



**Doc. 15272**

21 April 2021

## The functioning of democratic institutions in Turkey

### Report<sup>1</sup>

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

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### Summary

The Monitoring Committee is deeply concerned about recent developments in Turkey which have further undermined democracy, the rule of law and human rights.

Procedures seeking to lift the parliamentary immunity of a third of the parliamentarians (overwhelmingly from opposition parties), the attempt to close the Peoples' Democratic Party (HDP) and the continued crackdown on its members put political pluralism and the functioning of democratic institutions at risk.

The presidential decision of 20 March 2021 to withdraw from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ([CETS No.210](#), the Istanbul Convention) to combat violence against women and domestic violence is a regrettable step backwards, made without any parliamentary debate, which raises the question of the modalities of denunciation of conventions in democratic societies.

The committee also urges the immediate release of Selahattin Demirtaş and Osman Kavala following the final judgments of the European Court of Human Rights.

In order to reverse these worrying trends, the Turkish authorities should seize the opportunity of implementing the Human Rights Action Plan and revising the legislation on elections and political parties to take meaningful steps, put an end to the judicial harassment of opposition and dissenting voices, improve freedom of expression and media and restore the independence of the judiciary, in co-operation with the Council of Europe

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1. Reference to Committee: Bureau decision of 16 April 2021. Reference 4576 of 19 April 2021.



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## A. Draft resolution<sup>2</sup>

1. Since Turkey was put under the parliamentary monitoring procedure in April 2017, the Parliamentary Assembly has been closely following the developments in this country in a spirit of dialogue and co-operation with the authorities. Regrettably, a number of issues of concern have remained unaddressed by the Turkish authorities despite the recommendations based on the findings of the Council of Europe monitoring mechanisms. Notably, the European Commission for Democracy through Law (Venice Commission) had identified structural deficiencies encompassed in the constitutional amendments that established the presidential system in 2017. The most serious issues of concern include the lack of independence of the judiciary, the lack of sufficient safeguards for the separation of powers and checks and balances, restrictions on freedom of expression and the media, the abusive interpretation of the anti-terror legislation, non-execution of judgments of the European Court of Human Rights, restrictions applied to the protection of human and women's rights and infringement of the fundamental rights of politicians and (former) members of parliament from the opposition, lawyers, journalists, academics and civil society activists.

2. In the past years, the Assembly has been concerned about the constant deterioration of the rights of opposition politicians and of their ability to exercise their elected mandates, thus seriously undermining the functioning of democratic institutions in Turkey. The Assembly resorted to organise three urgent procedure debates entitled "The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?" ([Resolution 2260 \(2019\)](#) of January 2019), the "New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards" (See [Resolution 2347 \(2020\)](#) of October 2020) and the present debate on "The functioning of democratic institutions". This debate was triggered by worrying developments over recent months, notably the lifting of parliamentary immunities, the attempt to close the Peoples' Democratic Party (HDP) and the decision to withdraw from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ([CETS No.210](#), the Istanbul Convention) announced by the President.

3. On 20 March 2021, the President of the Republic signed a presidential decision withdrawing from the Istanbul Convention. This convention was opened for signature during the Turkish Presidency of the Committee of Ministers in Istanbul ten years ago. The Grand National Assembly was the first parliament in Europe to ratify it in 2012 by a unanimous vote, thus playing a pioneering and leading role in promoting this convention across Europe, which has become the gold standard in the fight against violence against women and domestic violence. In Turkey, the ratification of the convention was a push factor leading to the adoption of Law No. 6284 on Protection of Family and Prevention of Violence Against Women in 2012 by the Turkish parliament.

4. The Assembly deeply regrets that this presidential decision was taken without any parliamentary debate and on account of misleading narratives which run counter to the very objective of the Istanbul Convention. It underlines that it is urgent to hold a discussion on the Istanbul Convention that is based on facts – not on politically motivated misconceptions and myths. The Assembly stresses that parliaments are the place where societal and human rights issues must be debated in Council of Europe member States. The Istanbul Convention has therefore ensured that parliaments are directly involved in the monitoring of the convention, as well as its implementation. In respect to Turkey, the Assembly notes that all major opposition parties, including the Republican People's Party (CHP), the Peoples' Democratic Party (HDP) and the Good Party (İYİ), women's organisations and individual citizens have expressed their attachment to being part of the Istanbul Convention by seizing the State Council to annul the presidential decision of 20 March 2021.

5. Without prejudice to the decision of the State Council, the Assembly encourages the Turkish Grand National Assembly to engage in a meaningful debate in parliament, liaise with civil society organisations active in this field, remain committed to the fight against violence against women and domestic violence and ensure that all measures are taken to protect the victims, prosecute the perpetrators, prevent violence against women and promote gender equality, as required by the positive obligations of member States under the European Convention of Human Rights (ETS No. 5). In this respect it welcomes the creation, on 9 March 2021, of an ad hoc parliamentary committee on "Researching the causes of violence against women to determine the necessary policies".

6. The Assembly underlines that even though the Turkish national legislation may be sufficient to combat violence against women, withdrawing from the Istanbul Convention implies that Turkey can no longer benefit from its provisions relating to international co-operation in criminal matters and seek co-operation from other

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2. Draft resolution adopted by the Committee on 20 April 2021.

States parties to bring the perpetrators of crimes against women to justice. The withdrawal also sends a message to the international community about a deprioritisation of the fight against violence against women. The Assembly sincerely hopes that a way will be found for Turkey to reintegrate the convention.

7. The Assembly recalls that violence against women is widespread in all societies and cannot be justified on any grounds. It concerns all segments of society, beyond political and societal lines. Recalling its Resolution 2289 (2019) on The Istanbul Convention on violence against women: achievements and challenges, the Assembly reaffirms for its part its commitment to promote the ratification and implementation of the Istanbul Convention in Europe, and beyond, notably through its “Network of Women free from violence” and reiterates its full support to civil society organisations promoting and protecting women’s rights. For the Assembly, withdrawing from a human-rights based convention (unanimously) ratified by the parliament constitutes a step backwards for the country. At the European level, it weakens the multilateral co-operation promoted by the 47 Council of Europe member States and prevents the country benefiting from the added-value of an independent monitoring mechanism (the Group of Experts on Action against Violence against Women and Domestic Violence – GREVIO).

8. The Assembly notes with concern that the unilateral decision of the President to withdraw from an international treaty without any consultation of the parliament or the society has triggered speculative debates about possible withdrawals from other international treaties, including the European Convention of Human Rights. This could affect the country’s legal stability and predictability. While the ratification and denunciation of treaties are a matter of national sovereignty, the Assembly notes that the unprecedented withdrawal from a major Council of Europe convention has raised many questions and concerns about its democratic processes. In light of these developments, a reflection should be launched about standards that should govern the ratification and withdrawal from international treaties in democratic societies, beyond the minimal legal and constitutional conditions. The Assembly therefore asks the Venice Commission to prepare a comparative study and possible guidelines about the modalities that should govern the ratification and withdrawal from Council of Europe conventions.

9. Another adverse development relates to the weak framework for the protection of parliamentary immunity in Turkey, already highlighted in previous Assembly resolutions. The Assembly notes with concern that one third of the parliamentarians are currently targeted by legal proceedings and could see their immunity lifted. Opposition parliamentarians are overwhelmingly concerned by these procedures, and parliamentarians from the HDP Party are disproportionately targeted – they account for 75% of the proceedings, mostly under terrorism-related charges. Three members of the HDP lost their mandates in 2020 and 2021 following final convictions for terrorism, while nine HDP parliamentarians currently face aggravated life sentences for their alleged organisation of the “Kobane protests” in October 2014.

10. On a positive note, the Assembly welcomes the return to the parliament of CHP parliamentarian Enis Berberoğlu following two rulings of the Constitutional Court which found that his rights to be elected and engage in political activities had been violated. The Assembly recalls that in a country governed by rule of law, lower courts must abide by rulings of the Constitutional Court. It deplores however the new proceedings which were launched in the meantime to again strip Mr Berberoğlu’s immunity.

