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## 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)

Co-rapporteurs: Ms Ingebjørg GODSKESEN, Norway, European Conservatives Group, and Ms Nataša VUČKOVIĆ, Serbia, Socialist Group

### Summary

Turkey is currently confronted with the consequences of the ongoing war in Syria and the surrounding countries, hosting almost 3 million refugees, and continuous terrorist threats and attacks perpetrated notably by Daesh and the PKK, which are to be unequivocally condemned.

Regretting the collapse of the peace talks on the Kurdish issue in July 2015 and the subsequent escalation of violence in south-east Turkey, the Monitoring Committee is concerned about the serious allegations of human rights violations during these security operations and the human and legal consequences of the lengthy curfews. The Parliamentary Assembly should call on the Turkish authorities to carry out effective investigations and set up mechanisms to observe the human rights situation and issue credible reports.

In addition, the committee is seriously concerned about the stripping of the immunity of a large number of parliamentarians – mostly from the opposition –, numerous measures and abusive application of legal provisions restricting freedom of expression and of the media, and the lack of independence of the judiciary.

The Monitoring Committee thus concludes that these developments constitute a threat to the functioning of democratic institutions and the country's commitments to its obligations towards the Council of Europe. The Assembly should therefore closely follow developments in the country and invite Turkey to align its legislation and practices with Council of Europe standards.

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1. Reference to committee: Bureau decision, Reference 4201 of 22 April 2016.



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

1. Turkey has been under post-monitoring dialogue with the Parliamentary Assembly since 2004. In its [Resolution 1925 \(2013\)](#), the Assembly encouraged Turkey, a founding member of the Council of Europe and a strategic partner for Europe, to pursue its efforts to align its legislation and practices with Council of Europe standards and fulfil the remaining post-monitoring dialogue requirements. Turkey has continued to face a complex and adverse geopolitical situation with the war in Syria and in the surrounding countries and terrorist attacks on its territory. The ongoing conflict in Syria has brought further massive flows of refugees to Turkey. The Assembly reiterates its appreciation of the outstanding efforts made by the country since 2011 to host nearly 3 million refugees (of which 262 000 are in refugee camps), who are in need of accommodation, education and access to social and medical care. For over five years, Turkey has been implementing the “open door policy” to the Syrians who fled from the war environment in their country and, in compliance with its international obligations, has abided by the principle of *non-refoulement*. The Assembly expresses its appreciation of the measures taken by the Turkish authorities to improve the living conditions of Syrian refugees, in particular by allocating work permits since 15 January 2016. The Assembly also values the outstanding financial efforts of the State to address this issue, despite remaining problems, in particular the lack of access to any education for 400 000 Syrian child refugees.

2. In August 2014, the country had the first direct election of the President of the Republic. Parliamentary elections were organised on 7 June 2015, and early parliamentary elections were held on 1 November 2015. While the Justice and Development Party (AKP) secured a majority in parliament in November 2015, the Peoples’ Democratic Party (HDP) – a political party with a pro-Kurdish stance, which had previously entered parliament through the election of independent candidates and subsequently formed a party group – entered parliament for the first time as a political party, despite the 10% electoral threshold, that the Assembly has repeatedly asked be substantially lowered.

3. European Union integration remains a strategic objective for Turkey. In the context of the 2016 EU-Turkey Agreement on the migrant crisis, and the implementation of a roadmap towards liberalisation of the visa regime, the Assembly welcomes the recent ratification of Protocol No. 15 amending the European Convention on Human Rights (ETS No. 213); the Council of Europe Convention on Action against Trafficking in Human Beings (ETS No. 197); the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No. 198). The Assembly notes that European Union integration remains a strategic goal for Turkey. It therefore reiterates its belief that the opening of additional chapters, in particular Chapter 23 (judiciary and fundamental rights) and Chapter 24 (justice, freedom and security), would help consolidate the reform process and reinforce the action undertaken by the Council of Europe for Turkey to align its legislation and practice with Council of Europe standards. Relations between Turkey and the European Union, which should be strengthened, will be of great importance not only for the stability and prosperity of the two sides, but for the entire region.

4. Recent developments in Turkey pertaining to freedom of the media and of expression, erosion of the rule of law and the alleged human rights violations in relation to anti-terrorism security operations in south-east Turkey have, however, raised serious questions about the functioning of its democratic institutions. These findings are corroborated by recent reports adopted by several Council of Europe monitoring mechanisms, such as the European Commission for Democracy through Law (Venice Commission), the Group of States against Corruption (GRECO), and the Commissioner for Human Rights, which have highlighted concurring and serious concerns that Turkey should address without further delay.

5. The disclosure of the corruption cases on 17 and 25 December 2013 allegedly involving four ministers and the son of the then Prime Minister Mr Recep Tayyip Erdoğan, marked the beginning of changes in domestic political processes, in particular the adoption of restrictive legislation (amendments to the Criminal Code and the Code of Criminal Procedure in 2014 and Internal Security Act of March 2015) and enhanced control of the executive over the judiciary (amendments to the Law on the High Council for Judges and Prosecutor in 2014), the creation of special courts (“criminal peace judgeships”) in June 2014 and the adoption of Act No. 5651 on the Internet in March 2015, increasing the Telecommunications Directorate’s (TIB) capacity to block websites.

6. The Assembly regrets that the peace talks to address the Kurdish issue collapsed in summer 2015, putting at stake the process of enlarging the cultural and linguistic rights of the Kurdish community, initiated and advanced in the preceding period, including by its political representation in parliament after the 2015

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2. Draft resolution adopted by the committee on 23 May 2016.

parliamentary and early parliamentary elections. The breakdown of the peace talks in July 2015 led to increased violence, bomb attacks by the PKK and retaliation measures by the Turkish security forces, including curfews imposed since December 2015 in several districts in south-east Turkey in order to carry out security operations.

7. In this context, the Assembly is very concerned about the decision of 20 May 2016 by the Turkish Grand National Assembly to strip a large number of parliamentarians of their immunity from prosecution by temporarily suspending Article 83 (first sentence) of the Constitution, thus ruling out a case-by-case examination based on merit. Even though MPs from all political groups are concerned, the Assembly notes with concern that this decision disproportionately affects the opposition parties, in particular the People's Democratic Party, some of whose members are facing terrorism-related charges for statements they have made.

8. The Assembly recalls that parliamentary immunity should first and foremost enable elected representatives to work and express themselves without fear of harassment by the executive, the courts or political opponents. It is thus worried about the potential political consequences of this decision, which could damage parliamentary life and undermine the healthy political environment that Turkey needs to tackle today's challenges, including terrorist threats and the urgent need to solve the Kurdish issue by political and peaceful means. While there are allegations about the lack of independence of the judiciary, the Assembly urges the Turkish authorities to ensure that the cases brought against parliamentarians are handled in due compliance with Council of Europe standards on fair proceedings and trials and respect for freedom of expression, which Turkey has pledged to uphold.

9. In recent years, Turkey has faced massive and repeated terrorist attacks perpetrated by the so-called "Islamic State of Iraq and the Levant" (ISIL/Daesh), the "Kurdistan Workers' Party" (PKK) and the PKK-affiliated "Kurdistan Freedom Hawks" (TAK). These attacks caused hundreds of casualties in Ankara, Suruç, Istanbul, Bursa or Diyarbakır. In addition, the border city of Kilis has been targeted by shelling from Syrian territory. The Assembly unequivocally condemns these attacks and all terrorist action and violence perpetrated by the PKK, Daesh or any other organisation, which can on no account be tolerated. The Assembly stresses Turkey's right and duty to fight terrorism and address security issues in order to protect its citizens. It recalls, however, that those security operations must be carried out in line with international law, and in accordance with the principle of proportionality and necessity. The right balance between security and individual liberties must be found in Turkey.

10. The Turkish authorities are trying to keep a balance between freedom and security in the counter-terrorism operations in south-east Turkey, so as to protect citizens' right to life, which is the most fundamental right, and to ensure public security. Security operations have dramatically intensified in south-east Turkey since August 2015. The Assembly is very worried about the human consequences of the lengthy, round-the-clock curfews imposed in 22 districts, including Sur, Silvan (province of Diyarbakır), Nusaybin, Dargeait (province of Mardin), Sırnak Center, Cizre, Silopi, Idil (province of Sırnak) and Yüksekova (province of Hakkari). These curfews are affecting 1.6 million people and have resulted in the displacement of 355 000 people and in restrictions in access to water, electricity, education and health care, including emergency medical care, which has proved fatal for many residents. At least 338 civilians were reported dead by the Human Rights Foundation of Turkey as at 20 April 2016. According to the Ministry of the Interior, between 20 July 2015 and 13 May 2016, these operations resulted in 458 security officers being killed and 3 321 being wounded.

