



Parliamentary immunity withdrawn from elected member of National Assembly by constitutional amendment of 20 May 2016: violation of freedom of expression

In today's **Chamber** judgment¹ in the case of [Kerestecioğlu Demir v. Turkey](#) (application no. 68136/16) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 10 of the European Convention on Human Rights.

The case concerned the withdrawal of parliamentary immunity from the applicant, an elected member of the Turkish National Assembly, a decision which in her submission was the result of her political opinions. She also complained of a violation of her right to freedom of expression.

Referring to its case-law from the Grand Chamber judgment in *Selahattin Demirtaş (no. 2)*, the Court had already found that the constitutional amendment of 20 May 2016, removing the parliamentary immunity of elected representatives in the National Assembly, was part of terrorism prevention measures. It could be seen from the reasoning behind that amendment that it sought to restrict the political speech of parliamentarians.

In the light of that case-law, the Court took the view that the withdrawal of the applicant's parliamentary immunity through the constitutional amendment constituted in itself an interference with her right under Article 10 of the Convention. Confirming the Grand Chamber's analysis in *Selahattin Demirtaş (no. 2)*, a judgment delivered on 22 December 2020, the Court found that there had been a violation of Article 10 of the Convention.

Principal facts

The applicant, Filiz Kerestecioğlu Demir, is a Turkish national who was born in 1961 and lives in Ankara (Turkey).

On 28 July 2015 the President of the Republic made a statement in which he claimed that the leaders of the Peoples' Democratic Party (HDP) would have to "pay the price" for acts of terrorism.

On 29 July 2015 all MPs of the HDP group, including the applicant, submitted a petition to the Bureau of the Turkish National Grand Assembly (the "National Assembly") requesting the waiver of immunity of their parliamentary group members. On 3 August 2015 the National Assembly Bureau informed the HDP group's chair that, in accordance with Rule 134 of the Rules of Procedure, the mere fact that an MP was requesting the withdrawal of his or her parliamentary immunity was not sufficient for that measure to be enforced.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 1 November 2015 Ms Kerestecioğlu Demir was re-elected as a member of the National Assembly for the HDP and was thus granted parliamentary immunity. She was re-elected again in the parliamentary election of 24 June 2018.

According to an investigation report drawn up by the Istanbul police and submitted to the public prosecutor, on 14 February 2016 a group of about 100 women, including Ms Kerestecioğlu Demir, held a meeting in Kadıköy (Istanbul). Ultimately about two hundred people gathered, chanting slogans. A police officer had warned the group not to chant provocative slogans for security reasons. The applicant contested this warning. On 9 May 2016 the public prosecutor drew up an investigation report against Ms Kerestecioğlu Demir with a view to withdrawing her parliamentary immunity and submitted it to the Ministry of Justice. This criminal investigation concerned her participation in the meeting and her statement to the press on 14 February 2016.

On 20 May 2016 the National Assembly adopted a constitutional amendment according to which parliamentary immunity, as provided for in the second paragraph of Article 83 of the Constitution, was to be withdrawn in all cases where a request for waiver of immunity was submitted to the competent authorities before the date of adoption of the amendment. This constitutional amendment concerned a total of 154 members of the National Assembly, which consisted of 550 MPs at the time, including 59 members from the CHP (Republican People's Party), 55 from the HDP, 29 from the AKP (Justice and Development Party) and 10 from the MHP (Nationalist Action Party). It also affected one independent MP.

The constitutional amendment was prompted by clashes in Syria between "Daesh" and the forces of an organisation linked to the PKK (Kurdistan Workers' Party, an illegal armed organisation), and the outbreak of serious violence in Turkey in 2014 and 2015, following the failure of negotiations to resolve the Kurdish issue.

Fourteen HDP MPs and one CHP MP were remanded in custody as part of the criminal investigations against them.

Seventy MPs brought an action in the Constitutional Court seeking the annulment of the constitutional amendment, arguing essentially that it should be considered a "parliamentary decision" taken under Article 83 of the Constitution. They requested that the Constitutional Court review the constitutionality of this "decision" under Article 85 of the Constitution.

On 3 June 2016 the Constitutional Court unanimously rejected the request. It noted that this was a constitutional amendment in the formal sense of the term. It observed that the review of the amendment could be carried out in accordance with the procedure described in Article 148 of the Constitution, stipulating that only the President of the Republic or one fifth of the 550 members of the National Assembly could bring an action for annulment in the Constitutional Court. As this condition was not met, the application of the interested parties was rejected.

On 8 June 2016 the constitutional amendment was published in the Official Gazette and entered into force.

Following the withdrawal of parliamentary immunity, the public prosecutor resumed the criminal investigation against Ms Kerestecioğlu Demir. On 25 October 2016 he filed an indictment against her in the Anadolu Assize Court, seeking her conviction for participating in an illegal meeting. On 25 January 2018, considering that the meeting in question had been a peaceful meeting, the Anadolu Assize Court acquitted Ms Kerestecioğlu Demir. The Istanbul Public Prosecutor appealed against this judgment. The Istanbul Court of Appeal overturned the 25 January 2018 judgment on the grounds of procedural irregularities.

On 12 February 2019 the Anadolu Assize Court acquitted her. In February 2019 the prosecutor again appealed against the judgment. The criminal proceedings against Ms Kerestecioğlu Demir are still pending in the national courts.

Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of thought, conscience and religion), Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 18 (limitation on use of restrictions on rights) of the Convention, the applicant complained that the constitutional amendment of 20 May 2016 withdrawing her parliamentary immunity had violated her rights to freedom of expression and freedom of assembly.

The application was lodged with the European Court of Human Rights on 11 November 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,
Marko **Bošnjak** (Slovenia),
Aleš **Pejchal** (the Czech Republic),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),
Saadet **Yüksel** (Turkey),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 10

In the light of its case-law and the nature of the applicant's complaint, the Court took the view that the questions raised in the present case called for examination solely under Article 10 of the Convention.

The Court drew attention to the principles of its case-law concerning the freedom of expression of parliamentarians, as set out in [Selahattin Demirtaş \(no. 2\)](#). In that case the Court had indicated that it could be seen from the explanatory memorandum on the constitutional amendment, that it had been brought forward because "at a time when Turkey [was] waging the strongest and most intensive campaign against terrorism in its history, certain members of parliament, whether before or after their election, [had] made speeches voicing moral support for terrorism", which had "aroused public indignation". The aim of the constitutional amendment had therefore been to limit the political speech of the members of parliament in question.

The Court had also found in that case that the combination of various measures, including the withdrawal of the applicant's parliamentary immunity by the constitutional amendment of 20 May 2016, had constituted an interference with the exercise of his right to freedom of expression under Article 10 of the Convention. In the light of that case-law, the Court took the view that the withdrawal of the present applicant's parliamentary immunity through the constitutional amendment had in itself constituted an interference with her right under Article 10 of the Convention.

The Court observed that by a petition of 29 July 2015, all MPs of the HDP, the applicant included, had requested the waiver of their parliamentary immunity. However, on 3 August 2015, the National Assembly's Bureau had indicated that the mere fact that an MP requested the waiver of his or her parliamentary immunity was insufficient for the measure to be enforced. The Court thus took the view that the petition did not affect its finding about the withdrawal of the applicant's parliamentary immunity following the constitutional amendment of 20 May 2016.

Confirming the Grand Chamber's analysis, the Court found a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that Turkey was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.

Separate opinions

Judge Yüksel expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.