11. At the same time, the Assembly is appalled by the conviction of HDP parliamentarian Ömer Faruk Gergerlioğlu to 2,5 years in prison for “making propaganda for a terrorist organisation” after re-tweeting a news article – who was not incriminated – in August 2016. This conviction was upheld by the Supreme Court of Cassation in February 2021 and the execution of the sentence was not suspended until the end of Mr Gergerlioğlu’s mandate – contrary to customary practice. As a result, Mr Gergerlioğlu lost his mandate after the sentence was read out in parliament on 17 March 2021 and he was detained on 27 March 2021.

12. The Assembly regrets that the Constitutional Court did not have the possibility to review the pending individual application lodged by Mr Gergerlioğlu before the execution of the sentence became effective, thus resulting in a loss of parliamentary mandate with immediate effect. The Assembly asks the Turkish authorities to ensure harmonised judiciary practice pertaining to the execution of convictions of MPs with due respect to their parliamentary immunity and to ensure a speedy examination of individual applications by the Constitutional Court which, in the past, has been instrumental in redressing the violation of rights of parliamentarians and allowed their return to parliament.

13. The Assembly is concerned that opposition parliamentarians seem to be subject to a possible stripping of immunity on a routine basis for their statements or publications. The Assembly notes with great concern that one third of the parliamentarians, including the leaders of the two main opposition parties in parliament, are subject to such procedures. This is highly problematic and creates prejudice to ensuring the sound functioning of a parliament. In addition, it has a chilling effect discouraging dynamic debate, which is essential

for a properly functioning democracy. The Assembly therefore urges the Turkish authorities to put an end to the judicial harassment of parliamentarians and refrain from submitting numerous summaries of proceedings seeking the undue lifting of their immunity which gravely impedes the exercise of their political mandate.

14. The Assembly cannot but reiterate its concerns about restrictions to freedom of expression, which impedes the exercise of political mandates. It regrets that no progress was made regarding the interpretation of the anti-terrorism legislation which is not in line with the case-law of the European Court of Human Rights. As a result, a high number of convictions are pronounced based on a too wide interpretation of this legislation or of controversial provisions of the Criminal Code. The Assembly urges the Turkish authorities to address the “pervasive problems regarding [the] independence and impartiality” of the judiciary system noted by the Committee of Ministers in March 2021 – and prevent politically motivated rulings that contradict Council of Europe standards.

15. The Assembly underscores the primordial role played in a democratic regime by political parties. It is therefore extremely concerned about the steps taken by the Supreme Court of Cassation, at the request of the Nationalist Movement Party (MHP), to close the second largest opposition party in Turkish Parliament and to ban 687 HDP members for their alleged ties to the Kurdistan Workers' Party (PKK). The Assembly notes that the indictment of 17 March 2021 was returned by the Constitutional Court to the Supreme Court of Cassation for serious deficiencies on 31 March 2021.

16. The Assembly recalls that it had opposed the closure of the ruling party (namely the AK Party) in its [Resolution 1622 \(2008\)](#) “Functioning of democratic institutions in Turkey: recent developments” in which it had stressed that “the dissolution of political parties should be regarded as an exceptional measure to be applied only in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country”.

17. The Assembly also recalls that political parties enjoy the freedoms and rights enshrined in Article 11 (freedom of assembly and association) and Article 10 (freedom of expression) of the European Convention of Human Rights. Closures of political parties are a drastic measure which should only occur as a last resort in strictly defined situations. The Assembly remains confident that the Constitutional Court will be guided by the strict regulations governing the closure of political parties in Turkey, the case-law of the European Court of Human Rights – where exceptions set out in Article 11 need to be strictly construed, with a limited margin of appreciation of Contracting States – and by the 1999 Guidelines on prohibition and dissolution of political parties and analogous measures of the Venice Commission.

18. Whatever the outcome of this pending procedure, the Assembly underscores that the launch of a lawsuit against the second largest opposition party combined with continuous harassment and arrests of its members, elected representatives and leaders is an alarming signal in itself reflecting the difficulties faced by the opposition. This seriously undermines the functioning of democratic institutions and political pluralism at national and local levels. In this respect, the Assembly regrets the lack of any progress in the re-instatement of the 48 dismissed mayors (out of 59) from the HDP elected in March 2019, in contradiction with the Council of Europe standards, or in revising the legislation so as to ensure its compliance with the European Charter of Local Self-Government (ETS No.122).

19. The Assembly recalls that the proper functioning of democratic institutions in a representative democracy requires fair election procedures, a sound legal basis and safe environment for the functioning of political parties, guaranteed freedom of expression and media that allow for the expression of opposition viewpoints and for democratic transitions of power. The Assembly notes that reforms of the Law on the political parties and electoral legislation are envisaged. It encourages the Turkish authorities to seize this opportunity to address the long-lasting issues of concerns raised by the Assembly and the Venice Commission in previous years:

19.1. concerning the electoral law, the Assembly welcomes the intention expressed by the authorities to lower the election threshold (presently 10%) which is the highest in Europe. This has been a long-lasting request from the Assembly. The Assembly asks the Turkish authorities, when revising the election legislation, to take into account the need to ensure fair electoral processes conducted in an environment conducive to freedom of expression and freedom of the media;

19.2. at the same time, the Assembly recalls that a genuinely pluralistic democracy requires that parties across the political spectrum are able to operate and reflect the opinions of the voters in their diversity, including minorities;

19.3. in order to increase good governance and a level playing field in politics, the Assembly encourages the Turkish authorities, in line with the recommendations contained in the two compliance reports published by the Group of States against Corruption (GRECO, Third and Fourth Rounds of Evaluation) in March 2021, to improve the legal and regulatory framework and in particular to:

19.3.1. take resolute action to strengthen transparency in the financing of political parties and election campaigns, where considerable progress is yet to be made;

19.3.2. improve the prevention of corruption in respect of members of parliament, judges and prosecutors, in particular by adopting a law on ethical conduct for members of parliament, enhancing the transparency of the legislative process;

19.3.3. introduce structural changes which would ensure judicial independence, including the revision of the composition of the Council of Judges and Prosecutors which does not comply with European standards with regard to the independent self-governing body of the judiciary, and allows the executive to have a strong influence on a number of key matters regarding the running of the judiciary.

20. The Assembly recalls the concerns already highlighted with respect to freedom of expression and the media, and to the situation of journalists. The Assembly remains concerned about the high number of journalists who remain in prison, are prosecuted for working as journalists or resolve to self-censorship. In this context, the Assembly draws attention to some meaningful developments:

20.1. the Assembly welcomes the decision of the Constitutional Court of 8 April 2021 repealing a statutory decree article that set the basis for the closures of media outlets on the ground of “posing a threat to national security” and reversing a provision that paved the way for the seizure of the properties that were shut down;

20.2. the Assembly welcomes two Chamber’s rulings (not final) of the European Court of Human Rights of 13 April 2021 related to the cases *Ahmet Hüsrev Altan v. Turkey* and *Murat Aksoy v. Turkey*, concerning two journalists arrested after the failed coup due to their publications, their alleged membership to the Gülen Movement and their alleged preparation of a coup. While Murat Aksoy has been released from pre-trial detention in 2017, renowned journalist and novelist, Ahmet Altan, has been in jail since 2016. The Court found, notably, a violation of their rights to freedom of expression, liberty and security of the two plaintiffs due to lack of evidence, lack of reasonable suspicion and lack of access to their files. The Assembly welcomes the swift decision taken by the Supreme Court of Cassation to release Ahmet Altan on the following day.

21. The Assembly expect the Turkish authorities to undertake the necessary reforms to address the above-mentioned concerns. It takes good note of the launch of the Human Rights Action Plan on 2 March 2021 prepared in consultation with Council of Europe and other relevant international bodies. It aims notably at strengthening the right to a fair trial, protecting and strengthening freedom of expression, association and religion and promoting legal predictability and transparency. The Assembly encourages the authorities, to fine-tune the scope of this action plan so as to address pressing human rights and rule of law issues, including the strengthening of the independence of the judiciary, the revision of the too widely interpreted anti-terror law and the protection of human rights defenders, in co-operation with the Council of Europe. The Assembly also invites the authorities to ensure that the action plan will be accomplished by a detailed roadmap with specific actions to be taken to achieve its goals.

