

TURKEY

- **TUR-COLL-02:** 68 parliamentarians
- **TUR-55:** Mehmet Sincar



Inter-Parliamentary Union
For democracy. For everyone.

Türkiye

*Decision adopted by consensus by the IPU Governing Council at its 213th session
(Geneva, 27 March 2024)¹*



A demonstrator holds up a picture of Figen Yüksekdağ during the trial of the co-leader of pro-Kurdish party People's Democratic Party (HDP) in front of the court in Ankara on 13 April 2017. ADEM ALTAN/AFP

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|---------------------------------------|-----------------------------------|
| TUR-69 - Gülser Yildirim (Ms.) | TUR-107 - Ferhat Encü |
| TUR-70 - Selma Irmak (Ms.) | TUR-108 - Hişyar Özsoy |
| TUR-71 - Faysal Sariyildiz | TUR-109 - Idris Baluken |
| TUR-73 - Kemal Aktas | TUR-110 - Imam Taşçier |
| TUR-75 - Bedia Özgökçe Ertan (Ms.) | TUR-111 - Kadri Yildirim |
| TUR-76 - Besime Konca (Ms.) | TUR-112 - Lezgin Botan |
| TUR-77 - Burcu Çelik Özkan (Ms.) | TUR-113 - Mehmet Ali Aslan |
| TUR-78 - Çağlar Demirel (Ms.) | TUR-114 - Mehmet Emin Adiyaman |
| TUR-79 - Dilek Öcalan (Ms.) | TUR-115 - Nadir Yildirim |
| TUR-80 - Dilan Dirayet Taşdemir (Ms.) | TUR-116 - Nihat Akdoğan |
| TUR-81 - Feleknaş Uca (Ms.) | TUR-118 - Osman Baydemir |
| TUR-82 - Figen Yüksekdağ (Ms.) | TUR-119 - Selahattin Demirtaş |
| TUR-83 - Filiz Kerestecioğlu (Ms.) | TUR-120 - Sirri Süreyya Önder |
| TUR-84 - Hüda Kaya (Ms.) | TUR-121 - Ziya Pir |
| TUR-85 - Leyla Birlik (Ms.) | TUR-122 - Mithat Sancar |
| TUR-86 - Leyla Zana (Ms.) | TUR-123 - Mahmut Toğrul |
| TUR-87 - Meral Daniş Beştaş (Ms.) | TUR-124 - Aycan Irmez (Ms.) |
| TUR-88 - Mizgin Irgat (Ms.) | TUR-125 - Ayşe Acar Başaran (Ms.) |
| TUR-89 - Nursel Aydoğan (Ms.) | TUR-126 - Garo Paylan |
| TUR-90 - Pervin Buldan (Ms.) | TUR-128 - Aysel Tuğluk (Ms.) |
| TUR-91 - Saadet Becerikli (Ms.) | TUR-129 - Sebahat Tuncel (Ms.) |
| TUR-92 - Sibel Yiğitalp (Ms.) | TUR-130 - Leyla Güven (Ms.) |
| TUR-93 - Tuğba Hezer Öztürk (Ms.) | TUR-131 - Ayşe Sürücü (Ms.) |
| TUR-94 - Abdullah Zeydan | TUR-132 - Musa Farisogullari |
| TUR-95 - Adem Geveri | TUR-133 - Emine Ayna (Ms.) |

TUR-96 - Ahmet Yildirim
TUR-97 - Ali Atalan
TUR-98 - Alican Önlü
TUR-99 - Altan Tan
TUR-100 - Ayhan Bilgen
TUR-101 - Behçet Yildirim
TUR-102 - Berdan Öztürk
TUR-105 - Erol Dora
TUR-106 - Ertuğrul Kürkcü

TUR-134 - Nazmi Gür
TUR-135 - Ayla Akat Ata (Ms.)
TUR-136 – Beyza Ustün (Ms.)
TUR-137 - Remziye Tosun (Ms.)
TUR-138 - Kemal Bulbul
TUR-140 - Gültan Kışanak (Ms.)
TUR-141 - Semra Güzel (Ms.)
TUR-142 - Saliha Aydemir (Ms.)
TUR-143 – Can Atalay

