BAR HUMAN RIGHTS COMMITTEE OF ENGLAND & WALES

TRIAL OBSERVATION REPORT

Selahattin Demirtaş v Turkey
Interim Report

June 2019

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Produced by BHRC

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UPDATE: Since the publication of this Report, we have been asked by the Ministry of Justice to correct paragraphs 58 and 59. BHRC is grateful for the comments and the full text of the MoJ communication has been inserted at footnote 17.

Bar Human Rights Committee

The Bar Human Rights Committee ("BHRC") is the international human rights arm of the Bar of England and Wales. It is an independent body, distinct from the Bar Council of England and Wales, dedicated to promoting principles of justice and respect for fundamental human rights through the rule of law. It has a membership of nearly five hundred lawyers, comprised of barristers practicing at the Bar of England and Wales, legal academics and law students. BHRC's fifteen Executive Committee members and general members offer their services *pro bono,* alongside their independent legal practices, teaching commitments and/or legal studies. BHRC also employs a full-time executive officer.

BHRC aims to:

- uphold the rule of law and internationally recognised human rights norms and standards;
- support and protect practicing lawyers, judges and human rights defenders who are threatened or oppressed in their work;
- further interest in and knowledge of human rights and the laws relating to human rights, both within and outside the legal profession;
- support and co-operate with other organisations and individuals working for the promotion and protection of human rights; and
- advise the Bar Council of England and Wales in connection with international human rights issues.

As part of its mandate, BHRC undertakes legal observation missions to monitor proceedings where there are concerns as to the proper functioning of due process and fair trial rights. The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer and critic.

Introduction and Overview

1. On 18 and 19 June 2019, Pete Weatherby QC, Executive Member of the BHRC, attended the latest stage of the long-running trial of Selahattin Demirtaş, who was a member of the Turkish Grand National Assembly (Parliament) and the former co-leader and Presidential candidate of the Peoples' Democratic Party (HDP), Turkey's third largest political party, on a multi-charge indictment alleging incitement and support for terrorism. Given that the trial continues, this is an interim report.

2. On 20 June 2019, Pete Weatherby QC then attended the 'final' hearing of the trial of Veysel Ok, a lawyer indicted with a single charge of insulting the judiciary, based upon a newspaper interview he had given during which he had questioned the independence of the judiciary. In the event, this hearing was adjourned administratively.

3. The purpose of the mission was primarily to observe the two trials with particular regard to:
    a. Concerns as to whether the Demirtaş trial is politically motivated rather than a genuine criminal justice process.
    b. Whether the charges Mr. Demirtaş faces are aimed at curtailing freedom of expression and the ability to freely take part in democratic elections and the political process, or whether they are properly the subject of criminal trial.
    c. The continuance of Mr. Demirtaş' pre-trial detention in light of the ECtHR judgment that continued detention is a breach of Article 5(3), Article 3 to Protocol 1 (A3P1), and Article 18: Selahattin Demirtaş v. Turkey (No.2), 14305/17, 20 Nov. 2018.
    d. Whether defence claims of a lack of judicial independence are well-founded.
    e. Concern as to whether the prosecution of Veysel Ok for expressing an opinion about the independence of the judiciary is consistent with the requirement to safeguard the integrity and independence of lawyers – an essential element of the Rule of Law.
    f. Access to the courts.

4. For reasons explained more fully below, BHRC cannot form a definitive view of the Demirtaş trial based upon observing one section of it. However, the trial observation and associated meetings raised or confirmed a number of concerns.

5. The indictment originally consisted of thirty-one sets of charges or 'files' which were joined as 2016/24950. The indictment ran to 501 pages. However, more allegations are being joined even at this late stage of the proceedings. The evidence largely comes from the text of speeches delivered by Mr. Demirtaş in public, in his position as co-leader of the third largest political party in Turkey. Whereas, it is entirely possible to properly found criminal charges of incitement and support for a proscribed

organization on political speeches, the protection of freedom of expression and respect for free participation in democratic elections makes the context acutely relevant.

6. The prosecution of Mr. Demirtaş became possible because of the removal of his Parliamentary immunity and that of 137 others on 20 May 2016. The removal of Parliamentary immunity and the charging and detention of MPs, largely on the basis of political speeches, raises clear concern that the rule of law is being curtailed for political ends. This concern is compounded by the fact that the April 2017 referendum – which approved sweeping new powers for the President – and the last general election, took place during the State of Emergency (SoE) which persisted from the attempted July 2016 coup until July 2018. During the SoE, presidential decrees curtailed freedom of expression by facilitating the closure of media outlets critical of the Government, and the detention of record numbers of journalists. Many of these emergency decrees were made permanent by new anti-terrorism laws brought into force in August 2018 immediately following the end of the SoE.

7. Concern is also raised by the fact that the prosecution in the Demirtaş cases is seeking sentences amounting to between 43 and 142 years imprisonment. Mr. Demirtaş is 46 years of age and such a sentence could have the same effect as a whole life term, even taking account of early release provisions.

8. Specific concern regarding the ongoing detention of Mr. Demirtaş arises from the ECtHR judgment which found violations of Article 5(3) (excessive pre-trial detention), Article 3 to Protocol 1 (the detention interfered with the right to free elections under conditions which ensure the free expression of the will of the people), and Article 18 (the interference with Article 5 was for an improper motive: "it pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society"). The Court held that there were insufficient reasons for continued detention and that the reasons given were formulaic. Further, the Court emphasized that that the right to free elections under conditions which will ensure the free expression of the opinion of the people, enshrined in A3P1, "are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law" and that whilst freedom of expression is important for everybody, it is especially so for elected representatives. Accordingly, interference with the freedom of expression of an opposition member of parliament calls for the closest scrutiny and it is thereby essential that domestic courts show that they have weighed the competing interests of the individual and society as safeguarded by A3P1 on the one hand, and the proper administration of justice on the other, in decisions to extend detention . Given that the Court had already found a breach of A5(3) on the grounds of insufficient reason to continue detention, the fact that the interference with parliamentary duties was particularly severe given that Mr. Demirtaş was one of the leaders of the opposition, and that the domestic authorities did not properly consider the alternatives to

detention, continued detention was disproportionate and a violation of A3P1 as well. However, of even more significance was the finding of a violation of Article 18:

> *273. Having regard to the foregoing, and in particular the fact that the national authorities have repeatedly ordered the applicant's continued detention on insufficient grounds consisting simply of a formulaic enumeration of the grounds for detention provided for by law, the Court finds that it has been established beyond reasonable doubt that the extensions of the applicant's detention, especially during two crucial campaigns, namely the referendum and the presidential election, pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society (see, mutatis mutandis, Mehmet Hasan Altan, cited above, § 210, and Şahin Alpay, cited above, § 180).*
>
> *274. There has therefore been a violation of Article 18 of the Convention in conjunction with Article 5 § 3.*

9. The judgment has been referred to the Grand Chamber which will hear the case on 18 September 2019, and the Court's judgment is therefore not final. However, one of the key points in the reasoning of the Court was that the domestic trial court had merely extended pre-trial detention based upon a formulaic submission by the prosecution. The Court did so again at the end of the current stage of the trial, albeit by a majority.