11. The legal basis for these repeated and lengthy curfews, and their compatibility with Council of Europe standards, have raised doubts. The Assembly expects Turkey to amend its legal framework in line with the Venice Commission opinion on this issue, to be adopted in June 2016.

12. Despite efforts deployed by the Turkish authorities to provide the displaced persons with food and accommodation, temporary jobs in State agencies and social aid, including compensation for lost income, the future of the displaced persons is uncertain. It seems that large parts of the areas under curfew were destroyed during and after the curfews, and during the subsequent clearance operations to remove buried explosive devices. The situation is especially regrettable in the ancient part of Sur, which was classified as a Unesco world cultural heritage site in 2015.

13. There have been allegations of serious human rights violations, notably in Cizre, which require due and effective investigation, including the collection of evidence before the areas are cleared. The Assembly believes that access to information through the increased presence of the media and accurate and unbiased media coverage of the situation in south-east Turkey, transparency of the procedures, as well as the prosecution of those who committed crimes or abuses of human rights, would contribute towards restoring

confidence. The Assembly notes that Turkey is one of the 116 countries offering an open invitation to the United Nations Special Procedures since 2001. The Assembly welcomes the recent visit of the United Nations Working Group on Enforced or Involuntary Disappearances in March 2016, of Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights, to south-east Turkey in April 2016 and the announced visit of representatives of the United Nations High Commissioner for Human Rights. It invites Turkey to consider setting up a fact-finding team, including independent experts and personalities trusted by all sides of Turkish society, to observe the human rights situation in the affected districts and publish credible reports. The Assembly further encourages Turkey to strengthen national independent human rights bodies so as to increase citizens' confidence in, and use of, these mechanisms.

14. The Assembly notes that administrative investigations have been initiated against 63 security personnel due to their misconduct during the operations in south-east Turkey. It expects the Turkish authorities to carry out effective investigations into all other allegations of misconduct by security personnel during these operations.

15. The adoption by the government of an emergency decree on expropriation on 21 March 2016 related to Sur (Diyarbakır) has raised concern among displaced persons. The lack of information about legal procedures, future urban construction projects and the right of displaced persons to return to live in their neighbourhoods poses many questions. Lack of transparent information fuels fears and insecurity among those concerned. The Assembly expects Turkey to take due care of the needs of the local population and ensure fair compensation for the losses suffered by civilians in case of expropriation procedures, which should be conducted in line with Council of Europe standards and taking account of property rights and their safeguards, as guaranteed by the European Convention on Human Rights.

16. The Assembly is also deeply concerned that the tensions and clashes could spread to other parts of Turkey. It urges the PKK to stop its terrorist attacks and lay down its arms. The Assembly also urges all those involved to resort to political means to stop the escalation of violence. The Turkish Parliament, which could provide a political forum for a peaceful resolution of the conflict, should consider putting in place mechanisms to reactivate the peace process, including a joint, cross-party parliamentary commission, or a "truth and reconciliation" commission that would allow for a fresh impetus and the healing of past traumas. Political solutions need to be discussed in parliament by all the political forces involved. A due system of parliamentary inviolability – which excludes statements inciting hatred, violence or the destruction of democratic rights and freedoms – is thus necessary to ensure that issues of public interest can be debated by elected representatives without fear of executive or judicial interference.

17. The Assembly is also worried by the lack of political dialogue in the region and the arrests and destitution of democratically elected mayors in south-east Turkey on charges of "aiding and abetting a terrorist organisation". The Assembly calls on political figures to refrain from acts and statements that could be perceived as further fuelling the tensions.

18. The announced preparation of legislation which would empower Governors to appoint new mayors also raises questions with regard to the respect of the provisions of the European Charter of Local Self-Government (ETS No. 122), which Turkey ratified in 1992. The Assembly reiterates its call on Turkey, in line with the post-monitoring dialogue requirement, to further introduce decentralisation in full respect of the territorial integrity of the country and to ratify the European Charter for Regional or Minority Languages (ETS No. 148) and the Framework Convention for the Protection of National Minorities (ETS No. 157), which could also contribute to restoring confidence among communities.

19. With regard to freedom of expression and of the media, the Assembly shares the concerns of the Council of Europe Commissioner for Human Rights about "the alarming scale of recourse to an overly wide notion of terrorism to punish non-violent statements and criminalisation of any message that merely coincides with the perceived interests of a terrorist organisation". The Assembly urges Turkey to fully comply with its obligations under all the human rights treaties it has ratified. The Assembly remains concerned about the extensive interpretation of the Anti-Terror Law, which contradicts Council of Europe standards and leads to the criminalisation and prosecution of human rights defenders and lawyers. It thus reiterates the call it made in 2013 for Turkey to review its definitions of offences related to terrorism and membership of a criminal organisation in line with the case law of the European Court of Human Rights.

20. Recalling its [Resolution 2035 \(2015\)](#) on the protection of the safety of journalists and of media freedom in Europe, the Assembly is concerned about the latest developments in the field of freedom of expression and freedom of the media, which should be understood in the light of the case law of the European Court of

Human Rights with respect to Article 10 of the Convention. There are concerns that changes in recent years in ownership of media companies serving business interests were motivated by, and have resulted in, significant political influence on the media.

21. The Assembly believes that the abusive application of Article 299 (Insulting the President of the Republic) – there were about 2 000 cases in two years against journalists and academics, but also ordinary citizens – is leading to an undue restriction of freedom of expression, considering the case law of the European Court of Human Rights with respect to Article 10 of the Convention. It recalls in this respect that defamation cases can be handled under civil law procedures or under the general provisions of Article 125 of the penal code on insult.

22. The Assembly is deeply concerned about the prosecution of investigative journalists following their investigations into topics of general interest. It should be possible to conduct domestic and foreign investigative journalism on all topics, and in all regions. The Assembly is appalled by the harsh prison sentences issued against these journalists. It expects the judicial institutions to take future decisions in the light of the well-established case law of the European Court of Human Rights, and the authorities to harmonise the legislation and its interpretation by domestic courts with Council of Europe standards. In this respect, the Assembly praises the important role played by the Constitutional Court of Turkey to secure freedom of expression and of the media, and individual applications to the Constitutional Court, which remain an effective mechanism to protect rights covered by the European Convention on Human Rights.

23. The Assembly remains concerned about the large number of websites blocked (110 000) and Twitter takedown requests. Blocking websites appears to be a highly disproportionate measure, which impedes the public's right to have access to, and to be provided with, information on the Internet, and negatively impacts media pluralism and free expression. It urges Turkey to upgrade its legal framework in line with the European Convention on Human Rights, in particular to review Act No. 5651 on the Internet, in line with the recommendations of the Venice Commission (to be adopted in June 2016) on the regulation of publications on the Internet and combating crimes committed by means of such publications.

24. The Assembly recalls that journalists and other media actors make an essential contribution to public debate and the opinion-making processes needed in a democratic society. Council of Europe member States have a positive obligation to ensure freedom of expression, protection of journalists and access to information, and to create the conditions to enable them to act as public or social watchdogs and inform the public on matters of general and public interest. Too many measures currently taken by the authorities, including investigations, prosecutions and the interpretation of the Penal Code by domestic courts, have a chilling effect. Attacks on journalists and media outlets, seizure of the media (which undermines property rights), pressure on journalists and punishment of journalists doing their job lead to self-censorship. The Assembly therefore urges Turkey to secure a favourable environment for freedom of expression as guaranteed by Article 10 of the Convention and to implement Recommendation CM/Rec(2016)4 of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors.

25. The Assembly believes that further improving the legal framework would help the country to overcome current restrictions to freedom of expression. In the light of the March 2016 opinion of the Venice Commission, the Assembly invites Turkey to:

25.1. repeal Article 299 of the Penal Code (Insulting the President of Republic);

25.2. repeal Article 301 (Degrading the Turkish Nation, the State of the Turkish Republic, the Organs and Institutions of the State) or amend it to ensure that all the notions used in it are clear, specific and predictable, and that its application is limited to statements inciting violence and hatred and that its interpretation by the domestic courts is in line with the case law of the European Court of Human Rights;

25.3. limit the use of Article 216 and resort to – proportionate – criminal sanctions only in cases of open incitement to violence, armed resistance or uprising, and not to punish harsh criticism against government policies. Moreover, it should only be applied in extreme cases of religious insults that intentionally and severely disturb public order, or calls for public violence, and not for mere blasphemy;

25.4. ensure a strict interpretation of Article 314 (Membership of an Armed Organisation) so as to limit it to cases which do not involve the exercise of the rights to freedom of expression and assembly, in compliance with the established criterion in the case law of the Court of Cassation that acts attributed to a defendant should show “in their continuity, diversity and intensity” his or her “organic relationship” with an armed organisation or whether his or her acts may be considered as committed knowingly and wilfully within the “hierarchical structure” of the organisation.

