

Resolution 2376 (2021)¹

The functioning of democratic institutions in Turkey

Parliamentary Assembly

1. Since Turkey was placed 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 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, the non-execution of judgments of the European Court of Human Rights (the Court), the restrictions applied to the protection of human rights and women's rights and the infringement of the fundamental rights of politicians and (former) members of parliament from the opposition, lawyers, journalists, academics and civil society activists.

2. In recent years, the Assembly has been concerned about the constant deterioration of the rights of opposition politicians and their ability to exercise their elected mandates, thus seriously undermining the functioning of democratic institutions in Turkey. The Assembly resorted to organising three debates under urgent procedure entitled "The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?" ([Resolution 2260 \(2019\)](#) of January 2019), "New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards" ([Resolution 2347 \(2020\)](#) of October 2020) and the present debate on the functioning of democratic institutions in Turkey. This debate was triggered by worrying developments in recent months, notably the lifting of parliamentary immunity, the attempt to dissolve 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 of Turkey.

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 Turkish Grand National Assembly, by a unanimous vote, was the first parliament in Europe to ratify it in 2012, thus playing a pioneering and leading role in promoting this convention across Europe. The convention has become the gold standard in the fight against violence against women and domestic violence. In Turkey, the ratification of the Istanbul 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 there is an urgent need 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

1. *Assembly debate* on 22 April 2021 (14th sitting) (see [Doc. 15272](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Thomas Hammarberg and Mr John Howell). *Text adopted by the Assembly* on 22 April 2021 (14th sitting).



forums in which 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 aforementioned HDP and the Good Party (İYİ), in addition to women's organisations and individual citizens have expressed their attachment to seeing their country remain 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 combating 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 on Human Rights (ETS No. 5, the Convention). 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 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. 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 Istanbul 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 \(2019\)](#) "The Istanbul Convention on violence against women: achievements and challenges", the Assembly, for its part, reaffirms its commitment to promoting the ratification and implementation of the Istanbul Convention in Europe and beyond, notably through its Parliamentary Network Women Free from Violence, and reiterates its full support for civil society organisations promoting and protecting women's rights. For the Assembly, withdrawing from a human rights based convention ratified (unanimously) by the parliament constitutes a step backwards for the country. At the European level, such a measure weakens the multilateral co-operation promoted by the 47 Council of Europe member States and prevents the country in question from benefitting 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 by the President of Turkey to withdraw from an international treaty without any consultation with parliament or society has triggered speculative debates about possible withdrawal from other international treaties, including the European Convention on 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 however 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 undertaken about standards that should govern the ratification of 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 in Turkey are currently targeted by legal proceedings and could see their immunity lifted. The overwhelming majority of these procedures concern opposition parliamentarians, and parliamentarians from the HDP Party are disproportionately targeted – they account for 75% of the proceedings, most of which are based on 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 right to be elected and engage in political activities had been violated. The Assembly recalls that, in a country governed by the 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 of immunity.

11. At the same time, the Assembly is appalled by the sentencing of HDP parliamentarian Ömer Faruk Gergerlioğlu to two and a half years in prison for “making propaganda for a terrorist organisation” after re-tweeting a news article – which was not subject to legal proceedings – in August 2016. The conviction was upheld by the Turkish Court of Cassation in February 2021 and, contrary to customary practice, the execution of the sentence was not suspended until the end of Mr Gergerlioğlu’s mandate. 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 members of parliament, 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 allowing their return to parliament.

13. The Assembly is concerned that opposition parliamentarians seem to routinely face being stripped of immunity on the basis of their statements or publications. The Assembly notes with great concern that one third of parliamentarians, including the leaders of the two main opposition parties in parliament, are subject to such procedures. This is highly problematic and prejudices the sound functioning of a parliament. In addition, it has a chilling effect which discourages the dynamic debate 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 impede 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 based on an overly broad 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 by political parties in a democratic regime. It is therefore extremely concerned about the steps taken by the Court of Cassation, at the request of the Nationalist Movement Party (MHP), to dissolve the second largest opposition party in the 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 referred back to the Court of Cassation by the Constitutional Court on 31 March 2021 due to serious deficiencies.

