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

Doc. 15618
26 September 2022

The honouring of obligations and commitments by Türkiye

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

In a mid-term review of the monitoring procedure for Türkiye, the Monitoring Committee focuses on the judiciary, the implementation of judgments of the European Court of Human Rights and the preparation of the 2023 presidential and parliamentary elections.

In this respect, the ongoing crackdown on members of the political opposition, the attempt to close the Peoples' Democratic Party (HDP), restrictions on freedom of expression and of the media and the overly-broad interpretation of anti-terror legislation remain worrisome. While welcoming the lowering of the electoral threshold from 10% to 7%, the committee is however concerned about other recent electoral amendments and calls on the Turkish authorities to secure all conditions for free and fair elections.

Furthermore, urgent reforms are needed to restore the full independence of the judiciary and an effective system of checks and balances.

The committee concludes that the change of the political system adopted in 2017 by Türkiye – while being a sovereign right of any member State – has seriously weakened its democratic institutions and made the system of checks and balances dysfunctional and deficient. The committee therefore invites the Parliamentary Assembly to continue to follow the developments concerning democracy, rule of law and human rights in the framework of the monitoring procedure for Türkiye.

1. Reference to Committee: Resolution 1115 (1997).

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A. Draft resolution[2]

1. In April 2017, the Parliamentary Assembly decided to place Türkiye under the monitoring procedure. Since then, it has closely followed the developments in the country in a spirit of dialogue and co-operation with the Turkish authorities. The Assembly has paid particular attention to the unaddressed structural deficiencies in the functioning of Türkiye's democratic institutions, as identified by Council of Europe monitoring mechanisms. The Assembly has undertaken to make a mid-term review of the monitoring procedure, focusing specifically on the implementation of the judgments of the European Court of Human Rights, the judiciary and challenges to the rule of law, and the preparation of the 2023 parliamentary and presidential elections.

2. Significant political developments have occurred since the adoption of the 2017 report: constitutional amendments establishing a presidential system were adopted in 2017 by 51,4% of the voters and a new political system was put in place. In recent years, worrying political developments have impacted the functioning of democratic institutions. In particular, it became challenging for members of the political opposition to exercise their elected mandates in a free and safe environment.

3. In reaction to these developments, the Assembly organised three debates under urgent procedure. The first in January 2019 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?" (see Resolution 2260 (2019)), the second in October 2020 on the "New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards" (see Resolution 2347 (2020)) and the third in April 2021 on "The functioning of democratic institutions in Turkey" (see Resolution 2376 (2021)).

4. Issues of concern identified by the Assembly include the independence of the judiciary, the separation of powers and checks and balances, restrictions on freedom of expression and of the media, the overly-broad interpretation of anti-terror legislation, the implementation of judgments of the European Court of Human Rights, restrictions on the protection of human rights, and infringement of the fundamental rights of politicians and (former) members of parliament from the opposition, and also lawyers, journalists, academics and civil society activists.

5. The Assembly also remains vigilant about the safeguard of women's rights and gender equality in Türkiye. In this context, it regrets the decision of the President of the Republic to withdraw from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, the "Istanbul Convention") in March 2021 and sincerely hopes that a way will be found for Türkiye to reintegrate the Istanbul Convention, which has become the gold standard in the fight against violence against women and domestic violence.

6. The Assembly acknowledges that Türkiye has faced and is still facing various and serious terrorist threats in a region that is unstable. However, the response to these threats must be in compliance with human rights, rule of law and democracy standards.

7. Moreover, Russia's aggression against Ukraine has added new concerns for regional security and stability. In this respect, the Assembly welcomes the mediation efforts undertaken by Türkiye with a view to resolving the conflict, and commends the role played by Türkiye in facilitating the signature of the United Nations-brokered Black Sea Grain Initiative of 22 July 2022.

8. Concerning the execution of the judgements of the European Court of Human Rights:

8.1. While acknowledging that Türkiye has implemented an important number of European Court of Human Rights rulings, the Assembly recalls that the implementation of all rulings of the Court is at the core of the protection of fundamental rights in all member States; the findings of the Court should be respected, and not disregarded. In this context, the Assembly calls on Türkiye to adopt a constructive approach and abide by its obligations in a spirit of good faith and in accordance with the principle of the rule of law.

8.1.1. In this respect, the Assembly was appalled by the aggravated life-sentence given to philanthropist Osman Kavala on 25 April 2022 by the 13th High criminal court, this, notwithstanding that the European Court of Human Rights had urged the Turkish authorities to release Mr Kavala having found his pre-trial detention unlawful and pursuing an ulterior purpose – namely to silence him and dissuade other human rights defenders.

2. Draft resolution adopted by the Committee on 14 September 2022.

8.1.2. On 2 February 2022, the Committee of Ministers decided to bring infringement proceedings against Türkiye over its failure to implement this ruling of the European Court of Human Rights – a rare procedure which had only been triggered once. While the Turkish authorities argued that Mr Kavala had been released in February 2020, the European Court confirmed, on 11 July 2022, that Türkiye had failed to implement the judgment by re-arresting Mr Kavala on charges based on facts that were similar, or even identical, to those that the Court had already examined in its judgment.

8.2. Reiterating its call on Türkiye to implement the court judgements, the Assembly will follow with close attention the activities of the Committee of Ministers with respect to the follow-up of the infringement proceedings under Article 46.4 of the European Convention on Human Rights (ETS No. 5). It calls on the support of member States to the Committee of Ministers to ensure that decisions in this respect will not undermine or jeopardise the effectiveness of the system of protection of fundamental rights and the credibility of the Court, as this would open the way to a dangerous and detrimental trend for other Council of Europe member States.

8.3. Noting that domestic procedures are still onward going, the Assembly underscores that the solution to the Kavala case lies in the hands of the Turkish judicial system. The latter has the capacity to find a legal solution and show a more diligent interpretation of the Court judgement, in compliance with its ruling and with international law. In the meantime, the Assembly reiterates its call for the release of Mr Kavala.

8.4. The Assembly also continues to follow the implementation of the Court judgement of December 2020 relating to the detention of opposition leader Selahattin Demirtaş (who has been in detention since 2016) and its supervision by the Committee of Ministers. The Court had also concluded that Article 18 of the Convention had been violated, and that Mr Demirtaş' detention sought an ulterior purpose, namely to stifle political debate. The Assembly reiterates its call for Mr Demirtaş' release.

8.5. The Assembly has highlighted, in its previous resolutions, the restrictive environment for civil society organisations. In this respect, the Assembly is shocked by the conviction of Mr Kavala's co-defendants in the Gezi trial – all renowned persons, including architects, intellectuals, prominent civil society activists, including the Director of the Council of Europe School of Political Studies – to 18 years of prison. The Assembly calls for their immediate release and for their charges to be dropped.

9. Concerning the independence of the judiciary:

9.1. The Assembly recalls that the European Commission for Democracy through Law (Venice Commission), in its 2017 opinion, had concluded that the constitutional amendments establishing a presidential system did not guarantee the separation of powers and the independence of the judiciary, notably due to the composition of the Council of judges and prosecutors.

9.2. Despite steps taken by the authorities – including the adoption of an Action Plan on Human Rights in March 2021 and the Fourth Judicial Package in July 2021 – the authorities have not been able to address and redress some of the systemic issues which seriously undermine the functioning of the justice system:

9.2.1. The right to a fair trial (which represents 70% of the violations found by the Constitutional Court in individual application cases lodged since 2012) and, in particular, the violation of the right to a trial within a reasonable time (which was found in 90% of the rulings of the Constitutional Court in 2020 and 2021) should be secured. Noting that the Constitutional Court has launched a "pilot judgment procedure" and suspended these cases, the Assembly urges the authorities to take all necessary legal steps requested by the Constitutional Court to reduce the length of procedures.

9.2.2. In this context, the Assembly stresses the important role of the Constitutional Court in promoting the protection of fundamental freedoms, including the right to a fair trial, notably through the mechanism of individual applications, and calls for the strengthening of the Constitutional Court's independence. The Assembly urges the authorities to ensure more effective and systematic implementation of its rulings by lower courts and welcomes the co-operation established with the Council of Europe to find common solutions.

9.2.3. The Assembly also remains concerned about the situation in prisons and calls on the authorities to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and to authorise the publication of all its reports. It welcomes the commitment by the authorities to a zero-tolerance policy towards ill-treatment and torture, but nonetheless urges them to take more resolute and

credible action to investigate thoroughly serious allegations of ill-treatment and torture. It also urges the authorities to pay attention to the situation of seriously ill prisoners, including former MP Aysel Tuğluk.

10. Concerning the upcoming presidential and parliamentary elections scheduled in 2023:

10.1. The Assembly values the commitment of the Turkish people to democratic processes through their high participation in elections and a vibrant political scene.

10.2. The Assembly however remains very concerned by the ongoing crackdown on members of the political opposition, including the procedures seeking to lift the parliamentary immunity (overwhelmingly of opposition parties), and more generally acts of violence suffered by opposition politicians which have put political pluralism and the functioning of democratic institutions at risk. The case against Canan Kaftancıoğlu, Head of the Republican People's Party (CHP) provincial branch of Istanbul, convicted to nearly 5 years in prison (and released under supervision) based on old Tweets, and for, *inter alia*, allegedly "insulting the President", and the ban on her participating in political life, is yet another example of this restrictive and punitive environment in which opposition members are operating.

10.3. The Assembly will closely follow the ongoing procedure related to the attempt to close the Peoples' Democratic Party (HDP) – which is the third largest party in parliament – and to ban 451 HDP politicians from political life. The Assembly recalls that closures of political parties are a drastic measure which should occur only as a last resort. As already stressed in its Resolution 2376 (2021), the Assembly remains confident that the Constitutional Court will be guided by the strict regulations governing the closure of political parties in Türkiye, the case law of the European Court of Human Rights – where exceptions set out in Article 11 need to be construed strictly, with a limited margin of appreciation of Contracting States – and by the 1999 "Guidelines on the prohibition and dissolution of political parties, and analogous measures" of the Venice Commission.

10.4. The Assembly notes that the Turkish Parliament adopted, on 25 April 2022, amendments to the electoral law, regrettably without extensive consultations and debates and failing to reach a political consensus, as highlighted by the Venice Commission in June 2022 in its joint opinion (CDL-AD(2022)016) with the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR).

10.4.1. The Assembly welcomes the lowering of the electoral threshold from 10% to 7% – a long-lasting request from the Assembly – as well as new arrangements facilitating the participation of visually impaired persons in elections.

10.4.2. However, other provisions of this law are problematic: the Venice Commission raised concerns, *inter alia*, about the criteria required from political parties to qualify to stand for elections, which "favours larger and well-established political parties", and the new composition of the district and provincial electoral boards: their judicial members will no longer be the three most senior judges in the province but determined "by drawing lots" from eligible judges. For the Venice Commission, this "potentially makes appointment more susceptible to political pressure and manipulation in light of the limited safeguards in the judicial appointment system to ensure the independence of judges". This new regulation is also a major source of concern for the opposition.

10.4.3. Changes were also made in the legal provisions concerning the misuse of office in election campaigns; the Venice Commission recommended that "the President does not stand outside the party system but, rather, is part of it, there is no reason why s/he should not be subject to the restrictions in the same ways as other high public officials to prevent conflicts of interest and misuse of administrative resources".

10.4.4. In light of the recommendations made by the Venice Commission, the Assembly urges the Turkish authorities to proceed to the proposed changes or, at the least, to implement the legislation in a spirit that will be conducive to a level playing field. The electoral legal framework should ensure equal opportunities for all political players, and this will constitute an important criterion to assess the fairness of the upcoming elections.

10.5. Another essential component of political debates and elections campaigns is freedom of expression. However, there are serious concerns about ongoing restrictions and legal proceedings hampering the exercise of this right. Recalling its previous requests and the Venice Commission's 2016 opinion, the Assembly calls on Türkiye to, notably, amend Article 301 (Degrading Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State) and Article 125 (insult to officials), as well

as to abrogate Article 299 (Insult to the President) in accordance with emerging European consensus towards decriminalisation of defamation of the Head of State, and taking into account the judgment of the Court in the *Vedat Şorli v. Turkey* case and the Court's case law.

10.6. In particular the overly-broad interpretation of the anti-terrorism law has undermined freedom of expression and fundamental rights. The Assembly reiterates its concerns that such interpretation of the law has been used as a tool to stifle political debate and the activities of civil society. Drawing inspiration from the amendment of Article 7 of the Anti-Terrorism Law in October 2019, the Assembly encourages the authorities to amend further articles of the Anti-Terrorism Law and the Criminal Code which have led to violations of the right to freedom of expression, to clarify that the exercise of the right to freedom of expression does not constitute an offence, in the same way that Article 7 now states that expressions of thought that do not exceed the boundaries of reporting or for the purpose of criticism shall not constitute criminal activity.

10.7. Media play an important role in election campaigns. Freedom of media, however, remains a challenge. The Assembly notes that long-standing issues remain problematic, such as attacks against journalists, the control of media by the State, the use or withholding of advertising funds as a means to marginalise and criminalise media critical of the regime. The Assembly is concerned by the draft bill criminalising "disinformation" that could lead to prison sentences and could potentially lead to censoring online media. The Assembly asks for its withdrawal, pending an opinion from the Venice Commission.

10.8. The Assembly stresses that transparency and accountability are key for democracies and that transparency of party funding is important to ensure fair electoral competition. The Assembly regrets the lack of progress concerning the implementation of the recommendations of the Group of States against Corruption (GRECO) and urges the authorities to take action to increase transparency of party funding, to adopt a law on ethical conduct for members of parliament, to ensure transparency of the legislative process and to adopt measures to ensure parliamentary members' integrity. The Assembly also recalls GRECO's previous concerns about the weakened judicial independence, which impacts on the fight against corruption.

11. The Assembly notes that the change of the political system adopted in 2017 – while being a sovereign right of any member State – has seriously weakened the democratic institutions in Türkiye and made the system of checks and balances dysfunctional and deficient. The Assembly expresses the urgent need for reforms to restore the full independence of the judiciary and effective checks and balances. The Turkish authorities need to ensure that all conditions will be met to guarantee free and fair elections, including the ability of the opposition to operate, and journalists to work in an independent way. The Assembly remains at the disposal of the authorities to pursue a constructive dialogue. It resolves, in the framework of the monitoring procedure for Türkiye, to continue to follow the developments in the country concerning democracy, rule of law and human rights.

B. Explanatory memorandum, by Mr John Howell and Mr Boriss Cilevičs, co-rapporteurs

1. Introduction

1. In April 2017, the Parliamentary Assembly decided to place Türkiye[3] under the monitoring procedure. Since then, it has closely followed the developments in the country in a spirit of dialogue and co-operation with the Turkish authorities. The Assembly has paid particular attention to the unaddressed structural deficiencies in the functioning of Türkiye's democratic institutions, as identified by Council of Europe monitoring mechanisms. These issues of concern include the independence of the judiciary, the separation of powers and checks and balances, restrictions on freedom of expression and on the media, the overly-broad interpretation of anti-terror legislation, the implementation of judgments of the European Court of Human Rights, restrictions on the protection of human and women's rights and infringement of the fundamental rights of politicians and (former) members of parliament from the opposition, lawyers, journalists, academics and civil society activists.[4]

2. Since then, co-operation between the Monitoring Committee, the Assembly monitoring rapporteurs and Türkiye has remained intense, despite the changes of rapporteurs[5] and the Covid-19 pandemic which seriously hampered the normal work of the rapporteurs. In 2018, the Assembly monitors Ms Marianne Mikko (Estonia, SOC) and Mr Nigel Evans (United Kingdom, EC/DA) issued an information note following their March 2018 visit,[6] which dealt, *inter alia,* with the consequences of the failed coup and the disproportionate measures (including the dismissal of massive numbers of officials and numerous closures of media and civil society associations) taken under the state of emergency; the setting up of an Inquiry Commission on State of Emergency Measures to provide legal remedy for applications of dismissed civil servants or entities forced to close; and the preparation of the 2018 parliamentary and presidential elections as well as the 2019 local elections. The rapporteurs agree that Türkiye faces a significant level of terrorism which the country has a legitimate right to fight,[7] but they have also examined whether the legislation has been drafted too loosely in a way which has a deleterious effect on human rights.