26. The Assembly encourages the Turkish authorities to address these proposals in the framework of the working group on freedom of expression created in 2016 by the Ministry of Justice and the Council of Europe, as part of Turkey's Action Plan to prevent violations of the European Convention on Human Rights. It expects the necessary amendments to the legislation to be prepared and adopted in consultation with the Council of Europe.

27. It urges Turkey to further co-operate with the Council of Europe and implement the recommendations by GRECO when carrying out the Judicial Reform Strategy, which aims at establishing a more reliable justice system, executing judicial services in an independent and impartial way and concluding trials within a reasonable time. It welcomes, as a first step, the adoption of the "Action Plan on Enhancing Transparency and Strengthening the Fight Against Corruption (2016-2019)" on 30 April 2016 to address these issues.

28. With regard to respect for the rule of law, the Assembly is very concerned about the recent statements made by the President of the Republic and ministers not to respect a decision of the Constitutional Court on the unlawfulness of the pretrial detention of investigative journalists, which was based on the case law of the European Convention on Human Rights. The Assembly urges Turkish officials to refrain from unduly interfering in the judiciary and challenging the rule of law. The Assembly appreciates however that all decisions of the Constitutional Court resulting from individual applications have been implemented.

29. Independence of the judiciary is guaranteed by the Constitution. A number of judicial packages have been launched since the constitutional referendum of 2010. They provide for stronger involvement of elected judges and prosecutors in the High Council of Judges and Prosecutors, which are positive moves. However, the recent developments and amendments to the Law on the High Council of Judges and Prosecutors in 2014 raised the issue of the lack of independence of the judiciary and undue interference by the executive.

30. GRECO noted in its March 2016 report that the appointment of the elected members of the High Council of Judges and Prosecutors in 2014, the use of disciplinary proceedings, including the dismissal of a number of members of the judiciary, and the potential influence by the executive within this body, have further triggered the debate concerning the role and the independence of the High Council of Judges and Prosecutors, which seriously undermines the trust of the public in its judicial institutions. The Assembly shares these concerns and calls on Turkey to:

30.1. implement GRECO's recommendations, in particular to strengthen the security of tenure of judges and to ensure that evaluations of the performances of judges and prosecutors, as well as disciplinary procedures against them, are free from undue influence;

30.2. further revise the Law on the High Council of Judges and Prosecutors to reduce the influence of the executive within the Council.

31. The Assembly also notes that in 2014 the fight against terrorism was extended to the Gülen Movement (the so-called "parallel State structure"), a former ally of the AKP. The purge to clear the State institutions of alleged Gülenist followers raises question in respect of procedural guarantees. This move particularly affected the judicial system, where the large number of transfers, arrests and detentions of judges and prosecutors could have a deterrent effect on the members of the judiciary.

32. The Assembly concludes that the latest developments pertaining to freedom of the media and of expression, erosion of the rule of law and the alleged human rights violations in relation to the anti-terrorism security operations in south-east Turkey constitute a threat to the functioning of democratic institutions and the country's commitments to its obligations towards the Council of Europe. The Assembly will continue to follow closely the issues raised in this report, in particular the situation in south-east Turkey with respect to human rights, on the basis of information provided by its Monitoring Committee. The Assembly recalls that the Turkish authorities are invited to fulfil the remaining requirements pertaining to the post-monitoring dialogue with the Parliamentary Assembly. It reiterates the readiness of the Council of Europe, in particular the Venice Commission, to support the Turkish authorities' efforts in this respect.

## B. Explanatory memorandum by Ms Ingebjørg Godskesen and Ms Nataša Vučković, co-rapporteurs

### 1. Introduction

1. Since 2004, the Parliamentary Assembly has been engaged in a post-monitoring dialogue with Turkey to monitor the implementation of a 12-point roadmap (see paragraph 23 of [Resolution 1380 \(2004\)](#) on the honouring of obligations and commitments by Turkey). The Monitoring Committee has since then been following developments in the country. The Assembly adopted [Resolution 1925 \(2013\)](#) on the post-monitoring dialogue with Turkey. A fact-finding visit was carried out by former Assembly rapporteur Ms Josette Durrieu in May 2015.<sup>3</sup> The Assembly observed the 2014 presidential election and the June and November 2015 parliamentary and early parliamentary elections. It has also been engaged in a continuous dialogue with the Turkish delegation to the Parliamentary Assembly – which was enlarged to 36 members in 2016, after Turkey became a major contributor to the Council of Europe.

2. Upon our suggestion, the Monitoring Committee organised a hearing on recent developments in south-east Turkey and the peace process on 9 March 2016. In a declaration adopted on the same day, the committee expressed its serious concern about recent developments in Turkey with respect to restrictions on media freedom and access to pluralistic information, challenges to the decisions of the Constitutional Court and the erosion of the rule of law, as well as the human rights situation of people living in south-east Turkey, who have been subject to military operations and curfews for several months.<sup>4</sup>

3. The Monitoring Committee also decided to propose a debate on the functioning of democratic institutions in Turkey during the June 2016 part-session, which was agreed by the Bureau of the Assembly on 22 April 2016. As co-rapporteurs, we decided to pay a fact-finding visit to the country from 9 to 13 May 2016 in order to discuss with the Turkish authorities the main issues highlighted by the committee, namely freedom of media and expression, the rule of law and the situation in south-east Turkey. We would like to thank the Turkish authorities, in particular the Chairperson of the Turkish delegation to the Assembly, Mr Talip Küçükcan, for facilitating the meetings and ensuring the excellent preparation of the visit. In the parliament, we had discussions with the Assembly delegation and the leaders or members of the four political groups, and Mr Yeneroğlu, President of the Committee on Human Rights Inquiry. We met the Minister of Foreign Affairs, Mr Çavuşoğlu and the Minister for Family and Social Affairs, Ms Ramazanoğlu, the Undersecretary of the Minister for European Affairs Ambassador Soysal, the Deputy Undersecretaries of the Interior and Justice Ministries, the Vice-President of the Constitutional Court, Mr Üstün, the Vice-President of the High Council of Judges and Prosecutors, and the Head of the European Union Delegation, Ambassador Haber. We had meetings with journalists from a variety of media outlets, as well as non-governmental organisations (NGOs). We travelled to Diyarbakır on 10 May to discuss the situation with the authorities, but also with representatives of civil society, displaced persons and lawyers.

4. In this report, we intend to highlight the current problematic issues raised in the Monitoring Committee, but also to draw lines of action where more action could be undertaken by the authorities in co-operation with the Council of Europe, so as to address these shortcomings. We understand that the current situation is at a critical point. We therefore deem it necessary to provide information about the context and political background, and the recent political developments that may have a significant impact on the functioning of democratic institutions. We will then look at the situation in south-east Turkey, address the issues of freedom of expression and of the media, and the issue of the rule of law.

### 2. Context and political background

#### ***2.1. Political landscape after the 2014 presidential election and the 2015 (early) parliamentary elections***

5. Since the adoption of [Resolution 1925 \(2013\)](#), there have been a number of significant political changes:

- the anti-corruption operation on 17 and 25 December 2013, in which four ministers and the son of the then Prime Minister Recep Tayyip Erdoğan were suspected of being involved, marked the beginning of new political processes, with the adoption of a series of laws pertaining to the tightening of internal

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3. Information note by the rapporteur on her fact-finding visit to Istanbul, Şanlıurfa and Ankara (30 April-4 May 2015) (rapporteur: Ms Josette Durrieu, France, SOC), [AS/Mon \(2015\) 18 rev.](#)

4. [Declaration](#) adopted by the committee on 9 March 2016.



security, restrictive conditions on the use of the Internet and changes in the structure of the High Council of Judges and Prosecutors. Alleged members of the “parallel State structure”, including within the police and the judiciary, have since then been continuously tracked;

- the country had the first direct election of the President of the Republic, which was won by Mr Erdoğan with 51.79% of the votes. Parliamentary and early parliamentary elections were held respectively on 7 June<sup>5</sup> and 1 November 2015. While the Justice and Development Party (AKP) secured a majority in parliament in November 2015 (with 49.50% of the votes and 317 seats), the Peoples’ Democratic Party (HDP) – a political party with a pro-Kurdish stance – entered parliament for the first time in Turkish history, despite the 10% electoral threshold; a threshold that the Assembly has repeatedly asked be substantially lowered.

6. As the AKP failed to form a coalition to set up a government after the June 2015 elections, early parliamentary elections were organised on 1 November 2015. According to the Assembly’s observers, while the elections were generally free and well administrated, the election campaign was “characterised by unfairness, given the serious restrictions on freedom of the media, the criminalisation of dissenting voices, the lack of effective and timely remedies provided by the Supreme Board of Elections (SEB) (in particular with respect to unfair media coverage) and judicial review of SEB decisions, and the context of fear prevailing in the country following the resumption of terrorist attacks, and the renewed fight against terrorism”.<sup>6</sup> The November 2015 elections enabled the AKP to recover a majority in the parliament and to appoint its Chairperson, Mr Ahmet Davutoğlu, Prime Minister. While the CHP gained 25.32% of the votes (134 seats), the HDP again managed to overcome the 10% threshold, gaining 10.76% (59 seats).

