Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1380 (2004)[1]

Honouring of obligations and commitments by Turkey

Parliamentary Assembly

1. Turkey has been a member of the Council of Europe since 1949 and as such has undertaken to honour the obligations concerning pluralist democracy, the rule of law and human rights arising from Article 3 of the Statute. It has been the subject of a monitoring procedure since the adoption, in 1996, of Recommendation 1298 on Turkey's respect of commitments to constitutional and legislative reforms.

2. On 28 June 2001, in Resolution 1256 concerning the honouring of obligations and commitments by Turkey, the Parliamentary Assembly welcomed the progress made by Turkey but decided to continue the monitoring process and review progress, pending a further decision to close the procedure.

3. The Assembly notes that, despite a serious economic crisis in 2001, the political instability that led to early elections in November 2002 and the uncertainties caused by the war in Iraq, the Turkish authorities have not deviated from their efforts to implement the reforms necessary for the country's modernisation. Turkey has achieved more reforms in little more than two years than in the previous ten.

4. The Assembly welcomes the adoption in October 2001 of important changes to the constitution, seven reform packages approved by parliament between February 2002 and August 2003 and numerous other laws, decrees and circulars to implement these reforms. It also welcomes the changes made to the constitution in May 2004, which paved the way for the ratification of the Statute of the International Criminal Court.

5. It notes with satisfaction that, despite initial concern in November 2002 about the accession to power of the Justice and Development Party, led by Mr Erdogan, the new government, with the unstinting support of the only opposition party, the Republican People's Party (CHP), has so far made good use of its absolute majority in parliament to expedite and intensify the reform process.

6. With regard to pluralist democracy, the Assembly recognises that Turkey is a functioning democracy with a multiparty system, free elections and separation of powers. The frequency with which political parties are dissolved is nevertheless a real source of concern and the Assembly hopes that in future the constitutional changes of October 2001 and those introduced by the March 2002 legislation on political parties will limit the use of such an extreme measure as dissolution. The Assembly also considers that requiring parties to win at least 10% of the votes cast nationally before they can be represented in parliament is excessive and that the voting arrangements for Turkish citizens living abroad should be changed.

7. With regard to institutional arrangements, the Assembly congratulates Turkey on reducing the role of the National Security Council to what it should never have ceased to be, namely a purely consultative body concerned with defence and national security. The amendment to Article 118 of the constitution and those to the legislation governing the National Security Council and its secretariat represent fundamental progress that is to be welcomed. With the changes made to the constitution in May 2004, Turkey completed this reform by taking the necessary steps to exclude army representatives from civil bodies such as the Higher Education Council (YÖK) and to establish parliamentary supervision of military activities, particularly from a financial standpoint. The Assembly also calls on the Turkish authorities to exclude any army representatives from the

1. Assembly debate on 22 June 2004 (18th Sitting) (see Doc. 10111, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Ms Delvaux-Stehres and Mr Van den Brande). Text adopted by the Assembly on 22 June 2004 (19th Sitting).

Supreme Board of Radio and Television (RTÜK). Despite Turkey's geostrategic position, the Assembly also demands that Turkey recognise the right of conscientious objection and introduce an alternative civilian service.

8. The Assembly welcomes the fact that the maximum period of police custody for collective offences has been reduced from fifteen to four days and that all detained persons are entitled to see a lawyer from the first hour of police custody.

9. The Assembly also welcomes the Turkish authorities' decision to abolish the state security courts, following the abrogation of Article 143 of the constitution in May 2004. It strongly urges Turkey, as it did in 2001, to draw on the experience of the Venice Commission for any further constitutional revisions. It believes that the 1982 Constitution, which has already been frequently modified, would gain in coherence and clarity from a complete overhaul. The Assembly also welcomes the fact that the Turkish authorities have started to consider granting individuals direct access to the Constitutional Court.

10. The Assembly also calls on the Turkish authorities to finalise without delay the draft proposal to create an ombudsman institution and congratulates Turkey on the steps taken to improve dialogue with NGOs, particularly via the new composition of regional human rights councils and the more flexible legislation on associations. NGOs' freedom of action nevertheless needs to be strengthened.

11. The Assembly welcomes Turkey's determination to fight corruption, particularly through the establishment of several parliamentary committees of inquiry, its approval in January 2003 of an emergency anticorruption plan and its ratification of the Council of Europe Criminal and Civil Law Conventions on Corruption (ETS N°s. 173 and 174) in September 2003 and March 2004 respectively. It hopes that Turkey will shortly submit the instruments of ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS N°. 141), already ratified by the Turkish Parliament on 16 June 2004.

