Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 15171
19 October 2020

New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
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Summary

The Monitoring Committee strongly condemns the recent crackdown on political opposition and civil dissent in Turkey, which infringes the fundamental rights of local politicians and (former) members of parliament from the opposition, lawyers, journalists and civil society activists. The lifting of parliamentary immunity of MPs on terror-related charges and the dismissal and replacement of dozens of mayors from the opposition after the March 2019 elections disregard the voters' will and further jeopardise the functioning of democratic institutions. In addition, the recent arrest of lawyers and revised Law on Attorneyship undermine the effective administration of justice.

Recalling previous PACE resolutions, the Committee calls on Turkey to put an end to laws and practices that contravene democratic standards, revise its legislation and constitutional framework in order to ensure the separation of powers, restore freedom of speech and media freedom, restrict the interpretation of its anti-terror legislation, implement the judgments of the European Court of Human Rights, investigate credible allegations of torture and ill-treatment, implement CPT recommendations and seek the Council of Europe's expertise to bring its election legislation into line with European standards. The Committee thus calls on Turkey to secure conditions allowing its vibrant civil and political society, genuinely committed to democracy, to act and speak out freely and safely.

1. Reference to committee: Bureau decision, Reference 4542 of 12 October 2020.

Contents **Page**

A. Draft resolution 3
B. Explanatory memorandum by Mr Thomas Hammarberg and Mr John Howell, co-rapporteurs 7
1. Introduction 7
2. Crackdown on opposition politicians and elected representatives, at national and local level, and the functioning of democratic institutions 7
3. Rule of law and functioning of the justice system 10
3.1. The situation of lawyers 10
3.2. Revision of the Attorneyship Law 10
3.3. Lack of separation of powers 11
3.4. Announced reforms of the justice system and expectations 11
4. Crackdown on human rights defenders in the context of the protection of human rights 13
4.1. Situation of human rights defenders and civil society activists 13
4.2. Freedom of expression and media 14
4.3. Allegations of torture and ill-treatment 15
4.4. Implementation of the judgments of the European Court of Human Rights 16
4.5. The long-lasting effects of the state of emergency. 17
5. Concluding remarks 17

A. Draft resolution[2]

1. In January 2019, the Parliamentary Assembly held an urgent debate on "The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?". In its Resolution 2260 (2019), it expressed its concerns about the deterioration of the situation regarding the rule of law, democracy and human rights in Turkey. Worrying developments in this regard included the stripping of immunity of 154 parliamentarians in 2016, restricted freedom of expression and media, reduced checks and balances in the new presidential system and unfair election processes which have increasingly diminished, obstructed or undermined the ability of opposition politicians to exercise their rights and fulfil their democratic roles, and resulted in (former) opposition deputies being prosecuted, detained or convicted.

2. Unfortunately, the overall situation has not improved since 2019. In the past months there were new crackdowns on political opposition and civil dissent, which the Assembly strongly condemns. Investigations and prosecutions targeted local politicians, members and former members of parliament, members of opposition political parties and lawyers. Continued undue pressure was exerted on journalists, civil society activists and other groups in society, such as doctors, during the management of the Covid-19 pandemic. Such crackdowns also have a regrettable chilling effect on women's participation in political and social life. These adverse developments need to be considered in the broader context of deteriorating rule of law, democracy and human rights that, in 2017, resulted in the re-opening of the monitoring procedure for Turkey. Issues of concern identified in the Assembly's Resolution 2156 (2017) included repeated violations of freedom of expression and of the media, the detention of parliamentarians and journalists, the lack of independence of the justice system, the situation in southeast Turkey and the questions of separation of powers and checks and balances, which had led to a serious deterioration of the functioning of democratic institutions.

3. Since 2017, important political developments have taken place in the country: the constitution was amended by the 2017 referendum by 51% of the voters and a presidential system was established; early presidential and parliamentary elections were organised on 24 June 2018; the state of emergency installed following the July 2016 failed coup d'état was lifted in July 2018; local elections were held in March 2019. At the same time, subsequent legislation has further restricted fundamental rights and prevented significant progress from being reached during this period. In addition, the will of the voters was disregarded in many municipalities. As foreseen by the European Commission for Democracy through Law (Venice Commission) in its 2017 Opinion, the presidential system has weakened the separation of powers, checks and balances and parliamentary oversight. Increased political interference in the justice system has resulted in weakened protection of human rights.

4. The Assembly notes that many issues identified by itself, the Commissioner for Human Rights and the Venice Commission remain a matter of concern in 2020. The Assembly calls on the Turkish authorities to seriously address the roots of the problems and to comply with their obligations towards the Council of Europe. It encourages the Turkish authorities to take meaningful steps in improving their standards in the field of democracy, rule of law and human rights

5. Concerning the functioning of democratic institutions:

5.1. the Assembly deplores that the restrictions of the rights of opposition politicians highlighted in Resolution 2260 (2019) have not been lifted. Following the local elections in March 2019, elected mayors from opposition parties were prevented from taking their seats, removed, prosecuted and detained on terrorism-related charges. The Assembly strongly condemns the dismissal or removal of elected representatives, including 48 out of 65 mayors (including those of the Metropolitan Municipalities of Diyarbakır, Mardin, and Van) belonging to the Peoples' Democratic Party (HDP) and one mayor in the Urla district in Izmir from the Republican People's Party (CHP) – and their replacement by government-appointed trustees, in contradiction with the European Charter of Local Self-Government (ETS No. 122). Moreover, the Assembly condemns the recent mass arrest warrants issued against HDP members, including the co-mayors of Kars and former deputies, for their alleged involvement in the October 2014 Kobane protests violence;

2. Draft resolution adopted unanimously by the Committee on 16 October 2020.

5.2. the Assembly therefore urges the Turkish authorities to put an end to these practices, which clearly violate democratic principles, to review Turkey's legislation in accordance with Resolution 450 (2019) and Recommendation 439 (2019) of the Congress of local and regional authorities as well as the Venice Commission Opinions of 2017 and 2020, and to make the necessary legislative changes, and in particular to:

5.2.1. recognise as elected the six mayoral candidates who received the highest number of votes during the local elections of 31 March 2019 in the district municipalities of Diyarbakır, Erzurum, Kars and Van but were denied the mayoral mandate by decision of the Supreme Election Council of 11 April 2019;

5.2.2. reinstate the mayors of the metropolitan cities of Diyarbakır, Mardin, Van and all other cities, districts and towns who were suspended by decision of the Ministry of the Interior or implement an alternative solution which respects the will of the voters;

5.3. furthermore, the Assembly calls on the Turkish authorities to put an end to the repression of opposition political parties and to:

5.3.1. create the conditions necessary for a proper functioning of representative democracy, with political parties able to operate in a free and safe environment, guarantee parliamentary immunity and ensure that politicians, including from the opposition, are able to express themselves and exercise their political mandates;

5.3.2. revise the electoral legislation in accordance with the recommendations of the Venice Commission to ensure that elections are not only free, but also fair and conducted in an environment conducive to freedom of expression and freedom of the media;

5.4. the Assembly calls on the Turkish authorities to fully protect parliamentary immunity in accordance with Assembly Resolution 1601 (2008) "Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament" and the standards of the Venice Commission. Further to the decision of Turkey's Constitutional Court of 17 September 2020, the Assembly expects a swift re-trial of Mr Enis Berberoğlu to redress the violations of his parliamentary rights found by the Constitutional Court and enable him, without further delay, to return to parliament and exercise his parliamentary mandate with due parliamentary immunity;

5.5. the Assembly strongly encourages the Turkish authorities to seek the expertise of the Council of Europe to launch the reforms needed to bring election legislation into line with the Council of Europe and the Office for Democratic Institutions and Human Rights (ODIHR) recommendations, including the lowering of the 10% electoral threshold, the drafting of a code of ethics for parliamentarians and the implementation of other 2019 recommendations The of the Group of States against Corruption (GRECO) pertaining to the funding of political parties and the prevention of corruption among MPs. These legislative changes should contribute to ensuring a stronger level playing field and truly competitive elections.

