Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2459 (2022)[1]

The honouring of obligations and commitments by Türkiye

Parliamentary Assembly

1. In April 2017, the Parliamentary Assembly decided to place Türkiye under the monitoring procedure. Since then, it has closely followed the developments in the country in a spirit of dialogue and co-operation with the Turkish authorities. The Assembly has paid particular attention to the unaddressed structural deficiencies in the functioning of Türkiye's democratic institutions, as identified by the Council of Europe's monitoring mechanisms. The Assembly has undertaken to make a mid-term review of the monitoring procedure, focusing specifically on the implementation of the judgments of the European Court of Human Rights (the Court), the judiciary and challenges to the rule of law, as well as on the preparation of the 2023 parliamentary and presidential elections.

2. Significant political developments have occurred since the adoption of the 2017 report: constitutional amendments establishing a presidential system were adopted in 2017 by 51.4% of the voters and a new political system was put in place. In recent years, worrying political developments have impacted the functioning of democratic institutions. In particular, it has become challenging for members of the political opposition to exercise their elected mandates in a free and safe environment.

3. In reaction to these developments, the Assembly organised three debates under urgent procedure: the first in January 2019 on "The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?" (see Resolution 2260 (2019)); the second in October 2020 on the "New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards" (see Resolution 2347 (2020)); and the third in April 2021 on "The functioning of democratic institutions in Turkey" (see Resolution 2376 (2021)).

4. Issues of concern identified by the Assembly include the lack of independence of the judiciary, the separation of powers and checks and balances, restrictions on freedom of expression and of the media, the overly broad interpretation of anti-terror legislation, the implementation of judgments of the European Court of Human Rights, restrictions on the protection of human rights and the infringement of the fundamental rights of politicians and (former) members of parliament from the opposition, as well as of lawyers, journalists, academics and civil society activists.

5. The Assembly also remains vigilant about the safeguarding of women's rights and gender equality in Türkiye. In this context, it regrets the decision of the President of the Republic to withdraw from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, the Istanbul Convention) in March 2021 and sincerely hopes that a way will be found for Türkiye to reintegrate the Istanbul Convention, which has become the gold standard in the fight against violence against women and domestic violence.

6. The Assembly acknowledges that Türkiye has faced and is still facing various and serious terrorist threats in a region that is unstable. However, the response to these threats must be in compliance with standards of human rights, the rule of law and democracy.

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1. *Assembly debate* on 12 October 2022 (30th sitting) (see Doc. 15618 and Doc. 15618 Add., report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr John Howell and Mr Boriss Cilevičs). *Text adopted by the Assembly* on 12 October 2022 (30th sitting).

7. Moreover, Russia's aggression against Ukraine has added new concerns for regional security and stability. In this respect, the Assembly welcomes the mediation efforts undertaken by Türkiye with a view to resolving the conflict and commends the role played by Türkiye in facilitating the signature of the United Nations-brokered Black Sea Grain Initiative of 22 July 2022.

8. Concerning the execution of the judgments of the European Court of Human Rights:

8.1. While acknowledging that Türkiye has implemented an important number of European Court of Human Rights rulings, the Assembly recalls that the implementation of all rulings of the Court is at the core of the protection of fundamental rights in all member States; the findings of the Court should be respected and not disregarded. In this context, the Assembly calls on Türkiye to adopt a constructive approach and abide by its obligations in a spirit of good faith and in accordance with the principle of the rule of law.

8.1.1. In this respect, the Assembly was appalled by the aggravated life sentence given to philanthropist Osman Kavala on 25 April 2022 by the 13th High Criminal Court, this notwithstanding that the European Court of Human Rights had urged the Turkish authorities to release Mr Kavala having found his pre-trial detention unlawful and pursuing an ulterior purpose – namely to silence him and dissuade other human rights defenders.

8.1.2. On 2 February 2022, the Committee of Ministers decided to bring infringement proceedings against Türkiye over its failure to implement this ruling of the European Court of Human Rights – a rare procedure which had only been triggered once. While the Turkish authorities argued that Mr Kavala had been released in February 2020, the Court confirmed, on 11 July 2022, that Türkiye had failed to implement the judgment by re-arresting Mr Kavala on charges based on facts that were similar, or even identical, to those that the Court had already examined in its judgment.

8.2. Reiterating its call on Türkiye to implement the Court's judgments, the Assembly will follow with close attention the activities of the Committee of Ministers with respect to the follow-up of the infringement proceedings under Article 46.4 of the European Convention on Human Rights (ETS No. 5, the Convention). It calls on the support of member States to the Committee of Ministers to ensure that decisions in this respect will not undermine or jeopardise the effectiveness of the system of protection of fundamental rights and the credibility of the Court, as this could open the way to a dangerous and detrimental trend for other Council of Europe member States.

