediği, eylemleri sebebiyle sanığın tutuklanmadığı*", Turkish Supreme Court, Third Penal Section, 2022/7812, judgment no. 2023/1753.

b. Conviction by the Adana 7th Assize Court and loss of MP status

29. Another example of the ongoing abuse of criminal proceedings against Ms. Yüksekdağ Şenoğlu is the case that led to her losing her MP status on 21 February 2017. The Adana 7th Assize Court sentenced her to 10 months in prison for alleged "propaganda in support of a terrorist organisation" on account of a speech she made in November 2013. The Supreme Court upheld the conviction in September 2016 which resulted in Ms. Yüksekdağ Şenoğlu losing her MP status (Annex IV). At the time of this decision, Ms. Yüksekdağ Şenoğlu was still the co-chair of the HDP, but she subsequently lost her membership of HDP due to this conviction.[28] While this case was brought before the Constitutional Court and in March 2022 the Court found a violation of Ms. Yüksekdağ Şenoğlu's right to vote, right to be elected and to engage in political activity (Article 67 of the Constitution),[29] no action was taken to ensure the elimination of the negative consequences of this violation despite the applications made to the Parliament and domestic courts.

c. Conviction by the Diyarbakır 13th Criminal Court of First Instance

30. Ms. Yüksekdağ Şenoğlu faced two further investigations after she lost her MP status as a result of the Adana case, on account of her defence statements before the judicial authorities in the course of her questioning following her arrest on 4 November 2016. There she stated: "*I mean no disrespect to you personally; however, I refuse to be a movie extra in this judicial theatre that was initiated on the orders of Erdoğan whose political life is blemished. I will not answer any of your questions. I do not believe that any legal process could be just under these conditions (…) Even bringing me here is unlawful. You, as the members of the judiciary who have to be bound by universal and democratic legal principles and the international conventions signed by Turkey (…), should refuse to be part of this ruse (…)".* She was accused of "degrading the Turkish nation, the Turkish Republic, and the organs and institutions of the State" (Article 301(1) and (2) of the Criminal Code) and "insulting the President" (Article 299(1) of the Criminal Code). While she was acquitted for the alleged offence of "degrading the nation" by the Ankara 9th Assize Court,[30] the Diyarbakır 13th Criminal Court of First Instance found her guilty of "insulting the President" and sentenced her to one year and six months in prison (Annex V). The judgment is still pending before the Gaziantep Regional Court of Appeal.

31. These three proceedings provide conclusive evidence that the domestic authorities have failed to carry out a genuine assessment of the ECtHR's findings with a view to implementing them. In none of the proceedings have either the prosecutorial authorities or the courts addressed the five core elements of the ECtHR judgment the NGOs set out in paragraph 12 above. Ms. Yüksekdağ Şenoğlu is still facing a number of criminal proceedings for her political statements and activities on the basis of the domestic

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[28] The decision was taken by the Chief Public Prosecutor of the Court of Cassation in accordance with Article 11(b)(5) of Law No. 2820 on Political Parties providing: "Persons who have been convicted of terrorist activity, … shall not be eligible to become a member of political parties or be listed as a member by others", English translation available at: ttps://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2018)032-e.

[29] The Turkish Constitutional Court, App. No. 2016/39759, judgment date: 30 March 2022.

[30] Ankara 9th Assize Court, File No. 2017/12754, Indictment No. 2017/7664, Investigation No. 2017/7664.

prosecutorial and judicial authorities' assumption - or summary conclusion - that her speech fell outside of the scope of non-liability or freedom of expression. These ongoing proceedings demonstrate the continuing failure of the Turkish authorities to comply with their obligation to implement the ECtHR judgments, in this case particularly in relation to the Court's findings in *Yüksekdağ Şenoğlu and Others* with respect to Articles 5, 10 and 18 (together with 5) of the Convention.