6. Concerning the rule of law:

6.1. the Assembly condemns the recent arrests of lawyers and the criminalisation of their activities. The Assembly recalls that lawyers play a key role in the implementation of rule of law standards and the effective administration of justice. They must therefore be able to exercise their profession independently and safely. The Assembly deplores that lawyers detained on terror-related charges felt forced to resort to hunger strikes, at the cost of their lives, to demand a fair trial. In this context, the Assembly is concerned by the adoption of the amendments to the Attorneyship Law of 1969 in July 2020 without proper consultation, which does not comply with Council of Europe standards and undermines the independence of the bar associations;

6.2. the Assembly therefore calls on the Turkish authorities to:

6.2.1. put an end to all forms of reprisals against lawyers, including judicial harassment and arbitrary detention;

6.2.2. in light of the October 2020 opinion of the Venice Commission, repeal the 2020 amendments to the Attorneyship Law of 1969 which could lead to further politicisation of the legal profession, and work out, if need be, alternative solutions ensuring a meaningful involvement of the community of Turkish attorneys in the discussions;

6.2.3. authorise, without further delay, the organisation of the general assembly of lawyers to allow the regular holding of elections of the Union of the Turkish bar associations;

6.3. as highlighted again in the February 2020 report of the Council of Europe Commissioner for Human Rights, the functioning of the justice system is a serious area of concern and many issues remain to be addressed, including the lack of independence of the judiciary and the insufficient procedural safeguards and guarantees to ensure fair trials. The Assembly expects the Turkish authorities to implement the reform strategy adopted in May 2019 with genuine political will to effectively improve the independence, impartiality and transparency of the judiciary, and to pursue as an objective, as stated by the authorities, the strengthening of freedom of expression and the media. In addition, the Assembly calls on the revision of the composition of the Council of judges and prosecutors and the constitutional framework, which does not secure the separation of powers, as indicated by the Venice Commission in its 2017 Opinion.

7. Concerning the respect of human rights:

7.1. the Assembly deplores the ongoing violations of freedom of expression and the media. The Assembly is fully aware of the terrorist threats that Turkey has been facing in a turbulent region. It recalls, however, that the Turkish authorities must adhere to the principles of rule of law and human rights standards, which require any interference with basic human rights to be defined in law, necessary in a democratic society and strictly proportionate to the aim pursued;

7.2. in this context, the Assembly welcomes the intention expressed by the Turkish authorities to expand freedom of expression, notably by drafting a new Human Rights Action Plan, and the continuous frank and constructive dialogue and co-operation established between the Council of Europe and the Turkish authorities in this respect. However, the Assembly expects meaningful changes in legal practice and the implementation of legislation as a result of these well-intentioned developments;

7.3. the Assembly welcomes the recent decisions taken by the Constitutional Court of Turkey related to the release of detained parliamentarians, the release and acquittal of “Academics of Peace”, the lifting of the access block to Wikipedia, which has been in place since April 2017. In these cases, the Constitutional Court found violations of freedom of expression. The Assembly hopes that these rulings by the Constitutional Court, alongside the well-established case law of the European Court of Human Rights, will guide the daily work of judges and prosecutors. The Assembly is concerned, however, by the fact that the authority of the Constitutional Court, which plays an essential role for the implementation of the European Court of Human Rights case law at national level, is being openly challenged in statements by Turkish officials. It calls on the Turkish authorities to refrain from such statements which could undermine the work of the Constitutional Court and expects the lower courts to abide by the rulings of the Constitutional Court;

7.4. the Assembly expects that the reforms undertaken in the field of justice and human rights will lead – as requested by several Council of Europe bodies – to the amendment of the Anti-terror law so as to ensure that its implementation and interpretation complies with the European Convention on Human Rights (ETS No. 5, the Convention), as interpreted by the European Court of Human Rights, and to repeal, amend and/or ensure strict interpretation of a number of legal provisions from the Penal Code which, according to the Venice Commission, contain excessive sanctions and are too widely applied against freedom of expression and information. These provisions include Article 299 (Insulting the President of the Republic), Article 301 (Degrading the Turkish Nation, the State of the Turkish Republic, the Organs and Institutions of the State), Article 216 (incitement to violence, armed resistance or uprising) and Article 314 (Membership of an Armed Organisation);

7.5. the Assembly calls on the Turkish authorities to implement paragraph 9.5 of its Resolution 2317 (2020) “Threats to media freedom and journalists’ security in Europe”. In this context, the Assembly is worried that the law on social media adopted on 28 July 2020 will lead to further restriction of freedom of expression in social media and prevent Turkish people from having access to alternative sources of information;

7.6. concerning the issue of pre-trial detention, the Assembly notes that two judgments of the European Court of Human Rights in the cases of Selahattin Demirtaş v. Turkey (No. 2) (Chamber ruling, not final) and Kavala vs. Turkey found a violation of Article 18 in conjunction with Article 5.1 of the Convention (right to liberty and security of person). The Assembly calls on Turkish authorities to fully implement both judgements. It also urges Turkey, in line with the decisions of the Committee of Ministers of 1st and 29 September 2020, to immediately release Osman Kavala and drop the new charges brought against him which amount to judicial harassment;

7.7. the Assembly is deeply concerned by credible allegations of torture in police and detention centres and expects the Turkish authorities to respond promptly to these allegations. While welcoming the publication, in August 2020, of two reports prepared in 2017 and 2019 by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Assembly reiterates its call on the Turkish authorities to authorise, without any further delay, the publication of the 2016 CPT report and to implement all remaining CPT recommendations, including those pertaining to the situation of Mr Abdullah Öcalan and other prisoners who remain cut off from contacts with the outside world at the İmralı F-Type High-Security Closed Prison, as already referred to in its Resolution 2260 (2019);

7.8. the Assembly remains deeply concerned by the situation of human rights defenders, as well as the situation facing academics, journalists and lawyers, whose fundamental rights have been infringed, especially after the failed coup d'état. It calls on the Turkish authorities to put an end to the judicial harassment of human rights defenders. It remains particularly concerned after the conviction of six human rights defenders, including Taner Kılıç, former Head of Amnesty International Turkey, in the "Büyükada trial". These prison sentences are yet another blow to civil society, and seriously undermine, if not contradict, the displayed intention of the authorities to expand freedom of expression;

7.9. the Assembly invites the Turkish authorities to review Law No. 7145 on the "Amendment to Some Laws and Emergency Draft Laws" which was adopted after the lifting of the 2016 state of emergency, and to ease the continued restrictive effects on fundamental rights, including freedom of expression and assembly. In this context, the Assembly will further assess the consequences of the emergency decree-laws and subsequent legislation, including the judicial review process of dismissed people and legal entities, which were made possible after the establishment of the Inquiry commission in 2017;

7.10. finally, the Assembly deeply regrets that the issue of the death penalty, which is incompatible with membership of the Council of Europe, has surfaced again in public discussion. It urges Turkish politicians and the Turkish Grand National Assembly to refrain from any move that could lead to the reintroduction of capital punishment.

8. The Assembly remains confident of the ability of the Turkish people and authorities to address and redress the deficiencies in the field of democracy, human rights and rule of law, provided there is a strong and genuine political will to do so. The Assembly praises Turkey's vibrant civil and political society, which is genuinely committed to democracy, as demonstrated again during the March 2019 local elections, which were marked by a high turn-out. The Assembly therefore invites the Turkish authorities to create a climate that allows all stakeholders to be able to act and speak out freely and safely, in the limits set by the European Convention on human rights, and to refrain from systematic prosecution and investigation of dissenting voices and rather protect fundamental freedoms.

9. The Assembly also urges the Turkish authorities to consolidate institutions and mechanisms which could protect fundamental rights. It calls on Turkey to remain committed to the full implementation of the Council of Europe Convention to prevent and combat violence against women and domestic violence (CETS No. 210, the Istanbul Convention) and refrain from any negative stance or piece of legislation which would result in condoning violence against women and girls or impunity for the perpetrators of such violence, infringe women's fundamental rights or harm their participation in political and social life. It also invites Turkey to strengthen the Ombudsman's office or the Human Rights and Equality Institution of Turkey which could and should serve to protect the fundamental freedoms of the Turkish people.

