



Resolution 2121 (2016)¹

The functioning of democratic institutions in Turkey

Parliamentary Assembly

1. Turkey has been under post-monitoring dialogue with the Parliamentary Assembly since 2004. In its [Resolution 1925 \(2013\)](#) on the post-monitoring dialogue with Turkey, the Assembly encouraged Turkey, a founding member of the Council of Europe and a strategic partner for Europe, to pursue its efforts to align its legislation and practices with Council of Europe standards and fulfil the remaining post-monitoring dialogue requirements. Turkey has continued to face a complex and adverse geopolitical situation with the war in Syria and in the surrounding countries and terrorist attacks on its territory. The ongoing conflict in Syria has brought further massive flows of refugees to Turkey. The Assembly reiterates its appreciation for the outstanding efforts made by the country since 2011 to host nearly 3 million refugees (262 000 of whom are in refugee camps), who are in need of accommodation, education and access to social and medical care. For over five years, Turkey has been implementing an “open door policy” to Syrians fleeing the war environment in their country and, in compliance with its international obligations, has abided by the principle of *non-refoulement*. The Assembly expresses its appreciation for the measures taken by the Turkish authorities to improve the living conditions of Syrian refugees, in particular by allocating work permits since 15 January 2016. The Assembly also values the outstanding financial efforts of the State to address this issue, despite remaining problems, in particular the lack of access to any education for 400 000 Syrian refugee children.

2. In August 2014, the country had its first direct election of the President of the Republic. Parliamentary elections were organised on 7 June 2015, and early parliamentary elections were held on 1 November 2015. While the Justice and Development Party (AKP) secured a majority in parliament in November 2015, the Peoples' Democratic Party (HDP) – a political party with a pro-Kurdish stance, which had previously entered parliament through the election of independent candidates and subsequently formed a party group – entered parliament for the first time as a political party, despite the 10% electoral threshold, which the Assembly has repeatedly asked be substantially lowered.

3. European Union integration remains a strategic objective for Turkey. In the context of the 2016 EU–Turkey Agreement on the migrant crisis, and the implementation of a road map towards liberalisation of the visa regime, the Assembly welcomes the recent ratification of Protocol No. 15 amending the European Convention on Human Rights (CETS No. 213); the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197); and the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167). The Assembly reiterates its belief that the opening of additional chapters of the European Community *acquis*, in particular Chapter 23 (judiciary and fundamental rights) and Chapter 24 (justice, freedom and security), would help consolidate the reform process and reinforce the action undertaken by the Council of Europe for Turkey to align its legislation and practice with Council of Europe standards. Relations between Turkey and the European Union, which should be strengthened, will be of great importance not only for the stability and prosperity of the two sides, but for the entire region.

1. *Assembly debate* on 22 June 2016 (23rd and 24th Sittings) (see [Doc. 14078](#) and addendum, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Ms Ingebjørg Godskesen and Ms Nataša Vučković). *Text adopted by the Assembly* on 22 June 2016 (24th Sitting).



4. Recent developments in Turkey pertaining to freedom of the media and of expression, erosion of the rule of law and the human rights violations in relation to anti-terrorism security operations in south-east Turkey have, however, raised serious questions about the functioning of its democratic institutions. These findings are corroborated by recent reports adopted by several Council of Europe monitoring bodies, such as the European Commission for Democracy through Law (Venice Commission), the Group of States against Corruption (GRECO) and the Office of the Commissioner for Human Rights, which have highlighted concurring and serious concerns that Turkey should address without further delay.

5. The disclosure of corruption cases on 17 and 25 December 2013, allegedly involving four ministers and the son of the then Prime Minister Mr Recep Tayyip Erdoğan, marked the beginning of changes in domestic political processes, in particular the adoption of restrictive legislation (amendments to the Criminal Code and the Code of Criminal Procedure in 2014 and the Internal Security Act of March 2015) and the executive's increased control over the judiciary (amendments to the law on the High Council for Judges and Prosecutors in 2014), the creation of special courts ("criminal peace judgeships") in June 2014 and the adoption of Law No. 5651 on the internet in March 2015, increasing the Turkish Telecommunications Directorate's (TIB) capacity to block websites.

