



Resolution 1925 (2013)¹

Final version

Post-monitoring dialogue with Turkey

Parliamentary Assembly

1. In 2004, the Parliamentary Assembly decided to close the monitoring procedure concerning Turkey and open a post-monitoring dialogue, stating that it was confident that the Turkish authorities would continue the process of reform and implement the reforms that had been adopted. The Assembly notes that [Resolution 1710 \(2010\)](#) on the term of office of co-rapporteurs of the Monitoring Committee now requires the Assembly to debate in plenary the implementation of [Resolution 1380 \(2004\)](#) on the honouring of obligations and commitments by Turkey.

2. There has been co-operation with Turkey in the framework of the post-monitoring dialogue in order to verify the implementation of the 12 action requirements set out in paragraph 23 of [Resolution 1380 \(2004\)](#), namely: reforming the 1982 Constitution; lowering the electoral threshold of 10%; recognising the right of conscientious objection; establishing the ombudsman institution; ratifying the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), the Framework Convention for the Protection of National Minorities (ETS No. 157), the European Charter for Regional or Minority Languages (ETS No. 148), the revised European Social Charter (ETS No. 163) as well as accepting the provisions of the Social Charter not already accepted; completing the revision of the Criminal Code (in particular, respect for the need for proportionality arising from the case law of the European Court of Human Rights (“the Court”) on freedom of expression and association); examining legislation dating from the period of the state of emergency; implementing the reform of local and regional government, and decentralisation; managing the return of persons internally displaced by the conflict in the 1990s; training of judges and prosecutors as well as the police and gendarmerie; lifting the geographical reservation to the Geneva Convention relating to the Status of Refugees; pursuing a policy of recognising the existence of national minorities living in Turkey and granting them the right to maintain, develop and express their identity and to apply it in practice; and continuing efforts to combat female illiteracy and all forms of violence against women.

3. The Assembly underlines that the process of major reforms is taking place against an extremely complex background in both domestic and external terms. Over the last ten years, since the Justice and Development Party (AKP) came to power, Turkey has entered a period of political transition characterised by redefinition of the role of the army; repositioning of the various branches of power (such as the judiciary); the opening of major trials (Ergenekon, Balyoz, “Union of Communities in Kurdistan” (KCK) that are having a profound effect on society and the key political, military and civil players as well as the Kurdish question in Turkey and the conflict between the Turkish State and the Kurdistan Workers’ Party (PKK) that has claimed over 40 000 victims. The Assembly also notes that, in an unstable Middle East, the Syrian conflict has far-reaching consequences in Turkey. The country has taken in over 220 000 refugees since 2011, in a remarkable display of solidarity.

4. The Assembly notes that the accession negotiations between Turkey and the European Union started in 2005. It welcomes the resumption of the discussions and the possible opening of new chapters of the negotiations, including Chapter 22 on regional policy and co-ordination of structural instruments in the

1. *Assembly debate* on 23 April 2013 (12th Sitting) (see [Doc. 13160](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Ms Durrieu). *Text adopted by the Assembly* on 23 April 2013 (12th Sitting).



negotiations in 2013. It believes that the opening of additional chapters, in particular Chapter 23 (judiciary and fundamental rights) and Chapter 24 (justice, freedom and security), would help consolidate the reform process and underpin the action of the Council of Europe.

5. The Assembly draws attention to the very significant economic achievements made in a context of global crisis. This is confirming Turkey's position as a regional power which is engaged multilaterally and has a vital role in strategic and energy terms. These are all factors which make the stability of Turkey vital to the whole of the eastern Mediterranean.

6. The Assembly also notes with interest that the "Arab Spring" revolutions have affected almost all the Muslim countries of the southern Mediterranean. Now, however, Turkey is the "benchmark" for these countries which are experiencing great instability. Hence the particular importance of continuing the expected reforms and bringing them to a successful conclusion.