7. Following the disappointing results of the Nationalist Party MHP at the November elections (11.9% of the votes and 40 seats), leading members of the party challenged the leadership of Mr Bahçeli<sup>7</sup> and requested the organisation of an extraordinary party congress. As this proposal was dismissed by the party leadership, the matter was brought to court. One court decided to appoint trustees to organise a party congress on 15 May, while another court decided the contrary. While awaiting the decision of the Supreme Court of Appeal, dissidents resolved to gather on 15 May 2016 and collect signatures for the organisation of the party congress, but the leading figures (and potential candidates to the post of leader) were prevented by the police from attending this party meeting. A few days earlier, Mr Bahçeli had vowed to support the government (in particular in its fight against terrorism), raising speculation about his possible participation in a governmental coalition – a crucial issue ahead of the adoption of constitutional amendments on the lifting of immunities, the non-partisan President of the Republic or a new Constitution.

8. Our visit took place a few days after Prime Minister Davutoğlu announced, after meeting President Erdoğan, that he would, “by necessity”, step down from his position of Chairperson of the party and not re-stand for this position, thus opening the way for the organisation of an extraordinary congress of the AKP on 22 May 2016, which appointed the new chairperson of the party – and Prime Minister – Mr Binali Yıldırım, then Minister of Transport, Maritime and Communication. The decision to side-line Mr Davutoğlu was perceived as yet another move by the now directly-elected President of the Republic to play an active role in politics: since his election, the President has extensively used the competences granted to him by the Constitution, such as presiding the Council of Ministers, which was done only on rare occasions by his predecessors. He was also actively involved in the 2015 election campaigns, and is involved in daily politics and party business, in breach of the spirit of the Constitution and its Article 103, which requires the President to perform his function without bias.<sup>8</sup> This has led many to fear that the office of the President was being hijacked and the ground was being laid for a *de facto* presidentialisation of the regime, paving the way for the drafting of a tailor-made Constitution based on a presidential system, thus formalising a practice established by President Erdoğan.

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5. As a result of the June 2015 elections, the AKP remained the dominant political force in the country (40.87% of the vote and 258 seats) but has lost its 13-year-old parliamentary majority (276 seats). The Peoples’ Democratic Party (HDP), a party with a pro-Kurdish stance, surpassed the 10% threshold (13.12% of the votes, and 80 seats) by combining support both for the various minorities and the defence of social rights, and also by receiving protest votes, especially from citizens who oppose the possibility of a presidential system (see AS/Mon (2015) 18 rev, paragraph 52). The Republican People’s party CHP collected 24.95% of the votes (132 seats), while the Nationalist Movement Party MHP had 16.29% of the votes (80 seats).

6. [Doc. 13922](#), Observation of the early parliamentary elections in Turkey (1 November 2015), paragraph 40.

7. 543 MHP members, out of a total of 1 242 party delegates requested the organisation of an extraordinary congress to amend party regulations which do not allow extraordinary leadership congresses to be held.

8. Article 103 of the [Turkish Constitution](#).

9. During our visit, we discussed recent political developments after the early parliamentary elections of 1 November 2015. The main issue was the motion tabled by 316 AKP members to introduce a constitutional amendment that would, temporarily, suspend Article 83, first sentence, of the Constitution, which states that “A deputy who is alleged to have committed an offence before or after election shall not be detained, interrogated, arrested or tried unless the General Assembly decides otherwise”. Even though this measure applies to 138 deputies from different political parties,<sup>9</sup> it turns out that half of the 567 requests concerned HDP members, including for proceedings initiated on the basis of terrorist-related charges. Discussing the scope and extent of immunities is a legitimate debate in a democracy, one that has been debated in several Council of Europe countries, including Turkey, for a number of years, as well as by the Parliamentary Assembly.<sup>10</sup> While immunity should never be an obstacle to rendering justice,<sup>11</sup> it should provide adequate protection for parliamentarians, in particular those belonging to the minority, from undue procedures. In the current context, the overly wide notion of terrorism combined with concerns about the independence of the judiciary leads us to wonder whether the stripping of immunity may not affect disproportionately one political group in parliament, and produce negative consequences on political processes expected to address and solve the Kurdish issues. The HDP co-leader, Mr Demirtaş, warned that, with the adoption of the bill, there would be “a serious risk” of violence increasing in the country as a result and that many people would feel that the democratic political channels have been shut completely.<sup>12</sup>

10. The constitutional amendment was unanimously voted in the Constitutional Committee after a heated session. On 20 May 2016, the Turkish Parliament adopted – by 376 votes in favour – a constitutional amendment to strip 138 MPs of their immunity from prosecution.

11. Prosecuting members of parliament for statements touching on terrorist-related subjects needs to be assessed in the light of the case law of the European Court of Human Rights. In a previous case, the immunity of four parliamentarians (Leyla Zana, Hatip Dicle, Selim Sadak and Orhan Doğan), members of the pro-Kurdish Democratic Labor Party (DEP) – a predecessor of the HDP – were lifted in 1994 on charges of helping the PKK. They were eventually sentenced to jail, where they spent nine years until the European Court of Human Rights found Turkey guilty, which led to retrials.<sup>13</sup> Lifting the immunity of individual parliamentarians – who potentially face trials and pretrial detention on terrorism charges – was seen by some as a surrogate to the ban of the pro-Kurdish party. This option had been clearly ruled out by the authorities, especially after the judgment of the European Court of Human Rights of 12 January 2016,<sup>14</sup> which found that Turkey had violated the right to freedom of assembly and association by ordering the dissolution of the Party for a Democratic Society (DTP) in 2009 as the party had not distanced itself sufficiently from some members’ “indirect support of terrorism”.

12. Another issue discussed with parliamentarians was the revision of the Constitution. After the November 2015 elections, the AKP again launched work on a new Constitution and undertook to revise the military-inspired 1980 Constitution, as recommended by the Parliamentary Assembly in its [Resolution 1380 \(2004\)](#). A cross-party conciliation committee (2012-2014) failed to draft a new Constitution, yet approved 60 articles for a future Constitution. In March 2016, after consultation, the representatives of the three opposition parties

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9. 27 AKP deputies, 51 CHP deputies, 50 HDP deputies, 9 MHP deputies, and 1 independent deputy. Figures provided by the HDP, as at 21 April 2016.

10. See [Doc. 14076](#), “Parliamentary immunity: challenges to the scope of the privileges and immunities enjoyed by members of the Parliamentary Assembly” (rapporteur: Ms Liliana Paliuhovici, Republic of Moldova, EPP/CD).

11. In its last report, the Group of States against Corruption (GRECO) stressed that parliamentary immunity is perceived as a significant obstacle to bringing MPs to justice when suspected of corruption and required determined measures to be taken to ensure that parliamentary immunity is not used as a means to hinder or hamper criminal investigations against MPs suspected of corruption or other similar misconduct (Greco Eval IV Rep (2015) 3E, 17 March 2016).

12. [www.middleeasteye.net/news/immunity-vote-begins-332860045](http://www.middleeasteye.net/news/immunity-vote-begins-332860045).

13. [www.hurriyetdailynews.com/Default.aspx?PageID=238&NID=96395&NewsCatID=409](http://www.hurriyetdailynews.com/Default.aspx?PageID=238&NID=96395&NewsCatID=409).

14. *Party for a democratic society (DTP) and others v. Turkey*, Applications Nos. 3870/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 and 37272/10. [Decision of the Chamber](#) (not final, Turkey appealed the decision). See ECHR 009 (2016): “The Court found in particular that the reasons put forward by the Constitutional Court for ordering the DTP’s dissolution, one of the main political actors which had argued in favour of a peaceful solution to the Kurdish problem, could not be regarded as sufficient to justify the interference in its right to freedom of association. The Court did not identify any DTP political project that was incompatible with the concept of a democratic society; it also considered that the speeches made by its two co-presidents were not such as to justify this dissolution, in so far as they had not encouraged the use of violence, armed resistance or insurrection. It noted, however, that taking such a measure on the ground that the party had not openly distanced itself from the acts or speeches of its members or local leaders that could be interpreted as indirect support for terrorism could reasonably be held to have met a ‘pressing social need’. However, it considered that, having regard to the relatively limited political impact on public order or the protection of the rights and freedoms of others, this failure to act could not in itself amount to a reason justifying a sanction of such severity as the dissolution of an entire party.”

refused to further co-operate with the AKP on this issue, as the presidential system proposed by the AKP was non-negotiable. During our visit and discussions with the Assembly delegation and parliamentary groups, we were informed about a new initiative to introduce three to six amendments to the Constitution, which would allow the President of the Republic to be partisan – and keep ties with his political party, which is ruled out by the current Constitution. Should these amendments be adopted, the drafting of a new Constitution could be introduced at a later stage. We reiterated our hope that the Turkish authorities would take advantage of the expertise of the European Commission for Democracy through Law (Venice Commission) to ensure that future constitutional developments are in line with Council of Europe standards, in particular the separation of powers, and the checks and balances which are essential in a democracy to prevent abuse of power and breach of the rule of law and of fundamental rights.