10. The Assembly notes that serious concerns are currently raised with regard to the compliance of Turkey's external actions, including military operations, with Council of Europe obligations, including the European Convention on Human Rights. The Assembly thus resolves to include this issue in its next reports as part of the monitoring procedure.

11. The Assembly also resolves, in the framework of the monitoring procedure for Turkey, to follow the developments in the country concerning democracy, rule of law and human rights, to engage in a meaningful and constructive dialogue with the authorities and to assess progress made in a comprehensive monitoring report to be presented in the course of a future part-session of the Assembly.

B. Explanatory memorandum by Mr Thomas Hammarberg and Mr John Howell, co-rapporteurs

1. Introduction

1. The present report derives from a request for an urgent debate entitled **"**New crackdown on political and social opposition in Turkey: how to safeguard human rights, fundamental freedoms and the protection of Turkish citizens by the European Court of Human Rights?" tabled on behalf of the Group of the Unified European Left (UEL), by Mr Tiny Kox (UEL, the Netherlands). Following the decision of the Standing Committee of 12 October 2020 to hold an urgent debate on this topic and its referral for a report to the Committee on Honouring of Obligations and Commitments by Council of Europe member States (Monitoring Committee), as co-rapporteurs on Turkey and in accordance with the established practice we were confirmed as rapporteurs for this report under urgent procedure by the Committee at its meeting of 16 October 2020. The Monitoring Committee also approved, at this meeting, the new title we had proposed for this report.

2. We were appointed co-rapporteurs for the monitoring of Turkey respectively in June 2019 and January 2020. Owing to the Covid-19 pandemic, we have not yet had the opportunity to pay a fact-finding visit to the country. This report will therefore rely on existing authoritative sources of information, opinions and reports of the European Commission for Democracy through Law (Venice Commission) and reports from international NGOs and national civil society organisations as well as exchanges of views organised in the Monitoring Committee. Our texts of reference include notably Resolution 2121 (2016) and Resolution 2156 (2017) of the Parliamentary Assembly on the "Functioning of democratic institutions in Turkey" and Resolution 2260 (2019) adopted under urgent procedure, on "The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?".

3. This report under urgent procedure does not allow for a comprehensive analysis of all relevant issues related to human rights, democracy and rule of law, which ought to be addressed in a full monitoring report. We expect to prepare the latter as soon as possible. We believe that the recent crackdown on political opposition and civil dissent needs to be considered in the overall context and take into account recent developments that have affected the functioning of democratic institutions, rule of law and the protection of human rights in Turkey.

4. During the past months, there were also developments at an international level involving Turkey. External actions undertaken by the country, including military operations, in northern Syria, the East Mediterranean, Libya or Turkey's reported involvement the conflict between Armenia and Azerbaijan have raised serious concerns, including about the compliance of Turkey's external actions with Council of Europe obligations. This was also raised by the European Court of Human rights when it called, in the interim measures of 6 October 2020, on "all States directly or indirectly involved in the conflict [between Armenia and Azerbaijan], including Turkey, to refrain from actions that contribute to breaches of the Convention rights of civilians, and to respect their obligations under the Convention."[3] The monitoring report cannot overlook this dimension, which will be an important component of our future work. However, in the present report, we have decided to concentrate on pressing domestic developments, in line with the spirit of the Standing Committee`s reference. At the same time, we believe that the compliance of Turkey's external actions with Council of Europe standards should be incorporated in our next reports as part of the monitoring procedure.

2. Crackdown on opposition politicians and elected representatives, at national and local level, and the functioning of democratic institutions

5. In its Resolution 2260 (2019), the Assembly recalled that political opposition in and outside parliament is an essential component of a well-functioning democracy and expressed its concerns about the deterioration of the situation of the rule of law, democracy and human rights in Turkey, including the stripping of immunity of 154 parliamentarians in 2016, restricted freedom of expression and media, reduced checks and balances in the new presidential system or unfair election processes – which have increasingly diminished, obstructed or undermined the ability of opposition politicians to exercise their rights and fulfil their democratic roles, and resulted in (former) opposition deputies being prosecuted, detained or convicted. Highlighting the clear existence of strong prerequisites for democracy in Turkish society, including the citizens' aspirations for genuine choices between candidates, parties and political programmes, the Assembly called on the Turkish authorities to fully respect the rights and fundamental freedoms of opposition politicians. In particular, the Assembly called on Turkey to guarantee parliamentary immunity, amend the legislation and constitution in line with the Venice Commission's recommendations, lower the 10% electoral threshold, upgrade freedom of

3. Press release ECHR 276 (2020) of 6 October 2020.

expression and media, implement the judgments of the European Court of Human Rights, and further co-operate on these issues with the Council of Europe and the Parliamentary Assembly in the framework of its ongoing monitoring procedure.

6. In 2019, there were some positive developments with respect to (former) deputies in detention, notably the release of MP Leyla Güven on 28 January 2019[4], the ruling of the Constitutional Court of 3 October 2019 finding a violation of the freedom of expression of convicted former MP Sırrı Süreyya Önder[5] of the Peoples' Democratic Party (HDP), and the release, on 31 October 2019, of former MP Eren Erdem of the Republican People's Party (CHP) after the enactment of the first package of the Judicial Reform (see below).

7. Unfortunately, new crackdowns on opposition members have taken place since then. We would like to mention a few recent examples:

– On 18 December 2019, the dismissal of Burak Oğuz from the CHP party, Mayor of the Urla district in Izmir District, for his alleged links to the Gülen Movement[6], and his replacement by a trustee, was a worrying development. The President of the Congress of Local and Regional Authorities of the Council of Europe (the Congress) stated on that occasion that "the excessive recourse to judicial proceedings against local elected officials in Turkey and their replacement by appointed officials is seriously undermining the democratic choice of Turkish citizens and the proper functioning of local democracy in Turkey".[7]

– On 4 June 2020, HDP deputies Leyla Güven and Musa Farisoğulları and CHP deputy Enis Berberoğlu were stripped of their parliamentary status. While the arrest of Ms Güven and Mr Berberoğlu afterwards was brief, Mr Farisoğulları remains behind bars together with former co-chairs of HDP and four other HDP deputies.

– On 23 June 2020, the appeal court upheld the conviction of Canan Kaftancioğlu, Chairperson of the Istanbul branch of the CHP, to nine years in prison owing to a tweet published six years ago. Her conviction had occurred in the wake of local elections won by the opposition and was seen as a retaliation for Ms Kaftancioğlu's successful management of Ekrem Imamoğlu's election campaign in Istanbul.

– On 17 September 2020, the Constitutional Court ruled that the right of (former) CHP Member of Parliament, Enis Berberoğlu, to stand for election and engage in political activities as well as his right to freedom and security had been violated. Mr Berberoğlu – a former journalist – was sentenced to five years in prison in 2017 for disclosing information about the possible involvement of Turkey in the Syrian conflict.[8] On 15 October 2020, a lower court, however, refused to abide by the ruling of the Constitutional Court and to give Mr Berberoğlu a re-trial, thus preventing him from returning to parliament.

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4. Ms Güven had been on an indefinite hunger strike since 8 November 2018. She was released following the decision of the High Penal Court of Diyarbakir. This decision was welcomed by the Assembly co-rapporteurs Ms Marianne Mikko (Estonia, SOC) and Mr Nigel Evans (United Kingdom, EC/DA), see their Statement of 28.01.2019, "Monitors welcome Leyla Güven's release, urge her to end hunger strike".

5. The Constitutional Court ruled that the statements made in 2013 by former MP Sırrı Süreyya Önder could not be considered "an encouragement to use the methods of the terrorist organization [PKK] that involve force, violence or threat" and concluded that Mr Önder's freedom of expression had been violated. The Assembly monitoring co-rapporteurs welcomed this landmark unanimous decision of the Constitutional Court, which could help "guarantee deputies' ability to freely express themselves and to exercise their political rights and activities, whether inside or outside parliament", and "to address all issues of public importance, including those which are sensitive or controversial but need to be addressed". Seven HDP MPs are currently in detention Figen Yüksekdağ, Selahattin Demirtaş, Çağlar Demirel, İdris Baluken, Gülser Yıldırım, Musa Farisoğulları and Abdullah Zeydan. Except for Mr Farisoğulları, who was elected during the current 27th term of the parliament, all others were elected during the 26th term. The trials of former HDP Co-Chairs Selahattin Demirtaş and Figen Yüksekdağ continue (since November 2016). İdris Baluken has been sentenced to 16 years, 8 months in prison, Çağlar Demirel has been sentenced to 7 years, 6 months, Abdullah Zeydan to 8 years, 1 month, 15 days and Selma Irmak to 10 years in prison.