6. The Assembly regrets that the peace talks to address the Kurdish issue collapsed in summer 2015, putting at stake the process of enlarging the cultural and linguistic rights of the Kurdish community, initiated and advanced in the preceding period, including by its political representation in parliament after the 2015 parliamentary and early parliamentary elections. The breakdown of the peace talks in April 2015 led to increased violence and terrorist attacks by July 2015, bomb attacks by the PKK and retaliation measures by the Turkish security forces, including curfews imposed since December 2015 in several districts in south-east Turkey in order to carry out security operations.

7. In this context, the Assembly is very concerned about the decision of 20 May 2016 by the Turkish Grand National Assembly to strip a large number of parliamentarians of their immunity from prosecution by temporarily suspending Article 83 (first sentence) of the constitution, thus ruling out a case-by-case examination based on the facts of the case. Even though MPs from all political groups are concerned, the Assembly notes with concern that this decision disproportionately affects the opposition parties, in particular the HDP, many of whose members have been charged for their statements under the anti-terror law (No. 3713). The Assembly, reiterating its call in [Resolution 1925 \(2013\)](#), urges the Turkish Government to revise the legislation and practices on terrorism in line with European standards, by narrowing the scope of its definition and introducing a criterion of proportionality.

8. The Assembly recalls that parliamentary immunity should first and foremost enable elected representatives to work and express themselves without fear of harassment by the executive, the courts or political opponents. It is thus worried about the potential political consequences of this decision, which could damage parliamentary life and undermine the healthy political environment that Turkey needs to tackle today's challenges, including terrorist threats and the urgent need to solve the Kurdish issue by political and peaceful means. As there are allegations about the lack of independence of the judiciary, the Assembly urges the Turkish authorities to ensure that the cases brought against parliamentarians are handled in due compliance with Council of Europe standards on fair proceedings and trials and respect for freedom of expression, which Turkey has pledged to uphold.

9. In recent years, Turkey has faced massive and repeated terrorist attacks perpetrated by the so-called "Islamic State of Iraq and the Levant" (ISIL/Daesh), the "Kurdistan Workers' Party" (PKK) and the PKK-affiliated "Kurdistan Freedom Hawks" (TAK). These attacks have caused hundreds of casualties in Ankara, Suruç, Istanbul, Bursa or Diyarbakır. In addition, the border city of Kilis has been targeted by shelling from Syrian territory. The Assembly unequivocally condemns these attacks and all terrorist action and violence perpetrated by the PKK, Daesh or any other organisation, which can on no account be tolerated. The Assembly stresses Turkey's right and duty to fight terrorism and address security issues in order to protect its citizens. It recalls, however, that those security operations must be carried out in line with international law, and in accordance with the principle of proportionality and necessity. The right balance between security and individual liberties must be found in Turkey.

10. Security operations have dramatically intensified in south-east Turkey since August 2015. Despite assurances by the Turkish authorities to keep a balance between freedom and security in the police and military operations in south-east Turkey, so as to protect citizens' right to life, which is the most fundamental right, and to ensure public security, the Assembly is very worried about the human consequences of the unprecedented months-long, round-the-clock curfews imposed in 22 districts, including Sur, Silvan (province of Diyarbakır), Nusaybin, Dargeçit (province of Mardin), Sırnak Centre, Cizre, Silopi, Idil (province of Sırnak) and Yüksekova (province of Hakkari). These curfews affect 1.6 million people and have resulted in the

displacement of at least 355 000 people and in restrictions in access to water, electricity, education and health care, including emergency medical care, which has proved fatal for many residents. At least 338 civilians were reported dead by the Human Rights Foundation of Turkey as at 20 April 2016. According to the Ministry of the Interior, between July 2015 and 13 May 2016, these operations resulted in 458 security officers being killed and 3 321 wounded, while the Chief of General Staff of the Turkish Army announced that 2 583 PKK members had been killed inside Turkish territory and 2 366 others in Iraq during air strikes as at 23 May 2016.

