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Contact: Zoë Bryanston-Cross  
Tel: 03.90.21.59.62

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Meeting: 1501<sup>st</sup> meeting (June 2024) (DH)

Communication from the applicant (03/05/2024) concerning the case of Yuksekdag Senoglu and Others v. Türkiye (Application No. 14332/17) (Selahattin Demirtas (No. 2) group, 14305/17) (appendices in Turkish are available at the Secretariat upon request).

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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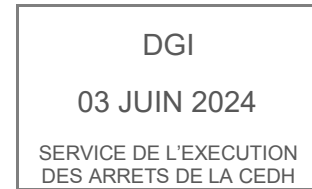
Réunion : 1501<sup>e</sup> réunion (juin 2024) (DH)

Communication du requérant (03/05/2024) relative à l'affaire Yuksekdag Senoglu et autres c. Türkiye (requêtes n° 14332/17) (groupe Selahattin Demirtas (n° 2), 14305/17) (des annexes en turc sont disponibles auprès du Secrétariat sur demande) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI Directorate General of Human Rights and Rule Law  
Department for the Execution of Judgments of the ECtHR  
F-67075 Strasbourg Cedex FRANCE  
E-mail: [DGI-Execution@coe.int](mailto:DGI-Execution@coe.int)



3 June 2024

**Rule 9.1 submission by the representatives of Figen Yüksekdağ Senoğlu on the individual and general measures required for the implementation of the Figen Yüksekdağ Senoğlu and 12 Others v. Türkiye (Application no. 14332/17)**

## I. INTRODUCTION

1. *In Yüksekdağ Şenoğlu and Others v. Türkiye* (Application no. 14332/17 and 12 other applications), the European Court of Human Rights (ECtHR) found, on 8 November 2022, in the applicant Figen Yüksekdağ Şenoğlu's case, violations of Article 10 (freedom of expression), Article 5(1) (right to liberty and security), Article 5(3) (right to trial within a reasonable time or to be released pending trial), Article 5(4) (right to have lawfulness of detention speedily examined by a court), Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5, and Article 3 of Protocol No. 1 (right to free elections) of the Convention. Furthermore, the Court called on Türkiye, under Article 46 of the Convention, to take the necessary measures to secure the applicant's release.
2. Applicant Figen Yüksekdağ Şenoğlu was parliamentary candidate for the Adana electoral district in the 2002 general election. She is one of the founders of the Socialist Party of the Oppressed (ESP) in 2010 and then in June 2014, she was elected as the co-chair of the Peoples' Democratic Party (HDP) alongside with Selahattin Demirtaş. HDP, the first political party in Türkiye to adopt a co-chair system, surpassed the 10% electoral threshold in the 7 June 2015 elections, resulting in the applicant being elected as a member of parliament for Van.
3. While serving as a member of parliament and co-chair of HDP, Yüksekdağ's parliamentary immunity was lifted on 20 May 2016 through a temporary constitutional amendment. Subsequently, on 4 November 2016, she was arrested on charges of “dispersing a meeting and demonstration by force”, “publicly inciting the commission of an offense”, “making propaganda for a terrorist organization”, “membership in an armed terrorist organization”, “attending illegal meetings and demonstrations unarmed and not dispersing despite warnings”, and “publicly inciting hatred and enmity”. The trial against Yüksekdağ began in 2017 before the Ankara 16. Assize Court, with the case and the main allegations against her centered on the events known as the “Kobani incidents” of 6-8 October 2014.