3. In recent years, worrying political developments have impacted the functioning of democratic institutions, and in particular the ability of members of the political opposition to exercise their elected mandates in an environment conducive to genuine political and open debates which characterise a democratic society. As a result, the Assembly organised three debates under urgent procedure entitled "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 January 2019 (see Resolution 2260 (2019)); "New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards" in October 2020 (see Resolution 2347 (2020)); and "The functioning of democratic institutions in Turkey" in April 2021 (see Resolution 2376 (2021)).

4. Significant political developments have occurred since the above-mentioned 2017 report: constitutional amendments establishing the presidential system were adopted in 2017 by 51,4% of the voters through a referendum held under the state of emergency. On 24 June 2018, President Erdoğan was re-elected with 52% of the vote, while the Justice and Development Party (AKP) - Nationalist Movement Party (MHP) coalition won the majority of seats in parliament. The Assembly election observation mission assessed that these elections had provided voters with a genuine political choice but that there were unequal campaign conditions, giving an undue advantage to the incumbent President and ruling party.[8] In March 2019, the local elections marked a turning point, with the opposition winning major cities, including Istanbul and Ankara.

5. During this period, the country faced many challenges, both at national and international levels, including economically. The situation is marked today by high inflation – the annual inflation rate of 80% in August 2022 was the highest in the last 24 years,[9] rising unemployment, a plunging Turkish lira and the

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3. As from 3 June 2022, the name of the country was changed from Turkey to Türkiye in accordance with the Presidential Circular n°2021/24 of 3 December 2021. Documents published before that day will keep their original title.
4. See Doc. 14282 and Addendum
5. Mr Thomas Hammarberg (Sweden, SOC) was appointed in June 2019 and replaced by Mr Boriss Cilevičs (Latvia, SOC) in February 2022, Mr John Howell (United Kingdom, EC/DA) was appointed in January 2020, replacing Mr Nigel Evans (United Kingdom, EC/DA).
6. AS/Mon (2018) 07.
7. The authorities stressed that Türkyie has been fighting against terrorism in all its forms and manifestations for decades, "ranging from the Fetullahist Terrorist Organization (FETÖ) to the separatist PKK/PYD/YPG terrorism, and the leftist DHKP-C to religiously motivated terrorist groups such as DAESH". The PKK is recognised as a terrorist organisation by the European Union, the United States, Canada and Australia. AS/Mon (2022) 15 comments.
8. See Doc. 14608.

presence of nearly four million refugees. Türkiye launched several military interventions (in northern Syria, Iraq, Libya) and external operations (in the East Mediterranean), and recently announced a new military operation in Syria (with which the country shares a 900-kilometer border) to form a 30 kilometre-wide buffer zone along Türkiye's border,[10] the main objective of this operation, as described by the authorities being to "eliminate terrorist formations along Türkyie's borders".[11] We also bear in mind that the instable regional context, and the fact that the country is hosting 4,5 million refugees.[12] New developments concerning the resolution of the Cyprus conflict are also followed by the rapporteurs for the monitoring of Türkiye (this question falls within the remit of the Sub-Committee on Conflicts concerning Council of Europe Member States) and the Committee on Political Affairs and Democracy.[13] The Russian aggression against Ukraine was another challenge, as the country has relations with both Russia and Ukraine: Türkiye supports Ukraine's territorial integrity but does not apply the sanctions against Russia, since Türkiye's general policy is not to join unilateral sanctions. The country has remained committed to the 1936 Montreux convention regarding the Regime of the Straits and closed the Bosphorus Strait to military ships; moreover it offered its mediation securing a meeting between the Russian and Ukrainian ministers of foreign affairs on 10 March 2022 in the margins of the Diplomatic Forum of Antalya, hosted direct negotiations between the two countries in İstanbul on 29 March 2022, facilitated the signing of the UN-brokered Black Sea Grain Initiative of 22 July 2022 (which enabled the resumption of commercial food exports from three key Ukrainian ports) and the opening of a the Joint Coordination Centre in Istanbul to implement this agreement. As a member of the North Atlantic Treaty Organization (NATO), Türkiye expressed its stance on the application of Sweden and Finland to join NATO due to their alleged "ongoing propaganda and support to recruitment and financing activities of terrorist organisations in these countries".[14] On 28 June 2022, Turkiye, Finland and Sweden signed a Trilateral memorandum under the auspices of NATO, to address security concerns raised by Türkiye and pave the way for Finland and Sweden to become NATO members.

6. Another major – and regrettable – development relates to the decision of President Erdoğan to withdraw Türkiye from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, the "Istanbul Convention"). This withdrawal became effective on 1st July 2021. This decision triggered a strong reaction, at national and international levels, and was covered by the previous Assembly report on Türkiye debated under urgent procedure. Since then, civil society and women's organisations have continuously challenged this decision and expressed their attachment to the Istanbul Convention – which has become the gold standard in the fight against violence against women and domestic violence – while insisting that the new law on violence against women adopted in April 2022 by the parliament (and published in the Official Gazette on 27 May 2022), would be insufficient to prevent feminicides.[15] The authorities claimed that the denunciation of the Convention did not affect the legal and administrative structure established in Türkiye for the protection, support and empowerment of victims of violence, notably Law No. 6284 on Protection of Family and Prevention of Violence against Women, which is in effect since 2012 and includes all the measures of İstanbul Convention. They also stressed Türkiye's commitment to show zero tolerance to violence against women.[16] This is to be welcome. Nevertheless, we underline how important it is to safeguard and reinforce women's rights and gender equality in Türkiye and reiterate the Assembly sincere wish expressed in its Resolution 2376 (2021) that a way will be found for Türkiye to reintegrate the Istanbul Convention. We would like to underline the importance of international co-

9. The independent inflation group ENAG put the figure at 160.76%: DuvaR. English (03.06.2022).
10. Reuters (1 June 2022).
11. AS/Mon (2022) 15 comments.
12. Figures provided by the authorities. In their comments, the IYI party has stressed the issue of uncontrolled immigration, which has been increasing in recent years, and which has "become a threat to [Türkyie's] national security and also to {its] socio-cultural structure. AS/Mon (2022) 15 comments. See also figures of the Office of the United Nations High Commissioner for Refugees (UNHCR) (May-July 2022), highlighting that 4 million refugees and asylum-seekers in Türkiye include around over 3.65 million Syrians under temporary protection and close to 330 000 international protection status holders and asylum-seekers of other nationalities.
13. The Assembly Committee on Political Affairs and Democracy is currently preparing a report on a "Call for Famagusta's return to its lawful inhabitants" (rapporteur: Piero Fassino (Italy, SOC)).
14. AS/Mon (2022) 15 comments.
15. The authorities explained that this law increased the penalties for willful killing, deliberate injury, threat, torture and torture against women in order to combat violence against women more effectively and to provide deterrence. The scope of catalog crimes, and the scope of free aid for victims were expanded. For more details, see AS/Mon (2022) 15 comments.
16. The authorities referred to the 4th National Action Plan on Combating Violence against Women (in effect since 1st July 2021), the 2022 Activity Plan for Combating Violence Against Women and the Action Plan on Human Rights, which aims at "Improving the Effectiveness of the Fight Against Domestic Violence and Violence Against Women". AS/Mon (2022) 15 comments.

operation and exchange of good practices in this area, which is only possible within an international framework such as the Istanbul Convention and could further strengthen the effectiveness of Turkiye's efforts to combat domestic violence.

7. Since March 2021, over 200 applications have been lodged with the Council of State by civil society organisations and political leaders, such as Ms Meral Akşener, Chairperson of the IYI (Good) Party, challenging the legality of the presidential decision to withdraw from the Istanbul Convention. In a 3-to-2 vote, the 10th Chamber of the Council of State rejected the demands for a stay of execution. However, the two dissenting opinions of the judges and those of the Council of State prosecutors stated that the President did not have the authority to withdraw from international treaties.[17] On 28 April 2022, the Council of State prosecutor reiterated his position that the President's decision was unlawful after the first hearing on six of these cases. The same position was reiterated on 7 June 2022 in the hearing concerning fifteen other applications to the Council of State. On 19 July 2022, the 10th Chamber of the Council of State ruled, by a 3-2 vote, that the presidential decree on the withdrawal was lawful and was not in violation of the Turkish Constitution and laws. The verdict can be appealed. We will continue to monitor this, together with the Assembly General rapporteur on violence against women, Ms Zita Gurmai (Hungary, SOC).

8. Many other issues related to democracy, human rights and the rule of law in Türkiye deserve to be examined in the framework of this monitoring report on Türkiye, the first since the country was returned to the monitoring procedure. However, in agreement with the Monitoring Committee, we propose, given the current context, to issue an initial, interim report and focus on three main issues which have had a significant impact on the functioning of democratic institutions, namely challenges to the rule of law, the implementation of the decisions of the European Court of Human Rights and the preparation of the 2023 parliamentary and presidential elections.

9. This report is based on the findings of the Council of Europe monitoring mechanisms and other major international and national non-governmental organisations, on the work carried out by the Monitoring Committee since the previous rapporteurs' last visit in 2018 (namely four exchanges of views on recent developments and three hearings on the 2019 local elections, the reform of the justice system and the situation of dismissed and replaced mayors) and of our activities as rapporteurs: online meetings were organised in 2021 with students, academics, representatives of the Council for Higher Education, the Ministry of the Interior and the Ministry of Justice with regard to the protests at Bosphorus University. We also paid a regular fact-finding visit to Türkiye in March 2022. Following the aggravated life sentence handed down to Osman Kavala, despite an earlier ruling from the European Court of Human Rights calling for his release, the Monitoring Committee asked us to pay an *ad hoc* visit in May 2022 to follow the developments and report back. On 8 August 2022, we received the comments to the preliminary draft report from the Turkish Delegation to the Assembly in co-operation with the competent authorities of Türkiye.[18] These comments included contributions from the authorities and the ruling party, and from the opposition parties, the Republican People's Party (CHP), the Peoples' Democratic Party (HDP) and the IYI Party, which have provided useful and constructive input to this report.

10. We have continuously underscored that it is essential to engage in open and constructive discussions with the Turkish authorities. In this respect, we would like to thank the Turkish delegation to the Assembly for its excellent co-operation and readiness to provide all necessary support and assistance to the rapporteurs in fulfilling their mandate.

2. Rule of law

2.1. Rule of law and the independence of the justice system in the current constitutional framework

11. As documented in previous resolutions and opinions of the European Commission for Democracy through Law (Venice Commission), long-standing concerns subsist about the independence of the judiciary in Türkiye.[19] This question has become even more acute since 2017, when the constitutional amendments establishing an executive presidency were adopted on 16 April 2017 by a majority of voters (51.4%) (with a turnout of 85,32%), after a speedy parliamentary procedure and under the state of emergency. While the constitutional amendments provided for the abolition of military courts – which the Assembly welcomed, at the

17. They argue that it was not possible to leave the Convention by a President's Decision, given that it had been ratified by parliament and published with its Law No. 6251 in the Official Gazette on 29 November 2011.
18. See document AS/Mon (2022) 15 comments.
19. Resolution 1925 (2013) "The post-monitoring dialogue with Turkey".

same time they introduced some negative measures. In this respect, it is worth recalling the issues highlighted by the Venice Commission in its 2017 opinion on these constitutional amendments,[20] in relation to the functioning of the justice system in what the Turkish authorities then described as a "Turkish-style presidential system". Let us briefly recall some of the concerns raised at that time:

12. *Concerning the separation of powers and checks and balances*: The Venice Commission noted that "a presidential regime requires very strong checks and balances, and especially a strong, independent judiciary" as controversies between the executive and the legislative branches "often end up in courts" in presidential systems. Under the new Constitution, the President of the Republic would be at the same time the head of State and the head of the government. In addition, the constitutional amendments would lead to "an excessive concentration of executive power in the hands of the President and the weakening of parliamentary control of that power".[21]

13. *Concerning the weakening of the independence of the judiciary*: the Venice Commission pointed out that the composition of the Council of Judges and Prosecutors (CJP) would be problematic, as all 13 members would be appointed by either the President (four+two *ex officio* members, namely the Minister of Justice[22] and the Undersecretary of Justice, appointed by the President) or the parliament (7), which contradicts both the position of the Venice Commission and Committee of Ministers Recommendation CM/ Rec(2010) on judges: independence, efficiency and responsibilities. In addition, because the President would be engaged in party politics, his/her choice of the members of the Council of Judges and Prosecutors "will not have to be politically neutral". "No member of the Council would be elected by peer judges anymore. On account of the Council's important functions of overseeing appointment, promotion, transfer, disciplining and dismissal of judges and public prosecutors, the President's control over the Council would extend to all the judiciary. Control over the Council of Judges and Prosecutors would also indirectly enhance the President's control over the Constitutional Court".[23]

14. Furthermore, the constitutional amendments increased the *influence of the Executive over the Constitutional Court* following the changes made regarding the manner of appointment of the members of the CJP: "the CJP is responsible for the elections of the members of the Court of Cassation and the Council of State. Both courts are entitled to choose two members of the Constitutional Court by sending three nominees for each position to the President, who makes the appointments".[24] The President's control over the Council of Judges and Prosecutors would therefore also indirectly enhance the President's control over the Constitutional Court.[25]

15. These conclusions were also confirmed by GRECO in its latest report. Recalling that the new composition of the CJP runs counter to European standards for an independent self-governing body of the judiciary, it noted that "the executive has kept a strong influence on a number of key matters regarding the running of the judiciary: the process of selecting and recruiting candidate judges and prosecutors; reassignments of judicial officeholders against their will; disciplinary procedures; and training of judges and prosecutors. As regards the training of judges and prosecutors, lectures on the Judicial Ethics Declaration have started but GRECO recommended more practical training based on more detailed guidance, and separate training for judges and prosecutors.[26] We were informed that the CJP adopted on 8 March 2022 a "Social Media Usage Guideline" and works on a guideline, which includes concrete examples of the

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20. CDL-AD(2017)005: Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017, adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017).
21. This assessment was challenged by the authorities in their comments (ASMon (2022) 15 comments), claiming that the executive branch is extensively supervised by the parliament by means of parliamentary inquiry, general debate, parliamentary investigation and written questions, and by the has the Court of Accounts which performs the audit on its behalf.
22. The Minister of Justice is the President of the CPJ. The authorities stressed that the Minister cannot attend the Chamber meetings and the Plenary Session meetings concerning the disciplinary matters of the judges and prosecutors. The Deputy Minister of Justice is one of the six members of the First Chamber and has one vote in the voting. (AS/Mon (2022) 15 comments).
23. Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017, adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017), CDL-AD(2017)005.
24. In other words, as provided by Article 146 of the Constitution, the President of the Republic shall appoint three members from the Court of Cassation, two members from the Council of State from among three candidates to be nominated, for each vacant position, by their respective general assemblies, from among their presidents and members. AS/Mon (2022)15 comments.
25. CDL-AD(2017)005, para. 121.

implementation of the Declaration of Ethics for Turkish Judiciary. The Justice Academy of Türkiye also organises trainings on judicial ethics organised for the candidate and serving judges and prosecutors[27] which should be encouraged, taking however into account GRECO's recommendations.

16. Concerning the prevention of corruption in respect of members of parliament, judges and prosecutors (Fourth Round), GRECO's latest compliance report of March 2022[28] concluded that no progress had been made by Türkiye: the level of implementation remained the same as in the previous report published in 2020.[29] The parliament has not yet been seized or examined a draft Law on Ethical Conduct for Members of Parliament; transparency of the legislative process and measures to ensure MPs' integrity are still lacking. GRECO has also recalled that "the underlying reasons for GRECO's recommendations remain the fundamental structural changes which have weakened judicial independence and also led the judiciary to appear even less independent from the executive and political powers than at the time of the adoption of the Evaluation Report".[30] This worrisome delay in implementing the recommendations of the GRECO should be urgently addressed to improve the anti-corruption framework, and the transparency and accountability of State institutions.