10. The conduct of the judges at the current stage of the trial did not raise evidence of a lack of independence, other than that the majority upheld the prosecution submission that Mr. Demirtaş should remain in detention, despite the reasoning of the ECtHR above, as relied upon by the defence.

11. Judicial independence was, however, a main topic of discussion during a meeting with Judge Dr. Hacı Ali Açikgül, the Head of Human Rights at the Ministry of Justice, and it is apparent that the Government does not accept the widespread international criticism that judicial independence has been seriously eroded by structural changes to the Council for Judges and Prosecutors (HSK) which regulates judicial appointments and discipline, and what amounts to the mass arbitrary dismissal of over a quarter of the judiciary since the attempted coup of July 2016.

12. In the separate trial of Veysel Ok, the final hearing was administratively adjourned at a late stage, apparently due to the judge going on holiday outside of the normal judicial vacation period.

13. Mr. Ok was one of the defence lawyers in the Altan trial of journalists, covered by BHRC in 2017. The case against Mr. Ok relates to a media interview he gave in 2015 during which he expressed the opinion that independence of the judiciary had been eroded in Turkey. BHRC has previously expressed deep concern about the failure of the Turkish

state to safeguard lawyers and this prosecution is one example of worrying evidence that lawyers remain at risk. Mr. Ok faces imprisonment and the withdrawal of his licence to practice law if he is convicted.

Terms of reference

14. The backdrop to these trial observations is widespread international concern regarding the erosion of the rule of law in Turkey, the concentration of power in the presidency with particular regard to judicial independence, the protection of lawyers, interference with the democratic process, and attacks on freedom of expression. In part, these concerns relate to the reaction to the attempted coup of July 2016 with mass detentions and dismissals of judges, prosecutors and other public officials and academics, and substantial changes to the constitution made during the SoE. Some of these expressions of concern are cited in *Selahattin Demirtaş v. Turkey (No.2)*, in particular from the Council of Europe Commissioner for Human Rights, the Inter-Parliamentary Union (IPU), and the European Commission for Democracy through Law (Venice Commission).

15. This mission builds upon other BHRC trial observations in Turkey relating to journalists in the Taraf, Zaman, and Altan cases, and the trial of Osman Kavala, a leading civil society figure. Reports on those cases can be viewed on the BHRC website. It also builds upon the joint letter of BHRC, the International Bar Association, and the Law Society of E&W to the UN Special Rapporteur on the Independence of Judges and Lawyers, detailing the structural and individual attacks on judges and lawyers by the Turkish state, dated 18 September 2018[1], and the Joint Stakeholders Submission to the UN Human Rights Council's UPR – Turkey, (International Coalition of Legal Organisations) 35th Session (Jan-Feb 2020), to which BHRC was a signatory[2].

16. The June 2017 BHRC report on the Altan trial noted: "Particular concerns relate to the independence of the judiciary and the protection of judges, prosecutors, defence lawyers and journalists, which are of paramount importance to the rule of law, codified within the International Covenant of Civil and Political Rights and the European Convention of Human Rights to which Turkey is bound as a signatory party." Observation of the Demirtaş trial raises the opportunity for BHRC to determine whether political leaders should be added to that list, with particular regard to the findings of the ECtHR regarding Article 3 of Protocol 1 to the Convention – the right to free

[1]Joint letter to the UN Special Rapporteur on the Independence of Judges and Lawyers, dated 19 September 2018 available at: https://eldh.eu/wp-content/uploads/2018/08/BHRC_IBAHRI_LSEW_Joint_Submission_-_Turkey_FINAL2.pdf

[2] Joint Stakeholders Submission to the UN Human Rights Council's UPR – Turkey, (International Coalition of Legal Organisations) 35th Session (Jan-Feb 2020), available at: http://www.barhumanrights.org.uk/wp-content/uploads/2019/07/UPR-Turkey-Combined.pdf

elections under conditions which allow for the free expression of the people – and Article 18 – improper reasons for continued detention.

17. The separate prosecution of Veysel Ok raises further concerns that the state is criminalising lawyers for expressing legitimate opinion and interfering with their ability to undertake their profession. A key part of the work of BHRC is highlighting attacks on lawyers and any failure of the state to safeguard their personal integrity and ability to perform their function without fear or interference.

Acknowledgments

18. During the mission, BHRC was pleased to meet with Sir Dominick Chilcott, the British Ambassador, Judge Dr. Hacı Ali Açikgül, the Head of Human Rights at the Ministry of Justice, diplomats from the US, Canada, the Netherlands and Switzerland, MPs from Germany and Sweden, and the President of the European Free Alliance group from the European Parliament. The diplomats and politicians were all observing the Demirtaş trial. BHRC also met with Osman İşçi, the General Secretary of the Human Rights Association based in Turkey, several of the defence lawyers representing Mr. Demirtaş, and representatives of his political party, the HDP.

19. BHRC is grateful to all those who met with the mission, and those who gave their time to discuss the trials and relevant context.

Funding

20. The mission was wholly funded from BHRC's trial observation fund, provided in part by the Bar Council of England and Wales and from annual contributions by BHRC members. BHRC conducted the trial observations and wrote this report on a *pro bono* basis.