22. In the meantime, the Assembly expects the Turkish authorities to take concrete and meaningful steps and thus abide by its Council of Europe obligations. The Assembly in particular urges the immediate release of former HDP co-chair Selahattin Demirtaş and philanthropist Osman Kavala in application of the rulings of European Court of Human Rights of 2020 and subsequent decisions of the Committee of Ministers which is supervising their implementation. The Assembly recalls that the Court ruled that there was, in both cases, a violation of article 18 of the Convention and that the sentences were pursuing an ulterior purpose: Mr Demirtaş’s detention sought to stifle pluralism and limit freedom of political debate, while Mr Kavala’s detention aimed at silencing him and acted as a dissuasion to other human rights defenders.

23. The Assembly also insists that civil society activists need to be able to operate in a safe and free environment. The Assembly remains concerned by on-going procedures targeting human rights activists, and calls upon the authorities to:

23.1. drop the charges against the members of the “Büyükada trial”, Öztürk Türkdoğan, Chair of the Human Rights Association and, in general, ensure that human rights activists, including LGBT and women’s activists, can exercise their freedom of expression and assembly without undue judicial pressure;

23.2. refrain from incriminating, prosecuting and arresting peaceful demonstrators, students and LGBT people, in particular those protesting the appointment of the rector of Boğaziçi University or the withdrawal from the Istanbul Convention;

23.3. repeal the provisions contained in the 2020 “Law on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction”, providing for the possible temporary suspension of NGO leaders facing terror-related investigations and their replacement by government-appointed trustees, which further restrict NGOs activities and freedom of association in the name of counter-terrorism, as highlighted by the Council of Europe Commissioner for Human Rights.

24. The Assembly strongly reiterates its call on the Turkish authorities to put an end to laws and practices that contravene democratic standards, to revise its legislation and constitutional framework in order to ensure the separation of powers, to restore freedom of speech and media freedom, to restrict the interpretation of its anti-terror legislation, and to implement the judgments of the European Court of Human Rights.

25. The Assembly strongly encourages the Turkish authorities to make use of the Council of Europe expertise in order to elaborate and implement the reforms needed to restore the independence of the judiciary, reinstate proper checks and balances which are an essential condition in a democratic society governed by the rule of law. The Assembly expects the Turkish authorities to live up to the democratic aspirations of its vibrant civil and political society, genuinely committed to democracy, to act and speak out freely and safely.

26. 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. It urges the Turkish authorities to engage in a meaningful and constructive dialogue and to assess progress made in a comprehensive monitoring report to be presented in the course of a future part-session of the Assembly.

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

### 1. Introduction

1. In March 2021, the leaders of the five political groups of the Parliamentary Assembly tabled a request for an urgent debate on “The functioning of democratic institutions in Turkey”. On 15 April 2021, this request was formally supported by the Monitoring Committee. The Assembly decided on 19 April 2021 to hold an urgent procedure debate on the subject and referred it for a report to the Committee on Honouring of Obligations and Commitments by Council of Europe member States (Monitoring Committee). As co-rapporteurs on Turkey, and in accordance with the established practice, we were confirmed as rapporteurs for this report under urgent procedure by the Committee at its meeting of 19 April 2021.

2. This request for an urgent procedure debate is the third one in three years, reflecting the renewed concerns of this Assembly pertaining to democracy, rule of law and human rights in Turkey. In January 2019, the Assembly adopted [Resolution 2260 \(2019\)](#) “The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?” Six months ago, the Assembly debated the “New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards” and adopted [Resolution 2347 \(2020\)](#) on 23 October 2021. Furthermore, the Standing Committee organised, on 19 March 2021, a current affairs debate on “recent developments concerning parliamentary democracy in Turkey” which highlighted the concerns of many members of the Assembly with respect to the functioning of democratic institutions.

3. Since the adoption of the last resolution on Turkey, the Monitoring Committee has followed the developments in the country very closely. It organised a hearing on the situation of dismissed and replaced mayors with the participation of members of the majority and the opposition, governmental and non-governmental experts, as well as members of the European Commission for Democracy through Law (Venice Commission) and the Congress of local and regional authorities of the Council of Europe in November 2020 and on the “The follow-up to [Resolution 2347 \(2020\)](#): recent developments with respect to the rights of the opposition” on 15 April 2021, with the participation of Philippe Dam, Advocacy Director, Europe and Central Asia Division, Human Rights Watch, Professor Osman Can, University of Marmara, Faculty of Law, Department of Constitutional Law and Mustafa Tayyip Çiçek, Deputy Director General of International Relations and EU Affairs, Ministry of Justice. The President of the Assembly paid a three-day official visit from 30 March to 1 April 2021 where the President stressed the need to make progress.<sup>3</sup>

4. We have decided to focus this report on major recent developments which are relevant to the functioning of democratic institutions, the rule of law and the protection of human rights in Turkey, in particular the issue of parliamentary immunity, the attempts to close the Peoples' Democratic Party (HDP), the continued pressure on dissenting voices and the withdrawal from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ([CETS No.210](#), the Istanbul Convention). This report under urgent procedure does not seek to provide for a comprehensive analysis of all relevant issues related to human rights, democracy and the rule of law, which ought to be addressed in a full monitoring report.

5. In this report, we have taken the stance to focus on some domestic developments and their compliance to Council of Europe standards, with special attention paid to the parliament. We note with concern that the presidential system established in 2017 has weakened the role of the parliament. In addition, opposition parliamentarians have been under pressure; their parliamentary immunity might be lifted for their (critical) views; restrictions on freedom of expression and media impacts the exercise of their mandates. In addition the parliament has been bypassed on issues that have a major impact on society and which ought to be debated in parliament – such as the fight against violence against women and domestic violence, as highlighted by the presidential decision to withdraw from the Istanbul convention. The Assembly has always stressed that “a political opposition in and outside parliament is an essential component of a well-functioning democracy”<sup>4</sup>. In the current circumstances, the opposition finds it difficult to “evaluate, oversee and criticise the work of the ruling government, ensure transparency of public decision and efficiency in the management of public affairs, thereby ensuring the defence of the public interest and preventing misuse and dysfunction”.<sup>5</sup>

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3. [PACE President, ending his visit to Turkey, emphasises the need to work together to make progress \('ilerleme'\) \(coe.int\)](#), 1 April 2021.

4. See [Resolution 1601 \(2008\)](#) “Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament”.

5. *Ibid.*

## 2. The issue of parliamentary immunity

6. In its [Resolution 2347 \(2020\)](#) of October 2020 (following an urgent procedure debate), the Assembly strongly condemned the new crackdown on political opposition and civil dissent in Turkey, which infringed the fundamental rights of local politicians and (former) members of parliament from the opposition, lawyers, journalists and civil society activists. In particular it stressed that the lifting of parliamentary immunity of MPs on terror-related charges and the dismissal and replacement of dozens of mayors from the opposition after the March 2019 elections, disregarded the voters' will and further jeopardised the functioning of democratic institutions. The Assembly therefore called on Turkey to put an end to laws and practices that contravened democratic standards, revise its legislation and constitutional framework in order to ensure the separation of powers, restore freedom of speech and media freedom, restrict the interpretation of its anti-terror legislation and implement the judgments of the European Court of Human Rights. The Assembly also called on Turkey to secure conditions allowing its vibrant civil and political society, genuinely committed to democracy, to act and speak out freely and safely.

7. This Assembly has, on many occasions, stressed that parliamentary immunity needs to be better protected in Turkey in order to allow parliamentarians to exercise their political mandate, and to express their opinions within the boundaries of freedom of speech as understood by the European Court of Human Rights.

8. We are concerned that almost a third of all parliamentarians are currently subject to summaries of proceedings aiming at lifting parliamentary immunity. These requests target disproportionately the opposition: as of 1 March 2021, 90 % of the 192 MPs who had summaries of proceedings under the review of the Joint Parliamentary Constitutional and Justice Committee were from opposition parties (Republican People's Party (CHP), Peoples' Democratic Party (HDP) and Good Party (İYİ)). Out of a total of 1 267 summaries, 955 (75 %) have been prepared against 59 HDP deputies (about 10 % of the parliament); 245 summaries (about 20 %) have been prepared against 97 deputies of CHP, and there are only 13 summaries against ruling Justice and Development Party (AKP) deputies, 8 against Nationalist Party (MHP) deputies, and 15 against İYİ Party deputies.<sup>6</sup> In addition, 47 MPs from the HDP elected in 2018 (out of 59) are now being threatened to be banned from politics following the procedure launch to close the HDP party (see below).