12. The Assembly welcomes the significant advances in women's rights resulting from the constitutional revisions of October 2001 and May 2004, the entry into force in January 2002 of the new Civil Code and the August 2002 Job Security Act, and welcomes the fact that Article 10 of the constitution, as amended in May 2004, now expressly stipulates that the state has a duty to guarantee equality between men and women. Modern states must provide for equality between all their citizens, particularly as regards access to employment, public and elective offices, health and education. It calls on the Turkish authorities to introduce programmes to eradicate female illiteracy, which is essential for women to be able to exercise their rights. The Assembly has noted with satisfaction that the Criminal Code was amended in July 2003 to make it impossible to plead mitigating circumstances for honour crimes. It calls on the authorities to take a clear stand against honour crimes and domestic violence and to offer women support, particularly by increasing the number of refuges.

13. Regarding fundamental freedoms, the Assembly congratulates Turkey for finally abolishing the death penalty, by ratifying Protocol No. 6 of the European Convention on Human Rights in November 2003 and signing Protocol No. 13 in January 2004. Following the changes made to the constitution in May 2004, Protocol No. 13 should be ratified very shortly.

14. It also congratulates Turkey for its commitment to combating torture and impunity – the authorities' zero tolerance policy is starting to bear fruit. Improvements to conditions of police custody, greater safeguards for the rights of the defence and entitlement to a medical examination have been welcomed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), whose recommendations, including those relating to detention conditions, have been systematically implemented. Although the latest report published by the CPT on 18 June 2004 recognises that important progress has been achieved, the Assembly agrees with the CPT that the Turkish authorities must remain vigilant and ensure that their instructions are followed throughout the country.

15. The Assembly considers that, as part of the fight against impunity, abolishing the requirement to secure prior administrative approval to prosecute officials charged with torture or inhuman or degrading treatment, removing the power to suspend prison sentences or commute them into fines, making it obligatory to investigate complaints from victims as a priority and requiring prosecutors to conduct investigations personally all represent considerable progress. It also notes that considerable efforts have been made to improve police and gendarmerie training, with Council of Europe assistance.

16. The Assembly takes note of important measures to liberalise the legislation on freedom of expression: Section 8 of the Anti-Terrorism Act has simply been repealed, Articles 312, 159, 169 of the Criminal Code and Section 7 of the Anti-Terrorism Act have been amended to make them more compatible with the case-law of

the European Court of Human Rights and the legislation on press-related offences has also been amended. However, the Assembly still awaits progress on the offences of defaming or insulting the principal organs of state, which should no longer be liable to imprisonment.

17. The Assembly notes that important progress has been made regarding freedom of association. Under the amended Article 33 of the constitution, only the courts may refuse to register associations' statutes or dissolve or suspend their activities. The 1983 Associations Act has been considerably revised, particularly as regards prior scrutiny of associations' activities. Concerning freedom of assembly, meetings can now only be banned if they pose a clear threat to public order.

18. Turning to freedom of religion and the treatment of religious minorities, the Assembly congratulates the Turkish authorities for amending the legislation on religious foundations and on constructions, which will now allow the bodies concerned to buy and sell property and build new places of worship.

19. Turkey is a secular Muslim state. This unique state of affairs is evidence of its attachment to European democratic values, based on tolerance and mutual respect. Turkey must ensure that the state's neutrality continues to be respected and that the religious sphere does not interfere with the principles of governance of a modern society.

20. The Assembly welcomes the lifting of the state of emergency in the remaining four south-eastern provinces where it was still in force, and the passing of the Reintegration Act in July 2003, which has permitted the release, among others, of several thousand Turkish citizens of Kurdish origin and a return to normal life for hundreds of other people who have given themselves up to the authorities. The Assembly also hopes that parliament will shortly approve the draft legislation to compensate the victims of terrorism or of measures taken by the government to combat terrorism. Nearly five years after the end of hostilities, the Assembly believes that the time has come to invest more in the economic and social reconstruction of the south-east. It notes the Turkish authorities' commitment to developing the "village return" programme, with the assistance of the World Bank and the United Nations. The Assembly also welcomes the recent adoption of the law encouraging investments in provinces with low per capita income.