Alleged human rights violations

- ✓ Failure to respect parliamentary immunity
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings and excessive delays
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Arbitrary arrest and detention
- ✓ Ill-treatment
- ✓ Abusive revocation or suspension of the parliamentary mandate

A. Summary of the case

Over 600 criminal and terrorism charges have been brought against the members of parliament of the People's Democratic Party (HDP) since 20 May 2016, when the Constitution was amended to authorize the wholesale lifting of parliamentary immunity. They are being tried on terrorism-related charges and charges of defamation of the President, Government or State of Türkiye. Some of them also face older charges in relation to the Kurdistan Communities Union (*Koma Civakên Kurdistan* – KCK) first-instance trial that has been ongoing since 2011, while others face more recent charges. In these cases, their parliamentary immunity was allegedly not lifted.

Since 4 November 2016, scores of parliamentarians have been detained and others have gone into exile. Since 2018, over 30 parliamentarians have been sentenced to prison terms. Ten current and former parliamentarians are in prison, namely the former HDP co-chairs, Mr. Selahattin Demirtaş and Ms. Figen Yüksekdağ, as well as Ms. Leyla Güven, Ms. Semra Güzel, Ms. Hüda Kaya, Ms. Gültan Kışanak, Mr. Sebahat Tuncel, Mr. Nazmi Gür, Ms. Ayla Akat Ata and Mr. Can Atalay. Some of them were arrested in September 2020, although the accusations against them relate to the events in the distant past that unfolded soon after the siege of Kobane in Syria in 2014. At least 15 HDP members of parliament have lost their parliamentary mandates in recent years, largely as a result of their criminal convictions. Most recently, on 30 January 2024, Mr. Can Atalay, who had been elected in the May 2023 parliamentary elections from prison, lost his parliamentary mandate due to his earlier conviction and sentence to 18 years on charges of “aiding attempts to overthrow the Turkish Republic” for his alleged involvement in the Gezi protests in 2013. It should be noted that in October 2023, the Constitutional Court had ruled that he should be released given that his continued imprisonment violated his right to hold office, which ruling subsequently triggered a judicial crisis when the Court of Cassation said it would not recognize the ruling and filed a criminal complaint against the judges who made it. President Erdoğan has since reportedly stated publicly that he intends to curb the powers of the Constitutional Court.

According to the complainant, the charges against HDP members of parliament are groundless and violate their rights to freedom of opinion and expression, and freedom of assembly and association. The complainant claims that the evidence adduced to support the charges against the members of parliament relates to public statements, rallies and other peaceful political activities carried out in furtherance of their parliamentary duties and political party programme. Such activities include mediating between the Kurdistan Workers' Party (*Partiya Karkerên Kurdistanê* – PKK) and the Turkish

Case TUR-COLL-02

Türkiye: Parliament affiliated to the IPU

Victims: 68 opposition members of parliament (34 men and 34 women)

Qualified complainant: Section I.(1)(c) of the Committee Procedure (Annex I)

Submission of complaint: June 2016

Recent IPU decision: February 2023

IPU mission: June 2019

Recent Committee hearings: Hearing with the Deputy Head of the Turkish delegation at the 148th IPU Assembly (Geneva, March 2024)

Recent follow-up:

- Communication from the authorities: Letter from the President of the Turkish IPU Group (January 2024)
- Communication from the complainant: March 2024
- Communication to the authorities: Letter to the President of the IPU Group (March 2024)
- Communication to the complainant: March 2024

Government as part of the peace process between 2013 and 2015, publicly advocating political autonomy and criticizing the policies of President Erdoğan in relation to the current conflict in south-eastern Türkiye and at the border with Syria (including denouncing the alleged crimes committed by the Turkish security forces in that context). The complainant alleges that such statements, rallies and activities do not constitute any offence, and that they fall under the clear scope and protection of the fundamental rights of members of parliament.

An IPU trial observer concluded in 2018 that the prospects for Ms. Yüksekdağ and Mr. Demirtaş receiving fair trials were remote and that the political nature of both prosecutions was evident. It should be noted that, on 17 July 2022, the Constitutional Court ruled in one of the cases against Ms. Yüksekdağ that her rights to freedom of thought and expression, as well as to be elected, were violated when she was stripped of her parliamentary immunity in 2016.