9. Request for lifting of immunity of – overwhelmingly opposition – members of parliament by the Turkish presidency is becoming a routine exercise: on 15 April 2021, new motions were filed to lift the parliamentary immunity of eight CHP and two HDP deputies, including main opposition CHP leader Kemal Kılıçdaroğlu. The summary of proceedings against the CHP deputies concerns the party's brochure named "The Political Leg of FETÖ<sup>7</sup> in 21 Questions." These proceedings add to those initiated against eleven other HDP and Democratic Regions Party (DBP) deputies weeks before, and other ones concerning 25 members of opposition, 22 of them being from the HDP, including PACE members Hişyar Özsoy and Feleknas Uca, who are prosecuted on terror charges, and 3 MPs from the CHP. Three HDP parliamentarians lost their mandates due to terror-related conviction. In addition, 9 parliamentarians from the HDP, including its co-chair Pervin Buldan, face aggravated life sentences for having allegedly organised the deadly "Kobane protests" in October 2014.<sup>8</sup> To date, over 200 MPs (one third of the MPs) face losing their immunity.

10. On a positive note, we had welcomed the return to parliament of opposition MP Enis Berberoğlu (from the CHP), after a long political struggle: Mr Berberoğlu was originally sentenced to 5 years and 10 months in prison in October 2017 for disclosing secret State information, following the publication of a news report on "MIT Trucks" in the Cumhuriyet newspaper. Mr Berberoğlu was re-elected MP in June 2018 while in pre-trial detention. A ruling by the Supreme Court of Cassation upheld his parliamentary immunity and suspended the execution of his sentence during his parliamentary mandate. In June 2020 however, he was unexpectedly stripped of his parliamentary immunity and detained. He was then put under house arrest in September 2020 due to the Covid-19 prison regulations. After Turkey's Constitutional Court twice ruled that his rights to be elected and engage in political activities had been violated, a lower court in Istanbul finally held a re-trial, which paved the way for his return to parliament.<sup>9</sup> We were however informed that new summaries of proceedings had been sent to parliament last month, seeking again the lifting of Mr Berberoğlu's immunity.

11. Another striking example concerns the stripping of immunity and loss of mandate of HDP parliamentarian Dr Ömer Faruk Gergerlioğlu.<sup>10</sup> Dr Gergerlioğlu has a conservative background, he was a human rights activist in the Mazlum-Der organisation. He was a physician but was dismissed from the medical

6. Figures provided by the HDP, as of 4 March 2021.

7. Turkish authorities refer to the Gülen network as the Fethullahist Terrorist Organization (FETÖ).

8. 108 individuals are prosecuted in this case. A hearing is scheduled on 26 April 2021.

9. Statement of the Assembly co-rapporteurs, Mr Hammarberg and Mr Howell, of 12 February 2021, [PACE monitors welcome return of Turkish opposition MP to parliament \(coe.int\)](#)

profession by a decree issued under the state of emergency on 7 January 2017 and could not work in either public or private medical facilities. Elected in 2018 in parliament, he has remained a vocal human rights advocate. In 2016, he was convicted of “making propaganda for a terrorist organisation” and sentenced to 2,5 years in prison after re-tweeting a news story (reporting that the leadership of the armed Kurdistan Workers’ Party (PKK) had called on the Turkish State to take a step towards peace) which was published by the news agency T24. This news agency was not prosecuted for this publication,<sup>11</sup> which makes Dr Gergerlioğlu’s conviction dubious, if not spurious. The Supreme Court of Cassation upheld his conviction and sentence of two years and six months in prison on February 2021. Dr Gergerlioğlu lodged an individual application to the Constitutional Court<sup>12</sup> (which does not have a suspensive effect) to challenge the grounds of the conviction. However, the parliament proceeded with the reading of his conviction on 17 March 2021, leading to the automatic loss of his seat.<sup>13</sup> Dr Gergerlioğlu started a “justice watch” in parliament to protest his loss of mandate, was evicted, arrested on 21 March 2021 after an investigation was launched following his “refusal to leave the Parliament” and released, and was finally detained on 3 April 2021 despite being hospitalised.

12. The constitution provides that final convictions lead to automatic loss of mandate. The Constitutional Court is not an appeal court of the Supreme Court of Cassation and lodging individual applications to the Constitutional Court does not have a suspensive effect. However, in recent times, we note that several rulings of the Constitutional Court found a violation of rights covered by the European Convention of Human Rights (ETS No. 5). This led to re-trials of the parliamentarians, and eventually their return to parliament. Rulings of the Constitutional Court have therefore played a decisive role in restoring MPs’ immunity. This was the case for Mr Berberoğlu in 2020 and 2021 (see above), or MP Sırrı Süreyya Önder in 2019. In addition, as in Mr Berberoğlu’s case, the execution of prior sentences are (or can be) suspended until the convicted parliamentarians complete their mandate, with due respect of their parliamentary immunity. That was not the case for Dr Gergerlioğlu.

13. It is also striking that many opposition parliamentarians could see their parliamentary immunity due to their statements or publications falling under the scope of the anti-terror law, or under provisions of the Criminal Code (notably article 299 dealing with “insult to the president”) which the Assembly and the Venice Commission deemed as problematic. It is worth recalling that the Venice Commission considers that “freedom of expression of Members of Parliament is an essential part of democracy. (...) Only speech that calls for violence or directly supports the perpetrators of violence can lead to criminal prosecution. (...) The European Court of Human Rights case law shows that Turkey has a problem with safeguarding freedom of expression, not least with respect to cases considered as propaganda for terrorism. This is partly due to the fact that (...) the scope of several provisions of the Criminal Code is too wide. This endangers freedom of expression in general but notably also freedom of expression of members of the National Assembly(...). In the opinion of the Venice Commission, the system of parliamentary immunity in Turkey should not be weakened, but reinforced, in particular in order to ensure the freedom of speech of Members of Parliament”.<sup>14</sup> We cannot but reiterate this recommendation from the Venice Commission.

### 3. Attempts to close the Peoples' Democratic Party (HDP)

14. As noted in previous Assembly resolutions, pressure against opposition politicians has intensified these past years. The Assembly had stressed that this repression affects disproportionately the HDP and its members at local and national level and could render the party inoperative. The European Court of Human Rights established, in 2020, that the arrest and detention of former co-leader of the HDP, Mr Demirtaş, in 2016 had pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate.

15. In recent weeks, a new crackdown on HDP members and MPs happened after the dreadful execution of 12 Turkish citizens and one Iraqi citizen who were found dead (after being executed) during a failed rescue operation launched by the Turkish army in Gara, in northern Irak, on 10 February 2021. The hostages had

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10. See our Statement of 18 March 2021: [Stripping Turkish MP’s mandate is another blow to parliamentary democracy, say PACE monitors \(coe.int\)](#).

11. For more detail, see “Weathering the storm: defending human rights in Turkey’s climate of fear”, Amnesty International, EUR 44/8200/2018, April 2018.

12. [Article 148 of the Turkish constitution](#) stipulates that “Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted.»

13. Article 84 of the constitution provides that “The loss of membership, through a final judicial sentence or deprivation of legal capacity, shall take effect after the Plenary has been notified of the final court decision on the matter.”

14. [Opinion on the constitutional amendment of 12 April 2016](#).

been abducted by the PKK in 2015 and 2016. The circumstances of this military operation raised questions; the requests tabled by the parliamentary opposition to establish an investigation committee were rejected. But two days later, over 700 HDP members were arrested and over 130 of them were detained as of mid-February.

16. On 17 March 2021, following the request from the MHP, the Supreme Court of Cassation's Chief Public Prosecutor Bekir Şahin<sup>15</sup> sent an indictment to the Constitutional Court seeking the closure of the party on the basis that HDP members aimed "to destroy and eliminate the indivisible integrity of the State with its nation" via acting as an extension of the PKK and "the terrorist groups linked to it" in parliament. The prosecutor also claimed that the deputies "acted in a way that contradicted the rules of democratic and universal law" and sought a political ban of 687 HDP members, including former co-chairs Figen Yüksekdağ and Selahattin Demirtaş (in prison), Assembly members Hiszzyar Oszoy, Feleknes Uca, Tayip Temil, former Assembly member Filiz Kerestecioğlu and honorary Assembly member Ertuğrul Kürkçü. In total, 47 MPs who were elected on the HDP list in 2018 are included in this list.