7. The Assembly points out that although many reforms were carried out during the initial phase of the post-monitoring dialogue (2004-2010), they responded only partially to some of the 12 action requirements of [Resolution 1380 \(2004\)](#). In this context, the Assembly notes the following advancements:

7.1. the ad hoc reform of certain articles of the Criminal Code in 2005, and in particular amendment of Article 301 punishing attacks on the "Turkish identity and nation", the complete repeal of which is requested;

7.2. the launch of training programmes for judges and prosecutors, mainly concerning the 2005 Criminal Code;

7.3. the 2007 constitutional reform, which has paved the way for the election of the president of the republic by direct universal suffrage from 2014;

7.4. the adoption, since 2007, of measures to combat torture and degrading treatment and to train the security forces;

7.5. the reinforcement of the provisions of the Criminal Code concerning efforts to combat violence against women, the development of major training programmes since 2006 and the adoption of the law on the protection of the family in 2007;

7.6. the adoption of the Foundations Act, which came into force in February 2008;

7.7. the adoption of the Act on Compensation for Damage arising from Terrorism and Combating Terrorism, which came into force in March 2008, and the launch of programmes for the return of displaced persons and several socio-economic development programmes in south-eastern Turkey;

7.8. the initiative "democratic opening" towards the Kurdish community launched in 2009, which in particular opened up debate about the Kurdish question, expanded the use of the Kurdish language in the media and election campaigns and allowed the teaching of Kurdish in universities;

7.9. the holding of a constitutional referendum in September 2010, which led to the opening of the trials of the leaders of the coup d'état of 12 September 1980; reforming the procedures for the appearance before civil courts of members of the military, including officers, and persons accused of crimes against the security of the State; increasing the number of members of the Constitutional Court and the High Council of Judges and Prosecutors; adoption of the principle of the establishment of the institution of ombudsman; introducing the right of individual appeal to the Constitutional Court in matters falling within the scope of the European Convention on Human Rights (ETS No. 5); and broadening the scope and the substance of trade union rights and the right to freedom of association;

7.10. the ratification of the revised European Social Charter in 2007.

8. The Assembly underlines that all the measures adopted must now be fully and rapidly implemented.

9. The Assembly therefore wishes to take a detailed look at the implementation of [Resolution 1380 \(2004\)](#) and analyse the reforms carried out over the subsequent period (2010-13), and the announced reforms.

10. With regard to the reform of the constitution, the electoral threshold and enabling Turkish citizens living abroad to vote:

10.1. the Assembly takes note of the establishment by parliament on 19 October 2011 of a 12-member "conciliation committee" with equal representation of the four parties in parliament. It is chaired by the Speaker of the Grand National Assembly, Mr Cemil Çiçek. Its purpose is to revise the constitution inspired by the military following the 1980 coup d'état. The Assembly underlines in

particular the exemplary nature of the membership of the committee and the consensus rule adopted for decision making. It also welcomes the consultation of all the driving forces in Turkish society initiated by the conciliation committee, but nevertheless notes the difficulties in reconciling different positions on some fundamental principles such as citizenship and some key political issues such as decentralisation. While the initial intention and determination were commendable, the exercise is challenging. The Assembly expects the reform of the constitution to be consistent with the standards set by the Council of Europe;

10.2. it is up to the institutions and citizens of Turkey to define the country's future democratic system and type of governance. The Assembly nevertheless invites the Turkish authorities to draw on the expertise of the European Commission for Democracy through Law (Venice Commission) before finalising the draft constitution. It is essential to safeguard the institutional balance of powers and the independence of the judicial system, clearly specify the appropriate checks and balances and affirm respect for fundamental rights and individual freedoms, while ensuring compliance with Council of Europe standards;

10.3. the Assembly reiterates its call on the Turkish authorities to take account of the Venice Commission's recommendations on lowering the electoral threshold of 10% – by far the highest in the 47 member States of the Council of Europe – so as to widen the participation in parliament of political parties, which play a key role in democracies;

10.4. the Assembly welcomes the fact that the Turkish authorities have taken the necessary measures to implement the parliament's decision of May 2012 and enable Turkish voters living abroad to vote in the 2014 presidential and 2015 parliamentary elections, and in future elections.

