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The situation of Leyla Güven and other local elected representatives in detention in Turkey

Bureau of the Congress

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Summary

Leyla Güven was arrested on 29 December 2009, while she was mayor of Viranşehir and member of the Congress. More than four years later, she is still in detention. She has been on trial since 2010, with no end to her trial in sight.

As Turkey prepares itself for new local elections, in March 2014, a large number of mayors, deputy mayors and municipal councillors remain in long-term remand detention.

The Congress rapporteurs report on their second visit to Leyla Güven in detention and, noting that all detained members of the Turkish Grand National Assembly have now been freed as a result of a recent ruling of the Turkish Constitutional Court, request that the same principles be applied to the local elected representatives who remain in detention.

1 L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent and Liberal Democrat Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

THE SITUATION OF LEYLA GÜVEN AND OTHER LOCAL ELECTED REPRESENTATIVES IN DETENTION IN TURKEY

RESOLUTION 367 (2014)²

1. Leyla Güven was arrested on 29 December 2009, shortly after her appointment to the new Turkish delegation to the Congress and her keynote speech in the October 2009 Congress plenary session. She has now been in remand detention for more than four years.

2. The Congress continues to follow her case. The Congress Bureau already expressed its concern at the situation of Mrs Güven and the other detained elected representatives in its May 2010 “Declaration on elected representatives detained in Turkey”. In March 2013, in its “Declaration on the situation of local and regional politicians in Turkey”, the Congress reaffirmed its position that the massive detention of local politicians in Turkey is debilitating for local democracy.

3. On 7 December 2013, in accordance with the decision taken by the Congress Bureau at its meeting of 3 December 2012, the Congress rapporteurs visited Leyla Güven in Diyarbakir prison. The report of their visit, which they presented to the Congress Bureau at its meeting on 10 February 2014, is reproduced in the explanatory memorandum to this resolution.

4. As Turkey prepares itself for new local elections, in March 2014, a large number of mayors, deputy mayors and municipal councillors remain in long-term remand detention, a situation unparalleled in Council of Europe member states.

5. The Congress notes that, following the 4 December 2013 ruling of Turkey’s Constitutional Court in the Mustafa Balbay case, ordering his release on the grounds that his remand detention had been excessive and unlawful and that his right to be elected had been violated, the Turkish courts have now released all five members of parliament who were detained in similar circumstances and on similar charges to Leyla Güven.

6. The Congress regrets that ruling has not been applied to Leyla Güven, nor to the 15 mayors, 23 deputy mayors and several dozen municipal councillors who remain in detention in Turkey.

7. The Congress therefore:

a. bearing in mind the report of the visit of its rapporteurs to Leyla Güven in Diyarbakir E-type prison on 7 December 2013, as well as the report of their previous visit to Leyla Güven on 6 October 2011;

b. convinced that such detentions constitute a serious obstacle to the democratic process in Turkey and also raise serious questions about the rule of law and the protection of human rights and this country;

c. resolves to keep following the case Leyla Güven and all other local elected representatives who find themselves in similar situations;

d. instructs its Bureau to continue to examine this issue at each of its meetings, until the people in question have been released and to maintain a file on Leyla Güven, including her photo and information about her detention, on the homepage of its website.

² Preliminary draft resolution and preliminary draft recommendation approved by the Bureau of the Congress on 10 February 2014.

Members of the Bureau:

H. van Staa (President of the Congress), J.-C. Frécon (President of the Chamber of Local Authorities), N. Romanova (President of the Chamber of Regions), A. Knape, M. O'Brien, G. Doganoglu, H. Pihlajasaari, J. Warmisham, G.-M. Helgesen, A. Koopmanschap, U. Wüthrich-Pelloli, M. Cools, C. Lammerskitten, E. Verrengia, S. Orlova, D. Suica, L. Sfirloaga.

N.B.: The names of members who took part in the vote are in italics.

Secretariat of the Bureau: D. Rios Turón, L. Taesch.

THE SITUATION OF LEYLA GÜVEN AND OTHER LOCAL ELECTED REPRESENTATIVES IN DETENTION IN TURKEY

RECOMMENDATION 355 (2014)³

1. On 29 December 2009, Leyla Güven was arrested, one of many people detained in a wave of arrests. At the time she was mayor of Viranşehir, elected in the 2009 local elections and member of the Congress. Today, more than four years later, she is still in detention. She has been on trial since 2010, with no end to her trial in sight.