17. Provided that the HDP is found to be in the "center" of activities deemed contrary to the Constitution, sanctions could include the closure of the party, and the ban of HDP members (these members would be prevented from being founders, members, executive or inspectors of another political party for five years). Financial sanctions could also be applied to the party (without being closed), by depriving the party of financial aid from the Treasury. These decisions require a qualified majority of two-thirds by the (15) members of the Constitutional Court.

18. On 31 March 2021, the Constitutional Court returned the indictment to the Court of Cassation over "procedural deficiencies and omissions". In its reasoned decision (published on 15 April 2021), the Constitutional Court indicated that the Court of Cassation chief prosecutor had failed to prove the relation between the HDP and the acts listed in the indictment, according to the justification: the inclusion of the relevant peoples' acts in the indictment [was] not enough (...) and the party 'becoming a center' to these acts also [needed] to be revealed.<sup>16</sup>

19. The issue of party closures is recurrent in Turkey. Since 1961, 25 parties have been closed. Since the first pro-Kurdish party was represented in parliament (1991), five pro-Kurdish parties have been closed.<sup>17</sup> President Erdoğan and the AK Party have expressed, on several occasions, being opposed to the closure of political parties. The European Court of Human Rights has underlined the primordial role played in a democratic regime by political parties enjoying the freedoms and rights enshrined in Article 11 (freedom of assembly and association) and also in Article 10 (freedom of expression) of the European Convention on Human Rights. Concerning political parties, it considers that contracting states have a limited margin of appreciation. Except in one case (concerning the prohibition of the Refah Party), the Court had found a violation of article 11 of the Convention (freedom of assembly and association) in the cases related to the closure of Turkish political parties, namely the People's Labor Party (HEP), the Freedom and Democracy Party (OZDEP), the People's Democracy Party (HADEP) and the Democratic Society Party (DTP).<sup>18</sup>

20. The AK Party was subject to a procedure of party closure in 2008.<sup>19</sup> The Assembly had debated this question before the ruling of the Constitutional Court; in its [Resolution 1622 \(2008\)](#) "Functioning of democratic institutions in Turkey: recent developments", the Assembly had stressed that "regardless of its outcome, the lawsuit against the ruling party, as well as the Prime Minister and the President of the Republic, is seriously affecting political stability in the country, as well as the democratic functioning of State institutions (emphasis added). Following the procedure, the AK Party was not dissolved (10 out of the 11 judges found that the AK Party had exploited religious feelings for the sake of political interests and had become the focus of activities

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15. Mr Şahin had been appointed to his post in 2013 by President Recep Tayyip Erdoğan. He had ranked fourth out of five candidates in the elections held at the Court of Cassation.

16. [Constitutional Court returns HDP closure indictment to Court of Cassation – English \(bianet.org\)](#)

17. The People's Labor Party (HEP) established in 1990 was banned in July 1993. Its succeeding parties were later banned as well: the Freedom and Democracy Party (OZDEP) in November 1993, the Democracy Party (DEP) in June 1994, the People's Democracy Party (HADEP) in March 2003, the Democratic Society Party (DTP) in December 2009.

18. [Factsheet](#) – Political parties and associations, Court Press Unit, October 2016.

19. The AK Party-led majority in parliament had adopted, on 9 February 2008, changes to the constitution and the law on higher education to ease the Muslim headscarf ban at universities. The amendments were considered contrary to secular principles and declared unconstitutional by the Constitutional Court on 5 June 2008. In the meantime, on 14 March 2008, judicial proceedings were instituted by the Chief Prosecutor of the Supreme Court of Turkey to dissolve the ruling AK Party on the grounds that the party had become a "centre of anti-secular activities" and ban 71 of its members, including President Gül and Prime Minister Erdoğan, as well as 39 members of parliament, from politics for five years. See [Resolution 1622 \(2008\)](#), para. 5 and 6.

contradicting the principles of a democratic and secular republic but only a majority of 6 judges (instead of the 7 required for the qualified majority) had voted for the dissolution of the party, which was nevertheless subject to a financial sanction (the Constitutional Court withdrew half of its public financial support for the period of one year).<sup>20</sup>

21. The attempt to close the HDP appears as the culmination of a process of continued pressure exerted against the HDP party. The procedure is going on. Regardless of its outcome, it is a worrying development which has raised the question of its political motivation ahead of the next presidential and parliamentary elections planned in 2023.<sup>21</sup> We stress that political parties enjoy the freedoms and rights enshrined in Article 11 (freedom of assembly and association) and Article 10 (freedom of expression) of the European Convention of Human Rights. Closures of political parties are a drastic measure which should only occur as a last resort. We remain confident that the Constitutional Court will be guided by the strict regulations governing the closure of political parties in Turkey, the case-law of the European Court of Human Rights – where exceptions set out in Article 11 need to be construed strictly, with a limited margin of appreciation of Contracting States – and by the 1999 Guidelines on prohibition and dissolution of political parties and analogous measures of the Venice Commission.

#### 4. The withdrawal of the Istanbul Convention: national and international challenges

22. On 20 March 2020, the President of the Republic signed, at midnight, a decision withdrawing Turkey from the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No.210), also known as the “Istanbul Convention”. This convention was opened for signature during the Turkish Presidency of the Committee of Ministers in Istanbul ten years ago. This presidential decision triggered huge reactions in Turkey, in Europe and beyond, including a statement of the Secretary General of the Council of Europe, Marija Pejčinović Burić, in which she deplored the “devastating news” and a “huge setback to these efforts [compromising] the protection of women in Turkey, across Europe and beyond”.<sup>22</sup> In their joint statement, the President of the Assembly, Rik Daems, and the Chair of the Committee of Ministers German Minister of Foreign Affairs, Heiko Maas, recalled that Turkey had been the first member State “to ratify in 2012 the Council of Europe Convention on preventing and combating violence against women and domestic violence, opened for signature in Istanbul during the Turkish Chairmanship of the Organisation 10 years ago. And it did so by a unanimous vote at the Grand National Assembly”, deeply regretted the decision of the President of Turkey to withdraw from this “widely supported” Convention in the country.<sup>23</sup>

23. The withdrawal decision was taken without any parliamentary debate. This is all the more regrettable in that the Grand National Assembly had played a leading and pioneering role in promoting the ratification of the convention. This ratification was also a push factor for the adoption of Law No. 6284 on Protection of Family and Prevention of Violence Against Women in 2012 by the Turkish parliament (which we see is now challenged by people close to the New Welfare Party<sup>24</sup>).

24. It should also be noted that the Istanbul Convention was the first Council of Europe convention to include, in its article 70, a parliamentary involvement in the monitoring of the implementation of the convention. The Assembly and its Parliamentary Network Women Free from Violence<sup>25</sup> have adopted numerous reports highlighting the crucial role of parliamentarians and parliaments in addressing a societal issue which prevails in all Council of Europe member States – gender-based violence-, fighting domestic violence and violence against women and overseeing public policies needed to eradicate this scourge.

25. We also deeply regret that the justification of this withdrawal relied on misleading narratives, claiming that the convention had been “hijacked by the LGBT community” to “normalise homosexuality” which was seen as “incompatible with Turkey’s social and family values”.<sup>26</sup> Such messages blatantly run counter to the very objective of the convention, which is to protect women from violence, including domestic violence. We also heard that withdrawing from the convention would secure better protection of women thanks to the

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20. Opinion on the Constitutional and Legal Provisions relevant to the Prohibition of Political Parties in Turkey adopted by the Venice Commission at its 78th Plenary Session (13-14 March 2009), CDL-AD(2009)006-e.

21. The request to ban hundreds of HDP members, including its senior officials, was understood as a way to ensure that a new party could not be created to succeed the HDP, as it has been the case in the past.

