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The functioning of democratic institutions in Turkey

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Ms Ingebjørg GODSKESEN, Norway, European Conservatives Group, and Ms Marianne MIKKO, Estonia, Socialist Group

Summary:

While acknowledging the trauma caused by the failed coup attempt of 15 July 2016 and multiple ongoing terrorist threats, the Monitoring Committee is concerned about the implementation of the state of emergency, the large-scale and disproportionate effect of the decree laws – including the massive dismissal of civil servants, judges, prosecutors and academics and the closing down of media and NGOs – as well as limited access to judicial remedies.

The Monitoring Committee is also worried about the detention of parliamentarians and journalists, repeated violations of the freedom of expression and of the media and the situation in south-east Turkey, leading to a serious deterioration of the functioning of democratic institutions. The committee has moreover expressed concern about the constitutional amendments (in particular respect for the separation of powers, checks and balances and independence of the judiciary) to secure a presidential system and the conditions of the organisation of the referendum of 16 April 2017.

In the light of these developments, the Monitoring Committee urges Turkey to take urgent measures (including the lifting of the state of emergency and the release of MPs and journalists) and proposes that the Parliamentary Assembly reopen the monitoring procedure so as to intensify its co-operation with the Turkish authorities and all forces in the country.

1. Reference to committee: Reference 4274 of 27 January 2017.

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A. Draft resolution[2]

1. On 15 July 2016, Turkey suffered a failed *coup d'état* initiated by a group within the Turkish armed forces, which resulted in 248 people being killed and 2 000 wounded. The Parliamentary Assembly has firmly condemned this attempt to overthrow the country's democratically elected institutions, in particular the Turkish Grand National Assembly, which was bombarded that night, and fully acknowledges that these events were traumatic for Turkish society. The Assembly expressed its support and praised the Turkish people for uniting to reject this attempted military coup, thus demonstrating its democratic maturity. The Turkish authorities declared that members of the Gülen movement were behind the attempted coup, which prompted the authorities to launch a vast purge in the State institutions that had been infiltrated by the movement – a view which seems to be widely accepted by Turkish society.

2. That night, Turkey faced a dangerous armed conspiracy, which gave the President of the Republic a legitimate reason to declare a state of emergency and give extraordinary powers to the government. In line with Article 15 of the European Convention on Human Rights (ETS No. 5), Turkey derogated from certain human rights. The three-month state of emergency has been prolonged twice since then, in October 2016 and January 2017, with the parliament's agreement.

3. While recalling that state of emergency regimes aim at re-establishing public order, the Assembly stresses that this situation should remain within the limits set by the Constitution and the domestic and international obligations of the State. The state of emergency should thus be strictly limited in time and effect, and be lifted as soon as possible.

4. The Assembly is fully aware that Turkey is facing multiple threats and challenges due to its adverse geopolitical situation: with the ongoing conflict in Syria, 3 million refugees fled to Turkey, whose efforts to accommodate and take care of many refugees should again be commended.

5. Turkey has faced massive and repeated terrorist attacks perpetrated by the so-called "Islamic State of Iraq and the Levant" (ISIL/Daesh), the "Kurdistan Workers' Party" (PKK) and the PKK-affiliated "Kurdistan Freedom Hawks" (TAK). These attacks caused hundreds of casualties in Ankara, Suruç, Istanbul, Bursa, Diyarbakır, Kayseri and other cities in Turkey. In addition, the border city of Kilis was targeted by shelling from Syrian territory. The Assembly unequivocally condemns these attacks and all terrorist action and violence perpetrated by the PKK, Daesh or any other organisation, which can by no means be tolerated.

6. The Assembly stresses Turkey's right and duty to fight terrorism and address security issues in order to protect its citizens and its democratic institutions. It recalls, however, that the fight against terrorism nationwide, as well as the security operations conducted in south-east Turkey must adhere to the principles of the rule of law and human rights standards, which require any interference with basic human rights to be defined in law, necessary in a democratic society and strictly proportionate to the aim pursued, in accordance with its international obligations.

7. Unfortunately, eight months after the attempted coup, the situation has deteriorated and measures have gone far beyond what is necessary and proportionate. The authorities have been ruling through decree laws going far beyond what emergency situations require and overstepping the parliament's legislative competence. The Assembly is also concerned that most of the decree laws have so far not been approved (as required by the Constitution), or their implementation monitored by the parliament, which the Assembly considers to be a serious democratic deficiency.

8. The Assembly recalls its Resolution 2121 (2016) on the functioning of democratic institutions in Turkey, adopted in June 2016, namely prior to the failed coup, according to which the developments pertaining to freedom of the media and of expression, erosion of the rule of law and the alleged human rights violations in relation to the anti-terrorism security operations in south-east Turkey constituted a threat to the functioning of democratic institutions and the country's commitment to its obligations towards the Council of Europe. The Assembly regrets that none of the issues identified have been addressed. The Assembly has, on the contrary, noted that the harmful developments observed in June 2016 have accelerated and worsened since the failed coup.

9. The Assembly is in particular concerned about the stripping of the immunity of 154 MPs in May 2016, which the European Commission for Democracy through Law (Venice Commission) described in October 2016 as an ad hoc, "one-shot" and *ad hominem* measure, as well as a misuse of the constitutional amendment procedure, thus not in line with Council of Europe standards. It further condemns the ongoing

2. Draft resolution adopted by the committee on 8 March 2017.

detention of 12 parliamentarians since November 2016, and is dismayed by the Prosecutor's Office requests calling for respectively 142 years' and 83 years' imprisonment for the People's Democratic Party (HDP) Co-Chairs, Selahattin Demirtaş and Figen Yuksekdag.

10. The Assembly concludes, with great concern, that such lifting of immunity has seriously undermined the democratic functioning and position of the parliament. In addition, this decision has disproportionally affected the opposition parties and in particular the HDP, with 55 out of 59 (i.e. 93%) of its members stripped of their immunity. This has had a deterrent effect and has led to serious restrictions to democratic debate in the run-up to the constitutional referendum of 16 April 2017 to establish a presidential system. It also paved the way for the arrest and the current detention of 12 HDP members of parliament, including the two co-chairs of the party, and also the arrest of hundreds of HDP officials, which has rendered the party inoperative. The Assembly deeply regrets that its delegations were repeatedly denied access to these detained parliamentarians.

11. At the same time, the Assembly is concerned about the situation of local administrations in south-east Turkey: it notes with concern that trustees appointed by the government have taken over the administration of two thirds of the municipalities which were governed by pro-Kurdish political parties. Dozens of their mayors are currently in prison.

12. The Assembly considers that these developments amount to a serious deterioration of the functioning of democratic institutions in the country, particularly by weakening the role of the elected representatives and undermining the legislative and supervisory functions of the parliament. Recalling its Resolution 2127 (2016) on parliamentary immunity and the 2016 Venice Commission opinion, the Assembly therefore calls on the Turkish authorities to:

12.1. release the arrested parliamentarians, unless they are convicted after due process and a fair trial;

12.2. restore the inviolability of the MPs stripped of their immunity, based on the conclusions of the Venice Commission;

12.3. authorise Parliamentary Assembly and international parliamentary delegations to visit the detained parliamentarians.

13. The Assembly expresses its deep concern about the scale and extent of the purges conducted in the public administration and the judiciary, and many other public institutions, targeting alleged members of the Gülen movement. The Assembly recalls its Resolution 2121 (2016) and notes that the Gülen movement, a former ally of the ruling party operating legally until 2014, was later labelled "Fethullahist Terrorist Organisation"/"Parallel State Structure" and considered a terrorist organisation. According to the Venice Commission, while civil servants have an obligation to be loyal vis-à-vis the State and not to take instructions from external sources, it is the duty of the State to clarify to all public servants when a hitherto well-established organisation is subsequently considered as a "threat to the national security" – and becomes thus incompatible with public service – to avoid lack of information and clarity which could lead to "unjust dismissals which may be seen as retroactive punishment".

14. These measures have had a serious impact on the functioning of the State institutions: a quarter of judges and prosecutors, a tenth of the police force and 30% of the staff in the Ministry of Foreign Affairs have been dismissed, not to mention the nearly 5 000 academics dismissed since July 2016, which is impeding the running of the universities.

15. The Assembly is extremely worried about the high number of individuals arrested and kept in custody waiting indictment, without access to their files. The Assembly expects the Turkish authorities to resort to pretrial detention only as a last resort and on valid grounds.

16. The Assembly is also dismayed by the social consequences of the measures applied in the framework of the state of emergency: those dismissed have had their passports cancelled. They are banned from ever working again in public administration, or in institutions which have links to the public administration. They have no access to a social security scheme and their assets have been seized – which raises question about the protection of property rights. Their families have also been affected by these measures. The Assembly fears that these measures amount to a "civilian death" for those concerned. This situation will have a dramatic and detrimental long-term effect on Turkish society, which will need to find the means and mechanisms to overcome this trauma.

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

18. The Assembly also notes that the Constitutional Court has not yet reached a decision on whether or not it should examine the 50 000 individual applications pending in relation to the publication of the emergency decree laws. The Assembly recalls in this respect that the right to individual petition introduced in 2010 has proved to be an effective means for the Constitutional Court to redress human rights violations in recent years. It therefore invites the Constitutional Court to confirm this practice.

19. The Assembly remains worried about respect for fundamental rights under the state of emergency. Considering the scale of the operations undertaken, the Assembly is concerned that the state of emergency has been used not only to remove those involved in the coup from the State institutions, but also to silence any critical voices and create a climate of fear among ordinary citizens, independent non-governmental organisations (NGOs) and the media, jeopardising the foundations of a democratic society.

20. In this respect, the Assembly welcomes the willingness expressed by the Turkish authorities to continue the dialogue with the Council of Europe, and values the efforts of the joint working group established by the Turkish Minister of Justice and the Secretary General of the Council of Europe. The adoption of three decree laws on 23 January 2017, restoring access to lawyers from the first day of custody and limiting police custody to seven days (renewable once at the request of the Public Prosecutor in certain cases), is a positive result of this co-operation. The Assembly now expects these first steps to be followed by others in order to address the remaining procedural shortcomings resulting from the decree laws and upgrade the human rights situation and domestic redress mechanisms. The failure to do so will certainly result in the European Court of Human Rights facing tens of thousands of applications from Turkish citizens in the coming years.

21. In the light of the serious concerns and established violations of human rights under the state of emergency, as highlighted by the Venice Commission and the Council of Europe Commissioner for Human Rights, the Assembly also urges the Turkish authorities to:

21.1. lift the state of emergency as soon as possible;

21.2. put an end to the collective dismissal of civil servants through decree laws, which negate procedures based on individual cases respectful of the presumption of innocence;

21.3. take all necessary steps to ensure that the newly created Inquiry Commission on State of Emergency Measures starts its work rapidly and with adequate human and financial resources; ensure that its decisions are taken quickly, independently and transparently in order to start a judicial review procedure, so as to ensure that any wrongdoing is properly redressed with due diligence;

21.4. redress the procedural shortcomings under the state of emergency, in particular with respect to the duration of detention and effective access to lawyers;

21.5. abolish the provision providing for the stripping of citizenship in cases of trials *in absentia*, which is contrary to international legal instruments and may result in statelessness;

21.6. amend the decree laws to ensure that all transfers of property to the State are temporary, subject to final adjudication at the end of the state of emergency, and in full compliance with Article 6.1 of the European Convention on Human Rights;

21.7. ensure that the right to education, as set out in Article 2 of the Protocol to the European Convention on Human Rights (ETS No. 9), is fully protected.

22. The Assembly reiterates its deep concern about the situation in south-east Turkey, which has been subjected to security operations since August 2015. It shares the concerns expressed by the Commissioner for Human Rights about violations of fundamental rights in the region, including property rights, access to education and lack of effective investigations into alleged human rights violations. The Assembly is also shocked by the investigations launched against human rights organisations which reported on alleged human rights violations – deemed credible – in Cizre.

23. In this context, the Assembly is appalled by the adoption of the 2016 Law on the legal protection of security forces involved in the fight against terrorist organisations, which could encourage impunity. It nevertheless notes that the authorities seek to pursue a zero-tolerance policy with respect to torture and ill-treatment. It thus urges the Turkish authorities to:

23.1. repeal the 2016 Law on the legal protection of security forces involved in the fight against terrorist organisations; ensure that effective investigations into allegations of unlawful acts are carried out in order to guarantee that those responsible are held accountable for unlawful acts, including for ill-treatment, excessive use of force or any other abuse of power;

23.2. establish an effective and independent complaints mechanism to combat impunity, as suggested by the Commissioner for Human Rights;

23.3. authorise, without any undue delay, the publication of the last reports prepared by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and implement the CPT's recommendations.

24. With respect to freedom of the media and of expression, the Assembly is alarmed by the repeated violations of freedom of the media, the large number of journalists currently detained and the pressure exerted on critical journalists, which is unacceptable in a democratic society. Council of Europe member States have a positive obligation to ensure freedom of expression, protection of journalists and access to information and to create the conditions to enable the media to act as public or social watchdogs and inform the public on matters of general and public interest.

25. The Assembly recalls in particular its Resolution 2121 (2016) on the functioning of democratic institutions in Turkey, and Resolution 2141 (2017) on attacks against journalists and media freedom in Europe. It remains concerned about the situation of the media in Turkey, the extensive interpretation of the Anti-Terror Law, which contradicts Council of Europe standards, seriously undermines the democratic foundations of the country and leads to the criminalisation and prosecution of human rights defenders and lawyers. It reiterates its call on the Turkish authorities to repeal, revise or ensure a strict interpretation of Article 216 (criminalising public incitement to hatred or hostility and degrading sections of the public), Article 299 (insulting the President of Republic), Article 301 (degrading the Turkish nation, the State of the Turkish Republic, the organs and institutions of the State) and Article 314 (membership of an armed organisation) of the Penal Code, as well as internet law No. 5651, in accordance with the opinions of the Venice Commission of 2015.