6. This Movement is called "Fethullahist Terrorist Organisation" by the Turkish authorities.

7. Press Release of the President of the Congress, Mr Anders Knape, 18 December 2019.

8. After his conviction, and following his re-election as a Member of Parliament in June 2018, Mr Berberoğlu, was released in September 2018 due to parliamentary immunity until the end of his parliamentary mandate following the decision of the Supreme Court of Cassation, which was welcomed by the President of the Parliamentary Assembly. See Doc 14812, paragraph 30). However, on 5 June 2020, Mr Berberoğlu's immunity was stripped again, he was re-arrested and sent to house arrest on the same day, following the adoption of the Criminal Enforcement Law in the context of the Covid-19 pandemic.

– On 25 September and 1st October 2020, arrest warrants were issued against 101 members and elected representatives of the HDP, including former deputy Sırrı Süreyya Önder (who was later released) and former member of the Assembly Nazmi Gür, for their alleged involvement in the October 2014 Kobane protests violence.[9] 17 HDP politicians were arrested including the co-Mayors of Kars (and replaced by trustees) in what the President of the Congress described as a "new blow to local self-government".[10]

– On 8 October 2020, Murat İde, press adviser to opposition party Good Party (İYİ) leader Meral Akşener, was detained one day for a column he wrote in 2015. These incidents take place in an environment which is seriously restricting political activities of opposition parties.

8. In January 2019, the Assembly had already expressed its concerns about the restriction of the rights of opposition politicians at local level, in particular those connected to the Kurdish question, notably the replacement of over 90 elected mayors from the HDP or its sister party by government-appointed trustees. This took place during the state of emergency and is in contravention of the European Charter of Local Self-Government (ETS No. 122). This practice had also been criticised by the Venice Commission.[11]

9. This trend intensified after the local elections of 31 March 2019. The Justice and Development Party (AK Party) and its allies of the Nationalist Party MHP won 51% of the votes but lost the majority in the cities of Ankara and Istanbul. The election of the Mayor of Istanbul on 31 March 2019 was marked by the highly criticised annulment of the result by the Supreme Election Council (SEC) and, eventually, the re-run on 23 June (which led to the election of the CHP candidate Ekrem Imamoglu, with the support of the HDP). In its election observation report, the Congress concluded that the two polls had been conducted in order and were administered satisfactorily, with a remarkably high turnout. However, urgent steps were needed to reform the SEC (whose decisions cannot be appealed), to clarify the electoral legislation and to harmonise all election laws in order to give them a coherent framework. The Congress also recommended the removal of overly restrictive limitations of freedom of association, assembly and expression in order to re-establish an environment fully conducive to genuinely democratic elections.[12]

10. The dismissal and replacement of elected Mayors (the vast majority of them belonging to the HDP) resumed after the March 2019 local elections. The Venice Commission issued an opinion on the replacement of elected candidates and mayors in June 2020[13], calling on the Turkish government to repeal decisions that have undermined democratic self-government in southeast Turkey.

11. According to the latest figures provided by the HDP, 48 mayors from this party elected in March 2019 (including the Mayors of the Metropolitan cities of Diyarbakır (Selçuk Mızraklı), Mardin (Ahmet Türk) and Van (Bedia Özgökçe Ertan) have so far been dismissed owing to terrorism-related charges and replaced by government-appointed trustees. In addition, 6 mayors who won the elections in 2019 were denied their election certificates based on the fact that they had previously been dismissed from their jobs by emergency rule decrees. As a result, 54 out of 65 mayors (83%) of the HDP mayors elected by the voters are not able to run their municipalities.[14] In addition**,** between the summer of 2015 and November 2019**,** more than 6 500 HDP officials, members and voters were imprisoned for their political engagement.[15] We fear that the level and duration of repression against HDP members and politicians amount to systematic political oppression which could aim at suppressing this political party.

12. Political crackdown is a threat to all opposition parties and thus seriously undermines the functioning of political life in Turkey. Ensuring free and fair elections – as much as respecting the will of the voters, at local and national levels – is a cornerstone for building a sound democracy. Turkey has a vibrant civic and political life, including women and environmentalist movements, which contribute to the public and political debate; whether Turkey should have a presidential or parliamentary system is an issue which continues to animate

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9. See our statement of 1st October 2020, "PACE Turkey monitors call for the immediate release of arrested opposition members".
10. Statement of the President of the Congress, Mr Anders Knape, of 1st October 2020.
11. "It is particularly worrying that, through emergency legislation, the central authorities are enabled, in the framework of the fight against terrorism, to appoint unelected mayors, vice mayors and members of local councils, and exercise, without judicial control, discretionary control over the functioning of the concerned municipalities", CDL-AD(2017)021, Turkey – Opinion on the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern the exercise of Local Democracy, adopted by the Venice Commission at its 112th Plenary Session (6-7 October 2017).
12. See report of the Congress CG37(2019)14.
13. Turkey – Opinion on the replacement of elected candidates and mayors, adopted by the Venice Commission on 18 June 2020 by a written procedure replacing the 123rd plenary session, CDL-AD(2020)011.
14. Statement of the HDP "The seizure of Kars municipality and seventeen more arrests, including the co-mayor of Kars and former MPs and Central Executive Board members", 2 October 2020.
15. Figures as of 20 November, provided by the HDP.

political parties from the opposition. New political parties were recently formed, notably the Future Party created in December 2019 by former Prime Minister and AK Party member Ahmet Davutoğlu, while the former Minister of Economy, Ali Babacan, created a new political formation called the DEVA Party. A Green Party was also established in September 2020. These developments will enrich political debates in Turkey. It is one more reason, taking into account previous election observation reports, for the Assembly to pay greater attention to the election conditions and environment, but also, more generally speaking, to enhance the transparency of the legislative process as well as the integrity of MPs. We hope that the Turkish Parliament will draft its code of ethical conduct for MPs, as requested by GRECO in 2019.[16] We also expect the Turkish authorities to make full use of the Council of Europe's expertise when considering the revision of the Law on political parties and election legislation, including the lowering of the 10% electoral threshold, which remains the highest in Europe.

3. Rule of law and functioning of the justice system

3.1. The situation of lawyers

13. We are concerned by the deteriorating situation of lawyers in Turkey and the criminalisation of their activities. On 11 September 2020, 47 lawyers were arrested and their offices searched. Since July 2016, over 1 500 lawyers have been prosecuted. We recall that lawyers play a key role in the implementation of democratic standards and the effective administration of justice. They must therefore be able to exercise their profession independently and safely.[17]

14. A high number of lawyers have been detained on terror-related charges for defending clients charged with terrorism. Fourteen lawyers from the Progressive Lawyers' Association (an organisation closed on 22 November 2016 by a decree issued under the state of emergency) involved in "terrorism-related" cases or cases deemed sensitive were sentenced to heavy prison sentences, which were upheld by the Supreme Court of Cassation on 15 September 2020.

15. Some of these lawyers were forced to resort to hunger strikes, at the cost of their lives, to demand fair trials. Ebru Timtik was one of them. She paid the ultimate price for her quest for a fair trial, while her colleague Aytaç Ünsal was finally released in a critical state. Ms Timtik's death added to the death of the music band Grup Yorum members Helin Bölek and İbrahim Gökçek, as well as Mustafa Koçak who were also demanding a fair trial but lost their lives in April 2020 and May 2020.