2. She is not alone in this case. As Turkey prepares itself for new local elections, in March 2014, 15 mayors, 23 deputy mayors and several dozen municipal councillors find themselves in similar long-term remand detention, a situation unparalleled in Council of Europe member states.

3. On 7 December 2013, in accordance with the decision taken by the Congress Bureau at its meeting of 3 December 2012, the Congress rapporteurs visited Leyla Güven in Diyarbakir prison. The report of their visit, which they presented to the Congress Bureau at its meeting on 10 February 2014, is reproduced in the explanatory memorandum to this recommendation.

4. The Congress, believing that a basic principle of justice is that you are innocent until proven guilty, notes that:

a. according to Mrs Güven's lawyers, her pre-trial detention has already long exceeded any sentence which could result from her charges;

b. on 4 December 2013, Turkey's Constitutional Court issued a landmark ruling in the similar case of the MP Mustafa Balbay, also detained since 2009 and ordering his release, on the grounds that his remand detention had been excessive and therefore unlawful and that his right to be elected had been violated as he was unable to perform his public duties while in detention;

c. as a result of this ruling, the Turkish courts have now released the five members of parliament who had been detained in similar circumstances and on similar charges to Leyla Güven, while the 15 mayors, 23 deputy mayors and several dozen municipal councillors remain in detention, unable to carry out the mandates for which they were elected.

5. The Congress therefore asks the Committee of Ministers:

a. to invite the Turkish authorities to apply the same standards and principles to local elected politicians as it does to its members of parliament, and therefore:

b. to release Leyla Güven and all the Turkish local elected representatives who find themselves in a similar situation and to do so in the context of the March 2014 Turkish municipal elections.

³ See footnote 2

THE SITUATION OF LEYLA GÜVEN AND OTHER LOCAL ELECTED REPRESENTATIVES IN DETENTION IN TURKEY

EXPLANATORY MEMORANDUM

1. On 29 December 2009, Leyla Güven, mayor of Viranşehir and member of the Turkish delegation of the Congress, was arrested in one of a series of large-scale detentions of local elected representatives, lawyers, journalists and political and human rights activists.
2. More than four years later, Ms Güven remains in remand detention, together with a large number of other elected local politicians, charged under Turkey's penal and anti-terrorism laws. The situation of Ms Güven has been addressed in several Congress sessions and, since the rapporteurs first visited her in prison on 6 October 2011, the Congress Bureau has been updated on her situation at each of its meetings. She has been on trial since October 2010.
3. Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, who visited Leyla Güven in prison in May 2010, has commented in detail on the context of these detentions in his 2012 report "Administration of justice and protection of human rights in Turkey", extracts of which are appended to this report.

Report of the visit to Leyla Güven (7 December 2013)

4. On Saturday 7 December 2013, in accordance with the decision taken by the Congress Bureau at its meeting of 3 December 2012, a delegation of the Congress, composed of Congress rapporteurs on Turkey, Anders Knappe (Sweden, EPP/CD) and Leen Verbeek, (Netherlands, SOC), visited former Congress member Leyla Güven, in the E-type prison in Diyarbakir, accompanied by Jean-Philippe Bozouls, Executive Secretary to the Chamber of Local Authorities. Gaye Doganoglu (EPP/CD), Head of the Turkish delegation to the Congress, also participated in the mission.
5. During this visit, made at the request of the Congress Bureau and with the authorisation of the Turkish authorities, the rapporteurs were able to have a long discussion alone with Ms Güven. They reported back to the Congress Bureau at its meeting on 10 February 2014.

The meeting with Ms Güven

6. The delegation met with Ms Güven in the office of the Deputy Director of the prison, who was not present for the meeting. The rapporteurs found her in good health and good spirits. She thanked the delegation for coming to visit her, and thanked the Congress for its ongoing support for her during her detention. This support was very important to her.
7. She reiterated how pleased she had been to be a member of the Congress delegation and how impressed she had been by the one plenary session that she had been able to attend before her arrest in 2009. She was very pleased to note the number of women in the Congress delegations and considered this to be an important achievement of the Congress.
8. She was wearing black, in mourning for two young men who were shot dead in Gever, Yüksekova, in the town of Hakkari, on 6 December 2013 by Turkish security forces while participating in a demonstration against the desecration of graves.
9. She expressed her sadness that, since her election as mayor in 2009, she had been unable to carry out her mandate and serve her people. They deserved better. Her municipality is in a region where there are severe social inequalities, especially with respect to women. She had planned many projects to improve the situation of women in her town, but had been unable to carry these through. Before her election in 2009, she had already served as mayor in Küçükdikili, Adana, where she had done much to improve the situation of women.
10. She does not intend to stand in the March 2014 local elections, on the grounds that she will be unable to serve her citizens if she is still in detention.