26. The Assembly thus calls on the Turkish authorities to:

26.1. release the detained journalists (more than 150) and human rights defenders, unless they have been indicted for actively participating in terrorist acts;

26.2. put an end to the unacceptable policy of the criminalisation of dissenting voices, and protect media freedom, in line with the European Convention on Human Rights and the case law of the European Court of Human Rights; review the attitudes and practices of the justice system, in particular prosecutors and peace judges, so as to discard the "consistent pattern of judicial harassment with a clear chilling effect that stifles criticism" (as described by the Commissioner for Human Rights) and to achieve a more Convention-compliant interpretation of Turkish legislation;

26.3. amend the anti-terror law so as to ensure that its implementation and interpretation comply with the European Convention on Human Rights;

26.4. refrain from applying sweeping measures, including against the media and NGOs, on the basis of vague criteria of alleged "connection" to a terrorist organisation without evidentiary grounds and in the absence of judicial decisions and;

26.5. create an environment conducive to media freedom and pluralism, notably by strengthening the editorial independence of the Turkish Radio and Television Broadcasting Company, and implementing an effective monitoring mechanism to ensure that the media abides with regulations, in line with Council of Europe standards.

27. In the light of the backsliding with respect to freedom of expression and of the media observed in recent years – and which has worsened under the state of emergency –, the Assembly considers that Turkey is failing to comply with this obligation and urges the authorities to take urgent measures to restore freedom of expression and of the media, based on the February 2017 conclusions of the Commissioner for Human Rights and on the relevant opinions issued by the Venice Commission in 2016 and 2017.

28. The Assembly takes note of the adoption of a package of constitutional amendments on 21 January 2017 and the organisation of a constitutional referendum on 16 April 2017. If approved by the people through referendum, this constitutional revision would result in a profound change and a shift from a parliamentary to a presidential system, granting the President of the Republic extensive powers while drastically reducing the supervisory role of the parliament. The Assembly emphasises that it is the sole right of the Turkish citizens to decide on the democratic political system they wish to have, provided that sufficient information is given to the voters and that enough time is allowed for public debate.

29. In this context, the Assembly notes with concern that the constitutional amendments were adopted in parliament after a rapid procedure (six weeks in all) and marked by tense debates, infringement of the secrecy of votes, absence of continuous broadcasting of all the parliamentary debates on television and no public consultation on the proposed changes. It is also concerned about the envisaged system of checks and balances, the separation of powers and the independence of the judiciary. The advisability of holding of a referendum under a state of emergency, with 500 000 persons displaced in the wake of the curfews and security operations in south-east Turkey since August 2015, also raise serious questions.

30. The Assembly is also worried about recent changes in the election legislation made through decree laws that strip the Supreme Election Board of its possibility to sanction any media which makes biased political propaganda, and allow unlimited political advertising on private radio and television channels. This is a step backwards and will not be conducive to fair access to the media and balanced media coverage during elections or referendums. The Assembly recalls that citizens have the right to be duly informed about the issues at stake and to be provided with comprehensive information on all views, including dissenting voices, in good time. It thus urges the Turkish authorities to amend accordingly its election legislation and address the remaining electoral shortcomings identified by the Assembly in previous election observation reports.

31. The Assembly appeals to the Turkish authorities to take all due measures to ensure that the right to vote freely and in full security is upheld for all Turkish citizens. It reiterates its call to allow civil society organisations to be accredited as domestic election observers; this would contribute to the transparency of the election process.

32. The Assembly has on numerous occasions recalled that Turkey is a strategic partner for the Council of Europe, and repeatedly called for a constructive dialogue with Turkey, one of its oldest members and one of the first signatories of the European Convention on Human Rights, in 1950. It thus welcomes the ongoing constructive dialogue with the Organisation, which should continue to be based on mutual trust and lead to further results.

33. The Assembly is determined to continue dialogue and co-operation with Turkey, and to offer its support in the difficult times faced by the country. In the wake of the failed coup, which revealed serious dysfunctioning within Turkey's democratic institutions, the Assembly believes that the post-coup developments, including the implementation of the state of emergency, have had large-scale, disproportionate and long-lasting effects on the protection of fundamental freedoms, the functioning of democratic institutions and on all sectors of society. It notes that the disproportionate measures taken (150 000 civil servants, military officers, judges, teachers and academics dismissed; 100 000 individuals prosecuted and 40 000 of them detained), the prevailing legal uncertainty despite recent steps taken by the authorities, and the consequences of the emergency decree laws on individuals and their families have created a climate of suspicion and fear which is detrimental to social cohesion and stability.

34. The Assembly wishes to strengthen and intensify its monitoring of the developments in Turkey and its dialogue with all the forces in the country on these developments in order to ensure that the serious concerns it has expressed about the respect for human rights, democracy and the rule of law are addressed. The Assembly therefore decides to reopen the monitoring procedure in respect of Turkey until its concerns are addressed in a satisfactory manner. In particular, it expects Turkey, as a matter of priority, to:

34.1. lift the state of emergency as soon as possible;

34.2. in the meantime, halt the publication of emergency decree laws which bypass parliamentary procedures, unless strictly needed under the state of emergency law, and put an end to the collective dismissal of civil servants through emergency decree laws;

34.3. release all the detained parliamentarians pending trial;

34.4. release all the imprisoned journalists pending trial;

34.5. establish and launch the work of the Inquiry Commission on State of Emergency Measures to ensure an effective national judicial remedy for those dismissed through emergency decree laws;

34.6. ensure fair trials with respect for due procedural guarantees;

34.7. take urgent measures to restore freedom of expression and of the media, in line with Assembly Resolution 2121 (2016) and Resolution 2141 (2017), and with the recommendations of the Commissioner for Human Rights and the Venice Commission;

34.8. organise the April 2017 constitutional referendum in line with Council of Europe standards and the Venice Commission's Code of good practice on referendums, so as to guarantee the freedom of voters to form an opinion;

34.9. implement as soon as possible the recommendations of the Venice Commission concerning the constitutional amendments.

35. The Assembly resolves, in the framework of the monitoring procedure for Turkey, to assess progress made in a report to be presented in the course of the Assembly's 2018 session.

B. Explanatory memorandum by Ms Ingebjørg Godskesen and Ms Marianne Mikko, co-rapporteurs

1. Introduction

1. On 15 July 2016, Turkey suffered a failed *coup d'état*, after a group within the Turkish armed forces attempted to overthrow the democratic institutions and abolish the constitutional order with force and violence, which left 248 dead and more than 2 000 wounded. The authorities immediately affirmed that members of the movement led by Fethullah Gülen,[3] which was labelled a terrorist organisation in 2014 (thus known as "FETÖ/PDY", i.e. the "Fethullahist Terrorist Organisation"/"Parallel State Structure"), were behind the failed coup, in an attempt to take over the democratic institutions and destroy the constitutional order in Turkey – which was denied by Fethullah Gülen. There was, however, widespread consensus that the movement had been infiltrating notably the judiciary and the police, and other State institutions, for more than 40 years. The influence of the Gülen movement in State institutions was already raised in the 2013 post-monitoring report presented by the Parliamentary Assembly rapporteur Ms Josette Durrieu (France, SOC), but was at that time dismissed by the authorities.[4] In the meantime, the European Commission for Democracy through Law (Venice Commission) has provided factual information about the movement, and the involvement of some members of this movement in certain illegal acts in order to gain influence, those acts allegedly consisting of "manipulations of the entry exams to various State institutions, collection of a *de facto* compulsory 'taxes', under the guise of benevolent donations supposed to finance the charity projects of the Gülenist network, fabrication of incriminating evidence against political opponents", such as in the so-called Ergenekon and Balyoz trials, "in which a large number of persons were convicted on the basis of at least partially fabricated evidence".[5]

2. The Council of Europe was among the first organisations to condemn this attempt to overthrow an elected government: Assembly President Pedro Agramunt, Secretary General Thorbjørn Jagland and Estonian Minister of Foreign Affairs Marina Kaljurand, in her capacity as Chair of the Committee of Ministers of the Council of Europe, condemned the coup on behalf of the organisation and paid visits to the country in the weeks that followed the failed coup,[6] to show the solidarity of the European people with Turkey. Since then, delegations of the Parliamentary Assembly, the Congress of Local and Regional Authorities of the Council of Europe, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Venice Commission, as well as the Council of Europe Commissioner for Human Rights, have also visited the country and continue to closely follow the situation in Turkey, and the compatibility of the post-coup measures with Council of Europe norms.

3. The failed *coup d'état* prompted the authorities to declare a state of emergency and launch a vast process to "cleanse" the State institutions from members seen as being loyal to the Gülen movement.

4. While, according to the Venice Commission,[7] there was no doubt that the Turkish authorities were confronted "with a dangerous armed conspiracy", and that they had "good reasons to declare a state of emergency and give extraordinary powers to the government", the consequences of the state of emergency on human rights protection and the scale of the purge raises serious questions. Even though Turkey may take measures derogating from its obligations under the European Convention on Human Rights (ETS No. 5) (Article 15), a state of emergency regime is not a carte blanche for the authorities – and should "remain within the limits set by the Constitution and domestic and international obligations of the State".[8]

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3. Fethullah Gülen is a Muslim preacher who has developed an educational network throughout the world and whose students have become influential in State institutions, as already reflected in previous Assembly reports. After 2013, a rift openly developed between Mr Recep Tayyip Erdoğan and his former ally Gülen, who is currently self-exiled in the United States.
4. See the dissenting opinion presented by the Chairperson of the Turkish delegation to Ms Durrieu's report (Doc. 13160).
5. Opinion on Emergency Decree Laws No. 667-676 following the failed coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session, 9-10 December 2016 (CDL-AD(2016)037), paragraph 17.
6. The Secretary General was the first international personality to visit Turkey in the aftermath of the failed coup (on 4 August 2016), followed by the Chairperson of the Committee of Ministers (24 August) and the President of our Assembly (1-2 September). The European Committee for the Prevention of Torture (CPT) visited Turkey at the beginning of September, the Commissioner for Human Rights at the end of September and the Venice Commission in October (AS/Pol (2016) 18 rev).
7. CDL-AD(2016)037, paragraph 225.
8. Ibid.

5. The Monitoring Committee followed the post-coup developments in the framework of the post-monitoring dialogue which has been in place since 2004. At all of its subsequent meetings, the committee held exchanges of views on the situation in Turkey, in particular the consequences of the state of emergency and the subsequent decree laws. On 9 November 2016, the committee adopted a declaration expressing its serious concern after the arrest of 12 members of parliament, the implementation of the state of emergency, "notably the continuous and massive dismissal of civil servants and members of the judiciary and the consequences of the measures contained in the decree laws on fundamental freedoms and fair trials, which will result in numerous complaints being lodged with the European Court of Human Rights, should Turkey fail to redress these shortcomings and ensure effective legal remedies", as well as the arrests of leading journalists from *Cumhuriyet* – for their alleged support to the PKK and the Gülen movement –, the recent closure of Kurdish media and the restrictions imposed on the autonomy of the universities; the committee also expressed its dismay over the renewed discussions about the reintroduction of the death penalty in Turkey, which, it stressed, is incompatible with membership of the Council of Europe.[9]

6. Expressing increased concern about the consequences of the failed *coup d'état*, the Monitoring Committee, meeting on 14 December 2016, decided to request the holding of a debate under urgent procedure on the functioning of democratic institutions and asked us, as the committee's co-rapporteurs on Turkey, to visit the country.

7. Our fact-finding visit was carried out in Istanbul and Ankara from 9 to 13 January 2017. We met the Vice-President of the Grand National Assembly, the Minister of Education, the Deputy Ministers of Foreign Affairs and Justice, representatives of the Ministry of Internal Affairs, the Turkish delegation to the Parliamentary Assembly, members of the political groups represented in parliament, the President of the parliament's Justice Committee, the Ombudsman, representatives of trade unions, the diplomatic community, representatives of the media and non-governmental organisations (NGOs), academics and local authorities. We would like to thank the Turkish delegation and the Turkish authorities for the organisation of the visit, which took place in the midst of the vote on the constitutional amendments. Unfortunately, we were unable to meet the President of the Republic, the Prime Minister, the Chairperson of the parliamentary Constitutional Committee and the Vice-President of the High Council for Judges and Prosecutors.

8. By letter dated 23 February 2017, the Chairperson of the Turkish delegation, Mr Talip Küçükcan, provided us with additional, updated information on the latest developments, which we have taken into account in the preparation of this report. We would like to thank him for this information.

9. In addition to the activities of the Monitoring Committee, a cross-party ad hoc sub-committee of the Committee on Political Affairs and Democracy, chaired by Mogens Jensen (Denmark, SOC),[10] was invited to the country and submitted an information note following its visit on 21 and 22 November 2016, which has provided excellent background information and valuable recommendations from which we drew inspiration.[11] The conclusions of the ad hoc sub-committee, which were endorsed by the Political Affairs Committee on 15 December 2016, found it "necessary that the Assembly decides to reopen the monitoring procedure for Turkey, currently subject to a post-monitoring dialogue" (paragraph 115). It also shared the view, that we fully support, that "challenging the credentials of the Turkish parliamentary delegation would not only be erroneous but also counterproductive. It would target majority and opposition members from the Turkish Parliament alike, harm the dialogue that has been engaged and could lead to distancing the country from the Organisation" (paragraph115). As a consequence, the Political Affairs Committee also requested an urgent debate on the functioning of democratic institutions in Turkey during the January 2017 part-session.

10. On 23 January 2017, the request for an urgent debate on the situation in Turkey, which was tabled by both the Political Affairs and Monitoring Committees, was turned down by the Bureau of the Assembly, and failed to reach a two-thirds majority in the Assembly chamber, despite the support of nearly 60% of the Assembly members who voted. The following day, the Political Affairs Committee adopted a declaration on the situation in Turkey and recent developments.[12] For its part, on 26 January 2017, the Monitoring Committee deplored the Assembly's decision not to hold an urgent debate and requested that a debate on "The functioning of democratic institutions in Turkey" be held during the April 2017 part-session to "allow the Assembly to debate recent developments in the country, continue the dialogue and prompt Turkey, one of the

9. Declaration adopted by the Monitoring Committee on 9 November 2016.

10. The ad hoc Sub-Committee on Recent Developments in Turkey was composed of Mr Mogens Jensen (Denmark, SOC), Chairperson of the Committee on Political Affairs and Democracy; Ms Deborah Bergamini (Italy, EPP/CD); Ms Josette Durrieu (France, SOC); Ms Kelly Tolhurst (United Kingdom, EC); Ms Anne Brasseur (Luxembourg, ALDE) and Mr George Loucaides (Cyprus, UEL).