Factual Background to the Cases

a. Selahattin Demirtaş

21. Mr. Demirtaş was a member of the Turkish Parliament from 22 July 2007 until 7 July 2018. Between 2014 and 2018 he was co-leader of the HDP. The prosecution of Mr. Demirtaş became possible because of the removal of his Parliamentary immunity and that of 137 others on 20 May 2016[3]. The vast majority of MPs whose immunity was lifted were from the two main opposition parties and the removal applied to almost all of the HDP MPs. President Erdogan had justified the measure, alleging that the HDP were the political wing of the Kurdish Workers Party (PKK), a prohibited organisation[4]. The HDP remains an open and legal organisation.

22. Mr. Demirtaş was arrested on 4 November 2016 together with Figen Yüksekdağ (co-Chair of the HDP) and seven other MPs. Mr. Demirtaş and Ms Yüksekdağ are subject to separate trials but face similar charges of establishing or administering a terrorist organisation, propagandising for a terrorist organisation, incitement to hatred and enmity, and incitement to commit crime. Almost all the evidence is the prosecution interpretation of speeches Mr. Demirtaş and Ms Yüksekdağ made as leaders of the HDP, although there is some evidence from a hard drive and telephone intercepts of contact with alleged members of the PKK.

23. In *Selahattin Demirtaş v. Turkey (No.2) (above cit)* the ECtHR noted:

> 57. The charges brought against the applicant by the public prosecutor may be summarised as follows.
>
> (i) In a speech he had given in Batman on 27 October 2012 in the offices of the Peace and Democracy Party ("the BDP", a left-wing pro-Kurdish political party), the applicant had disseminated propaganda in favour of the PKK terrorist organisation by urging people to close their shops and not to send their children to school as a protest aimed at securing the release of the PKK leader.
>
> (ii) On 13 November 2012 two demonstrations had been held in Nusaybin and Kızıltepe in protest against the conditions of the PKK leader's detention, and the applicant had made the following comments in Kızıltepe:

[3] Demirtaş v Turkey (No 2) at [41]
[4] See BBC News "Parliament in Turkey backs lifting of immunity from prosecution" dated 20 May 2019 available at: https://www.bbc.co.uk/news/world-europe-36344314

> *"They said you couldn't put up the poster of Öcalan. Those who said it ... Let me speak clearly. We are going to put up a sculpture of President Apo. The Kurdish people have now risen up. With their leader, their party, their elected representatives, their children, their young and old, they are one of the greatest peoples of the Middle East."*

According to the bill of indictment, these comments amounted to propaganda in favour of a terrorist organisation.

(iii) In a speech he had given in the BDP offices in Diyarbakır on 21 April 2013, the applicant had made the following statements:

> *"The Kurdish movement used to see the war as a war of self-defence. Nowadays, if you have enough experience to resist [and] prevail using non-violent methods, it is not morally [and] politically right to use weapons. Today, those who criticise us also say that the Kurdish people would not exist, at least in Turkish Kurdistan, without the PKK movement. You could not speak of the existence of Kurds in Turkish Kurdistan. Without the coup in 1984 [the year of the first PKK attacks], without the guerrillas, no one today could speak of the existence of the Kurdish people; the Kurds would have no other choice. ... At the time of the initial resistance in Şemdinli [and] Eruh [the first terrorist attacks by the PKK, carried out in the Şemdinli district in Hakkari and the Eruh district in Siirt on 15 August 1984], no one was aware of what was happening but the resistance has today created [the] reality of the [Kurdish] people. We have gained our identity."*

(iv) Following the proclamations of self-governance and the operations conducted by the security forces, the applicant had stated on several occasions that the operations in question were massacres carried out by the national authorities and had described certain acts attributed to members of the PKK as acts of resistance.

(v) The applicant had actively worked for the DTK organisation, founded according to the public prosecutor in order to raise public awareness of the PKK's views, and had given speeches at meetings organised by the DTK.

(vi) The applicant was in charge of the political wing of the KCK illegal organisation; the public prosecutor presented evidence against him including the following:

> – two documents, entitled "documento" and "ikram ark", discovered on a hard drive seized from the home of a certain A.D.,

who had been sentenced to eighteen years' imprisonment for leading a terrorist organisation; according to those documents, the KCK leader in Turkey, S.O., had given instructions to several people, including the applicant, to visit the relatives of ¡E., who had been mistakenly assassinated by the PKK;

– the records of intercepted telephone conversations between S.O. and K.Y., a person who had been sentenced to twenty-one years' imprisonment for leading a terrorist organisation, and between K.Y. and the applicant; according to those records, S.O. had given instructions to several people, including the applicant, to take part in certain meetings abroad, including in Strasbourg.

(vii) The applicant had incited the acts of violence that had taken place between 6 and 8 October 2014 through his speeches and statements, the relevant parts of which are summarised in paragraphs 22-23 above.

24. Mr. Demirtaş has been in Edirne F Type Prison since his arrest. He is being tried before the 19th Ankara High Criminal Court sitting at a trial complex within the Sincan F Type prison campus, 27km from Ankara.

25. The indictment originally consisted of thirty-one sets of charges or 'files' which were joined as 2016/24950. The indictment is set out over 501 pages. However, more allegations are being joined even at this late stage of the proceedings.

26. The bill of indictment was filed with the Diyarbikar Assize Court on 11 January 2017. The public prosecutor indicated that he sought sentences amounting to between 43 and 142 years imprisonment[5].

27. On 20 February 2017, Mr. Demirtaş lodged an application at the ECtHR alleging that his pre-trial detention violated his rights under Article 5, Article 10 and Article 18 of the Convention and Article 3 of Protocol 1.

28. On 28 November 2018, the Second Section of the ECtHR handed down judgment finding violations of Article 5(3) (excessive pre-trial detention)[6], Article 3 to Protocol 1 (the detention interfered with the right to free elections under conditions which ensure the free expression of the will of the people)[7], and Article 18 (the interference with Article 5 was for an improper motive: "it pursued the predominant ulterior

[5] Demirtaş v Turkey (No 2) at [56]
[6] Demirtaş v Turkey (No 2) at [193-196]
[7] Demirtaş v Turkey (No 2) at [240-241]

purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society")[8]. The Court dismissed other allegations under Article 5(1) and Article 5(4).