11. As explicitly stated in the Venice Commission's opinion in response to the request by the Chair of the Monitoring Committee of the Assembly, "the curfews imposed since August 2015 have not been based on the constitutional and legislative framework which specifically governs the use of exceptional measures in Turkey, including curfew. To comply with this framework, any curfew measure should be associated with emergency rule, as provided for in Articles 119 to 122 of the Constitution". According to those articles of the constitution, curfews can be declared only within the context of martial law or emergency state rule; both require a parliamentary decision for implementation, which was never taken. The Assembly expects Turkey to abide by its own laws and amend its legal framework in line with the Venice Commission opinion on this issue, dated 13 June 2016.

12. Despite efforts deployed by the Turkish authorities to provide the displaced persons with food and accommodation, temporary jobs in State agencies and social aid, including compensation for lost income, the future of these people is uncertain. It seems that large parts of the areas under curfew were destroyed during and after the curfews, and during the subsequent clearance operations to remove buried explosive devices. The situation is especially regrettable in the ancient part of Sur, which was classified as a UNESCO world cultural heritage site in 2015.

13. There have been allegations of serious human rights violations, notably in Cizre, which require due and effective investigation, including the collection of evidence before the areas are cleared. The Assembly believes that access to information through the increased presence of the media and accurate and unbiased media coverage of the situation in south-east Turkey, in addition to transparency of the procedures and the prosecution of those who committed crimes or abuses of human rights, would contribute to restoring confidence. The Assembly notes that Turkey is one of the 116 countries to offer an open invitation to the Special Procedures mechanism of the United Nations Human Rights Council since 2001. The Assembly welcomes the recent visits to south-east Turkey of the United Nations Working Group on Enforced or Involuntary Disappearances in March 2016 and of the Council of Europe Commissioner for Human Rights Mr Nils Muižnieks in April 2016, and the announced visit of representatives of the United Nations High Commissioner for Human Rights. It invites Turkey to consider setting up a fact-finding team, including independent experts and public figures trusted by all sides of Turkish society, to observe the human rights situation in the affected districts and publish credible reports. The Assembly further encourages Turkey to strengthen national independent human rights bodies so as to increase citizens' confidence in, and use of, these mechanisms.

14. The Assembly also expresses deep concern over the deaths of four civilians (Hüseyin Paksoy (16 years old), Serhat Altun, Cihan Karaman and Orhan Tunç) after being seriously wounded during the curfew in Cizre. Defying interim measures by the European Court of Human Rights, the Turkish Government denied these civilians access to medical aid. The Assembly notes that Ramazan Demir, the lawyer who appealed to the Court for interim measures to transfer these and many other wounded civilians to hospitals, was arrested on 4 June 2016.

15. The Assembly notes that administrative investigations have been initiated against 63 security agents due to their misconduct during the operations in south-east Turkey. It expects the Turkish authorities to carry out effective investigations into all other allegations of misconduct by security personnel during these operations. Nevertheless, the Assembly is appalled by the preparations for new retroactive legislation, already adopted by the parliamentary National Defence Commission, which allows legal prosecution of human rights violations committed by military personnel with the permission of their superiors and empowers the military with the authority to conduct security operations bypassing the jurisdiction of the courts under the pretext of urgency. The Assembly is deeply concerned that such developments could further infringe the rule of law.

16. The adoption by the government of an emergency decree on expropriation on 21 March 2016 related to Sur (Diyarbakır) has raised concern among displaced persons. The lack of information about legal procedures, future urban construction projects and the right of displaced persons to return to live in their neighbourhoods raises many questions. The lack of transparent information fuels fears and insecurity among those concerned. The Assembly expects Turkey to take due care of the needs of the local population and

ensure fair compensation for the losses suffered by civilians in case of expropriation procedures, which should be conducted in line with Council of Europe standards while taking account of property rights and their safeguards, as guaranteed by the European Convention on Human Rights (the Convention, ETS No. 5).