4. While detained and tried under the Ankara 16<sup>th</sup> Assize Court, another detention order was given against Yüksekdağ on 20 September 2019, under the Ankara Chief Public Prosecutor's Office investigation file no. 2014/146757 similarly concerning 6-8 October 2014 events. The accusations directed to Yüksekdağ included "undermining the unity and integrity of the state", several counts of "inciting to murder to conceal a crime or to avoid capture", "inciting robbery at night to benefit a criminal organization", "inciting deprivation of liberty by use of force", and "threat and deception". The trial under this investigation began in 2021 before the Ankara 22<sup>nd</sup> Assize Court. On 24 February 2021, having concerned the same incidents, the Ankara 16<sup>th</sup> Assize Court case was merged with the Ankara 22<sup>nd</sup> Assize Court's case.
5. On 21 November 2022, two weeks after the ECtHR decision in *Yüksekdağ Şenoğlu and 12 others v. Türkiye*, the Ankara 22<sup>nd</sup> Assize Court ordered Yüksekdağ's release from the merged Ankara 16<sup>th</sup> Assize Court case but decided to continue her detention under the order of 20 September 2019 (see above paragraph). A similar practice was seen in the case of Selahattin Demirtaş. On 2 September 2019, the Ankara 19<sup>th</sup> Assize Court issued a release order for Demirtaş, which was never executed. Instead, another detention order was placed against him on 20 September 2019. The Grand Chamber of the ECtHR referred to this as a "return" to pretrial detention. In both cases, Turkish authorities used these "sham" release orders to argue that they were complied with ECtHR judgments.
6. Since 4 November 2016, Yüksekdağ has been detained on the same charges and is currently held in Kocaeli No. 1 F-Type High-Security Closed Prison. Despite the ECtHR's judgment finding serious flaws in the proceedings against her and several other former MPs (including in the cases of *Encü and 39 Others*, and *Kerestecioğlu v. Türkiye*) and its clear request for an immediate release, in the recent hearing on 16 May 2024, the Ankara 22<sup>nd</sup> Assize Court convicted Yüksekdağ of numerous baseless charges and sentenced her to a total of 33 years and 3 months in prison. The court also decided to continue her detention.
7. This Rule 9.1 submission presented on behalf of Yüksekdağ focuses on the decision delivered by the Ankara 22<sup>nd</sup> Assize Court on 16 May 2024 addressing the domestic court's failure to implement the ECtHR's judgment and Türkiye's continued violations of Figen Yüksekdağ's rights.

## II. RULING OF THE ANKARA 22<sup>nd</sup> ASSIZE COURT

8. The Ankara 22nd Assize Court sentenced Yüksekdağ to a total of 33 years and 3 months in prison.

### A. Sentences Imposed by The Court

9. The sentences imposed by the court are summarized as follows:

- ◆ **The applicant was found guilty of the offense of disrupting the unity and territorial integrity of the state as set out in Article 302/1 of the Turkish Penal Code No. 5237.** The applicant was sentenced to aggravated life imprisonment. Considering that the crime was classified as an act of terrorism under Article 3 of the Anti-Terrorism Law No. 3713, the sentence was increased by half to aggravated life imprisonment under Article 5/1 of the same law. Furthermore, since the applicant's actions were qualified as aiding the crime under Articles 302/1 and 39/2 of the Turkish Penal Code No. 5237, the aggravated life imprisonment sentence was reduced to **19 years' imprisonment under Article 39/1 of the Turkish Penal Code No. 5237.**
- ◆ **The applicant was found guilty of the offense of incitement to commit a crime under Article 214/1 of Turkish Criminal Code No. 5237.** As a result, the applicant was sentenced to 2 years' imprisonment, considering the intent and motive of the perpetrator. As the offense was committed through the press, the penalty was increased by half in accordance with Article 218 of the Turkish Penal Code No. 5237 and sentenced to 3 years' imprisonment. Since the offense was related to terrorist activities pursuant to Article 4 of the Anti-Terror Law No. 3713, the penalty was increased by half in accordance with Article 5/1 of the same law and a total of **4 years and 6 months imprisonment was sentenced.**
- ◆ **The applicant was found guilty of making propaganda for a terrorist organization on 19.07.2015.** The applicant was sentenced to **2 years and 6 months' imprisonment in accordance with the first sentence of Article 7/2 of the Anti-Terror Law No. 3713,** considering the intent, motive and gravity of the offense.
- ◆ **The applicant was found guilty of making propaganda for a terrorist organization** in an interview he gave to a German press organization on 08.08.2015. The applicant was sentenced to 1 year imprisonment at the lower limit pursuant to the first sentence of Article 7/2 of the Anti-Terror Law No. 3713. Since the offense was committed through the press, the penalty was increased by half in **accordance with the second sentence of Article 7/2 of the Anti-Terror Law No. 3713 and a total of 1 year and 6 months imprisonment was sentenced.**

