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Submission by the Turkey Human Rights Litigation Support Project, ARTICLE 19, Human Rights Watch, the International Commission of Jurists, and the International Federation for Human Rights (collectively “NGOs”) pursuant to Rule 9.2 of the Committee of Ministers’ Rules for the Supervision of the Execution of Judgments providing additional observations on the implementation of *Selahattin Demirtaş v. Turkey (No.2)* (Application no. 14305/17) Grand Chamber judgment of 22 December 2020.

I. Introduction

- 1- On 22 December 2020, the Grand Chamber of the European Court of Human Rights (“ECtHR” and “Court”) found in its landmark *Selahattin Demirtaş v. Turkey (No. 2)* judgment that Turkey violated Articles 5(1) and (3) (the right to liberty and security), Article 10 (freedom of expression), Article 3 of Protocol No. 1 (the right to free elections) and Article 18 (restrictions on rights for an unauthorised purpose) in conjunction with Article 5 of the European Convention on Human Rights (“the Convention”). In its judgment, the Grand Chamber held that Turkey must take all the necessary measures to secure Mr. Demirtaş’s immediate release, and that “the continuation of his pre-trial detention, on grounds pertaining to the same factual context, would entail a prolongation of the violation of his rights as well as a breach of the obligation on the respondent State to abide by the Court’s judgment in accordance with Article 46 § 1 of the Convention” (paragraph 442). Despite the passage of more than two years since the judgment, Mr. Demirtaş remains in detention.
- 2- Following its meeting of 9-11 March 2021, the Committee of Ministers (“CM”) drew attention to Mr. Demirtaş’s ongoing detention, underlined the Court’s ruling and requested Mr. Demirtaş’s immediate release. The Committee also highlighted the requirement that all negative consequences of the violation be eliminated by Turkey without delay, in application of the *restitutio in integrum*’s obligation.¹
- 3- During its examination of the case at its 1411st meeting (14-16 September 2021), the CM “underlined that the heart of the violation of Article 10 found by the Court was that the unprecedented, *ad homines* amendment of Article 83 § 2 of the Turkish Constitution on 20 May 2016 had unforeseeably deprived the applicant of parliamentary inviolability in respect of statements he made as a member of parliament”.² The CM concluded that “the obligation to provide him with *restitutio in integrum* in respect of this violation requires the removal of all the negative consequences for the applicant’s freedom of expression which resulted from the constitutional amendment, in particular the consequences of criminal prosecutions in respect of statements made by him which would otherwise have been protected under Article 83 § 2 of the Constitution”.³ Consequently, the Committee called once again for Mr. Demirtaş’s “immediate release, the quashing of his conviction by the Istanbul Assize Court, and termination of the criminal proceedings pending before the 22nd Ankara Assize Court, together with the removal of all other negative consequences of the constitutional amendment”.⁴

¹ CM decision, 1398th meeting (DH) 9-11 March 2021 - H46-40 *Selahattin Demirtaş v. Turkey (No. 2)*, (Application No. 14305/17).

² CM decision, 1411th meeting (DH) 14-16 September 2021 - H46-39 *Selahattin Demirtaş v. Turkey (No. 2)* (Application No. 14305/17), para. 3.

³ *Ibid.*

⁴ *Ibid.* para. 4.