22. Secretary General responds to Turkey’s announced withdrawal from the Istanbul Convention, 20 March 2021.

23. Council of Europe leaders react to Turkey’s announced withdrawal from the Istanbul Convention.

24. After Istanbul Convention, Islamists demand annulment of domestic law protecting women (duvarenglish.com).

25. Parliamentary Network Women Free from Violence (coe.int).

26. See the statements of government’s director of communications, Fahrettin Altun.

possible adoption of domestic legislation. Even though the Turkish national legislation may be sufficient to combat violence against women, withdrawing from the Istanbul Convention implies that Turkey can no longer benefit from its provisions relating to international co-operation in criminal matters and seek co-operation from other states parties to bring the perpetrators of crimes against women to justice. In addition, being part of the convention provides for an assessment by an independent monitoring body, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO).

26. The modalities of this withdrawal also raised questions among civil society activists and opposition political parties. A coalition of NGOs called on the Council of Europe to reject the notification sent by the Turkish authorities<sup>27</sup> – this request is however not admissible, as denunciation of conventions are “notified” to the Secretary General of the Council of Europe (article 80 of the Convention). The denunciation was notified on 22 March 2021. It will become effective on 1<sup>st</sup> July 2021.

27. There were also objections raised as to the fact that the Istanbul convention had been ratified by the parliament in 2012 (while there was a parliamentary system) and should therefore be, *mutatis mutandis*, denounced by the parliament. We understand that there are different legal views on this issue, and we leave legal considerations to the academic community. However, we would like to stress that, from a political point of view, it would have been meaningful to consult the parliament and civil society organisations active in this field prior to taking a decision which will affect millions of women and girls in Turkey. The scope of the convention covers a wide range of human rights and was widely supported in society. We note moreover that the presidential decision to withdraw is not based on a consensus in society: as a matter of fact, all major opposition parties, including the CHP, the HDP and the İYİ, women’s organisations and individual citizens expressed their attachment to the Istanbul Convention and decided to seize the State Council to annul the presidential decision of 20 March 2021. It is also appalling to see that women who demonstrated in favour of the Istanbul convention faced police violence and were even arrested.

28. In this vein, and with no prejudice to the decision of the State Council, we expect the Turkish Grand National Assembly to engage in meaningful debates in parliament: it is urgent to hold a discussion on the Istanbul Convention that is based on facts – not on politically motivated misconceptions and myths. The parliament should also work closely with civil society organisations active in this field, remain committed to the fight against violence against women and domestic violence and ensure that all measures are taken to protect the victims, prosecute the perpetrators, prevent violence against women and promote equality between women and men, as required by the positive obligations of member States under the European Convention of Human Rights. A positive step was taken with the creation of an ad hoc parliamentary committee on “Researching the causes of violence against women to determine the necessary policies” on 9 March 2021 following a unanimous vote by the plenary. This committee includes 19 MP’s from all political parties and will work for 3 months (with a possible one-month extension). We note that this decision however followed numerous unsuccessful attempts of opposition parties to establish such an ad hoc parliamentary commission in view of the rising feminicides and violence against women. Since June 2018, opposition parties have tabled tens of motions (the CHP alone 23 of them) which were either not put on the agenda in the General Assembly or rejected by the ruling majority.

29. We acknowledge that ratifications and denunciations of international treaties are a matter of national sovereignty. However, we consider that withdrawing from a human-rights based convention which had been – unanimously – ratified by the parliament – and with the same ruling party in power at the time of the ratification and denunciation – is very surprising and can only constitute a step backwards for the country. We also fear that, at the European level, it weakens the multilateral co-operation promoted by the 47 Council of Europe member States in 2011.

30. We have also noted that the unilateral decision of the president to withdraw from an international treaty without any consultation of the parliament or the society has triggered speculative debates on the (legal) possibility for the president to unilaterally decide to withdraw from any other international treaty, including the European Convention of Human Rights or other conventions.<sup>28</sup> This “possibility” could affect the country’s legal stability and predictability. This leads us to think that we should engage in a reflection about the standards that should govern the ratification and withdrawal from international treaties in democratic societies,

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27. [Urgent appeal to the Council of Europe – EŞİK – Eşitlik İçin Kadın Platformu \(esikplatform.net\)](https://www.esikplatform.net)

28. In this context, a discussion was launched about the 1936 Montreux convention (which established the sovereignty of Turkey over the Straits and regulates maritime transportation). In the context of the construction of the Istanbul Kanal (which should connect the Black Sea and the Sea of Marmara), a question was brought by a journalist to the speaker of the parliament about the possibility for Turkey to withdraw from the European Convention of Human Rights or the Montreux Convention. The speaker deemed that this could be “possible” [legally speaking]. This sparked the publication of a (midnight) declaration by 104 retired admirals calling on the government to refrain from opening withdrawal from the

beyond the minimal legal and constitutional conditions required. In this respect, the expertise of the Venice Commission would be useful to provide us with a comparative study, and possibly guidelines, on the modalities of the ratification of, and, withdrawal from Council of Europe conventions.

## 5. Other recent developments related to human rights and rule of law

### 5.1. Non implementation of the European Court of Human Rights judgments in the cases of Mr Demirtaş and Mr Kavala.

31. There has been no progress regarding the execution of the judgments of the European Court of Human Rights concerning former HDP co-chair Selahattin Demirtaş and philanthropist Osman Kavala, two cases where the Strasbourg Court found a violation of article 18 of the Convention. The Committee of Ministers, which is supervising the execution of the European Court's judgments, met on 9-11 March 2021.

32. It again urged the Turkish authorities to immediately release Selahattin Demirtaş,<sup>29</sup> recalling that his arrest and pre-trial detention (since 2016) especially during two crucial campaigns pursued an ulterior purpose, namely to stifle pluralism and limit freedom of political debate (violation of Article 18 taken in conjunction with Article 5) and decided to resume its examination of the individual measures at its next meeting of June 2021 in the event that the applicant has not been released by then.

33. The Committee of Ministers also examined the implementation of the Court ruling *Kavala v. Turkey*,<sup>30</sup> following the interim resolution adopted in December 2020. It recalled the Court's findings that the applicant's arrest and pre-trial detention took place in the absence of evidence to support a reasonable suspicion he had committed an offence (violation of Article 5.1 of the Convention) and these had an ulterior motive, namely to silence him and dissuade other human rights defenders (violation of Article 18 taken in conjunction with Article 5.1). The Committee of Ministers reiterated its deep concern and called to release Osman Kavala, while waiting for the reasoned decision of the Constitutional Court (which found that Kavala's detention was lawful) and decided to send a letter to the Minister of Foreign Affairs and discuss this issue at each of its regular and human rights meetings.

34. The Committee of Ministers also concluded that "the Court's findings in this case, in particular under Article 18 of the Convention, and the subsequent events which gave rise to the above-mentioned presumption that this violation is continuing, supported by the findings of other Council of Europe bodies, *reveal pervasive problems regarding the independence and impartiality of the Turkish judiciary*; invited therefore the authorities *to take adequate legislative and other measures to protect the judiciary and ensure that it is robust enough to resist any undue influence, including from the executive branch*".<sup>31</sup> (*emphasis added*).

35. It is very discouraging to see that there is no progress on these files, on the contrary. In December 2020, the Constitutional Court ruled, by 8 votes against 7, that Kavala's continued detention did not violate his rights to liberty and security despite the Court ruling. Judge Engin Yıldırım branded Kavala's imprisonment as "a Kafkaesque legal spiral" in his dissenting opinion: "the applicant's release twice and arrest three times, under almost the same accusations and without the manifestation of new pieces of evidence that result in strong suspicions, resembles a Kafkaesque legal spiral".<sup>32</sup> Amnesty International's Europe Director, Nils Muižnieks, recalled that the continued detention of Osman Kavala and Selahattin Demirtaş, who had been arbitrarily and unjustly deprived of their liberty for years, despite the binding Court decisions that they be released, "makes a mockery of President Erdoğan's government's attempts to whitewash systemic human rights abuses by unveiling a meaningless Human Rights Action Plan [on 2 March 2021]. Turkish authorities must release Kavala and Demirtaş, allow human rights defenders to do their work and stop putting undue pressure on their judges."<sup>33</sup>

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Montreux Convention to debate. Turkish officials saw it as a direct challenge from the military to the civilian government. Various AKP officials accused the former soldiers of suggesting a coup – 14 of the signatories were detained and later released on probation. The authorities also claimed that the main opposition party CHP was behind this declaration.

29. *Selahattin Demirtaş v. Turkey* (No. 2) (Application No. 14305/17).

30. *Kavala v. Turkey* (Application No. 28749/18).