11. With regard to completing revision of the Criminal Code (in particular, respect for the need for proportionality arising from the case law of the European Court of Human Rights on freedom of expression and association), examination of the legislation dating from the period of the state of emergency and the training of judges and prosecutors as well as the police and gendarmerie:

11.1. the Assembly underlines that Turkey has implemented judicial reforms to bring its legislation into line with the European Convention on Human Rights, in particular with the adoption of the "3rd package of judicial reforms" in July 2012 and the "4th package" in April 2013. In particular, the aim of these reforms was to strengthen the presumption of innocence and restrict pre-trial detention. It has to be said that, in spite of some releases on bail or under court supervision, the short-term results have not matched expectations. Persons being held in pre-trial detention, including elected members of parliament, still account for 23% of prisoners;

11.2. the Assembly welcomes the ratification, in September 2011, of the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and invites Turkey to introduce a national torture prevention mechanism;

11.3. while the Assembly notes the reforms undertaken in the area of juvenile justice, it is nevertheless awaiting the conclusions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning the treatment and conditions of detention of juveniles. The Assembly also urges the authorities to improve conditions in all Turkish prisons, in line with Council of Europe standards and practice;

11.4. in terms of freedom of expression, which is a very crucial issue, while underlining the reforms carried out under the "3rd package" to relax restrictions, the Assembly refers to [Resolution 1920 \(2013\)](#) on the state of media freedom in Europe. It reiterates its explicit request that Turkey conduct an in-depth review of the legal provisions and administrative measures relating in particular to the provisions of the Criminal Code and anti-terrorism legislation. Legislation concerning the Internet also needs to be clarified, in order to verify its compatibility with the case law of the European Court of Human Rights;

11.5. the Assembly welcomes the adoption on 11 April 2013 of the "4th package of judicial reforms". The amendments of, in particular, the Criminal Code and the anti-terrorism legislation should help to bring Turkish legislation into line with the case law of the European Court of Human Rights, as requested. They should also help to clarify the distinction between freedom of expression and terrorist propaganda, as expected. The Assembly renews its request for Article 301 of the Criminal Code to be repealed, as well as Article 125 of the Criminal Code which criminalises defamation. The Assembly also calls for a review of the definitions of offences related to terrorism and membership of a criminal organisation in line with the case law of the European Court of Human Rights;

11.6. the Assembly notes that the adoption of the “4th package of judicial reforms” should make possible the abolition of the statute of limitation for torture cases and the reopening of the trials in the cases in which the European Court of Human Rights has found a lack of effective investigations, in violation of the European Convention on Human Rights;

11.7. the Assembly also invites Turkey to continue the reforms undertaken in order to protect all fundamental and individual freedoms so that protecting the individual is made the focus of its human rights system;

11.8. the Assembly notes that the educational reform (the “4 + 4 + 4 system”) increases the duration of compulsory schooling, which is a positive move. There is, however, some concern about the introduction of religious education from lower secondary level, as sections of “Imam Hatip schools” have been re-established there. This measure seems to be a departure from the principle of secularism based on respect for all religions, a principle endorsed by the prime minister. The Assembly will follow the implementation of the new system;

11.9. with regard to respect for the rights of lesbian, gay, bisexual and transsexual (LGBT) persons, the Assembly asks Turkey to take every step, educational measures included, to combat all forms of discrimination and adopt appropriate legal and constitutional provisions. The Assembly hopes that these reforms concerning sexual orientation and gender identity will be fully implemented, in accordance with Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity;

11.10. the Assembly cannot but note that several human rights and fundamental freedoms issues remain problematic:

11.10.1. the Assembly deplores the fact that there has still been no legal outcome to the pre-trial detention of large numbers of members of parliament, mayors and local elected representatives. This situation clearly hampers the exercise of the mandates given to these elected representatives by citizens and requires an urgent legislative solution;

