Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1622 (2008)[1]
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Functioning of democratic institutions in Turkey: recent developments

Parliamentary Assembly

1. The Parliamentary Assembly recalls that, in its Resolution 1380 (2004) on honouring of obligations and commitments by Turkey, it decided to close the monitoring procedure for Turkey, acknowledging the progress achieved in the reform process and confident that the Turkish authorities would pursue and consolidate these reforms, the implementation of which would require considerable changes to its legislation and regulations in the years to come. The Assembly decided to continue the post-monitoring dialogue with Turkey, through its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), with regard to 12 issues that Turkey was invited to address as part of the reform process undertaken by its authorities.

2. The Assembly notes with satisfaction that the Government of Turkey, led by Prime Minister Erdogan, has stood, for over five years, for strong economic growth and political reforms, which has allowed the country to attract the support of investors thanks to its continuing macro-economic stability and its pursuit of privatisations, and made possible the opening of accession negotiations with the European Union in October 2005. Since then, Turkey has made continuous efforts to meet the Copenhagen criteria, including the need to achieve "stability of institutions guaranteeing democracy, the rule of law and human rights", in line also with the statutory obligations incumbent on it as a Council of Europe member state.

3. However, reforms were halted in spring 2007 when a political crisis erupted as a result of the failure of the Turkish Grand National Assembly (hereafter "the parliament") to elect a new President of the Republic. This crisis led to early parliamentary elections in July 2007, considered by the Assembly and other international observers as generally in compliance with Turkey's commitments as a member state of the Council of Europe and European standards for free and fair elections. The Assembly notes that the high voter turnout confirmed that confidence in the democratic process exists in Turkey.

4. Having obtained 46.6% of the votes at the July 2007 elections, the Justice and Development Party (hereafter AK Party) of Prime Minister Erdogan ensured a large absolute majority. The Assembly, while regretting the Turkish authorities' failure to comply with its previous calls to lower the 10% electoral threshold, notes that the current parliament is more representative of the country's political diversity than the previous one, representing about 90% of the opinions of the electorate.

5. However, a fresh crisis followed the adoption by the parliament on 9 February 2008 of changes to the constitution and the law on higher education which would ease the Muslim headscarf ban at universities. The amendments were considered contrary to secular principles and declared unconstitutional by the Constitutional Court on 5 June 2008.

1. *Assembly debate* on 26 June 2008 (26th Sitting) (see Doc. 11660, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Van den Brande). *Text adopted by the Assembly* on 26 June 2008 (26th Sitting).

6. In the meantime, on 14 March 2008, judicial proceedings were instituted by the Chief Prosecutor of the Supreme Court of Turkey to dissolve the ruling AK Party on the grounds that the party had become a "centre of anti-secular activities" and ban 71 of its members, including President Gül and Prime Minister Erdogan, as well as 39 members of parliament, from politics for five years. The case is pending before the Constitutional Court.

7. The Assembly stands firm for state secularity in the Council of Europe member countries. However, the criteria of secularism cannot be applied to political parties, as political parties inspired by the moral values of a religion are widespread in most Council of Europe member countries. When such a party is in government and the government passes anti-constitutional decisions, legal action should be taken against those decisions and not against the political party behind them.

8. The Assembly is concerned that, regardless of its outcome, the lawsuit against the ruling party, as well as the Prime Minister and the President of the Republic, is seriously affecting political stability in the country, as well as the democratic functioning of state institutions, and is delaying urgent economic and political reforms.

9. At the same time, the Assembly underlines that effective separation of powers and the independence of the judiciary are fundamental principles of a democracy based on the rule of law which should be fully guaranteed by all state institutions. No influence should be exercised on the Constitutional Court of the country. In this respect, the Assembly is confident that the latter will apply European standards regarding the dissolution of political parties resulting from the case law of the European Court of Human Rights (the Court) on Articles 10 (freedom of expression) and 11 (freedom of assembly and association) of the European Convention on Human Rights (the Convention – ETS No. 5) and the Guidelines on prohibition and dissolution of political parties and analogous measures, adopted by the European Commission for Democracy through Law (Venice Commission) of the Council of Europe in December 1999.