- 4- During its examination of the case at the 1419th meeting (30 November-2 December 2021), the CM went on one step further and adopted an Interim Resolution, underlining that the applicant had been continuously deprived of his liberty since November 2016, and reiterated that “the [Turkish] authorities’ argument that the applicant’s current pre-trial detention [fell] outside the scope of the Court’s judgment [had been] examined and rejected by the Court in its indication under Article 46, as well as by the CM in its previous examinations based on the information available to it”.⁵ Furthermore, the Committee strongly urged again the authorities to assure Mr. Demirtaş’s immediate release and stressed that “the obligation of *restitutio in integrum* calls for measures to restore the applicant as far as possible to the position he would have enjoyed had these violations not occurred and that such measures should be compatible with the conclusions and spirit of the Court’s judgment”.⁶
- 5- Most recently, in its decision of 8-9 March 2022, the CM recalled that the Court held that Turkey had an obligation to take all necessary measures to secure Mr. Demirtaş’s immediate release, but also noted the Turkish authorities’ claim that the applicant was being detained on the basis of new evidence and allegations which were in substance different from those examined by the Court in its judgment.⁷ The CM considered that under these circumstances further information was needed.
- 6- In light of the CM’s decision, this submission addresses the Turkish authorities’ claims regarding the state of evidence and accusations against Mr. Demirtaş. It particularly focuses on the Government’s argument that “new pieces of evidence” that had not been examined by the ECtHR have emerged and that the substance of the allegations against Mr. Demirtaş is now different.⁸ The NGOs dispute this claim and maintain the conclusions shared with the CM in their two earlier submissions that the scope of the ECtHR’s judgment fully covers Mr. Demirtaş’s ongoing pre-trial detention in relation to the criminal proceeding pending before the Ankara 22nd Assize Court.⁹ The submission concludes by offering concrete recommendations to the CM including the necessity of triggering infringement proceedings in view of the Turkish Government’s refusal to take the measures mandated by the Court.

II. Abuse of criminal proceedings against Selahattin Demirtaş and continuing violation of Article 18

- 7- As the NGOs also explained in their Rule 9.2 submissions dated 7 February 2021 and 23 July 2021, the ongoing pre-trial detention of Mr. Demirtaş following the Grand Chamber judgment, in connection with criminal proceedings against him on a factual or legal basis similar to the one that led the Court to find multiple violations of the Convention, constitutes a prolongation of the

⁵ Interim Resolution CM/ResDH(2021)428 (Adopted by the Committee of Ministers on 2 December 2021 at the 1419th meeting of the Ministers’ Deputies) Execution of the judgment of the European Court of Human Rights *Selahattin Demirtaş v. Turkey* (No. 2).

⁶ *Ibid.*

⁷ CM decision, 1428th meeting (DH), 8-9 March 2022 - H46-37 *Selahattin Demirtaş v. Turkey* (No. 2) (Application No. 14305/17), para. 2.

⁸ See Communication from the authorities (17/11/2021) concerning the case of *Selahattin Demirtaş v. Turkey* (No. 2) (Application No. 14305/17), para. 4, available at [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)1211E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)1211E) ; Communication from the authorities (20/01/2022) concerning the case of *Selahattin Demirtaş v. Turkey* (No. 2) (Application No. 14305/17), para. 3, available at [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)101E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)101E) ; Communication from the authorities (20/04/2022) concerning the case of *Selahattin Demirtaş v. Turkey* (No. 2) (Application No. 14305/17), para. 3, available at [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)446E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)446E).

⁹ Communications from 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 and 23 July 2021, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)192revE](http://hudoc.exec.coe.int/eng?i=DH-DD(2021)192revE) and [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)759](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)759).

violations of his rights.¹⁰ Thus, his ongoing pre-trial detention is fully covered within the scope of the Grand Chamber judgment, in particular by its finding of a violation of Article 18 in conjunction with Article 5.¹¹