17. In 2017, the Venice Commission had assessed that the proposed constitutional amendments would introduce in Türkiye a presidential regime "which lacks the necessary checks and balances required to safeguard against becoming an authoritarian one". It had concluded that "the substance of the proposed constitutional amendments represents a dangerous step backwards in the constitutional democratic tradition of Turkey". In short, the Venice Commission concluded that the 2017 constitutional amendments establishing the presidential system did not guarantee the separation of powers. For its part, the Assembly has, in several resolutions, called for the revision of these constitutional provisions to restore the separation of powers.

18. The presidential system has introduced profound changes in the Turkish institutional system, and remains an issue of political debate. The united opposition parties (see below) have vowed to reintroduce the parliamentary system, should they win the next elections. In light of the above assessments made in previous years by the Venice Commission and GRECO, the main opposition party CHP shared with us its assessment of the current functioning of the political system:[31]

– The CHP assesses that "the oversight powers of the legislature have become dysfunctional. With the decree power granted to the president, the legislative authority that had belonged exclusively to the parliament has become vested in the president, disrupting the separation of powers to the benefit of the executive. The legislative checks on the executive have been effectively obliterated. The authority to censure and pose verbal questions to ministers has been abolished. Besides, the parliamentary investigations, which had constituted one of the most effective checks for the legislature, have been rendered inoperable due to an increase in the quorum. Furthermore, the inalienable budgetary right exercised by the legislature on behalf of the nation has been abolished. This right has been transferred to the president, with the previous year's budget taking effect should the budget drafted by the president be rejected. Thus, the negotiations in the parliament and the rejection of the budget have no practical consequence for the executive";

– The CHP added that "the fact that the Constitutional Court is under pressure and being threatened by the government and that almost all its members are to be appointed directly or indirectly by the president undermines the independence and impartiality of the high court. Appointments to the Constitutional Court are carried out with political motives. The aim is to have a Constitutional Court that is subjected to the executive. The verdicts of the Constitutional Court are not implemented because of

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26. Fourth evaluation round (Corruption prevention in respect of members of parliament, judges and prosecutors), second interim evaluation report, GrecoRC4(2020)18, published on 18 March 2021. According to Transparency International Corruption Perceptions Index, Türkiye had fallen to 96th of 180 countries in its scoring 38 out of 100 (the global average being 43; Türkiye dropped 11 points since 2012.
27. More details were provided the authorities in their comments. AS/Mon (2022)15 comments.
28. Fourth evaluation round (Corruption prevention in respect of members of parliament, judges and prosecutors), third interim evaluation report, GrecoRC4(2022)5, adopted on 25 March 2022 and published on 23 June 2022.
29. Türkiye has implemented satisfactorily or dealt with in a satisfactory manner three of the twenty-two recommendations contained in the Fourth Round Evaluation Report.GrecoRC4(2022)5.
30. That relates to the composition of the CJP (made up of members appointed by the President of the Republic and the Grand National Assembly of Türkiye (GNAT) and that none are elected by judges and prosecutors themselves), the strong influence of the executive on a number of key matters regarding the running of the judiciary: the process of selecting and recruiting candidate judges and prosecutors; reassignments of judicial officeholders against their will; disciplinary procedures; and the non-differentiated training of judges and prosecutors. GrecoRC4(2022)5, para. 91.
31. AS/Mon (2022) 15 comments.

the pressure of the executive and the Council of Judges and Prosecutors do not impose sanctions against the lower court judges who do not respect the verdicts being mentioned. These judges are even rewarded by the Council. Such developments obliterate the principle of constitutional state."

19. Commenting our report, the IYI Party has also emphasised that "Türkiye is a democratic state of the law with 150 years of parliament and 100 years of republican tradition": the IYI would implement a "strengthened parliamentary system" after an election win, with "a state administration based on values such as democracy, human dignity, freedom, rule of law and human rights".

2.2. Issues of concern in light of the current functioning of the justice system

20. The rule of law and the independence of the judiciary are essential to ensure that fundamental freedoms are protected through fair trials and procedural safeguards. The number of trials which concern freedom of expression, freedom of the media or the deprivation of liberty is worrying. Current and previous Assembly monitoring rapporteurs have reacted on several occasions[32] to what the Assembly called a judicial harassment of those expressing dissenting or critical opinions – which are fully legitimate in a democratic society – from a large spectrum of groups in society (this includes politicians, journalists, academics, students, civil society activists, etc). This trend disregards the democratic principles enshrined in the Turkish Constitution and the European Convention on Human Rights (ETS No. 5) (which, in line with article 90 of the Constitution, prevails over national legislation in Türkiye).

21. We have raised these concerns with the authorities. In reply, they recalled that the Constitution provides for the independence of the judiciary. They also recalled that the mass dismissal of over 4 000 judges and prosecutors for their alleged allegiance to the Gülen movement – which is referred to as the "Fetullahist Terrorist Organization (FETÖ)" by the Turkish authorities[33] – has had consequences on the functioning of the justice system, with the recruitment of junior judges and prosecutors,[34] and that the decisions of courts should be handled within the Turkish judicial system.

22. In this respect, the pre-trial detention of judges and prosecutors following their mass dismissal has been found to be in violation of Council of Europe standards by the Venice Commission and the Assembly. More recently, the European Court of Human Rights issued a ruling concerning the *Turan and others v. Turkey* cases,[35] which concerned the arrest and pre-trial detention of 427 of these judges and prosecutors on suspicion of their membership of the Gülen movement in the aftermath of the attempted coup of 15 July 2016. In this case, the Court concluded the violation of Article 5.1 of the Convention on account of the unlawfulness of the initial pre-trial detention of the applicants who were ordinary judges and prosecutors and members of the Court of Cassation or the Supreme Administrative Court at the time of their detention. The Court confirmed its judicial stance and case law concerning the unlawfulness of the pre-trial detention of the members of the judiciary and the unreasonable interpretation by Turkish courts of the notion of *in flagrante delicto* with a view to evading procedural safeguards. The Court's position has been previously established in the similar applications of dismissed members of the Constitutional Court, Alparslan Altan and Erdal Tercan and of a purged judge Hakan Baş.

23. With reference to some cases which we have been closely following, a number of issues were discussed with the authorities:

24. We recalled the *need for the lower courts to comply with the decisions of higher courts (including the Constitutional Court)*, in compliance with the Turkish constitution. We remain concerned by the fact that decisions of the Constitutional Court – as was the case of the (former) MP Mr Enis Berberoğlu[36] – were not immediately complied with by lower courts. This was also reflected by the Committee of Ministers (supervising the implementation of cases related to the violation of freedom of expression) which noted that "the

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32. The list of statements issued by Assembly monitoring rapporteurs is available in the document "Overview of the work of the Monitoring committee".

33. The authorities referred to the ruling of 16th Criminal Chamber of the Court of Cassation of 24 April 2017, upheld by the Assembly of Criminal Chambers of the Court of Cassation, establishing that the FETÖ was the clandestine terrorist organisation behind the coup attempt of 2016, during which 251 people were killed and 2 734 injured. The Gülen movement is only recognised as a terrorist organisation by Türkiye, and the Assembly did not take position on this issue. We will therefore stick to the terminology used in previous Assembly reports.

34. The authorities emphasized that in-service training ensured quick professional acquis and competencies. In addition, senior and experienced lawyers were entitled to join the judge and prosecutor professions in this process. AS/Mon (2022) 15 comments.

35. *Turan and Others v. Turkey*, 23 November 2021, Applications nos. 75805/16 and 426 others, judgment of 23 November 2021.

prosecutors and the lower courts do not follow the case law of the higher courts and continue to initiate prosecutions or convict journalists and others, for activities that should be tolerated as the exercise of freedom of expression as protected by Article 10" and requested "information on the relevant practice of prosecutors and lower courts to allow the Committee to assess the present situation".[37]

25. The issue *of fair trials* is prominent, as documented by the Constitutional Court, where individual applications can be lodged since 2012 regarding breaches of the rights enshrined in the European Convention on Human Rights. In ten years, the Constitutional Court has received 392 758 complaints. 90% were rejected (either on administrative grounds (4%) or for being inadmissible (86%). 80% of all cases have been processed. In 28 402 cases (namely 9,1% of all complaints received), the Court found at least one violation. In 70,8% of these cases, the Court found that the right to a fair trial was violated.[38] In 2021, 60 000 individual applications were made, as many as the European Court of Human Rights received that same year, as the President of the Constitutional Court noted.[39] This trend was confirmed in recent years: since 2020, the Court has been receiving a significant number of applications deriving from "the right to trial within reasonable time" (more than 39 000 in the first semester 2022 alone); in almost 90% of its judgments issued in 2020 and 2021, the Constitutional Court found a violation of this right. Therefore, on 5 July 2022, the Court applied a "pilot judgment procedure" and decided to postpone the related cases for a period of time on the condition that the legislators take measures required to enforce the judgment.[40] We can but ask the authorities to swiftly proceed to the expected reforms in order to address this systemic issue.

26. The recourse to *secret witnesses* has also been a matter of concern. Anonymous witnesses have been a controversial issue in political trials in Türkiye since they were introduced in 2008.[41] The European Court of Human Rights had ruled on 13 October 2020 that, unless a conviction is based on other solid evidence, secret witness testimony alone cannot be grounds for lawful conviction.[42]

27. The issue of the *impartiality of the justice system* also needs to be addressed. In the light of the Kavala case, which we became acquainted with during our last visit, we were concerned by several issues raised by the lawyers and family of the plaintiffs, which seriously challenged the impartiality of several judges and prosecutors who had been dealing with the case since 2013, and which have seriously undermined their trust in the procedure and expectation of a fair trial. We would like to highlight some of the issues raised in this case:

– The prosecutor who originally carried out the investigation and wiretapped the human rights defenders, Muammer Akkas, was dismissed as part of an investigation into the anti-corruption operations carried out on 17-25 December 2014 [by alleged members of the Gülen movement]. He has fled the country. His evidence was however included in the file;

– One of the judges who handed down the aggravated life sentence on Mr Kavala and sentenced his co-defendants to 18 years in prison had been a candidate to become a deputy for the ruling AKP Party in 2018 (while the plaintiffs, in Osman Kavala's case, were members of the Cabinet of then Prime minister Mr Erdoğan).

28. The Kavala case also raises questions about decisions made by the Council of judges and prosecutors:

– in June 2019, Galip Mehmet Perk, the judge who voted against the continued arrest of Mr Kavala and Mr Aksakoğlu, was reassigned by the Council of judges and prosecutors to another court;[43]

– The three judges who acquitted the defendants in February 2020 – a decision openly criticised by President Erdoğan – were investigated by the Council;[44]

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36. 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. 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 (Doc 15171, para 7).
37. Altug Taner Akcam v. Turkey.
38. Constitutional Court of the Republic of Türkiye: Individual application statistics (23/9/2012 – 31/3/2022/1)
39. DuvaR.english (15 February 2022).
40. AS/Mon (2022) 15 comments.
41. Bianet (18 February 2022).
42. *Bakır v. Turkey* (Application No. 2257/11).
43. The authorities indicated that Mr Perk was appointed by the First Chamber of the Council of Judges and Prosecutors from the Beykoz Courthouse to the İstanbul Anatolian High Criminal Court as the President on 31 May 2019 and from the İstanbul Anatolian High Criminal Court to the İstanbul High Criminal Court as the President on 31 October 2019 upon his request. AS/Mon (2022) 15 comments.

– While disregarding its own principle that "judges who do not comply with Constitutional Court rulings cannot be promoted", the Council promoted Akın Gürlek – who has issued many controversial contentious sentences[45] and even defied the verdict of the Constitutional Court in the case of journalist Enis Berberoğlu – to the position of "first class judge" paving the way for his appointment to the Court of Cassation, the highest appeals court, and the Constitutional Court.[46] Mr Gürlek was the presiding judge of the Istanbul 14th High Criminal Court (which rejected the appeal of the eight defendants on 10 May 2022). In the most recent development, Akın Gürlek was appointed Vice-minister of justice by President Erdoğan on 2 June 2022.[47]

29. The authorities explained that some of these issues were currently addressed in different action plans: a strategy of justice reform was launched in 2019. On 2 March 2021, President Erdoğan unveiled the Action Plan on Human Rights, identifying 9 goals, 50 targets and nearly 400 activities that should be implemented over the next two years. They aimed at "strengthening the right to a fair trial", "protect and strengthen freedom of expression, association and religion" and promote "legal predictability and transparency". The monitoring and evaluation board was established by a Presidential Circular on 30 April 2021.[48] The authorities provided us with detailed information about its content and implementation and indicated that 40% of the activities foreseen had been implemented. We refer to the specific information received by the authorities and will follow its implementation. We also note that the annual report should be considered by the parliament.

30. The Turkish authorities also adopted the Fourth Judicial Package on 8 July 2021, including the amendment to Article 100 of the Code of Criminal Procedure which introduced the requirement of concrete evidence justifying strong suspicion to detain persons. This amendment was welcomed by the Committee of Ministers, but in "view of the increasing number of new judgments examined within the framework of the *Nedim Şener* group of cases", it urged the authorities to "take further measures to ensure that judicial authorities rely on concrete evidence justifying strong suspicion when placing individuals in detention and to provide information on the current judicial practice".[49]

31. Again, on the positive side, the Turkish authorities and the Council of Europe are implementing several co-operation programmes aimed at addressing relevant issues of concern and improving the legal practice, which is key to enhancing the independence and impartiality of the judiciary. We welcome for example the project on 'Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights', which could promote a more effective implementation of Constitutional Court rulings by

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44. The authorities provided us with details about this procedure: "The CJP launched an investigation against [these] three judges on following grounds: They accepted the tape recordings and physical follow-up reports in the previous hearings as lawful, on the grounds that there are concrete facts and evidence pointing to the existence of a strong criminal suspicion, decided to reject the objections to the detention and to continue the detention in the reviews made as required by the legal obligation. However, later in the last hearing, dated 18 February 2020, in which the final decision was made, they acted contradictory by accepting that the tape records and physical follow-up minutes were obtained unlawfully. The investigation was launched on this ground where three judges showed indifference and disorganisation in their task". The CJP launched an investigation against Galip Mehmet Perk, former President of the 30th High Criminal Court of Istanbul, on the grounds that, "while the trial was still going on, by sharing information about the file with third parties, he could not perform his duty correctly and impartially, and that he has contact or affiliation with the FETÖ terrorist organisation. The above-mentioned investigation file is currently under review by an investigating judge". AS/Mon (2022) 15 comments.

45. Mr Gürlek had sentenced columnists for daily Sözcü for "aiding an illegal organization"; former Co-Chair Selahattin Demirtaş to 4 years and 8 months in prison and former HDP deputy Sırrı Süreyya Önder to 3 years and 6 months in prison for "propagandizing for a terrorist organization"; the Progressive Lawyers' Association (ÇHD) lawyers to 159 years in prison in total; CHP Istanbul chair Canan Kaftancıoğlu, to 9 years and 8 months in prison because of her social media posts; former Cumhuriyet reporter Canan Coşkun to 2 years and 3 months in prison for "marking counterterrorism officials as a target."; Sebnem Korur-Fincancı, the head of the Turkish Medical Association, to 2 years and 6 months in prison. He also declared journalist Can Dündar a "fugitive" and issued an order to confiscate his real estate.

46. Bianet (10 may 2022). The authorities explained that Mr Gürlek's appointment as first-class judge was in line with the requirement of Article 15 of the Law No. 2802 on Judges and Prosecutors, following an evaluation made after three-year work based on several criteria, including "whether they gave rise to a decision of violation in the examinations made by the European Court of Human Rights and the Constitutional Court, the nature and gravity of the violation they cause, and their efforts to protect the rights guaranteed by the European Convention on Human Rights and the Constitution". AS/Mon (2022) 15 comments.

47. The President's power to nominate and dismiss high-level State officials according to procedures defined by himself/herself as well as ministers and vice-ministers (with the parliament exercising no control over these nominations) (CDL-AD(2017)005, para. 68).

