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TÜRKİYE: HDP CLOSURE WOULD VIOLATE RIGHTS TO FREEDOM OF EXPRESSION AND ASSOCIATION

A decision to close Türkiye's second largest opposition party, the People's Democratic Party (HDP), following a lawsuit at the country's Constitutional Court,¹ would result in multiple violations of the rights to freedom of expression and association. As the country prepares for crucial elections in the aftermath of the devastating 6 February earthquakes, an order to close HDP and a political ban² on several hundred current and former HDP members would be in clear breach of Türkiye's international obligations.

The Chief Public Prosecutor of the Court of Cassation filed a case against HDP in March 2021, following repeated public calls from the leader of the Nationalist Movement Party (MHP), Devlet Bahçeli, to close HDP due to allegations of "terror links". The Constitutional Court returned the indictment to the Chief Prosecutor, finding it did not provide sufficient evidence regarding the allegations that HDP was "a focal point for the terrorist organization". The Constitutional Court accepted a second iteration of the indictment presented by the prosecution in June 2021.³

The indictment alleges that the HDP has engaged in activities contrary to the "indivisible integrity of the state with its territory and nation",⁴ and that the party has become a focus of such activities.⁵ The HDP challenged the attempt to close the party by submitting its preliminary defence to the Constitutional Court on 5 November 2021. The Prosecutor's Office submitted its next opinion on 30 November without waiting for and examining the defence statements of the 451 people named in the indictment.⁶ In May 2022, the prosecuting authorities submitted further evidence allegedly to justify the allegations against the HDP, but without material proof to support the prosecution's case. In early January 2023, the Constitutional Court ordered a freeze on the party's bank accounts where the treasury deposits payments to which all parliamentary groups are entitled. This decision was reversed in March 2023 on a majority vote, following the HDP's appeal. The HDP is expected to present its defence in a hearing on 11 April 2023.

The HDP is the eighth Kurdish-rooted left-wing political party in Türkiye to face legal action potentially for closure since 1993 for allegedly breaching the constitution.⁷ During this period, five parties were shut down for supposed links with the banned Kurdistan Workers Party (PKK). Two other parties dissolved themselves. The European Court of Human Rights (ECtHR), to which Türkiye is a state party, has repeatedly found violations of Article 11 of the European Convention on

¹ The Chief Public Prosecutor submitted the first version of the indictment to the Constitutional Court on 17 March 2021. The Court rejected the indictment on 31 March on the basis of procedural flaws in the case including the fact that no relationship had been established between the actions that were claimed to be contrary to the "indivisible unity of the state with its territory and nation", for which no justification was given other than being the subject of investigations and prosecutions, and the Party's becoming centre of these actions.

² Meaning they cannot stand in elections for five years, or found, manage, audit or be a member of a political party for five years.

³ Peoples' Democratic Party, Constitutional Court accepts indictment seeking HDP's closure, Statement by Foreign Affairs Spokespersons Feleknaş Uca & Hişyar Özsoy, 21 June 2021, <https://hdp.org.tr/en/constitutional-court-accepts-indictment-seeking-hdps-closure/15547/>

⁴ Article 68/4 of the Turkish Constitution: The statutes and programmes, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to protect or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime.

⁵ Article 69/6 of the Turkish Constitution: The decision to dissolve a political party permanently owing to activities violating the provisions of the fourth paragraph of Article 68 may be rendered only when the Constitutional Court determines that the party in question has become a centre for the execution of such activities. (Sentence added on October 3, 2001; Act No. 4709) A political party shall be deemed to become the centre of such actions only when such actions are carried out intensively by the members of that party or the situation is shared implicitly or explicitly by the grand congress, general chairpersonship or the central decision-making or administrative organs of that party or by the group's general meeting or group executive board at the Grand National Assembly of Türkiye or when these activities are carried out in determination by the abovementioned party organs directly.

⁶ The prosecutor's office claims that the party has engaged in acts contrary to the fourth paragraph of the Article 68 of the Constitution and Articles 78, 80, 81, 82 and 90 of the Law No. 2820 on Political Parties and asked for its permanent closure pursuant to the sixth paragraph of the Article 69 of the Constitution and Articles 101/1-b and 103 of the Law No. 2820 on political parties.