- 8- The ECtHR observed in *Papamichalopoulos and Others v. Greece* that “a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach”.¹² Therefore, the respondent State has two obligations following the judgment of the Court: i. If the breach is still continuing, to put an end to the breach; and ii. Provide full reparation for its consequences.
- 9- In *Assanidze v. Georgia*, where the respondent government, in the operative part of the judgment, was asked to release the applicant, the Court elaborated on these dual obligations: “It follows, inter alia, that a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach”.¹³
- 10- In *Selahattin Demirtaş v. Turkey (No.2)*, the Court concluded that “the continuation of [the applicant’s] pre-trial detention, on grounds pertaining to the same factual context, would entail a prolongation of the violation of his rights” and asked Turkey to take all necessary measures to secure the applicant’s immediate release in the operative part of the judgment. However, what differs *Selahattin Demirtaş (No.2)* from the *Assanidze* judgment is that in the former, the Court also concluded that the applicant’s detention had pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate.
- 11- Doubtless, the proceedings before the CM require the Committee to observe the implementation of the entire judgment, including Article 18 findings of the Court. In line with the jurisprudence of the Court identified above, this requires the respondent State to put an end to the breach, the applicant’s ongoing detention. In the light of this jurisprudence, it must be concluded that Mr. Demirtaş’s current detention constitutes a continuing violation unless otherwise is proven by the Government. However, the CM must also decide whether new pieces of evidence advanced by the Government are really new, considering the Court’s findings concerning Article 18 in the principal judgment. A failure to do this in a case where a state has been found in violation of Article 18 due to the detention of a prominent political opponent could enable the Government to evade its obligation to implement the Article 18 requirements of the judgment, as will be explained in greater detail below.
- 12- In this connection, it should be first underlined that Article 18 violations continue until the illegitimate purpose identified by the Court ceases to exist and the interference with the right for this purpose is ended. Notably, in the present case, the authorities’ abuse of the criminal proceedings against Mr. Demirtaş does not consist of a single act but of a combination of a series of acts and omissions. In the light of the Grand Chamber findings, the Government has the duty

¹⁰ Ibid, Rule 9.2 submissions from the NGOs, 7 February 2021 (paras. 31-58) and 23 July 2021.

¹¹ Ibid.

¹² ECtHR, *Papamichalopoulos and Others v. Greece (Article 50)*, App. No. 14556/89, 31 October 1995, para. 34.

¹³ ECtHR, *Assanidze v. Georgia [GC]*, App. No. 71503/01, 8 April 2004, para. 198.

to cease these acts and the pattern of unlawful conduct of which they form part. In other words, it must end Mr. Demirtaş's ongoing detention and all politically motivated criminal proceedings against him - not only one set of criminal proceedings. The CM must be satisfied that he is no longer targeted for political purposes, including by means of other parallel or subsequent criminal investigations and proceedings that serve the same, illegitimate purpose.

- 13- Second, the burden is on Turkey to prove that it has ceased to conduct criminal proceedings against Mr. Demirtaş with political motivation. Merely claiming that Mr. Demirtaş's detention continues because new evidence emerged after the Grand Chamber judgment -and some seven years after the events that the accusations stem from- cannot be considered sufficient for the Government to discharge its burden of proof in Article 18 cases. On the contrary, the burden of proof remains firmly on the state concerned to establish for the CM that this is not simply a tactic to circumvent the Grand Chamber's judgment and to perpetuate the violations found by the Court in relation to Article 18 of the Convention.
- 14- Third, in Mr. Demirtaş's case the Government's burden is higher. As found by the Grand Chamber, Mr. Demirtaş had already been held in pre-trial detention and charged with different crimes on the basis of the same facts, which contributed to the ECtHR's finding that the criminal proceedings against him and his pre-trial detention were politically motivated.¹⁴ Since then, new criminal proceedings have been brought against the applicant. Most notably, the applicant has been currently detained in the scope of the case before the Ankara 22nd Assize Court, based on the same facts which had already been reviewed by the ECtHR (6-8 October 2014 events), in relation to which new evidence is purported to have emerged. The alleged new evidence in this case though did not appear until October 2021. In these circumstances, the Government must prove that the evidence is truly new and convince the CM that this is not a part of strategy to silence Mr. Demirtaş, stifle pluralism and limit freedom of political debate in Turkey.
- 15- Fourth, the NGOs would underline that in finding a violation of Article 18 in conjunction with Article 5, the Grand Chamber noted, *inter alia*, how the politicians from the Peoples' Democratic Party (*Halkların Demokratik Partisi* in Turkish, "HDP") had been targeted by the constitutional amendment lifting parliamentary immunity, and by criminal proceedings against them. The developments concerning the HDP and HDP politicians after the ECtHR's judgment have been following a similar pattern. Most notably, on 7 June 2021 a lawsuit was filed with the Constitutional Court by the Chief Public Prosecutor of the Supreme Court for the permanent closure of the HDP. In this case brought against the HDP, the exact same accusations brought against Mr. Demirtaş which were already examined in the Grand Chamber judgment¹⁵ are among the grounds relied on by the Chief Public Prosecutor of the Supreme Court in his request for the dissolution of the HDP.
- 16- Finally, as is well known to the Committee, Turkey has repeatedly and consistently failed to implement the ECtHR judgments, including those concerning arbitrary pre-trial detentions and abuse of criminal law measures against opponents or perceived opponents. The recent development seen in the case of Osman Kavala, despite the ECtHR's judgment of December 2019 and the CM's persistent calls for his release, is yet another striking example. This context further supports the proposition that Mr. Demirtaş's detention is ongoing not as a result of new