21. The Assembly regrets that Turkey has still not ratified the Framework Convention for the Protection of National Minorities (ETS N°. 157) and the European Charter for Regional or Minority Languages (ETS N°. 148). Nevertheless, it considers that the first steps have been taken towards recognising the cultural rights of members of different ethnic groups and notably of persons of Kurdish origin. The constitution has been revised and no longer bans the use of languages other than Turkish; it is now possible to open language schools for studying the Kurdish language or languages, radio and television broadcasts are now authorised in Kurdish and parents may choose Kurdish first names for their children. The Assembly strongly encourages the Turkish authorities to continue promoting cultural and linguistic diversity, and hopes that the measures will have a real impact on the daily lives of those concerned, particularly their access to the judicial and administrative authorities and the organisation of health care.

22. The Assembly notes that the points it made in Resolution 1256 have been dealt with satisfactorily:

22.1. it congratulates the Turkish authorities for introducing the necessary changes to domestic legislation in 2002 and 2003 to permit the retrial of cases following findings by the Court of a violation of the Convention, which in particular has permitted the reopening of the trial of Leyla Zana and three other members of parliament in the Ankara Security Court. Nevertheless, the Assembly deeply regrets the decision handed down by the Ankara Security Court on 21 April 2004, at the end of the retrial, upholding the prison sentences they were given in 1994. It invites the Turkish Court of Cassation to examine with the utmost care the complaints currently before it concerning the way in which the trial was conducted and is pleased to note the court's decision of 9 June 2004 to release them in the meantime;

22.2. it also notes that more than five years after the judgment awarding Ms Loizidou just satisfaction, and in accordance with Article 46 of the Convention by which, like all the other parties to the Convention, it is bound, Turkey has finally agreed unconditionally to make the required payment. It reminds the Turkish authorities that they must still execute the judgment on the merits in the same case, delivered in 1996, and in particular adopt general measures to avoid repetition or continuation of the violations found by the Court. It asks Turkey to continue to co-operate fully with the Committee of Ministers in its difficult task of securing the proper implementation of judgments, particularly in the Cyprus v. Turkey inter-state case.

23. The Assembly therefore invites Turkey, as part of its authorities' current reform process, to:

23.1. carry out a major reform of the 1982 Constitution, with the assistance of the Venice Commission, to bring it into line with current European standards;

23.2. amend the electoral code to lower the 10% threshold and enable Turkish citizens living abroad to vote without having to present themselves at the frontier;

23.3. recognise the right of conscientious objection and establish an alternative civilian service;

23.4. establish the institution of ombudsman;

23.5. ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the Revised European Social Charter and accept the provisions of the Charter which it has not already accepted;

23.6. complete the revision of the Criminal Code, with the Council of Europe's assistance, bearing in mind the Assembly's observations on the definitions of the offences of insulting language and defamation, rape, honour crimes and, more generally, the need for proportionality arising from the European Court of Human Rights' case-law on freedom of expression and association;

23.7. undertake, with the Council of Europe's assistance, a comprehensive examination of the legislation dating from the period of the state of emergency, particularly that relating to association, trade unions and political parties, to ensure that as far as possible it reflects the spirit of recent reforms;

23.8. reform local and regional government and introduce decentralisation in accordance with the principles of the European Charter of Local Self-Government (ETS No. 122); as part of the reform, to give the relevant authorities the necessary institutional and human resources and arrange redistribution of resources to compensate for the underdevelopment of certain regions, particularly south-east Turkey, and move from a dialogue to a formal partnership with United Nations agencies to work for a return, in safety and dignity of those internally displaced by the conflict in the 1990s;

23.9. continue the training of judges and prosecutors as well as the police and gendarmerie, with the Council of Europe's assistance;

23.10. lift the geographical reservation to the 1951 Geneva Convention relating to the Status of Refugees and implement the recommendations of the Council of Europe Commissioner for Human Rights on the treatment of refugees and asylum seekers;

23.11. pursue the policy of recognising the existence of national minorities living in Turkey and grant the persons belonging to these minorities the right to maintain, develop and express their identity and to apply it in practice;

23.12. continue efforts to combat female illiteracy and all forms of violence against women.

24. The Assembly considers that over the last three years Turkey has clearly demonstrated its commitment and ability to fulfil its statutory obligations as a Council of Europe member state. Given the progress achieved since 2001, the Assembly is confident that the Turkish authorities will apply and consolidate the reforms in question, the implementation of which will require considerable changes to its legislation and regulations, extending beyond 2004. The Assembly therefore decides to close the monitoring procedure under way since 1996.

25. The Assembly will continue, through its Monitoring Committee, the post-monitoring dialogue with the Turkish authorities on the issues raised in paragraph 23 above, and on any other matter that might arise in connection with Turkey's obligations as a Council of Europe member state.