The prison

11. Mrs Güven is detained in Diyarbakir prison, a prison for common criminals. A wing of this prison has been allocated to women accused of terrorist offences. The women are detained here on remand until the court reaches a verdict. Like Ms Güven, many of the 50 women currently in the wing have been there for four years or more.

12. The prison is over-crowded. According to our different interlocutors, the prison was built to house 650 to 1,000 inmates and currently has a population of 1,050 to 1,300. New prisons are under construction on the outskirts of Diyarbakir, in the vicinity of the D-type (high-security) prison. When these are completed in 2015, the old E-type prison in the centre of Diyarbakir is destined to be closed. The prison has not therefore been renovated. The condition of the plumbing is poor and the quality of the drinking water has often been the cause for concern. Ms Güven claimed that she has suffered from several illnesses while in detention, which she believes would not have happened in other conditions.

13. Ms Güven shares a cell with 13 other women, including two 16 year-old girls. These women have to share eight beds. One woman has to sleep on the floor. The other inmates of the cell ensure that Ms Güven has a bed to herself, out of respect for her age. However, the situation is better than it was in 2009, when there were 23 women in the same cell. She believes that this improvement only came as a result of their own specific proposals to transfer some of the women to other prisons where there was more space.

14. Visiting conditions are poor, with visitors often obliged to queue outside the prison for hours with no seating or shelter. Strip-searching of visitors is common, which is humiliating, especially for the older women. As the results of their complaints, the authorities have stopped the practice of using sniffer-dogs in such searches.

15. She receives little information about the Congress and would like to receive more information about its activities. She is allowed to buy three newspapers, and has access to 18 TV channels. Prisoners are also allowed to have a radio, for which they must pay for the batteries. There is no Internet access. Prisoners are allowed to buy breakfast materials and had to pay for their own toiletries, but these were expensive in the prison, and many prisoners did not have the means to pay.

16. The Deputy Governor of Diyarbakir Province, Mr Zafer Engin, whom the delegation met after the prison visit, assured the Congress delegation that he would pass the information on the poor visiting conditions and poor conditions for detainees in the court to the relevant authorities.

The trial

17. Ms Güven informed the rapporteurs that her trial had been adjourned until 14 January 2014. 65 out of the 175 defendants have yet to testify. When she was asked to give her testimony, the microphone was switched off when she began speaking in Kurdish. Although the law has since been changed, allowing defendants to testify in Kurdish, she will not be given another opportunity to testify.

18. When the court is in session, the defendants spend five days a week at the court-house, much of this time in a rodent-infested cell with a leaky roof. Meals are brought from the prison. There is no end in sight for the trial. The court renews the remand order every two months. In the four years that she has been in remand detention, just 18 of the 175 defendants have been released. She maintains that such long remand detention is unlawful.

19. According to Ms Güven, most of the evidence presented in the trial comes from phone-tapping and bugging of political meetings in the period 2006 to 2009. Many of the charges refer simply to the occurrence of such words as 'PKK' or 'KCK' during such meetings and conversations. There is no suggestion that any violent act was committed or planned or that there was any incitement to such acts. She considers many of the allegations to be quite ridiculous. She is charged with membership of a terrorist organisation, which can carry a sentence from 6.5 to 12.5 years.

The situation of other elected local and regional politicians in detention

20. While the Congress Bureau has chosen to focus on the situation of Ms Güven, there is also an awareness that her case is not an isolated one. She is being tried in a mass trial of 175 defendants. A

large number of other local and regional politicians, activists, lawyers and journalists have been detained on similar charges.

21. The lawyer that the delegation spoke to maintained that all the charges against these defendants are of a political nature and are based on private conversations and discussions in internal political meetings. The position of the defence is that this is a clearly political trial with no legal basis. Prosecutions against many of the defendants began in April 2009, just one month after the former Democratic Society Party (DTP), of which Peace and Democracy Party (BDP) is the successor, returned strong results in the municipal elections. Much of the evidence is based on secret recordings of internal meetings of the DTP's local government committee. The BDP has an identical committee, which treats the same files as the former committee, but no prosecutions have been linked to the work of this BDP committee.