- ◆ **The applicant was found guilty of inciting or encouraging an illegal assembly or demonstration** during his speech at a press conference on 31.12.2015. **The applicant was sentenced to 2 years' imprisonment pursuant to Article 34 of the Law No. 2911 on Meetings and Demonstrations**, considering the position, motive and intensity of the intent of the perpetrator.
  - ◆ **The applicant was found guilty of making propaganda for a terrorist organization** at the funeral of Mehmet TUNÇ and Orhan TUNÇ on 01.03.2016. **The applicant was sentenced to 1 year and 6 months imprisonment in accordance with the first sentence of Article 7/2 of the Anti-Terror Law No. 3713**, considering the intent, motive and gravity of the crime.
  - ◆ **The applicant was found guilty of making propaganda for a terrorist organization on 11.04.2015. Pursuant to the first sentence of Article 7/2 of the Anti-Terror Law No. 3713, the applicant was sentenced to 1 year and 6 months of imprisonment**, considering the intent, motive and gravity of the offense.
  - ◆ On the grounds that the applicant violated the prohibition of making a speech during the election period at the opening of Kent Park on 28.10.2015, it was decided to sentence the applicant to **3 months imprisonment in accordance with Article 155 of the Law No. 298 on Basic Prohibitions of Elections and Voter Registers**, by departing from the lower limit, taking into account the purpose, motive and weight of the intention.
10. While the local court stated that it found no grounds for sentencing Yüksekdağ in relation to nine charges, acquitted her of fifteen charges, and dismissed two charges, the decision to sentence her to a total of 33 years and 3 months in prison indicates that the aim of keeping her behind bars has been secured.
11. The reasoned decision has not yet been served to the applicant. After the reasoned decision is served to the applicant and her representative, there is a right to appeal before the Ankara Regional Courts of Appeal.
12. Since the reasoned decision has not yet been served, the applicant has not been informed the reasons for the sentences. However, it is possible to make an informed assessment based on the court's justifications for the continuation of Yüksekdağ's detention over the past several years and the indictment and the prosecutor's final requests on merits.
13. All the cases in which sentences were imposed consist of speeches made by the applicant at political events due to her status as a member of parliament and chairperson of her

political party. The Ankara Court also imposed sentences on Yüksekdağ for speeches already reviewed by the ECtHR and determined to be an exercise of freedom of expression for an opposition politician.

14. For example, in the case initiated by the Şanlıurfa Chief Public Prosecutor's Office on 16 August 2016 (investigation no. 2016/17661, case no. 2016/6256, and indictment no. 2016/984), the Ankara 22<sup>nd</sup> Assize Court found that the applicant committed the alleged crime of “making propaganda for a terrorist organization” based on her speech on 19 July 2015 in front of the Suruç municipality building. The Ankara court sentenced her to 2 years and 6 months imprisonment, which is an increased sentence handed down based on her purpose and motive, the intensity of her intent, and the importance and value of the subject of the crime under Article 7/2 of the Anti-Terror Law No. 3713.
15. However, this speech was already analysed by the ECtHR in its judgment, which found it was protected under the Convention. (paras. 510, 518, 534). Despite the ECtHR clear finding, the Ankara 22<sup>nd</sup> Assize Court concluded that the applicant's speech constituted a crime, thereby continuing the violations of her rights.

## **B. Evidence**

16. The evidence cited in the Ankara Court’s decision to impose sentences and continue the applicant's detention includes:

- ◆ Social media posts by the HDP Central Executive Committee calling for support to Kobane:

These social media posts were examined in the judgment of *Figen Yüksekdağ Şenoğlu and 12 Others v. Türkiye* (Application no. 14332/17) (pp. 6-7) and the ECtHR concluded that the call was in line with the Convention standards (paras. 508, 532, 639).