11. AS/Pol (2016) 18 rev.

12. See Declaration adopted by the Political Affairs Committee on 24 January 2017.

oldest Council of Europe member States and among the first signatories of the European Convention on Human Rights, to comply with its obligations towards the Council of Europe and enhance its democratic stability and security".[13]

2. Political background

2.1. General considerations

11. Turkey continues to face adverse geopolitical conditions. It is engaged in military operations on the ground in northern Syria to combat Daesh and contain the Kurdish organisations in Syria which are perceived as a threat to its national security. It is today involved in the military operations to free the Iraqi city of Mossoul from the control of Daesh. Turkey has sponsored, together with the Russian Federation and Iran, the launch of a round of peace talks in Astana. In the wake of the ongoing conflict in Syria since 2011, Turkey is hosting nearly 3 million refugees. The Assembly has continuously praised the efforts and resources invested in the accommodation of the refugees, which forms the core of an agreement reached with the European Union and ongoing negotiations to obtain a visa-free regime for Turkish citizens.

12. Turkey is facing multiple terrorist threats and attacks perpetrated by the "Islamic State of Iraq and the Levant" (ISIL/Daesh), the "Kurdistan Workers' Party" (PKK)[14] and the PKK-affiliated "Kurdistan Freedom Hawks" (TAK), which have, again recently, carried out terrorist attacks. Below are listed just a few of the most recent attacks:

– a bomb attack on 10 December 2016 outside Beşiktaş's Vodafone Arena Stadium killed 46, including 37 police officers, and wounded 150. TAK claimed responsibility;

– on 17 December 2016, a car bomb by the PKK killed at least 13 soldiers and wounded 56 when it ripped through a bus carrying off-duty soldiers in the central city of Kayseri;

– the Reina nightclub in Istanbul was attacked on 1 January 2017 by ISIL (39 victims);

– a car bomb attack, for which TAK later claimed responsibility, targeted the İzmir courthouse and killed two people on 5 January 2017.

13. In this respect, during our visit to the country, we acknowledged the extent of the terrorist threats and attacks faced by Turkey,[15] and we acknowledged the price paid by the Turkish citizens who opposed the coup plotters in Istanbul, Ankara and other cities. Unfortunately, the terrorist threats, combined with an uncertain political environment, have had a negative impact on the economy, and tourism in particular, and have started to have a dramatic effect on the domestic economic situation, with the Turkish lira plunging.

14. We stressed that it is the right and duty of the Turkish State to fight against terrorism in all its forms. At the same time, the fight against terrorism can only be effective if fought within the framework of the rule of law and respect for the values upheld by the Council of Europe.

15. In the light of the developments that occurred in 2015/2016, especially after the disruption of the discussion on the resolution of the Kurdish issue and the crackdown on the media and the judiciary, the Assembly decided to hold a debate on the functioning of democratic institutions. In its Resolution 2121 (2016) adopted on 22 June 2016, i.e. three weeks before the failed coup, the Assembly concluded that the erosion of the rule of law, infringements of freedom of the media and of expression and human rights violations in relation to the anti-terrorism security operations in south-east Turkey "constituted a threat to the functioning of democratic institutions of the country and its commitments to its obligations towards the Council of Europe".

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13. Statement on the proposed constitutional reform in Turkey adopted by the Parliamentary Assembly's Monitoring Committee, 26 January 2017.

14. The PKK is notably recognised as a terrorist organisation by the European Union, the United Stated and the North Atlantic Treaty Organization (NATO). According to the data provided by the authorities, between July 2015 and 13 February 2016, 872 security personnel and 338 civilians were killed; 2 118 civilians wounded; and 231 civilians kidnapped by the PKK (Information received in the letter from Mr Küçükcan, Chairperson of the Turkish delegation, 23 February 2017).

15. According to media reports, more than 580 people were killed over the past two years in Turkey due to terrorism.

16. At the same time, the Assembly has on numerous occasions recalled that Turkey is a strategic partner for the Council of Europe, and repeatedly called for a constructive dialogue with Turkey. We are convinced that in these challenging times, reinforced co-operation with Turkey is needed to uphold fundamental freedoms, the rule of law and democracy. At this moment in time, the Council of Europe, and in particular our Assembly, need and want to engage further with Turkey.

2.2. Turkey's failed coup d'état of 15 July 2016

17. On 15 July 2016, a group within the Turkish Armed Forces attempted to overthrow the democratic institutions and abolish the constitutional order with force and violence. According to the General Staff of the Army, 8 651 military personnel were involved and 35 planes including fighter jets of the Turkish armed forces, 37 helicopters, 246 armoured vehicles including 74 tanks and approximately 4 000 light weapons were used.[16] This group issued a declaration on behalf of the "Peace at Home Council" on the Turkish Radio and Television (TRT). During this coup, a number of State institutions were targeted by planes and bombs (including the Turkish Parliament, the Presidential Palace, the Ankara Security Directorate, the Police Special Operation Forces of the General Directorate of Security and the National Intelligence Agency).

18. President Erdoğan escaped an assassination attempt at his hotel in Marmaris. He addressed the Turkish people by videophone on the private channel CNN Türk that night, calling on them to take to the streets and oppose the coup. Thousands of people demonstrated and confronted the plotters. The coup subsequently failed in the early hours of 16 July 2016. It left 248 people dead and 2 200 injured, causing a great trauma in society. It was unanimously condemned by all political parties and civil organisations, as well as by the international community.[17] On 7 August 2016, President Erdoğan organised a meeting in Yenikapı with Prime Minister Binali Yıldırım, Chair of the Justice and Development Party (AKP), Mr Kemal Kılıçdaroğlu, leader of the Republican People's Party (CHP) and Mr Devlet Bahceli, leader of the Nationalist Movement Party (MHP). The leader of the Democratic Peoples' Party (HDP), Mr Selahattin Demirtas, was not invited to this meeting. On 9 August 2016, millions of Turks demonstrated to express their commitment to democracy.

19. The authorities have since asked for the extradition of Fethullah Gülen[18] from the United States, which has requested evidence regarding his direct involvement in the coup attempt. On 13 September 2016, Turkey sent a first temporary arrest request against Fethullah Gülen.[19]

20. In the wake of the failed *coup d'état*, the debate about the reintroduction of the death penalty resurfaced. The President of the Republic indicated that he would promulgate the reintroduction of the death penalty, if the parliament would agree to adopt such a law. For the time being, no such bill has been introduced or debated, but the Monitoring Committee, and later the sub-committee of the Political Affairs Committee, already expressed a clear stance on that issue: the death penalty is completely incompatible with membership of the Council of Europe.[20]

21. This coup attempt, which the President of the Republic considered to be a "gift of God", was followed by a massive purge not only in the public administration, but also in the private sector. During our visit to Turkey, we were also puzzled to hear strong rhetoric in official statements referring to "a country under occupation", which should be "liberated" and required a "second war of independence". This confirmed the overall atmosphere in a country which is going through a profound transitional phase, questioning its past and reshaping its future, and profiling the birth of a new Republic which should culminate in 2023.

22. During our visit, we could clearly see how traumatic the coup has been for Turkish citizens. Everyone we met condemned the coup, and was supportive of any move to bring the perpetrators and those directly and actively involved to justice. However, some of those we met were also traumatised by the counter-coup measures, which have created legal uncertainty and fostered an atmosphere of fear. In particular NGO and media representatives, who are in the forefront of the protection of the fundamental rights of citizens and vulnerable persons, were affected by this atmosphere.

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16. See http://constitutionalcourt.gov.tr/inlinepages/press/PressReleases/detail/31.html, paragraph 2.
17. See compilation of statements issued by Parliamentary Assembly President Mr Agramunt, Council of Europe Secretary General Mr Jagland, Chairperson of the Committee of Minister Ms Kaljurand, Minister of Foreign Affairs of Estonia, and Commissioner for Human Rights Mr Muižnieks (See AS/Mon/Inf (2016) 13).
18. On 11 July 2016, Turkey ratified the Additional Protocol to the European Convention on Extradition (ETS No. 86) and the Third and Fourth Additional Protocols to the Convention (CETS Nos. 212 and 209).
19. www.hurriyetdailynews.com/turkish-justice-ministry-demands-us-arrest-gulen-over-coup-attempt.aspx?pageID=238&nID=103844&NewsCatID=510.
20. Declaration adopted by the Monitoring Committee on 9 November 2016.

3. Implementation of the state of emergency

3.1. Consequences of the state of emergency and the subsequent decree laws

23. On 20 July 2016, President Erdoğan announced that Turkey would declare a three-month state of emergency under Article 120 of the Constitution.[21] On 21 July 2016, the Turkish authorities notified the Secretary General of the Council of Europe of its derogation from the European Convention on Human Rights under the Convention's Article 15.[22] The Turkish authorities have since provided regular information about the implementation of the state of emergency and prolonged the state of emergency on 11 October 2016 and 19 January 2017 for two additional periods of 90 days.

24. In the framework of the state of emergency, 21 "Decrees with Force of Law" ("Kanun Hükmünde Kararname", KHK, hereafter "decree laws") were published. The Constitution requires that decree laws be approved by the parliament within 30 days following their publication. To date, only five decree laws (Nos. 667, 668, 669, 671 and 674) have been approved by the parliament. Two of them (Nos. 686 and 687) are on the agenda of the relevant committee and the remaining 14 are on the agenda of the general assembly of the parliament, which raises serious concerns about: 1) the compliance of the decree laws with the Constitution; and 2) the effective role of the parliament in discussing and approving the emergency decree laws.

25. The decree laws notably regulated:[23]

– the dismissal of civil servants, members of the judiciary,[24] members of the public service, the Turkish armed forces[25], the Coast Guard Command organisation and the Turkish National Police.[26] Their names appeared in the lists appended to the decree laws, for being "considered to be a member of, affiliated with or have cohesion or connection with terrorist organisations or structures, organisations or groups which are established by the National Security Council as engaging in activities against the national security of the State". Those dismissed from office will not be employed again. They will not, directly or indirectly, be assigned to a public service. Their gun licences were revoked and their passports cancelled;

– the closure of private health institutions and organisations, private education institutions and organisations as well as private dormitories and lodgings for students, foundations and associations and their commercial enterprises, foundation-run higher education institutions, unions, federations and confederations on the ground that "they belong to, are connected or are in communication with the Fethullah Terrorist Organisation (FETÖ/Parallel State Structure)".[27] All movables, real estate assets, receivables and rights, and all documents and papers of foundations closed down were seized and transferred to the General Directorate of Foundations;

– the closure of private radio stations and television channels, newspapers and periodicals;[28]

– the appointment of university rectors by the President of the Republic, for a maximum of two terms at the same university, from three candidates proposed by Turkey's Higher Education Board (YÖK). The President will also be able to appoint a rector directly if he does not select one of those presented by the YÖK within a month and the body does not present a new candidate.[29]

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21. Article 120 of the Constitution stipulates: "In the event of the emergence of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairmanship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months", see http://codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm.
22. See the news released by the Secretary General on 21 July 2016. It was recalled that there could be no derogation from the following articles: Article 2 (Right to life), Article 3 (Prohibition of torture and inhumane or degrading treatment or punishment), Article 4.1 (Prohibition of slavery) and Article 7 (No punishment without law). The European Convention on Human Rights would continue to apply in Turkey. Where the government sought to invoke Article 15 in order to derogate from the Convention in individual cases, the European Court of Human Rights would decide whether the application met the criteria set out in the Convention, notably the criteria of proportionality of the measure taken.
23. Non-exhaustive information, based on the translation available.
24. Decree with Force of Law No. 669 of 31 July 2016 and Decree with Force of Law No. 670 of 17 August 2016.
25. Decree with Force of Law No. 667 of 23 July 2016.
26. Decree with Force of Law No. 670 of 17 August 2016.
27. Decree with Force of Law No. 667 of 23 July 2016 and Decree with Force of Law No. 673 of 1 September 2016.
28. Decree with Force of Law No. 668 of 27 July 2016.
29. www.hurriyetdailynews.com/bogazici-univesity-academics-rally-against-turkeys-new-decree-law-on-rector-appointments.aspx?PageID=238&NID=105650&NewsCatID=339.

26. A recent development was the publication of four decree laws on 6 January 2017, which resulted in the dismissal of 8 398 more public employees and 649 academics and the banning of 83 more civil society organisations. These decree laws also provide that citizens living abroad with court cases pending or under prosecution, who fail to return to Turkey within three months of the publication of their name in the *Official Gazette* by the Minister of Justice at the request of the prosecutor, could be deprived of their citizenship – which would result in statelessness, in blatant violation of international treaties.

27. On 7 February 2017, with the publication of decree law No. 686, about 4 500 civil servants were dismissed, among them nearly 330 academics, according to the list established by the YÖK, and 2 600 members of the Ministry of National Education.[30]

28. On 8 February 2017, the publication of Decree Law No. 687 stripped the Supreme Election Board (YSK/SBE) of the right to impose penalties or broadcasting bans on broadcasting companies not complying with fair media coverage regulations during election campaigns, or not complying with the regulations concerning the ban on publishing opinion polls ten days prior to the date of the referendum. The decree law also provided for a change in the law on basic provisions of elections, allowing limitless advertising on private television stations during elections and referendums. This is a clear regression compared to the rules in force so far, which were already depicted as problematic in previous election observation reports.[31] Balanced access of supporters and opponents to public media broadcasting should thus be examined, as it is a precondition for guaranteeing the freedom of voters to form an opinion.

3.2. Issues raised by emergency decree laws vis-à-vis Turkey's obligations towards the Council of Europe

29. While the Turkish authorities had legitimate reasons to declare a state of emergency and to derogate from the European Convention on Human Rights in July 2016, we observed that the state of emergency has had a huge impact on many segments of society, far beyond the expected impact on alleged "FETÖ/PDY" members. The Turkish authorities assert that the scope of the decree laws issued has been "limited to the terrorist organisations in order not to interfere with the rights and freedoms of others".[32] This, however, is contradicted by the Venice Commission,[33] and by our own findings during our visit to Turkey: the various representatives from civil society or from the media whom we met confirmed that the state of emergency was indeed being used in a way that "went beyond what is permitted by the Turkish Constitution and by international law",[34] as noted by the Venice Commission.

30. We have tried to sum up the main issues raised by the decree laws vis-à-vis Turkey's obligations towards the Council of Europe. It is also important to recall that, even under a state of emergency, the European Convention on Human Rights continues to apply in Turkey and any measures taken under the state of emergency must comply with it. Even in the case of a derogation from Article 15 of the Convention, the European Court of Human Rights remains competent to decide whether the criterion of proportionality of the measures taken has been respected in the individual cases against Turkey that will come before it.