A 2018 IPU review of 12 court decisions issued against HDP members reached similar conclusions. It concluded, *inter alia*, that the judiciary in Türkiye, from the first-instance courts to the Constitutional Court, completely disregarded the case law of the European Court of Human Rights and the main judgment of the Turkish Constitutional Court in relation to freedom of expression when evaluating whether an expression constituted incitement to violence or one of the other offences with which the members of parliament were charged.

On 22 December 2020, the Grand Chamber of the European Court of Human Rights delivered its judgment in the case of *Demirtaş v. Türkiye* (No. 2) (Application No. 14305/17), and held that there had been violations of his rights to freedom of expression, to freedom and security, to a speedy decision on the lawfulness of detention and to free elections. The Court also found that Mr. Demirtaş' detention, especially during two crucial campaigns relating to the referendum of 16 April 2017 and the presidential elections of 24 June 2018, had pursued the ulterior motive of stifling pluralism and limiting freedom of political debate, which was at the very core of the concept of a democratic society. The Court held that the respondent state was to take all necessary measures to secure his immediate release. On 7 January 2021, the Ankara 22nd Assizes Court accepted a 3,500-page indictment against Mr. Demirtaş and 107 other defendants, issued by the Ankara public prosecutor on 30 December 2020, regarding the same protests that took place in October 2014, this time charging Mr. Demirtaş with 30 new offences. Since then, Mr. Demirtaş has been sentenced to prison terms in other criminal cases, which the complainant maintains violate his basic human rights. The Turkish authorities have stated that the ruling of the European Court of Human Rights could not be implemented, given that Mr. Demirtaş' ongoing detention was related to new evidence that is substantially different from that examined by the Court. Similarly, on 8 November 2022, the European Court of Human Rights ruled that Türkiye had violated Articles 10 (freedom of expression) and 5 (subparagraphs 1, 3 and 4 concerning the right to freedom and security) of the European Convention regarding the pretrial detention of 13 HDP parliamentarians elected to parliament in November 2015, namely Ms. Figen Yüksekdağ, Mr. İdris Baluken, Ms. Besime Konca, Mr. Abdullah Zeydan, Mr. Nihat Akdoğan, Ms. Selma Irmak, Mr. Ferhat Encu, Ms. Gülser Yildirim, Mr. Nursel Aydoğan, Ms. Çağlar Demirel, Mr. Ayhan Bilgen, Ms. Burcu Çelik Özkan and Ms. Leyla Birlik.

On 1 February 2022, the European Court of Human Rights ruled that the lifting of the parliamentary immunity of 40 HDP lawmakers, who had brought their case to the European Court following the constitutional amendment in May 2016, had violated their right to freedom of expression. In so doing, the Court responded to their assertion that the lifting of their immunity came in response to their political opinions and drew for its conclusions on this point on its rulings in the cases of *Demirtaş v. Türkiye* and *Demir v. Türkiye*.

On 19 October 2021, in the landmark decision *Vedat Şorli v. Turkey*, the European Court of Human Rights found that section 299 of the Turkish Criminal Code, which criminalizes insulting the President, was incompatible with the right to freedom of expression, and urged the Government to align legislation with Article 10 of the European Convention on Human Rights.

The Turkish authorities have provided extensive information on the legal status of the criminal proceedings against the HDP parliamentarians, without, however, providing information on the precise facts to support the charges or convictions, despite numerous requests over the years from the IPU.

The Turkish authorities have repeatedly justified the legality of the measures taken against the HDP parliamentarians, and invoked the independence of the judiciary, the need to respond to security and terrorism threats and legislation adopted under the state of emergency. The authorities have provided

detailed information on parliament's May 2016 "provisional constitutional amendment" on parliamentary immunity, which has been used to prosecute parliamentarians from all parties. They have asserted that there is no "HDP witch-hunt" in Türkiye; that women parliamentarians are not being specifically targeted; that there is no Kurdish issue in Türkiye and no current conflict in south-eastern Türkiye; that Türkiye is facing a terrorism issue on many levels involving the PKK and its "extensions"; that the HDP has never publicly denounced the violent activities of the PKK; that HDP members, including members of parliament, have made many statements in support of the PKK and their "extensions"; that HDP members have attended funerals of PKK suicide bombers and called for people to take to the streets, which has resulted in violent incidents with civilian casualties; that this does not fall within the acceptable limits of freedom of expression; that the Constitutional Court has reached such conclusions in several cases and, in other cases, domestic remedies have not yet been exhausted; and that the independence of the judiciary and the rule of law in Türkiye must be respected.