⁷ VOA TÜRKÇE, HEP'ten HDP'ye Kapatılan Kürt Partileri, 20 March 2021, <https://www.amerikaninsesi.com/a/hepten-hdp-ye-kapatilan-kurt-partileri/5820797.html>

Human Rights in all applications following the shuttering of Kurdish-rooted political parties, primarily on the ground that the authorities' order to dissolve these political parties could not reasonably be said to have met "a pressing social need".⁸ It is important to note that the first ever political party closed for addressing Kurdish social and political issues was the Workers Party of Türkiye (TİP), which was dissolved in 1971, long before the PKK was established.⁹

Thus far, Türkiye has failed to implement rulings by the European Court in which human rights violations were found based on the closure of political parties or other restrictions imposed on people associated with them. These rulings include cases where the authorities lifted HDP lawmakers' immunities, allowing them to be unjustly prosecuted, as well as cases in which the anti-terrorism law has been used to unduly restrict the rights to freedom of expression and association. For example, in December 2020, the European Court's Grand Chamber found that Türkiye had violated the rights to liberty and security (Article 5), freedom of expression (Article 10) and free elections (Article 3 of Protocol No.1), among others, due to the pre-trial detention and criminal prosecution of former party co-chair Selahattin Demirtaş.¹⁰ The Court has also found that broadly formulated criminal laws, in particular Anti-Terrorism Law (No.3713) and its broad interpretation, have been used to penalize a wide range of legitimate activities including expression of political dissent.¹¹ Moreover, the Court has found unwarranted and disproportionate interferences with the right to freedom of expression as a result of criminal investigations against political opponents under various articles of the Penal Code or Anti-Terrorism Law.¹²

The closure of the HDP would be a violation of the rights to freedom of expression and association, and would seriously undermine the ability of people in Türkiye to take part in the conduct of public affairs. Amnesty International urges the Turkish authorities to uphold their obligations under international human rights law and abide by the ECHR, its protocols and previous Court rulings to ensure these rights are duly protected. The Chief Public Prosecutor of the Court of Cassation should withdraw the lawsuit against the HDP, particularly in light of the ECtHR rulings in previous cases where the European Court found violations of the right to association in recent years due to similar circumstances in which the Turkish authorities have closed political parties.

Amnesty International also urges the Constitutional Court to take into consideration the multiple binding rulings of the ECtHR that are relevant to the current case and that should serve as a guiding basis for its upcoming judgment. The Turkish state as a whole, including the judiciary, has an obligation to uphold international human rights law and guarantee that everyone in the country is able to freely exercise their right to freedom of association.

ACCUSATIONS AGAINST THE HDP

The HDP was founded in 2012 and received the support of 5.8 million voters, almost 12 percent of the electorate in the legislative elections in 2018. The 843-page indictment requesting the HDP's closure alleged that "the HDP is the centre

⁸ European Court of Human Rights, Factsheet – Political Parties and Associations, May 2022, https://www.echr.coe.int/Documents/FS_Political_parties_ENG.pdf

⁹ <https://www.resmigazete.gov.tr/arsiv/14064.pdf>

¹⁰ European Court of Human Rights (ECtHR), *Selahattin Demirtaş v. Turkey (No. 2)*, Application 14305/17, Grand Chamber judgment, 22 December 2020, <https://hudoc.echr.coe.int/tur#%7B%22itemid%22:%5B%22001-207173%22%7D>

¹¹ See, for example, ECtHR, *Kiliçdaroğlu v. Turkey*, Application 16558/18, Second section judgment, 27 October 2020, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-205898%22%7D>; ECtHR, *Özer v. Turkey (No. 3)*, Application 69270/12, Second Section Judgment, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-200841%22%7D>; ECtHR, *Ürper and Others v. Turkey*, Applications 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07, 20 October 2009, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22C3%9Ccrper%20and%20others%20v.%20Turkey%22%7D%22%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%22CHAMBER%22%7D%22%22itemid%22:%5B%22001-95201%22%7D>; ECtHR, *Mehmet Hasan Altan v. Turkey*, Application 13237/17, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Mehmet%20Hasan%20Altan%20v.%20Turkey%22%7D%22%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%22CHAMBER%22%7D%22%22itemid%22:%5B%22001-181862%22%7D>, para 188.

¹² See, for example, *Selahattin Demirtaş v. Turkey (No. 2)*, para 337; ECtHR, *Özgür Gündem v. Turkey*, Application 23144/93, 16 March 2000, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22C3%96zg%20C3%BCr%20G%20C3%BCndem%20v.%20Turkey%22%7D%22%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%22CHAMBER%22%7D%22%22itemid%22:%5B%22001-58508%22%7D>; ECtHR, *Korkmaz c. Turquie (no 3)*, Application 42590/98, 20 December 2005, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Korkmaz%20c.%20Turquie%22%7D%22%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%22CHAMBER%22%7D%22%22itemid%22:%5B%22001-71721%22%7D>

The prosecutor has also requested a five-year political ban on 451 former and current HDP members and the suspension of the party's bank accounts on the basis of meritless or weak evidence.