- ◆ Speeches made by the applicant as a politician and member of parliament:

The ECtHR judgment refers to numerous speeches by Yüksekdağ, ultimately concluding that these speeches fell within the scope of freedom of expression and that her prosecution and removal from parliament for these speeches violated her rights, including Article 3 of Protocol No. 1 and Article 18 of the Convention in conjunction with Article 5 (paras. 639, 397).

### C. Decision on the Continued Detention

17. In its decision dated 16 May 2024, the Ankara Court ruled: “*Considering that the crime of Undermining the Unity and Integrity of the State is one of the crimes listed in Article 100/3 of Law No. 5271, the amount of the sentence imposed, and the time the defendant has spent in detention, it is concluded that the conditions for detention continue, the application of judicial control provisions would be insufficient, and that detention is deemed proportional and necessary. Therefore, the requests for release are rejected, and the CONTINUATION OF DETENTION BY VERDICT is decided.*”.

18. Under Turkish law, the Ankara 22nd Assize Court could have ordered Yüksekdağ’s release pending appeal. Since her conviction is subject to appeal, Yüksekdağ is still considered a detainee (not a convict/*hükümlü*). By ordering her continued detention, the Ankara court not only blatantly failed to implement the ECtHR judgment but also failed to respect the domestic law principles governing detention. This decision is legally flawed in three respects:

- ◆ This decision not only undermines the ECtHR’s judgment and Türkiye’s obligation to implement it, but it also blatantly violates domestic law. Under Turkish law, the maximum detention period for crimes falling within the jurisdiction of the Assize Court (Article 12 of Criminal Procedure Code) is two years, with the extension period for crimes defined in the Second Book, Fourth Part, Fourth, Fifth, Sixth, and Seventh Chapters of the TCC, and crimes falling within the scope of the Anti-Terror Law No. 3713, not exceeding five years. In other words, the total detention period for these crimes is seven years (Article 102/2 of the Criminal Procedure Code). This period represents the maximum detention period applicable even if there are grounds for extended detention, and if this period expires, an immediate release decision must be issued. The applicant has been detained since November 2016 and remains detained as of the date of this submission. In other words, the maximum detention period of seven years passed in November 2023.
- ◆ The grounds for the continuation of detention listed in Article 100 of the Criminal Procedure Code do not apply to the applicant.
  - The strong suspicion of a crime has been ruled out by the ECtHR decision.
  - There is no concrete evidence of risk of the applicant fleeing (the Ankara Assize Court did not cite such a reason in its decision).
  - There can be no suspicion of evidence tampering by the applicant, as this phase has passed several years into the proceedings. In other words, the evidence gathering has been or should have been concluded by now.

- ◆ The evidence and reasons examined have been reviewed by the ECtHR, which concluded that the applicant’s multiple Convention rights were violated. Despite the ECtHR’s clear findings, which should have led to Yüksekdağ’s immediate release and subsequent acquittal, the Ankara 22nd Assize Court imposed decades-long sentences on the applicant.

#### **D. Statements Made by the Government Officials Following the Ruling**

19. The Ankara 22<sup>nd</sup> Assize Court’s decision convicting the applicant and ordering her continued detention, when evaluated in light of statements made by government officials following the ruling, demonstrates that the applicant is continued to be detained for political purposes, in violation of Article 18 of the Convention together with Article 5.
20. Since the beginning of the proceedings against Yüksekdağ, there have been numerous statements by government officials that can be considered as interference in the case. Some of these statements are included in the ECtHR’s *Figen Yüksekdağ Şenoğlu and 12 others v. Türkiye* judgment (para. 34).
21. The statements that continued throughout the trial, interfering with the judiciary, persisted after the decision in May 2024, with government officials celebrating the verdict. High-ranking state officials made statements regarding the applicant and the Kobane case, describing the prison sentences imposed despite the ECtHR decision as “justice being served.”<sup>1</sup>
22. The leader of the ruling coalition partner, Nationalist Movement Party (MHP), Devlet Bahçeli, stated, “*To call the sentencing of terrorist Demirtaş and other instigators of the 6-8 October events unlawful, to oppose it, is the gravest insult to the state and the nation. Claiming that it damages the atmosphere of reconciliation is nothing but terrorism glorification and hypocrisy.*”<sup>2</sup>
23. President Recep Tayyip Erdoğan stated, “*(...) The law must hold these people accountable. Trying to exonerate the terror uprising by calling it a political case is first and foremost an insult to law and democracy. No one can justify and legitimize the 6-8 October events. We do not approve of the excessive comments regarding the court decision. The decision has brought relief to hearts that have turned into Karbala for the last 10 years due to the pain of the losses, and it has strengthened the belief in the manifestation of justice. We see*