29. The reasoning and decision is summarised above at paragraphs 8 and 9.

30. The judgment has been referred to the Grand Chamber which will hear the case on 18 September 2019 and the Court's judgment is therefore not final. However, one of the key points in the reasoning of the Court was that the domestic trial court had merely extended pre-trial detention based upon a formulaic submission by the prosecution. The Court did so again at the end of the current stage of the trial, albeit by a majority.

b. Veysel Ok

31. Veysel Ok is a lawyer practicing in Istanbul. He is co-director of the Media and Law Studies Association which supports journalists who face freedom of expression charges, as well as promoting the public's right to information more generally and supporting the rights of minorities including refugees and the LGBTI community[9].

32. Mr. Ok was one of the defence lawyers in the Altan trial of journalists, covered by BHRC in 2017[10]. Mr. Ok is himself on trial for "insulting the judicial organs of the state" contrary to Article 301 of the Turkish Criminal Code.

33. The case against Mr. Ok relates to a media interview he gave on 25 December 2015 to the now closed newspaper *Özgür Düsünce*. During the interview he stated:

> *"Previously, judges could hold varying opinions. There was a possibility of being tried by judges who valued freedoms. But now all members of the judiciary come in a single color. We see the judges serving at the Criminal Judgeships of Peace. They are deaf to defence statements or objections. Where the loyalties of these judges lie is clear. Nothing changes the result because the decisions are pre-ordered. Either, those in power give orders to the judicial authorities before the investigation or attack the defendant via the government press."*[11]

34. Mr. Ok faces imprisonment and the withdrawal of his licence to practice law if he is convicted.

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[8] Demirtaş v Turkey (No 2) at [273-274]

[9] See Media and Law Studies Association (MLSA) "About" last visited 24 August 2019 available at https://www.mlsaturkey.com/en/about/

[10] See BHRC "TRIAL OBSERVATION REPORT Altan and Others v. Turkey: journalists on trial after the coup" dated June 2017 available at http://www.barhumanrights.org.uk/wp-content/uploads/2017/09/Turkey-Report-June-2017.pdf

[11] MLSA "Veysel Ok appears before judge on charges of "insulting judiciary"" dated 9 May 2018 available at https://www.mlsaturkey.com/en/veysel-ok-appears-before-judge-on-charges-of-insulting-judiciary/

The Hearings

35. BHRC attended both days of the current stage of the Demirtaş trial on 18 and 19 June 2019. The case is being heard by Presiding Judge Murat İlhan, sitting with Judge Cengiz Aydiner, and Judge Şaban Oğuz Canbolat. The Prosecutor is Uğur Fatih Pehlivan. Defence advocates at the current hearing were: Av.Mesut Özer, Av.Mustafa Kemal Baran, Av.Mehmet Emin Aktar, Av.Cahit Kırkazak, Av.Aydın Erdoğan, Av.Taylan Altunay, Av.Sabahattin Acar, Av.Muhlis Oğurgül, Av.Mehmet Nuri Özmen, Av.Kemal Akalın, Av.Kenan Maçoğlu, Av.Gözde Demirci, Av.Günizi Satar, Av.Levent Kanat and Av.Mahsuni Karaman. Advocates Av.Aygül Demirtaş Gökalp ve Av.Arzu Kayaoğlu assisted Mr. Demirtaş in the prison from where he appeared by videolink.

36. On the first day, the minibus transporting most of the international observers, including the observer for BHRC was stopped at a police checkpoint within sight of the Sincan complex for about two hours. The police candidly indicated that the presiding judge was aware that the observers were there and had no objection to their presence in the court. However, the officers were awaiting other unspecified authority before allowing the observers to proceed.

37. The police action applied to all observers including MPs from Sweden and Germany, and diplomats from the US, Netherlands and Switzerland.

38. On the second day, access to the court was obtained without incident or delay.

39. The Court was well under way by the time access was gained on 18 June 2019. The court room was extremely large – designed for mass cases arising from the coup. At Sincan there are two courts accommodating the 19th Ankara High Criminal Court, with two panels of judges, one for the Demirtaş trial and the other for army officers who are alleged to have plotted to arrest or assassinate President Erdogan during the coup.

40. At one end of the court sat the three judges on a raised platform, with the prosecutor at the same level to their right. On the other side was a very large video screen upon which Mr. Demirtaş appeared. The rest of the courtroom was at ground level. About fifty members of the public sat at the rear of the court facing the judges. Down the right hand side were approximately 12 police officers, empty media benches and fifteen defence lawyers, nearest to the judges. Down the left hand side sat HDP MPs, and international observers. In the centre of the court were 264 empty seats.

41. Both court days were filled almost exclusively by a defence statement by Mr. Demirtaş concerning one part of the indictment: dossier 23. Mr. Demirtaş appeared by videolink, flanked by two of his lawyers, as he is detained several hundred miles away. The video facilities were particularly good and Mr. Demirtaş appeared to have no

difficulties in interacting with the court. There was a minimum of interference from the court itself, and at times, the defence lawyers added submissions of their own. The prosecutor said nothing until the end of the second day.

42. Mr. Demirtaş' statement asserted that:
    a. He was a leading opposition figure and that the impugned speeches had to be viewed in that context;
    b. He had been involved prominently in the peace process between 2012-2015;
    c. The original investigating prosecutor was arrested and dismissed from his post after the 2016 attempted coup for his alleged links to the Gulenists. The fact that he had started the investigation during the peace process suggested a political motive to undermine the prospect of a peaceful solution;
    d. The investigation was illegitimate as it had been commenced when he had parliamentary immunity. Telephone interception evidence was illegal as it was undertaken without warrant;
    e. It was spurious to accuse him of giving respect to a terrorist by referring to "Mr." Ocalan. By referring to "Kurdistan" he was doing no more than the President or the AKP candidate for the mayorship in Istanbul, Mr. Yildirim, who had also used the term. In fact Kurdistan was an administrative district;
    f. In a democracy, Kurds were entitled to argue for autonomy, and it was possible to agree with the aims of the PKK without supporting their methods;
    g. The judges should assert their independence and do the right thing in dismissing the charges.

43. Mr. Demirtaş' lawyers repeated and emphasized many of the points he had made.

44. On 19 June 2019, Mr. Demirtaş continued his statement with detailed reference to his speeches, making similar points to the previous day. After the lunch adjournment, Mr. Demirtaş requested that he stop his statement on the basis of ill health and indicated that his lawyers present at the jail had large distances to travel. The court acceded to the request, allowing Mr. Demirtaş' lawyers present in the courtroom to take over.

