



## Resolution 2156 (2017)<sup>1</sup>

# The functioning of democratic institutions in Turkey

### Parliamentary Assembly

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. It expressed its support and praised the Turkish people for uniting to reject this attempted military coup, thus demonstrating their democratic maturity. The Turkish authorities declared that members of the Gülen movement were behind the attempted coup. This prompted the authorities to launch a vast purge in the State institutions. There seems to be a widely accepted view in Turkish society that the above-mentioned institutions had been infiltrated by the movement.

2. That night, Turkey faced a dangerous armed conspiracy, which gave the president 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 standards. The three-month state of emergency has been prolonged three times since then, in October 2016, January 2017 and April 2017, with the parliament's agreement.

3. While keeping in mind that a state of emergency aims 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: the ongoing conflict in Syria has forced 3 million refugees to Turkey, whose efforts to accommodate and take care of these 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 have 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 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 international obligations, which includes the revision of legislation and practices on terrorism in line with European standards.

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1. *Assembly debate* on 25 April 2017 (12th Sitting) (see [Doc. 14282](#) and [addendum](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteurs: Ms Ingebjørg Godsken and Ms Marianne Mikko). *Text adopted by the Assembly* on 25 April 2017 (12th Sitting).



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 it considers to be a serious democratic deficiency.

8. In this context, the Assembly underlines that the reintroduction of the death penalty would be incompatible with membership of the Council of Europe and urges the Turkish Grand National Assembly to refrain from any move that could lead to the reintroduction of capital punishment and thus jeopardise Turkey's membership of the Council of Europe.

9. The Assembly recalls its [Resolution 2121 \(2016\)](#) on the functioning of democratic institutions in Turkey, adopted in June 2016, 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 to 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, as graphically evidenced by the February 2017 report of the Office of the United Nations High Commissioner for Human Rights and three successive reports by the Council of Europe Commissioner for Human Rights in October and December 2016 and February 2017.

10. The Assembly is in particular concerned about the stripping of the immunity of 154 members of parliament (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 detention of 12 parliamentarians since November 2016, and is dismayed by the requests from the Public Prosecutor's Office for respectively 142 years and 83 years of imprisonment for the People's Democratic Party (HDP) co-chairs, Selahattin Demirtaş and Figen Yüksekdağ.

11. 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 disproportionately affected the opposition parties and in particular the HDP, with 55 out of 59 (or 93%) of its members stripped of their immunity. This has had a deterrent effect and 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 HDPMPs, 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.

12. 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. The Assembly deplores that these detentions have suspended the practical exercise of local democracy in that region, led to disproportionate supervision of local administrations through the appointment of trustees and reduced local public services, in contravention of the European Charter of Local Self-Government (ETS No. 122). The Assembly urges the Turkish authorities to release, where appropriate, the mayors currently in pretrial detention and fully restore local democracy in south-east Turkey, in line with Resolution 416 (2017) and Recommendation 397 (2017) of the Congress of Local and Regional Authorities of the Council of Europe.

13. 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 \(2016\)](#) "Parliamentary immunity: challenges to the scope of the privileges and immunities enjoyed by members of the Parliamentary Assembly" and the 2016 Venice Commission opinion on the suspension of the second paragraph of Article 83 of the constitution (Parliamentary inviolability), the Assembly therefore calls on the Turkish authorities to:

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

13.2. restore the inviolability of the immunity of the MPs who have been stripped of their immunity, based on the conclusions of the Venice Commission;

13.3. release the detained parliamentarians, unless they are convicted after a fair trial with due process guarantees.

14. 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 as the “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 to 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 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”.

15. 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 universities.

16. 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.

17. The Assembly is also dismayed by the social consequences of the measures applied in the framework of the state of emergency. The civil servants who were dismissed have had their passports cancelled. They are banned from ever working again in the public administration, or in institutions which have links to the administration. They have no access to a social security scheme and their assets have been seized – which raises the question of the protection of property rights. Their families have also been affected by these measures. The Assembly fears that these measures amount to a “civil 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.

18. 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 legal entities (associations, foundations, private institutions, media, etc.) to challenge measures taken under the decree laws. The Assembly is concerned that the members of this commission have not yet been appointed and the commission is not operating. 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.

