



**Third Party Intervention**

**In the Case of Encu v. Turkey (no. 56543/16) and other 39 applications**

**by**

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An independent non-governmental organization specialized in defending and promoting  
freedom of expression

## Introduction

1. İFÖD will address in its intervention in the case of Encü v. Turkey (**no. 56543/16**) and related other 39 applications the issue of lifting of parliamentary immunity of the deputies by a provisional constitutional amendment and its impact on the freedom of expression of members of the parliament.
2. It is understood from the Court's communication that Mr. Ferhat Encü and other 39 applicants in the case were members of the Parliament from the opposition party HDP elected in the elections held on 01.11.2015. On 20.05.2016, the National Assembly adopted a constitutional amendment which added a provisional Article 20 to the Constitution which lifted the immunity of deputies for all requests for the lifting of immunity that had been transmitted to the National Assembly by the date of the publication of the Amendment. The constitutional amendment in question concerned a total of 154 members of the National Assembly. As noted in the communication, immunities of 29 out of 317 deputies of the Justice and Development Party (AKP), 59 out of 133 deputies of the Republican People's Party (CHP), 55 out of 59 deputies for the Peoples' Democratic Party (HDP), 10 out of 40 deputies for Nationalist Movement Party (MHP) and one independent deputy were lifted.
3. 70 MPs submitted a request to the Constitutional Court, arguing that although made with a constitutional amendment, lifting the parliamentarians' immunity was a parliamentary decision which could be reviewed by the Constitutional Court. This request was rejected by the Constitutional Court on 03.06.2016,<sup>1</sup> on the grounds that the case concerned a constitutional amendment which could be reviewed only for procedural grounds and there was no such claim in that application. The constitutional amendment was published in the Official Gazette on 08.06.2016 and came into force the same day.
4. The Court asked the parties to address whether the applicants exhausted domestic remedies, as required by Article 35(1) of the Convention and more importantly asked whether the lifting of parliamentary immunities interfered with the exercise of the freedom of expression of the applicants, of the opposition members, within the meaning of Article 10 of the Convention. If that was the case, the Court further asked whether this infringement was prescribed by law and necessary in a democratic society, corresponds to a "pressing social need" and whether it is "proportionate to the legitimate aim pursued" within the meaning of case law of the Court. Finally, the Court asked whether the procedure followed by the legislature had a dissuasive effect on the exercise by the applicants of their right to freedom of expression and the consequences of the waiver of the applicants' parliamentary immunity.
5. İFÖD's submission will deal with the **question of whether the lifting of parliamentary immunities interfered with the exercise of the freedom of expression of the applicants** and whether it was prescribed with law. İFÖD's submission will therefore focus on the **detrimental impact of the lifting of the parliamentary immunity on political speech** involving members of the Parliament in Turkey. Within this context, İFÖD will provide a comparative analysis of the impact of the constitutional amendments on deputies that are members to different political parties and will show the significant differences and effects of the lifting of the parliamentary immunity on each political party during the last four years.
6. İFÖD will finally discuss in this intervention the main legal framework under which the deputies have been investigated and prosecuted considering that the parliamentary immunity was predominantly lifted with the Constitutional amendment with regards to speech related offences such as insulting the President of Turkey, insulting a public officer, terror propaganda, membership to terrorist organisations, praising crime and criminals or incitement to hatred.

<sup>1</sup> Decision no. 2016/117.

7. İFÖD will argue that this joined applications cannot be evaluated and understood **without considering the general political context in Turkey**. Therefore, **lifting of immunities of the MPs** by an unprecedented provisional constitutional amendment and systematic persecution of opposition deputies, especially members of HDP can only be understood by considering this political context.