On 17 March 2021, the chief prosecutor of the Turkish Court of Cassation referred a request for the dissolution of the HDP to the Constitutional Court, accusing the HDP of terrorist activities. It appears that the prosecution is drawing heavily on the ongoing proceedings against several HDP politicians in the 2014 Kobane case referred to earlier. At the hearing held with the Committee on the Human Rights of Parliamentarians at the 148th IPU Assembly (March 2024), the Deputy Head of the Turkish delegation stated that the legal proceedings had been completed, that the files had been handed over to the court rapporteurs, who would now have to report back to the court as a whole, after which a date would be set for the ruling. She pointed out that Turkish law had been amended, with the current criteria allowing for the dissolution of political parties to be much more stringent. She also said that the court could decide, rather than choosing between dissolving the HDP or not, that the penalty would be to deprive it of state funding.

The Deputy Head of the Turkish delegation also pointed out that further legal reforms had taken place to promote respect for the right to freedom of expression, which had been acknowledged by the Council of Europe's Committee of Ministers on 14 March 2024. In this regard, it should be noted that the Committee had welcomed, in connection with the *Işıkırık* group of cases, the recent decision of the Constitutional Court, which had annulled section 220(6) of the Criminal Code and invited the authorities to provide the Committee with full details and analysis of the legislative amendment that entered into force on 12 March 2024 and to keep the Committee updated on the application of this provision by the domestic courts. The Committee also welcomed the rulings of the Constitutional Court and the Court of Cassation provided by the authorities, demonstrating a Convention-compliant application of section 220(7) of the Criminal Code. At the same time, in the absence of any information to indicate a significant drop in the number of investigations, prosecutions, pretrial detention orders and convictions imposed in relation to the exercise of freedom of expression, the Committee repeated its call on the authorities to consider further legislative amendments to the Criminal Code and the anti-terrorism legislation, particularly sections 125(3) and 301 of the Criminal Code, to clarify that the exercise of the right of freedom of expression does not constitute an offence, and to abrogate section 299 of the Criminal Code.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the complaint concerning the situation of Mr. Can Atalay, which is the subject of cases TUR-69 to TUR-142, is admissible, considering that the complaint: (i) was submitted in due form by qualified complainants under section I.1(c) of the Procedure for the examination and treatment of complaints (Annex I of the revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns a member of parliament at the time of the initial allegations; and (iii) concerns allegations of failure to respect parliamentary immunity, violation of freedom of opinion and expression, and arbitrary arrest and detention, which are allegations that fall under the Committee's mandate; and *decides* to merge Mr. Atalay's case with the present collective case;
2. *Thanks* the President of the Turkish IPU Group for her latest communication and the Deputy Head of the Turkish delegation for the information provided at the hearing held with the Committee on the Human Rights of Parliamentarians during the 148th IPU Assembly (March 2024);