V. The Case Before the Constitutional Court Concerning the Dissolution of the HDP

32. In finding a violation of Article 18 in conjunction with Article 5 of the Convention in *Yüksekdağ Şenoğlu and Others*, the ECtHR noted, among other elements, that HDP politicians had been specifically targeted by the constitutional amendment lifting parliamentary immunity, and by criminal proceedings against them (para. 637). The developments concerning the HDP and HDP politicians after the ECtHR's judgment have continued to follow this pattern.

33. On 7 June 2021, the Chief Public Prosecutor of the Court of Cassation filed an indictment with the Constitutional Court demanding the permanent closure of the HDP, the confiscation of its assets by the treasury, and a political ban on its 451 prominent members including its co-chairs, MPs, and members of its executive branches.[31] The basis of the indictment is the prosecutor's allegation that the HDP's members, sub-bodies and executives have taken part in the commission of alleged crimes "in breach of the indivisible integrity of the State with its territory and nation and human rights" or "encouraged them to be committed" or "praised these crimes and those who committed them".[32]

34. The dissolution case, presently pending before the Constitutional Court, relies on accusations brought against Ms. Yüksekdağ Şenoğlu, Mr. Demirtaş, and other HDP politicians which are similar to those already examined by the ECtHR and found to violate the Convention, including in the cases of *Selahattin Demirtaş (no. 2), Yüksekdağ Şenoğlu and Others, Kerestecioğlu Demir, and Encü and Others*.[33]

VI. Continuing Violation of Articles 10 and 18 of the Convention

35. The obligations of Convention state parties to implement ECtHR judgments comprise putting an end to the violation and making reparation for the consequences of the violation in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*).[34] Implementation of the judgment in its entirety, as stated above, is vital to protect human rights and to ensure the binding force of ECtHR judgments in line with Article 46 of the Convention. The NGOs submit that Ms. Yüksekdağ Şenoğlu's continuing detention and the developments in the criminal proceedings against her, as explained above, constitute a continuing violation of her rights, particularly in relation to

[31] The indictment was based on the 17 March 2021 indictment filed by the same prosecutor but returned by the Constitutional Court on 31 March 2021 for failing to meet legal standards.
[32] The bill of indictment to the Constitutional Court by the Chief Public Prosecutor of the Court of Cassation, 7 June 2021, p. 832.
[33] ECtHR, *Kerestecioğlu Demir v. Turkey*, App No. 68136/16, 4 May 2021.
[34] ECtHR, *Papamichalopoulos and Others v. Greece (Article 50),* App No. 14556/89, 31 October 1995, para. 34 and *Assanidze v. Georgia [GC],* App No. 71503/01, 8 April 2004, para. 198.

the violations found by the ECtHR in Article 5, Article 10, and Article 18 in conjunction with Article 5 of the Convention.

36. The NGOs first recall that, in relation to Article 10, the ECtHR referred to the Grand Chamber finding in *Selahattin Demirtaş (No. 2)* that the lifting of the applicant's parliamentary immunity and the way the criminal law was applied to penalise her for her political speech were neither foreseeable nor prescribed by law (paras. 506-509 of the judgment). In this regard, it should be underlined that the Court's finding applies to any prosecutions or convictions for Mr. Yüksekdağ Şenoğlu's protected political speech delivered while she was an MP or started after her parliamentary immunity was unlawfully lifted. Indeed, the applicant's prosecution and conviction in, for example, the Ankara and Mersin cases, were only possible as a result of the 20 May 2016 constitutional amendment lifting her parliamentary immunity. Yet, the local judicial and prosecutorial authorities, as discussed above, have consistently failed to properly apply the ECtHR's findings on this matter in their actions against Ms. Yüksekdağ Şenoğlu and other former HDP MPs. Despite the ECtHR's ruling under Article 10 regarding the constitutional amendment lifting Ms. Yüksekdağ Şenoğlu's parliamentary immunity, the criminal proceedings against her facilitated by this amendment continued. These include, for example, the ongoing Ankara case, her convictions in the Diyarbakır and Mersin cases, the upholding of her conviction in the Adana case. Furthermore, she has subjected to numerous further criminal proceedings because she lost her MP status as a result of the final conviction in the Adana case.