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30. Details are available here: http://bianet.org/english/politics/183418-4-464-public-officials-discharged-by-statutory-decree-no-686. In the wake of the mounting protests (including among AKP members) stirred by this new wave of dismissals, the Deputy Prime Minister vowed to re-evaluate the list of these 330 academics.

31. See Doc. 13611, Observation of the presidential election in Turkey (10 August 2014), Doc. 13822, Observation of the parliamentary elections in Turkey (7 June 2015) and Doc. 13922, Observation of the early parliamentary elections in Turkey (1 November 2015), in which the ad hoc committee was "all the more concerned that the sanctions based on the Radio and Television Supreme Council's (RTSC) media monitoring reports, and imposed by the SBE on the broadcasters, did not provide an effective remedy for breaches of regulations. … The lack of comprehensive guidelines and definitions to implement these principles in the election period, and the political composition of this Council, do not enable the RTSC to regulate the media scene in a way which guarantees fair access of political contestants to media during election times, which would allow voters to make a well informed choice" (paragraph 29).

32. Letter from Mr Küçükcan, Chairperson of the Turkish delegation, 23 February 2017.

33. CDL-AD(2016)037.

34. Ibid.

3.2.1. Extent of the measures taken, lack of proportionality

31. The post-coup measures, the state of emergency and the emergency decree laws have resulted in unprecedented mass dismissals, investigations, arrests, and closures of media and institutions. The figures mentioned by official authorities and our interlocutors speak for themselves on the extent of the measures taken:

– 150 000 people were dismissed,[35] including approximately 96 000 as a direct consequence of the publication of their name on an appendix to the decree laws;

– 100 000 people are facing investigations, of which 44 000 are imprisoned pending trial;[36]

– 3 994 judicial professionals were suspended, while 3 659 were dismissed by state of emergency decrees,[37] including 173 judges from the high courts and five members of the High Council of Judges and Prosecutors (HSYK);

– 177 media outlets were shut down, including a large number of pro-Kurdish media, but also Kemalist or left-wing media. Internet access restrictions have increased;

– more than 150 journalists are reportedly detained,[38] this includes the editor-in-chief of the opposition newspaper *Cumhuriyet*, Murat Sabuncu, and the Chairperson and executive members of the Cumhuriyet Foundation, all accused of "committing crimes on behalf of 'FETÖ' and the outlawed PKK without being a member" aiming to "conceal the truth with manipulation and publish stories that aimed to make Turkey ungovernable";

– 2 500 journalists have lost their jobs since 15 July 2016 and many more apply self-censorship in order to protect themselves;

– approximately 2 100 schools, dormitories and universities have been shut down;

– approximately 1 800 associations and foundations have been shut down, including 370 civil society organisations, of which 199 represent Kurdish civil society, accused of alleged links to "terrorism" on 11 November 2016. All movables, real estate assets, receivables and rights, and all documents and papers of foundations closed down were seized and transferred to the General Directorate of Foundations;

– YARSAV, the Turkish independent association of judges and prosecutors – which was functioning as an ONG and is a member of the International Association of Judges (IAJ) and the European Association of Judges (EAJ) – was dissolved and many of its leaders were arrested, including Mr Murat Arslan, its President.

32. In a recent communication, the Turkish authorities argued that with the existing domestic remedies, to date, over 300 institutions had been reopened (including 182 associations, 18 foundations, 92 private education institutions, five radio-TV channels, 17 newspapers and one private health institution) and more than 31 000 public employees reinstated.[39]

33. We were shocked to learn about the consequences of these decree laws in practice. We looked at the situation in the education sector, which was massively affected by the dismissals. We had meetings with various trade unions – covering a wide political spectrum – and the Minister of Education. We learnt that 30 000 teachers had been dismissed (they were 33 065 one month later[40]), as well as 6 000 academics or university staff members. In addition, 50 000 teachers and staff members had been suspended, many of them for at least three months. The work permits of 20 000 teachers in the special private education service had been cancelled by the Ministry of Education.

35. Figures provided by the Ombudsman, Mr Şeref Malkoç, during our visit to Turkey.
36. www.dailysabah.com/legislation/2017/01/09/new-system-will-truly-strengthen-separation-of-power-says-constitution-committee-head.
37. Figures as at 4 January 2017, provided by the HSYK in a written response to the Parliamentary Commission founded to investigate the July 15 attempted coup.
38. Figures provided by Platform 24 in CommDH005(2017), paragraph 20.
39. Observations by the Turkish authorities on the Commissioner's Memorandum on freedom of expression and media freedom in Turkey, CommDH/GovRep(2017)2, 15 February 2017, and letter from Mr Küçükcan, Chairperson of the Turkish delegation, 23 February 2017.
40. Figures provided by the Minister of Education. http://bianet.org/english/human-rights/183523-minister-of-national-education-33-065-people-have-been-expelled-from-the-ministry.

34. It was also noted that several academics who had been dismissed had obviously nothing to do with the failed coup – but they had signed the Peace Declaration[41] in 2015, which was sufficient to qualify them to be considered as guilty. In February 2017, 184 of the 330 dismissed academics had signed the Peace Declaration. In total, 312 academics who signed the Declaration were dismissed by decree laws as of 15 February 2017.[42] Some teachers were also forced to quit their jobs; this was the case for 140 of them in Batman after a trustee was appointed to the municipality.

35. All the trade union representatives backed in principle the measures undertaken to prosecute and arrest the coup plotters, especially within the security police and the military. However, they all found it difficult to believe that hundreds of thousands of people, including thousands of teachers and doctors, were involved in a *coup d'état*.

36. The state of emergency also had an impact on trade union activities, which were already under pressure before the coup. The trade union KESK recalled that they had lost 28 of their members in the 10 October 2015 bomb attack in Ankara, but later faced prosecution for organising demonstrations. They felt that the state of emergency had increased the pressure on trade unions, with the dismissals and suspensions of their members based on "biased, arbitrary lists lacking legal grounds": in the wake of the failed coup, 11 807 members and managers of the trade unions we met had been suspended from their jobs, while 2 179 members had been dismissed through decree laws and disciplinary procedures. Strong suspicions were expressed that these dismissals and suspensions were not related to the coup, but purely to trade union activities. They considered that decree laws were being used as a means to suppress the job security of public employees. The government was constantly restricting the fundamental freedoms needed to carry out trade union activities. Trade union representatives were all in favour of further investigations to uncover those involved in the coup, but they called for the state of emergency to be lifted to enhance job security.

37. Given the high percentage of women working in the education and health sectors, we can assume that the state of emergency has had a disproportionate impact on women. We were also told that many associations and foundations which were dealing with gender issues (such as violence against women or reproductive health) but also municipal services in the HDP municipalities now under trusteeship, had been closed down – preventing women's access to the services previously provided. Our attention was also drawn to the fact that the failed coup had nurtured a male chauvinist mentality, which was now operating unimpeded. This, according to women's associations, had resulted in an increase in violence against women, in particular in public places such as buses, where there had been an increase of attacks on women, and even rapes, in recent months.

38. Concern about the scale and extent of the purges conducted in the public administration and the judiciary, and many other public institutions, targeting alleged members of the Gülen movement was also reflected in the December 2016 opinion of the Venice Commission. The Assembly had, in its Resolution 2121 (2016), noted that the Gülen movement, a former ally of the ruling party operating legally – for more than 40 years – until 2014, was later considered a terrorist organisation. While civil servants have an obligation to be loyal vis-à-vis the State and not to take instructions from external sources, it is the duty of the State to clarify to all public servants when a so far well-established organisation is subsequently considered as a "threat to national security" – and becomes thus incompatible with public service – to avoid lack of information and clarity which could lead to "unjust dismissals which may be seen as retroactive punishment", according to the Venice Commission.[43]

39. Last but not least, we were concerned about the impact of this massive purge on the school and university systems, on pupils and students, whose right to education is protected by the Additional Protocol (Article 2) to the European Convention on Human Rights. The suspension and dismissal of thousands of teachers and academics, the closure of schools in Turkey and abroad, and the disruption of work in faculties could result in serious challenges, ranging from the transfer of students to the recognition of their past studies and qualifications or the validity of qualifications obtained in institutions which have since closed. We expect that due consideration will be paid to these issues, in order not to stigmatise or impede the future of this generation of students. Likewise, we are concerned by the move made by the Turkish authorities, with the assistance of the newly established Maarif Foundation,[44] to incite foreign countries to close down Gülen-linked schools and institutions, and by reported cases of religious authorities allegedly spying on the Turkish community living abroad or inciting Turks to denounce alleged members of the Gülen movement.

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41. A number of academics who signed in 2015 a peace declaration ("We shall not be part of this crime!") calling for an end to the military campaign in south-east Turkey and accusing the government of breaching international law have been facing prosecution, as highlighted in Resolution 2121 (2016) and Doc. 14078, paragraph 56.
42. http://bianet.org/english/human-rights/183659-discharges-of-academics-by-statutory-decrees.
43. CDL-AD(2016)037, paragraph 127.

3.2.2. Lack of procedural guarantees: access to lawyers, detention

40. The decree laws introduced a number of measures and practices which raise many concerns from the point of view of their compatibility with Council of Europe standards.

41. The dismissals lack due prior notification. In our discussions, it was repeatedly mentioned that those dismissed by decree law had received no prior notification – just discovered that their names were on a list. In addition, they did not know why or on what evidence they had been dismissed, and did not have access to their file. As pointed out by the Venice Commission, "the public servants concerned should have been able, at least, to know the evidence adduced against them and be allowed to comment on that evidence before any decision on dismissal was taken".[45]

42. As already pointed out by the Commissioner for Human Rights, the Venice Commission, and the ad hoc sub-committee of the Political Affairs Committee, the concept of "connections" to the Gülen movement has been too "loosely defined and did not require a meaningful connection with such organisations" which may reasonably cast doubt on the loyalty of civil servants. *In concreto*, when we enquired about the evidence needed to identify a "Gülenist", we were told that at least two criteria had to be fulfilled. We failed to obtain the list of criteria, but some of the criteria which were often mentioned included the use of the Bylock encrypted messenger service,[46] financial transactions operated in the Bank Asya since 2014, attendance in private schools belonging to the Gülen movement or confessions made by members of the movement. Reference was also made to exam questions being stolen and commercial solidarity among members of the movement.

43. The decree laws have also reduced the rights of the defence: until 23 January 2017, persons in police custody could not be seen by a judge for up to 30 days; access by detainees to a lawyer could be restricted for up to five days, and there were also restrictions on the right to a lawyer of their own choice or their right to confidential conversations with their lawyers. In addition to these legal hurdles, we were informed that lawyers also face a series of practical obstacles when visiting their clients, such as restricted visiting hours, or the obligation to make an appointment with their client. While it is obvious that the scale of the arrests and detentions have put an extra burden on the police and the justice system which have limited logistical capacities, this should not be at the expense of the most basic rights of the defence, such as access to a lawyer. International human rights associations also pointed out that a prolonged custody period without access to a judge or a lawyer is likely to increase the risk of being subjected to torture and ill-treatment.[47] Further detailed concerns about restricted access to lawyers in Turkey under the state of emergency are listed in the excellent Assembly report on "Securing access of detainees to lawyers".[48]

44. It is beyond any doubt that these restrictions to the rights of the defence will be challenged in domestic courts (which are yet to be defined) and before the European Court of Human Rights. By the end of 2016, 50 000 individual applications were pending before the Constitutional Court.

45. On 23 January 2017, the first day of the Assembly's part-session, the Turkish authorities published four new decree laws which contained two important provisions regarding procedural guarantees: the right of a suspect in police custody to have access to a lawyer could no longer be restricted during five days; and the time during which suspects could be held in police custody was reduced from up to 30 days to seven days, although the Public Prosecutor could extend this period by a further seven days in specific circumstances.[49]

46. These provisions are undoubtedly a positive move. It will remain in the remit of the European Court of Human Rights, if cases arise, to decide whether the seven-day period is necessary and proportionate under the current state of emergency.

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44. https://www.dailysabah.com/politics/2017/02/13/maarif-foundation-head-we-aim-to-offer-an-education-that-reflects-turkish-vision-promote-turkish-language.
45. CDL–AD(2016)037, p. 143.
46. According to figures indicated by a prosecutor, there could be 220 000 users of the Bylock messenger service.
47. Amnesty International, Turkey: Independent monitors must be allowed to access detainees amid torture allegations, 24 July 2016.
48. See Doc. 14267 (rapporteur: Ms Marietta Karamanli, France, SOC), in particular paragraphs 38-48. See also Resolution 2154 (2017).
49. I.e. by decision of the public prosecutor when facing difficulties to collect evidence, or in case of a high number of suspects, according to the information provided by the authorities. (From the letter from Mr Küçükcan, Chairperson of the Turkish delegation, 23 February 2017.)

3.2.3. Lack of effective remedies: creation of an administrative commission in 2017

47. We heard many testimonies from people who, having been dismissed, felt powerless and unable to seek redress from the justice system: the decisions taken on the basis of decree laws cannot be challenged in a court and, moreover, the European Court of Human Rights has, for the time being, declared these complaints inadmissible, for the very reason that "[t]he fact that the Constitutional Court had pronounced itself on the constitutionality of a law in the context of a review of constitutionality *in abstracto* did not prevent the individuals from filing an individual petition before it to challenge the individual measures taken in implementation of this law".[50] In reality, those individuals dismissed by decree laws, or legal entities liquidated by decree laws, are trapped in a legal limbo.

48. A working group comprising senior officials from the Ministry of Justice and the Council of Europe was set up in September 2016 to examine issues that could potentially lead to violations of the Convention. We welcome this initiative and the ongoing dialogue between the Turkish authorities and the Secretary General of the Council of Europe, and expect concrete results. The issue of the absence of judicial review was raised in this context, and the Secretary General suggested establishing an ad hoc body to find a legal solution.

49. The Venice Commission also expressed its concern about this issue, and advised that "if, for practical reasons, the re-introduction of full access to court for public servants is impossible in the current conditions, the Turkish authorities should consider alternative legal mechanisms, which might permit individual treatment of all cases and ultimately give those dismissed their 'day in court', thereby supporting the proposal made by the Secretary General of the Council of Europe concerning the creation of an independent ad hoc body for the examination of individual cases of dismissals, subject to subsequent judicial review".[51]

50. Access to effective remedies is of utmost importance: it has been shown that the dismissal of public servants was not based on individual reasoning.[52] We were also told that the criteria used are imprecise and subject to the assessment of individuals. In certain cases, this process was perceived as a way of removing undesirable colleagues. We questioned in detail several officials who had been entrusted with identifying the Gülenists in their departments, submit names to a committee and then to their respective ministries. We drew their attention to the fact that their decision would have a dramatic impact on people's lives. Those involved in this "selection process" were all convinced that remedies existed and could be activated if mistakes had been made. We understood that, in practice, the percentage of those reinstated was low: since August 2016, they amounted to less than 400 of the 96 000 civil servants dismissed.