19. 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 underlines 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.

20. 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, academics, independent non-governmental organisations (NGOs) and the media, jeopardising the foundations of a democratic society.

21. 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.

22. 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:

- 22.1. lift the state of emergency as soon as possible;
- 22.2. put an end to the collective dismissal of civil servants through decree laws, which negate procedures based on individual cases that are respectful of the presumption of innocence;
- 22.3. 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;
- 22.4. redress the procedural shortcomings under the state of emergency, in particular with respect to the duration of detention and effective access to lawyers;
- 22.5. 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;
- 22.6. 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;
- 22.7. 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.

23. 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 Council of Europe Commissioner for Human rights and the United Nations High 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.

24. In this context, the Assembly is appalled to learn about 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:

- 24.1. 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, including for ill-treatment, excessive use of force or any other abuse of power;
- 24.2. establish an effective and independent complaints mechanism to combat impunity, as suggested by the Council of Europe Commissioner for Human Rights;
- 24.3. authorise, without undue delay, the publication of the most recent reports prepared by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and implement the CPT's recommendations.

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

26. 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 and 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 the Republic of Turkey), 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 Law No. 5651 on the Internet, in accordance with the opinions of the Venice Commission of 2015.

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

27.1. release all detained journalists (more than 150) and human rights defenders;

27.2. 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 members 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;

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

27.4. refrain from applying sweeping measures, including against the media, academics 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;

27.5. ensure that the Inquiry Commission on State of Emergency Measures will be fully operational without further delay and with the power to restore the *status quo ante* and/or, where appropriate, provide adequate compensation; grant priority treatment to the most urgent applications, including those introduced by the media outlets; and issue reasoned, individualised decisions in line with the recent opinions of the Venice Commission;

27.6. 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.

28. 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.

29. The Assembly takes note of the adoption of a package of 18 constitutional amendments by the parliament on 21 January 2017 and by 51.4% of the voters during the constitutional referendum on 16 April 2017, which will result in a profound change and a shift from a parliamentary to a presidential system, granting the president 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.

30. In this context, the Assembly notes with concern that the constitutional amendments were adopted in parliament after a rapid procedure (six weeks in all), 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 planned system of checks and balances, the separation of powers and the independence of the judiciary. The advisability of holding 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 raises serious questions.

31. The Assembly is also worried about recent changes in the election legislation made through decree laws that strip the Supreme Board of Elections (SBE) of its ability 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 underlines 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 a timely manner. It thus urges the Turkish authorities to amend its electoral legislation accordingly and address the remaining electoral shortcomings identified by the Assembly in previous election observation reports.

32. In the light of the preliminary findings of the Parliamentary Assembly and the international referendum observation mission of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), the Assembly deeply regrets that the referendum was held on an uneven playing field, thus preventing the two sides in the campaign from having equal opportunities. Furthermore, the decision of the SBE in the course of the voting day – allowing the validation of unsealed ballot papers in contradiction with the 2010 election law – has raised serious questions about the legitimacy of the outcome of the referendum. The Assembly also expects the SBE to thoroughly investigate all alleged election irregularities.

33. 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.

34. The Assembly welcomes the fact that, in coherence with democratic principles, the military courts, which are constantly criticised for judicial independence, have been abolished by the constitutional amendments and that members with military backgrounds in the Constitutional Court have been removed.

35. In the light of the March 2017 recommendations of the Venice Commission on the constitutional amendments, the Assembly resolves to follow the institutional developments and to work with the Turkish authorities, possibly through the preparation of constitutional amendments, to ensure that the constitutional framework and its implementation comply with Council of Europe standards.

36. The Assembly has on numerous occasions underlined that Turkey is a strategic partner for the Council of Europe, and has 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.

37. 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 dysfunctions 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.

38. 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:

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

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

38.3. release all the detained parliamentarians and co-mayors pending trial;

38.4. release all the imprisoned journalists pending trial;

38.5. 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;

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

38.7. 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;

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

39. 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.
40. In the aftermath of the failed coup attempt, the Assembly welcomes the fact that high-level political contacts and technical co-operation between Turkey and the Council of Europe have intensified.