45. The court then heard submissions regarding the joinder of two further cases related to speeches made by Mr. Demirtaş in Istanbul. The defence were largely neutral concerning the application and the court determined that one of the cases should be joined but not the other.

46. The prosecution applied for detention to continue, briefly citing the same list of reasons as had been relied upon formerly, indicating that the factual position was unchanged. The reasons why continuing detention was sought were said to include: the seriousness of the charges, the fact that they were 'catalogue' offences which

carried the presumption of pre-trial detention[12], the fact that Mr. Demirtaş had previously exhorted other HDP MPs not to answer calls for questioning, and flight risk. Mr. Demirtaş' lawyers made application for release on judicial control (similar to bail) relying heavily on the judgment of the ECtHR. The lawyers argued that there was no or insufficient evidence on the charges, Mr. Demirtaş had been on numerous international trips when under investigation and had no intention to flee, and crucially the prosecution had advanced no reasoning why judicial control was inappropriate, a point which had been central to the decision of the ECtHR. The lawyers argued that although the judgment was not yet final and enforceable, if it was correct, there was a continuing breach.

47. At the end of the hearing the defence lawyers requested that the court allow foreign MPs and BHRC to address Mr. Demirtaş in open court. The court allowed the request, and BHRC briefly addressed Mr. Demirtaş to indicate its role as independent legal observer and to note that it would publish a report of its findings.

48. The judges reserved their decision on the application for continued detention. By written decision dated the same day, the court upheld the prosecutor's application, simply repeating the prosecutor's list rather than giving reasons explaining how they had weighed the proportionality of the competing public interests: a central deficit identified by the ECtHR. However, the decision was by majority with Judge Cengiz Aydıner dissenting and asserting that the court should respect the ECtHR decision and release Mr. Demirtaş on judicial control with condition not to leave the country.

49. On 20 June 2019, BHRC attempted to attend the final hearing of the trial of Veysel Ok at the Caglayan Court in Istanbul. However, the hearing was administratively adjourned at a late stage apparently due to the judge going on holiday outside of the judicial vacation period. Attendance at the aborted hearing did allow BHRC to discuss the issues with those involved, both about the case and the pressures under which lawyers work. The final hearing has been adjourned until September 2019.

[12] Article 100(3) of the Turkish Code of Criminal Procedure (CCP) lists 'catalogue' offences deemed so serious that there is a presumption of detention.

Meetings

50. On 17 June 2019, BHRC was pleased to meet with Sir Dominick Chilcott, the British Ambassador. The purpose of the meeting was to discuss the trial observations and to explain what BHRC sought to achieve.

51. Later the same day BHRC met with an academic[13] who had been dismissed from her post during the State of Emergency – one of more than 400 who had been sacked for signing a peace petition. Since dismissal, the former lecturer in literature had managed to obtain some employment with an NGO but explained that she was otherwise unemployable because of the nature of the dismissal which barred her from public service for life. She has applied for reinstatement to the State of Emergency Commission but has yet to receive a decision[14]. Most others in her position have not received decisions either, and a very small number of those that have, have been reinstated. She explained that there was no reasoned allegation against her, she had been provided with no evidence, and the process does not involve a hearing[15].

52. BHRC then met with Osman İşçi, the General Secretary of the Human Rights Association (HRA) based in Turkey. Mr. İşçi is also a dismissed academic in a similar position. The HRA is a well-established mass membership organization and campaigns around many human rights issues. Mr. İşçi provided much useful context to the general situation. He noted that Mr. Demirtaş had been an active supporter of the HRA for many years.

53. On 18 June 2019, BHRC attended the trial and later met with Judge Dr. Hacı Ali Açikgül, the Head of Human Rights at the Ministry of Justice, and his colleague Judge Ali Mehmet. The meeting involved a full and frank discussion regarding judicial independence, the position of lawyers, mechanisms by which sacked judges and

[13] BHRC has not published the identity of a number of persons in this report for their own wellbeing.
[14] As explained in the joint letter to the Special Rapporteur referred to above, the Commission was set up by Emergency Decree 685 (later codified by Law No 7075) in response to a large number of decisions of the domestic courts that they had no jurisdiction to deal with applications for revocation of post-coup dismissals under emergency decrees and following pressure from the Secretary-General to the Council of Europe and the Venice Commission. However, the Venice Commission has criticised the Commission for lack of independence given that 5 out of its 7 commissioners are appointed by the executive, and noted that reasons were not given for dismissals, there are no hearings and Commission decisions are not public or reasoned. In short there is no due process and only a very small percentages of applications dealt with to date have led to reinstatement. The Commission has been criticised in similar terms by the UN OHCHR and the European Parliament.
[15] Some 700 of the 2,100 academics who signed the petition were charged with 'making propaganda for a terrorist organisation'. On 26 July 2019, the Constitutional Court held that convictions on that charge violated the academics' freedom of expression as protected under Article 26 of the Constitution: https://ahvalnews.com/peace-petition/turkeys-top-court-says-clearing-signatories-terror-charges-does-not-indicate It remains to be seen whether all the convictions will be quashed, whether pending prosecutions will be dropped, and whether this will lead to full reinstatements.

academics could challenge their dismissal, and issues around the Demirtaş trial, the ECtHR decision, and improper political interference.

54. Dr. Açikgül noted that other countries have judicial councils regulating the judiciary which include executive appointees. Therefore, he saw no problem with recent constitutional changes which gave the President and legislature complete control over the Council for Judges and Prosecutors (HSK) (previously the Supreme Board of Judges and Prosecutors, HSYK), which is in charge of the organisation of the judiciary, including the admission of judges and prosecutors, appointments, transfers, promotion, as well as disciplinary proceedings and supervision of judges and prosecutors.

55. Until 2010 the Council had 7 members, five proposed by the judges, plus the Minister of Justice and Undersecretary to the Ministry. From 2010 to 2017, the Council had 22 members, sixteen chosen by the judges, four by the President, plus the Minister and Undersecretary. Since 2017 there are 13 members, Parliament appoints seven, the President appoints four, plus the Minister and Undersecretary.