51. We were eager to learn more about the expected effective remedies to be provided by the Turkish justice system. Unfortunately, we could see no progress since the visit of the sub-committee chaired by Mr Jensen; it still remained unclear "whether even the Constitutional Court will have the power to thoroughly review the constitutionality of the emergency decree laws, in particular on the basis of individual applications brought before it". As explained by Mr Jensen, "the fact that the Constitutional Court has rejected a review of the emergency decree laws *in abstracto*, following applications filed by opposition MPs (prior to their approval by parliament), did not exclude this Court's competence to decide on individual petitions brought by individuals affected by the emergency decree laws *in concreto* (before or after their approval by parliament), a competence that, for the Venice Commission, the Constitutional Court did have". We do not need to recall in detail here the important role that the Constitutional Court has played in safeguarding human rights in Turkey since the right of individual petition to this Court for violations of human rights was introduced.

52. On 23 January 2017, with the publication of Decree Law No. 685, the Turkish authorities decided to set up a national administrative commission ("Inquiry Commission on State of Emergency Measures") to ensure an effective national judicial remedy for individuals challenging measures taken under the decree laws. The commission will be competent to review, in particular, the dismissals of civil servants and studentships, the closure of associations, foundations, trade unions, federations, confederations, private health institutions, private education institutions, higher education foundations, private radio stations and television channels, newspapers and reviews, news agencies, publication and distribution channels outlets, and the annulment of the ranks of retired staff.

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50. AS/Pol (2016) 18 rev, p. 9. See, for example, the decision in the case of Mercan v. Turkey (Application No. 56511/16).
51. CDL-AD(2016)037, paragraph 228.
52. Ibid., paragraph 140.

53. As a result, individuals who were dismissed through an administrative decision based on the decree laws can lodge an application to ordinary courts. An individual dismissed by virtue of an appendix to the decree laws can apply to the Inquiry Commission on State of Emergency Measures, the decisions of which are subject to judicial review and can be challenged before the relevant courts.[53]

54. We were informed that the commission would be composed of seven members (public officials, judges and prosecutors): three to be appointed by the Prime Minister; one by the Minister of Justice; one by the Minister of the Interior; and two by the High Council of Judges and Prosecutors. It would be entitled to take binding decisions, such as on the reinstatement of dismissed civil servants. If it adopts a decision in favour of a institution that has been closed down, all the effects of this closure will be considered null and void.

55. The decisions of the national commission will be subject to judicial review by the competent administrative courts whose decisions may be further challenged before the Constitutional Court and, as a last resort, before the European Court of Human Rights, which will then decide whether the remedy is effective or not.

56. The members were to be appointed within one month, to begin their work within six months at the latest. The commission will be established for a two-year term, but this can be extended, if necessary, for one year renewable. To date, however, the commission has not yet been formed.

57. The setting up of the Inquiry Commission on State of Emergency Measures is a welcome decision, which paves the way for judicial review, and puts an end to the judicial limbo faced so far by dismissed persons. We have heard a number of criticisms from opposition parties related to the appointment of the members of this commission and serious doubts about the capacity of such a structure to handle thousands of cases in a reasonable time. In this respect, we share the view expressed by the Political Affairs Committee on 24 January 2017, for which "these measures seem to be in line with recommendations by the Secretary General of the Organisation, which were backed by the *ad hoc* sub-committee, and could be considered as a step in the right direction *provided that the decisions by the new administrative commission are taken rapidly, independently and transparently*"[54] (our emphasis). We also note, along with Vice-President of the European Court of Human Rights and Turkish judge Prof Işıl Karakaş, that this commission is an administrative, not a judicial body.[55]

58. The efficiency of the national administrative commission will however be closely scrutinised, and we trust that further co-operation with the Council of Europe on the remaining contentious issues will redress the adverse consequences of measures which are obviously not compatible with the European Convention on Human Rights and the case law of the European Court of Human Rights. If not addressed, these deficiencies will ultimately result in tens of thousands of applications being lodged with the Court, which already experienced a drastic increase of applications from Turkey in 2016:[56] already 16 000 applications have been registered by the Court, which, for the time being, rejected some of them, urging the applicants to exhaust domestic remedies.

3.2.4. Allegations of torture

59. After the failed coup, a number of allegations of torture and ill-treatment were raised by international and local human rights associations, such as the Human Rights Association of Turkey[57] and Amnesty International.[58] The opposition party CHP[59] collected 37 000 complaints about unfair treatment.[60] It was surprising, if not shocking, to read that Mehmet Metiner, AKP Deputy and Chair of the parliamentary Sub-

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53. Letter from Mr Küçükcan, Chairperson of the Turkish delegation, 23 February 2017.
54. Situation in Turkey: statement by the Committee on Political Affairs and Democracy, 24 January 2017.
55. www.hurriyetdailynews.com/echr-vice-president-welcomes-new-state-of-emergency-commission-in-turkey.aspx?pageID=238&nID=108997&NewsCatID=339.
56. The number of applications from Turkish citizens to the European Court of Human Rights rose from 8 400 in 2015 to 15 800 in 2016.
57. www.hurriyetdailynews.com/former-torture-methods-reemerge-in-turkish-prisons-human-rights-association.aspx?pageID=238&nID=103887&NewsCatID=339.
58. See the report by Amnesty International Turkey: Independent monitors must be allowed access to detainees amid torture allegations, Amnesty International, 24 July 2016, and memorandum of 6 September 2016 "A summary of all concerns regarding the failed coup attempt in Turkey and its aftermath".
59. The CHP received complaints from 3 304 people stating that allegations of torture during detention were not investigated and people were falsely accused of "being FETÖ members" over personal conflicts. See www.hurriyetdailynews.com/chp-receives-more-than-3000-complaints-over-gulen-probes-state-of-emergency.aspx?pageID=238&nID=103713&NewsCatID=338.

Committee on Prisons, declared on 13 October 2016 that the sub-committee would not visit those arrested for "being a member of the 'Fethullahist Terrorist Organisation (FETÖ)'" and not carry out any investigation into the torture and maltreatment claims.[61]

60. In the light of these allegations, the CPT carried out an ad hoc visit to Turkey from 29 August to 6 September 2016 to examine the treatment and conditions of detention of persons who were detained in connection with the recent attempted military coup. The report was submitted to the authorities in November 2016. We hope, and expect, the Turkish authorities to authorise the swift publication of the CPT report, in line with a so far well-established practice. We note, however, that the three past CPT reports prepared in 2015 and 2016 have not yet been published.

61. The Venice Commission also drew attention to "the evident fact that measures adopted following the coup remove crucial safeguards that protect detainees from abuse, and hence increase the likelihood of ill-treatment and torture". It underscored that the prohibition on torture and cruel, inhuman or degrading treatment or punishment is a non-derogable human rights obligation under both the ECHR and the International Covenant on Civil and Political Rights (ICCPR). It concluded that "no emergency situation may justify such abuse".[62]

62. We raised this issue with the authorities, who dismissed any allegations of torture. They argued that whenever there are such allegations, investigations are launched. We took good note that the authorities reaffirmed the "zero-tolerance" approach and had recently taken new initiatives.[63] However, the credible reports produced by NGOs, and the restricted access of detainees to their lawyers, their families or international delegations is another source of concern. The adoption of the 2016 law on the legal protection of security forces involved in fights against terrorist organisations, which the Assembly opposed in its Resolution 2121 (2016), is also a worrying development and could encourage impunity of law-enforcement agents carrying out security operations: in case of alleged wrongdoing, the opening of a prosecution would require authorisation by the Minister of Justice.

3.2.5. Confiscation of assets

63. According to the decree laws, the assets of the dismissed persons or liquidated entities are seized and transferred to the Savings Deposit Insurance Fund (TMSF), which appoints trustees and board members to run the business. At the time of our visit, the assets of 800 companies had been transferred to the TMSF; their book value was estimated at 30 billion lira (approximately 8 billion euros at the time of our visit), while their debts were estimated at 5 billion lira. The companies seized (managed) by TMSF employ 20 000 persons, 14 000 of them belonging to a single holding. The Chairperson of the TMSF emphasised that all measures were taken in full compliance with the rule of law, and with due respect for property rights, which remained untouched when assets were transferred. If there was a ruling in a criminal case, the property would be confiscated. He said that the companies would not be sold unless the company liabilities surpassed its assets: in such cases, the company would be liquidated, and the money transferred to a bank account pending a trial, and could be ultimately sent back to the owner of the company [if proven innocent]. Our interlocutors put great emphasis on the respect of the rule of law, and stressed that the sale of assets would require the permission of the owner of the company.

64. The Savings Deposit Insurance Fund was also entrusted to sell or liquidate within one year the – now controversial – Bank Asya, which is said to have funded the terrorist activities of the Gülen movement. There had been two tenders, which had proved unsuccessful, leading the TMSF to liquidate the bank. The Fund representatives stressed that the money would be transferred back to the owners.

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60. www.hurriyetdailynews.com/chp-urges-fair-trial-cites-1-million-sufferers-in-post-coup-process.aspx?pageID=238&nid=104053. On 13 September 2016, Deputy Prime Minister Canikli indicated that 53 schools, which were shut down for allegedly being linked with the Gülen community, had been reopened "after it was realised that they actually have no connection to the community". See http://bianet.org/english/politics/178682-vice-pm-there-are-some-wrongful-civil-service-dismissals.

61. http://bianet.org/english/human-rights/179597-rights-organizations-protest-akp-mp-rejecting-to-investigate-torture-of-feto-arrestees.

62. CDL-AD(2016)037, p. 38.

63. The authorities mentioned that in October 2016 a unit was established under the Ministry of Justice to collect, investigate and respond to all allegations of ill-treatment in prisons and detention centres. Furthermore, a portal for citizens has been set up to receive complaints on allegations of ill-treatment. According to the authorities, the complaints received through this portal are taken into consideration and duly assessed by the authorities. (From the letter from Mr Küçükcan, Chairperson of the Turkish delegation, 23 February 2017.)

65. Considering the overall process of dismissals, lacking effective remedies and the deficiencies of the current legal processes, many questions remain open concerning the management, confiscation or liquidation of seized properties, which has already given rise to allegations of properties being sold to pro-government individuals. Such process, marked by legal uncertainty and unfair competition, could also have a detrimental effect on the economy and investment plans.

66. We have also kept in mind the findings of the Venice Commission, which deplored the permanent nature of the measures taken, including the confiscation of assets, referring to Article 2.2 of Decree Law No. 667 stipulating that "under no circumstances shall any claim or demand related to all kinds of debts of those listed in paragraph one be made against the Treasury". For the Venice Commission "this may be understood as meaning that the State confiscates the assets of the liquidated entities, but does not accept their liabilities. Such provision may unjustly penalise other economic actors, which had contractual, labour and other relations to the liquidated entities without, however, being involved in their allegedly unlawful activities".[64] We thus encourage the Turkish authorities to clarify this issue and ensure that the decree laws are amended so as to ensure that all transfers of property to the State are temporary, subject to final adjudication after the end of the state of emergency and in full compliance with Article 6.1 of the European Convention on Human Rights.

3.2.6. Impact of the massive purges on individuals ("civilian death")

67. The implementation of the decree laws has had serious impacts, not only on the suspected individuals, but also on their families: the cancellation of passports, confiscation of assets, eviction of the family from publicly-owned housing. We gained the same impression as the Political Affairs Committee's sub-committee, for which "the decrees impose sanctions or measures, affecting the lives of hundreds of thousands of persons, including not only of those directly concerned but also of their families, in a permanent manner that is not limited in time to the emergency of the situation".

68. During our discussions, our interlocutors explained that being dismissed resulted not only in a permanent ban on employment in public administration, but also a ban on any job connected to public services or public tenders. The teachers' trade unions explained that dismissed teachers could no longer work in any educational structure, not even a private one. Three months after their dismissal, the teachers no longer benefit from health care services.

69. We had many examples of teachers being dismissed on the sole grounds that they had had trade union activities, or because they were active in citizenship associations. This was deemed unacceptable, even by institutions which were said to be close to the government.

70. As a result, measures which were supposed to target the coup plotters and civil servants allegedly involved in it have automatically impacted on their family members, with no respect for the presumption of innocence. This amounts to collective punishment and to a blatant interference with the privacy, family life and freedom of movement of the family circle of those public servants, which, according to the Venice Commission, would require particularly strong reasons.[65]

71. We are also concerned about the effect, in the long term, of the counter-coup measures which may affect up to one million people according to estimations by the opposition party CHP, if one takes into account the families of those dismissed, prosecuted and arrested. Some of our interlocutors pointed out that the stigmatisation of a significant segment of society, or its exclusion from the national community (by the stripping of citizenship) could only pave the way for new opposition circles that would develop outside the system and be prone to foreign interference.

72. Thus, we strongly believe, as does the Commissioner for Human Rights, that "deviations from the rule of law and human rights principles may expedite the punishment of the guilty. … But such an approach will leave indelible scars and be immensely detrimental in the long run. The best antidote against terrorism is human rights and the rule of law, including the use of due process and a reasoned, rational approach. In the same vein, transparency is the best weapon against a secret organisation which will most probably seek to harness and exploit any sense of injustice or victimhood caused by haste".[66] Such a perspective deserves deep reflection, and we fear that these measures, amounting to a "civilian death" for those concerned, will have a dramatic and detrimental long-term effect on Turkish society, which will need to find the means and mechanisms to overcome this trauma and rebuild an inclusive society.

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64. CDL-AD(2016)037, paragraph 180.
65. CDL-AD(2016)037.
66. CommDH(2016)35, paragraph 49.

3.2.7. Impact of the massive purges on the functioning of democratic institutions (judiciary, security forces)

73. During our visit, we had the possibility to discuss with many officials whose institutions were confronted with mass dismissals. For example, in the Savings Deposit Insurance Fund, 12 out of 400 employees were dismissed; in the Metropolitan Municipality of Istanbul, 800 out of 7 000 employees were dismissed (100 of them were later reinstated), in a regional development agency of Istanbul, 7 out of 57 were dismissed. We almost had the impression that every public administration unit had to "deliver" its quota of infiltrated Gülen members as a sign of loyalty to the State, which, in itself, triggered many questions about the whole process.

