Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1256 (2001)[1]

Honouring of obligations and commitments by Turkey

Parliamentary Assembly

1. The Assembly recalls firstly its Recommendation 1298 (1996) on Turkey's respect of commitments to constitutional and legislative reforms, in which it instructed its committees concerned to open the monitoring procedure in respect of Turkey under Order N° 508 (1995), and secondly Order N° 545 (1998) on the humanitarian situation of the Kurdish refugees and displaced persons in south-eastern Turkey and northern Iraq, in which it instructed its Monitoring Committee to study the issue of the Kurdish minority in the framework of the monitoring procedure concerning Turkey.

2. The Assembly is aware of the importance of Turkey – one of the oldest member states of the Council of Europe – for the Organisation, because of Turkey's choice in favour of Europe, its contribution to Europe's social and cultural heritage and basic values, as well as the geopolitical significance of Turkey.

3. The Assembly is pleased with the increased mutual understanding of each other's concerns: in the other Council of Europe member states comprehension of the difficulties met by Turkey in its efforts to solve the conflict in south-eastern Turkey and, within Turkey, understanding of the criticism from other member states on the country's human rights record.

4. The Assembly commends the Turkish authorities on the establishment – notwithstanding an economic crisis without precedent throughout the country – of the National Programme for the Adoption of the acquis communautaire, approved in March 2001 by the Turkish Government in the framework of the accession process to the European Union, and out of which Chapters 1.1 (Introduction) and 1.2 (Political Criteria) have been presented by the government as a programme for honouring the obligations and commitments of Turkey as a member state of the Council of Europe.

5. The Assembly recognises that Turkey is a functioning democracy with a multiparty system, free elections and an active and independent legislature, based on a constitution approved by referendum in 1982

6. However, the Assembly recalls also that this constitution was drafted when Turkey was under military rule and that it is partly based on principles which are no longer in line with present-day criteria in force in the Council of Europe.

7. The Assembly welcomes, therefore, the amendments which have since been made to the constitution, in particular regarding the replacement of the military judges in each of the Turkish State Security Courts. It also notes with satisfaction that in the National Programme the review of the constitution will have priority and trusts that the amendments will include the changes which the Assembly suggests in paragraph 16 of this resolution.

8. With regard to the rule of law, the Assembly welcomes the measures taken by the Turkish authorities to improve the conditions of police custody, to eradicate torture and ill-treatment and to identify and efficiently sanction those who have committed such acts.

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1. Assembly debate on 28 June 2001 (23rd Sitting) (see Doc. 9120, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, co-rapporteurs: MM. Bársony and Zierer). Text adopted by the Assembly

9. In particular, the Assembly commends the Turkish authorities on their recent decision to authorise publication of the reports drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visits to Turkey in 1999, 2000 and January 2001.

10. The Assembly welcomes also the adoption of laws amending the Penal Code, the Law on Penal Procedures against Civil Servants and the Law on the Fight against Organised Crime, and encourages the authorities concerned to accelerate work on the new Code of Criminal Procedure, the new Penal Code, amendments to the Civil Code, the draft bill on the creation of the institute of ombudsman and the draft bill on local authorities.

11. The Assembly notes with satisfaction that the Turkish authorities have accepted the need to reform their penitentiary institutions and that Article 16 of the Prevention of Terrorism Act has been amended to allow prisoners to take part in communal activities.

12. Turkey is to be commended on progress made in creating awareness of the need for the respect for human rights and fundamental freedoms, as well as on the measures taken by the Turkish authorities to improve or complement legislation in this field.

13. Above all, the Assembly welcomes the return of tranquillity in south-eastern Turkey, the cease-fire announced by the PKK and the reduction of action by the Turkish armed forces to some occasional security operations; it also notes that the Turkish authorities have embarked on a relief programme for people who have left their homes and returnees, and that they are determined to develop the economy in the region.

14. The Assembly acknowledges the increased freedom of association in Turkey, which enables a growing number of associations, foundations and trade unions to state their opinions and views, and thus to influence public opinion. However, there are concerns that defenders of human rights and human rights organisations are still under pressure.

15. The Assembly welcomes the extension of freedom of expression following the adoption of the Law on the Postponement of Sentences and Trials in respect of Crimes Committed through the Press and Broadcasting and the ongoing amendment of the Penal Code, including the debate on modifying Article 312, which provides for sentences of up to three years and exclusion for life from public functions for incitement to hatred on grounds of race or religion.

16. However, the Assembly is concerned about a number of obligations where progress made cannot yet be considered to be substantial and the honouring of which requires further action by the Turkish authorities in charge:

a. the Assembly trusts that the revision of the constitution announced in the National Programme will lead also to the establishment of a certain parliamentary control over the Turkish National Security Council, revision and completion of the system of protection of human rights and fundamental freedoms, abolition of the death penalty, confirmation of the pre-eminence of law and reinforcement of the judiciary's control over all administrative acts;

b. whilst recognising fully the independence of Turkey in constitutional matters, its experience and its expertise, the Assembly nevertheless recommends that in any amendment of the Turkish Constitution account be taken of the experience and work of the European Commission for Democracy through Law (Venice Commission) in constitutional revisions;

c. the Assembly recommends that the Turkish authorities ensure that the relevant constitutional provisions and other legal rules cannot be interpreted in a way which prevents political parties from carrying out their normal functions and elected representatives from expressing freely their political opinions, with due respect to the principle of refraining from engaging in any activity or performing any act aimed at inciting violence or discrimination, at undermining parliamentary democracy or at destroying any of the rights and freedoms set forth in the European Convention on Human Rights;