3. *Remains alarmed* at the prospect of the dissolution of the HDP party, also bearing in mind that its predecessors were dissolved by court order; *considers* that such a step would show once again that the authorities continue to view, wrongly, the PKK and the HDP as one and the same entity; *recalls* in this regard that, while recognizing that the two organizations rely largely on the same support base and pursue similar objectives, the HDP is a legal political party that does not in any way advocate violence to achieve its goals; *trusts* that the Turkish Constitutional Court will clearly take this distinction into account in the ruling it adopts; and *also trusts* that the amended legal framework in place in Türkiye complies with, and will be interpreted in this case in order to comply with, the European Court of Human Rights' jurisprudence regarding the dissolution of or ban on a party as an extreme measure only justified as a last resort and in very exceptional circumstances;
4. *Remains concerned* that in recent years the number and scope of the rulings from the European Court of Human Rights underscore that the legal steps to which the HDP parliamentarians have been subjected did not follow due process and came in direct response to the exercise of their freedom of expression and, as determined in the case of Mr. Demirtaş, were aimed at stifling the opposition;
5. *Remains deeply concerned* in this regard that 10 current and former parliamentarians continue to languish in prison; *considers*, once more, that the information on file, as provided by the Turkish Parliament, does nothing to dispel the doubts that the HDP parliamentarians have been targeted in connection with the legitimate exercise of their political rights; *calls on* the Turkish authorities to review their situation and, where possible, to release them and terminate the criminal proceedings; and *requests* the Turkish authorities, once again, to provide information on the facts in support of the legal action taken against those 10 and other individuals concerned in this case;
6. *Reaffirms its long-standing view* that, in their legitimate fight against terrorism, the Turkish authorities need to take more decisive action to ensure that current national legislation and its application are in line with international and regional standards on freedom of opinion and expression, assembly and association; *notes with great interest*, however, that the Constitutional Court has adopted several rulings in support of some of the basic human rights at the heart of the cases at hand and that some legislative reforms are said to have taken place to strengthen freedom of expression; *wishes* to receive more information on these matters, also in light of the reported calls to curb the powers of the Constitutional Court made at the highest official level in Türkiye that may jeopardize its work, and on any further intended plans to strengthen freedom of expression; and *wishes also* to receive in this regard more information on the preparation of the new human rights action plan and the new judicial reform strategy paper;
7. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining the case and to report back to it in due course.



Inter-Parliamentary Union

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Turkey

TK/41 - Hatip Dicle
TK/67 - Mustafa Balbay
TK/68 - Mehmet Haberal
TK/69 - Gülser Yildirim (Ms.)
TK/70 - Selma Irmak (Ms.)
TK/71 - Faysal Sariyildiz
TK/72 - Ibrahim Ayhan
TK/73 - Kemal Aktas
TK/74 - Engin Alan
TK/55 - Mehmet Sinçar

Decision adopted unanimously by the IPU Governing Council at its 195th session (Geneva, 16 October 2014)

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of the above-mentioned parliamentarians and to the resolution adopted at its 194th session (March 2014),

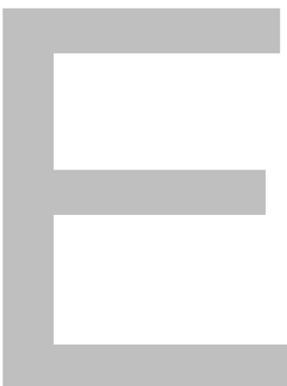
Referring to the full report on the mission conducted to Turkey by two members of the IPU Committee on the Human Rights Parliamentarians, Vice-President of the Committee, Ms. Ann Clwyd and Ms. Margaret Kiener Nellen, from 24 to 27 February 2014 (CL/195/11(b)-R.1),

Recalling that the nine parliamentarians above were all elected in June 2011 while in prison and are being prosecuted for destabilizing or overthrowing the constitutional order, including by being members of terrorist organizations, in three complex cases known as the “Sledgehammer/Balyoz case”, the “Ergenekon case” and the “KCK case”,

Considering that the nine parliamentarians have now been released pending the completion of ongoing proceedings following groundbreaking decisions of the Constitutional Court of Turkey on the excessive length of pretrial detention, the right of elected parliamentarians to sit in Parliament and the need to respect international fair-trial guarantees; Mr. Alan and Mr. Dicle were granted provisional release on 19 and 28 June 2014, respectively,

Considering that they are now able to exercise their parliamentary mandate with the exception of Mr. Dicle, who lost his parliamentary status at the time of his invalidation; Mr. Balbay’s and Mr. Haberal’s restrictions on the freedom of movement have been lifted,

Recalling that Mr. Mehmet Sinçar, a former member of the Grand National Assembly of Turkey, of Kurdish origin, was assassinated in September 1993 in Batman (south-eastern Turkey),



Considering that the appeal in Mr. Sinçar's case was concluded in January 2011; the decision does not make any specific reference to the murder of Mr. Sinçar, to the appeal lodged by his family or to any of the arguments raised by their lawyers; it does not indicate that the judicial process effectively probed the political and security context prevailing at the time of the murder and the possible responsibility of the chain of command of the Turkish intelligence and security officers, in particular existing information implicating five agents in planning and executing the crime,