## **2.2. Security and migration issues in the regional and international context**

13. Turkey has been confronted with numerous terrorist attacks on its territory since mid-2015, prompting the authorities to intensify the fight against terrorism and security operations in the south-east:

- deadly attacks were perpetrated by Daesh in Suruc in July 2015 (35 killed), Ankara on 10 October (103 killed and 400 injured) and Istanbul on 12 January 2016 (10 killed in the touristic Sultanahmet district), and 19 March 2016 on the commercial street of Istiklal (4 killed and 36 wounded), which prompted the Turkish security forces to escalate military operations against IS targets inside Syrian territory. More recently, on 1 May 2016, a Daesh militant exploded his car near the police headquarters in the southern city of Gaziantep, killing three policemen and wounding 21 people, including civilians;
- in Ankara, the “Kurdistan Freedom Hawks” (TAK) – a group affiliated to the “Kurdistan Workers' Party” – claimed responsibility for two attacks that killed dozens of people on 17 February 2016 (29 civilians and military personnel killed) and 13 March 2016 (35 people killed), as well as a bomb attack near Bursa’s Grand Mosque (14 persons wounded) aimed at “avenging the Turkish Government’s current security operations in the south-eastern provinces”, according to the TAK claims.<sup>15</sup>

14. In addition, over recent weeks, the city of Kilis, which borders Syria, has been targeted by rockets fired by Daesh forces from the Syrian territory, leaving 21 people dead (as at 9 May 2016) and more than 70 wounded.

15. As co-rapporteurs, we firmly condemn all terrorist attacks perpetrated against Turkish citizens, which can on no account be tolerated. The Turkish State has the right and the duty to protect its population from these deadly attacks, which aim to undermine democracy and the rule of law. Fighting terrorism in a global world requires international co-operation, and we welcome the recent ratification by Turkey of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198). At the same time, the fight against terrorism must be conducted in line with international standards.

16. The resolution of the Kurdish issue in Turkey cannot be separated from the situation of Kurds in neighbouring countries, in particular in northern Syria (where Syrian Kurds established self-administrated cantons) and in northern Iraq (where the PKK has based its headquarters). The current regional geopolitical context creates additional constraints on Turkey’s regional policy. Recently, Iran strengthened its regional role after the signature of the 14 July 2014 Joint Comprehensive Plan of Action on Iran’s nuclear programme. Russia became increasingly involved in the Syrian conflict and provided direct support to Syrian leader Bashar-el-Assad. The Russian-Turkish relationship also deteriorated after the shooting down of a military plane which was violating Turkish airspace in November 2015. The participation of Syrian Kurds in the Geneva talks with a view to resolving the Syrian conflict remains a disputed issue among anti-Daesh coalition partners. Turkey has intensified its air strikes on northern Iraq, northern Syria and southern Turkey to reportedly combat the “Kurdistan Workers' Party” and related Kurdish organisations in the region, as well as Daesh.

17. The ongoing conflict in Syria continues to fuel the massive flow of refugees reaching Turkey. The Assembly stresses the outstanding efforts made by the country since 2011 to host nearly 3 million refugees (of which 262 000 in refugee camps),<sup>16</sup> which are in need of accommodation, education and access to social

15. [www.hurriyetdailynews.com/pkk-affiliated-group-claims-suicide-attack-in-turkeys-bursa.aspx?pageID=238&nID=98600&NewsCatID=509](http://www.hurriyetdailynews.com/pkk-affiliated-group-claims-suicide-attack-in-turkeys-bursa.aspx?pageID=238&nID=98600&NewsCatID=509).

16. <http://data.unhcr.org/syrianrefugees/country.php?id=224>.

and medical care. The Assembly values the outstanding financial efforts of the country to address this issue, with over €7 billion spent on refugee-related issues, despite some remaining problems, in particular the lack of access to any education for 400 000 Syrian child refugees.

18. In 2015-2016, European Union member States were confronted with unprecedented numbers of refugees and migrants arriving in western Europe, notably via the eastern Mediterranean route, transiting through Turkey. On 18 March 2016, the EU-Turkey Agreement was signed to manage the migration crisis. As part of this agreement, and after the completion of 67 out of 72 benchmarks of its 2013 Visa Liberalisation Roadmap, the European Commission proposed, on 4 May 2016, to the European Parliament and the Council of the European Union to lift the visa requirements for Turkish citizens, on the understanding that the Turkish authorities would fulfil, as a matter of urgency and as they committed to do so on 18 March 2016, the five remaining benchmarks, notably on the implementation of the GRECO recommendations to fight terrorism, and the need to revise the anti-terror legislation – an issue that was raised by the Parliamentary Assembly in 2013 in the framework of its post-monitoring dialogue. The reinvigorated accession negotiations with the European Union prompted Turkey to ratify several Council of Europe conventions, including Protocol No. 15 amending the European Convention on Human Rights (CETS No. 213), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

19. Notwithstanding this adverse geopolitical context, recent domestic developments in Turkey pertaining to freedom of the media and of expression, erosion of the rule of law and anti-terrorism security operations in south-eastern Turkey raise serious questions about the functioning of its democratic institutions. These findings are corroborated by recent reports adopted by several Council of Europe monitoring mechanisms, such as the Venice Commission, GRECO and the Commissioner for Human Rights, which highlighted concurring concerns that Turkey should address without further delay.

### 3. Situation in south-east Turkey

20. Following the collapse of the peace talks in July 2015, violence escalated in south-east Turkey, leading to clashes between Turkish security and army forces, and the PKK. In order to conduct security operations and “eradicate the PKK”, the authorities have imposed, since August 2015, curfews in various districts which, as noted by Assembly’s election observers, were predominantly voting for the HDP. In retaliation, ditches and trenches were built in these areas under curfew and barricades were erected by youngsters first, and then possibly PKK militants. This situation depicts a change in the strategy of the PKK, which is relocating its guerrilla type of action from rural to urban areas, that it to say in highly populated areas, thus causing human loss when clashes occur. The Ministry of the Interior provided us with the latest figures, according to which, since 20 July 2015, 458 security officers have been killed and 3 321 wounded, while – in official terminology – “1 682 terrorists were counteracted and 450 captured alive”. Almost 4 500 weapons and 50 tons of explosives have been seized.<sup>17</sup> Today, Şırnak-Central and Nusaybin remain under curfew. In Sur and Yüksekova security operations have ended but the curfews, full-time search and control are maintained. In Cizre, Silopi and İdil, operations have ended, but the curfews remain in place from 21:30 to 04:30. In Silvan, Varto, Derik, Dargeçit and Bağlar security operations have ended and the curfews have been lifted.<sup>18</sup>

21. According to the figures gathered by the Human Rights Foundation of Turkey, there were 65 officially confirmed, open-ended and round-the-clock [all day] curfews in at least 22 districts of seven cities in south-east Turkey<sup>19</sup> between 16 August 2015 and 20 April 2016. Some 1.6 million people have been affected by these curfews, which resulted in 355 000 displaced persons.<sup>20</sup> Considering the number and the length of the curfews, the Monitoring Committee expressed serious concern about the compatibility of the legal framework governing curfews in Turkey with Council of Europe standards and requested the expertise of the Venice Commission, which is expected to be adopted in June 2016. The Commissioner for Human Rights, Mr Niels Muižnieks, also questioned the very weak basis (namely an administrative decision based on a law that does not even mention the word “curfew”) on which to impose such drastic restrictions of basic human rights, for a

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17. Information provided to the co-rapporteurs by the Ministry of the Interior, 13 May 2016.

18. Ibid.

19. These cities are as follow: Diyarbakır (35 times), Şırnak (10 times) ve Mardin (11 times), Hakkâri (5 times), Muş (once), Elazığ (once) and Batman (twice), in [Fact-sheet](#) on Declared Curfews Between August 16, 2015 and April 20, 2016 and Civilians who Lost Their Lives released by the Human Rights Foundation of Turkey (HRFT).