3.2. Revision of the Attorneyship Law

16. Not only individual lawyers, but also their professional organisations are challenged. In July 2020, the parliament adopted the 2020 amendments to the Attorneyship Law of 1969, which introduced two major changes to the system of governance of the legal profession in Turkey, allowing the creation of multiple bar associations in large provincial centres (instead of a single one, as before)[18] and changing the relative voting power of bar associations within the Union of the Turkish Bar Associations (the UTBA). The law was adopted without proper consultation of the bar associations and was seen as a step which could jeopardise the position of lawyers in the Turkish justice system.

17. At the request of the Monitoring Committee, on 9 October 2020 the Venice Commission adopted an opinion on the 2020 amendments to the Attorneyship Law of 1969.[19] It concluded that it was not clear how the new system would improve the quality of services or training provided by the UTBA or the Bar Associations to the attorneys. It pointed out that "the creation of alternative bar associations may lead to incoherent practice in disciplinary matters and create administrative instability". And there was "a real risk that the creation of multiple bar associations in the same city, based on voluntary membership, will lead to further

16. See Third Evaluation Round, Addendum to the Second Compliance Report on Turkey, "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of Party Funding" and Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors", Interim Compliance Report, Turkey, adopted by GRECO at its 82nd Plenary Meeting (18-22 March 2019).

17. See our statement of 22 September 2020, together with Alexandra Louis (France, ALDE), General Rapporteur on the situation of human rights defenders in Council of Europe member States.

18. In provinces with more than 5 000 attorneys (namely in Ankara, Istanbul, and Izmir), a minimum of 2 000 attorneys can establish an additional bar association to any already in existence.

19. Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the July 2020 amendments to the Attorneyship law of 1969, adopted by the Venice Commission at its 124th online Plenary Session (8-9 October 2020) CDL-AD(2020)029.

politicisation of the legal profession. This is incompatible with the neutral role which the attorneys should normally play. It will also endanger the independence of attorneys, which is implicitly required by the international human rights treaties, by the soft law standards, and which is one of the requirements of the rule of law". The Venice Commission concluded that the Turkish authorities should consider alternative solutions while ensuring "meaningful involvement of the community of Turkish attorneys in the discussions about any further reforms of the legal profession."[20]

18. Further to the adoption of the law, a second bar association was created in Istanbul and was licensed in September. In other cities however, lawyers failed to collect 2000 signatures in time to create a second association and send delegates for the UTBA election scheduled for 11 October 2020. Owing to a new outbreak of the pandemic, the Ministry of Interior decided to prohibit events (such as elections and general assemblies) of professional organisations, including bar associations and NGOs, until 1 December 2020 – while allowing, at the same time, similar events organised by political parties. This decision was challenged by the bar associations but upheld by the Supreme Election Council (SEB). The bar associations argued that the ban was intended to gain time for the newly formed pro-government bar associations to send delegates for the UTBA election.[21]

19. We call on the Turkish authorities to revise the Attorneyship Law as amended in July 2020 in line with the opinion of the Venice Commission of October 2020 and to authorise, without further delay, the organisation of the general assembly of lawyers to allow the regular holding of elections of the UTBA, taking into account the sanitary requirements in vigour.

3.3. Lack of separation of powers

20. The justice system still faces many challenges, especially after the dismissal of a quarter of its judges and prosecutors after the failed coup. The 2017 constitutional amendments establishing a presidential system with extensive powers granted to the President of the Republic, further undermined the independence of the judiciary and do not guarantee the separation of powers, as documented by the Venice Commission in 2017[22] and by GRECO in 2018[23]. In particular the composition of the Council of Judges and Prosecutors, which contradicts Council of Europe standards, and the suspension of ordinary safeguards and procedures for the dismissal, recruitment and appointment of judges and prosecutors has, according to the Commissioner for Human Rights, Ms Dunja Mijatović, reinforced "the existing tendency of the Turkish judiciary to put the protection of the State above that of human rights. The criminal process appears to often be reduced to a mere formality, especially in terrorism-related cases. In countless other cases, the judiciary is literally bypassed even for measures seriously affecting individuals' core human rights, such as certain travel restrictions or the right to practise as a lawyer"[24].

21. We would also like to refer to the comprehensive report issued by the Commissioner for Human Rights in February 2020, which provides for an in-depth analysis of the current situation, including the impact of the presidential system on the protection of human rights. Ms Mijatović describes the devastating consequences of the measures taken by the authorities in the aftermath of the state of emergency on judicial independence and impartiality and on the rule of law and human rights in Turkey. Numerous long-standing problems, such as the misuse of detentions on remand, have been exacerbated and compounded by new shortcomings.

3.4. Announced reforms of the justice system and expectations

22. The Turkish authorities launched a new reform of the justice system in May 2019. On 17 October 2019, the Grand National Assembly of Turkey adopted a Law intending to "improve the independence, impartiality and transparency of the judiciary; further strengthen the freedom of expression and press; enhance the right to a fair trial by setting maximum detention periods; further strengthen the rights of juveniles and victims of crime; facilitate access to justice and reduce workload of the judiciary"[25]. Some notable measures adopted include: the possibility to appeal judgments of (criminal sections of) regional courts, particularly those with

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20. Ibid, paragraphs 68-76.
21. www.duvarenglish.com/politics/2020/10/06/turkeys-election-board-rejects-appeal-against-decision-to-postpone-bar-associations-elections/.
22. CDL-AD(2017)005.
23. In its last report, GRECO deplored the lack of tangible progress made recently on measures to prevent corruption among MPs, judges and prosecutors. See GrecoRC4(2017)16.
24. Statement issued by the Commissioner for Human Rights following her visit to Turkey, "Turkey needs to put an end to arbitrariness in the judiciary and to protect human rights defenders", 8 July 2019.
25. Information provided by the authorities.

direct effect on freedom of expression; inclusion of a specific provision in the Anti-terror Law stating that "the expression of thoughts which do not exceed the limits of reporting or made for the purpose of criticism shall not constitute an offence". Other measures include an amendment to the internet law introducing a gradual blocking mechanism of websites; definitions of new time limits for pre-trial detention[26] and reissuance of passports following an ordinary application assessment by law enforcement authorities in case of acquittal.

23. The readiness of the authorities to acknowledge, and address, shortcomings in the judicial system is to be welcomed. The Monitoring Committee had a chance to discuss the reform of the justice system and the Action plan for human rights and their expected impact on freedom of expression and assembly during a hearing organised on 13 November 2019. Some of the measures taken are positive steps. The dialogue established with the Council of Europe to discuss the reform strategy and the human rights action plan is also to the credit of the authorities and should be further strengthened, and we expect the working group set up by the Ministry of Justice and the Council of Europe to resume its work. However, there is a shared feeling among many stakeholders that, despite its good intention, the strategy failed to address core problems of the justice system:

– A group of opposition political parties composed of the CHP, the Democrat Party, the HDP, the Saadet (Felicity) Party and the Turkish Labour Party viewed the judicial reform strategy paper as failing "to address major judicial problems such as the independence of the judiciary, freedom of expression and widespread and systemic violations of rights caused by the state of emergency decrees". This political alliance subsequently drafted amendments to 14 bills focusing on the need to ensure fair trial (as a matter of urgency), as well as amendments to the Law on meetings and demonstration rallies of the Press Law. They also called for the establishment of a parliamentary committee to debate the justice reform.[27]

– The Commissioner for Human Rights explained to the authorities that "this strategy does not address crucial problems, such as the constitutional framework guaranteeing judicial independence and self-governance, or many shortcomings concerning the principles of fair trial, equality of arms and legal certainty". Ms Mijatović also rightly pointed out that the implementation of the strategy depends on "the authorities' willingness to completely and very quickly overhaul key legislation, including the Criminal Code, Anti-Terrorism Law and Code of Criminal Procedure".[28]

24. As highlighted by Council of Europe Secretary General, Ms Marija Pejčinović Burić, at the launch of the Human Rights Action Plan on 9 December 2019, "the ambiguity of some legislation, the limited or narrow interpretation of human rights standards and excessive limitations on rights and freedoms are still at the origin of many applications to the European Court of Human Rights", and changes in judicial interpretation and further legislative amendments are needed to overcome these problems.[29]

25. There are pressing and long-lasting issues that should be addressed seriously and lead to meaningful changes. This Assembly has, on many occasions, called for a reform of the Anti-terror law and the Criminal Code, which continue to be interpreted too broadly, in contradiction with the case law of the European Convention on Human Rights (ETS No. 5, the Convention), leading to unjustified prison sentences or pre-trial detentions. In 2019, 36 000 individuals were prosecuted for "insult to the President", based on article 299 of the Criminal Code which should be deleted or amended, according to the Venice Commission.

