

Resolution 2347 (2020)¹

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

Parliamentary Assembly

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

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

3. Since 2017, important political developments have taken place in the country: the constitution was amended as a result of the 2017 referendum by 51% of the voters and a presidential system was established; early presidential and parliamentary elections were organised on 24 June 2018; the state of emergency declared following the July 2016 failed *coup d'état* was lifted in July 2018; and local elections were held in March 2019. At the same time, subsequent legislation has further restricted fundamental rights and prevented significant progress from being reached during this period. In addition, the will of the voters was disregarded in many municipalities. As foreseen by the European Commission for Democracy through Law (Venice Commission) in its 2017 Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017, the presidential system has weakened the separation of powers, checks and balances and parliamentary oversight. Increased political interference in the justice system has resulted in weakened protection of human rights.

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 23 October 2020 (see [Doc. 15171](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs of the Committee: Mr Thomas Hammarberg and Mr John Howell).*



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

5. Concerning the functioning of democratic institutions:

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

5.2. the Assembly therefore urges the Turkish authorities to put an end to these practices, which clearly violate democratic principles, to review Turkey's legislation in accordance with Resolution 450 (2019) and Recommendation 439 (2019) on local elections in Turkey and mayoral re-run in Istanbul (31 March and 23 June 2019) of the Congress of Local and Regional Authorities of the Council of Europe, as well as the Venice Commission opinions of 2017 and 2020, and to make the necessary legislative changes, and in particular to:

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

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

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

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

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

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

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

6. Concerning the rule of law:

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

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

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

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

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

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

7. Concerning the respect of human rights:

7.1. the Assembly deplores the ongoing violations of freedom of expression and of the media. The Assembly is fully aware of the terrorist threats that Turkey has been facing in a turbulent region. It emphasises, however, that the Turkish authorities 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;

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

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

7.4. the Assembly expects that the reforms undertaken in the fields of justice and human rights will lead – as requested by several Council of Europe bodies – to the amendment of the anti-terrorism law so as to ensure that its implementation and interpretation comply with the European Convention on Human Rights (ETS No. 5, the Convention), as interpreted by the European Court of Human Rights, and to repeal, amend and/or ensure strict interpretation of a number of legal provisions from the

Criminal Code, which, according to the Venice Commission, contain excessive sanctions and are too widely applied against freedom of expression and information. These provisions include Article 299 (insulting the President of the Republic), Article 301 (degrading the Turkish nation, the State of the Turkish Republic, the organs and institutions of the State), Article 216 (provoking the public to hatred, hostility or degrading) and Article 314 (membership of an armed organisation);

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

7.6. concerning the issue of pre-trial detention, the Assembly notes that two judgments of the European Court of Human Rights in the cases of *Selahattin Demirtaş v. Turkey (No. 2)* (Chamber ruling, not final) and *Kavala v. Turkey* found a violation of Article 18 (limitation on use of restrictions on rights), in conjunction with Article 5, paragraph 1, of the Convention (right to liberty and security). The Assembly calls on the Turkish authorities to fully implement both judgments. It also urges Turkey, in line with the decisions of the Committee of Ministers of 1 and 29 September 2020, to immediately release Mr Osman Kavala and drop the new charges brought against him, which amount to judicial harassment;

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

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

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

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

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

9. The Assembly also urges the Turkish authorities to consolidate institutions and mechanisms which could protect fundamental rights. It calls on Turkey to remain committed to the full implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, the Istanbul Convention) and refrain from any negative stance or legislation which would

result in condoning violence against women and girls or impunity for the perpetrators of such violence, infringe women's fundamental rights or harm their participation in political and social life. It also invites Turkey to strengthen the ombudsman's office or the Human Rights and Equality Institution of Turkey, which could and should serve to protect the fundamental freedoms of the Turkish people.

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

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