20. This figure is mentioned by NGOs (see HRFT Fact-sheet), based on a Statement by the Ministry of Health on 27 February 2016. The Ministry of interior calculated that 280 500 people were displaced (data provided to the co-rapporteurs by the Ministry of the Interior, 13 May 2016).

huge population and for months on end.<sup>21</sup> For Amnesty International, these daily 24-hour curfews lasting for over 90 days (at the time of our committee hearing) amounted to a form of collective punishment, forbidden by international law. In places visited by Amnesty International and which had previously been under curfew, it was clear that many of the people who died (the elderly, babies and women) could not have been involved in any fighting.

22. The Constitutional Court of Turkey rejected the request to annul the decision to impose curfews. The European Court of Human Rights, in its decisions of 13 January 2016, refused to indicate interim measures for lack of elements, decided to pursue its examination of applications to issue interim measures but relied on the government to take any necessary steps to ensure that physically vulnerable individuals could have access to treatment if they so requested.<sup>22</sup>

23. We decided to travel to Diyarbakır on 10 May 2016 to get a better picture of the current developments in south-east Turkey. We thank the authorities, in particular the Ministry of the Interior, for making this visit possible. The historical neighbourhood of Diyarbakır, called Sur, is currently under curfew. The city is also subject to regular, if not daily, attacks. On the day of our visit, a car transferring PKK militants was bombed, leaving 3 PKK militants dead, and 45 wounded, including 12 police officers. Likewise, we were shocked to learn that, on 12 May 2016, a truck loaded with 15 tons of explosives accidentally exploded in a rural area of the province of Diyarbakır, killing 16 civilians and wounding 23. The PKK claimed responsibility, saying that the explosion had been “accidental” after shooting erupted between the truck driver and the villagers. The explosives were meant to be transferred to another location. The HDP co-leader Mr Demirtaş demanded that the PKK apologise and condemned this explosion.<sup>23</sup>

24. We were not in a position to visit the site of Sur (which is still either under curfew or under investigation) but we understood from various sources that, in Sur, like in other places, severe damage caused by heavy artillery and bombardments in densely-populated areas had been observed. In Sur, there were 23 000 inhabitants in the neighbourhoods which have been under curfew. Only a thousand had decided to stay during the security operations. We also noted the extent and consequences of these security operations on civilians affected by the curfews (1.6 million people) or who had to leave the areas under curfew (355 000 people). Those who remained were subject to restrictions in access to water, electricity, education and health care, including emergency medical care, which proved fatal for many residents. According to data of the Ministry of the Interior, 30% of the 280 500 displaced residents<sup>24</sup> had returned home.<sup>25</sup>

25. In Diyarbakır, we spoke with the Governor, Mr Aksoy, and the Chief Prosecutor, Mr Solmaz. They briefed us on the current situation, the help provided by the State (food and accommodation, temporary jobs in State agencies and social aid, including compensation for lost income, etc.), and the investigations being carried out. We were also informed about the 10-point Anti-Terror Action Plan presented by the Prime Minister, Mr Davutoğlu, on 5 February 2016.<sup>26</sup> We had discussions with the Governor about the measures undertaken to assist the victims of the security operations. We were informed that the State provided rent allowances and financial aid,<sup>27</sup> free accommodation in guest houses, various assistance<sup>28</sup> and that financial aid (3.7 million Liras) had been granted to 1 564 tradesman who had been affected by the terrorist attacks. The Turkish Employment Agency had provided jobs for 3 000 persons from displaced families affected by the security operations.<sup>29</sup>

26. The adoption by the Council of Ministers of an emergency decree on expropriation on 21 March 2016 raised many concerns among displaced persons. It concerned notably Sur (Diyarbakır), enabling the expropriation of 6 292 plots of land (out of 7 714 plots – that is to say 82%). The remaining 18% belonged

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21. [Statement](#) of the Commissioner for Human Rights Nils Muižnieks on 14 April 2016, “Turkey: security trumping human rights, free expression under threat” (hereafter: “Statement of the Commissioner for Human Rights, 14 April 2016”)

22. ECHR 016 (2016), 13 January 2016.

23. [www.hurriyetdailynews.com/pkk-should-apologize-says-demirtas.aspx?pageID=238&nID=99309&NewsCatID=338](http://www.hurriyetdailynews.com/pkk-should-apologize-says-demirtas.aspx?pageID=238&nID=99309&NewsCatID=338).

24. This figure refers to the districts of Sur (province of Diyarbakır), Nusaybin, (province of Mardin), Sîrnak Center, Cizre, Silopi, Idil (province of Sîrnak) and Yüksekova (province of Hakkari).

25. Data provided to the co-rapporteurs by the Ministry of the Interior, 13 May 2016, based on the 280 500 displaced persons registered (see footnote above).

26. This plan vows to “re-establish public order, allow reconstruction of schools and health facilities, draft a new constitution, mobilise society to rent aid to those displaced, compensate all economic losses resulting from terrorism, broaden local administrations’ authorities with effective inspection and effective communication strategy in the region to maintain correct information flow”, cited by [bianet](#).

27. Approximately \$6 million had been disbursed.

28. Including in-kind donations, such as 19 670 packages of food aid, 11 000 loaves of bread aid and 9 750 blankets (data provided by the Ministry of the Interior).

29. Data provided by the Ministry of the Interior.

either to the Housing Development Administration of Turkey (TOKİ<sup>30</sup>) or were already owned by the State Treasury. Overall, at the end of this process, every plot of land in Suriçi<sup>31</sup> would be turned into public property.<sup>32</sup> We were informed by the Governor that this decree had been adopted to accelerate the reconstruction process and allow the return of the displaced families, and that the expropriated owners would receive one third of the value of their property on a bank account, and that the ownership title would be transferred to the State Treasury. This expropriation process was however challenged by a platform of local NGOs, which lodged a complaint in court. In the meantime, they feared that reconstruction work had already begun.

27. We were given rather contrasted evaluations by Ms Kışanak, Co-Mayor of the HDP-run Metropolis of Diyarbakır, and the NGOs working with displaced persons in the region. The Metropolitan Municipality of Diyarbakır provided assistance to 4 758 families (30 000 persons). The municipality had undertaken to register digitally all displaced families. The municipal authorities estimated that 70% of the building in the eastern part of the old city (namely the six neighbourhoods under curfews) had been fully or partly destroyed by the security operations. According to their figures, 45 000 people from Sur were displaced. Two thirds of the displaced were renting apartments, while one third was living with friends or relatives.<sup>33</sup> They also stressed that 95% of the population in the Sur district was poor.

28. In addition, serious allegations of human rights violations have emerged and have to be duly investigated. The investigation related to the killing of the President of the Bar Association and prominent human rights defender, Mr Tahir Elçi, in the street in Sur on 28 November 2015 is still to be completed.

29. The violence of the clashes, the extent and violence of the terrorist attacks and the retaliation measures by the security forces further exacerbated the relationships between communities. The proportionality of these measures raised question in a number of areas, such as the limitation of human rights, freedom of movement, property rights and the massive demolition of homes, etc. The displaced population, who fled the clashes and lost everything they had overnight, are still prevented from approaching the area. The emergency expropriation decree that was adopted on 21 March 2016 for the Sur area, was also challenged by the residents. In Sur, we met some displaced persons who were in need of information, help and support, and felt insecure about the future. Impunity was another source of concern; as was effective investigations into alleged abuses by security forces. These reports were in particular very serious in relation to Cizre, as reflected in the statement made by United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein.<sup>34</sup> Further to Zaid's statement, the Turkish Ministry of Foreign Affairs – who refuted that it had denied access to the United Nations representatives – invited the United Nations investigation commission to carry out research and investigations.<sup>35</sup>

30. The lack of information about legal procedures, future urban construction projects and the right of displaced persons to return to live in their neighbourhoods raise many questions and lack of transparent information fuels fears and insecurity among those concerned. The Assembly expects Turkey to take due care of the needs of the local population and ensure fair compensation for the losses suffered by civilians in case of expropriation procedures, which should be conducted in line with Council of Europe standards and taking account of property rights and their safeguards as guaranteed by the European Convention on Human Rights.

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30. TOKİ has special responsibility for housing, including social housing, and urban transformation projects. It targets the construction of 1 million housing units by 2023. See for [www.toki.gov.tr/en/index.html](http://www.toki.gov.tr/en/index.html).

31. Suriçi is the neighbourhood within the ancient walled city, with approximately 71 000 inhabitants.

32. See the report prepared by the Diyarbakır Metropolitan Municipality (30 March 2016) on Cultural Heritage Damage assessment report on Sur, Diyarbakır – aftermath of the armed conflict.