31. [CM/Notes/1398/H46-33](#).

32. Turkish Constitutional Court member Engin Yıldırım refers to Osman Kavala's case as 'Kafkaesque legal spiral' ([duvarenglish.com](#)).

33. [Turkey: Failure to free Osman Kavala makes mockery of Erdoğan's Human Rights Action Plan](#), Amnesty International, 12 March 2021.

## 5.2. Freedom of expression and media

36. We wish to recall that the Assembly has in various resolutions called on the Turkish authorities to improve the situation of the media, and upgrade freedom of expression and the media. Unfortunately, the situation has not improved much. It seems that there are slightly fewer journalists in prison as compared to previous years. However, journalists remain exposed to “an escalating range of sanctions that includes fines, withdrawal of advertising and reduction in the bandwidth available to them”<sup>34</sup> and to judicial harassment, notably under terror-related charges. In Reporters Without Borders 2020 World Press Freedom Index, Turkey ranks 154th out of 180 countries (compared to 157<sup>th</sup> in 2019). Amnesty International, for its part, is alarmed that “the crackdown on dissenting voices has brought independent journalism in Turkey to the edge of the precipice”.<sup>35</sup> Two recent developments in relation to media freedom are mentioned in the paragraphs below:

37. The European Court of Human Rights, in a Chamber’s ruling<sup>36</sup> (not final) of 13 April 2021, found that the rights to freedom of expression and security and liberty of journalist and novelist Ahmet Altan – who has spent more than four years in prison – had been violated due to lack of evidence, lack of “reasonable suspicions” and lack of access to his file. Mr Altan had been arrested in 2016 after the failed coup on terrorism charges, for his alleged ties to the Gülen Movement and was sentenced to 10 years and 6 months in prison for “attempting to overthrow the Government of Turkey”, then “knowingly and willingly aiding a terrorist organisation despite not being included in its hierarchical structure”. The Court assessed that the incriminated articles were written “as part of journalistic activity and cannot be construed as grounding a reasonable suspicion that the applicant had committed the offences in question. The applicant’s criticisms of the president’s political approach cannot be seen as an indication that he had prior knowledge of the attempted coup of 15 July 2016”.<sup>37</sup>

38. On 14 April 2021, the Supreme Court of Cassation ruled that Mr Altan should be released based on his prolonged imprisonment of over four-and-a-half years. We welcome this swift move and verdict of the Supreme Court of Cassation to redress Mr Altan’s rights violations and release him. However, this should not obliterate neither the many years he spent in prison after the failed coup – for his alleged membership to the Gülenist Movement and for articles he had written – nor the fact that many journalists remain detained.

39. On 8 April 2021, the Constitutional Court decided to repeal a statutory decree article that had set the basis for the closures of media outlets on the ground of “posing a threat to national security” and to reverse a provision that paved the way for the seizure of the properties that were shut down. During the state of emergency declared following the failed coup on 15 July 2016, some 204 media outlets and distribution companies were closed down by nine statutory decrees; 179 media outlets are still closed. The Assembly and the Venice Commission<sup>38</sup> had, at that time, expressed their concerns about these provisions which would seriously damage the media landscape and undermine freedom of expression and the media. We therefore welcome the decision of the Constitutional Court, though it will take time to redress the damage caused and require proper compensation to media outlets concerned.<sup>39</sup>

## 5.3. Dissenting and critical voices under pressure

40. We continued to pay attention to Turkey’s vibrant civil society which aspires to the full exercise of its fundamental rights. As established in previous Assembly resolutions, dissenting or critical voices, in particular in civil society, are being silenced. We were shocked to learn about the arrest of Öztürk Türkdoğan, Chair of the Human Rights Association on 19 March 2021 in a wave of anti-PKK arrests, which also targeted HDP officials. Mr Türkdoğan was later released under judicial control, with an international travel ban. Mr Türkdoğan assumed that this arrest was linked to the position he had taken after the killing of Turkish hostages in Gara (see above), and the subsequent speech made by the Minister of Interior, Mr Sülyeman Soylu, who referred to the Human Rights Association as a “cursed association.”

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34. [Turkey, RSF](#).

35. “Continuation of human rights abuses call into question a new human Rights Action Plan and cast doubt on Turkey’s commitment to human rights, the rule of law and the protection of women and girls”, Amnesty International, 15 April 2021, REF: TIGO IOR 30/2021.1653.

36. Judgment of the European Court of Human Rights in the case *Ahmet Hüsrev Altan v. Turkey*, (Application no. 13252/17), 13 April 2021.

37. *Ibid*, para. 136.

38. See the Opinion on the Measures provided in the recent Emergency Decree Laws with respect to Freedom of the Media, adopted by the Venice Commission at its 110th Plenary Session (10-11 March 2017)”, [CDL-AD\(2017\)007](#).

39. [Journalists demand reinstatement of rights after top court verdict annulling media closures – Hikmet Adal – english \(bianet.org\)](#).

41. The legal environment has also deteriorated. In December 2021, we had reacted to the adoption of the Law on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction,<sup>40</sup> which provides for the possibility to “temporary suspend” NGOs whose leaders are facing terror-related investigations and replace them with government-appointed trustees, for more controls imposed on NGOs' fundraising activities and donations from foreign countries. The authorities failed to convince us when explaining that this law aimed at fighting money-laundering. This legislation does send a strong and chilling signal to civil society organisations and further undermines the foundations of the democratic functioning of Turkish society. The Commissioner for Human Rights, Ms Dunja Mijatović, called on the Turkish authorities to “refrain from further restricting NGOs activities and freedom of association in the name of counter-terrorism” in a letter sent to the Ministers of justice and interior, published on 10 March 2021. She asked the authorities to refrain from implementing this legislation which, in fact, could undermine NGO's rights.<sup>41</sup>

42. We are also following other legal proceedings and issues that NGOs are subject to. In the case of the Büyükada trial (where 11 human defenders attending a human rights seminar on the Büyükada island had been prosecuted on terrorism related charges in 2017), we are appalled to learn that the prosecutor at the Supreme Court of Cassation requested the confirmation of the conviction of former and now honorary chair of Amnesty International Turkey, Taner Kılıç, while the other three human rights defenders' convictions were requested to be overturned. In view of the (lack of) evidence brought against Mr Kılıç, this amounts to judicial harassment of a human rights defender, with obvious chilling effects on other ones. We urge the Turkish authorities to carefully review this case and drop the charges.

43. We have also been looking at the management of the peaceful demonstrations organised, without discontinuity, since the appointment of Professor Bulu as the Bogaziçi University rector by President Erdoğan on 2 January 2021. This appointment – and subsequent appointments of deans of the newly created faculties – is challenged both by the student and the academic communities. As co-rapporteurs, we have had consultations with students, professors, as well as representatives of the Higher Council of Education (YÖK), the Ministry of justice and interior, to whom we expressed our concerns about the arrests and detention of students, the restrictions to their freedom of expression and assembly, disproportionate use of police violence, homophobic statements made by officials and fears expressed with respect to academic freedoms and democratic processes concerning appointment procedures. The authorities stated that all procedures were legal and that police intervention had been proportionate. However, we note that this conflict, which has lasted over 100 days, is deeply rooted. We call on the authorities to engage into dialogue with all stakeholders, take into account the legitimate aspiration for democratic processes and good governance of universities and find the means to end this crisis.

#### **5.4. The electoral environment: challenges and perspectives**

44. Judicial and economic reforms have been initiated by the authorities in 2021 to restore confidence of the investors and address major economic challenges due to the Covid-19 pandemic, high inflation and unemployment and a plunging of Turkish Lira. In this context, the Human Rights Action Plan was unveiled on 2 March 2021 by President Erdoğan, encompassing 9 goals,<sup>42</sup> 50 targets and nearly 400 activities that should be implemented over the next two years. They should notably seek to “strengthen the right to a fair trial”, “protect and strengthen freedom of expression, association and religion” and promote “legal predictability and transparency”. This Plan was met with great scepticism by the opposition and NGOs while, on the same day, the procedure to close down the HDP was launched by the Supreme Court of Cassation. For our part, we hope that the Turkish authorities will seize the opportunity of this Action Plan to take meaningful steps and make progress in redressing the structural deficiencies related to human rights and the rule of law, including the independence of the judiciary and the revision and stricter interpretation of the anti-terror legislation.