¹⁴ The Court held that the criminal proceedings against the applicant and his detention pursued an ulterior purpose of stifling pluralism and limiting freedom of political debate.

¹⁵ Mr. Demirtaş's speeches and activities, which had been prosecuted as terrorism-related offences.

developments in the proceedings against him but the Turkish authorities' ongoing aim of keeping him behind bars for political purposes.

17- The NGOs, therefore, submit that the CM should question the timing and the veracity of the alleged new pieces of evidence advanced by the Government. The Government must prove that this allegedly new evidence constitute reasonable suspicion that the applicant committed a crime that does not fall within Article 5 and Article 18 examination of the Court in *Selahattin Demirtaş (No. 2)* judgment. Whilst doing this examination, the CM should also take into account that in both this case and the Kavala judgment, the respondent Government has an established track record in citing judicial tactics that seem to have been developed so as to avoid releasing the applicants from detention and thereby evading the obligation to implement the ECtHR judgments.

III. Continuing failure of Turkey to discharge its obligation to take the individual measure of releasing Selahattin Demirtaş

18- As is known to the Committee, despite the *Selahattin Demirtaş v. Turkey (No. 2)* judgment and the CM's subsequent decisions calling for Mr. Demirtaş's immediate release, the Turkish Government has refused to secure his release and has continued to use evasive judicial tactics to continue his detention. The Government's arguments before the Committee purporting to justify Mr. Demirtaş's ongoing detention have changed over time but have been consistently spurious. The Government argued, for example, that Mr. Demirtaş's detention, following the Ankara 19th Assize Court's release order on 2 September 2019, fell outside of the scope of the Grand Chamber judgment. It later claimed that Mr. Demirtaş was no longer a detainee but a convict from 3 May 2021 onwards, and that his new legal status fell outside the scope.¹⁶

19- In their submission of 23 July 2021 before the CM, the NGOs made clear that these arguments were wholly without merit, and no more than another effort to circumvent the Court's judgment.¹⁷ This conclusion was shared by the CM which adopted its decision of 14-16 September 2021 and later the Interim Resolution of 2 December 2021.

20- Most recently, in its submissions to the CM, to justify Mr. Demirtaş's ongoing detention, the Turkish Government alleged that new evidence had emerged after the ECtHR's judgment and had thus not been examined by the ECtHR within the scope of the present case.¹⁸

21- In its submission of 17 November 2021, the Government referred to the reasoning of the Ankara 22nd Assize Court in its decision of 27 October 2021.¹⁹ In this decision the Assize Court authorised the continuation of Mr. Demirtaş's detention on the following grounds:

- There was a strong suspicion that the applicant committed the alleged offence imputed to him, considering the new evidence obtained along with other evidence already existing in the

¹⁶ In its submission of 19 November 2021 (1419th meeting (December 2021) (DH) - Rule 8.2a - Communication from the authorities (19/11/2021) concerning the case of *Selahattin Demirtaş v. Turkey (No. 2)*), the Government informed the CM that the applicant's prison sentence stemming from Istanbul 26th Assize Court judgment, which is delineated by the ECtHR as the second set of proceedings, had come to an end on 16 November 2021, since the term the applicant spent in detention within the scope of criminal proceedings before the Ankara 22th Assize Court was deducted from the final sentence imposed in the case before the Istanbul Assize Court.