11.10.2. the Assembly calls on Turkey to respect fully the rights of the defence in the major trials (Ergenekon, Balyoz, KCK) which are being conducted by courts with special powers. These trials are simultaneously affecting elected representatives, members of the armed forces, university teachers, students, journalists and Kurds. The Assembly is concerned by the high number of these trials;

11.10.3. in addition, the Assembly notes that arrests and pre-trial detention, notably of journalists, young people and students, raise serious concerns. It urges Turkey to adopt, without further delay, the necessary legislation to guarantee freedom of expression and the right to demonstrate, and to ensure that police action, if it is necessary, remains proportionate;

11.11. with regard to the dissolution of political parties, the Assembly invites Turkey, in line with the Venice Commission’s 2009 recommendations, to renew efforts, in the context of the work on constitutional reform, to introduce a properly elaborated procedure based on strict criteria, such as condoning or inciting violence or overt threats to fundamental democratic values;

11.12. in terms of trade union rights, the Assembly takes note of the law adopted on 19 October 2012. It notes the low number of unionised employees (less than 10%), namely 1 million out of 10 million. It draws attention to the high threshold of over 3% unionised employees in firms with over 30 employees for trade unions to be entitled to enter into collective bargaining. At present, this would mean that barely half of trade unions would be able to do so. The measure appears to be gradual, however, and is not due to be applied in full until 2018. The Assembly therefore asks Turkey to make sure that the new trade union legislation genuinely guarantees the exercise of the right to bargain collectively. It encourages Turkey to continue its discussions with the socio-economic partners and trade unions in order to lift the reservations entered into in respect of Articles 2.3, 4.1, 5 and 6 of the revised European Social Charter;

11.13. the Assembly underlines the obvious need to train judges and prosecutors. It encourages the authorities to continue and step up the programmes of compulsory in-service training for law-enforcement officers. This is vital for ensuring that the new legislative measures are implemented effectively and account is taken of the case law of the European Court of Human Rights. The training of justice and law-enforcement personnel must be accompanied by an absolutely necessary change in attitudes. The Assembly strongly urges Turkey to continue the co-operation established with the Council of Europe in these areas.

12. With regard to establishing the institution of ombudsman and recognising the right of conscientious objection and establishing an alternative civilian service:
- 12.1. the Assembly notes with satisfaction the establishment of an ombudsman, following the constitutional referendum of 12 September 2010 and the adoption of the law of 14 June 2012, thereby honouring a specific request by the Assembly set out in the 12 action requirements. It nevertheless invites the Turkish Parliament to review the criteria for the selection and election of the ombudsman and deputy ombudsmen so as to ensure the credibility and effectiveness of this newly established institution and its funding;
- 12.2. the Assembly also welcomes the determined efforts by the Ministry of Justice to ensure that more account is taken of the case law of the European Court of Human Rights, improve supervision of the implementation of the Court's judgments and prevent repetitive violations of articles of the Convention. In particular, it welcomes the establishment of a compensation system in cases of excessive length of detention or proceedings, as well as the account taken of compliance with the Court's case law in the promotion of judges;
- 12.3. the Assembly welcomes the possibility opened up by the 2010 constitutional revision for individual appeals to the Constitutional Court regarding breaches of the rights enshrined in the European Convention on Human Rights and implemented since September 2012;
- 12.4. given that it was one of the 12 action requirements, the Assembly is disappointed that no steps have been taken to establish a legislative framework for conscientious objection and an alternative civilian service in order to comply with the recent case law of the European Court of Human Rights on the matter.
13. With regard to implementation of the reform of local and regional government and decentralisation and the return of displaced persons:
- 13.1. the Assembly is convinced that continuing and increasing decentralisation will be a key factor in Turkey's development strategy, and also a possible response for resolving the Kurdish question. In this context, it urges Turkey to implement Recommendation 301 (2011) adopted by the Congress of Local and Regional Authorities of the Council of Europe on 24 March 2011 and to continue the reforms in the area of decentralisation, in accordance with the European Charter of Local Self-Government (ETS No. 122), ratified by Turkey in 1992;
- 13.2. the Assembly notes with satisfaction the entry into force in March 2008 of Law No. 5233 on Compensation for Damage arising from Terrorism and combating Terrorism. It encourages Turkey to continue its economic and social programmes for the lasting return of displaced persons, as provided for in the 12 action requirements.
14. With regard to the Council of Europe legal instruments mentioned in Resolution 1380 (2004):
- 14.1. the Assembly welcomes Turkey's ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime on 6 October 2004 and of the revised European Social Charter on 27 June 2007, in accordance with [Resolution 1380 \(2004\)](#);
- 14.2. the Assembly notes that Turkey has neither signed nor ratified the Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages, as requested by the Assembly in 2004. It urges Turkey to now consider signing these legal instruments;
- 14.3. the Assembly welcomes the adoption of the March 2010 circulars intended to improve access to asylum procedures, ensure better protection of vulnerable groups and provide better access for asylum seekers to the labour market. Furthermore, the Assembly welcomes the adoption, on 4 April 2013, of the Foreigners and International Protection Act, which constitutes a significant step forward in the protection of the rights of foreigners, irrespective of their status. It urges Turkey to continue its co-operation with the Office of the United Nations High Commissioner for Refugees (UNHCR) and reiterates its call to lift the geographical limitation to the 1951 Geneva Convention relating to the Status of Refugees. It also urges the international community to support Turkey's efforts to improve the reception and integration of refugees;
- 14.4. the Assembly is pleased to note the ratification, on 23 March 2012, of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196). It also takes the opportunity to reiterate its total condemnation of all acts of violence and terrorism. With regard to the terrorist acts related to the PKK, the Assembly reiterates that a political solution must be found to the Kurdish question and calls for the cessation of all violence – a precondition for any negotiations.