22. According to the lawyer, many of the charges brought against the defendants are based on the Turkish Penal Code (Law no.5237, Article 220), which provides that you can be charged of membership of an illegal organisation even if you are clearly not a member, if it can be demonstrated that you have helped such a group or made propaganda by speaking in favour of such a group or of its aims. Participation in a demonstration, of which there are many in this region, is often considered sufficient evidence for a criminal prosecution, if any of the slogans chanted during such an event can be argued to be such propaganda. Therefore the number of people on trial constitute only a small proportion of the number of people who could be brought to trial on such evidence. However, in practice, it is argued that the government selects its targets, in order to intimidate the others, and that Leyla Güven is one such target.

23. Some of the charges against Ms Güven and the others in her trial are based on Article 314 of the Penal Code (membership of an armed organisation) and Articles 6 and 7 of the Law against Terrorism (Law no.3713). These articles, which have been frequently criticised in the international community, have often been used by prosecutors in combination, resulting in the imprisonment, among others, of a large number of journalists. Critics argue that they constitute unreasonable limitations on freedom of expression and freedom of assembly. In October 2013, the Turkish Ministry of Justice revealed that, over the past four years, 20,000 people had been convicted under the law against terrorism, the great majority of whom were jailed for non-violent offences.

24. A recent decision of Turkey's Constitutional Court has raised hope amongst many of those currently on trial. On 4 December 2013, the Court issued a landmark ruling with regard to Mustafa Balbay, MP for the opposition CHP party, who had also been in jail since 2009. The court ordered his release, ruling that his remand detention had been excessive and therefore unlawful and also that his right to be elected had been violated because he was not able to perform his public duties while in detention. Since both these points are also applicable to Leyla Güven's case, there is hope that this decision could pave the way for the release of Leyla Güven and others in a similar position. Turkish President Abdullah Gül, speaking in Kilis on 5 December 2013, has underlined the importance of this ruling.

25. The right to freely exercise an elected political mandate is also enshrined in Article 7.1 of the European Charter of Local Self-Government, one of the articles that Turkey declared itself to be bound by, when it ratified the Charter on 1 April 1993. Members of Leyla Güven's BDP party reminded the rapporteurs that one of their party's priorities for local government is to extend Turkey's application of the European Charter.

26. It was also argued that, with so many elected politicians and party members still in detention, the municipal elections planned for March 2014 would not be able to claim to be free and fair.

27. The rapporteurs consider that the characteristics of the detention of and prosecutions against Ms Güven and the other elected local representatives in Turkey are accurately described in the report "Administration of justice and protection of human rights in Turkey", by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey from 10 to 14 October 2011 (see Appendix).

Conclusion

28. While impressed by Ms Güven's resilience and noting that the detention conditions have slightly improved since their visit 2011, the rapporteurs are concerned by the excessive length of proceedings, the excessive length of remand detention and the nature of the charges. They believe that the situation of Ms Güven and the other local elected representatives in similar circumstances raises serious questions with respect to Turkey's commitment to local democracy and constitute serious impediments to the fulfilment of their political mandates.

29. The Rapporteurs note that, with respect to Ms Güven and the many other local elected politicians that remain in long-term remand detention in Turkey⁴ the problems in the administration of justice that were described by the Commissioner for Human Rights in 2011, are still apparent two years later.

30. They believe that the credibility of the forthcoming 30 March 2014 municipal elections will be seriously compromised if this situation persists and call for all the mayors and municipal councillors in question to be freed.

⁴ According to information received by the Rapporteurs in the context of this visit, 15 mayors, 23 deputy mayors, 133 municipal councillors, 21 provincial councillors and 8 former mayors are currently in remand detention in Turkey.

Appendix

CommDH(2012)2, 10 January 2012

Administration of justice and protection of human rights in Turkey

Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey from 10 to 14 October 2011

Extracts

[...]

5. As the Commissioner underlined in his July 2011 Report on freedom of expression in Turkey, certain shortcomings of the Turkish judicial system are an important source of violations of the European Convention on Human Rights (hereinafter 'ECHR') in Turkey. The European Court of Human Rights ('ECtHR') delivered more than 2,200 judgments against Turkey in the period 1995-2010. Almost 700 of these judgments concerned violations of the right to a fair trial, and more than 500 related to the right to personal liberty and security. The Commissioner observes that the Turkish justice system has not managed to date to effectively tackle and prevent such violations, even though some of the dysfunctional aspects of the system have been identified by the ECtHR as the direct cause of human rights violations in many cases.

6. The Turkish legislation has been subject to important changes in recent years, in order to bring it into line with ECHR standards, such as the adoption of a new Turkish Criminal Code (hereinafter 'TCC') and a new Turkish Code of Criminal Procedure (hereinafter 'TCCP') in 2004. In particular the amendments to the TCCP, which entered into force on 1 June 2005, sought to address many procedural shortcomings identified in the case-law of the ECtHR.