AN ATTACK ON THE RIGHTS TO FREEDOM OF ASSOCIATION AND EXPRESSION

The right to freedom of association enshrined in Article 11 of the ECHR and Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Türkiye is also a party, protect political party activities and guarantee the right to form or join political parties.²⁴ As noted by the Venice Commission and the UN Special Rapporteur on the right to freedom of peaceful assembly and of association, political parties should also be enabled to exercise their right to hold opinions, freely express their ideas and to seek, receive and impart information without interference by state authorities in accordance to Article 19 of the ICCPR and Article 10 of the ECHR.²⁵ According to the ECtHR, “the fact that their activities form part of a collective exercise of freedom of expression in itself entitles political parties to seek the protection of Articles 10 and 11 of the Convention”.²⁶

While the right to freedom of association is not absolute, restrictions can only be justified if they are prescribed by a clear and accessible law, pursue one or more legitimate aims permitted under international human rights law and be necessary and proportionate to that legitimate aim.²⁷

The Turkish authorities' allegations that the HDP sought to achieve its political goals and actions by using force are unsubstantiated. Although a significant part of the indictment covers HDP activities between 2013-2015, these are not presented in the context of the government sanctioned peace process between the PKK and the Turkish State, which was underway at that time.

The European Court has been clear in stating that the justification for the dissolution of a political party must meet a “pressing social need” and must consider the following general principles: (i) whether there was plausible evidence that the risk to a legitimate aim, supposing it had been proved to exist, was sufficiently imminent; (ii) whether the acts and speeches of the leaders and members of the political party concerned were imputable to the party as a whole; and (iii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the values inherent to the Convention.²⁸

As established by the UN Human Rights Council, advocating peacefully for changing a Constitution or any other government policies should not be a reason to impose restrictions on political parties, let alone for their dissolution.²⁹ The Venice Commission has further stated that the prohibition or enforced dissolution of political parties “may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the constitution”.³⁰

The suspension or involuntary dissolution of an association, including political parties, are among the most severe restrictions on the right to freedom of association and may only be used when there is a clear and imminent threat to national security or public order. Such a decision must be strictly necessary and proportionate to the legitimate aim pursued, and may only be used when less restrictive means would be insufficient.

Amnesty International has concluded that the Chief Public Prosecutor of the Court of Cassation has failed to consider relevant judgments from the ECtHR that are binding on Türkiye, as well as additional expert opinions from the Venice

²⁴ Türkiye is a contracting party to the ECHR since 1954 and is bound by the implementation of the judgments of the ECtHR at domestic level. Türkiye ratified the ICCPR in 2003.

²⁵ Venice Commission, Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, CDL-INF (2000) 1, 10 January 2000; UN Special Rapporteur on Freedom of Peaceful Assembly, 7 August 2013, UN Doc. A/68/299, para. 38.

²⁶ ECtHR, *United Communist Party of Türkiye and Others v. Türkiye*, 30 January 1998, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-9416%22%5D%7D>, para. 43.

²⁷ ECHR, Article 11, second paragraph; Guide on Article 11 of the European Convention on Human Rights

²⁸ ECtHR, *Hadep and Demir v Turkey*, Application 28003/03, 14 December 2010, <https://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%5B%22878622%22%5D%2C%22itemid%22:%5B%22001-102256%22%5D%7D> para. 70.

²⁹ Human Rights Council, Resolution 12/16 on Freedom of opinion and expression, A/HRC/RES/12/16, adopted without a vote, 12 October 2009, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G09/166/89/PDF/G0916689.pdf?OpenElement>

³⁰ Venice Commission, Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, CDL-INF (2000) 1, 10 January 2000.

Commission and the UN Special Rapporteur on the right to freedom of peaceful assembly and of association, when drafting the indictment against the HDP. The Chief Public Prosecutor of the Court of Cassation must withdraw the lawsuit against the HDP as it stems solely from the peaceful exercise of the rights to freedom of association and expression. Moreover, the Constitutional Court must ensure that the standards set by the European Court in relevant judgements applicable to this case are followed when deciding this case to ensure that people in the country are able to freely and safely exercise their rights to freedom of expression and association without fear of reprisals.