74. We also concluded from information received that one quarter of judges and prosecutors, a tenth of the police forces, and 30% of the staff in the Ministry of Foreign Affairs had been dismissed. Such figures are very high, and despite the assurances given by officials that the functioning of these institutions is back to normal thanks to speedy recruitment procedures, there are legitimate questions about the capacity of State institutions, which have been significantly affected by the purges, to function normally. This particularly affected the military and the security forces, at a time when Turkey is facing multiple terrorist threats and engaged in military operations both in Turkey and abroad.

75. In the education sector for example, trade unions indicated that the mass dismissals and suspension of teachers had indeed resulted for some time in restricted access by pupils to schools. New teachers had indeed been recruited by the administration on a contractual basis, but there were questions about the competence of these new recruits, which resulted in pupils and students having difficulties preparing and passing their exams. There was also a growing lack of trust in the teachers, which in turn had had an impact on the education provided.

76. With the publication of Decree Law No. 686 on 7 February 2017, 4 811 academics from 112 universities were dismissed under the state of emergency.[67] Moreover, more than 33 000 members of staff from the Ministry of Education were expelled by decree laws, according to the figures released by the Minister of Education, Mr Yılmaz.[68]

77. The Assembly, and the Council of Europe as a whole, has paid particular attention to the dismissal of judges and prosecutors.[69] The judiciary was one area which was said to be the most "penetrated" by the Gülen movement. According to Decree Law No. 667, this task was given to the supreme judicial instances (the Constitutional Court, the Court of Cassation, the Supreme Administrative Court, the Court of Accounts). Lower court judges are dismissed by a decision of the High Council of Judges and Prosecutors (HSYK).[70] It is a well-known fact that thousands of judges and prosecutors were dismissed by the HSYK the day after the coup, based on lists which had been prepared in advance.

78. These collective dismissals have also had an impact on the functioning of the judiciary and its independence. The Venice Commission pointed out that "judges represent a special category of public servants, whose independence is guaranteed at the constitutional and international levels … Therefore, any dismissals within the judiciary or the regulatory bodies of the judiciary such as the HCJP, for example, should be subjected to particularly exacting scrutiny, even in times of a serious public emergency. Such dismissals not only affect human rights of the individual judges concerned, they may also weaken the judiciary as a whole. Finally, such dismissals may create a 'chilling effect' within the judiciary, making other judges reluctant to reverse measures declared under the emergency decree laws out of fear of becoming subjects of such measures themselves. These measures may have adverse effects on the independence of the judiciary and the effectiveness of the separation of powers within the State. This 'institutional dimension' of the measures taken in respect of judges thus deserves special attention".[71]

79. In conclusion, we consider that a state of emergency should remain an exceptional regime. Eight months after the failed coup, while the trials of the coup plotters are ongoing, the state of emergency still allows the authorities to pursue large-scale purges, which, in our understanding, go well beyond the reasonable goal of punishing those who attempted to overthrow the democratic institutions. As time passes, the necessity to maintain such an exceptional regime raises serious questions. As rightly pointed out by the

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67. http://bianet.org/english/human-rights/183432-4-811-academics-from-112-universities-discharged-by-5-statutory-decress.
68. http://bianet.org/english/human-rights/183523-minister-of-national-education-33-065-people-have-been-expelled-from-the-ministry.
69. See Resolution 2121 (2016).
70. CDL-AD(2016)037, paragraph 149.
71. Ibid., paragraph 148.

Venice Commission, "the longer the situation persists, the lesser justification there is for treating a situation as exceptional in nature with the consequence that it cannot be addressed by application of normal legal tools".[72] We thus call on the Turkish authorities to lift the state of emergency as soon as possible, in order to return to normality and avoid abuses.

4. Freedom of the media and of expression

80. The Assembly focused its Resolution 2121 (2016) on the issue of freedom of the media and of expression. In the light of the Opinion of the Venice Commission of March 2016, it urged the Turkish authorities to revise several articles of the Penal Code as well as the Anti-Terror Law so as to ensure that their implementation and interpretation are compatible with the case-law of the European Court of Human Rights.[73] Unfortunately, none if these requests were addressed.

81. In June 2016, the Assembly's co-rapporteurs highlighted the numerous issues hampering media freedom, such as ownership, the chilling effects of measures taken, investigations into critical media holdings and the ongoing seizure of media outlets which had been close to the Gülen movement, blocking of internet and social media, etc. At that time, prominent investigative journalists such as Can Dundar and Erdem Gül, were already facing prosecution for leaking State secrets after they released information about arms being sent to Syria by the Turkish secret services.

82. In this context, the emergency decree laws issued since August 2016 reinforced pressure on the media, with new waves of arrests in the name of the fight against the "FETÖ/PYD" movement or the PKK. This new crackdown on the media resulted in an even higher number of journalists and media officers being put behind bars. According to our figures, in the absence of official data provided by the authorities, the number of journalists and media staff under arrest or detention exceeds 150, and the process has targeted many circles, for various reasons, which make us think that, today, any independent, critical, non-obedient journalist, but also columnist, writer or academic is at risk. Many have been in detention for more than five months without any indictment. Let us mention here few examples:

– the prominent newspaper Cumhuriyet, one of Turkey's oldest daily newspapers (founded in 1924), was targeted on 31 October 2016: 13 journalists, including the Editor-in-Chief Murat Sabuncu and executive board members of the Cumhuriyet Foundation were arrested, accused of "committing crimes on behalf of FETÖ and the outlawed Kurdistan Workers' Party [PKK] without being a member", aiming to "conceal the truth with manipulation and publish stories that aimed to make Turkey ungovernable". Nine of them were placed in pretrial detention on 3 November 2016, while four were released on bail and barred from travelling abroad.[74] A detention order was issued against former *Cumhuriyet* Editor-in-Chief Can Dündar, who is currently abroad;

– as a culmination of the crackdown against *Cumhuriyet*, the arrest of prominent investigative journalist Ahmet Sik for "support to the FETÖ and the PKK", at the end of December 2016, raises serious questions; Ahmet Sik had, in 2011, spent 13 months in pretrial detention with Nedim Sener – following a decision by judges allegedly close to the Gülen movement – while he was investigating the Gülen movement's infiltration in the State administration. Some interlocutors considered that the arrest of Ahmet Sik, one of the most outspokenly critical – and knowledgeable – journalists about the Gülen movement, arrested for "propaganda in favour of the FETÖ", is turning recent developments into an Orwellian situation;

– 25 of the 56 journalists[75] who took over the position of editor-in-chief of the Kurdish newspaper *Özgür Gündem* on a rotating basis, as part of a campaign called "Editors-in-Chief on Watch" to substitute the staff members who had been arrested, are now themselves being prosecuted. This is the case of Reporters Without Borders correspondent Erol Önderoglu, who spent ten days in pretrial detention in June 2016, and faced 11 years in prison. On 14 February 2017, in the absence of their lawyers, three of these editors-in-chief – Cengiz Baysoy, İmam Canpolat and Çilem Küçükkeleş – were sentenced to 1 year and 3 months in prison for "propagandising for a terror group". Mr Küçükkeleş was also fined 6 000 Turkish lira for "publications promoting terrorism".

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72. Ibid., paragraph 41.
73. See Resolution 2121 (2016).
74. http://aa.com.tr/en/todays-headlines/turkish-newspaper-staff-sent-to-prison-pending-trial/679124.
75. All details available here: http://bianet.org/english/media/183624-prosecutor-demands-penalty-for-journalists-mater-yildirim-turker-in-ozgur-gundem-case.

83. Unfortunately, this list is far from exhaustive, and we could add many other examples of journalists sued, arrested and sentenced. The journalists we met in Turkey also have the feeling that selective justice is being applied: on the one hand, journalists and columnists working for pro-government media have the liberty to express themselves without facing any prosecution, while critical journalists are under fire and criminalised. There is a growing fear that, for a tweet or a single chronicle, any journalist can be deprived of his/her press card, passport, citizenship, or be put in prison.

84. In addition, economic pressure is being exerted on journalists' associations (for one of them, the rent for its office was recently increased tenfold) or via advertising: on 6 October 2016, the media reported that "Turkey's Press Advertisement Institution, the authority for distributing official adverts to newspapers, announced that it would not direct any business to publications whose owners, partners or executives face terrorism charges, raising criticism from the opposition and another organisation from the sector. Newspapers which do not fire journalists who face such charges within five days will also not benefit from official adverts, according to a regulation published in the Official Gazette on 5 October 2016".[76]

85. The situation of the media in Turkey was also analysed at length by Mr Volodymyr Ariev (Ukraine, EPP/CD) in his report on "Attacks against journalists and media freedom in Europe",[77] which was debated during the January 2017 part-session. A large section of his report is devoted to the situation in Turkey, which has not improved since his previous report, but has rather deteriorated. In its Resolution 2141 (2017), the Assembly expressed "its concerns regarding the dire situation for the media and journalists in Turkey under the decrees passed during the state of emergency, in particular the dissolution and seizure of assets of media companies, the detentions of writers, journalists, editors and executives of media companies, as well as the cases of deviations from criminal procedure law, including access to a lawyer and the right to be informed promptly of the nature and cause of the criminal charges", calling on the Turkish authorities "release from detention all journalists who have not been indicted for actively participating in terrorist acts", to upgrade the legislation and to review, the emergency decree laws, in so far as they order the arrest of writers and media staff and the public seizure of media companies and their assets.

86. There are strong suspicions that we are today facing systematic arrests of journalists, famous columnists and academics who are perceived as being a threat to the State. There is also an unhealthy climate for journalism: officials repeatedly denounced the "so-called" journalists, the "disguised" journalists, and the "Western-orchestrated media campaign" to justify the detention of journalists which, in their view, was unrelated to their journalistic activity or for opinions that they had expressed. We cannot subscribe to this assessment, which contradicts our own evaluation of the situation and goes against the founding principles of journalism and a free media, as understood by the Council of Europe.

87. The case of Aslı Erdoğan is symptomatic: a novelist who had done research on the Armenians and the Kurds, Asli Erdoğan was appointed a member of the Publishing Consultancy Board of the Kurdish newspaper *Özgür Gündem*. She was not even a journalists on, or owner of, the newspaper, she had no organic link to it, but on 19 August 2016, Aslı Erdoğan (and others) was arrested, a few days after the "temporary" closure of the paper by a court order on 16 August 2016 on grounds of publishing "terror propaganda" allegedly supporting the PKK. She was charged under Article 302 of the Penal Code (Disrupting the Unity and Integrity of the State), which was a total shock to her. She faces aggravated life imprisonment. She spent four and half months in prison before being released under judicial control on 29 December 2016. Despite her poor health and needing to take medication, she was deprived of water for 48 hours (which was later denied by the Ministry of Justice), placed in solitary confinement in a cold cell, with restricted contact with the outside world (one phone call every two weeks). It was only due to international pressure that was she allowed to see a lawyer after two days (instead of five, as requested by the prosecutor), was taken to hospital when this became necessary, and did not suffer torture as such. However, we understand that the arrest of Aslı Erdoğan, a "White Turk" researching on Kurds and other minorities, but by no means a political activist, sends out a clear signal with a deterrent chilling effect: today, anyone could be at risk of being arrested and imprisoned.

88. We also observed that the crackdown on media has silenced many dissenting voices and put freedom of expression at high risk. We met a number of representatives of human rights NGOs, the media, and trade unions who are under enormous pressure – and exhausted from their daily struggle to exercise their fundamental freedoms. The crackdown on media freedom has also been documented by several prominent

76. www.hurriyetdailynews.com/turkey-to-cut-official-ads-on-newspapers-of-journalists-charged-with-terror-links-.aspx?pageID=238&nID=104691&NewsCatID=509.
77. Doc. 14229. See also Resolution 2141 (2017) and Recommendation 2097 (2017).

international human rights organisations.[78] Unfortunately, the situation is steadily deteriorating: there is a growing feeling of insecurity, legal uncertainty and arbitrariness among human rights defenders who feel that they could be subject, at any moment, to prosecution, arrest and detention.

89. Our findings and concerns were confirmed by the Commissioner for Human Rights, Nils Muižnieks, in his "Memorandum on freedom of expression and media freedom in Turkey", published on 15 February 2017.[79] The Commissioner, who has carried out extensive work on Turkey during his mandate, has presented an alarming state of play, depicting backsliding with respect to media pluralism and independence, and safety and security of journalists. He noted that the deterioration of freedom of expression and of the media – which even worsened under the state of emergency – "goes hand-in-hand with the erosion of the independence and impartiality of the Turkish judiciary" leading to "a consistent pattern of judicial harassment with a clear chilling effect that stifles criticism". The Commissioner points out the role of prosecutors and criminal judges for peace in this process. The Monitoring Committee already raised concern about this newly created institution and requested an opinion by the Venice Commission, which it adopted in March 2017.[80]

90. In his concluding remarks, the Commissioner stated that "Turkey is on a very dangerous path, where legitimate dissent and criticism of government policy is vilified and repressed, shrinking the scope of democratic public debate, including directly inside the Turkish Parliament, and polarising the society. Experience has shown time and time again that it is precisely in such situations that hatred and violence, as well as terrorist organisations, thrive".[81]

91. For Commissioner Muižnieks, "the ongoing state of emergency confers almost limitless discretionary powers to the Turkish executive to apply sweeping measures, including against the media and NGOs, without any evidentiary requirement, in the absence of judicial decisions and on the basis of vague criteria of alleged 'connection' to a terrorist organization".[82] He thus urged the Turkish authorities to take urgent measures to restore freedom of expression in Turkey – a position we cannot but fully support.

92. We are awaiting an opinion by the Venice Commission on the effects of the emergency measures on the freedom of the media. In his report, Mr Jensen noted that the recent decrees also include measures pertaining to the use of social media (obliging internet service providers to share personal information about their subscribers with the police without a court decision): "Given the thousands of cases and arrests on grounds of insult and propaganda in social media, this is a clear step to further persecute and stifle all voices of opposition and criticism in this venue." We fear that Turkey is no longer meeting its Council of Europe obligations with respect to freedom of the media and of expression, and we regret that the repeated requests made by the Assembly, by the Commissioner for Human Rights or by the Venice Commission to the Turkish authorities to upgrade the legislation have remained, in most of cases, unaddressed.