48. Under the presidency of the President, the Board is composed of members of the executive, namely the Vice President, the Ministers of Justice, Family and Social Services, Labor and Social Security, Foreign Affairs, Treasury and Finance, Interior, and the Deputy Chairman of the Legal Policies Board of the Presidency. There is a dedicated website to raise awareness about this plan: Action Plan on Human Rights, AS/Mon (2022) 15 comments.

49. Altug Taner Akcam v. Turkey.

lower courts.[50] This technical co-operation is a good example of how the Council of Europe and various stakeholders representing the Turkish authorities can exchange and look for solutions to address structural deficiencies.

2.3. Impact of the justice administration on the situation in prisons

32. The functioning of the justice system was also adversely impacted by the consequences of the failed coup in 2016 which was followed by mass detentions. Since then, arrests of individuals for their alleged membership in the Gülen movement have continued in the police, the army, and other State institutions. According to the statement of 22 November 2021 by the Minister of the Interior, Mr Soylu, 99 962 persons were arrested in operations against supporters of the Gülen movement since the coup attempt. 22 340 people with alleged links to the movement are currently in prison, including both those who are serving sentences and those in pre-trial detention. A further 25 026 individuals are currently wanted on terrorism charges.[51]

33. These developments contributed to making the situation in prisons even more difficult. There are currently 319 587 people detained.[52] In the Council of Europe's Annual Penal Statistics on Prison Populations for 2021 (so-called SPACE I study[53]) and taking into account countries with more than 300 000 inhabitants, Türkiye was the country with the second highest incarceration rates on 31 January 2021 (325 inmates per 100 000 inhabitants) after Russia (328). Türkiye reported a prison density of more than 105 inmates per 100 places (108 – as a matter of fact, this being an indicator of "serious overcrowding"). While the SPACE study noted that the Covid-19 pandemic had contributed to reducing the prison population in Europe in 2020, consolidating a ten-year-long trend in most European States, Türkiye was the only country (with more than 300 000 inhabitants) that had a higher prison population in 2021 than in 2011.[54]

34. The Human Rights Association İstanbul Branch Prisons Commission considers that around 15-20% of these nearly 300 000 prisoners were arrested for political reasons and face serious rights violations[55]; they are subjected to longer deprivation of freedom than other prisoners serving the same time and harsher conditions of execution such as isolation.[56]

35. Despite the introduction of early release measures due to the pandemic (which however excluded those convicted or detained for "terror-related charges", including, *inter alia*, many intellectuals, journalists, members of parliament, elected mayors, civil society representatives or ordinary citizens in detention for expressing critical views), prisons remain overcrowded. During the Covid-19 pandemic the Criminal Enforcement Law adopted on 14 April 2020 had allowed the early or conditional release of 90 000 prisoners to prevent the spread of the Covid-19 pandemic in overcrowded prisons.[57] We have been informed that this legislation was extended until 31 July 2023. In January 2022, the Turkish Presidency has allocated 2 billion Turkish liras to build 36 new prisons in 2022, in addition to the 383 currently existing.[58] This could, however, significantly increase Türkiye's already high incarceration rate.

36. In the meantime, we continue to receive information about allegations of torture and ill-treatment, as reported by the Human Rights Association, which recently documented that prisoners suffer from trauma after strip searches (now renamed "detailed search"[59]), torture, mistreatment and various other rights violations.[60] Other allegations stem from the Platform for an Independent Judiciary which has repeatedly and openly

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50. EU-CoE Joint Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights", implemented by the Council of Europe Programme office in Ankara.
51. Stockholm Center for Freedom (22.11.2021).
52. Figures given by Minister of interior Soylu on 21 November 2021, ibid.
53. SPACE I (2021).
54. The authorities claimed that prison conditions comply with international standards, including those of the CPT. They indicated "in some provinces, when there are many unforeseen numbers of people detained, there may be a temporary crowding in penitentiary institutions. However, this situation is resolved in a short time by transfers to other penitentiary institutions". AS/Mon (2022) 15 comments.
55. Open letter of the Human Rights Association Istanbul Branch sent to the Ministry of Justice, Parliamentary Human Rights Commission and General Directorate of Prisons on 18 March 2022. These figures were deemed as "not credible" by the authorities. AS/Mon (2022) 15 comments.
56. "Rights violations in Turkish Prisons: Monitoring Report 2020", Human Rights Association, 1st April 2021.
57. Assembly rapporteurs had deplored the discriminatory as detained politicians, journalists, academics and other civil society activists charged with "terrorism" in unfair trials were excluded from that scheme and were not allowed them to enjoy equal sanitary preventive measures: statement by the co-rapporteurs (24 April 2022).
58. DuvaR.English (19 February 2022).
59. Pursuant to the amendment dated 12 November 2021, the phrase "strip search" has been replaced by "detailed search" in the regulation on the Administration of Prison Establishments and the Execution of Sentences and Security Measures. The authorities emphasised that this amendment also highlights the exceptional nature of this measure.

alerted about the brutal assaults on and ill-treatment of imprisoned Turkish judges and prosecutors.[61] The refusal of the Ankara Bar Association to release the report on alleged torture in police custody against Gülenists prepared by the Bar's Human Rights Centre further fuelled concerns about the extent of this problem.[62]

37. We shared our concerns with the Chair of the parliamentary inquiry committee on human rights, which carries out inspection visits to prisons, and which could play a positive role in addressing issues of concern related to detention conditions. We also understand that the authorities could, in the framework of the implementation of the 2021 Action Plan on Human Rights, work at strengthening the Human Rights and Equality Institution in order to allow it to meet the Paris Principles and be accredited as a National Mechanism for the prevention of torture. We were later informed that the application process launched in July 2021 by the Human Rights and Equality Institution should be examined by the Sub-committee on Accreditation Secretariat of the Global Alliance of National Human Rights Institutions in the second semester 2022.[63]

38. In the Council of Europe, allegations of torture and ill-treatment in places of detention are monitored by the CPT.[64] The CPT paid a regular visit to Türkiye in January 2021 to examine the treatment and safeguards afforded to persons detained by law enforcement agencies as well as the treatment and conditions of detention of persons held in prisons. The CPT also discussed the follow-up of its previous recommendations regarding the situation of the prisoners being held in Imralı F-type High-Security Prison.[65] We encourage the Turkish authorities to implement the recommendations of the CPT, to address the issue of isolation of prisoners,[66] and to authorise the publication of its report. We have also taken note of the authorities' reiterated commitment to a zero-tolerance policy against torture,[67] which, however, requires determined action and a firm stance. In this respect, there was a noteworthy unanimous decision of the Constitutional Court on 9 August 2022 following the death of 19-year-old Ali İsmail Korkmaz in 2016, who had been beaten to death by police officers and civilians during the 2013 Gezi Park protests. Mr Korkmaz's family had lodged an individual application to the Constitutional Court, which ruled that Mr Korkmaz had been "subjected to torture" in violation of the Constitution's Article 17 on the prohibition of torture. It also ordered the State to pay compensation to the family and ordered the retrial of police officer Hüseyin Engin who was previously acquitted. The Court also stressed that "law enforcement officers must respect human dignity under all circumstances".[68]

39. Another concern that should be urgently addressed is the situation of ill prisoners in Türkiye. According to the statement of the Human Rights Association Prisons Commission of 14 December 2021, at least 59 ill prisoners have lost their lives since early 2020, including seven who died shortly after deferment of the execution of their sentences. And according to the Human Rights Association's statement of 19 November 2021, there are at least 1 569 ill prisoners, 591 of whom are seriously ill. The number of ill prisoners has multiplied by six in ten years. The authorities informed us that Türkiye has in the meantime put into service R Type Closed Penitentiary Institutions in Metris, Menemen and Elazığ so as to accommodate, rehabilitate and treat ill, dependent convicts and detainees.[69]

Complaints of convicts and detainees about discrimination, ill-treatment or arbitrary practice are immediately forwarded to the relevant authorities, and if deemed necessary, a judicial and administrative investigation is initiated against the relevant personnel, AS/Mon (2022) 15 comments.

60. DuvaR.english (22 December 2021).

61. This Platform includes the Association of European Administrative Judges (AEAJ), European Association of Judges (EAJ), Judges for Judges and Magistrats Européens pour la Démocratie et les Libertés (MEDEL).

62. DuvaR.english (10 February 2022).

63. AS/Mon (2022) 15 comments.

64. The authorities underlined that monitoring of prisons is also performed by the United Nations Committee Against Torture (UNCAT). At the national level, penitentiary institutions can be monitored by the Chief Public Prosecutors, Attorney Generals in charge of prisons, inspectors of the Ministry of Justice and prison controllers, civil monitoring boards, provincial and district human rights boards, the Human Rights Inquiry Committee of the GNAT and the Petition Committee of the GNAT, and Ombudsman Institution officials, AS/Mon (2022) 15 comments.

65. CPT (27 January 2021).

66. The HDP alerted us about the "total isolation of prisoners on the Imrali islands": three prisoners have not met their lawyers since 2015, and one has not seen a lawyer since 7 August 2019. Many prisoners have not been able to have visits by family members or used their right to making phone calls to their families for years. The four inmates are totally isolated from their families, lawyers and the rest of the society: In: AS/Mon (2022) 15 comments.

67. AS/Mon (2022) 15 comments.

68. The Constitutional Court however rejected the plaintiff's application concerning i.a the "violation of the right to life," "violation of the right to assembly and demonstration". The judgment was found insuffient by the family, which announced its intention to lodge a complaint at the Constitutional Court. www.duvarenglish.com/top-turkish-court-orders-compensation-to-gezi-park-victim-ali-ismail-korkmazs-family-news-61115.

69. AS/Mon (2022) 15 comments.

40. One of these seriously ill prisoners is former MP Aysel Tuğluk, who has been detained since 2016 and suffers early-onset dementia (see below). Sadly, the number of prisoners who have lost their lives in Türkiye's prisons has increased by nine in just the past three months. The HDP has also expressed its concern and documented the worsening situation of ill-prisoners in Türkiye,[70] which needs to be urgently addressed by the authorities.

3. Implementation of judgements of the European Court of Human Rights

41. Türkiye was among the first States to join the Council of Europe and has played a leading role in the Organisation. However, the developments of the past few years have raised concerns about whether the country is fulfilling its obligations. These include implementation of the judgements of the European Court of Human Rights (which is supervised by the Committee of Ministers), which is essential to ensure the effectiveness of the protection of fundamental freedoms and human rights. In February 2022, the Committee of Ministers launched an infringement procedure for non-compliance with the ruling of the Court in the case of Osman Kavala.

42. The issue is clear. The Turkish authorities argue that by releasing Mr Kavala they have complied with the judgment of the European Court of Human Rights even although he was subsequently rearrested. Most other observers believed the Court judgement applies to the evidence on which the original judicial decision was based and that these elements are substantially lacking. On 11 July 2022, the European Court has clarified the matter and confirmed that Türkiye did not implement this judgment.[71]

3.1. Some facts and figures

43. In 2021, Türkiye represented 21,7% of the number of applications (compared to 15,7% in 2019 and 19% in 2020) and 7% of the judgements delivered by the European Court of Human Rights (Court) in 2021.[72] As of 31 December 2021, 70 150 applications were pending before a judicial formation.

44. In its report on the implementation of the Court judgments (2020), the Assembly rapporteur Mr Constantinos Efstathiou (Cyprus, SOC) had noted that Türkiye remained "the second country having the highest number of non-implemented Court judgments and still faces serious structural or complex problems, some of which have not been resolved for over ten years. This might be due to deeply rooted problems such as persistent prejudice against certain groups in society, inadequate management at national level, lack of necessary resources or political will or even open disagreement with the Court's judgment".[73] By the end of 2019, Türkiye had 21 leading cases pending for more than 5 years under enhanced supervision.[74]

45. The Turkish authorities stressed that Türkiye had a high rate of implementation of rulings of the Court (88%). They also disagreed with what they see as double standards being applied, as other member States have not executed their judgments for years either. They specifically referred to three judgments of the Court against Greece[75] regarding the dissolution and the denial of registration of associations (bearing the word "Turkish" in their names) established by persons belonging to the Turkish community in Western Thrace. The authorities stressed that, In these three cases, the Court found, in 2007 and 2008, a violation of freedom of association guaranteed under Article 11 of the European Convention on Human Rights. Despite the fact that the rulings were issued more than ten years ago, their implementation by Greece is still pending.[76]

46. However, we consider that the cases of Mr Demirtaş and Mr Kavala, who are in detention since 2016 and 2017 respectively, are of a different nature and are characteristic of the human rights situation in general. These pre-trial detentions were unlawful due to the lack of concrete evidence. At the same time, they concealed an ulterior purpose (the Court found a violation of article 18 of the Convention), thus very seriously

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70. See the HDP statement of 3 May 2022: "More prisoners lose their lives in Turkey's prisons".
71. See below, section 3.2.2 providing details about this Court judgment.
72. European Court of Human Rights Facts and Figures 2021. On 31 December 2021, Türkiye ranked second after Russia (24,2%).
73. After Russia, and before Ukraine, Romania, Hungary, Italy, Greece, the Republic of Moldova, Azerbaijan and Bulgaria. Doc. 15123, "The implementation of judgments of the European Court of Human Rights".
74. Doc. 15123, para. 59 (compared to Russia (38), Ukraine (38), Türkiye (21), Romania (15), Bulgaria (13), Azerbaijan (11), Italy (9), Greece (6), the Republic of Moldova (6) and Poland (6)).
75. Case of *Tourkiki Enosi Xanthis and Others v. Greece*, *Case of Bekir-Ousta and Others v. Greece* and *Case of Emin and Others v. Greece*.
76. AS/Mon (2022) 15 comments. The IYI party has also raised this issue of non implementation of ECtHR rulings, adding that "the fact that the relevant countries are not subject to the infringement procedure brings to mind of Turkish society the concern that "double standards are applied to the parties".

undermining the functioning of a democratic society: Mr Demirtaş's detention sought to stifle pluralism and limit freedom of political debate, while Mr Kavala's detention was aimed at silencing him and deterring other human rights defenders. This has prompted the Assembly and its rapporteurs to repeatedly call for their immediate release.[77] These two cases have become emblematic of deficiencies in Türkiye's judicial system.

47. In one of the cases against Mr Demirtaş, the Constitutional Court found on 20 July 2022 that Mr Demirtaş' rights had been violated when he was prosecuted for attending a demonstration in 2011 in which slogans in support of the Kurdistan Workers' Party (PKK) were chanted. The Court stated that Mr Demirtaş' sole attendance to the meetings did not automatically mean that he was the organiser or manager of the meeting, nor that he was complicit in the activities of those who acted against the law. The launch of such lawsuit could not be legitimate in the first place (despite suspended legal proceedings against him at that time) on the grounds that "some demonstrators chanted slogans and unfurled the terror organization's [PKK] flag when [Mr Demirtaş] was at the meeting".[78]

48. Looking at the latest statistics of the execution of the judgements (March 2022), some additional criteria should be taken into account to have an objective picture of Türkiye's compliance with its obligations. The situation differs with regard to the implementation of leading cases (which require legislative and other measures from member States to prevent the same violation taking place again and are more difficult to close) and the implementation of repetitive cases: following the new approach adopted by the Committee of Ministers in 2018 repetitive cases are closed when no individual measure is required or can be taken (prosecution being time-barred for example). From that perspective, while overall Türkiye closed 88% of all cases (the country ranks 23rd among 47 member States), 91 % of them were repetitive cases (at the 25th rank) but only 63% were leading cases (39th among 47 States).[79]

49. In addition, the dismissal of thousands of civil servants (about 130 000) after the failed coup, for their alleged ties to the Gülen movement, is expected to trigger numerous applications to the Strasbourg Court. These civil servants were dismissed after the coup on the basis of emergency decrees. They could challenge these decisions before the Inquiry Commission on the State of Emergency Measures (these challenges were, in a vast majority of cases, not successful) and domestic courts, which has paved the way for the exhaustion of domestic remedies. The European Court might have to face numerous cases which could seriously hamper its functioning.