8.3. In this respect, the Assembly welcomes the decision of the Ministers' Deputies of 22 September 2022 related to the implementation of the Kavala judgment and its reference to the Assembly. It invites the President of the Assembly and the Chair of the Committee of Ministers to maintain close contacts and make full use of the means at their respective disposal, if Türkiye's failure to comply with its obligations should persist.

8.4. Noting that domestic procedures are still ongoing, the Assembly underscores that the solution to the Kavala case lies in the hands of the Turkish judicial system. The latter has the capacity to find a legal solution and show a more diligent interpretation of the Court judgment, in compliance with its ruling and with international law. In the meantime, the Assembly reiterates its call for the release of Mr Kavala.

8.5. The Assembly also continues to follow the implementation of the Court judgment of December 2020 relating to the detention of opposition leader Selahattin Demirtaş (who has been in detention since 2016) and its supervision by the Committee of Ministers. The Court had also concluded that Article 18 of the Convention had been violated and that Mr Demirtaş' detention sought an ulterior purpose, namely to stifle political debate. The Assembly reiterates its call for Mr Demirtaş' release. The Assembly also urges the authorities to ensure that Mr Demirtaş' individual application challenging his current detention, which has been pending before the Constitutional Court since 7 November 2019, be examined rapidly and in a manner compatible with the spirit and conclusions of the Court's judgment, including in particular its reasoning under Article 18 of the Convention, as recalled by the Ministers' Deputies on 22 September 2022.

8.6. The Assembly has highlighted, in its previous resolutions, the restrictive environment for civil society organisations. In this respect, the Assembly is shocked by the conviction of Mr Kavala's co-defendants in the Gezi trial – all renowned persons, including architects, intellectuals, prominent civil society activists, including the Director of the Council of Europe School of Political Studies – to 18 years of prison. The Assembly calls for their immediate release and for their charges to be dropped.

9. Concerning the independence of the judiciary:

9.1. The Assembly recalls that the European Commission for Democracy through Law (Venice Commission), in its 2017 opinion, had concluded that the constitutional amendments establishing a presidential system did not guarantee the separation of powers and the independence of the judiciary, notably due to the composition of the Council of Judges and Prosecutors.

9.2. Despite steps taken by the authorities – including the adoption of an Action Plan on Human Rights in March 2021 and the fourth judicial package in July 2021 – the authorities have not been able to address and redress some of the systemic issues which seriously undermine the functioning of the justice system:

9.2.1. The right to a fair trial (which represents 70% of the violations found by the Constitutional Court in individual application cases lodged since 2012) and, in particular, the right to a trial within a reasonable time (the violation of which was found in 90% of the rulings of the Constitutional Court in 2020 and 2021) should be secured. Noting that the Constitutional Court has launched a "pilot judgment procedure" and suspended these cases, the Assembly urges the authorities to take all necessary legal steps requested by the Constitutional Court to reduce the length of procedures.

9.2.2. In this context, the Assembly stresses the important role of the Constitutional Court in promoting the protection of fundamental freedoms, including the right to a fair trial, notably through the mechanism of individual applications, and calls for the strengthening of the Constitutional Court's independence. The Assembly urges the authorities to ensure more effective and systematic implementation of its rulings by lower courts and welcomes the co-operation established with the Council of Europe to find common solutions.

9.2.3. The Assembly also remains concerned about the situation in prisons and calls on the authorities to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and to authorise the publication of all its reports. It welcomes the commitment by the authorities to a zero-tolerance policy towards ill-treatment and torture, but nonetheless urges them to take more resolute and credible action to investigate thoroughly serious allegations of ill-treatment and torture. It also urges the authorities to pay attention to the situation of seriously ill prisoners, including former member of parliament Aysel Tuğluk.

10. Concerning the upcoming presidential and parliamentary elections scheduled in 2023:

10.1. The Assembly values the commitment of the Turkish people to democratic processes through their high level of participation in elections and a vibrant political scene.

10.2. The Assembly however remains very concerned by the ongoing crackdown on members of the political opposition, including the procedures seeking to lift parliamentary immunity (overwhelmingly of opposition parties), and more generally acts of violence suffered by opposition politicians which have put political pluralism and the functioning of democratic institutions at risk. The case against Canan Kaftancıoğlu, Head of the Republican People's Party (CHP) provincial branch of Istanbul, convicted to nearly five years in prison (and released under supervision), based on old tweets and for, *inter alia*, allegedly "insulting the President", and the ban on her participating in political life are further examples of this restrictive and punitive environment in which opposition members are operating.

10.3. The Assembly will closely follow the ongoing procedure related to the attempt to close the Peoples' Democratic Party (HDP) – which is the third largest party in the parliament – and to ban 451 HDP politicians from political life. The Assembly recalls that the "dissolution of political parties is a drastic measure which should only occur as a last resort". As already stressed in its Resolution 2376 (2021), "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 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".

10.4. The Assembly notes that the Turkish Parliament adopted, on 25 April 2022, amendments to the electoral law, regrettably without extensive consultations or debates and failing to reach a political consensus, as highlighted by the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) in their joint opinion (CDL-AD(2022)016) adopted in June 2022.