7. However, following these reforms, it became increasingly apparent that the interpretation and application of the new legislation by courts and prosecutors often followed established patterns which were incompatible with ECHR standards. Together with many structural problems affecting the administration of justice in Turkey (such as the heavy workload of courts and prosecutors leading to significant backlogs, in particular of High Courts), this situation has prevented the legislative reforms from achieving their full potential. It has to be pointed out, however, that many shortcomings remain in the statutes themselves, and importantly in the letter and spirit of the Turkish Constitution.

8. Among the cases where the ECtHR pointed directly to the Turkish justice system as a source of violations, those concerning Articles 5 (right to liberty and security) and 6 (right to a fair trial) of the ECHR figure prominently. In particular, excessive resort to detentions on remand and excessively lengthy judicial proceedings have been consistently identified as problems in many Turkish cases. In addition, the role of the judicial authorities has been subject to the scrutiny of the ECtHR in connection with Articles 2 (right to life) and 3 (prohibition of torture) of the ECHR, notably in the context of effective investigations and impunity for state actors, often in combination with Article 13 ECHR (right to an effective remedy). Finally, the case-law of the ECtHR indicates that the over-restrictive state-centred attitude of the judicial authorities has played a major role as regards undue restrictions of Articles 10 (freedom of expression) and 11 (freedom of assembly and association) of the ECHR.

9. Recent high-profile cases, such as *Ergenekon*, *Sledgehammer (Balıyoz)* and *KCK (Union of Communities in Kurdistan)*, as well as the domestic proceedings related notably to the murder of the writer and journalist *Hrant Dink*, have led to an increased awareness of specific, long-standing shortcomings in the administration of justice. This has arguably created relatively favourable conditions for judicial reform

[...]

19. Procedural delays during the trial period are seen as another major reason for lengthy trials in Turkey. A typical Turkish court case, regardless of the type of the court, is characterised by repeated

adjournments and long periods during which the case file is sent to experts. In most cases, hearings are scheduled with delays of several months.

[...]

24. As regards the practice of the prosecutors, another problem often mentioned during the Commissioner's visit concerned indictments, which often take a very long time to prepare, frequently while the suspects are remanded in custody. The Commissioner is concerned about reports that these documents can become overly long, sometimes running into thousands of pages, especially in cases relating to terrorism and organised crime. This is due to the fact that they contain a compilation of pieces of evidence, such as long, indiscriminate transcripts of many wire-tapped telephone conversations, some of which reportedly bear little relevance to the offence in question. The Commissioner considers that the Turkish authorities should ensure that the prosecutors have the qualifications and resources needed in order to appropriately filter the existing evidence or to collect the necessary new evidence in such highly complex cases, which would allow them to prepare indictments of a high quality, containing sound legal analysis which connects essential pieces of evidence to the accusation.

[...]

27. The Commissioner recalls Recommendation Rec (2006)13 of the Committee of Ministers on the use of remand in custody, which provides that the use of remand in custody must always be exceptional and justified. It is crucial to safeguard the principle of presumption of innocence and bear in mind that the only justification for detaining persons whose guilt has not been established by a court could be to ensure that the investigations are effective (securing all available evidence, preventing collusion and interference with witnesses) or to avoid evasion of justice. Where less restrictive alternative measures (such as judicial control, release on bail or bans on leaving the country) could address these concerns, they must be used instead of detention. In any event, detention must be as short as possible and only continue for as long as it is justified.

28. As of September 2011, there were 144 judgments of the ECtHR under supervision of execution by the Committee of Ministers, primarily concerning the excessive resort to and length of detention on remand (and excessive length of criminal proceedings), in violation of Article 5, paragraph 3 ECHR. The ECtHR has noted that such cases originated 'in widespread and systemic problems arising out of the malfunctioning of the Turkish criminal justice system and the state of the Turkish legislation, respectively'. The ECtHR has further found that general measures at national level must be taken in order to remedy the situation, in the light of more than 140 similar cases pending before it.

[...]

Long time limits for detention

38. While the new TCCP introduced upper limits beyond which detentions on remand may not be extended, the Commissioner considers that these limits are still very long, especially for crimes against state security. For example, the upper time limit defined in Article 102 TCCP is two years for offences within the jurisdiction of assize courts, extensible for three more years. These time limits are doubled for certain crimes relating to state security under Article 252, which brings the maximum legal detention period to ten years. The Commissioner considers that these time limits are excessively long.