10. The Assembly notes that respect for the principle of proportionality is of special importance with regard to the dissolution of political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy. It recalls that the Court has repeatedly stated that the dissolution of a political party, accompanied by a temporary ban prohibiting its leaders from exercising political responsibilities, is the most drastic measure; a measure of such severity should be applied only in the most serious cases.

11. The Assembly also recalls its Resolution 1308 (2002) on restrictions on political parties in the Council of Europe member states, in which it underlined that, although democracies have the right to defend themselves against extremist parties, the dissolution of political parties should be regarded as an exceptional measure to be applied only in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country.

12. The Assembly notes that Turkey has a legacy of political party closures, almost all of which have resulted in findings of violations of Article 11 of the Convention. In its Resolution 1380 (2004) closing the monitoring procedure for Turkey, the Assembly, emphasising that the frequency with which political parties were dissolved was a real source of concern, expressed the hope that in future the constitutional changes of October 2001 and those introduced in the legislation on political parties would "limit the use of such an extreme measure as dissolution".

13. It further notes that, in the light of these same reforms, the Committee of Ministers in 2007 closed the supervision of the execution of the Court judgments in all cases concerning the dissolution of political parties in Turkey between 1991 and 1997, as it was satisfied that the relevant judgments had been appropriately executed. In so doing, the Committee of Ministers strongly encouraged the Turkish authorities to pursue their efforts to give direct effect of the Court's case law in the implementation of Turkish law.

14. The current proceedings against the AK Party, regardless of their outcome, spark a renewed debate about the legal basis for the closure of political parties in the country and show that, despite the above-mentioned reforms, the issue of dissolution of political parties in Turkey is not closed. The Assembly notes that it has become clear that further constitutional and legislative reforms in this respect are necessary.

15. A full revision of the 1982 Constitution which, despite repeated revisions, still bears the marks of the 1980 military *coup d'état,* and a comprehensive review of the law on political parties are required in order to bring these texts fully into line with European standards. In pursuing such reforms, the Turkish authorities should in particular envisage introducing stricter criteria for the dissolution of political parties, such as condoning or inciting violence or overt threats to fundamental democratic values, in line with the above-mentioned guidelines of the Venice Commission.

16. The Assembly recalls that, when adopting Resolution 1380 and closing the monitoring procedure for Turkey, it had invited Turkey, as part of its reform process, to "carry out a major reform of the 1982 Constitution, with the assistance of the Venice Commission, to bring it into line with European standards". The need for a new, civil constitution has now become more evident than ever.

17. In this regard, the Assembly notes the government's initiative to draft a new constitution and considers that this opens a window of opportunity for a broad national debate involving all actors of society. It encourages the government to finalise this process in close co-operation with the Venice Commission. The new constitution should in particular guarantee an appropriate system of checks and balances and give a prominent place to the protection of human rights and fundamental freedoms, in line with European standards, in order to fully ensure the democratic functioning of Turkey's institutions and the consolidation of its modernisation and reform process.

18. At the same time, the Assembly, emphasising the importance of effective separation of powers, urges all state institutions to respect each other's competences and join efforts to pursue, with renewed vigour, the much-needed economic and political reforms that will turn Turkey into a modern democracy.

19. All institutions in the member states are bound by the obligations, commitments and principles of the Council of Europe. Taking into account the separation of the judicial and the political powers, the Assembly underlines that the judicial authorities also have to respect these standards and principles and to act accordingly.

20. The Assembly asks its Monitoring Committee to intensify its post-monitoring dialogue with Turkey, closely follow the development of the democratic functioning of its state institutions and, in particular, the constitutional drafting process, and if need be seriously consider the possibility of re-opening the monitoring procedure for Turkey.