33. Data provided by the Diyarbakır Metropolitan Municipality.

34. Zeid Ra'ad Al Hussein had received "a succession of alarming reports about violations allegedly committed by Turkish military and security forces in south-east Turkey over the past few months, in particular in the town of Cizre during the extended curfew there from mid-December until early March. This relates to allegations of massive, and seemingly highly disproportionate, destruction of property and key communal infrastructure – including buildings hit by mortar or shellfire, and damage inflicted on the contents of individual apartments and houses taken over by security forces, but also allegations of arbitrary arrests, and of torture and other forms of ill-treatment. He also referred to reports quoting witnesses and relatives in Cizre which suggest that more than 100 people were burned to death as they sheltered in three different basements that had been surrounded by security forces". See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19937&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19937&LangID=E). A delegation of members of the Human Rights Association (IHD), the Human Rights Foundation of Turkey (TIHV), the Health and Social Service Workers Union (SES), the Diyarbakır Bar Association and the Agenda Child Association prepared a report on 31 March 2016 about the 79 days of curfew in Cizre (14 December 2015-12 March 2016).

35. <http://bianet.org/english/human-rights/174825-un-sends-investigation-commission>.

31. Access to information through the increased presence of the media and accurate and unbiased media coverage, transparency of the procedures, prosecution of those who committed crimes or abuses of human rights, but also the presence of observers to assess the human rights situation in the affected districts and release credible reports, would contribute towards restoring confidence. However, to resume the peace process, the PKK has to stop its terrorist attacks and lay down its arms. All those involved should resort to political means to stop the escalation of violence.

32. The Assembly is also worried about the lack of political dialogue in the region, the arrests and destitution of democratically elected mayors in south-east Turkey on the following charges: “aiding and abetting a terrorist organisation”, “disrupting the unity and territorial integrity of the State”, “membership of a terrorist organisation and making terrorist propaganda”, “acting as a human shield” and “providing logistical support to a terrorist organisation”.<sup>36</sup> The announced preparation of legislation<sup>37</sup> which would empower the Governor to appoint “trustees” and replace mayors suspected of committing terrorism-related crimes, also raised questions. The Assembly recalls that, as part of the post-monitoring dialogue, decentralisation needs to remain on the agenda – in compliance with the European Charter for Local Self-Government, which Turkey ratified in 1992 – as a possible response to Kurdish needs in the region, and in full respect of the territorial integrity of the country. It also reiterates its call on Turkey to ratify, in line with the post-monitoring dialogue requirement, the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities which could also contribute restoring confidence among communities.

#### 4. Restriction to freedom of expression and freedom of the media

33. In several of its resolutions, the Assembly stressed that freedom of the media and of expression remain problematic in Turkey.<sup>38</sup> These issues, despite positive steps highlighted in Assembly [Resolution 1925 \(2013\)](#), remain unaddressed, or have even worsened. The deterioration of the situation of media in Turkey was also reflected in the 2016 Freedom House report, where Turkey backslided to the 156th position (out of 199 countries and regions) (-6 places compared to 2015) and was considered as “not free”.<sup>39</sup> In the 2016 World Press Freedom Index released by Reporters Without Borders, Turkey ranks 151th (out of 180 countries) (-2 places compared to 2015).<sup>40</sup>

34. According to media organisations, 28 journalists (15 of them were convicted) and 10 media distributors were in prison in April 2016. Eighteen of these journalists and distributors are from the Kurdish media. They are charged with being affiliated to an [illegal] organisation according to the Anti-Terror Law and the Turkish Penal Code.<sup>41</sup> The main opposition party (CHP), for its part, stated that in 2015 “774 journalists were fired, 484 legal actions were taken by the judicial authorities, 200 press members and seven media companies were subjected to an investigation, 156 journalists had been detained, and court cases had been opened against 238 journalists”.<sup>42</sup> The Press for Freedom organisation reported that, in the first quarter of 2016 alone, among others, 894 journalists were dismissed from their jobs, 200 attacks were reported against journalists, including 21 against media institutions, and 12 journalists faced charges of “insulting the President”.<sup>43</sup> The authorities however denied that any journalists were in prison because of their journalistic activity, and the Platform for Civil Solidarity (an association close to the government) provided us with a list of 28 detained journalists, and their grounds for detention.

35. During our visit, we expressed our concern about freedom of the media and of expression. In Istanbul and Ankara, we met several journalists from various media. Echoing the concerns voiced by the Commissioner for Human Rights, too many measures currently taken by the authorities, including investigations, prosecutions and the interpretation of the Penal Code by domestic courts, have had a chilling

36. <http://bianet.org/english/politics/171844-davutoglu-announces-anti-terror-action-plan>.

37. [www.hurriyetdailynews.com/ankara-to-appoint-trustees-to-municipalities-in-southeast-turkey.aspx?pageID=238&nID=94221&NewsCatID=338](http://www.hurriyetdailynews.com/ankara-to-appoint-trustees-to-municipalities-in-southeast-turkey.aspx?pageID=238&nID=94221&NewsCatID=338).

38. See [Resolution 1925 \(2013\)](#) on the post-monitoring dialogue with Turkey, or [Resolution 2035 \(2015\)](#) on the protection of the safety of journalists and of media freedom in Europe, and [Doc 13664](#) (paragraphs 117-139).

39. This backsliding results from “the imprisonment of media personnel on fabricated charges related to national security, throttling of Internet service after major news events, severe restrictions on foreign journalists including imprisonment and deportation, recurrent violence against media personnel and production facilities, and abrupt changes in media regulations”, [https://freedomhouse.org/sites/default/files/FH\\_FT0P\\_2016Report\\_Final\\_04232016.pdf](https://freedomhouse.org/sites/default/files/FH_FT0P_2016Report_Final_04232016.pdf), p. 20.

40. <https://rsf.org/en/turkey>.

41. Independent Communication Network (BIA) Media Monitoring Report, April 2016, bianet.org.

42. [www.hurriyetdailynews.com/774-journalists-fired-156-detained-last-year-in-turkey-chp.aspx?pageID=238&nID=93699&NewsCatID=339](http://www.hurriyetdailynews.com/774-journalists-fired-156-detained-last-year-in-turkey-chp.aspx?pageID=238&nID=93699&NewsCatID=339), 11 January 2016.

43. Journalists Association, Press for Freedom project; Violation of freedom of press and media, January – April 2016.

effect. Attacks on journalists and media outlets, seizure of media (which undermines property rights), pressure on journalists and punishment of journalists doing their job leads to self-censorship. Recent changes in media ownership, with media outlets being bought by companies who run businesses with the State, were motivated by, and have resulted in, political influence on the media.<sup>44</sup> Our findings thus confirmed the concerns expressed previously by the Parliamentary Assembly,<sup>45</sup> in Ms Durrieu's previous information note,<sup>46</sup> and also substantiated by the high number of alerts (61) related to Turkey registered by the "Council of Europe Platform to promote the protection of journalism and safety for journalists".<sup>47</sup> Recent negative developments also concerned the deportation or entry denial of foreign journalists.<sup>48</sup>

#### 4.1. Restrictive measures to limit media freedom

36. The Assembly already previously deplored the blocking of Internet websites. Unfortunately, no progress was noted in that area; on the contrary, the number of blocked websites has increased significantly in the past months (there are currently 110 000). The Commissioner for Human Rights recalled that the country holds the world record for Twitter takedown requests.<sup>49</sup> The Assembly questioned the compatibility of the 2014 Internet law (Law 5651) with Council of Europe standards, as this Law broadened the capacity of the Telecommunication Communications Presidency (TIB) to block access to websites. We have also been informed that, in April 2015, an article (8.a) was introduced in Law 5651, allowing judges (on rare occasions) and the Prime Minister to require the TIB to block websites, and then submit the request to a judge who – if our information is correct – is usually inclined to grant such authorisation. Seventy separate blocking decisions have been issued since July 2015, without being published. The Assembly therefore requested the opinion of the Venice Commission on this new article, to be adopted in June 2016.

37. Another problematic issue relates to the withdrawal of TV channels from digital service providers. A few weeks before the November 2015 elections, several television stations – most of them critical of the government – were removed from four digital service providers, following correspondence from the Ankara Prosecutor's Office in connection with ongoing investigations into charges of supporting terrorism.<sup>50</sup> At the request of the Ankara Prosecutor, the independent Turkish broadcaster IMC TV was pulled off the air by Turksat (one of Turkey's largest broadcasters) on 26 February 2016<sup>51</sup> for allegedly "spreading terrorist

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44. [The 2016 Freedom House on Turkey](#) report notes that media ownership was mostly in the hands of companies operating in areas of such as energy, mining, and construction, and drew attention to the fact that some of these companies prospered during Mr Erdoğan's term of office via the TMSF (Saving Deposit Insurance Fund).