37. As explained above, the local judicial and prosecutorial authorities did not make any genuine assessment, in line with the ECtHR's judgment (para. 509 of *Yüksekdağ Şenoğlu and Others*), as to whether Ms. Yüksekdağ Şenoğlu's statements were protected by the parliamentary non-liability enshrined in Article 83(1) of the Constitution. Article 83(1) makes clear that non-liability is absolute, and extends to statements and opinions parliamentarians repeat or disseminate outside the Parliament and not only to those made during formal parliamentary proceedings (paras. 259 and 263 of S*elahattin Demirtaş (No. 2)*).

38. Furthermore, in contravention of the established case law under Article 10 of the Convention, and in particular the Court's conclusions in the *Yüksekdağ Şenoğlu and Others* judgment, Ms. Yüksekdağ Şenoğlu's manifestly non-violent statements and acts led to a wave of criminal proceedings against her, as well as her detention from 4 November 2016 onwards. Her statements that became the subject of prosecution include, for example, her criticism of the pre-trial detention of journalists Erdem Gül and Can Dündar,[35] her participation in a petition campaign organised by the Human Rights Association (İHD) which was launched to protest the declaration of the state of emergency following the 15 July 2016 coup attempt, and her calling out of the persecution of the Saturday Mothers/People.[36]

[35] Ankara 10th Assize Court, File No. 2017/22577.

[36] The indictment prepared on these statements by the Van Prosecutor's Office (Investigation no. 2018/8079, File no. 2018/5527, Indictment no. 2018/3641) was initially heard before the Ankara 12th Assize Court (File number 2019/209). The case was later merged with the case before the Ankara 16th Assize Court. The Ankara 16th Assize

39. Second, the aforementioned criminal proceedings against Ms. Yüksekdağ Şenoğlu and Türkiye's intensifying arbitrary use of criminal proceedings against the other HDP politicians, through which the Turkish authorities have ensured the continuation of Ms. Yüksekdağ Şenoğlu's detention and prevented her from effectively carrying out her political activities, demonstrate that Türkiye continues to pursue "the ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society" (para. 637 of the judgment).

40. The NGOs submit that the accumulation of the criminal proceedings against Ms. Yüksekdağ Şenoğlu, Mr. Demirtaş, and other HDP politicians, together with the pending dissolution case against the HDP, and the serious limitations these actions have had on the politicians' ability to exercise their Convention rights, are evidence of the Turkish Government's blatant failure to prove that the political motivation behind the actions against Ms. Yüksekdağ Şenoğlu ceased to exist.

41. This ongoing purpose is evident not only in the criminal proceedings launched against Ms. Yüksekdağ Şenoğlu, Mr. Demirtaş, other HDP politicians and the HDP directly, but also in recent political developments in Türkiye. In the *Selahattin Demirtaş (no. 2)* judgment, which led the Court to find the same Article 18 violation in *Yüksekdağ Şenoğlu and Others,* the Grand Chamber emphasised that the timing of the applicant's pre-trial detention coincided with two crucial election campaigns: the 16 April 2017 referendum on the constitutional changes introducing the presidential system in Türkiye, and the 24 June 2018 presidential election. In the *Yüksekdağ Şenoğlu and Others* judgment, the Court found a violation of Article 18 (in conjunction with Article 5) with reference to, among others, this earlier conclusion (para. 647).