26. The management of the pandemic resulted in the adoption of the Turkish Criminal Enforcement Law aiming at conditionally releasing 90 000 prisoners exposed to the virus in prisons) targeting those detained under terror-related charges: while we welcomed the adoption of urgently needed measures to safeguard the health of prisoners, detained persons and prison staff, we deeply regretted that the Turkish Parliament had not treated in the same manner detained politicians, journalists, academics and other civil society activists charged with 'terrorism' in unfair trials and had not allowed them to enjoy equal sanitary preventive measures.[30] The main opposition, the CHP, challenged this law, which they claimed had characteristics of an amnesty or pardon law (and would have required a three-fifths majority in parliament). The Constitutional

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26. "The maximum duration of imprisonment will be 6 months for offences not requiring serious sanctions; 1 year for high criminal offences; and 1,5 years for heavy offences such as offences in the Anti-Terror Law, and offences in the Turkish Criminal Code committed collectively against nation and State. In the latter case, the maximum duration may be extended by 6 months."
27. Information provided by the CHP to the Monitoring Committee at its November 2019 hearing on Turkey.
28. Statement issued by the Commissioner for Human Rights following her visit to Turkey, ibid.
29. Council of Europe, Press Release.
30. See our statement of 3 April 2020, and our joint statement, together with Boriss Cilevičs (Latvia, SOC), rapporteur on "Should politicians be prosecuted for statements made in the exercise of their mandates?", 24 April 2020.

Court rejected the appeal by a majority, while the President of the Constitutional Court, Zühtü Arslan, the Deputy President Hasan Tahsin Gökcan and five members of the Court expressed dissenting opinions to this decision of rejection.[31]

4. Crackdown on human rights defenders in the context of the protection of human rights

4.1. Situation of human rights defenders and civil society activists

27. Human rights defenders remain in a difficult position and are subject to political and judicial harassment. In recent years, the Assembly has expressed its deep concerns in this regard. Another concern is the Law on meetings and demonstrations (No. 2911), which is used routinely and arbitrarily to ban peaceful assemblies and criminalise people's participation in them. Many civil society representatives and human rights defenders are subjected to prosecution and judicial harassment while carrying out peaceful activities or expressing opinions which might not be mainstream. We have reacted, together with the General Rapporteur of the Assembly on the situation of human rights defenders in Council of Europe member States, Alexandra Louis (France, ALDE), and we share the concerns expressed by the Commissioner for Human Rights about "the tightening of an already repressive legal and regulatory framework, the outright closure of civil society organisations without any court decision or an effective remedy, toxic political discourse and smear campaigns in pro-government media, and numerous criminal proceedings against human rights defenders".[32] We would like to present a few examples which, we think are telling of the current situation:

– "Academics for Peace" were charged with "terror propaganda" after signing a Declaration of Peace "We shall not be a party to this crime" issued in 2016 in the wake of the military operations conducted in southeast Turkey. Over 600 of the 2 200 signatories have gone on to be prosecuted for terrorism, with dramatic consequences for their academic careers and personal lives. On 26 July 2019, the Constitutional Court of Turkey ruled that the rights of the Academics for Peace had been violated, a decision welcomed by the rapporteurs of the Assembly.[33] Since then, 522 Academics for Peace have been acquitted. They, however, face difficulties reintegrating into their academic positions.[34] The ruling of the Court, which established that this peace declaration was within the boundaries of freedom of expression, was however challenged by the Minister of the Interior who criticised the Court's ruling and stated that this petition was "a declaration of a terrorist organisation, the PKK [Kurdistan Workers' Party]".[35]

– We have also been following with great concern the "Büyükada trial" of 11 human rights defenders, including the honorary chairperson of Amnesty International, Taner Kılıç, who had participated in a human rights training on the Prince Islands and were arrested in July 2016 on terror-related charges.[36] Taner Kılıç was detained for allegedly using the encrypted messenger Bylock (allegedly used by Gülen movement followers and released following expert reports denying this charge. However, in November 2019, the State prosecutor requested convictions against Taner Kılıç, Idil Eser, Özlem Dalkıran, Günal Kurşun, Veli Acu and Nejat Taştan and requested the acquittal of Nalan Erkem, Ilknur Ustun, Şeyhmus Özbekli, Ali Gharavi and Peter Steudtner. On 3 July 2020, despite lack of credible evidence [37], the Istanbul 35th High Criminal Court, by a majority decision, convicted Taner Kılıç of 'membership of a terrorist organisation' and sentenced him to six years and three months in prison. Idil Eser, Özlem Dalkıran and Günal Kurşun were convicted of 'knowingly and willingly assisting a terrorist organisation without being members of it and were sentenced to one year and 13 months. The remaining seven

31. http://bianet.org/english/law/232277-constitutional-court-rejects-appeal-against-law-on-criminal-enforcement.
32. Statement issued by the Commissioner for Human Rights following her visit to Turkey, ibid.
33. Statement by the Assembly monitoring co-rapporteurs Mr Evans (United Kingdom, EC/DA) and Mr Thomas Hammarberg (Sweden, SOC) of 30 July 2019: "Rapporteurs on Turkey expect the release and acquittal of the 'Academics for Peace'".
34. Joint Statement by Academics for Peace: We Demand Our Reinstatement, 3 December 2019.
35. http://bianet.org/english/politics/231507-interior-minister-targets-constitutional-court-again-this-time-over-academics-for-peace-ruling.
36. See the statements of PACE co-rapporteurs on their concern at the arrest of several prominent human rights defenders in Istanbul on 5 July (7 July 2017), on the publication of the indictment against them (13 October 2017), on the release of eight human rights defenders and the dismay after the continued detention of Amnesty International Chair (27 October 2017), on the rapporteur's call for his immediate and unconditional release (31 January 2018), on his re-arrest (2 February 2018) and release (16 August 2018).
37. See detailed information about the verdict (and its official translation) provided by Amnesty International, update to the Council of Europe: "The Büyükada trial, another step towards paralysing civil society in Turkey as identified by the European Court of Human Rights in Kavala v. Turkey", B2006, 20 August 2020.

human rights defenders were acquitted, but the prosecutor has appealed the acquittals of two further defenders – Veli Acu and Nejat Taştan. The "Büyükada trial" which has been on-going for three years, is emblematic of a pattern of judicial harassment of human rights defenders and of civil society and unjust conviction of prominent human rights defenders which sends a chilling message to civil society in an attempt to paralyse and dissuade it.

– Women's organisations have also been under pressure. Their marches have been regularly terminated by the police. The overall atmosphere is not conducive to promoting women's rights and gender equality. Recently there were discussions initiated by Turkish senior politicians about a possible withdrawal from the Council of Europe Convention to prevent and combat violence against women and domestic violence (CETS No. 210, Istanbul Convention). It would be extremely damageable for Turkish society – if not a blunt backlash – to deprive the Turkish people, in particular women and girls, of this unique legal instrument which was promoted by Turkey itself – being the first country to ratify this Convention in 2012, to its credit. We also note that this proposal was met with fierce protests from women's organisations across political parties, thus demonstrating the attachment of Turkish people to this Convention and its underlying principles.[38]. We encourage the authorities to remain committed to the Istanbul Convention, to implement the recommendations made by GREVIO and the Committee of the Parties in January 2019[39], and to refrain from any negative stance or piece of legislation which could harm the conditions of women in Turkey and prevent them from living free from any violence. Crackdowns on women's organisations have in particular a regrettable chilling effect on women's participation in political and social life.