¹⁷ See supra note 9, the 9.2 submissions from the NGOs dated 7 February 2021 (paras. 31-58) and 23 July 2021

¹⁸ See supra note 8, Communication from the authorities (17/11/2021) concerning the case of *Selahattin Demirtaş v. Turkey (No. 2)* (Application No. 14305/17), para. 4; Communication from the authorities (20/01/2022) concerning the case of *Selahattin Demirtaş v. Turkey (No. 2)* (Application No. 14305/17), para. 3; Communication from the authorities (20/04/2022) concerning the case of *Selahattin Demirtaş v. Turkey (No. 2)* (Application No. 14305/17), para. 3.

¹⁹ See supra note 8, Communication from the authorities (17/11/2021) concerning the case of *Selahattin Demirtaş v. Turkey (No. 2)* (Application No. 14305/17), para. 4.

case file. As regards the new evidence, the Assize Court referred, in particular, to the statements of an anonymous witness (Mahir) and named witness K.G, the digital materials obtained from B.Y. and the statements of the defendant İ.B..

- The Assize Court also considered that the social media posts shared on the official HDP Twitter account, @HDPgenelmerkezi, on 6 October 2014 calling for solidarity with the people of Kobani against the Daesh siege and for the people to protest, were not protected by the parliamentary non-liability enshrined in Article 83(1) of the Constitution.²⁰

22- In its submission of 20 January 2022, the Turkish Government referred to its previous submissions before the CM.²¹ However, in its submissions of 14 April 2022²² and 20 April 2022,²³ in addition to the alleged 'new' evidence referred to in its previous submissions, the Government also noted the statements of another anonymous witness ABC123,²⁴ and the recordings of telephone conversations between Mr. Demirtaş and absconded suspect K.Y.²⁵ as evidence which had not been examined by the ECtHR and that they claim supported strong suspicion that the applicant had committed the imputed crime.²⁶ Lastly, the Government also repeated its previous arguments that Mr. Demirtaş's current detention was subject of another application pending before the Constitutional Court and the ECtHR, and that the CM had no authority to evaluate the content of the evidence and the domestic court's assessment made on the basis of this evidence.²⁷

23- The NGOs submit that this is a further attempt from the Government to flout its obligation, among others, to immediately release Mr. Demirtaş.

24- First, the Turkish Government argues that the CM has no authority to evaluate the content of the evidence and the domestic court's assessment made on the evidence which are used to justify Mr. Demirtaş's ongoing detention. In view of the fact that the CM has previously dismissed the Government's argument that Mr. Demirtaş's present detention falls outside the scope of the Court's judgment, the CM must necessarily be entitled to evaluate the quality of any alleged new evidence or facts which provide the grounds to prolong his detention and are relevant to determining whether there is a prolongation of the violations the Court found. As noted above, the Government is under the duty to put an end to the continuing detention of the applicant, but also to put an end to the pattern of unlawful conduct serving the ulterior purpose of stifling pluralism and limiting freedom of political debate by silencing him. The Government's argument that an assessment of evidence is out of bounds for the CM is manifestly unfounded in view of the CM's role in ensuring implementation of the judgment, including the part concerning the Article 18 violation.

²⁰ Ibid.

²¹ See supra note 8, Communication from the authorities (20/01/2022) concerning the case of Selahattin Demirtas v. Turkey (No. 2) (Application No. 14305/17).

²² 1436th meeting (June 2022) (DH) - Addendum to an Action Plan (14/04/2022) - Communication from Turkey concerning the case of Selahattin Demirtas v. Turkey (no. 2) (Application No. 14305/17), available at [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)434E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)434E).

²³ See supra note 8, Communication from the authorities (20/04/2022) concerning the case of Selahattin Demirtas v. Turkey (No. 2) (Application No. 14305/17).