d. pending a judgment of the European Court of Human Rights in the case of Mrs Leyla Zana and others, the legal possibilities should be examined or, if necessary, be created to revise prosecution procedures and subsequent sentences in respect of the former DEP parliamentarians imprisoned since that time;

e. the Assembly encourages the Turkish authorities to ensure implementation of the measures taken to improve the conditions of police custody, to eradicate torture and ill-treatment and to identify and efficiently sanction those who have committed such acts; they should also continue their co-operation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);

f. with regard to prison reform which has converted the large dormitory system to cells for one to three prisoners, the Assembly regrets that hunger strikes have caused to date the loss of twenty-three lives and urges the fasting prisoners and the Turkish authorities to end this human drama. The Turkish Government should follow the advice of the CPT and take immediately the necessary measures to ensure that, in particular, prisoners in the F-type prisons spend a reasonable part of the day engaged in a programme of communal activities outside their cells;

g. with regard to the right to life, the Assembly encourages Turkish society to continue and conclude the ongoing debate: no death sentences must be executed; the death penalty must be abolished de jure and Protocol No. 6 to the European Convention on Human Rights must be signed and ratified;

h. full enjoyment of the freedom of association should also be guaranteed in respect of organisations, and in particular organisations working legally for the protection of human rights in south-eastern Turkey; investigations should be conducted by the competent authorities into their complaints that these organisations are being prosecuted for exercising their legal activities, their offices being closed, their members being arrested and their telephone lines being tapped. The Assembly also urges the Turkish authorities to again grant human rights organisations access to prisoners;

i. the Assembly urges the Turkish authorities to accelerate modification of Article 312 of the Turkish Penal Code and to revise Article 8 of the Prevention of Terrorism Act, which in its present unclear wording opens the door to arbitrary action by the state against individuals for “crimes of expression of thought”, in particular journalists and politicians for having expressed opinions which, under the existing rules, could be interpreted as incitement to separatism, and to avoid further contravention of the European Convention on Human Rights;

j. although the Turkish authorities have executed most of the judgments of the European Court of Human Rights in which Turkey has been condemned, the Assembly encourages these authorities to accelerate procedures for adequate follow-up to those judgments which have not yet been completely implemented. In particular, the Assembly refers to the Loizidou case and takes full note of the third interim resolution of the Committee of Ministers (DH (2001) 80), adopted on 26 June 2001, whereby the Committee of Ministers declares its resolve to ensure, with all means available to the Organisation, Turkey’s compliance with its obligations under the judgment;

k. the Assembly recommends that the Turkish authorities lift the state of emergency in the four remaining south-eastern provinces and replace it with an economic state of emergency, and that they take the necessary legislative and administrative measures to guarantee full respect of the human rights of the Kurdish people in Turkey and enable them to live their Kurdish cultural identity (including teaching of the Kurdish language in schools in the Kurdish regions and authorisation of Kurdish language audiovisual media);

l. the Assembly also recommends that the Turkish authorities examine the principles laid down in the Framework Convention for the Protection of National Minorities (ETS No. 157) and in the European Charter for Regional or Minority Languages (ETS No. 148), with a view to signing and ratifying these instruments and applying the principles in respect of the different ethnic groups which live in Turkey;

m. in order to identify the various questions raised by the cohabitation of different ethnic groups, to exchange experiences and to define appropriate solutions, the Assembly invites the Turkish authorities to consider the opportunity of organising with the Parliamentary Assembly a seminar on multi-ethnic societies, to be held in Turkey.

17. The Assembly is aware that most of its concerns, expressed in paragraph 16 above, have been taken into account by the drafters of Chapters 1.1 and 1.2 of the National Programme for the Adoption of the acquis communautaire. It realises also that these chapters, ambitious and far-reaching as they may seem, reflect a delicate compromise between the ruling political forces in Turkey and are therefore worded in a cautious way, as good intentions, with long and flexible deadlines for their implementation.

18. The decision of the Turkish Constitutional Court of 22 June 2001 to ban the Virtue Party (the country’s main opposition party with 102 seats out of 550 in the Turkish Grand National Assembly) for activities contrary to the principle of a secular republic, to expel two of its members from parliament and to impose political bans on five more members, although it may be in accordance with the Turkish law, is in contradiction with the principles of pluralist democracy. The Assembly regrets this decision, which would contribute to political instability at a time when Turkey is engaging in important reforms.

19. In conclusion, the Assembly welcomes the progress Turkey has made in the honouring of its obligations as a member state of the Council of Europe since the start of the monitoring procedure, and in particular the open and sincere dialogue that has developed on still outstanding issues. The Assembly therefore encourages the Turkish authorities to implement the National Programme and to continue taking the legislative and administrative measures necessary to comply with the outstanding obligations listed in paragraph 16 above.

20. Whilst thus recognising that progress has been made in the honouring of certain aspects of Turkey's obligations, but that other aspects still warrant further action, the Assembly resolves to pursue, in close co-operation with the Turkish delegation, the monitoring procedure in respect of Turkey, with a view to advising and assisting the Turkish authorities concerned in their policy towards complying with Turkey's obligations as a member state and to assess further progress until the Assembly decides to close the monitoring procedure.