– Finally, the management of the Covid-19 pandemic is having repercussions in Turkish civil society: doctors are facing increased pressure when debating the accuracy of data about the number of infected persons. According to official figures of the Ministry of Interior, as of May 2020, at least 510 people have been taken into custody over allegedly "baseless" and "provocative" social media posts about the pandemic and the state's response to it.[40]

4.2. Freedom of expression and media

28. Journalists continue to be targeted, prosecuted and arrested for their work, or prevented from working. We refer to the previous resolutions adopted by the Assembly. In January 2020, our colleague, Lord Foulkes (United Kingdom, SOC), presented his report "Threats to media freedom and journalists' security in Europe to the Assembly". This report makes several references to Turkey and lists some of the challenges faced by Turkish journalists and media, in particular the "excessive or arbitrary anti-terrorist and anti-crime legislation" coupled with "arbitrary and biased justice".[41]

29. Investigative journalism is particularly threatened. The case of exiled journalist Can Dündar, who was sentenced for revealing state secrets when disclosing that Turkey was sending arms to Syria, is telling: the İstanbul 14th High Criminal Court decided on 7 October 2020, to formally declare him a fugitive and ordered the confiscation of his personal assets in Turkey, citing his failure to appear before court in his ongoing trial, and the appointment of a trustee to manage his assets. Another recent example is the gag placed by a Turkish court on the publication of the FinCEN files investigations[42] (including on the business run by Iranian-Turkish businessman Reza Zarrab and his alleged ties to, and the alleged involvement of senior Turkish politicians), thus preventing Turkish media outlets from reporting on some of these key findings.

30. The Assembly has always stressed that media freedom is a pre-requisite in a democratic society. In this context, the decision of the Constitutional Court of Turkey of 26 December 2019, ruling by a vote of 10 to 6 that the full access block to Wikipedia is a violation of freedom of expression, is to be welcomed. It is regrettable that this decision was taken almost two years after the introduction of the ban, and after the lodging of an application to the European Court of Human Rights.[43] Unfortunately, later developments did not confirm this trend: on 28 July 2020, the Turkish parliament adopted a new law on social media requiring foreign social media sites to appoint Turkish-based representatives to address authorities' concerns over content, prescribing deadlines for removal of material and fines that could be imposed on companies such as

38. See also the Statement issued by the Assembly Committee on Equality and Non-Discrimination, which reaffirms its support for the Istanbul Convention", 11 September 2020.
39. Recommendation on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Turkey, 28 January 2019, IC-CP/Inf(2019)2.
40. https://ipi.media/turkey-alarming-plans-to-further-crackdown-on-social-media/.
41. Doc. 15021.
42. See OCCRP.
43. Bianet, 31 December 2019.

the blocking of advertisements, the slashing of their bandwidth by up to 90%, or blocking access. We fear this law will further restrict freedom of the media on social networks and prevent Turkish people's access to information, as social media remains the main platform that people use to receive independent news, express their views, criticise and challenge the government.[44]

31. We note that external military interventions by Turkey have also resulted in further restrictions of fundamental freedoms (especially freedom of expression and assembly), as documented in January 2018 "(Operation Olive Branch") and October 2019 ("Operation Peace Spring") for the military operations conducted in northeast Syria.[45] The support granted by Turkey to Azerbaijan in its conflict with Armenia has also had adverse effect inside Turkey, including giving rise to hate speech against the member of parliament and deputy Chairperson of the HDP Garo Paylan of Armenian origin, who was targeted by a pro-government think tank, the Center for Eurasian Strategic Studies (ASAM), after making a call for peace[46], or intimidation undertaken on 28 September 2020, with a convoy of vehicles waving Azerbaijani flags and passing through the neighbourhood of Kumkapı, which has a large Armenian population and is home to the Armenian Orthodox Patriarchate. Despite the statement made by AK Party Spokesperson Ömer Çelik against provocations carried out on members of the minority Armenian community in the country, saying threats and harassments against them will not be allowed, concerns remain about the situation of Armenians in Turkey.

4.3. Allegations of torture and ill-treatment

32. The question of allegations of torture, especially since the failed coup, has been brought on many occasions to the attention of PACE co-rapporteurs and the Monitoring Committee. Allegations of torture were mentioned in the context of the abduction of alleged members of the Gülen Movement living abroad[47], and sent back to Turkey.[48] Media-outlets have issued reports about alleged ill-treatment of former civil servants in the Ankara Security Directorate in May 2019[49], allegations of torture of students in the Gazi neighbourhood police station (Istanbul)[50] and allegations of assault and torture against 36 members of the HDP Youth Assembly at the İstanbul Security Directorate after their arrest for chanting anti-war slogans.[51] The Human Rights Association has documented many cases of alleged torture and ill-treatment.[52] One of the most striking cases concerns two farmers from a district of Van, Osman Şiban and Servet Turgut, who allegedly were dropped from a helicopter (this seems to be confirmed by hospital reports) after they being detained and tortured by soldiers. Servet Turgut lost his life while Osman Şiban suffered loss of memory after heavy torture. An investigation was launched by the prosecutor's office.[53]

33. These concerns have been confirmed in the last reports published by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): during its visit in 2017, the CPT received a considerable number of allegations, mostly concerning excessive use of force at the time of apprehension, and allegations of physical ill-treatment inside law enforcement establishments. "In a number of cases, the alleged ill-treatment was of such severity that it could be considered as amounting to torture".[54] In 2019, the CPT "gained the impression that, compared to the findings of the 2017 visit, the severity of alleged police ill-treatment has diminished. However, the frequency of allegations remains at a worrying level". The CPT reiterated its recommendation that "a clear and firm message of "zero tolerance" of ill-treatment be

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44. https://ipi.media/turkey-alarming-plans-to-further-crackdown-on-social-media/.
45. See Amnesty International's research paper: "'We can't complain' – Turkey's continuing crackdown on dissent over its military operation 'Peace Spring' in Northeast Syria".
46. http://bianet.org/english/human-rights/232181-hundreds-of-people-express-solidarity-with-hdp-mp-garo-paylan.
47. A report published on 17 September 2020 by the International Observatory of Human Rights in collaboration with Turkey Tribunal refers to "25 cases in which it is beyond any reasonable doubt that an abduction organised by the Turkish State has taken place" and (based on figures given by the Turkish Minister of Foreign Minister Mr Mevlüt Çavuşoğlu) the abduction of 104 Gülenists from 21 countries (included Council of Europe members states) who were forcibly brought back to Turkey.
48. In January 2019, the Monitoring Committee had an exchange of views with Mr Frederik Richter, Reporter at *Correctiv*, Head of the international co-operation investigation on alleged secret prisons ("black sites") in Turkey.
49. https://bianet.org/english/human-rights/217547-allegations-of-torture-are-lies-and-smears-says-minister-soylu.
50. https://bianet.org/english/human-rights/218581-the-era-of-white-toros-has-ended-there-are-now-white-transit-vehicles.
51. https://bianet.org/english/politics/215763-hdp-youth-assembly-members-tortured-in-detention.
52. See the report published by the Association of Human Rights "Torture in its Various Dimensions in Turkey as of 26 June 2020".
53. www.duvarenglish.com/human-rights/2020/10/08/akp-admits-something-happened-when-asked-about-throwing-of-kurdish-men-from-army-helicopter/.
54. Executive summary of the report to the Turkish Government on the visit to Turkey carried out by the CPT from 10 to 23 May 2017, CPT/Inf (2020) 22 – Part.

delivered to all law enforcement officials, from the highest political level, namely the President of the Republic". The CPT called upon the Turkish authorities to take decisive action to "curb prison population inflation and to eradicate prison overcrowding".The solitary confinement of the prisoners on the İmralı island is considered as unacceptable. Apart from a few visits from authorities in 2019, Abdullah Öcalan remains cut off from contacts with the outside world, prompting the CPT to call for the development of a "sustainable system of regular visits by family members and lawyers".[55]

34. While we welcome the publication of the reports prepared by the CPT in 2017 and 2019, we also reiterate the call made by the Assembly to authorise, without undue delay, the publication of the 2016 report and implement all CPT's recommendations. We take these allegations very seriously and need to inquire into how the Turkish authorities and institutions have responded to these allegations, and whether the country remains committed to its "zero-tolerance policy" concerning torture and ill-treatment.