10.4.1. The Assembly welcomes the lowering of the electoral threshold from 10% to 7% – a long-lasting request from the Assembly – as well as new arrangements facilitating the participation of visually impaired persons in elections.

10.4.2. However, other provisions of this law are problematic: the Venice Commission raised concerns, *inter alia*, about the criteria required from political parties to qualify to stand for elections, which favour "larger and well-established political parties", and about the new composition of the district and provincial electoral boards: their judicial members will no longer be the three most senior judges in the province but determined "by drawing lots" from eligible judges. For the Venice Commission, this "potentially makes appointment more susceptible to political pressure and manipulation" in light of the limited safeguards in the judicial appointment system to ensure the independence of judges. This new regulation is also a major source of concern for the opposition.

10.4.3. Changes were also made in the legal provisions concerning the misuse of office in election campaigns; the Venice Commission recommended that "the President does not stand outside the party system but, rather, is part of it, there is no reason why s/he should not be subject to the restrictions in the same ways as other high public officials to prevent conflicts of interest and misuse of administrative resources".

10.4.4. In light of the recommendations made by the Venice Commission, the Assembly urges the Turkish authorities to proceed to the proposed changes or, at the least, to implement the legislation in a spirit that will be conducive to a level playing field. The electoral legal framework should ensure equal opportunities for all political players, and this will constitute an important criterion to assess the fairness of the upcoming elections.

10.5. Another essential component of political debates and elections campaigns is freedom of expression. However, there are serious concerns about ongoing restrictions and legal proceedings hampering the exercise of this right. Recalling its previous requests and the Venice Commission's 2016 opinion, the Assembly calls on Türkiye to, notably, amend Article 301 (Degrading Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State) and Article 125 (Insulting public officials), as well as to abrogate Article 299 (Insulting the President of the Republic) in accordance with emerging European consensus towards decriminalisation of defamation of the head of State, and taking into account the judgment of the Court in the *Vedat Şorli v. Turkey* case and the Court's case law.

10.6. In particular the overly broad interpretation of the anti-terrorism law has undermined freedom of expression and fundamental rights. The Assembly reiterates its concerns that such interpretation of the law has been used as a tool to stifle political debate and the activities of civil society. Drawing inspiration from the amendment of Article 7 of the Anti-Terrorism Law in October 2019, the Assembly encourages the authorities to amend further articles of the Anti-Terrorism Law and the Criminal Code which have led to violations of the right to freedom of expression, to clarify that the exercise of the right to freedom of expression does not constitute an offence, in the same way that Article 7 now states that expressions of thought that do not exceed the boundaries of reporting or for the purpose of criticism shall not constitute criminal activity.

10.7. Media play an important role in election campaigns. Freedom of media, however, remains a challenge. The Assembly notes that long-standing issues remain problematic, such as attacks against journalists, the control of media by the State and the use or withholding of advertising funds as a means to marginalise and criminalise media critical of the regime. The Assembly is concerned by the draft amendment of Article 217/A to the Turkish Criminal Code that would criminalise the dissemination of "false or misleading information" and lead to prison sentences. For the Venice Commission, such an amendment would amount to an interference with the freedom of expression which "would be neither 'necessary in a democratic society' nor proportionate to the legitimate aims of prevention of disorder and protection of national security, of health and of rights of others". Beside its potential detrimental impact, namely a chilling effect and increased self-censorship, this amendment could cause irreparable harm to the exercise of freedom of speech before elections. The Assembly is therefore very concerned

about the possible consequences of this legislation in view of the presidential and parliamentary elections planned in 2023 and urges the Turkish authorities, in light of the Venice Commission's urgent opinion of October 2022, not to enact this draft amendment to the Criminal Code.

10.8. The Assembly stresses that transparency and accountability are key for democracies and that transparency of party funding is important to ensure fair electoral competition. The Assembly regrets the lack of progress concerning the implementation of the recommendations of the Group of States against Corruption (GRECO) and urges the authorities to take action to increase transparency of party funding, to adopt a law on ethical conduct for members of parliament, to ensure transparency of the legislative process and to adopt measures to ensure the integrity of parliamentary members. The Assembly also recalls GRECO's previous concerns about the weakened judicial independence, which impacts on the fight against corruption.

11. The Assembly notes that the change of the political system adopted in 2017 – while being a sovereign right of any member State – has seriously weakened the democratic institutions in Türkiye and made the system of checks and balances dysfunctional and deficient. The Assembly expresses the urgent need for reforms to restore the full independence of the judiciary and effective checks and balances. The Turkish authorities need to ensure that all conditions will be met to guarantee free and fair elections, including the ability of the opposition to operate and journalists to work in an independent way. The Assembly remains at the disposal of the authorities to pursue a constructive dialogue. It resolves, in the framework of the monitoring procedure for Türkiye, to continue to follow the developments in the country concerning democracy, the rule of law and human rights.