56. The fact that the judges no longer elect the members of their governing body is brought into sharp relief by the context of recent events which have seen more than a quarter of the judiciary dismissed by executive order following the attempted coup of July 2016. Dr. Açikgül asserted that "several hundred" judges had in fact been reinstated and that there were a number of avenues open to them to challenge their dismissals despite the Council being wholly appointed by the President and Parliament. Dr. Açikgül also noted that there are further judicial reforms in the pipeline, and helpfully provided a copy of the third 'Judicial Reform Strategy' recently published by the Government. Previous JRS documents had been published in 2009 and 2015 as part of Turkey's effort to accede to the European Union. The Strategy document contains many laudable aspirational references to the rule of law but few if any concrete measures to improve the actual position. Strikingly, the document describes the effect of the 2017 constitutional amendments as follows: "…a presidential government system was introduced to replace the parliamentary government system, and the separation of powers has been strengthened"[16].

57. With respect to dismissed public sector workers including academics, Dr. Açikgül noted the institution of the State of Emergency Commission in 2017, which has the power to reinstate. He did not believe the fact that the Commissioners were all appointed by the executive and that those dismissed had been given no reasons or evidence and that there was no recognized due process or hearings, presented an insurmountable problem.

[16] "Judicial Reform Strategy" May 2019 at [25] available at: https://www.yargireformu.com/images/YRS_ENG.pdf

58. Dr. Açikgül and his Department had been responsible for the state response to the application of Mr. Demirtaş to the ECtHR and he recognized the various concerns raised by the Venice Commission, Council of Europe and the Court regarding the rule of law in Turkey but noted that there had been many recent challenges that the state had to face.

59. Dr. Açikgül recognized that a judgment finding a violation of Article 18, that continuing detention was arbitrary because its dominant purpose was not permissible under Article 5(3), was almost unique. However, the State's position now that the case was to be reviewed by the Grand Chamber was that the judgment was not only unenforceable but of no importance at all, other than that there had not been a finding of a violation of Article 5(1) or on the issue of the raising of Parliamentary immunity.[17]

60. Finally, with regard to difficulties that observers and diplomats had encountered in accessing the Demirtaş and other trials, Judge Ali Mehmet assured BHRC that Turkey's courts were open to all.

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[17] As noted, following publication of this Report, the MoJ sent the following communication regarding paras 58-59. In the interests of transparency and clarity we reproduce the communication in full:

Dear [BHRC],
Thank a lot for sending me the interim report.
Of course the report reflects your institution's stance and comment.
For me, there is some misunderstanding of my comments
For par no. 59.
I did not mean that finding of a violation of Article 18 was unique. Instead, I have explained that for the first time the Court gave a violation judgement against Turkey regarding article 18.
Again in the same paragraph, I did not mean that the judgement has no importance at all. I mean that, The Court has found some violations. At the same time the court reach a conclusion that some of the other complaints did not constitute a violation of the Convention. As result, the panel of Grand Chamber has accepted the referral request, and now the case is before the GC. That is why, it does not mean that the judgement in question has no importance.
In addition, (for par. 58.) I did not mention that we recognized the various concerns raised by Venice Commission and other CoE Committees. I have mentioned that, We are aware of the fact that some international committees including VC raises some concern regarding Turkey. However they did not pay attention to the challanges that Turkey has faced in line with the Article 15 of the ECHR and the Article 4 of ICCPR. The same idea is valid also other part of the report mentioned my comments.
Please make relevant correction in the relevant part of the Interim Report as regards my comments.
I am looking forward to seeing the corrections
Dr. Haci Ali Acikgul

61. BHRC then met with a HDP delegation and one of the lead defence lawyers who explained the background to the cases against Mr. Demirtaş and the approach to the case before the Grand Chamber in September.

62. On 20 June 2019, BHRC met with another member of the Demirtaş legal team involved with the ECtHR case. He explained that he has a number of cases outstanding against himself and stated that there was a concerted campaign against lawyers who represented political opponents of the Government.

Compliance with domestic and international fair trial standards

A. The right to an independent, impartial and competent tribunal

63. The Turkish Constitution expressly provides for the independence of Judges, under Article 138:

> *"judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, laws, and their personal conviction in conformity with the law. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions …"*

64. Through Article 138, the Constitution follows principles set out in international instruments by which Turkey is bound:

Article 14 (1), International Covenant on Civil and Political Rights (ICCPR)

In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair hearing by a competent, independent and impartial tribunal established by law…

Article 6 (1) ECHR

"…everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law…"

65. The right is absolute. Independence presupposes a separation of powers pursuant to which the judiciary is institutionally protected from undue influence from the executive and legislative branches of government, as well as from other powerful figures or social groups, including political parties. The independence of courts and judicial officers must be guaranteed by the constitution, laws and policies of a country as well as being respected in practice by the government, its agencies and authorities, the legislature and the judiciary itself, in order to prevent abuses of power. Practical safeguards of independence, as set out in the UN Basic Principles on the Independence of the Judiciary,[18] include non-interference by governmental and other institutions,

[18] UN Basic Principles on the Independence of the Judiciary, available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx

the specification of qualifications necessary for judicial appointment, the need for guaranteed tenure, the requirement of efficient, fair and independent disciplinary proceedings regarding judges, and the duty of every State to provide adequate training to enable the judiciary to properly perform its functions. Judges are entitled to a fair hearing of any disciplinary charge made against them and independent review.

66. The recent submission of an 'International Coalition of Legal Organisations' (which includes BHRC) to the UN Human Rights Council's Universal Periodic Review – Turkey, 35th Session, sets out in detail international concerns regarding the erosion of judicial independence both in practice and structurally[19]. It refers particularly to the dismissal of judges and prosecutors without effective remedy, and to structural changes to the Council of Judges and Prosecutors highlighted above.

67. The dismissal by executive order of 4,260 judges and prosecutors[20], over a quarter of the judiciary, following the attempted 2016 coup, was an emergency measure which ran directly contrary to the independence of the judiciary. Whether or not such emergency measure was legitimate in the situation that pertained, there is no evidence that since the SoE has been lifted that there is any transparent process by which such dismissals are being reviewed, or that there are fair hearings before impartial tribunals subject to independent review, as required by the UN Principles. According to the MoJ "several hundred" of the dismissed judges and prosecutors have now been reinstated, however without a transparent process these reinstatements raise more concerns than they answer.