### **Background Information on the Political Atmosphere in Turkey**

8. Before the 07.06.2015 elections, the President Erdoğan clearly indicated his intention to change existing parliamentary system to a presidential one. When speaking at an opening ceremony in Gaziantep, he argued that existing parliamentary government system did not conform to Turkey and the presidential system was the system which would meet the needs of Turkey and stating that **“give us 400 members of parliament and let this issue be resolved in peace”**<sup>2</sup>. At that time, he was not a member of AKP because the constitution prohibited membership of President of the Republic to a political party. The HDP co leader Demirtaş, reminding the words of President Erdoğan, said in a rally **“We will not let you be President (Seni başkan yaptırmayacağız)”**. HDP intensely used this theme during the election campaign.
9. In 7 June general elections, HDP exceeded 10% election threshold by receiving 13.6% of the votes nationally and winning 80 seats in the Turkish Parliament. This was the first time that a political party with predominantly Kurdish leftist politicians achieved representation as a mainstream political party in the Turkish Parliament in Turkey’s history. Consequently, the AKP lost its majority to establish a government in the Parliament for the first time since 2002 due to the success of HDP overcoming the 10% election threshold. Following this election, President Erdoğan called for a snap re-election to take place on 01.11.2015 on the grounds that it had not been possible to form a coalition government.
10. After the 7 June elections, violence escalated in the country enormously. On 17 July, President Erdoğan announced that he did not recognize “Dolmabahçe Accord” which was agreed between the government and HDP on 28.02.2015 and included ten articles to solve the Kurdish problem. However, the President’s non-recognition of the Dolmabahçe Accord implied the official termination of the “solution process”. PKK ended ceasefire and KCK declared autonomous rule in some towns. This triggered security operations in the region. In the meantime, ISIL plotted explosive attacks against civilians in the city centers. As a result of bomb attacks in Suruç and Ankara more than 130 civilians died.<sup>3</sup> As a result of security operations and terror attacks, a total of 862 persons including 242 civilians lost their lives between 7 June and 1 November 2015 elections.<sup>4</sup>
11. President Erdoğan, continuously accused the HDP for the incidents and escalation of violence during this period, framing them as terrorist collaborators. On 28.07.2015, President Erdoğan stated that he does not approve closing down political parties, but also added that **“deputies of the Peoples’ Democratic Party (HDP) should pay the price one by one. The parliament should do what is needed and remove their parliamentary immunity shields. If people collaborate with a terrorist organization, they pay the price”**.<sup>5</sup>

<sup>2</sup> See at <https://t24.com.tr/haber/cumhurbaskani-erdogan-gaziantep-te-konusuyor,289627>

<sup>3</sup> See at <https://www.dw.com/tr/t%C3%BCrkiyeyi-sarsan-be%C5%9F-ay-7-haziran-1-kas%C4%B1m-2015/a-50204527>

<sup>4</sup> See at <https://t24.com.tr/haber/haber-analiz-davutoglu-ne-demek-istedi-862-insanin-hayatini-kaybettigi-7-haziran-ve-1-kasim-secimleri-arasinda-neler-oldu,836288>

<sup>5</sup> Statement by President Erdoğan, 28 July 2015, Ankara, available at [http://www.cumhuriyet.com.tr/haber/turkiye/332325/Erdogan\\_cozum\\_surecini\\_bitirdi\\_HDP\\_lilerin\\_dokunul\\_mazliginin\\_kaldirilmasini\\_istedi.html](http://www.cumhuriyet.com.tr/haber/turkiye/332325/Erdogan_cozum_surecini_bitirdi_HDP_lilerin_dokunul_mazliginin_kaldirilmasini_istedi.html)