50. We have shared our views with the Turkish authorities and stressed that the implementation of the Court's judgments is at the core of the protection of fundamental rights, and that these judgements need to be respected by the authorities, including all branches of the judiciary. As a positive example, we should recall that the Court of Cassation decided to release renowned journalist and novelist Ahmet Altan (who had been in jail since 2016) on 14 April 2021, the day after the European Court Chamber found, in two rulings, that the rights to freedom of expression, liberty and security of Ahmet Altan and Murat Aksoy had been violated due to lack of evidence, lack of reasonable suspicion and lack of access to their files.[80] We also note that, in the wake of the Kavala case, the opposition has called for the implementation of the Court judgements.[81]

3.2. The case of philanthropist Osman Kavala: ruling of the European Court of Human Rights, infringement procedure and domestic procedure

3.2.1. Background information about the case of Mr Kavala and his co-defendants in the context of the Gezi protests

51. The case of Mr Kavala and his co-defendants originates in the Gezi protests that took place in 2013. Millions of people demonstrated for weeks in the streets, initially against an urban development plan affecting the Gezi Park on Taksim square, then against a wide range of concerns, including freedom of the press, of expression and of assembly. Some demonstrations turned violent, with disproportionate use of force by the police. 11 people were killed, and thousands injured. In July 2013, 26 people – including Mücella Yapıcı from

77. The co-rapporteurs had previously issued a statement on 30 December 2020: "Selahattin Demirtaş must be released now: rapporteurs urge the Turkish authorities to implement the Court's final judgment".
78. DuvaR.english (20 July 2022).
79. Factsheet for Türkiye (14 March 2022), Department for the Execution of Judgments of the European Court of Human Rights: Turkey (coe.int). These figures are extracted from the Huddoc-Exec databasis.
80. See *Ahmet Hüsrev Altan v. Turkey* and *Murat Aksoy v. Turkey*: the two journalists had been arrested after the failed coup due to their publications and their alleged membership to the Gülen movement. While Mr Aksoy had been released from pre-trial detention in 2017, renowned journalist and novelist Ahmet Altan was in jail since 2016.
81. AS/Mon (2022) 15 comments, comments by the CHP.

the Chamber of Architects and Ali Çerkezoğlu from the İstanbul Medical Chamber – were arrested, and later acquitted. In March 2014, however, they faced a lawsuit for "founding and leading an organisation" (of protests). The complainant aggrieved parties in this case were the members of the 61st term cabinet formed in 2011.[82]

52. Philanthropist Osman Kavala was arrested in 2017 and detained. He was charged, in 2019, for allegedly organising and financing the 2013 Gezi protests (based on article 309 of the Criminal Code, attempt to overthrow the government). The 657-page indictment defined the Gezi protesters "an insurrection for coup", while the defendants were accused of "organising and funding the protests", charged with "attempting to overthrow the government", "damaging property", "damaging places of worship and cemeteries", "violating the Law on Firearms, Knives and Other Tools", "aggravated plunder" and "violating the Law on Protecting Cultural and Natural Assets."

53. On 18 February 2020, all defendants (except those who were abroad) were acquitted of all charges (based on article 312 related to the Gezi events). Mr Kavala was released, but immediately re-arrested after the Istanbul Chief Public Prosecutor's Office issued, on the same day, a detention warrant on charges of espionage this time (article 309 of the Criminal Code) as part of an investigation into the failed coup attempt in July 2016. The İstanbul 8th Penal Judgeship of Peace remanded him in custody on 19 February 2020. On 23 January 2021, the court of appeal overturned the verdicts of acquittal in the Gezi trial, explaining that pieces of evidence such as the defendants' social media posts, press statements and slogans chanted had not been considered in handing down the ruling.[83]

54. As a consequence, a retrial was organised. On 25 April 2022, the 13th High Criminal court sentenced Osman Kavala to an aggravated life sentence, without parole, for financing the Gezi protest. He was acquitted on the charge of espionage. Seven of his co-defendants – namely Mücella Yapıcı, Çiğdem Mater, Mine Özerden, Ali Hakan Altınay, Can Atalay, Tayfun Kahraman and Yiğit Ekmekçi – were sentenced to 18 years of prison for "attempting to overthrow the government by force" in connection with the Gezi Park anti-government protests in 2013, and imprisoned in the Silivri and Bakirkoy prisons in Istanbul. On 10 May 2022, the Istanbul 14th High Criminal Court unanimously rejected the co-defendants' objections against their detention and found that there were no flaws – either on legal or procedural grounds – in the ruling of 25 April 2022.[84] These co-defendants are all renowned architects, intellectuals, prominent activists of the civil society, not politicians. One of the co-defendants, Ali Hakan Altınay is the Director of the Council of Europe School of Political Studies of Istanbul, which was created in 2014 under the auspices of the Council of Europe. His conviction and detention is therefore even more shocking.

3.2.2. Infringement procedure: background information and state of play

55. Osman Kavala seized the European Court of Human Rights in 2018. In its ruling of 10 December 2019 (final in May 2020), the Court found that this arrest and pre-trial detention took place in the absence of evidence to support a reasonable suspicion he had committed an offence (violation of Article 5.1 of the Convention) and that it pursued an ulterior purpose, namely to silence him and dissuade other human rights defenders (violation of Article 18 taken in conjunction with Article 5.1). The Court in addition held that the length of time taken by the Constitutional Court to review the applicant's complaint about his detention (one year, four months and 24 days) was insufficiently "speedy", given that his personal liberty was at stake (violation of Article 5.4).[85]

56. On 1st September 2021, a court decided to prolong the detention of Mr Kavala despite six decisions and an interim resolution from the Committee of Ministers calling for his release, which the Commissioner for Human Rights, Dunja Mijatovic, saw as showing contempt for human rights and the rule of law.[86]

57. On 2 February 2022, the Committee of Ministers of the Council of Europe decided to bring infringement proceedings against Türkiye over its failure to implement the European Court of Human Rights ruling on Kavala and referred the case to the European Court of Human Rights. The decision of the Committee of Ministers to trigger the infringement procedure is rare – it was only used once, in the case of Ilgar Mamadov, who was, however, released during the procedure – and reflects how serious this case has become.

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82. Later Ahmet Davutoğlu, former Minister of Foreign Affairs and founder of the Future Party, and Ali Babacan, then Minister of Economy and later founder of the DEVA Party, asked to be withdrawn from this list. Bianet (10 May 2022).
83. Bianet (10 May 2022).
84. The decision of the Istanbul 14th High Criminal Court is currently pending before the Regional Court of Justice. AS/Mon (2022) 15 comments.
85. Department for the Execution of judgments of the European Court of Human Rights: main issues.
86. Statement by the Commissioner for Human Rights (2 September 2021).

58. During our regular fact-finding visit to Türkiye in March 2022, we discussed the implementation of the Kavala ruling with several interlocutors. The officials were of the opinion that the Court ruling had been implemented (as Mr Kavala had been released in February 2020). However, there was a certain consensus or understanding that a solution, meeting the legal requirements, needed to be found in order to solve this case within the Turkish judicial system in order to avoid a painful infringement procedure.

59. The decision of 25 April 2022 by the 13th High criminal court to sentence Mr Kavala to life imprisonment, therefore came as a shock; the Assembly President Tiny Kox, called for the immediate release of Mr Kavala.[87] The verdict of 18 years in prison handed down to Mr Kavala's co-defendants and their immediate detention was also shocking. As a consequence, the Monitoring Committee decided on the following morning to postpone its meeting which was scheduled to take place in Ankara on 23-24 May 2022 and asked the rapporteurs for the monitoring of Türkiye to carry out a visit to the country and to report back to the committee at its next meeting on the developments in this case.

60. During our *ad hoc* visit to Istanbul and Ankara from 18 to 20 May 2022, we met the lawyers of Mr Kavala and his co-defendants, his family members, as well the Vice-minister of justice. We regret that we were not able to go to the Silivri prison to meet Mr Kavala and hear his views. We expressed our dismay at the aggravated life sentence given to him on 25 April 2022, which blatantly defies the 2019 ruling of the European Court of Human Rights. The authorities argued that the ruling had been implemented, as Mr Kavala had been released (on 19 February 2020). However, having heard the legal arguments on both sides, we find it difficult to subscribe to this narrative: it seemed clear to us that the same evidence deemed insufficient by the European Court to justify even a pre-trial detention had nevertheless been used in the second case as the basis for the harshest possible sentence at first instance level. This amounted to a clear disregard for the findings of the European Court of Human Rights; the Court's judgment also applied to the subsequent indictment on the basis of which he was re-arrested. At the same time, we also noted that there were no complaints about prison conditions.

61. On 2 February 2022, the Committee of Ministers referred the case to the European Court of Human Rights to assess whether the ruling in the Kavala case has been implemented or not. On 11 July 2022, the European Court of Human Rights issued its second judgment in the Kavala case, ruling that "Türkiye has failed to fulfil its obligation under Article 46.1 [binding force and execution of judgments] to comply with the judgment delivered on 10 December 2019, which called on the Government to end the applicant's detention and secure his immediate release. The Court stressed that "with regard to this new charge of military or political espionage (Article 328 of the Criminal Code), it appeared from the order of 9 March 2020 returning Mr Kavala to pre-trial detention and the bill of indictment of 28 September 2020 *that the espionage suspicions had been based on facts that were similar, or even identical, to those that the Court had already examined in the Kavala judgment.* The Court therefore concluded *that neither the decisions on Mr Kavala's detention nor the bill of indictment contained any substantially new facts capable of justifying this new suspicion*. As during Mr Kavala's initial detention, the investigating authorities had once again referred to numerous acts which were carried out entirely lawfully to justify his continued pre-trial detention, notwithstanding the constitutional guarantees against arbitrary detention." (emphasis added).

62. The Court noted that Türkiye had taken some steps towards executing the Chamber judgment of 10 December 2019 and had also presented several Action Plans. It noted, however, that on the date on which the Committee of Ministers had referred the matter to it, and in spite of three decisions ordering his release on bail and one acquittal judgment, Mr Kavala had still been held in pre-trial detention for more than four years, three months and fourteen days. The Court considered that the measures indicated by Türkiye did not permit it to conclude that the State Party had acted in "good faith", in a manner compatible with the "conclusions and spirit" of the Kavala judgment, or in a way that would have made practical and effective the protection of the Convention rights which the Court had found to have been violated in that judgment."[88]

63. In a joint statement delivered on the same day, Ireland's Minister for Foreign Affairs and Chair of the Council of Europe's Committee of Ministers, Simon Coveney, the Assembly President Tiny Kox, and the Secretary General of the Council of Europe, Marija Pejčinović Burić, welcomed this judgment which clarified the question of the implementation of the Kavala judgement, renewed their call for the immediate release of Mr Kavala and urged Türkiye, as a Party to the Convention, "to take all necessary steps to implement the judgment".[89]

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87. Statement by the President of the Assembly (26 April 2022)
88. Press release of the Court, 11 July 1022, ECHR 240 (2022).
89. European Court of Human Rights judgment in the case Kavala v. Türkiye: joint statement by Council of Europe leaders (11 July 2022).

64. Mr Kavala believed that this decision would "give strength to those members of the Turkish judiciary who continue to act in accordance with the rule of law despite political pressures."[90]

65. The Turkish authorities however disregarded this ruling and considered the European Court of Human Rights had acted "as if it was a court of first instance by disregarding the ongoing domestic proceedings and did not assess the matter on a fair basis. Thus, the Court once again called into question the credibility of the European human rights system". They also stressed that Mr Kavala's conviction of 25 April 2022 is not final and is currently under judicial review; independent domestic legal proceedings should be respected and any acts that could interfere with it must be avoided.[91]

66. Until the judgment is final, these individuals remain detainees and have not been finally convicted. The defendants were awaiting the reasoned judgement of the court to appeal (regional court of appeal, Court of Cassation, and possible application to the Constitutional Court). We stressed that the solution to the Kavala case lies in the hands of the Turkish judicial system, which has the capacity to find a legal solution which complies with the ruling of the European Court of Human Rights – in compliance with international law and reached without political pressure or undue interference. We also expressed our hope that higher courts will show a more diligent interpretation of the European Court judgement.[92] In the meanwhile, we will follow the work of the Committee of Ministers.

67. Likewise, we will closely follow the cases of Mr Kavala's co-defendants who were sentenced to 18 years of prison in relation to Mr Kavala's case. Three of his co-defendants – Tayfun Kahraman, Mücella Yapıcı and Can Atalay – had applied to the Constitutional Court. On 18 August 2022, the Court ruled that the applicants' right to freedom of expression, right to hold demonstration and freedom of organisation had not been violated, saying that the applicants' arguments were "manifestly ill-founded." The applicants' lawyers challenged the lawfulness of the decision, as it has been signed by İrfan Fidan (who had prosecuted several important cases including the Gezi Park trial itself) and Selahaddin Menteş (a former undersecretary of the Justice Ministry).[93]

3.3. The case of Selahattin Demirtaş

68. The Assembly has also followed the case of former HDP co-chair Selahattin Demirtaş, who has been in prison since 2016 on terror-related charges. In December 2020[94], the Grand Chamber ruled that Mr Demirtaş was detained in the absence of evidence to support a reasonable suspicion he had committed an offence (violation of Article 5.1 and 5.3) and that his arrest and pre-trial detention pursued an ulterior purpose, namely, to stifle pluralism and limit the freedom of political debate (violation of Article 18 taken in conjunction with Article 5).

69. In March 2022, the Committee of Ministers recalled that the Court had held that Türkiye had to take all necessary measures to secure the applicant's immediate release, but also had to perform its role under Article 46.2 of the Convention with due regard to the applicant's evolving situation. In this context, it took note "of the new evidence and allegations referred to by the authorities and relied on by the domestic court to maintain the applicant in detention on the grounds that this new evidence and allegations were in substance different from those examined by the Court in its judgment; considered in these circumstances that further information on this issue is needed before the Committee can make its decisive assessment on the individual measures required to remedy the violations found by the Court; encouraged the authorities to take all possible steps to ensure that the Constitutional Court makes its determination concerning the applicant's ongoing detention in the shortest possible timeframe and with full regard to the Court's findings in this case, particularly its reasoning under Article 18 of the Convention."[95]

70. In June 2022, in light of the "new evidence and allegations referred to by the authorities", the Committee of Ministers required further information before it could make its "decisive assessment on the individual measures required to remedy the violations found by the Court" and reiterated its requests concerning the examination of Mr Demirtaş' complaint by the Constitutional Court "without further delay and in

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90. Tweet from Osman Kavala, 11 July 2022.
91. AS/Mon (2022) 15 comments.
92. See also our statement of 20 May 2022: "A solution to the Kavala case lies in the hands of Turkey's judges, say PACE monitors".
93. DuavR.english (26 August 2022).
94. *Selahattin Demirtaş v. Turkey* (No 2), Application 14305/17.
95. Mr Demirtas had lodged a complaint to the Constitutional Court concerning his detention on 7 November 2019. CM/Del/Dec(2022)1428/H46-37, 1428th meeting, 8-9 March 2022 (DH), H46-37 Selahattin Demirtaş (No. 2) group v. Turkey (Application No. 14305/17).

a manner compatible with the spirit and conclusions of the Court's judgment, including in particular its reasoning under Article 18 of the Convention". The Committee of Ministers also urged the authorities to take "effective measures to strengthen the structural independence of the Council of Judges and Prosecutors to ensure the full independence of the judiciary, in particular from the executive branch, taking inspiration from the relevant Council of Europe standards" and to adopt "concrete legislative and other measures capable of strengthening freedom of political debate, pluralism, and the freedom of expression of elected representatives, especially of members of the opposition".[96] Notwithstanding the current discussions in the Committee of Ministers, we believe that Mr Demirtaş should be released.