²⁴ See supra note 22, Addendum to an Action Plan (14/04/2022) - Communication from Turkey concerning the case of Selahattin Demirtas v. Turkey (no. 2) (Application No. 14305/17), paras. 13-15. The witness' statements were read at the hearing of 11 February 2022 before the Ankara 22nd Assize Court.

²⁵ Ibid. paras. 15-16. This piece of evidence was noted by the Ankara 22nd Assize Court as new evidence during hearings that took place on 28 March-8 April 2022.

²⁶ Ibid. para. 16.

²⁷ Ibid. para. 17; see also supra note 8, Communication from the authorities (20/04/2022) concerning the case of Selahattin Demirtas v. Turkey (No. 2) (Application No. 14305/17), para. 6.

- 25- Second, it should be underlined that the criminal proceedings against Mr. Demirtaş concern events which took place more than 7 years ago. The Government must convincingly explain why the evidence claimed to be ‘new’ appears only now, several years after the events, and following the ECtHR’s December 2020 judgment finding Mr. Demirtaş’s detention politically motivated and the CM’s subsequent calls for his release.
- 26- Third, the Government fails to give clear and reliable information on the alleged ‘new’ evidence. Notably, the Government refers to the recordings of telephone conversations between Mr. Demirtaş and absconded suspect K.Y in its submissions as new evidence. However, it does not provide any explanation on the content of those recordings or how they differ from the evidence against Mr. Demirtaş which had already been examined within the scope of the Grand Chamber judgment and considered insufficient to justify the applicant’s pre-trial detention (paragraph 336). Furthermore, while the Government refers to statements of the defendant İ.B as new evidence, it fails to explain whether and why they are different from his statements given at the investigation stage.
- 27- Moreover, heavy reliance is placed on supposed anonymous witnesses, yet reports illustrate an extremely worrying practice of the abuse of such witnesses in Turkey. In a detailed analysis of 18 case files concerning cases of detained HDP mayors in the Kurdish region since the attempted coup of July 2016, Human Rights Watch concluded that:²⁸
- “[T]he court decisions [ordering pretrial detentions of mayors] relied on vague and generalized allegations against the mayors by witnesses, some secret, and on details of their political activities and social media postings, which fail to establish reasonable suspicion of criminal activity that would justify detention”;
 - “[I]n most cases, the identity of the witnesses is protected [The witnesses] allege that the mayors are associated with certain activist organizations that operated without hindrance for years but that the authorities now regard as PKK-linked. Or they assert in a generalized and vague way that that the mayors undertook unspecified activities for the armed group”; and
 - “[I]n making their determinations on whether the evidence constitutes reasonable suspicion a crime has been committed, [domestic] courts demonstrated no need to probe protected witnesses’ generalized and vague assertions against suspects, or to question their motivation or why their identity has to be protected.”
- 28- Mr. Demirtaş’s lawyers have argued that the use of anonymous witnesses is a new tactic of the Turkish Government to avoid its obligation to implement the Grand Chamber judgment.²⁹ According to the lawyers, the domestic authorities use anonymous witnesses, or additional witness statements on the same issues to create the illusion that the evidence added to the case file is new and different than those already assessed in the Grand Chamber judgment. This together with the widely documented issues around independence and impartiality of the judiciary, lack of sufficient safeguards against arbitrariness and the continuing interference of the executive for political purposes in judicial procedures in Turkey, point to a cluster of unlawful conduct designed to keep opposition politicians including Mr. Demirtaş behind bars.

²⁸ Human Rights Watch, Turkey: Kurdish Mayors’ Removal Violates Voters’ Rights: End Politically Motivated Arrests and Trials, 7 February 2020, available at <https://www.hrw.org/news/2020/02/07/turkey-kurdish-mayors-removal-violates-voters-rights#>.

²⁹ 436th meeting (June 2022) (DH) - Rule 9.1 - Communication from the applicant (13/04/2022) in the case of Selahattin Demirtaş v. Turkey (no. 2) (Application No. 14305/17) para 27028, available at [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)424E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)424E).