12. Yet, the HDP succeeded in passing the 10 percent threshold once again in the November 2015 elections and gained this time 59 seats at the Parliament. This was a radical change in the Turkish politics. The strong presence of the HDP in the Turkish politics directly affected the ruling party. As the main opposition party received less than 3% of votes in the south-eastern Turkey, AKP was receiving disproportional seats in the predominantly Kurdish populated provinces due to the 10% threshold. The role of HDP in the major cities where large Kurdish population lives, such as Istanbul, also cannot be underestimated. In Istanbul, HDP received 12,60% votes and 11 seats in the Parliament in the November 2015 elections. In June 2018 elections, HDP also received 12,7 % of the votes (1.195.602 votes) casted in Istanbul and therefore won 12 seats.
13. It was **against this background the criminal investigations brought against HDP MPs** was accelerated. It can be observed that following President Erdoğan's statements, the number of preliminary investigation files (fezleke) prepared by prosecutors and transmitted to Parliament against the members of HDP increased exponentially in 2015 and 2016. On 02.01.2016, President Erdoğan stated that '*HDP MPs should go to prison.*'<sup>6</sup> Between 15 December 2015 and May 2016, the number of preliminary investigation files against HDP MPs before the Parliament almost tripled, reaching 510 files by May 2016. Between April and May 2016, 154 files were sent by prosecutors to Parliament against HDP members.
14. Most of these preliminary investigation files concerned political speeches and political activities of the MPs. As will be seen in the attached table the most common charge against HDP MPs is terrorist propaganda (Article 7/2 of the Law no 3713) followed by violating the law on assemblies (Law no 2119), insulting president (Article 299 of the TCC) or officials (Article 125/3 of the TCC) and state organs (Article 301 of the TCC). All the provisions that underpin these charges and their use have been reviewed and found to be not fully compatible with the Convention by ECtHR on numerous occasions.<sup>7</sup>
15. Following the huge increase of preliminary investigation reports by prosecutors sent to the Parliament concerning HDP politicians in March 2016, President Erdoğan called on the Parliament to conclude the immunity issue by saying that "*We should immediately conclude the immunity issue. The Parliament should rapidly take a step for it. We cannot discuss whether we lift the immunity of one MP, or two. We should adopt a principle. What is this principle? The ones who cause the death of 50-52 people by getting my Kurdish brothers to pour into the streets will not be prosecuted and they will show up at the Parliament and my people will overlook the matter, is that so? If the Parliament does not take necessary action, this nation and history will hold it accountable.*"<sup>8</sup> In April 2016, referring to the number of preliminary investigations by the prosecutors, President Erdoğan also stated that "*there are 550 dossiers requesting prosecution. They should be addressed as soon as possible. Afterwards, those who are found guilty should serve their sentences. Politics shouldn't be a barrier to these prosecution dossiers. The judiciary takes the necessary action*".<sup>9</sup>
16. Following this speech, the draft bill about lifting of immunities by a provisional constitutional amendment was brought before the parliament and enacted swiftly. The constitutional

<sup>6</sup> Statement by President Erdoğan, 2 January 2016, on plane returning from his official visit to Saudi Arabia to Ankara, available at [https://www.bbc.com/turkce/haberler/2016/01/160102\\_erdogan\\_hdp](https://www.bbc.com/turkce/haberler/2016/01/160102_erdogan_hdp)

<sup>7</sup> Cf. Department for the Execution of the Judgments of the European Court of Human Rights Turkey Country Factsheet, available at <https://rm.coe.int/tur-eng-fs4/1680709767>

<sup>8</sup> Speech by President Erdoğan, 16 March 2016, Ankara available at <https://t24.com.tr/haber/cumhurbaskani-erdogan-muhtarlar-toplantisinda-konusuyor.332319>

<sup>9</sup> Speech by President Erdoğan, 11 April 2016, İstanbul, available at [http://www.cumhuriyet.com.tr/haber/turkiye/513635/Erdogan\\_Yargilanacaksin\\_kardesim\\_ya\\_.html](http://www.cumhuriyet.com.tr/haber/turkiye/513635/Erdogan_Yargilanacaksin_kardesim_ya_.html) and <https://www.yeniakit.com.tr/haber/erdogandan-dokunulmazliklarla-ilgili-sert-sozler-160925.html>

amendment law no 6718 was adopted on 20.05.2016 and published in the Official Gazette on 08.06.2016. The Amendment concerned about **800 criminal files for 154 deputies of the National Assembly**: 518 of those 800 files were related to 55 HDP deputies. 17 HDP and 1 CHP deputies have been detained and others have been prosecuted. While no deputy has ever been detained for ordinary crimes, all HDP deputies have been detained for being a member of terrorist organisation. All detained deputies were charged **not for deeds, but for speeches they made at different venues, party meetings, demonstrations, and funerals**. Consequently, although they have been charged for being member of a terrorist organization none of them has been accused of committing violent acts.