3.4. Implementation of the court rulings concerning parliamentary immunity

71. The Court has also ruled in Demirtaş' case that the lifting of the applicant's parliamentary immunity and the way the criminal law was applied so as to penalise him for political speeches were not foreseeable and prescribed by law (Article 10) and that his consequent detention made it effectively impossible for him to take part in the activities of the National Assembly (Article 3 of Protocol to the Convention, ETS No. 9).[97] This issue refers to the lifting of the immunities of 139 deputies following the adoption of a constitutional amendment on 20 May 2016, a decision criticised by the Venice Commission and the Assembly. Previously, the Court had ruled in a case concerning our former Assembly member, Filiz Kerestecioğlu Demir, that the lifting of the applicant's parliamentary immunity violated her right to freedom of expression (Article 10).[98]

72. In February 2022, the Court issued another important ruling, concerning the lifting of the parliamentary immunities of 40 HDP MPs,[99] confirming that Article 10 (freedom of expression) had been violated in the cases of these MPs whose parliamentary immunities had been lifted, leading to criminal proceedings being brought against them. 14 were remanded in custody.

73. We hope that the Turkish authorities will implement these rulings and redress the consequences of the violations of the Convention, which have had a major impact on Türkiye's political life.

3.5. Implementation of rulings concerning freedom of expression and provisions of the Criminal Code

74. Another area that needs to be looked into concerns the rulings delivered by the European Court of Human Rights with respect to freedom of expression. This issue has been a recurring source of concern and was raised by the Assembly in various resolutions denouncing the restrictions suffered by politicians and, more generally, those expressing dissenting opinions. Prosecution and convictions were often based on provisions of the Criminal Code which were deemed problematic by the Venice Commission,[100] as well as by the overly broad interpretation of the Anti-Terrorism Law. The Committee of Ministers, which is supervising many of these cases, strongly urged the authorities, in March 2022, to "once again, amend Article 301 of the Criminal Code in light of the Court's clear case law and "consider further legislative changes of the Criminal Code and the Anti-Terrorism Law, such as extending the 2019 amendment of Article 7 of the Anti-Terrorism law to other provisions, to clarify that the exercise of the right to freedom of expression does not constitute an offence".[101]

75. The Committee of Ministers also urged the Turkish authorities, "in view of the worrying numbers of prosecutions and convictions under Articles 125 and 299 of the Criminal Code and *the emerging European consensus towards decriminalisation of defamation of the Head of State*" (our emphasis) to "consider amending Article 125 and abrogating Article 299 in accordance with the Court's case law".[102]

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96. Ibid.
97. Supervision of the execution of the Selahattin Demirtaş c. Turquie (No. 2).
98. *Selahattin Demirtaş (No. 2) group v. Turkey*, (Application No. 14305/17).
99. *Encu v. Turquie*, Application No. 56543/16 and 39 other applications (in French only).
100. Opinion on articles 216, 299, 301 and 314 of the Penal Code of Turkey, adopted by the Venice Commission at its 106th plenary session (Venice, 11-12 March 2016), CDL-AD(2016)002-e.
101. Supervision of the execution of the European Court's judgments, 1428th meeting, 8-9 March 2022 (DH), H46-36 Öner and Türk group (Application No. 51962/12), Nedim Şener group (Application No. 38270/11), Altuğ Taner Akçam group (Application No. 27520/07) and Artun and Güvener group (Application No. 75510/01), Işıkırık group (Application No. 41226/09) v. Turkey.
102. Ibid.

76. Ensuring the implementation of the Court's rulings is an important push factor for the upgrading of the standards of the country, and possibly for the restoration of rights which were violated. The decision of Türkiye not to comply with the Kavala and Demirtaş rulings has sent a very negative signal. It undermines the effectiveness of the system of protection of fundamental rights and the credibility of the Court, which would open the way to a dangerous and detrimental trend for other Council of Europe member States.

4. Preparation of the 2023 presidential and parliamentary elections

77. Presidential and parliamentary elections will be held in 2023, in a year when the Republic of Türkiye will celebrate its 100th anniversary. It is important that these elections be held in free and fair conditions. In previous election observation mission reports, the Assembly praised the high turnout in elections (over 80%) – which is part of Türkiye's history of democracy and State tradition and demonstrates Turkish people's commitment to democracy and their trust in the electoral system – and a vibrant political scene, but also pinpointed several problematic issues mainly pertaining to the fairness of the electoral process, which begins well before election day. Therefore, in April 2021, the Assembly asked the Turkish authorities "to take into account the need to ensure fair electoral processes, conducted in an environment conducive to freedom of expression and freedom of the media" when revising the electoral legislation. This section of the report intends to look at issues that we consider as having a meaningful effect on the fairness of the electoral process. The issues addressed here are not exhaustive but refer to the concerns previously identified by the Assembly.

4.1. Recent political developments

78. In recent years, new parties have emerged and a coalition formed. The AK Party and the MHP formed a ruling coalition in parliament following the 2018 elections.

79. Six opposition parties namely: the Republican People's Party (CHP), İYİ (Good) Party, the Felicity Party (SP), the Democrat Party (DP), the Future Party (founded on 12 December 2019 by Ahmet Davutoğlu, former Minister of Foreign Affairs and Prime Minister) and the Democracy and Progress Party (DEVA Party, founded on 9 March 2020 under the leadership of Ali Babacan, a former Minister of Economy under the AKP) have agreed to join forces.

80. On 28 February 2022, they signed a "Memorandum of Understanding on Reinforced Parliamentary System", committing themselves to re-establish the parliamentary system which was in place from 1923 until 2017. They envisage reducing the election threshold to 3%, reinforcing the supervisory role of the parliament, reducing the quorum in parliamentary investigations, limiting presidential terms to one term of seven years, restoring judicial independence, abolishing the Council of judges and prosecutors (and replacing it with two distinct bodies), improving individual rights and freedoms (ending the pressure on freedom of expression, meetings and demonstrations, and association), abolishing the Higher Education Council, revising the legislation pertaining to donations made to political parties and candidates, etc. They intend to present a joint candidate at the presidential election. Since February 2022 the six parties have declared a common roadmap regarding the steps they will take to push for a fair and free election and restructure the State institutions upon their election into power.

4.2. Crackdown on the opposition

81. The last reports debated under urgent procedure related to the crackdown on members of the political opposition. The Assembly expressed concern about the procedures seeking to lift the parliamentary immunity of one third of the parliamentarians (overwhelmingly from opposition parties), the attempt to close the HDP and the banning of 451 HDP politicians from political life, the continued crackdown on its members and more generally the political violence targeting opposition politicians which has put political pluralism and the functioning of democratic institutions at risk. In its Resolution 2376 (2021) of 22 April 2021, the Assembly called on the Turkish authorities to reverse these worrying trends, seize the opportunity of implementing the Action Plan on Human Rights released on 2 March 2021 to take meaningful steps to revise the legislation on elections and political parties, put an end to the judicial harassment of opposition and dissenting voices, improve freedom of expression and of the media and to restore the independence of the judiciary, in line with Council of Europe standards.

82. Recently, Türkiye's Constitutional Court took position on some of these cases. In July 2022, it ruled that former HDP co-chair Figen Yüksekdağ's rights had been violated when she was stripped of her parliamentary immunity in 2016, in breach of her rights to freedom of thought and expression, as well as to be elected. The Constitutional Court ordered the State to pay her 30 000 Turkish liras in compensation.

83. The case against Canan Kaftancıoğlu, Head of the CHP provincial branch of Istanbul, is another example of judicial harassment against members of the opposition – and in this case, against a prominent female politician who had managed a successful electoral campaign in 2019, leading to Ekrem İmamoğlu becoming Mayor of Istanbul. We were dismayed by the decision of the Court of Cassation of Türkiye, which upheld most of the sentences against her and convicted her to nearly 5 years in prison and a ban on participating in political life.[103] This punishment, based on old tweets, for, namely allegedly "insulting the President", was yet another blow to Türkiye's democracy and its vibrant political scene, and is all the more worrying in the run-up to the general elections scheduled for 2023. It showed, once again, how urgent it is to revise those controversial provisions of the Criminal Code which are contrary to European standards and which lead to abusive judicial procedures. Due to the law on the execution of sentences, Ms Kaftancıoğlu went to the Silivri prison on 31 May 2022. However, she was released under supervision on the same day. Nevertheless, she remains subject to a political ban, which will bar her from running for elected positions and from participating in elected assemblies. This is a very worrying development.

84. Turkish political life has also been marked by acts of political violence, which have resulted in dramatic casualties. We cannot but deplore the assassination of the young party activist, Deniz Poyraz, in Izmir on 17 June 2021: she was shot by an assailant who attacked the HDP office in İzmir despite police protection in front of the building;[104] on 14 July 2021, an assailant with a shotgun attacked another HDP office in the Marmaris district and fired more than 100 bullets; in August 2021, the head of the Good party in Istanbul was attacked,[105] to mention just a few cases. We are also concerned about a series of deadly attacks against Kurdish families which took place this summer (including the assassination of a family of seven in the province of Konya, who were seemingly attacked by members of the "grey wolves", an ultranationalist organisation reportedly close to the MHP). These acts, again, require thorough investigation and punishment of perpetrators.[106]

85. Previous Assembly reports have referred to the detention of thousands of HDP members since 2015. One of the major ongoing legal cases is the "Kobanî trial" over the incidents and protests that happened on 6-8 October 2014 and which claimed at least 43 lives. The court has handed down its interim ruling against 108 politicians. 22 were arrested, including the former Co-Chairs of the HDP and the former members of its Central Executive Board. The HDP has denounced many procedural deficiencies in this trial[107] and recalled that the Grand Chamber of the European Court of Human Rights did already review these Twitter messages in detail (which are part of the evidence used in the HDP closure case, see below). The Court concluded, in its judgment of December 2020, that "these calls remained within the limits of political speech, in so far as they cannot be construed as a call for violence. The acts of violence that took place between 6 and 8 October 2014, regrettable though they were, cannot be seen as a direct consequence of the tweets in question and cannot justify the applicant's pre-trial detention in relation to the offences in question".[108] We trust that the Constitutional Court will take into account these conclusions of the European Court of Human Rights in its ongoing closure case.

86. Former MP Aysel Tuğluk was one of the politicians arrested in the Kobanî case. She was sentenced on "terrorism charges" for attending meetings and funerals as vice-chair of the defunct Democratic Regions Party (DBP). Her prosecution however was postponed for three years, during which time she remained in detention. She was eventually sentenced to 10 years in prison. Ms Tuğluk's health is today in a critical condition, she suffers from early-onset dementia; her requests to be released (or to have her sentence deferred) due to her health condition have been rejected so far, despite a medical report from the Forensic Medicine Institute in Kocaeli, later contradicted by those of the Istanbul Forensic Medicine Institute.

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103. On 10 May 2022, the 3rd Criminal Chamber of the Court of Cassation upheld the sentences imposed for the crimes of publicly insulting a public official and publicly degrading the Republic of Türkiye, reduced the prison sentence of '1 year and 16 months' to '1 year and 9 months' for the crime of publicly insulting the President as it was accepted that Article 43 of the Turkish Criminal Code was applied incorrectly, stated that the other posts, except for one post, do not constitute the elements of the crime of insulting the President, and overturned the sentences imposed for the crimes of making propaganda of an armed terrorist organisation and publicly inciting the people to hatred and enmity. Information provided by the authorities, AS/Mon (2022) 15 comments.

104. The Human Rights Association and Human Rights Foundation of Türkiye considered that this assault was the result of hate speech and the criminalization of the HDP and required a thorough investigation.

105. Bianet (21 August 2021).

106. See the statement issued by the HDP on 23 July 2021 denouncing the "Racist attacks on Kurds in western Turkey", Bianet (31 July 2021).

107. See statement by the HDP of 3 May 2022, "Further mass detentions of HDP members within the scope of the Kobanî investigation". The HDP also stresses that the Kobanî trial is linked to the closure case against the HDP, "as the Chief Public Prosecutor of the closure case bases most of his accusations against the HDP on the Kobanî protests".

108. Grand chamber judgment, case of Selahattin Demirtaş v. Turkey (no 2), p.93, para. 327, 22 December 2020.

87. Following her individual application, the Constitutional Court ruled on 25 May 2022 that Ms Tuğluk's detention, ensuing the decision to postpone the prosecution, should be regarded as an interference with and violation of her right to hold meetings and demonstration marches, which is guaranteed in Article 34 of the Constitution. This paves the way to a re-trial "in order to eliminate the consequences of the violation". Ms Tuğluk will be paid 13 500 Turkish liras of non-pecuniary compensation".[109] The decision of the Constitutional Court is welcomed and a swift re-trial, in compliance with this decision, should be held, given Ms Tugluk's health condition. The HDP noted for its part that, at the same time, the Constitutional Court recently rejected an application by Ms Tuğluk against her arrest in the Kobanî investigation without examining the case "on the merits."

88. The crackdown on the opposition has also taken place at local level, and the situation of dismissed mayors remains unaddressed. The Minister of interior has justified these moves by the [alleged] ties of the mayors with a terrorist organisation.[110] Over 150 elected mayors had been dismissed and replaced with appointed governors in HDP-run municipalities since 2016. The HDP informed us that many of these mayors have been imprisoned, some released later, and many others had to leave the country and are currently living in European countries as refugees or asylum seekers. Currently, 22 mayors elected in 2014 and 7 mayors elected in 2019 are still behind bars.[111] The Congress of local and regional authorities of the Council of Europe in its last report deplored that the government continued to suspend mayors when a criminal investigation is opened against them – based on an overly-broad definition of terrorism – and replaces them with non-elected officials.[112] Unfortunately, there are no signs of progress in this area and the Assembly will continue to closely follow this situation and the functioning of democratic institutions at local level, which is an essential part of a democratic system.

4.3. Attempt to close the Peoples' Democratic Party (HDP)

89. In March 2021, the Chief Prosecutor of the Court of Cassation sent his indictment to the Constitutional Court seeking the closure of the HDP and the banning of 687 HDP members for their alleged ties to the PKK. On 31 March, the Constitutional Court returned the indictment to the Court of Cassation over "procedural deficiencies and omissions".

90. On 7 June 2021, the Court of Cassation re-submitted the indictment to the Constitutional Court, which accepted it on 21 June 2021.[113] The indictment seeks the HDP's closure, a political ban on 451 HDP politicians and a cautionary judgement on the party's bank account. The case is currently pending at the Constitutional Court. The timing of the issuance of its decision will be crucial in view of the electoral calendar and the need for political parties to get organised before the next elections, taking into account the latest electoral amendments adopted (see below).

91. In its Resolution 2376 (2021), the Assembly recalled that "political parties enjoy the freedoms and rights enshrined in Article 11 (freedom of assembly and association) and Article 10 (freedom of expression) of the European Convention on Human Rights. Dissolution of political parties is a drastic measure which should only occur as a last resort. The Assembly remains confident that the Constitutional Court will be guided by the strict regulations governing the dissolution of political parties in Turkey, the case law of the European Court of Human Rights – in which the exceptions set out in Article 11 are strictly construed, with a limited margin of appreciation for contracting States – and by the "Guidelines on prohibition and dissolution of political parties and analogous measures" adopted in 1999 by the Venice Commission. Since 1993, six pro-Kurdish political parties were dissolved and outlawed, on the same terrorism-related charges. As already highlighted in the Assembly previous report on the functioning of democratic institutions, except in one case (concerning the prohibition of the Refah Party), the European Court of Human Rights had found a violation of article 11 of the Convention (freedom of assembly and association) in all these cases related to the closure of Turkish political parties.[114]

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109. Information provided by the Chairperson of the Turkish delegation to the Assembly.
110. The authorities provided us with detailed information about their position. See AS/Mon (2022) 15 comments.
111. Figures given by the HDP, AS/Mon (2022) 15 comments.
112. CG(2022)42-14final, "Monitoring of the application of the European Charter of Local Self-Government in Türkiye", 23 March 2022.
113. The authorities provided us with a detailed "compilation from the Opinions of the General Prosecution Office of the Supreme Court of Appeal on the Ongoing Closure Case of HDP" where the prosecution explains the reasons why "it has become necessary to demand a decision for a permanent dissolution", which can be found in the document AS/Mon (2022) 15 comments.
114. Namely the People's Labor Party (HEP), the Freedom and Democracy Party (OZDEP), the People's Democracy Party (HADEP) and the Democratic Society Party (DTP). Doc 15272, para. 19.