68. After a series of changes to the Council of Judges and Prosecutors, the final change subsequent to the April 2017 referendum placed the Council under the complete control of the President and legislature.

69. A number of lawyers have indicated to BHRC that the effect of the dismissals and changes to the Council is that new judges are appointed on the basis of loyalty to the Government and that existing judges are afraid to give judgments that may be seen as contrary to the Government's interests in particular in high profile political, freedom of expression or post-coup cases.

70. Whereas these views are difficult to verify, they raise credible concerns. The fact that more than a quarter of the judiciary have been dismissed by executive order, without any due process or effective remedy, and the fact that some 634 judges and

[19] Joint Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review – Turkey, available at: http://www.barhumanrights.org.uk/wp-content/uploads/2019/07/UPR-Turkey-Combined.pdf
[20] Trthaver, 'FETÖ'den tutuklu ve hükümlü sayısı 31 bin 88' (Number of detainees and convicts from FETÖ 31 thousand 88) dated 05 January 2019 https://www.trthaber.com/haber/gundem/fetoden-tutuklu-ve-hukumlu-sayisi-31-bin-88-400107.html

prosecutors had themselves been convicted of terrorism charges by April 2019[21] is bound to have a chilling effect on judicial decision making in cases in which the President and Government have a direct interest.

71. In the snapshot of a two-day trial observation in the Demirtaş case, BHRC saw no actual evidence of a lack of judicial independence. The Judges were not responsible for difficulties of access and even allowed international observers to address the court. There was no attempt to limit Mr. Demirtaş' statement or the submissions of his lawyers.

72. However, the majority decision to continue detention until the next stage of the trial did raise concerns. Plainly, the court had to consider the issue of continued detention afresh and they were not required to simply follow the judgment of the ECtHR and release Mr. Demirtaş given that the judgment is not final and has been referred to the Grand Chamber. Nevertheless, the court should have considered the merits of the case, particularly in the light of the reasoning of the ECtHR and the fact that there is a continuing breach if the Grand Chamber reaches the same decision. The concern of BHRC is not simply the decision itself but the process and reasoning. As the ECtHR had stated, the original applications by the prosecution for continued detention had been formulaic, the decision of the court had failed to weigh the competing public interests, and it had failed to set out its reasoning on why release subject to 'judicial control' was not appropriate. In repeating that impugned process, not questioning the brief formulaic submission of the prosecutor, and not setting out any substantive reasoning as to the exercise of proportionality, the majority gave the strong impression that they were not going to release Mr. Demirtaş whatever the merits of his case were.

B. Freedom of Expression

73. Article 26 of the Turkish Constitution expressly protects freedom of expression, in accordance with Turkey's international obligations pursuant to Article 19 ICCPR and Article 10 ECHR.

Article 19(2) ICCPR
Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of

[21] See updated statistics as of 26 April 2019 available at: https://www.freejudges.eu/report/update-the-numbers-of-convicted-judges-and-prosecutors-over-the-pretext-of-terrorism-charges-in-turkey-reached-634-as-of-26-april-2019-35-of-them-are-woman-judges-these-are-only-published-convic/

frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 10(1) ECHR
Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers…

74. Under both domestic and international law, freedom of expression is a qualified right, it is subject to permissible restriction where prescribed by law and where necessary in a democratic society to respect the rights and reputation of others, national security, public order or public health and morals: Article 10(2) ECHR and Article 19(3) ICCPR. Case law in Strasbourg and the UN Human Rights Committee (HRC) indicates that permissible restrictions on freedom of expression are strictly construed and limited.

75. Mr. Demirtaş and his lawyers have strongly argued that there is no evidence upon which convictions could properly be based on the charges he faces. In essence, Mr. Demirtaş argues that none of the impugned texts promote terrorism or incite violence, and in particular that there is nothing wrong with promoting the same aspirations as a group such as the PKK without approving of its methods. Given the extent of the charges and impugned texts, BHRC is not in a position to take a definitive view. However, it is not in dispute that the vast majority of the evidence presented by the prosecution comes from public speeches made by Mr. Demirtaş. Only the most clear and compelling evidence of support for terrorism or incitement to violence could justify criminalizing the speeches of a major political leader whose party got between 10-13% of the popular vote at the pertinent time. The fact that Mr. Demirtaş was actively and prominently engaged with the peace process through the material period is not determinative but it is plainly relevant context.

76. The particular protection of freedom of expression for elected representatives has been underlined by the ECtHR, "…there is little scope under Article 10(2) for restrictions on political speech…" . In *Castells v Spain* (above cit), the court asserted:

> *…While freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament, like the applicant, call for the closest scrutiny on the part of the Court.*

77. Criminal sanctions imposed for offences related to freedom of expression require special scrutiny and imprisonment will be compatible only in "exceptional

circumstances." Although such circumstances could be made out in a case of clear incitement to violence, the scale of imprisonment sought by the prosecution in Demirtaş case raises issues of proportionality as well as principle.

78. With respect to the case against Veysel Ok, the issue of freedom of expression is also front and central. Domestic and international law permit laws protecting the integrity of the judicial system: the final phrase of Article 10(2) expressly allows for qualification of freedom of expression on the basis of "maintaining the authority and impartiality of the judiciary."

79. However, the comments made by Mr. Ok were generalized and in the context of widespread criticism of the independence of the Turkish judiciary, which was and remains a live issue of public interest. There is an important distinction to be drawn between grave or insulting comments made against a particular judge or court, which could have the effect of undermining public confidence in the judicial system, and generalized opinion. In the former case, those subject to criticism are unable to reply, or counter the attack on their integrity. Where the comments are generalised, they are political comment by their nature, and should be protected as such. Lawyers are entitled to the protection of Article 10, as underlined by Principle 23 of the UN Basic Principles on the Role of Lawyers.

C. Arbitrary Detention

80. Article 19 of the Turkish Constitution protects personal liberty, in accordance with Turkey's obligations pursuant to Article 9 ICCPR and Article 5 ECHR. In the context of the trial of Mr. Demirtaş, the ECtHR has considered his ongoing detention to be outwith any of the exclusive exceptions within Article 5(1)(c) and therefore to be in breach of Article 5(3). However, importantly, the ECtHR has gone much further in holding "beyond reasonable doubt" that the continuing detention was for an improper political motive and therefore contrary to Article 18 read with Article 5(3), as well as a breach of A3P1. The court's reasoning is set out above and not repeated. The clear implication of the ruling is that the breach of Article 5(3) was not a simple error but a deliberate act, and that the agent of that act was the ostensibly independent judiciary.