17. On this issue, the Venice Commission observed that “*while some of the files concern ordinary crimes such as smuggling, embezzlement, most of the files for which inviolability was removed by the Amendment of 20.05.2016 concern offences related to speech, such as insulting the President, insulting a public officer, terror propaganda or incitement to hatred*”.<sup>10</sup> In its report, the Venice Commission stated that this amendment was not only an ad hoc regulation but also could be characterized as a piece of *ad hominem* legislation.<sup>11</sup> The Venice Commission also added that “As all *ad hominem* legislation, the Amendment is also problematic from the point of view of the principle of equality. The distinction between the 139 deputies on the one hand, and all earlier cases as well as the cases which arose since adoption of the Amendment on the other hand, cannot be justified with the workload of the Assembly. The Amendment violates therefore the principle of equality”.<sup>12</sup>

### **Parliamentary Immunities Provided by The Turkish Constitution and Standard Procedure for The Lifting of Parliamentary Immunity in Turkey**

18. Article 83 of the Turkish Constitution provides two types of immunities for MPs: non-liability and inviolability. The provision is as follows:

*“ARTICLE 83- Members of the Grand National Assembly of Turkey shall not be liable for their votes and statements during parliamentary proceedings, for the views they express before the Assembly, or, unless the Assembly decides otherwise, on the proposal of the Bureau for that sitting, for repeating or revealing these outside the Assembly.*

*A deputy who is alleged to have committed an offence before or after election shall not be detained, interrogated, arrested or tried unless the Assembly decides otherwise. This provision shall not apply in cases where a member is caught in flagrante delicto requiring heavy penalty and in cases subject to Article 14 of the Constitution as long as an investigation has been initiated before the election. However, in such situations the competent authority has to notify the Grand National Assembly of Turkey of the case immediately and directly.”*

19. The first paragraph of Article 83 is related to legislative non-liability of MPs and implies that MPs shall not be punished for the expressions they use in parliament and repeated outside. As a result of this, the first paragraph of Article 83 of the Constitution offers a special protection to the political expression of MPs. The person who makes a speech as an MP at Parliament or repeats it outside the Parliament cannot be investigated and prosecuted for that political speech even after termination of his/her term.

<sup>10</sup> Venice Commission, Opinion on The Suspension of The Second Paragraph of Article 83 of The Constitution (Parliamentary Inviolability), Adopted by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016) Opinion No. 858/2016 CDL-AD(2016)027, para. 50. Available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2016\)027-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2016)027-e)

<sup>11</sup> Ibid, para. 73 et seq.

<sup>12</sup> Ibid, para. 75.

20. Obviously, repeating a political speech outside the Parliament cannot be interpreted as repeating literally the same words said in the Parliament. Rather the protection extends to oral expressions of the politics of an MP conducted in Parliament and outside Parliament. The core purpose of this constitutional protection is to allow MPs speak freely without thinking that he/she will be subject to prosecution for what he/she says while h/she is an active member of Parliament. The Court also held in previous cases that “the inherent characteristics of the system of parliamentary immunity and the resulting derogation from the ordinary law pursue the aim of allowing free speech for representatives of the people and preventing partisan complaints from interfering with parliamentary functions”.<sup>13</sup>
21. The Venice Commission describes non-liability as follows: “Rules on non-liability (special freedom of speech) for members of parliament are to be found in almost all democratic countries, although the details differ quite a bit. Non-liability is closely linked to the parliamentary mandate and protects the representatives when acting in their official capacity – discussing and deciding on political issues.”<sup>14</sup>
22. The second part of Article 83 of the Turkish Constitution is related to inviolability and provides immunity to the MPs throughout their mandate except for the situations where the member is caught in flagrante delicto requiring heavy penalty. The second paragraph of Article 83 of the Turkish Constitution provides that a deputy who is alleged to have committed an offence before or after election shall not be detained, interrogated, arrested or tried unless the Assembly decides otherwise. The provision provides for two exceptions to the principle of inviolability of the members of the National Assembly: 1) the Member of the Assembly is caught committing a crime in *flagrante delicto*; 2) for the crimes covered by Article 14 of the Constitution, with the condition that the investigation has been initiated before the election of the deputy concerned.
23. The procedure to be followed for lifting parliamentary immunity is based on Articles 83 and 85 of the Constitution. Further detailed rules are provided in the Rules of Procedure of the Parliament. An MP’s immunity can only be lifted with regards to the crimes that fall within the second paragraph of Article 83. Nevertheless, the provisional Article 20 of the Constitution<sup>15</sup> temporarily suspended the application of this procedure for certain preliminary investigation files and for certain MPs. This unprecedented, one-off constitutional amendment retrospectively lifted the immunity of certain MPs including the applicants.