42. The NGOs submit that Ms. Yüksekdağ Şenoğlu's, Mr. Demirtaş's and other HDP politicians' ongoing detentions and/or prosecutions continue to serve the same political purposes. During the parliamentary and presidential elections in May 2023, both former co-chairs of the HDP, two prominent figures of the opposition in the country, together with thousands of other HDP politicians remained in prison. With the pending dissolution case against the HDP, its fair and effective participation in the election campaign was deemed impossible. This situation was addressed by the members of the International Election Observation Mission in their May 2023 statement which concluded that: "Key political and social figures are in prison even after judgments of the European Court of Human Rights, media freedom is severely restricted and there is a climate of self-censorship. Türkiye is a long way from creating fair election campaign conditions."[37]

43. The political purpose behind the actions taken against Ms. Yüksekdağ Şenoğlu and other HDP politicians was effectively confirmed by President Erdoğan. During his election campaign and following his contested win in the presidential election run-off of 28 May

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Court case was then merged with the main case before the Ankara 22nd Assize Court which is pending as of the date of this submission.

[37] Press Release on the International Election Observation Mission Republic of Türkiye – General Elections, 14 May 2023, https://www.oscepa.org/en/news-a-media/press-releases/press-2023/tuerkiye-elections-marked-by-unlevel-playing-field-yet-still-competitive-international-observers-say.

2023, President Erdoğan and other Government officials have continually and publicly targeted the HDP politicians and Mr. Demirtaş. Several examples of these speeches have been shared with the Committee in the Rule 9.1 submission by Mr. Demirtaş's lawyers.[38] One of the most striking examples is the 28 May 2023 speech in which President Erdoğan targeted Mr. Demirtaş and Mr. Kemal Kılıçdaroğlu – Mr. Erdoğan's rival during the presidential elections who promised in his campaign that the ECtHR judgments in the cases of Mr. Demirtaş and Mr. Kavala would be implemented. President Erdoğan stated: "During our rule, you cannot release Selo, the terrorist who murdered 51 Kurdish brothers of mine. Something like that *cannot* [emphasis added] happen under our rule." This statement triggered his supporters to start chanting "Hang Selo!" (*Selo'ya idam*, S*elo* is an abbreviation for Selahattin Demirtaş).[39] These speeches continue to exert and risk exerting undue pressure or influence on the judicial authorities involved in the domestic legal proceedings against Ms. Yüksekdağ Şenoğlu, as well as Mr. Demirtaş and other HDP politicians facing similar legal actions (para. 637 of the judgment).

44. The NGOs averred in our earlier submissions to the Committee that Article 18 continues to be violated unless and until the illegitimate purpose identified by the Court ceases to exist and the interference with the right for this purpose is ended. In Ms. Yüksekdağ Şenoğlu's case, her unlawful detention and all politically motivated criminal proceedings against her, consisting of a combination of a series of acts and omissions, are ongoing. The Government has manifestly failed to establish that Ms. Yüksekdağ Şenoğlu is no longer being targeted for political purposes, including, among others, by means of other parallel or subsequent criminal investigations and proceedings that serve the same illegitimate purpose.

45. The NGOs reiterate their 4 November 2022 submission in *Selahattin Demirtaş (no. 2)* that "the CM should use all the legal, political and diplomatic tools designated in the Convention system to increase the pressure on Türkiye", in this case, to secure the immediate release of Ms. Yüksekdağ Şenoğlu, as well as Mr. Demirtaş.[40] This is particularly urgent taking into account the serious impact their ongoing detention had on the May 2023 presidential and parliamentary elections and will have on the coming local (municipal) elections of March 2024. The steps the CM should consider taking in this vein must include the triggering of infringement proceedings against Türkiye under Article 46(4) of the Convention in the event that Ms. Yüksekdağ Şenoğlu or Mr. Demirtaş remain in detention. The Committee should also make efforts to ensure the direct and continuing engagement with Türkiye, through all available channels -including by member states, the Secretary General, the PACE, and all other Council of Europe institutions- to ensure full implementation of the entirety of the ECtHR judgments without further delay.

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[38] Communication from the applicant (31/07/2023) in the case of Selahattin Demirtas v. Turkey (no. 2) (Application No. 14305/17), paras. 7-10, https://hudoc.exec.coe.int/ENG?i=DH-DD(2023)920E.