92. It added that "whatever the outcome of this pending procedure, the Assembly underscores that the initiation of legal proceedings against the second largest opposition party, combined with continuous harassment and arrests of its members, elected representatives and leaders, is in itself an alarming signal [...] which seriously undermines the functioning of democratic institutions and political pluralism at national and local levels".[115]

4.4. Recent changes in the electoral framework

93. Under the presidential system, as explained by the Venice Commission, there is a system of "bilateral" renewal of the elections: the President can dissolve the parliament on any grounds whatsoever – and the parliament can also dissolve itself on any grounds (with a three-fifths majority). In either of these two cases, the presidential and parliamentary elections would be held simultaneously. The President is limited to two mandates, unless the parliament dissolves itself during the second mandate of the President, which would then pave the way for the eligibility for his/her third mandate. The Venice Commission considered that holding elections simultaneously "means in practice that usually the President controls the parliamentary majority … It makes it unlikely that there will be meaningful separation of powers … It rather follows a concept of unity of power which is characteristic for not so democratic a system".[116]

94. The election law proposed by the AKP and the MHP and adopted on 16 March 2018 gave political parties the possibility to form pre-election coalitions, a novelty in the Turkish election system, leading the AKP and the MHP to form a coalition for the parliamentary elections. Shortcomings identified by the Assembly observers in recent years in the field of media coverage, blurring of State and party resources or funding of political parties remain unaddressed.[117] In this respect GRECO urged for more progress on the issue of transparency of party funding[118] and stated its disappointment at the very low level of progress achieved; it regretted that, over the past 10 years, only one recommendation out of nine had been fully implemented. GRECO urged the Turkish authorities to give new impetus to their legislative efforts towards increased transparency of political financing, including in connection with elections, in accordance with GRECO's recommendations. A Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections had for example been prepared in 2014 but never made it to the parliament's agenda, said GRECO.

95. On 26 April 2022, the parliament adopted amendments to the electoral law. They lowered the electoral threshold from 10% to 7% which is to be welcomed, as Türkiye has had the highest threshold in Europe for years. This has been repeatedly criticised by the Assembly. The electoral amendments also included provisions related to the allocation of seats within coalitions, to changes in the composition of the district electoral board or to eligibility criteria established for political parties to compete in elections.[119] In view of the technicality of these changes, the monitoring committee requested an opinion from the Venice Commission, which adopted its Joint opinion on 17-18 June 2022.[120]

96. The Venice Commission and ODHIR noted that these amendments – which were expected after the transition from the parliamentary to the presidential system of government – were adopted "within a few weeks in a process that was not fully inclusive as the involvement of the opposition was limited and civil society was excluded from the process". The Law therefore "does not represent a political consensus. Interlocutors also noted a pattern of amending the electoral legislation prior to each electoral cycle, without due procedural safeguards, which could undermine the credibility of the electoral process and the stability of the legal framework".

115. Resolution 2376 (2021), para.18.
116. CDL-AD(2017)005.
117. Report on the Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, published on 15 March 2018 (GrecoRC4(2017)16),
118. Second Addendum to the Second Compliance Report on Türkiye [which terminates the Third Round], adopted on 29 October 2020 and published on 18 March 2021, GrecoRC3(2020)5. GRECO had concluded that Türkiye has implemented satisfactorily seven of the seventeen recommendations contained in the Third Round Evaluation Report. Of the remaining recommendations, six recommendations remain partly implemented and four not implemented.
119. Under current laws, parties having a group in parliament or having completed organising chapters in 41 out of *Türkiye*'s 81 provinces were eligible to participate in elections.
120. CDL-AD(2022)016.

97. The Venice Commission and ODIHR welcomed the decrease of the election threshold from 10% to 7% (which, however, remains among the highest in Europe even after its decrease) as well as a new arrangement facilitating the participation of visually impaired persons in elections, thus addressing previous opinions and ODIHR election observation reports. Turkish authorities are encouraged "to consider, after an extensive public debate, the possibility of decreasing the threshold even further".

98. Concerning the issue of seat allocation, which had been discussed during our visit in Türkiye in March 2022, the Venice Commission explained that "Law No. 7393 has changed this system, replacing the two-stage allocation[121] with a single-stage allocation, in which the seats are distributed among all parties regardless of whether they are part of any electoral alliance, and independent candidates using again the d'Hondt method. (…) The use of a single-stage allocation, when combined with the high electoral threshold, risks operating in clear disfavour of smaller parties belonging to an electoral alliance, thus limiting the impact of the creation of this alliance".

99. The amendments now set one single requirement for political parties in order to qualify to stand for elections,[122] namely having set up their organisation in at least half (41) of the provinces at least six months prior to election day and having held party congresses; the Venice Commission and ODIHR note that "the single condition favours larger and well-established political parties, while on the contrary making it difficult for smaller and newer parties to establish themselves and find their way to the Parliament". In addition, the law seems to require two party congresses to have taken place at national, provincial and district levels to allow a party to take part in the next parliamentary elections to take place the year after the entry into force of the revised legislation, which is "an excessive burden".[123] In addition, it would make it "nearly impossible" for the members and supporters of the HDP to establish a new political party, meet the single condition foreseen and run in the upcoming 2023 elections, should the Constitutional Court decide to dissolve the party. The Venice Commission therefore recommended that the law "makes clear that it does not introduce changes to the conditions for eligibility of political parties to participate in the elections that *de facto* are not possible to meet in the time between adoption of the amendments and the next election and therefore potentially make some parties ineligible."

100. The amendments revisit the composition of the district and provincial electoral boards, which the representatives of the opposition parties and of non-governmental organisations considered as the most problematic part of the amendments (this triggered a complaint by the CHP to the Constitutional Court to annul three of its articles, including on the composition of election boards[124].): "Prior to the amendments, the three most senior judges in the province were automatically appointed as members of provincial boards, whereas the most senior judge in a district was automatically appointed the chair of the respective district-level board. The amendments have replaced this seniority system with a lottery system, under which judicial members of the boards shall be determined "by drawing lots" from eligible judges". The Venice Commission considers that "in light of the limited safeguards in the judicial appointment system to ensure the independence of judges, as underlined in prior Venice Commission assessments, as well as of the large-scale dismissal of judges that followed the attempted coup in 2016 and the deficiencies in the administration of lottery procedures for selecting civil servants for ballot box committees identified by the ODIHR election observation mission in 2018, the newly established system does not appear to improve the integrity of the election administration, compared to its previous composition. The system's foreseeability has deteriorated, and potentially makes appointment more susceptible to political pressure and manipulation."

101. Other changes concerned the voters registration and voters' request for change of address: district electoral board chairpersons become entitled to "reject a request for changing the registration address from one constituency to another during the period of public scrutiny, if they consider that the request to change the registration is 'suspicious'". However, the law "does not detail what criteria shall be applied towards such applications and what a "suspicious application" may encompass, which might lead to arbitrary or inconsistent

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121. "First, seats in electoral districts were allocated, using the d'Hondt method, between alliances that surpassed the threshold, parties that stood for election outside an alliance and had surpassed the threshold, and independent candidates. Second, another allocation was made among the members of the alliances to distribute the seats allocated to an alliance in the first step".

122. Under current laws, parties having a group in parliament could be eligible to participate in elections.

123. The authorities explained that "since condition of organisation in a province will be provided by establishing an organization in one third of its districts, including the central district, and holding district congresses, there is no need for the relevant party to hold congresses in all districts" AS/Mon (2022) 15 comments.

124. The CHP argues that the head of the election board should be the most senior judge in that particular constituency and changing this procedure does not comply with the Constitution. AS/Mon (2022) 15 comments.

decisions". The Venice Commission and ODIHR therefore recommend amending the law to make it more precise, though welcoming that "a rejected request to change the address will not freeze the voter's record, as was previously the case, but the voters will retain their previous constituency of registration".

102. Finally, the amendments also deal with the legal provisions concerning the misuse of office in election campaigns and deleted references to the Prime Minister (whose position was abolished in the presidential system) from Articles 65, 66 and 155 of Law No. 298. These provisions "impose restrictions on the participation in electoral campaigns of ministers and public officials and foresee sanctions for those who would disrespect such restrictions". They are meant to ensure that "all political parties and candidates can benefit from equal opportunities and that some of them would not be favoured by having public resources (official vehicles, official banquets; welcoming and protocol meetings, etc.) used in their support." The Venice Commission and ODIHR recommend including the reference to the President explicitly in Articles 65, 66 and 155 of Law No. 298, as the President "does not stand outside the party system but, rather, is part of it, there is no reason why s/he should not be subject to the restrictions in the same ways as other high public officials to prevent conflicts of interest and misuse of administrative resources".

103. While we commend the authorities for decreasing the threshold from 10 to 7% as a first step, we would appreciate to receive information from the authorities concerning the swift implementation of the above-listed recommendations of the Venice Commission in view of the upcoming 2023 elections.

104. In accordance with Article 67 of the Constitution, «Amendments to the electoral laws shall not apply to the elections to be held within one year from the entry into force date of the amendments". President Erdogan announced on 8 June 2022 that the next presidential and parliamentary elections would be held in June 2023, and that he would be the presidential candidate of the People's Alliance (of the AKP and the MHP).

4.5. Freedom of expression

4.5.1. Decriminalisation of defamation

105. The overuse of Article 299 of the Criminal Code ("Insult to the President") is still a reality: according to official figures, by the end of 2020, more than 160 000 people had been investigated for alleged insults against President Erdoğan and more than 38 000 people have been tried in court for the same reason since 2002 during Erdoğan's time as Prime Minister and then President.[125] In 2020 alone, a total of 946 522 criminal investigations were conducted under Article 125 of the Criminal Code, whereas 31 297 were conducted under Article 299.[126] In view of the worrying numbers of prosecutions and convictions under Articles 125 (insult to officials) and 299 of the Criminal Code, the Committee of Ministers has urged the authorities to consider amending Article 125 and abrogating Article 299 in accordance with the Court's case law", noting that there is an "emerging European consensus towards decriminalisation of defamation of the Head of State".[127]

106. Several PACE resolutions have called for the decriminalisation of defamation, and in particular Assembly Resolution 1577 (2007). The Venice Commission also confirmed in its 2016 opinion that this provision of the Criminal Code was contrary to the Council of Europe standards.

107. On 19 October 2021, the European Court of Human Rights issued for the first time a ruling concerning Article 299 of the Criminal Code ("insult to the President"): in the case *Vedat Şorli v. Turkey*,[128] the Court found that convicting the applicant to a prison sentence (the execution of which was suspended) on account of two posts shared on his Facebook account was a violation of his right to freedom of expression. The Court considered that "by its very nature, such a sanction inevitably has a dissuasive effect on the willingness of the person concerned to speak out on matters of public interest, particularly given the effects of the conviction".[129]

4.5.2. Fighting terrorism in compliance with human rights standards

108. Each country has a legitimate right to fight terrorism. Türkiye is facing various and serious terrorist threats in a region that is unstable. We understand that this is a sensitive issue for the Turkish society.[130] However, the response to these threats must be in compliance with human rights standards.

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125. BalkanInsight (11 March 2022).
126. Information provided by the authorities to the Committee of Ministers, in respect of the execution of the *Öner and Türk* groups of cases, Altug Taner Akcam v. Turkey.
127. Altug Taner Akcam v. Turkey.
128. Application No. 42048/19, 19 October 2021 (final).
129. Ibid. para. 45 (unofficial translation).

109. The broad interpretation of the anti-terror legislation however is a major problem that has been pinpointed, notably by the European Court of Human Rights on many occasions. It has led to unlawful prosecutions and unfounded sentences.[131] The overly broad definition of terrorism remains a matter of concern. The Assembly has repeatedly called for restricting the use of the anti-terror law within the boundaries of freedom of expression, including in its Resolution 2381 (2021) "Should politicians be prosecuted for statements made in the exercise of their mandate?"[132]. This has also impacted the functioning of local democracy and justified the suspension of mayors with a criminal investigation being opened against them and their replacement with non-elected officials.[133]

110. The Committee of Ministers noted, as regards the Öner and Türk group of cases, that "the problem of the disproportionate use of the criminal and anti-terror law in Türkiye for expressing critical or unpopular opinions has been pending before the Committee in relation to various judgments for over 20 years". In its 2021 Annual Report, the Court indicated that it had found a total of 418 violations of Article 10 of the Convention against Türkiye, 31 of them in 2021 alone. It also "strongly urged the authorities to consider further legislative changes to the Criminal Code and the Anti-Terrorism Law to clarify that the exercise of the right of freedom of expression does not constitute an offence.[134]

111. Some provisions of the Criminal Code are also problematic, in particular Article 220.6 and 220.7 of the Criminal Code, which provide that anyone who commits a crime on behalf of an illegal organisation or who knowingly and willingly aids and abets an illegal organisation shall be sentenced as a member of that organisation. Based on these provisions, most of the applicants in this group of cases were sentenced to several years of imprisonment for membership in an illegal organisation for having, for example, peacefully participated in a demonstration called for by an illegal organisation, or expressed a positive opinion about such an organisation, without the prosecution having to prove the elements of actual membership. The Court criticised in particular the wording of the provisions and their extensive interpretation by domestic courts which did not provide sufficient protection against arbitrary interference by the public authorities and therefore lacked predictability and had a chilling effect (violations of Articles 10 and 11).[135]

112. In October 2019, Türkiye amended Article 7 of the Anti-Terrorism Law, so that it provided that "expressions of thought that do not exceed the boundaries of reporting and those made for the purpose of criticism shall not engage criminal activity". This was considered an improvement, that could limit the application of Article 7. As a result, the Committee of Ministers also suggested that the authorities "could be encouraged to consider extending this amendment to other articles of the Anti-Terrorism Law and the Criminal Code which have led to violations of the right to freedom of expression, to clarify that the exercise of the right to freedom of expression does not constitute an offence."[136] Extending the 2019 amendment of Article 7 of the Anti-Terrorism Law to other provisions, as recommended by the Committee of Ministers, would also help to clarify that the exercise of right to freedom of expression does not constitute an offence. [137]

113. We also expressed the hope that the new Action Plan on Human Rights would provide an opportunity to tackle some of these issues – and bring some real changes in the practice of law. We were informed that some of the changes that had been introduced in the Anti-terrorism Law would also be included in the Criminal Code. A regulation of the 4th Judicial Package should avoid the sentencing of "those who make propaganda for the terrorist organisations, who print and publish the leaflets or declarations of the terrorist organisations, and those who participate in the illegal meetings and demonstration marches" of being "members of a terrorist organisation".[138] It is important to ensure that mere criticism is not treated as a criminal or terror-related offense.

114. We regret that the provisions contained in the 2020 Law on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, providing for the possible temporary suspension of NGO leaders facing terror-related investigations and their replacement by government-appointed trustees, have not

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130. See the comments provided by the IYI Party, AS/Mon (2022) 15 comments.
131. As an example, journalists and executives of the opposition newspaper Cumhuriyet, were accused, in 2016, after the failed coup, of "promoting and disseminating propaganda on behalf of "terrorist organisations"", including the Gülen movement and the PKK. The European Court found a violation of their freedom of expression due to the lack of reasonable evidence.
132. See Doc 15307.
133. See the last report of the Congress of local and regional authorities of Europe CG(2022)42-14final, 23 March 2022.
134. Altug Taner Akcam v. Turkey.
135. Ibid.
136. Ibid.
137. Ibid.
138. AS/Mon (2022) 15 comments.

been repealed.[139] The law is pursuing a legitimate goal, by introducing effective measures to combat terrorism, including measures against its financing, in compliance with the recommendations of the Financial Action Task Force. However, the Venice Commission found that some provisions of this law go "beyond that scope, since the new provisions apply to all associations, irrespective of their goals and records of activities, and lead to far reaching consequences for basic human rights, in particular the right to freedom of association and expression and the right to a fair trial". It also reminded the Turkish authorities that even in such circumstances member States have to comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law, while taking any steps to counter terrorism. Respect for human rights and the rule of law are an essential part of any successful counterterrorism effort".[140]

115. Regrettably, the anti-terrorism motivation has also been used as grounds to launch legal procedures against human rights defenders and civil society activists. The Assembly has urged the authorities to drop the cases against the Chair of the Human Rights Association, Öztürk Türkdoğan, who was prosecuted on multiple charges, including "membership of a terrorist organization" (article 314/2 of the Criminal Code), for which he was eventually cleared.[141] Other legal cases are ongoing.