### **The Effect of Lifting of Immunities by a Provisional Constitutional Amendment on The Freedom of Expression of The Deputies**

24. The Court’s well-established case law holds that freedom of speech of politicians enjoys broader protection under the Convention.<sup>16</sup> As stated in *Castells v. Spain* “while freedom of expression is

<sup>13</sup> *Kart v. Turkey*, Application no. 8917/05, § 88, 03.12.2009.

<sup>14</sup> Venice Commission, Opinion on the Scope and Lifting of Parliamentary Immunities, CDL-AD(2014)011, § 12.

<sup>15</sup> Provisional Article 20 reads: “On the date when this Article is adopted in the Grand National Assembly of Turkey, the provision of the first sentence of the second paragraph of Article 83 of the Constitution shall not be applied to the deputies who have files regarding the lifting of the parliamentary immunity which were submitted from the competent authorities authorized to investigate or give investigation or prosecution permit, Chief Public Prosecutor’s Offices and courts to the Ministry of Justice, the Prime Ministry, Office of Speaker of the Grand National Assembly of Turkey and the Presidency of Joint Committee consisting of the members of Constitution and Justice Commissions.

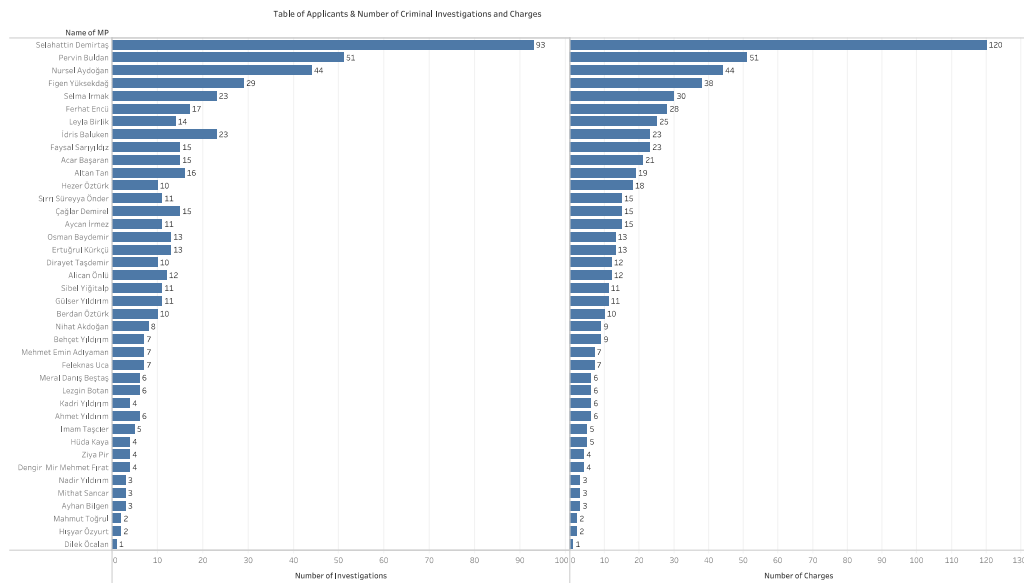
Within fifteen days as of the entry into force of this Article, the files in the Presidency of the Grand National Assembly of Turkey, Prime Ministry and Ministry of Justice regarding the lifting of parliamentary immunities shall be returned to the competent authority under the presidency of the Joint Commission composed of the members of Constitution and Justice Commissions so as to take the required actions.”

<sup>16</sup> *Perincek v. Switzerland* (GC), App. No. 27510/02, § § 16-51, 15.10.2015



important for everybody, it is especially so for an elected representative of the people. He/she represents his/her electorate, draws attention to their preoccupations and defends their interests. Accordingly, **interferences with the freedom of expression of an opposition member of parliament call for the closest scrutiny** on the part of the Court”.<sup>17</sup>