<sup>1</sup> <https://x.com/turanbulent/status/1791086703840502199>

<sup>2</sup> <https://www.rudaw.net/turkish/middleeast/turkey/180520245>

*that, even after 10 years of the attempted uprising, justice has finally been served, and we are pleased about this for the sake of the victims and our democracy.”<sup>3</sup>*

24. All these statements, when evaluated in the context of the applicant's trial process and the sentences imposed, serve as further evidence of the issues highlighted in the *Figen Yüksekdağ Şenoğlu and 12 Others v. Türkiye* judgment as grounds for the violation of Article 18 in conjunction with Article 5. The applicant has been subjected to judicial harassment and deprived of her liberty for more than seven years due to her political activities, beliefs and convictions.

#### IV. RECOMMENDATIONS

The applicant urge the CM to:

- 1) Call for the immediate release of Ms. Yüksekdağ Şenoğlu, as required by the ECtHR judgment and indicate that Ms. Yüksekdağ Şenoğlu's ongoing detention constitutes a prolongation of the violation of her rights.
- 2) Underline that the Court's judgment applies to Ms. Yüksekdağ Şenoğlu's ongoing detention, the criminal proceeding for which she was convicted, and to any other ongoing or future proceedings or detention, in which the factual or legal basis is substantially similar to that already addressed and found by the ECtHR to violate her Convention rights;
- 3) Call for the halt of all criminal proceedings initiated against Ms. Yüksekdağ Şenoğlu following the constitutional amendment lifting her immunity, as the Court found that the amendment had not met the legality standard of the Convention, and that all proceedings initiated pursuant to it should be deemed unlawful;
- 4) Request the Government of Türkiye to end the persecution through abusive criminal proceedings of Ms. Yüksekdağ Şenoğlu, including by dropping all charges under which she has been investigated, prosecuted, and detained, which have pursued an ulterior purpose of undermining the exercise of freedom of expression, stifling pluralism and limiting freedom of political debate, including the conviction that caused the loss of her MP status, in conformity with the Court's finding that her rights under Article 18 in conjunction with Article 5 have been violated, and that her exercise of freedom of expression was wrongfully subject to criminal liability;

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<sup>3</sup> <https://medyascope.tv/2024/05/20/erdogan-kobani-davasi-kararlarini-savundu-6-8-ekim-hadisesi-37-insanimizin-vahsice-olduruldugu-bir-teror-kalkismasi/>

- 5) Emphasise that restitutio in integrum in this case requires the cessation of the persecution of Ms. Yüksekdağ Şenoğlu through criminal proceedings, in the form of detentions, prosecutions, and convictions solely for her political activities and political speech;
- 6) Request the Government of Türkiye to stop any interferences in the judicial processes against the applicant, especially by attempting to pressure or unduly influence judicial authorities;
- 7) Take the necessary steps to ensure the direct and continuing engagement, through all available channels including by member states, the Secretary General, the 18 PACE, and all other Council of Europe institutions-- to secure full implementation of the ECtHR judgment without further delay and;
- 8) Use all legal, political, and diplomatic tools designated in the Convention system to ensure the immediate release of Ms. Yüksekdağ Şenoğlu, including infringement proceedings against Türkiye under Article 46(4) of the Convention if she remains in detention.

**Legal Representative of Figen Yüksekdağ Şenoğlu**  
**Att. Hatice Ezgi Güngördü**



## **LIST OF DOCUMENTS**

### **1. Ankara 22. Assize Court's minutes dated 16/05/2024**