[39] https://www.duvarenglish.com/erdogan-supporters-chant-death-penalty-for-demirtas-during-victory-speech-news-62493.

[40] Communications from NGOs in the case of Selahattin Demirtaş v. Turkey (No. 2) (Application No. 14305/17) (n. 10), 4 November 2022, para. 4.

46. The NGOs conclude that, in failing to implement the individual measures in Ms. Yüksekdağ Şenoğlu's case, including the ECtHR's explicit order for her immediate release, the Turkish Government is responsible for continuing violations of Articles 5(1) and (3), 10, 18 (in conjunction with Article 5) and Article 3 of Protocol No. 1 to the Convention. There has also been a breach of Article 46(1) of the Convention – the obligation to abide by any final judgment of the Court. The NGOs invite the CM to adopt the recommendations formulated below.

VII. Recommendations

47. The NGOs urge the CM to:

iv. Call for the immediate release of Ms. Yüksekdağ Şenoğlu, as required by the ECtHR judgment, and indicate that Ms. Yüksekdağ Şenoğlu's ongoing detention constitutes a prolongation of the violation of her rights;

v. Underline that the Court's judgment applies to Ms. Yüksekdağ Şenoğlu's ongoing pre-trial detention, the criminal proceeding for which she was convicted, and to any other ongoing or future proceedings or detention, in which the factual or legal basis is substantially similar to that already addressed and found by the ECtHR to violate her Convention rights;

vi. Call for the halt of all criminal proceedings initiated against Ms. Yüksekdağ Şenoğlu following the constitutional amendment lifting her immunity, as the Court found that the amendment had not met the legality standard of the Convention, and that all proceedings initiated pursuant to it should be deemed unlawful;

vii. Request the Government of Türkiye to end the persecution through abusive criminal proceedings of Ms. Yüksekdağ Şenoğlu, including by dropping all charges under which she has been investigated, prosecuted, and detained, which have pursued an ulterior purpose of undermining the exercise of freedom of expression, stifling pluralism and limiting freedom of political debate, including the conviction that caused the loss of her MP status, in conformity with the Court's finding that her rights under Article 18 in conjunction with Article 5 have been violated, and that her exercise of freedom of expression was wrongfully subject to criminal liability;

viii. Emphasise that *restitutio in integrum* in this case requires the cessation of the persecution of Ms. Yüksekdağ Şenoğlu through criminal proceedings, in the form of detentions, prosecutions, and convictions solely for her political activities and political speech;

ix. Request the Government of Türkiye to stop any interferences in the judicial processes against the applicant, especially by attempting to pressure or unduly influence judicial authorities, including those involved in the case before the Ankara 22nd Assize Court;

x. Take the necessary steps to ensure the direct and continuing engagement, through all available channels -including by member states, the Secretary General, the

PACE, and all other Council of Europe institutions- to secure full implementation of the ECtHR judgment without further delay; and

xi. Use all legal, political, and diplomatic tools designated in the Convention system to ensure the immediate release of Ms. Yüksekdağ Şenoğlu, including the triggering of infringement proceedings against Türkiye under Article 46(4) of the Convention in the event that she remains in detention.

LIST OF DOCUMENTS

1. Decisions of Ankara 22nd Assize Court on Ms. Yüksekdağ Şenoğlu's detention, dated 14 April 2023, 10 May 2023, 8 June 2023, 5 July 2023, 28 July 2023, 18 August 2023, and 15 September 2023 [**Annex I (1)-(7)**]

2. Ankara Public Prosecutor's submission on the merits, dated 14 April 2023 [**Annex II**]

3. Supreme Court decision on the Mersin case, 30 March 2023 [**Annex III**]

4. Parliament's session on MP status of Ms. Yüksekdağ Şenoğlu in relation to Adana case, dated 21 February 2017 [**Annex IV**]

5. Diyarbakır 13th Criminal Court of First Instance decision convicting Ms. Yüksekdağ Şenoğlu, dated 26 February 2019 [**Annex V**]