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40. Joint statement of the Assembly co-rapporteurs, Mr Hammarberg and Mr Howell, and the Assembly rapporteur on Restrictions on NGO activities in Council of Europe member States, Ms Alexandra Louis (France, ALDE), [Rapporteurs urge Turkish parliament not to adopt new restrictions on NGOs \(coe.int\)](#), 21 December 2020.

41. Turkey: authorities should refrain from further restricting NGOs activities and freedom of association in the name of counter-terrorism – [View \(coe.int\)](#).

Letter: <https://rm.coe.int/letter-to-mr-suleyman-soylu-minister-of-interior-of-the-republic-of-tu/1680a18d4c> and reply by the Minister of Interior, Mr Soyly, <https://rm.coe.int/reply-of-minister-soylu/1680a1b8fd>.

42. “A more robust human rights protection system”, “the independence of the judiciary and strengthening the right to a fair trial”, “Legal predictability and transparency”, “Protection and strengthening of freedom of expression, association and religion”, “Strengthening individual freedom and security”, “Safeguard the physical and moral integrity of the person and their private life”, “More effective protection of property rights”, “Strengthen social welfare and protect vulnerable groups”, “Ensure the highest level of administrative and social awareness on human rights”.

45. Important political reforms have been announced in the wake of the publication of the Human Rights Action Plan, including the revision of the law on political parties, of the electoral law and the drafting of a “civilian constitution”. Concerning the election law, it is envisaged to lower the electoral threshold (10% for the time being, the highest in Europe), which would be welcomed: this is a long-lasting request of the Assembly. The revision of these pieces of legislation should also, in our view, seek to strengthen political pluralism, so as to, (and we quote the Venice Commission) “promote pluralism as a means of guaranteeing participation by all persons and groups, including minorities, in public life, which should also allow for the expression of opposition viewpoints and for democratic transitions of power”.

46. We hope that the Turkish authorities will also seize this opportunity to address some transparency and integrity issues highlighted by GRECO in its March 2021 compliance reports (3<sup>rd</sup> and 4<sup>th</sup> round), where GRECO urged Turkey to ensure full judicial independence, integrity standards for MPs and transparency of party funding.<sup>43</sup>

47. GRECO concluded that no tangible results were reached on strengthening transparency in the financing of political parties and election campaigns (which has been discussed since 2010), with a few exceptions, such as the adoption of legislation on campaign funding of presidential candidates. A draft bill<sup>44</sup> has been in preparation since 2014. For GRECO “the current situation is not satisfactory; considerable progress is yet to be made in respect of transparency of political financing in Turkey. Only one recommendation out of nine has been fully implemented over the last 10 years. Resolute action was expected from the Turkish authorities towards increased transparency of political financing, including in connection with elections”. Concerning the prevention of corruption in respect of MPs, judges and prosecutors GRECO regretted the absence of a law on ethical conduct for members of parliament and the lack of measures to ensure MPs’ integrity and stressed the need to enhance the transparency of the legislative process.

48. The Assembly has stressed in many of its previous reports the need to increase the independence and impartiality of the judiciary, as recommended by the [Venice Commission](#) in its 2017 opinion, the Strasbourg Court rulings and the recent decision of the Committee of Ministers pointing to “the pervasive problems regarding the independence and impartiality of the Turkish judiciary system”. In its March 2021 reports, GRECO noted that over the years, “the fundamental structural changes have weakened judicial independence and have also led the judiciary to appear even less independent from the executive and political powers”: “the Council of Judges and Prosecutors (CJP) is made up of members appointed by the president of the republic and the GNAT and that none are elected by judges and prosecutors themselves, runs counter to European standards of an independent self-governing body of the judiciary. The executive has kept a strong influence on a number of key matters regarding the running of the judiciary.”<sup>45</sup>

## 6. Some concluding remarks

49. This report is the third one, in three years, depicting serious deficiencies in the functioning of democratic institutions of Turkey. The conclusions reached in January 2019 by our predecessors remain valid: “The [June 2018] elections took place in an atmosphere of limited space for pluralistic, democratic debate, unequal campaigning opportunities and media coverage, and misuse of administrative resources. As a result, Turkey now has an executive president with very extensive powers, a parliament with insufficient powers as a counter-weight, whose majority comes from the President’s party and its ally, and a judiciary whose independence has been curtailed. Freedom of expression, assembly and association is restricted, and independent media and civil society are under severe pressure. The scope for opposition politicians to play a meaningful role in public life, whether inside or outside parliament, has become extremely limited.”<sup>46</sup> Four years after their adoption, in light of the findings of several Council of Europe monitoring mechanisms, we have to acknowledge that the implementation of the 2017 constitutional amendments have considerably

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43. See Second Addendum to the Second Compliance Report on Turkey “Incriminations (ETS 173 and 191, GPC 2)” and “Transparency of Party Funding” (Third evaluation Round) [GrecoRC3\(2020\)5](#) and Second interim compliance report on “Corruption prevention in respect of members of parliament, judges and prosecutors” (Fourth evaluation round) [GrecoRC4\(2020\)18](#) adopted by GRECO at its 86th Plenary Meeting (26-29 October 2020) and published on 18 March 2021.

44. Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections.

45. [GrecoRC4\(2020\)18](#).

46. [Doc 14812](#) “The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?”, co-rapporteurs: Marianne Mikko (Estonia, SOC) and Nigel Evans (United Kingdom, EC/DA).

weakened the separation of powers and checks and balances, leading to undue interference of the executive branch in the judiciary system with devastating effects on the functioning of democratic institutions, both at national and local level.

50. We reiterate our strong conviction that the monitoring procedure must be based on trust, co-operation and frank dialogue. This is an essential component of our work, and we would like to thank the Turkish delegation for its readiness to assist us in our work and exchange with us and with the Monitoring Committee. At the same time, this procedure should also end in genuine co-operation between the Assembly and the Turkish authorities, aiming at achieving progress.

51. In this context, we appreciate each step taken and efforts made to promote our standards. The drafting of the Human Rights Action Plan is one of them and we hope that its implementation will achieve tangible results. At the same time, however, the developments that we are observing blatantly contradict these displayed intentions. It is not acceptable that one third of the parliamentarians, overwhelmingly from opposition parties, including the leaders of the two main opposition parties in parliament, face losing their mandates, mostly due to their statements. It does not allow the sound and proper functioning of a parliament. The same observation applies to part of the judiciary institutions, which have lost their independence and might be expected to render politically motivated verdicts, which is extremely damaging to the rule of law and democracy.

52. We trust that the current trends can be reversed. As a first step, the democratic situation could dramatically improve provided that the silencing of dissenting opinions ends. Investigation and prosecution of journalists, NGOs, human rights defenders, academics, students, and other critics of the government should no longer be customary practice. Judicial harassment of opposition parliamentarians (through the submission of numerous summaries of proceedings seeking the lifting of their immunity or attempts to close their party) should no longer be routine practice. These developments gravely endanger parliamentary democracy, and even question the very role and function of the opposition, if not of the parliament. How does it contribute to the democratic functioning of the State if it is not perceived as the place where different and critical opinions should be expressed and articulated, or issues concerning the whole society, such as women's rights, should be debated in order to draft improved legislation in line with international standards? The unilateral decision of the president of the republic to withdraw from the Istanbul Convention – which makes a difference in the lives of millions of women in Turkey – was a sad and worrying illustration of this dangerous tendency.

53. We encourage the Turkish authorities to engage in an inclusive consultations process and assess the functioning of their democratic and judicial institutions in light of the democratic aspiration of the Turkish people and taking into account its diversity. The Turkish authorities should take advantage of the announced drafting of a new constitution to seek the co-operation of the Council of Europe, notably its Venice Commission, to ensure that the constitutional framework provides again for the separation of power and the checks and balances and that election legislation meets the required conditions to ensure fair electoral processes and guarantee political pluralism.

54. As co-rapporteurs, we will remain committed to a meaningful and constructive dialogue with the authorities and plan to assess progress made in a comprehensive monitoring report to be presented in the course of a future part-session. In the meantime, our Assembly should continue to closely follow the developments in the country concerning democracy, the rule of law and human rights, strengthen its co-operation and provide all assistance needed.