17. The Assembly is also deeply concerned that the tensions and clashes could spread to other parts of Turkey. It urges the PKK to stop its terrorist attacks and lay down its arms. The Assembly also urges the Turkish Government to use political means to stop the escalation of violence. The Turkish Parliament, which could provide a political forum for a peaceful resolution of the conflict, should consider putting in place mechanisms to reactivate the peace process, including a joint, cross-party parliamentary commission, or a “truth and reconciliation” commission that would allow for a fresh impetus and the healing of past traumas. Political solutions need to be discussed in parliament by all the political forces involved. A fair system of parliamentary inviolability – which excludes statements inciting hatred, violence or the destruction of democratic rights and freedoms – is thus necessary to ensure that issues of public interest can be debated by elected representatives without fear of executive or judicial interference.

18. The Assembly is also worried about the arrest in south-east Turkey of 21 democratically elected Kurdish mayors and the dismissal of 31 others on controversial charges of “aiding and abetting a terrorist organisation”, which has further damaged the already weak local governments in these conflict areas. The Assembly calls on all political leaders at central and local levels to adopt a more inclusive and tolerant approach to resolve existing problems through dialogue and shared responsibility. Democratic political parties should condemn and take a firm stance against terrorism in full respect of human rights, the rule of law and Council of Europe standards.

19. The announced preparation of legislation which would empower governors to appoint new mayors also raises questions with regard to the respect of the provisions of the European Charter of Local Self-Government (ETS No. 122), which Turkey ratified in 1992. The Assembly reiterates its call for Turkey, in line with the post-monitoring dialogue requirement, to further pursue decentralisation in full respect of the territorial integrity of the country and to ratify the European Charter for Regional or Minority Languages (ETS No. 148) and the Framework Convention for the Protection of National Minorities (ETS No. 157), which could also contribute to restoring confidence among communities.

20. With regard to freedom of expression and of the media, the Assembly shares the concerns of the Council of Europe Commissioner for Human Rights about the alarming scale of recourse to an overly wide notion of terrorism to punish non-violent statements and criminalisation of any message that merely coincides with the perceived interests of a terrorist organisation. The Assembly urges Turkey to fully comply with its obligations under all the human rights treaties it has ratified. The Assembly remains concerned about the extensive interpretation of the anti-terror law, which contradicts Council of Europe standards. It thus reiterates the call it made in 2013 for Turkey to further review its definitions of offences related to terrorism and membership of a criminal organisation, in line with the Action Plan for the Prevention of Violations of the European Convention on Human Rights, adopted by Turkey in February 2014.

21. Recalling its [Resolution 2035 \(2015\)](#) on the protection of the safety of journalists and of media freedom in Europe, the Assembly is concerned about the latest developments in the areas of freedom of expression and freedom of the media, which should be understood in the light of the case law of the European Court of Human Rights with respect to Article 10 of the Convention. There are concerns that changes in recent years in ownership of media companies serving business interests were motivated by, and have resulted in, significant political influence on the media.

22. The Assembly believes that the abusive application of Article 299 (Insulting the President of the Republic) – there were about 2 000 cases in two years against journalists and academics, but also ordinary citizens – is leading to an undue restriction of freedom of expression, considering the case law of the European Court of Human Rights with respect to Article 10 of the Convention. It recalls in this respect that defamation cases can be handled under civil law procedures or under the general provisions of Article 125 of the Criminal Code on insult.

23. The Assembly condemns the call by the Turkish Ministry for Foreign Affairs for its citizens residing abroad to report cases of disrespect to the President of Turkey with a view to filing cases in foreign countries.

24. The Assembly is deeply concerned about the prosecution of investigative journalists following their investigations into topics of general interest. It should be possible to conduct domestic and foreign investigative journalism on all topics, and in all regions. The Assembly is appalled by the harsh prison sentences issued against these journalists. It expects the judiciary to take future decisions in the light of the well-established case law of the European Court of Human Rights, and the authorities to harmonise the legislation and its interpretation by domestic courts with Council of Europe standards. In this respect, the

Assembly praises the important role played by the Constitutional Court of Turkey to secure freedom of expression and of the media, and individual applications to the Constitutional Court, which remain an effective mechanism to protect rights covered by the European Convention on Human Rights.