25. It is understood from the case file that there were **549 preliminary investigation files** against **40 applicants** whose application forms were sent to İFÖD by the Court. In other words, parliamentary immunities of those 40 MPs were lifted for 549 preliminary investigations by provisional article 20 of the Turkish Constitution.
26. Within those 549 preliminary investigation files the MPs were charged for a total of 655 crimes because some of the investigations included more than one charges. It can be seen from the applications that almost all the **655 charges** are related to political speeches and political activities of the applicants. Almost all the 40 applicant MPs were charged with the crimes of terror propaganda (36 separate applicants) and violation of law on meetings and demonstrations (29 separate applicants) and 28 applicant MPs were charged with both of these crimes. They were also accused of other speech related crimes such as insulting president (17 separate applicants) or public officials (9 separate applicants), insulting state organs (13 separate applicants), praising crime or criminals (11 separate applicants), etc.
27. Prior to the unprecedented, provisional constitutional amendment, MPs in Turkey benefited from absolute immunity for their political speeches, just like in many democratic countries. Thus, there is no doubt that while making a speech, defending a view, a member of parliament would be fully entitled to think that he/she will benefit from this constitutional protection of absolute immunity and constitutional procedural safeguards provided for her/his political speech. Although, the provisional article 20 of the Constitution did not affect literally the non-liability of the MPs, in effect, as explained above, most of the charges against opposition MPs were based on their political speeches and political activities. However, as can be seen in detail in **Figure 1** below, Selahattin Demirtaş, who was the co-chair of HDP and also the presidential candidate for HDP in both 2014 and 2018, was subjected to **93 separate criminal investigations** and was **charged with 120 separate crimes**. Pervin Buldan, who was also the co-chair of HDP was subjected to **51 separate criminal investigations** and was **charged with 51 separate crimes**. Ferhat Encü, the former HDP MP and the main applicant in this case was subjected to **17 separate criminal investigations** and was **charged with 28 separate crimes**.



<sup>17</sup> *Castells v. Spain*, App No. 11798/85, § 42, 23.04.1992

Figure 1

28. An assessment of the application dossiers seems to suggest that the prosecutors and the criminal courts never examined whether the impugned speeches constituted political speech covered by absolute parliamentary immunity. Therefore, it is difficult to argue that the provisional constitutional amendment did not affect the non-liability of the MPs. Therefore, İFÖD is of the opinion that **the nature of charges against the applicants should be taken into the account** by the Court when evaluating whether provisional Article 20 of the Constitution constitutes interference with freedom of expression of the applicants.
29. It is also well-established in the Court's case law that the requirement of lawfulness laid down by Article 10 ordered "in accordance with a procedure prescribed by law" is not satisfied merely by compliance with the relevant domestic law. **Domestic law must itself be in conformity with the Convention**, including the general principles expressed or implied in it, particularly the principle of the rule of law, which is expressly mentioned in the Preamble to the Convention. The notion underlying the expression "in accordance with a procedure prescribed by law" requires the existence in domestic law of adequate legal protections and "fair and proper procedures".<sup>18</sup> The standard of "lawfulness" set by the Convention 'requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.'<sup>19</sup>
30. The Court's case law requires that a legal measure that restricts political expression must be seen as fair and proper procedures. Whilst the lifting of immunities *de jure* applied to all members of parliament retroactively, it is observed that this legal measure predominantly affected members of HDP. Although, all 154 MPs' immunities were lifted, only HDP members and some CHP members were actually prosecuted and convicted. 31 deputies of HDP were also arrested or taken into the custody<sup>20</sup> and 9 deputies are detained at the moment.<sup>21</sup>
31. İFÖD is of the opinion that the Court should evaluate whether the unprecedented, one-off and retroactive constitutional amendment, introduced after the applicants made their speeches over a span of approximately ten years as members of the Parliament, was foreseeable. Given the lack of previous examples of a one-off retroactive lifting of immunity for political speech of MPs in Turkish history, it is impossible to assert that this amendment, which subsequently led to the charge and prosecution of the applicants, was foreseeable in terms of the Court's case law. Considering that almost all the accusations brought against the applicants relate directly to their freedom of expression and their political opinions, it is therefore necessary to examine whether these speeches are protected by the *lex specialis* political expression protections in the form of parliamentary immunity and whether they could have foreseen when they delivered these speeches, in some cases ten years before the amendment, that they could be held responsible sometime in the future for their political speeches.
32. İFÖD observes that as a result of one-off provisional constitutional amendment, the applicants were deprived of constitutional guaranties related to lifting of their immunities. They could not defend their rights before the Parliament, and they could not apply to the Constitutional Court. The Venice Commission indicated that derogating from the Constitution in an *ad hoc* manner is problematic in particular when constitutional guarantees are reduced or removed, even if this is done in the form of a constitutional amendment.<sup>22</sup> The Venice Commission also underscored the