- 29- Despite this, the Ankara 22nd Assize Court attributes important weight to anonymous witnesses' statements as new evidence supporting strong suspicion that the applicant had committed the imputed crime, without giving any clear and detailed information to the CM on the content of the statements, safeguards adopted to prevent their arbitrary use and the manner in which the statements were taken.
- 30- Fourth, the Ankara 22nd Assize Court summarily held that the social media posts shared on the official HDP Twitter account on 6 October 2014 - calling for solidarity with the people of Kobani against the Daesh siege and for people to protest - were not protected by the parliamentary non-liability. The grounds for this decision were that the statements had been made outside of the parliament and the content was unrelated to Mr. Demirtaş's legislative activities.³⁰ However, this issue was already addressed by the Grand Chamber in its judgment. Article 83(1) of the Constitution makes clear that non-liability extends to statements and views parliamentarians "repeat or reveal ... outside the Assembly", and not only to those made during formal parliamentary proceedings. The ECtHR judgment recalled this point, and went on to state, "[a]s both parties also stated at the [Grand Chamber] hearing, it is clear that repeating a political speech outside the National Assembly cannot be construed as being limited to repeating the same words that were used in Parliament" (paragraph 259).
- 31- In the light of the above, the NGOs submit that the Turkish Government has failed to prove that it has ceased to conduct criminal proceedings against Mr. Demirtaş with political motivation, as it has failed to provide the CM with any clear and reliable information concerning the timing, the veracity and seriousness of the alleged new pieces of evidence. As a result, the Turkish Government is responsible for continuing violations of Mr. Demirtaş's Convention rights and Article 46(1) – the obligation of Turkey to abide by any final judgment of the Court. The NGOs invite the CM to adopt the recommendations formulated in their February 2021 and July 2021 submissions and below. They further urge the CM to reiterate its call on Turkey for the immediate release of Mr. Demirtaş and exhort the CM to take other necessary steps to ensure full implementation of the entirety of the ECtHR's judgment by Turkey.

IV. Recommendations to the CM on individual measures

Regarding individual measures, the NGOs urge the CM to:

- i. Insist on the immediate release of Selahattin Demirtaş as required by the ECtHR judgment and indicate that continuation of Mr. Demirtaş's detention in any form under criminal proceedings remaining within the scope of the Grand Chamber judgment constitutes a prolongation and entrenching of the violation of his rights under the Convention, as found by the ECtHR.
- ii. Confirm that the Grand Chamber judgment clearly applies to Mr. Demirtaş's ongoing pre-trial detention, the criminal proceeding under which he 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 to violate his Convention rights, by the ECtHR in its judgment.

³⁰ See supra note 8, Communication from the authorities (17/11/2021) concerning the case of Selahattin Demirtaş v. Turkey (No. 2) (Application No. 14305/17), para. 4.

- iii. Call for the halt of all criminal proceedings initiated against Mr. Demirtaş following the constitutional amendment lifting his parliamentary immunity, as the Grand Chamber found that the amendment did not meet the legality standard of the Convention, and that all proceedings initiated pursuant to it should therefore be deemed unlawful.
- iv. Request the Government of Turkey to end the persecution through abusive criminal proceedings of Selahattin Demirtaş, including by dropping all charges under which he has been investigated, prosecuted and detained, which have pursued an ulterior purpose of stifling pluralism and limiting freedom of political debate, in conformity with the Court's finding that his rights under Article 5(1) in conjunction with Article 18 were violated, and that his exercise of the right to freedom of expression was wrongfully used as evidence to incriminate him.
- v. Emphasise the continuing nature of the breach and that *restitutio in integrum*, in this case, requires – *inter alia* - the cessation of the persecution of Mr. Demirtaş through criminal proceedings, in the form of ongoing and future investigations, prosecutions and detentions, including pre-trial detentions, solely for his political activities and his political speech.
- vi. In the event that Selahattin Demirtaş remains in detention at the time of the 1436DH 8-10 June 2022 meeting, to take the necessary steps to trigger infringement proceedings against Turkey under Article 46(4) of the Convention on the ground of its continued failure to comply with the ECtHR Grand Chamber's judgment.