25. The prosecution of academics who signed a peace declaration calling for an end to the military campaign in south-east Turkey and accusing the government of breaching international law ("We shall not be part of this crime!") is another example that raises serious questions about the scope of the anti-terror law. Of the initial 1 128 signatories of the declaration, 495 academics are under investigation. On 14 January 2016, the police reportedly briefly detained 27 of them. The Council of Europe Secretary General issued, on 15 January 2016, a statement expressing his concern about these arrests. Four petitioners (Esra Mungan, Muzaffer Kaya, Kivanç Ersoy and Meral Camcı) were arrested and detained on 16 March 2016 on charges of "terrorist propaganda" (Article 7/2 of the anti-terror law). The prosecutor in the first hearing decided to drop the charges of terrorism and considered launching an investigation under Article 301 of the Criminal Code (insulting the State) – subject to the authorisation of the minister of justice. In the meantime, the four academics were released on 22 April 2016. Disciplinary and criminal proceedings had been launched against other petitioners for a statement calling for an end to the violence, which, for the Council of Europe Commissioner for Human Rights, fell within the boundaries of free speech, whether one agreed with their message or not.

26. The Assembly remains concerned about the large number of blocked websites (110 000) and Twitter takedown requests. Blocking websites appears to be a highly disproportionate measure which impedes the public's right to have access to, and to be provided with, information on the internet, and negatively affects media pluralism and free expression. The Assembly urges Turkey to upgrade its legal framework in line with the European Convention on Human Rights, in particular to review Law No. 5651 on the internet, in line with the recommendations of the Venice Commission (to be adopted in June 2016) on the regulation of publications on the internet and combating crimes committed by means of such publications.

27. The Assembly recalls that journalists and others who work in the media make an essential contribution to public debate and the opinion-making processes needed in a democratic society. Council of Europe member States have a positive obligation to ensure freedom of expression, protection of journalists and access to information, and to create the conditions to enable them to act as public or social watchdogs and inform the public on matters of general and public interest. Too many measures currently taken by the authorities, including investigations, prosecutions and the interpretation of the Criminal Code by domestic courts, have a chilling effect on the media. Attacks on journalists and media outlets, seizure of media holdings (which undermines property rights), pressure on journalists and punishment of journalists doing their job lead to self-censorship. The Assembly therefore urges Turkey to guarantee a favourable environment for freedom of expression as guaranteed by Article 10 of the Convention and to implement Recommendation CM/Rec(2016)4 of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors.

28. The Assembly believes that further improving the legal framework to protect the freedom of expression would help the country to overcome current restrictions. In the light of the March 2016 opinion of the Venice Commission, the Assembly invites Turkey to:

28.1. repeal Article 299 of the Criminal Code (Insulting the President of the Republic);

28.2. repeal Article 301 (Degrading the Turkish Nation, the State of the Turkish Republic, the Organs and Institutions of the State) or amend it to ensure that all the notions used in it are clear, specific and predictable, and that its application is limited to statements inciting violence and hatred and that its interpretation by the domestic courts is in line with the case law of the European Court of Human Rights;

28.3. limit the use of Article 216 and resort to – proportionate – criminal sanctions only in cases of open incitement to violence, armed resistance or uprising, and not to punish harsh criticism against government policies. Moreover, it should only be applied in extreme cases of religious insults that intentionally and severely disturb public order, or call for public violence, and not for mere blasphemy;

28.4. ensure a strict interpretation of Article 314 (Membership of an Armed Organisation) so as to limit it to cases which do not involve the exercise of the rights to freedom of expression and assembly, in compliance with the established criterion in the case law of the Court of Cassation that acts attributed to a defendant should show "in their continuity, diversity and intensity" his or her "organic relationship" with an armed organisation or whether his or her acts may be considered as committed knowingly and wilfully within the "hierarchical structure" of the organisation.