<sup>18</sup> *Pleso v. Hungary*, no. 41242/08, § 59, 02.10.2012

<sup>19</sup> *Demirtaş v. Turkey (No. 2)*, no. 14305/17, § 143, 20.11.2018

<sup>20</sup> <https://140journos.com/hangi-hdp-milletvekilleri-tutuklu-1c7ea1aeb23>

<sup>21</sup> <https://hdp.org.tr/es-genel-baskanlar-ve-tutuklu-vekiller/10712>

<sup>22</sup> Venice Commission, CDL-AD(2016)027, § 72.



ad hominem nature of the provisional constitutional amendment: “The Amendment under examination can be characterized as a piece of ad hominem constitutional legislation. While the Amendment is drafted in general terms, in reality it concerned 139 individually identifiable deputies. This constitutes a misuse of the constitutional amendment procedure: its substance amounts to a sum of decisions on the lifting of immunity of identifiable parliamentarians; decisions which, according to the suspended Article 83, should have been taken individually and subject to specific guarantees”.<sup>23</sup> It also added that “As all ad hominem legislation, the Amendment is also problematic from the point of view of the principle of equality. The distinction between the 139 deputies on the one hand, and all earlier cases as well as the cases which arose since adoption of the Amendment on the other hand, cannot be justified with the workload of the Assembly. The Amendment violates therefore the principle of equality”.<sup>24</sup>

33. Therefore, the Court should evaluate whether lifting of immunity of the applicants by a provisional constitutional amendment was compatible with the guarantees provided by the Convention. A one-off, blanket and retroactive constitutional amendment to lift the immunities of members of parliament has no precedent in the history of Turkish Parliament and under its constitutional law. In this respect İFÖD submits that none of the members of the parliament could reasonably have had a legitimate expectation that such a procedure might be introduced in the course of their parliamentary activities.
34. As indicated by Venice Commission abuse of constitutional amendment procedure by the parliamentary majority created an atmosphere of arbitrariness in terms of prosecution of opposition MPs for their political speeches and political activities.

### **Conclusion**

35. Considering the above reflections, the one-off and retrospective constitutional amendment has no precedent in the history of Turkish Parliament and in constitutional law. İFÖD is therefore of the opinion that the Court should take into consideration this aspect of the impugned legislation when evaluating whether the interference with the freedom of expression of the applicant MPs were foreseeable.

**26.10.2020**

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**İfade Özgürlüğü Derneği (İFÖD)** has been set up formally in August 2017 protect and foster the right to freedom of opinion and expression. The new Association envisions a society in which everyone enjoys freedom of opinion and expression and the right to access and disseminate information and knowledge.

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<sup>23</sup> Ibid, § 73.

<sup>24</sup> Ibid, § 75.

## Appendix I

Name of MP	Number of Investigations	Number of Charges	Anti-Terror Law 7/2	L 2911	TCC 125/3	TCC 21
Hıřyar Özyurt	2	2	✓			
İdris Baluken	23	23	✓	✓	✓	
Behçet Yıldırım	7	9	✓	✓		
Hüda Kaya	4	5	✓	✓		✓
Gülser Yıldırım	11	11				
Dirayet Tařdemir	10	12	✓	✓		
Mehmet Emin Adıyaman	7	7	✓	✓		
İmam Tařcier	5	5	✓	✓		
Faysal Sarıyıldız	15	23	✓	✓		
Sibel Yiğitalp	11	11	✓	✓		
Ayhan Bilgen	3	3	✓	✓		✓
Nihat Akdoğın	8	9	✓	✓		
Nursel Aydoğın	44	44				
Acar Başaran	15	21	✓	✓		✓
Mithat Sancar	3	3	✓			
Berdan Öztürk	10	10	✓	✓		
Feleknas Uca	7	7	✓			
Altan Tan	16	19	✓	✓		
Leyla Birlik	14	25	✓	✓		
Kadri Yıldırım	4	6	✓	✓		