4.4. Implementation of the judgments of the European Court of Human Rights

35. In recent months, two rulings of the European Court of Human Rights finding a violation of Article 18 of the Convention in conjunction with Article 5.1 (right to liberty and security) drew particular attention:

– The case of former HDP co-chair Selahattin Demirtaş (in detention since November 2016) was already raised in Resolution 2260 (2019). The Chamber of the European Court of Human Rights, in its November 2018 ruling (not final), found that it had been established beyond reasonable doubt that the extension of Mr Demirtaş's detention, especially during two crucial campaigns, namely the referendum and the presidential election, had pursued the "predominant ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society". Both parties to the case appealed the judgment. The hearing in the Grand Chamber took place in September 2019 and the Court has yet to deliver its final judgment, which we now urgently expect – Mr Demirtaş having been behind bars since October 2016.

– On 10 December 2019, in a Chamber ruling on the *Kavala vs. Turkey* case,[56] the European Court of Human Rights urged Turkey to release businessman and activist Osman Kavala (in detention for more than two years) who was accused of fomenting the 2013 Gezi protests. The Court unanimously concluded that there had been a violation of Article 5.1.c (owing to the lack of reasonable suspicion that the applicant had had violent intentions, and the case file concerned acts related to the mere exercise of rights guaranteed by the Convention or normal activism on the part of a human-rights defender) and a violation of Article 5.4 (due to lack of "speedy" review of this case by the Constitutional Court). By six votes to one, the Court concluded that there had been a violation of Article 18, since the extended detention of a human-rights defender pursued the ulterior purpose of reducing him to silence, with a chilling effect on civil society, and required his immediate release. The ruling of the Chamber became final on 13 May 2020 after the Grand Chamber decided to reject the appeal brought by the Turkish authorities, which prompted us to call for the immediate release of Osman Kavala, a call also made by the Committee of Ministers (in charge of the supervision of the implementation of the Court's judgments) in September and October 2020.

36. In both cases, the European Court of Human Rights found violations of Article 18 of the European Convention on Human Rights[57] in conjunction with Article 5.1 (right to liberty and security). Violation of Article 18 is unprecedented for Turkey, and reveals rising concerns resulting from the administration of the justice system. We reiterate the call made by the Assembly in January 2019 to fully implement the rulings of the Court and take all necessary measures, including legislative changes, to redress the situation.

37. Concerning the case of Mr Kavala, in September 2020, the Constitutional Court postponed reviewing his individual application claiming on the grounds that his arrest on "espionage" charges shortly after the court ruled for his acquittal was not legal. We were appalled to learn that, on 9 October 2020, a new indictment was prepared against Mr Kavala, claiming (again) that Mr Kavala had organised the 2013 Gezi Park protests, with

55. Executive summary of the report to the Turkish Government on the visit to Turkey carried out by the CPT from 6 to 17 May 2019: CPT/Inf (2020) 24 – Part.

56. Application no. 28749/18, Judgment of 10 December 2019. See the press release. The ruling refers to the Assembly Resolution 2225 (2018) "Protecting human rights defenders in Council of Europe member States" (paragraph 75) and to the Assembly Resolution 2156 (2017) "Functioning of Democratic Institutions in Turkey" (paragraph 64).

57. Article 18 stipulates that "the restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed".

prosecutors seeking aggravated life imprisonment. This new indictment, based on charges for which Mr Kavala was already cleared in February 2020, amounts to judicial harassment, and the charges should be dropped immediately.

4.5. The long-lasting effects of the state of emergency.

38. Despite the lifting of the state of emergency[58] in July 2018, which was welcomed by the Assembly[59], Law No. 7145 on the "Amendment to Some Laws and Emergency Draft Laws" was adopted in July 2018 and incorporated emergency decree provisions in ordinary laws, with continued restrictive effects on fundamental rights. For example, provincial governors were granted extra powers to restrict movement and assemblies in their provinces, citing vague notions of public order and security concerns, which has disproportionately affected "demonstrations in or concerning the mainly Kurdish southeast and assemblies by lesbian, gay, bisexual or transgender (LGBT) groups throughout the country".[60] Since the failed coup d'Etat, more than 77 000 people have been jailed pending trial and about 150 000 civil servants, military personnel and others have been dismissed or suspended from their jobs, without being able to challenge these decisions.

39. The Assembly had welcomed the decision taken on 23 January 2017 to establish a national administrative commission ("Inquiry Commission on State of Emergency Measures") to ensure an effective national judicial remedy for individuals or moral entities (associations, foundations, private institutions, media, etc.), enabling them to challenge measures taken under the decree laws. The Assembly had stressed the importance of this judicial review "by the competent administrative courts, whose decisions may be further challenged before the Constitutional Court and, as a last resort, before the European Court of Human Rights, which will then decide whether a remedy is effective or not. The Assembly will closely follow the work of this commission and the effective access, within a reasonable time, to legal remedies for those affected by the decree laws".[61]

40. Over 120 000 applications were lodged. Fifty percent of them concerned the re-opening of associations, foundations, dormitories, television channels and newspapers, while the remaining accepted applications were about the reinstatement of public officials in their posts. By the end of 2019, the Inquiry Commission had processed 98 300 of the 126 300 appeals registered since its first decision on 22 December 2017 and had rejected 91,3 % of the applications.[62] In December 2019, the term of office of the Commission was extended by one year.

41. There were severe consequences for the dismissed persons and their families: their passports were confiscated, they were banned from working in public institutions, stigmatised, deprived of access to the social security scheme, their assets were seized and their property rights were restricted. In 2017, the Assembly feared that these dismissed persons would be condemned to a "civic death"[63], with dramatic and detrimental long-term effect on Turkish society, the public administration, or in institutions which have links to the administration. Amnesty International stressed the need to "ensure the protection of [their] human rights, including to work, freedom of movement, health, housing and to an adequate standard of living"[64]. Academics have also been impacted by these measures. It is estimated that 6 000 academics have been dismissed under emergency decrees since 2016. In some cases, they had their passports cancelled and were prevented from working in the public sector. Three academics resorted to lodging a complaint with the European Court of Human Rights.

5. Concluding remarks

42. Prepared in the context of an urgent debate following a new crackdown on political opposition and civil dissent, this report intends to highlight some of the pressing issues that seriously undermine democracy, human rights and rule of law. The Assembly has been engaged, since 2017, in a monitoring procedure in respect of Turkey, which provides the necessary tools to engage in continuous, frank and open discussions

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58. The state of emergency was introduced in July 2016 after the failed coup in which 250 people lost their lives and 2 200 were injured.
59. The Assembly had adopted in April 2018 Resolution 2209 (2018) "State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights", calling upon the Turkish authorities to bring the state of emergency to an end.
60. Human Rights Watch, World report 2020.
61. Doc. 14282 – See also Resolution 2209 (2018), paragraph. 18.3.3.
62. Duvar, 26 December 2019.
63. Resolution 2156 (2017).
64. Amnesty International.

with the Turkish authorities and to discuss how the Assembly and the Council of Europe could best accompany the Turkish authorities in their intended improvement of fundamental rights. Furthermore, this procedure allows the Assembly to articulate its expectations, which would allow Turkey to leave the monitoring procedure.

43. Without being exhaustive, this report has highlighted a number of issues that will need to be discussed with the authorities. The launch of a justice reform strategy and a human rights action plan are first steps, which need to be reinforced. We also want to discuss progress in enhancing the independence and functioning of the justice system, freedom of the media, expression and assembly, fundamental human rights, women's rights, or election conditions, which are serious concerns raised by the Assembly over many years. We should also recall that many other groups in society are subjected to pressure, such as women (and the repeated attempts to hinder or undermine the implementation of the Istanbul Convention) or the doctors, who have been under pressure during the Covid-19 pandemic.

44. We are confident that Turkey and its vibrant civic and political life, with a people genuinely committed to democracy, will find the ways and means to further engage in a much-needed democratisation process. We hope that the Assembly will provide the necessary support and political backing to its monitoring co-rapporteurs to keep Turkey, which is a long-lasting and important member State, on the Assembly's agenda, and contribute to fostering inclusive political dialogue.