Considering that the mission concluded and observed the following:

- With regard to freedom of expression:
 - The protection of freedom of expression in Turkey has been a long-standing issue of concern in prior cases before the Committee on the Human Rights of Parliamentarians which, since 1992, has repeatedly called on the Turkish authorities to take action to enhance respect for this fundamental right;
 - Peaceful and legal political activities of the parliamentarians concerned have been regarded as evidence of criminal and terrorist acts by the prosecution and the courts, and that despite progress made in legislative reforms; the Turkish legal framework and judicial practice continue to largely fail to distinguish between peaceful protest and dissenting opinions on the one hand, and violent activities pursuant to the same goals on the other;
 - In the case of Mr. Dicle, his statement publicly expressing a non-violent opinion supportive of the PKK fell within the scope of freedom of speech; he was therefore convicted in violation of his right to freedom of expression and that, as a consequence, his parliamentary mandate was arbitrarily invalidated,
- With regard to fair-trial guarantees:
 - In light of the information and documentation reviewed during and after the mission, the delegation has concluded that the judicial process under which the parliamentarians concerned have been, and continue to be, tried is not in compliance with international standards of due process, that justice was neither achieved nor perceived to have been achieved, and that the large scope of the proceedings and the broader context lend weight to the allegations that the judicial proceedings may have been politically motivated,

Considering that the Constitutional Court ruling of 18 June 2014 concluded that fair-trial violations occurred in the Sledgehammer case, which will pave the way for a retrial of Mr. Alan and other defendants in the case,

Considering that, in their observations on the mission report, the parliamentary authorities have stated that:

- They did not have any general objections to the findings of the delegation;
- Further legislative reforms were completed with the amendments made by Law No. 6526 of 21 February 2014, known as the Fifth Judicial Reform Package;
- The first hearing of the retrial of the persons accused in the Sledgehammer case, including Mr. Alan is scheduled for 3 November 2014,

1. *Thanks* the Turkish authorities for their observations and *notes with interest* that they generally share the findings of the mission;
2. *Further thanks* the mission delegation for the work done and endorses its overall conclusions; and *trusts* that the Turkish authorities will implement its recommendations promptly;
3. *Notes with satisfaction* that all parliamentarians have been released pending the completion of the ongoing proceedings and, with the exception of Mr. Dicle, are now able to exercise their parliamentary mandate; *also notes with interest* that the travel

restrictions on Mr. Balbay and Mr. Haberal have been lifted; *welcomes* the legislative reforms undertaken by the authorities;

4. *Deeply regrets*, however, that the parliamentarians concerned spent over half of their parliamentary term and an average of four years in detention before a solution was found; and *urges* the Turkish authorities to adopt appropriate constitutional and legislative amendments to fully implement the rulings of the Constitutional Court as regards the pretrial detention of parliamentarians;
5. *Is deeply concerned* that the peaceful and legal activities of the parliamentarians concerned were regarded as evidence of criminal and terrorist acts by the prosecution and the courts, and *calls on* the authorities to urgently strengthen freedom of expression and association, in particular concerning anti-terrorist legislation and the offence of membership of a criminal organization; *wishes* to be kept informed about legislative reform envisaged on these issues;
6. *Expects* that the judicial proceedings will provide appropriate redress for the acknowledged violations of due process and will be completed swiftly in compliance with international standards; *wishes* to be regularly apprised of their status and outcome;
7. *Urges* the Turkish authorities to pursue further investigations in the case of Mr. Sinçar and fully take into account existing information implicating five agents of the Turkish intelligence Services in planning and executing the crimes; *further invites* the parliamentary authorities to consider establishing a parliamentary commission to investigate the murder, together with other human rights violations committed in the 1990s in south-eastern Turkey, including abuses by State perpetrators;
8. *Trusts* that the parliamentary authorities will liaise with the competent executive and judicial authorities to keep the Committee apprised of any future developments, so as to facilitate a dialogue conducive to a satisfactory settlement of the cases under examination;
9. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.