15. With regard to pursuing the policy of recognising the existence of national minorities living in Turkey and granting persons belonging to these minorities the right to maintain, develop and express their identity and to apply it in practice:

15.1. the Assembly points out that Turkey refers to the definition of minorities established by the Treaty of Lausanne of 24 July 1923, which considers minorities to be “Turkish nationals belonging to non-Muslim minorities”. In addition, the Assembly notes that only the Jewish, Armenian and Greek Orthodox religious communities are in fact recognised as minorities by Turkey;

15.2. the Assembly welcomes the stepping up of dialogue with the religious communities and the recent measures to eliminate the problems encountered by non-Muslim minorities. The Assembly also notes the contribution made by the minorities to the work on the revision of the constitution, which should ensure equality, in law and in practice, of all Turkish citizens, whatever their religion;

15.3. the Assembly welcomes the amendment of the Foundations Act on 27 August 2011 aimed at facilitating the registration of real estate. It invites the Turkish authorities to finalise the process of return of property to religious communities;

15.4. with reference to the Venice Commission’s opinion of March 2010 on the legal status of religious communities in Turkey and the right of the Orthodox Patriarchy of Istanbul to use the adjective “Ecumenical”, the Assembly is pleased to note the discussions under way on the reopening of the Halki Orthodox seminary on Heybeliada Island;

15.5. while acknowledging that the recent reforms to Turkish legislation have improved relations with the non-Muslim religious communities, the Assembly nevertheless urges Turkey to implement the requirements of paragraph 19.2 of Assembly [Resolution 1704 \(2010\)](#) on freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (eastern Greece) and the recommendations of the Venice Commission included in its Opinion No. 535/2009 adopted in March 2010, in order to guarantee the fundamental right of freedom of religion, particularly through recognising the legal personality of non-Muslim religious communities, which would secure access to justice and protection of property rights;

15.6. in this context, the Assembly urges the launching of a conclusive dialogue with the Alevi community, in particular regarding the recognition of the legal status of the Alevi places of worship (Cem evleri), teaching about the Alevi religion in schools and investigations into confiscated property claims;