16. The Assembly recalls that it had opposed the dissolution of the ruling party (the Justice and Development Party – AK Party) in its [Resolution 1622 \(2008\)](#) “Functioning of democratic institutions in Turkey: recent developments”, in which it 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 on Human Rights. Dissolution of political parties is 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 dissolution of political parties in Turkey, the case law of the European Court of Human Rights – in which the exceptions set out in Article 11 are strictly construed, with a limited margin of appreciation for contracting States – and by the “Guidelines on prohibition and dissolution of political parties and analogous measures” adopted in 1999 by the Venice Commission.

18. Whatever the outcome of this pending procedure, the Assembly underscores that the initiation of legal proceedings against the second largest opposition party, combined with continuous harassment and arrests of its members, elected representatives and leaders, is in itself an alarming signal which reflects 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

reinstatement of the 48 mayors (out of 59) from the HDP elected in March 2019, who were dismissed in contradiction with 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 a safe environment for the functioning of political parties, the safeguarding of the freedoms of expression and of the media that allow for the expression of views by the opposition and the democratic transition of power. The Assembly notes that reforms of the Law on political parties and of the electoral legislation are envisaged. It encourages the Turkish authorities to seize this opportunity to address the long-standing issues of concern 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 electoral 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 to reflect the opinions of voters in all 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) in March 2021 (third and fourth rounds of evaluation), 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, thus 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 an 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 resort 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 an article in a statutory decree that set the basis for the closure of media outlets on the ground that they posed “a threat to national security” and reversing a provision that paved the way for the seizure of the properties of those media outlets that were to be shut down;

20.2. the Assembly welcomes two Chamber rulings (not yet 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*. The cases concerned two journalists arrested for their alleged preparation of the failed coup as a result of their publications and their alleged membership of the Gülen movement. While Murat Aksoy was released from pre-trial detention in 2017, the renowned journalist and novelist, Ahmet Altan, has remained in jail since 2016. The Court found, notably, a violation of both plaintiffs’ rights to freedom of expression, liberty and security 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 Court of Cassation to release Ahmet Altan on the day following delivery of the judgment.

21. The Assembly expects 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 the Council of Europe and other relevant international bodies. This action plan 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 issues relating to human rights

and the rule of law, including the strengthening of the independence of the judiciary, revision of the anti-terror law, which is too widely interpreted, 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 road map indicating specific actions to be taken in order 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 obligations arising from their Council of Europe membership. In particular, the Assembly urges the immediate release of former HDP co-chair Selahattin Demirtaş and philanthropist Osman Kavala, in application of the rulings of the European Court of Human Rights of 2020 and subsequent decisions of the Committee of Ministers, which is supervising the implementation of these rulings. The Assembly recalls that the Court ruled that there had been, in both cases, a violation of Article 18 of the Convention and that the convictions 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 deterring 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. It remains concerned by ongoing procedures targeting human rights activists and calls upon the authorities to:

23.1. drop the charges against the members of the "Büyükkada trial", Öztürk Türkdoğan, Chair of the Human Rights Association and, in general, ensure that human rights activists, including lesbian, gay, bisexual, transgender (LGBT) activists 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 against the appointment of the rector of Boğaziçi University or the withdrawal from the Istanbul Convention;

23.3. repeal or revise, in line with the relevant recommendations of the Venice Commission, the provisions contained in the 2020 Law on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, which provides for the possible temporary suspension of leaders of non-governmental organisations (NGOs) facing terror-related investigations and their replacement by government-appointed trustees, which further restrict NGO activities and their 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 Council of Europe expertise in order to prepare and implement the reforms needed to restore the independence of the judiciary and 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 a vibrant civil and political society, genuinely committed to democracy, to be able 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 the progress made in a comprehensive monitoring report to be presented in the course of a future part-session of the Assembly.