5. Constitutional reform

5.1. Functioning of the democratic institutions since June 2016: state of play

93. In June 2016, in its Resolution 2121 (2016), the Assembly expressed its concern about the lifting of the immunity of 154 MPs in May 2016. A total of 810 criminal cases have been brought against MPs from all political parties. However, whereas this concerns only 9% of AKP MPs, 23% of MHP MPs and 38% of CHP MPs, it concerns 55 out of 59 HDP MPs, i.e. 93%, including all four members of the HDP in the Turkish delegation to our Assembly. In its opinion of 14-15 October 2016, the Venice Commission described the lifting of immunity (i.e. inviolability) of these members of parliament as an ad hoc, "one-shot" and *ad hominem* measure, as well as a misuse of the constitutional amendment procedure, thus not in line with Council of Europe standards, and said "the inviolability of the Members of Parliament should be restored".[83]

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78. See, for example, the recent Human Rights Watch report on "Silencing Turkey's Media", 15 December 2016, or Amnesty International 2016/2017 report (pp. 367-371) and the report on "Turkey: Massive crackdown on media in Turkey" (EUR 44/5112/2016).
79. CommDH005(2017).
80. See CDL-AD(2017)004, Turkey – Opinion on the duties, competences and functioning of the criminal peace judgeships, adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017).
81. CommDH005(2017), paragraph 95.
82. Ibid., paragraph 13.5
83. Opinion on the suspension of the second paragraph of Article 83 of the Constitution (parliamentary inviolability), adopted by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016) (CDL-AD(2016)027-e).

94. In the meantime, 12 HDP MPs, including its Co-Chairs, Mr Demirtaş and Ms Yüksekdağ, are currently in pretrial detention on dozens of charges including some related to terrorism. On 4 and 7 November 2016, 13 MPs from the HDP, including the two Co-Chairs, were arrested as they had refused to follow the summons of the prosecutors to be interrogated in relation to the criminal cases against them. Three of them were subsequently released. Two more MPs from the HDP party were arrested on 12 December, in the aftermath of the Istanbul terrorist attack on 10 December, including the Deputy Chairperson of the HDP. MP Leyla Birlik was released on 4 January 2017. MPs Idris Baluken and MP Ferhat Encü were released on 30 January and 16 February 2017 respectively, while MP Meral Danış Beştaş and HDP spokesperson MP Ayhan Bilgen were arrested on 31 January 2017. Several other HDP members of parliament, including Leyla Zana, were arrested to testify, and later released under judicial control. Hundreds of party members have also been arrested.

95. For the Monitoring Committee, the arrests of MPs "jeopardise[d] MPs' freedom of expression as guaranteed by the European Convention on Human Rights, referring to the last opinion adopted by the Venice Commission, which criticised the timing and *rationae* of that procedure".[84]

96. We were dismayed to learn that the Prosecutor's Office had requested respectively 142 years' and 83 years' imprisonment for the HDP Co-Chairs, Selahattin Demirtaş and Figen Yuksekdag. At the same time, HDP MP Nursel Aydoğan was sentenced to 4 years 8 months and 7 days in prison for "committing crimes on behalf of a terrorist organisation and making propaganda" and "violation of the Law 2911" (which regulates protests and demonstrations).[85] In addition, the HDP co-chair, Ms Yuksedag, lost her parliamentary mandate on 21 February 2017, i.e. three months after her 2013 conviction was confirmed by the Supreme Court of Cassation in November 2016. This is another source of concern.

97. On 20 January 2017, Mr Demirtas obtained his first acquittal in a terrorism-related case. However, 102 summaries of proceedings were still pending against him including charges of "managing a terrorist organisation", "inciting people to violence and hatred", and "praising crime and criminals".

98. The developments related to the HDP Party, which obtained five million votes in 2015 and passed the 10% threshold on June and November 2015, will further ostracise the party: after being evicted from discussions on the future constitution, the HDP party members are being overtly and collectively labelled as "members of the PKK" or "members of the TAK". With one fifth of its MPs in prison – including its two co-chairs, with no access to their party members – and hundreds of staff members and local authorities arrested, the party has, in practice, been rendered inoperative.

99. On 20 February 2017, the HDP lodged an application with the European Court of Human Rights to protest against the violation of the freedom of expression and security of its detained MPs.

100. At the local level, the situation pertaining to elected representatives has also deteriorated: as at 31 January 2017, 81 co-mayors[86] from the Peace and Democracy Party (BDP, a sister party to HDP) were under arrest (Mardin Co-Mayor Ahmet Türk was later released on 3 February 2017), and "trustees" were appointed to 65 of the 103 municipalities won by the BDP at the last local elections of 30 March 2014. The Congress of Local and Regional Authorities of the Council of Europe is following the situation: on 13 February 2017, its Monitoring Committee pointed out that "the arrest and removal from office of many local elected representatives seriously risk damaging pluralist democracy at the local level and seriously weakening political parties and civil society"; and that "the detentions of elected mayors and their replacement by 'mayors appointed by the central authorities' in over 50 cities in south-east Turkey – which is incompatible with Turkey's commitments as a Party to the European Charter of Local Self-Government – has effectively suspended the practical exercise of local democracy in that region, with most municipal councils of those cities ceasing to function, and with almost six million Turkish citizens deprived of political representation at the

84. Declaration adopted by the Monitoring Committee on 9 November 2016.
85. This case refers to her actions in 2011: attending a funeral, joining a protest, standing behind a banner that read "Enough, No More Deaths, May Freedom Grow" during a protest, and giving speeches during press conferences.
86. "The term 'co-mayor' does not appear in Turkish legislation. The practice was introduced in municipalities in the Kurdish region after the last local elections, with a view to promoting gender parity, having both a female and male elected representative at the head of each municipality. According to the Vice-Minister of the Interior, the authorities in Ankara had tolerated this practice for the sake of conciliation. The 'co-mayors' were particularly active in seeking to change management methods and encourage greater decentralisation." CG/MON05(2017)16REV, paragraph 31, Fact-finding mission on the situation of local elected representatives in Turkey (rapporteurs: Anders Knape, (L, EPP/CCE) and Leendert Verbeek (R, SOC)), adopted by the Monitoring Committee of the Congress of Local and Regional Authorities on 13 February 2017.

local level, which constitutes a contravention of Article 7.1 of the Charter (the free exercise of the functions of local elected representatives)".[87] The Congress adopted a resolution and a recommendation[88] on 29 March 2017, which is further explained in the addendum to this report.[89]

101. Unfortunately, neither Political Affairs Committee's ad hoc sub-committee nor the Assembly's Presidential Committee were given access to the detained MPs. Even we, the Assembly's monitoring co-rapporteurs who, in the past, had had access to prisoners, were denied visits. We cannot understand why, notwithstanding the explanations given by the authorities that this was to protect us from unpredictable events inside the prisons. We thus firmly maintain our request that Assembly rapporteurs, and other Assembly delegations be allowed to visit the detained MPs and we trust that the authorities will indeed effectively ensure that "all the premises where persons are deprived of their liberty are open to both periodic and ad hoc visits by national and international mechanisms as permitted by law".[90]

5.2. Adoption of constitutional amendments by the parliament

102. The revision of the Constitution, which is one of the 12 post-monitoring items, has been under discussion for many years. There was already an attempt to draft a new, civilian constitution in 2011-2013, when a multiparty Conciliation Committee agreed on 60 articles after large public consultations were organised throughout the country. The work of this committee was however terminated after the AKP failed to put its proposal to establish a presidential system on the agenda, due to the three other parties' objecting.

103. The failed coup provided a moment of national unity among political parties (with the exception of the HDP which was not invited to the Yenikapi gathering) and an opportunity to relaunch discussions on revision of the Constitution. Following an agreement between the AKP and the Nationalist MHP, a package of 21 constitutional amendments introducing a shift to a presidential system was submitted to the parliament on 10 December 2016. This package, however, did not include the articles previously agreed by the Conciliation Committee and was not submitted to public consultation. The draft constitutional amendments were supported by the AKP (316 seats) and the leadership of the MHP (39 seats), but were fiercely opposed by the CHP (133 seats) and the HDP (59 seats, including 11 MPs in detention). *Pro memoria*, at least 330 votes were needed to adopt draft constitutional amendments to be sent to referendum, or 367 votes to adopt the Constitution directly.

104. Firstly, we must emphasise here that the position of the co-rapporteurs is very clear about constitutional reform: it is up to the people to decide on a country's political system. However, as rapporteurs, it is within our mandate to ensure that the draft constitution complies with the norms and standards of the Council of Europe. The Monitoring Committee therefore asked, on 14 December 2016, the Venice Commission to prepare an opinion on the constitutional amendments. The opinion adopted by the Venice Commission on 10-11 March 2017 is reflected in the addendum to this report.[91]

105. While awaiting this opinion, we were able to examine the draft constitutional amendments, which in our view raise serious concerns about the separation of powers and the independence of justice. It is for example striking that the members of the High Council of Judges and Prosecutors (HSYK) will now be appointed by parliament (nine members) and the President (four members), and that the Ministry of Justice and the Undersecretary of Justice will also be members. This is a regression compared to the reform introduced by referendum in 2010, which allowed a majority of the HSYK members to be appointed by their peers, in line with Council of Europe recommendations. We thus fail to understand how the new constitutional amendments could "truly strengthen the separation of powers", "prevent potential political crises" "prompt effective decision-making" or "protect the pluralistic structure of the Supreme Board of Judges and Prosecutors (HSYK)"[92] as stated by high officials in recent weeks.

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87. CG/MON05(2017)16REV, paragraph 7.
88. See Resolution 416 (2017), Recommendation 397 (2017) and document CG32(2017)13 on the fact-finding mission on the situation of local elected representatives in Turkey, adopted by the Congress of Local and Regional Authorities on 29 March 2017.
89. Doc. 14282 Addendum.
90. Letter from Mr Küçükcan, Chairperson of the Turkish delegation, 23 February 2017.
91. Doc. 14282 Addendum.
92. See www.dailysabah.com/legislation/2017/01/09/new-system-will-truly-strengthen-separation-of-power-says-constitution-committee-head; www.dailysabah.com/legislation/2017/01/04/presidential-system-to-foster-stability-prompt-effective-decision-making-ak-party-asserts and www.hurriyetdailynews.com/erdogan-warns-judges-over-gulenist-informants-.aspx?pageID=238&nID=108687&NewsCatID=338.

106. We were present in Ankara during the first round of the voting on the constitutional amendments and had meetings with the Turkish delegation to the Parliamentary Assembly and members of the political groups AKP, CHP and HDP (the MHP declined our invitation to meet). The discussions in parliament were tense and polarised. Two brawls erupted during the adoption of the amendments. The opposition challenged the voting procedures, denouncing the absence of secret voting. We raised the question with the Vice-Speaker of the Parliament, stressing the need to ensure secret voting in line with the Turkish Constitution, especially in a context when parliamentarians are under (peer) pressure and when each vote is crucial for the outcome of the debate.

107. We also expressed concern about the lack of consultation during the preparation of this constitutional package and the limited information provided to the public during the debates. We were told that the Turkish Parliament has access to slots on the public channels on Tuesdays, Wednesdays and Thursdays, while the debates are streamed on the internet TV channel of the parliament. This situation had prompted several parliamentarians to set up their own broadcasting channels (using their mobile phones).

108. We were told that those parliamentarians who were overtly breaching the rules on secret voting had been "warned", but that the objective was to pass the amendments "as soon as possible". We found it regrettable that these amendments, which would change Turkey's political system from its current parliamentary system to an executive-presidency, would be passed through hasty procedures.

109. On 15 January 2017, the parliament completed the adoption of the constitutional amendments – all 18 amendments submitted were adopted with a large majority (more than 340 votes, while only 330 were needed). On 21 January 2017, the parliament adopted the constitutional amendments in second reading, with 339 votes, paving the way for the organisation of a constitutional referendum on 16 April 2017.

110. The vote in parliament has further polarised the political parties. A demonstration organised by the Turkish Bar Association in front of the parliament building was terminated by the use of pepper gas and water cannons by the police. Later that day, the Governor of Ankara issued a 30-day ban on demonstrations in Ankara.

5.3. Preparation of the constitutional referendum of 16 April 2017

111. During our visit in January 2017, we expressed our doubts about holding a constitutional referendum under a state of emergency, which we believed would raise serious challenges: the situation of media freedom is alarming and fundamental rights, such as freedom of assembly, are likely to be restricted. There are serious questions about whether political parties will be able to campaign with equal opportunities under the state of emergency. It seems likely that this will not be conducive to a level playing field and a fair campaign environment.

112. On 21 January 2017, the Grand National Assembly adopted with 339 votes the 18 constitutional amendments, thus paving the way for a constitutional referendum. If approved by the Turkish people, the constitutional amendments will lead to a profound change in Turkey's political system, with a shift from a parliamentary to a presidential system.

113. In its statement of 26 January 2017, the Monitoring Committee stressed that the Turkish people are sovereign to decide on their political future – and their decision will deserve full respect. However, the committee expressed serious doubts about the desirability of holding a referendum under the state of emergency and ongoing security operations in south-east Turkey, referring to the rapid adoption procedure in parliament (six weeks in all) marked by tense debates, infringement of the secrecy of votes, absence of continuous broadcasting of all parliamentary debates on television, and no public consultation on the proposed changes.

114. The committee also expressed its deep concern as to whether the revised Constitution – which will grant extensive powers to the President of the Republic – would guarantee the separation of powers, proper checks and balances and the independence of the judiciary, which are prerequisites for democratic societies. It noted that this constitutional revision would also deprive the parliament of a large part of its fundamental role in making laws and supervising the executive.

115. The committee also expressed its concern about access to comprehensive information and fair access to the media by all political forces during the referendum campaign, in a context marked by a climate of suspicion and fear as a result of the implementation of the state of emergency, lack of media freedom, journalists in detention, and by the weakening of the Peoples' Democratic Party (HDP) after the detention of 12 of its MPs and hundreds of HDP officers. These measures have had a deterrent effect and have led to serious restrictions to democratic debate in the run-up to the constitutional referendum.

116. In this context, the Monitoring Committee urged the Turkish authorities to ensure that the organisation and conduct of the referendum complies with Council of Europe and Venice Commission guidelines[93] and the principles enshrined in the European Convention on Human Rights. It feared that the overall legitimacy of the process – and of the new Constitution itself – could be put into question, if the authorities failed to address the above-mentioned issues.