15.7. the Assembly also welcomes the substantial progress made since 2004 in terms of promoting the cultural and linguistic rights of the Kurds, including the use of languages other than Turkish in education, the media and election campaigns since 2011, and the option available since 2012 to choose the language used for defence purposes in court. While underlining its unequivocal condemnation of terrorism, the Assembly nevertheless notes that the imprisonment of thousands of Kurds – including local elected representatives and journalists – for alleged terrorism offences is weighing heavily on the settlement of the Kurdish question. The Assembly hopes that the ongoing judicial and constitutional reforms will produce a political solution here;

15.8. the Assembly welcomes the Turkish authorities’ official resumption, in December 2012, of exploratory talks with the PKK leader. It also welcomes the peace process, which it believes is obviously the way forward in ending violence and creating a peaceful environment for the solution of the Kurdish issue. The Assembly is aware that the process is fragile and should be accompanied by the withdrawal of the PKK militants from Turkey. A “Committee of Wise People”, made up of 63 members, has been put in place. The Assembly would like it to be representative of all actors of society and of the different political forces to bring the initiative to a successful conclusion;

15.9. while acknowledging the importance of minority schools for the preservation of the identity of the national minorities, the Assembly nevertheless regrets that the 2007 Private Teaching Establishments Act does not reflect the requirements set forth in paragraph 19.14 of Assembly [Resolution 1704 \(2010\)](#). Therefore, the Assembly urges Turkey to adapt the legislation so as to allow children from non-Muslim minorities, but without Turkish nationality, to be admitted to minority schools. In this regard, the Assembly, while taking into account the reciprocity practice applied in certain cases, notes that ad hoc solutions are not a sufficient remedy for the problem;

15.10. the Assembly notes that Turkey has not sent a reply to [Resolution 1704 \(2010\)](#). It invites Turkey to send a reply to the outstanding questions within two months.

16. With regard to continuing efforts to combat female illiteracy and all forms of violence against women:
- 16.1. the Assembly welcomes the advances in legislation made since 2005 and the reform of the Criminal Code with regard to combating violence against women, namely in terms of legislative provisions and awareness-raising measures. It praises Turkey's action in the preparation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, CETS No. 210). The Assembly notes that Turkey was the first country to ratify it in March 2012 without any reservation and to adopt a corresponding law. It has to be said, however, that violence against women remains a real problem;
- 16.2. the Assembly therefore underlines the need to make sure that the legislation is properly implemented, in particular through training for health-care professionals, police officers, prosecutors and judges, and to punish any breaches or lack of diligence on the part of institutions;
- 16.3. the Assembly encourages Turkey to continue its efforts to combat female illiteracy, which is a major obstacle to women's participation in public and economic life and means a greater risk of girls being exposed to physical, psychological and sexual violence. In this context, the Assembly urges Turkey to combat early and child marriages, in accordance with Assembly [Resolution 1468 \(2005\)](#) on forced marriages and child marriages. It also calls for vigilance concerning the preservation of women's right to abortion;
- 16.4. the Assembly hopes that Turkey will reassert its commitment to strengthening *de facto* gender equality. It welcomes the inclusion of positive discrimination in favour of women in the 2010 constitutional amendments. The Assembly hopes that Turkey will enshrine full gender equality in its future constitution and continue to be a benchmark in the region.
17. In conclusion, the Assembly underlines that Turkey is currently going through a period of political change and that the geopolitical context is particularly sensitive. The Assembly notes, however, that the process of legislative reform and institutional change is ongoing but incomplete as regards some key requirements of [Resolution 1380 \(2004\)](#). This process could lead to the drafting of a new constitution and the definition of a new political system, which the Assembly will assess in due course. It also assures Turkey of its full support in intensifying these democratic reforms.
18. Having regard to the local elections in 2014, the first election of the president of the republic by direct suffrage in 2014 and the parliamentary elections in 2015, the Assembly resolves to follow developments in Turkey and present a comprehensive report on the post-monitoring dialogue with Turkey after those events. It reiterates the willingness of the Council of Europe, in particular the Venice Commission, to support the Turkish authorities' efforts.