29. The Assembly encourages the Turkish authorities to address these proposals in the framework of the working group on freedom of expression created in 2016 by the Ministry of Justice and the Council of Europe, as part of Turkey's Action Plan for the Prevention of Violations of the European Convention on Human Rights. It expects the necessary amendments to the legislation to be prepared and adopted in consultation with the Council of Europe.

30. It urges Turkey to further co-operate with the Council of Europe and implement the recommendations by GRECO when carrying out the judicial reform strategy, which aims at establishing a more reliable justice system, executing judicial services in an independent and impartial way and concluding trials within a reasonable time. It welcomes, as a first step, the adoption of the Action Plan on Enhancing Transparency and Strengthening the Fight Against Corruption (2016-2019) on 30 April 2016 to address these issues.

31. With regard to respect for the rule of law, the Assembly is very concerned about the recent statements made by the President of the Republic and ministers declaring they would not respect a decision of the Constitutional Court on the unlawfulness of the pretrial detention of investigative journalists, which was based on the case law of the European Convention on Human Rights. The Assembly urges Turkish officials to refrain from unduly interfering in the judiciary and challenging the rule of law. It appreciates, however, that all decisions of the Constitutional Court resulting from individual applications have been implemented.

32. Independence of the judiciary is guaranteed by the constitution. A number of judicial package reforms have been launched since the constitutional referendum of 2010. They provide for stronger involvement of elected judges and prosecutors in the High Council of Judges and Prosecutors, which is a positive move. However, the recent developments and amendments to the law on the High Council of Judges and Prosecutors in 2014 raised the issue of the lack of independence of the judiciary and undue interference by the executive.

33. GRECO noted in its March 2016 report that the appointment of the elected members of the High Council of Judges and Prosecutors in 2014, the use of disciplinary proceedings, including the dismissal of a number of members of the judiciary, and the potential influence by the executive within this body, have further triggered the debate concerning the role and the independence of the High Council of Judges and Prosecutors, which seriously undermines public trust in judicial institutions. The Assembly shares these concerns and calls on Turkey to:

33.1. implement GRECO's recommendations, in particular to strengthen the security of tenure of judges and to ensure that evaluations of the performances of judges and prosecutors, as well as disciplinary procedures against them, are free from undue influence;

33.2. further revise the law on the High Council of Judges and Prosecutors to reduce the influence of the executive within the council.

34. The Assembly also notes that in 2014 the fight against terrorism was extended to the Gülen Movement (the so-called "parallel State structure"), a former ally of the AKP. The purge to clear the State institutions of alleged Gülenist followers raises questions in respect of procedural guarantees. This move particularly affected the judicial system, where the large number of transfers, arrests and detentions of judges and prosecutors could have a deterrent effect on the members of the judiciary.

35. Finally, while the Assembly welcomes the establishment of regional courts, it notes that the draft law on the restructuring of the Court of Cassation and Council of State raises questions. It therefore asks the Venice Commission for an opinion on this draft law and the constitutional aspects of the appointments of members of high judicial bodies. The Assembly moreover invites the relevant authorities to seek the opinion of the Turkish Constitutional Court and also to ensure that the adopted law takes into account the recommendations of the Venice Commission.

36. The Assembly concludes that the latest developments pertaining to freedom of the media and of expression, erosion of the rule of law and the human rights violations in relation to the anti-terrorism security operations in south-east Turkey constitute a threat to the functioning of democratic institutions of the country and its commitments to its obligations towards the Council of Europe. The Assembly will continue to follow closely the issues raised in this resolution in particular the situation in south-east Turkey with respect to human rights, on the basis of information provided by its Monitoring Committee. The Assembly recalls that the Turkish authorities are invited to fulfil the remaining requirements pertaining to the post-monitoring dialogue with the Parliamentary Assembly. It reiterates the readiness of the Council of Europe, in particular the Venice Commission, to support the Turkish authorities' efforts in this respect. The Assembly notes that progress made on all 12 items of the post-monitoring dialogue, including on the items discussed in the present resolution, will be assessed in the post-monitoring report to be presented in 2017.