117. Concerning the content of the constitutional amendments submitted to referendum, the Monitoring Committee requested the Venice Commission to prepare an opinion on the constitutional amendments, so as to address these fundamental issues. This opinion was adopted on 10-11 March 2017 and its conclusions are reflected in the addendum to this report.[94]

118. The Monitoring Committee also hopes that the Parliamentary Assembly and other international partners will be invited to observe the referendum, and that domestic NGOs will be accredited as observers, as previously required by the Assembly. On 26 January 2017, the Assembly's Bureau decided to set up a 30-member ad hoc committee to observe the referendum.

119. On 10 February 2017, President Erdoğan signed the constitutional amendments, paving the way for the organisation of a referendum. The Supreme Election Board announced on 13 February that the referendum would be held on 16 April 2017 for 55 million voters inland and three million abroad, who would be able to cast their votes in 57 countries.

120. A day earlier, Decree Law No. 687 was published. It strips the Supreme Election Board of the authority to penalise TV and radio stations that air one-sided broadcasts or biased propaganda during election periods. This has cast a shadow on the capacity of the authorities to abide with the obligation to ensure fair access to the media by the "yes" and "no" partisans, in line with Venice Commission guidelines. This has reinforced our concern about equal opportunities for all sides to express themselves and be heard on a level playing field. We also find it unacceptable that the authorities are resorting to simplified and polarised rhetoric by calling those opposing the referendum "terrorists" or "traitors". This is not the kind of behaviour expected from a democracy, and Turkey could draw inspiration from good practices in conducting a referendum, such as that held on the independence of Scotland.

6. Situation in south-east Turkey

121. Further to the previous report on the functioning of democratic institutions in Turkey, we have continued to follow the situation in south-east Turkey, where curfews continue to be imposed on a temporary basis to conduct security operations.

122. On 7 December 2016, the Commissioner for Human Rights published a detailed memorandum on the "Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey".[95] The Commissioner considered these measures to have been "neither legal, in the sense of being sufficiently foreseeable and defined in law, nor proportionate to the legitimate aim pursued by Turkey … The response the Turkish authorities developed since August 2015, characterised by the declaration of open-ended, 24-hour curfews, have caused a number of very serious human rights violations simply by virtue of having been imposed on the affected local populations". The Commissioner thus urged the Turkish authorities "in the strongest possible terms to put an immediate end to this practice. Any future measures deployed in the region must show much higher regard to the human rights of the local civilian population when balancing them against the imperative of the fight against terrorism".

123. In June 2016, the Assembly underlined the necessity to allow reporting on human rights violations in south-east Turkey. We were shocked to learn that four prominent human rights organisations, which had issued a report on the situation in Cizre following the security operations in August 2015, were facing prosecution under Article 301 of the Penal Code. We note that the Commissioner himself refers to "numerous" allegations of human rights violations committed by security forces, that he finds to be "extremely serious and consistent" and credible for many of them.

124. Despite the call made by the Assembly in June 2016,[96] on 23 June 2016 the parliament adopted the law on the legal protection of security forces (also including village and voluntary guards) involved in the fight against terrorist organisations, which we interpret as giving greater impunity to security forces involved in

93. See the Venice Commission Code of good practice on referendums, CDL-AD(2007)008.
94. See Doc. 14282 Addendum.
95. CommDH(2016)39, Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey, 2 December 2016.

"anti-terrorist activities". This raises serious questions at a time when the country is under a state of emergency and swift to prosecute under terrorist charges. The Commissioner for Human Rights regretted in this respect that one of the first measures taken in connection with the attempted coup of 15 July 2016 was to give administrative, legal and criminal immunity to State agents enforcing emergency decrees, recalling that "impunity has been a nefarious influence throughout Turkey's recent history".[97]

125. This reinforces our concerns about the fight against torture and ill-treatment. The Commissioner added that "all evidence indicates that the authorities did neither treat with the requisite seriousness the allegations of human rights violations, nor conduct *ex officio* criminal investigations into lives lost during the operations in a way that would be liable to shed light on the events. This situation falls woefully short of Turkey's international obligations". "Given the elapsed time since some of the operations, … it seems very improbable that any future investigation will fully satisfy the criteria for effectiveness. Unfortunately, Turkish authorities will therefore have to contend with the fact that Turkey will be presumed to have committed many serious human rights violations, including violations of the right to life, during the period in question."

126. The issue of compensation has not been addressed in a satisfactory manner. The Commissioner considers that "the existing framework for compensation appears clearly insufficient in many respects", and that expropriating the local population in certain cities affected by the operations would represent a "double punishment for the persons affected and cannot be considered a form of redress".

127. Recent concerns emerged about the situation of the village of Kuruköy (Nusaybin), after curfews were declared in nine villages of Mardin's districts on 11 February 2017. There were claims that three people had been killed and 39 others detained and tortured in Kuruköy. These claims could not be confirmed or investigated, as a delegation of the HDP party was not allowed to enter the village, which remained *incommunicado* for 10 days.[98]

128. We also note that on 15 December 2016, the European Court of Human Rights decided to communicate various complaints in the 34 applications concerning the curfew measures taken in Turkey since August 2015 to the Turkish Government and has asked them to submit their observations. These cases were given priority treatment.[99] We will continue to monitor the situation in the south-east.

7. Conclusions

129. In the light of recent conclusions of the Council of Europe monitoring mechanisms, the assessment made by the Political Affairs Committee's ad hoc sub-committee and our own findings, we conclude that the massive purges operated after the failed coup of 15 July 2016 constitute the continuation – and deepening – of an ongoing process. While it was fully legitimate to declare the state of emergency after the failed military coup, which resulted in 248 deaths and 2 000 wounded, the government is interpreting its extraordinary powers too extensively and has taken measures that have gone far beyond anything permitted by the Turkish Constitution and by international law. These measures have had the effect of further silencing critical voices and removing "undesirable" civil servants, also affecting their families, and have fostered a climate of fear, suspicion and polarisation of society. This raises the question of proportionality and necessity. As stressed by the Commissioner for Human Rights, in line with the principles of the rule of law and human rights standards, "any interference with basic human rights [needs] to be defined in law, necessary in a democratic society and strictly proportionate to the aim pursued".

130. In this context, we are alarmed by the state of media freedom and the systematic breaches of the freedom of expression, which constitute a serious infringement of Council of Europe obligations.

131. We are also concerned by the scale of the purges and their long-term effect on Turkish society: Turkey will need to find the means and mechanisms to overcome this massive purge, and rebuild an inclusive nation.

132. The Assembly takes note of the adoption of a package of constitutional amendments on 21 January 2017. If approved by the people through referendum, this constitutional revision would result in a profound change of political system – a shift from a parliamentary to a presidential system. The Assembly emphasises that it is the sole right of the Turkish citizens to decide on the political regime they wish to have, provided that sufficient information is given to the voters and that enough time is allocated to public debate. However, in the

96. See Resolution 2121 (2016).
97. CommDH(2016)39.
98. http://bianet.org/english/society/183806-call-from-hdp-to-international-institutions-for-blockaded-kurukoy-village.
99. ECHR 420 (2016), 15 December 2016, Press release "European Court of Human Rights looks into complaints about curfew measures in Turkey".

light of the constitutional amendments, adopted with rapid parliamentary procedures and highly polarised debates, and while awaiting the opinion by the Venice Commission, the Assembly expresses its deep concern about the envisaged checks and balances, separation of powers, independence of the judiciary and the competencies left to the parliament, which will no longer supervise the executive.

133. The Assembly has, on numerous occasions, recalled that Turkey is a strategic partner for the Council of Europe, and repeatedly called for a constructive dialogue with Turkey, one of its oldest members and one of the first signatories of the European Convention on Human Rights, in 1950.

134. This is the reason why we reiterate our desire and willingness to continue the dialogue with the Turkish authorities and enhance co-operation. This includes the renewed support of the Assembly in Turkey's fight against terrorism, which should uphold fundamental freedoms. We also reiterate our willingness to assist the country in its democratic transformation process by ensuring that Turkish policies comply with Council of Europe standards. We appreciate the ongoing dialogue between the authorities and the Council of Europe, which needs to be a two-way dialogue – and we hope that the dialogue will further lead to concrete results.

135. However, the failed coup highlighted some serious dysfunctions within Turkey's democratic institutions and requires the full attention of the Parliamentary Assembly, based on the three pillars of the Council of Europe which comprise a wide range of issues. In the current circumstances, the consideration of the 12 items defined as part of the post-monitoring dialogue could be seen as irrelevant. We also regret that Resolution 2121 (2016) of June 2016 on the functioning of democratic institutions in Turkey, which highlighted a number of serious shortcomings in Turkey's compliance with its obligations towards the Council of Europe, has remained unaddressed.

136. The Assembly is determined to continue the dialogue and co-operation with Turkey and offer its support in the difficult times the country is facing. In the wake of the failed coup, which revealed serious dysfunctioning within Turkey's democratic institutions, the Assembly believes that the post-coup developments, including the implementation of the state of emergency, have had large-scale, disproportionate and long-lasting effects on the protection of fundamental freedoms, the functioning of democratic institutions and on all sections of society. It notes that the disproportionate measures taken (150 000 civil servants, military officers, judges, teachers and academics dismissed, 100 000 individuals prosecuted and 40 000 of them detained), the prevailing legal uncertainty despite recent steps taken by the authorities, and the consequences of the emergency decree laws on individuals and their families, has created a climate of suspicion and fear which is detrimental to social cohesion and stability.

137. At the same time, we stress once again, in line with the position endorsed by the Committee on Political Affairs and Democracy in December 2016, that we remain committed to a constructive dialogue with Turkey, which must continue to play its role in the Parliamentary Assembly and the Council of Europe. In our view, the monitoring of developments in Turkey needs to be intensified and broadened – as does the dialogue with the Turkish people on these developments, taking into account the Assembly's concerns in this respect. The Assembly has an approved and well-developed mechanism for such a process: the full monitoring procedure.

138. The Assembly should strengthen and intensify its monitoring of the developments in Turkey and its dialogue with all forces in the country in order to ensure that the serious concerns it has expressed about the respect for human rights, democracy and the rule of law are addressed. The Assembly should therefore decide to reopen the monitoring procedure in respect of Turkey until its concerns are addressed in a satisfactory manner. In particular, Turkey should, as a matter of priority:

– lift the state of emergency as soon as possible;

– in the meantime, halt the publication of emergency decree laws which bypass parliamentary procedures, unless strictly needed under the state of emergency law, and put an end to the collective dismissal of civil servants through emergency decree laws;

– release all the detained parliamentarians pending trial;

– release all the imprisoned journalists pending trial;

– establish and launch the work of the Inquiry Commission on State of Emergency Measures to ensure an effective national judicial remedy for those dismissed through emergency decree laws;

– ensure fair trials with respect for due procedural guarantees;

– take urgent measures to restore freedom of expression and of the media, in line with Assembly Resolution 2121 (2016) and Resolution 2141 (2017), and with the recommendations of the Commissioner for Human Rights and the Venice Commission;

– organise the April 2017 constitutional referendum in line with Council of Europe standards and the Venice Commission's Code of good practice on referendums, so as to guarantee the freedom of voters to form an opinion;

– implement as soon as possible the recommendations of the Venice Commission concerning the constitutional amendments.

139. We will continue to follow the developments in Turkey closely and would recommend that the Monitoring Committee considers reporting to the Assembly on the progress made in addressing its concerns, and possible action to be undertaken by the Assembly, during a part-session of the Assembly in 2018.

Appendix – Dissenting opinion presented by Mr Talip Küçükcan (Turkey, EC), Chairperson of the Turkish Delegation to the Parliamentary Assembly of the Council of Europe[100]

This report unfortunately contains various factual mistakes, unsubstantiated claims and subjective assessments despite our efforts to provide updated information during the preparation phase. First of all, it should be known that rule of law, democracy and human rights are the fundamental principles of the State of the Republic of Turkey. The Turkish Government has been in a continuous dialogue with the Council of Europe, the CPT, the Secretary General of the Council of Europe, the President of PACE, the Venice Commission and the Commissioner for Human Rights and reciprocal visits have been carried out with a view to furthering a higher level of co-operation. All of the regulations taken in the fight against the coup attempt and terrorist attacks have been in line with the recommendations of the Council of Europe; obligatory, urgent and proportionate measures have been taken within the scope of the positive obligations of the State in the face of existential risks the Turkish State and its democracy have been facing. The decree laws issued in proportion to the present crisis in Turkey have been playing an important role in stabilising the situation and fighting against terrorist organisations.

Turkey is currently combating against the Fethullah Gülen Terrorist Organization/Parallel State Structure (FETÖ/PDY). It must be borne in mind that this terrorist organisation infiltrated the State agencies with a view to overthrowing the democratically elected government. Furthermore, PKK and Daesh increased their terrorist attacks in Turkey, claiming hundreds of innocent lives. The scope of the adopted measures has been limited to the terrorist organisations in order not to interfere with the rights and freedoms of ordinary citizens.

Secondly, contrary to the report's unfounded claim that FETÖ has been an ally of the ruling party and the report's identification of the terrorist organisation as a "movement", it should be indicated that the Turkish authorities have been combating FETÖ which attempted a coup and has been recognised as a terrorist organisation by independent courts since 2014. Ongoing trials show that FETÖ militants in law-enforcement agencies and the judiciary used their power to conceal the crimes of fellow members.

Thirdly, freedom of expression and free media constitute one of the foundations of Turkish democracy. The Constitution guarantees the right to express and disseminate thoughts without any interference. However, those individuals referred to in the report who are working as journalists are currently charged with serious crimes – being a member of, or supporting an illegal or armed terrorist organisation. Also, activities of certain media outlets were ceased due to their links with terrorist organisations. The report should support these criminal investigations for the sake of journalism and freedom of speech in Turkey.

Deciding to reopen the monitoring procedure in respect of Turkey will be an unjust, unfair and extremely prejudiced action which is in stark contradiction with the values of the Council of Europe. This report may result in an adverse effect on the relationship between Turkey and the Council of Europe and will not only significantly decrease the credibility of PACE in the eyes of Turkish public but also clearly constitute a discriminatory approach towards Turkey.

100. In accordance with Rule 50.4 of the Assembly's Rules of Procedure ("The report of a committee shall also contain an explanatory memorandum by the rapporteur. The committee shall take note of it. Any dissenting opinions expressed in the committee shall be included therein at the request of their authors, preferably in the body of the explanatory memorandum, but otherwise in an appendix or footnote").