81. As noted by the Turkish Ministry of Justice, the judgment is not final as the case has been referred to the Grand Chamber. Judge Dr. Hacı Ali Açikgül made quite clear that the State intends to fully contest the court's findings, and regards the extant judgment of no effect at all.

82. In the circumstances of a referral to the Grand Chamber, it is clear that the judgment is not binding in law or enforceable. Whether the extant judgment has *any* current effect is more complicated. At the conclusion of the latest stage of the trial, the trial

court was called upon by the prosecution to make a further similar decision to that which has been so heavily impugned, and the defence lawyers have invoked the ECtHR decision and reasoning in their submissions calling for the immediate release of Mr. Demirtaş.

83. Whereas the trial court must reach its own independent decision, and it is entitled to reject the contention that it has reached that decision for improper reasons outside of those permitted by Article 5(1)(c), it owes deference to the ECtHR as a court to which the Turkish State is bound, and it ought therefore to take account of the reasoning of the judgment, pending the Grand Chamber referral.

84. The prosecution made application for detention to continue, in a very short and formulaic submission which went no further than listing a series of objections to liberty. The defence lawyers noted that no greater reason for continued detention had been asserted than had been on earlier occasions, as impugned by the ECtHR, and that there was a compelling case for release under 'judicial control'. By majority, the judges accepted the prosecution application, in a written decision which went no further than repeating the points asserted and without weighing the competing interests of the administration of justice and liberty. The dissenting judge indicated his view that Mr. Demirtaş should be released under conditions which included that he must not leave the country.

85. The majority reached the same conclusion that it had in the decisions impugned by the ECtHR, on the basis of a similarly unreasoned application and without giving its own reasons weighing the competing interests of liberty and proper administration of justice, or indeed without setting out why measures allowing for release on judicial control were inappropriate.

86. Finally, with respect to the politicization of this process, BHRC notes that the President has made a series of forthright political statements attacking Mr. Demirtaş' concurrent with the trial. Those statements have connected Mr. Demirtaş' to terrorism and commented that the ECtHR judgment in his case amounted to support for terrorism[22].

Conclusions & Recommendations

[22] See "Turkey's Erdogan says ECHR ruling on jailed politician supports terrorism" dated 21 November 2018 available at: https://uk.reuters.com/article/uk-turkey-security-demirtas/turkeys-erdogan-says-echr-ruling-on-jailed-politician-supports-terrorism-idUKKCN1NQ1PC
See also Alval news dated 6 March 2019 available at: https://ahvalnews.com/hdp/erdogan-says-pro-kurdish-hdps-lawmakers-not-supporters-are-terrorists

87. BHRC reiterates its concern at the decline in judicial independence in Turkey, in particular through:
    a. the series of constitutional amendments which have put effective control of the judiciary in the hands of the President and the legislature;
    b. the dismissal of over a quarter of the judiciary by executive orders in the aftermath of the attempted 2016 coup, without recourse to effective mechanisms of appeal with due process;
    c. the prosecution of hundreds of judges, prosecutors and lawyers, as well as journalists, academics and members of civil society.

88. BHRC notes that although Turkey is committed to a programme of judicial reform, none of the proposed measures in the recent 'Judicial Reform Strategy' document substantively address the above concerns.

89. **BHRC therefore recommends that the Turkish government reconsiders its approach and introduces clear reforms to remove control of the judiciary from the executive and legislative arms of the State and puts in place robust measures to ensure that the judiciary, prosecutors and lawyers can operate in an environment free from political influence or threat**.

90. BHRC notes the difficulty of forming a definitive view of the Demirtaş trial from an observation of one stage only. However, BHRC has been significantly assisted by the ECtHR judgment, and by meetings with the Ministry of Justice, defence lawyers and others.

91. BHRC noted that although access to the court for all observers (including foreign MPs and diplomats) was difficult on the first day of this stage of the trial, the police expressly indicated that this was not caused by the court itself but by an unspecified executive authority. Once concerns were raised with the Minsitry of Justice, it is of note that access on the second day was unimpeded. It is further noted that international observers were allowed by the Presiding Judge to address the court (at the instigation of the defence lawyers).

92. Mr. Demirtaş and his lawyers were able to address the court at length and no complaints were made about disclosure of the prosecution case or time to prepare the defence. The trial had the appearance of a functioning criminal justice process.

93. Specific issues arise by the nature of the charges against Mr. Demirtaş, the evidence upon which they are based, and the context in which they arise. Essentially, the charges assert support for terrorism and incitement to violence, they are almost exclusively based upon the texts of public speeches, and the context is that Mr. Demirtaş was an elected co-leader of the third largest political party at the material time and a presidential candidate. Further relevant

background includes the existence of the State of Emergency at the time of arrest, the referendum leading to the institution of a Presidential system, and a general election during the period of detention.

94. BHRC notes that the ECtHR, in its ruling on Article 5(1), found that some of the allegations cannot be dismissed as entirely baseless. However, given the context noted above and the importance and deference given to freedom of expression for elected representatives, only the clearest of evidence could properly support detention and conviction in these circumstances. In addition to the general context, Mr. Demirtaş made a series of important points in his defence, including his personal role in the peace process, and the fact that an individual might agree with the objectives of a terrorist group does not imply that he/she agrees with its methods.

95. Whilst emphasizing the difficulty of reaching a definitive view, BHRC is concerned that these proceedings have the appearance of a political trial being conducted to disrupt the proper democratic process. This view is underpinned by the nature of the charges and evidence, the sentences sought by the prosecution, the general context of respect for freedom of expression and judicial independence in Turkey at the present time, public statements by the President, and the continuation of detention by the court since the ECtHR decision in this case, without apparent reflection on the impugned process.

96. **BHRC recommends that the prosecution reconsiders each charge in view of the general importance of freedom of expression and its specific importance with regard to elected representatives, in particular those with the stature of Mr. Demirtaş. Further, BHRC recommends that the prosecution reconsiders its position with respect to continuing detention.**