116. Another disturbing case was the prosecution and conviction of Taner Kılıç, Honorary Chair of the Turkish branch of the NGO Amnesty International, who was arrested in June 2017 on suspicion of belonging to the Gülen movement.[142] He was released in August 2018. In its Chamber's ruling of 31 May 2022, the European Court found a violation of Taner Kılıç's rights to liberty and security (Article 5.1, 5.3 and 5.5) and freedom of expression (Article 10).[143] The Court did not find a violation of article 18, noting that "in the context of its assessment of the applicant's complaints under Article 10 of the Convention, [it] had taken sufficient account of the applicant's position as leader of an NGO and a human-rights defender."[144]

117. Unfortunately, the misuse of anti-terrorism legislation and its broad interpretation have undermined fundamental freedoms and continue to be used as a tool to stifle political debate and the activities of civil society.

4.6. Freedom of media

118. Freedom of media has been a longstanding concern. During an electoral campaign, access to media and media coverage is crucial to provide voters with pluralistic information. Unfortunately, the last election observation reports issued by the Assembly have highlighted serious problems in this context.

119. In the 2022 World Press Freedom Index of Reporters Without Borders (RSF), Türkiye ranks 149th out of 180 countries (compared to its rank 153 in 2021, and 157 in 2018).[145] There is a slight improvement: Türkiye is no longer the country which has the highest number of imprisoned journalists, however the risk of

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139. The authorities stressed that, since the entry into force of this regulation, no member of governing boards of associations had been temporarily suspended from duty by the Ministry of Interior. AS/Mon (2022) 15 comments.

140. Opinion on "the compatibility with international human rights standards of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction recently passed by Turkey's National Assembly, amending, inter alia, the Law on Associations (No. 2860)", adopted by the Venice Commission at its 127th Plenary Session (hybrid, 2-3 July 2021), CDL-AD(2021)023cor-e. (para. 82).

This opinion had been requested by the Committee on Legal Affairs and Human Rights of the Assembly.

141. Mr Türkdoğan was tried for allegedly for "insulting" a public official (Article 125 of the Criminal Code), "membership of a terrorist organisation" (article 314/2 of the Criminal Code), "degrading the Turkish nation, state of the Turkish Republic and institutions and organs of the sate" (Article 301 of the Criminal Code). OBS Urgent Appeal for Öztürk Türkdoğan – HRA (ihd.org.tr).

142. "The authorities criticised [Mr Kılıç], in particular, for having allegedly downloaded and used the ByLock messaging service on his telephone; for subscriptions to certain publications, such as the Zaman newspaper (allegedly linked to FETÖ/PDY); for the facts that his sister was married to the editor of the Zaman newspaper, and that his children were schooled in institutions which were allegedly run by FETÖ/PDY and had been closed by legislative decrees after the attempted coup of 15 July 2016; and for holding bank accounts with Bank Asya, a financial institution which was allegedly linked to FETÖ/PDY". Press release of the Court.

143. The Court found violation of Article 5.1 (absence of reasonable suspicion that Mr Kılıç had committed an offence, either on the date that he was placed in pre-trial detention or when it was extended), Article 5.3 (absence of persistence of a reasonable suspicion justifying his continued detention), Article 5.5 (lack of compensatory remedy for unjustified pre-trial detention) and Article 10 (freedom of expression): Mr Kılıç's initial placement in pre-trial detention in the context of the second set of criminal proceedings brought against him, on account of actions that were directly linked to his activity as a human-rights defender, amounted to a genuine and effective restriction and thus an "interference" in the exercise of his right to freedom of expression.

144. *Taner Kılıç v. Turkey* (No. 2) (No. 208/18), Press release of the Court.

imprisonment and the fear of being subjected to judicial control or stripped of one's passport is ever-present. RSF noted "the 'hyper-presidency' of Recep Tayyip Erdoğan and his authoritarianism accompanied by a denial of freedom of the press and interference in the judicial system." However, "some judges have recently come out against 'this repression that goes too far': journalists have been acquitted of abusive charges such as 'insulting the president', 'belonging to a terrorist organization', or 'propaganda'. Judicial review now takes precedence over the imprisonment of journalists". This is a trend to be welcomed.

120. However, RSF notes that "verbal attacks and political hostility towards outspoken journalists have increased steadily in Türkiye since the 2019 local elections, exacerbating the existing climate of impunity and encouraging those suspected of links to corruption to attack local reporters who cover corruption." Two journalists have been murdered in recent months: in March 2021, Hazım Özsu, presenter of a programme on Radio Rahmet FMin Bursa, was gunned down by one of his listeners who did not appreciate his comments about religion. His alleged murderer, Halil Nalcaci, was arrested six days later and sentenced to life imprisonment by the court. On 19 February 2022, Güngör Arslan, owner and managing editor of a local newspaper in Kocaeli, was targeted in an armed attack on his office. Ten persons were arrested, including Ersin Kurt who had been accused by Mr Arslan in a series of articles recently published before his passing away of winning tenders from the Kocaeli Metropolitan Municipality, thereby violating the attorney's act.[146]

121. Additional structural issues undermine media pluralism. RSF findings show that "the government controls 90% of national media by means of regulators such as the Radio and Television Supreme Council (RTÜK), while the Press Advertising Council, which allocates State advertising, and the Presidential Directorate for Communications, which issues press cards, use clearly discriminatory practices in order to marginalise and criminalise media critical of the regime.[147] In a landmark ruling of 10 August 2022, Türkiye's Constitutional Court ruled that the fines issued by the Press Advertising Agency, the State body responsible for regulating publicly funded advertisements in the media, to dailies Cumhuriyet, Evrensel, Sözcü and Birgün were in violation of freedom of press and expression and has sent a copy of its ruling to the parliament for a regulation to be undertaken with regards to this issue.

122. There is tight control of internet; international social media platforms failing to appoint a legal representative in Türkiye or failing to apply the censorship decisions taken by Türkiye's courts are exposed to an escalating range of sanctions that include fines, withdrawal of advertising and reduction in the bandwidth available to them.

123. Finally, on 26 May 2022, the ruling coalition submitted a bill criminalising "disinformation". Those who are "spreading false information with regards to the country's domestic and external security, public order and general health in a way that that is suitable to disrupt the public peace, with the purpose of creating concern, fear or panic among the people" could face prison sentences of one to three years. Online news outlets will be required to remove "false" content, and the government may block access to their websites more easily. According to the authorities, this draft law aims at "regulating and enhancing the online media platforms just like the European Union's upcoming Digital Services Act, which aims to remove illegal content, increase transparent advertising, and improve the fight against disinformation. The European Union's digital regulations force tech giants like Google and Meta to police illegal content on their platforms, which is similar to the provisions of Türkiye's upcoming laws on the same issue."[148]

124. This draft law, however, has alarmed Turkish media professionals, who fear that it is aimed at silencing media, and to "tame" online media platforms where there is alternative and critical reporting", meaning that "the simplest political objection in the media would be "deleted" by the judiciary, which is under the influence of the ruling power", according to RSF representative Erol Önderoğlu.[149] This draft law was also criticised for being vaguely worded, and could put additional pressure on journalists.[150] The main opposition party CHP assesses this bill as an attempt to censor online media, should this bill be passed in its current version, and the CHP plans to take this draft law to the Constitutional Court to seek its annulation.[151]

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145. Turkey | RSF.
146. Bianet (16 March 2022). The authorities additionally explained that one of the arrested person, Burhan Polat, who is still on trial for instigating the murder, stated that he had prepared the murder plan because Güngör Arslan had sent wine and flowers to his girlfriend. AS/Mon (2022) 15 comments.
147. Turkey | RSF.
148. AS/Mon (2022) 15 comments.
149. Bianet (8 June 2022).
150. On 16 June 2022, 15 journalists and one media worker working for Kurdish-language media outlets or production companies were still being held after the 8 June detention of 19 journalists and the confiscation of computer hard drives, phones and other equipment. See the alert of 17 June 2022 published on the Council of Europe Safety of journalists platform.

125. Finally, a new trend seems to be emerging, with fines imposed by the RTÜK on channels that display comments from opposition members. In the wake of the verdict in the Kavala case, media who had broadcast the comments of two opposition deputies, Özgür Özel (from the CHP) and Ahmet Şık (from the Workers' Party of Türkiye), who had condemned the conviction of Osman Kavala and his co-defendants, received a fine from the RTÜK amounting to 3% of their monthly advertisement revenues on 10 May 2022.[152] In addition, an investigative journalist, İsmail Saymaz, faced investigation by the Anti-Terror and Organized Crime Bureau of the İstanbul Police Department after stating that the wife of one of the judges in the Gezi Trial who handed down the aggravated life sentence had been named a suspect in an investigation against followers of the Gülen movement. Later, the demonstrations celebrating the 9th anniversary of the Gezi demonstrations were restricted.

126. More recently, fines were imposed on four TV channels for airing opposition CHP leader Kemal Kılıçdaroğlu's speech in which he claimed that President Erdoğan was preparing to flee Türkiye with his family members if he lost the elections. The authorities claim that the fines issued by RTÜK "are not aimed to 'punish' or 'restrict' media platforms, but to make them responsible, to divert their attention from fake news and to increase the quality of the national media" and that "RTÜK's fine against the false statements of an opposition politician was a measure to protect the democracy in Türkiye from subversive disinformation attacks".[153] This is a highly sensitive issue which could have detrimental effects on freedom of expression. An opinion from the Venice Commission would be helpful to assess the compatibility of this draft law with our standards.

127. In conclusion, the conditions for the preparation of the 2023 elections should be improved to allow political parties to operate and to campaign freely.

5. Concluding remarks

128. Five years since the Assembly decided to place Türkiye under the monitoring procedure, we sought to prepare a mid-term review of this procedure, focusing specifically on the implementation of the judgments of the European Court of Human Rights, the judiciary and challenges to the rule of law, and the preparation of the 2023 parliamentary and presidential elections.

129. Despite some steps taken in the Action Plan on Human Rights of the 4th Judicial package, issues of concerns identified in previous resolutions of the Assembly have been insufficiently addressed by the authorities, We can but encourage Türkiye to further engage into a meaningful, result-oriented co-operation with the Council of Europe and its monitoring mechanisms to address them and find common solution. The Constitutional Court, through the mechanism of individual application, has an important role to play to secure fundamental rights.

130. One major recent development was the launch of an infringement procedure in February 2022, following Türkiye's failure to implement the Kavala judgment. We have on several occasions stressed that the solution to the Kavala case lies in the hands of the Turkish judicial system. The latter has the capacity to find a legal solution and show a more diligent interpretation of the European Court judgement, in compliance with its ruling and international law. The Assembly should therefore follow with close attention the activities of the Committee of Ministers with respect to the ongoing infringement procedure. We also expect the support of member States to the Committee of Ministers to ensure that decisions in this respect will not undermine or jeopardise the effectiveness of the system of protection of fundamental rights and the credibility of the Court. We therefore strongly encourage the Turkish authorities to abide by the Court rulings, and we reiterate our call to release Mr Kavala and also Mr Demirtaş.

131. We have also observed that since the political system was changed in 2017 by referendum – which is a sovereign right of any member State – and established a presidential system, the democratic institutions in Türkiye were weakened, and the system of checks and balances made dysfunctional and deficient. There is

151. AS/Mon (2022) 15 comments.
152. The media concerned were Flash TV, Halk TV, Tele 1 and KRT, Mr Özel said that "Gezi is free. Kavala is free. Recep Tayyip Erdoğan will be held to account before history". President Erdoğan then accused Özel of "insulting the president" in public remarks and sued him for compensation. Ahmet Sik said that "You will have given up on your dignity if you do not speak up now. The government has no dignity anyway. They are already a criminal organisation. Those who do not object are responsible for this verdict."
153. AS/Mon (2022) 15 comments.

an urgent need for reforms to restore in the first place the full independence of the judiciary and effective checks and balances, following the recommendations of the Venice Commission. This includes the need to revise the Constitution to restore the separation of powers.

132. Another crucial issue concerns the preparation of the presidential and parliamentary elections in 2023, which should be observed by the Assembly. The lowering of the electoral threshold from 10% to 7% – a long-lasting request from the Parliamentary Assembly – is a welcome development. However, the state of the overall electoral environment, including challenges to freedom of media and level playing field, could seriously undermine the fairness of electoral processes. In this respect, we remain worried about the crackdown on opposition members, and the ongoing closure case against the HDP, which would be an alarming sign. We hope that the Constitutional court will take a decision in compliance with European standards and the case law of the European Court of Human Rights. The Turkish authorities also need to ensure that all conditions will be met to guarantee free and fair elections, including the ability of the opposition to operate, and journalists to work in an independent way. Some of the recent changes in the electoral legislation (as highlighted by the Venice Commission) and the draft bill on disinformation are, in this context, of serious concern.

133. In this context, the Assembly should remain at the disposal of the Turkish authorities to pursue a constructive dialogue and should continue to follow the developments in the country concerning democracy, rule of law and human rights.

Appendix

Dissenting opinion presented by Mr Ahmet Yıldız (Türkiye, NR), Chairperson of the Turkish Delegation to the Assembly, pursuant to Rule 50.4 of the Rules of Procedure

There are issues we have raised during the preparation phase of the report, which unfortunately have not been reflected in full or at all in the current report. Also, our proposals for amendments have not been adopted by the Monitoring Committee. We therefore take this opportunity to submit this dissenting opinion in order to do justice to the report.

While the report draws attention to the unique situation of Türkiye with regard to her fight against terrorism, it is seen that the problems and difficulties Türkiye faces and the methods it has to follow to maintain public order and security are not fully acknowledged. Türkiye's will and efforts towards promoting and protecting human rights and the rule of law while countering terrorism are not sufficiently taken into account, as well. Türkiye exerts the utmost effort to fulfil its international obligations while addressing threats to its security. In this context, PKK should be referred to as a terrorist organisation as recognised by the courts, countries and international organisations.

Further, it is evident that the damages caused by a terrorist organisation such as FETÖ is not adequately understood and reflected in the report. It is unacceptable to still refer to FETÖ as “Gülen movement”, which is a terrorist organisation that has been disclosed and admitted to be a terrorist organisation by its own members, carried out many criminal activities, and going further, attempted to stage a coup to overthrow the constitutional order and the democratically elected government, which left 251 people dead and more than 2 000 wounded.

With regard to criticisms in the context of the implementation of the European Court of Human Rights’s (ECtHR) judgments, it should be noted that Türkiye has demonstrated its commitment to the European Convention on Human Rights by being the country that closed the highest number of cases in the last three years, namely 732 cases in 2019, 168 cases in 2020 and 222 cases in 2021. Türkiye has executed 2 850 judgments in the last 10 years, and the total number is approaching 4 000. While Türkiye has implemented such a large number of judgments, it is not fair and appropriate that only certain judgments are brought to the fore. There are countries that have not implemented the ECtHR’s judgments for more than a decade, but despite this, they are not subject to pressure while Türkiye is. Thus, a double standard is applied and also included in the report.

Additionally, as a related issue, the report should have refrained from making comments and calls on the ongoing legal proceedings, as they are to be respected, and any acts that could interfere with them should be avoided.

Last but not least, the concerns regarding the upcoming elections are unfounded. Türkiye has an established tradition of free, fair, transparent and democratic elections. There can be no doubt that within the framework of legislation, which reflects this tradition, and also international obligations, the 2023 parliamentary and presidential elections will be held in a democratic environment and a transparent manner.