45. See [Resolution 2035 \(2015\)](#) on the protection of the safety of journalists and of media freedom in Europe.

46. AS/Mon (2015)18 rev.

47. Alerts pertaining to Turkish journalists or media amount to 38% of all alerts published since April 2015. The most recent alert refers to the sentence of two years of prison given, on 26 April 2016, to *Cumhuriyet* journalists Ceyda Karan and Hikmet Cetinkaya under Article 216.1 of the Criminal Code ("inciting hate and enmity" of a religious nature by including small versions of the cartoon showing Mohamed holding a "Je suis Charlie" sign under the headline "All is forgiven"). The court acquitted them of separate charges of "insulting religious values". They were awarded increased penalties due to the offence being committed through the media. The two journalists have since been subject to death threats. The complaint against the journalists was lodged by 1 280 persons, including President Erdoğan's daughters and son-in-law. The two journalists appealed the decision, and remained free until the decision of the court of appeal. See <https://rsf.org/en/news/turkish-journalists-get-two-years-reprinting-charlie-hebdo-cartoon>.

48. On 19 April, Volker Schwenck, a reporter for German State Television (ARD) was deported on the grounds that he was previously banned from entering the country. On the same day, an entry ban was imposed by the Turkish authorities on Russian journalist Tural Kerimov, working as the Turkey Bureau Chief for Sputnik news agency, one week after the Turkish Telecommunications Authority (TIB) shut down Sputnik's Turkish-language website citing "administrative measures". On 25 April 2016, American journalist David Lepeska (working for the *Guardian*, the *Atlantic* and *Al Jazeera*) was denied entry. On 28 April 2016, Taina Niemela, a Finnish writer, was deported from Turkey after being detained in the eastern province of Van, upon claims that she attended the funeral of some terrorist group members. The Dutch-Turkish journalist Ebru Umar, for her part, was arrested on 24 April 2016, briefly detained and prosecuted under Article 299 of the Penal Code (after she denounced an e-mail communication by the Turkish consulate in the Netherlands prompting Turkish citizens to report any insulting statements targeting the President of the Republic) and finally authorised to leave the country on 11 May 2016.

49. Statement of the Commissioner for Human Rights, 14 April 2016.

50. See [Doc. 13922](#), paragraph 28. The digital service providers Tivibu, Turkcell TV+, Digiturk and Turksat removed television stations on 27 September, and 2, 8 and 12 October respectively. The television stations affected included Samanyolu TV, SHaber, KanalTürk, Bugün TV and Mehtap TV. On 9 October, Samanyolu TV filed complaints to the SBE, the Radio and Television Council (RTSC) and the Supreme Board of Prosecutors and Judges. Another complaint was filed on 12 October by the MHP to the SBE on the same issue. The complaint filed by Samanyolu TV was rejected by the SBE without legal reasoning. On 21 October, two CHP members filed complaints with the RTSC, the Izmir Public Prosecutor and the Supreme Board of Prosecutors and Judges.

51. [www.reuters.com/article/us-turkey-media-broadcaster-idUSKCN0VZ2LM](http://www.reuters.com/article/us-turkey-media-broadcaster-idUSKCN0VZ2LM).



propaganda” for the Kurdistan Workers' Party (PKK). This further compromises the possibilities for the public to have access through television and radio to impartial and accurate information and to “allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself”, as noted by Mr Muižnieks.<sup>52</sup>

38. Further restrictions to media freedom include bans imposed on the media on subjects which, we believe, are of public interest, such as the information disclosed by Can Dundar and Erdem Gül on the major terrorist attacks in Turkey in recent months, or the situation in south-east Turkey. In addition, some events deemed to be critical to the authorities seem to be ignored by those media under governmental influence, and hardly mentioned by the remaining media, which apply self-censorship for fear of financial pressure, being closed down or handed over to trustees.

39. Finally, economic pressure is yet another tool used to curb media freedom. In a recent move, a prosecutor launched an investigation against Aydın Dogan, founder of the Dogan Group, whose interests range from real estate to energy and media (it owns the *Hürriyet Daily* and the CNN-Turkey channel), on charges of running a fuel-smuggling ring – which he denies.<sup>53</sup> In 2009, the Dogan Group had already been given a 3.8 billion lira (\$1.3 billion) tax fine.

40. In recent months, in the name of the fight against the so-called “parallel State structure”, there were several seizures of holdings, including media companies, belonging to groups or persons allegedly supporting the Gülen Movement. On 30 October 2015, on the eve of Election Day, a board of trustees was appointed to take over the Koza İpek Holding (owner of critical media outlets including the television channels Kanaltürk and Bugün and the newspapers *Bugün* and *Millet*). The authorities explained that this judicial decision followed tax investigations into the group and “strong suspicions of setting up firms and umbrella organisations, and carrying out illegal financial transactions to fund a terrorist organisation”.<sup>54</sup> This seizure sparked criticism from the Assembly’s ad hoc committee to observe the elections, which regretted that unclear provisions in the Anti-Terrorism Law and Press Law were excessively applied during the election period, and that a number of journalists and media outlets were prosecuted for “support of terrorism”.<sup>55</sup>

41. In March 2016, the private media group Feza Journalism, owner of *Zaman*, Turkey’s largest newspaper which is Fethullah Gülen’s media outlet, was seized. Parliamentary Assembly President Pedro Agramunt expressed his serious concern at a court decision entrusting to State-appointed trustees the control of the media group to which the newspapers *Zaman* and *Today’s Zaman*, well known for their independent opinions, belong. He urged the Turkish authorities to take all available measures to reverse the effects of these undue restrictions and refrain from further undermining freedom of expression and silencing critical voices,<sup>56</sup> a plea which has remained unaddressed.

42. The taking over of these media organisation resulted in a drastic change in editorial policy, in a sharp decrease in the number of readers,<sup>57</sup> and finally in the closure of the Koza İpek media outlets in March 2016 “due to constant losses and the depletion of capital”, according to an official statement.<sup>58</sup> It is thus undeniable that, despite the intention expressed by the Turkish authorities,<sup>59</sup> the takeover of these newspapers by trustees obstructed the regular functioning of the companies, including the broadcasting corporation in question. This was also confirmed by the Commissioner for Human Rights after his visit to Turkey in April 2016, where he stated that “the takeover of newspapers and TV stations by trustees was also a very dangerous precedent ... by law, these trustees are supposed to safeguard assets, but they changed editorial policy, causing the loss of readership and ruining the market value of the companies. This is an extremely worrying precedent which has already done irreparable harm to media freedom and pluralism in Turkey, even before a final court judgment”.<sup>60</sup>

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52. For more information, see the [Thematic factsheet \(April 2016\)](#) on freedom of expression and broadcasting media, published by the Council of Europe Platform.

53. [www.reuters.com/article/us-turkey-media-insight-idUSKCN0XA0MG](http://www.reuters.com/article/us-turkey-media-insight-idUSKCN0XA0MG).

54. Information provided by the Minister of Justice on 5 November 2015 to the Council of Europe Platform.

55. [Doc. 13922](#), paragraph 27.

56. [Statement](#) by Assembly President Pedro Agramunt, 5 March 2016.

57. *Bugün* had previously had a circulation of 110 000, which had fallen to less than 18 000 early 2016.

58. [www.reuters.com/article/us-turkey-media-gulen-idUSKCN0W34ML](http://www.reuters.com/article/us-turkey-media-gulen-idUSKCN0W34ML).

59. [Response](#) from the Turkish Government to the Council of Europe Platform to promote the protection of journalism and the safety of journalists, 25 November 2015.

60. Statement of the Commissioner for Human Rights, 14 April 2016.

#### **4.2. The case of Can Dundar and Erdem Gül**

43. In Istanbul, we met Mr Can Dündar. Mr Dündar and Mr Erdem Gül were arrested after publishing material showing that Turkey's National Intelligence Organisation (MIT) had been delivering arms to Syria. They spent 92 days in pretrial detention, until the Constitutional Court found their detention to be unlawful – a decision challenged by President Erdoğan and his ministers. They were sentenced to, respectively, five years and 10 months and five years in prison for “leaking State secrets”, a sentence which raises again the question of journalists’ rights to inform the public on matters of general interest. They remain free, pending their appeal trial and the recovery of the right to leave the country. They were acquitted of the “attempted coup” charges and espionage and “knowingly aiding the armed terror group FETÖ/PDY [Fethullahist Terrorist Organization/ Parallel State Structure]”. On the day of the verdict, Mr Dündar escaped an armed attack in front of the courthouse by an individual who accused him of being “a traitor”, which is another worrying sign – and a possible consequence of the stigmatisation of investigative journalists. At institutional level, we are very puzzled by the President of the Republic openly challenging a decision of the Constitutional Court (and even its existence), in breach of the principle of separation of powers which, for the Venice Commission, was a clear violation of Council of Europe principles.<sup>61</sup> However, we note – with satisfaction – that so far all decisions of the Constitutional Court following individual applications have been implemented.

44. This case and the harsh sentences handed down again raise the right of journalists to inform the public on matters of general interest. In a recent decision (*Görmüş and Others v. Turkey*<sup>62</sup>), the European Court of Human Rights emphasised the importance of freedom of expression with regard to matters of public interest. The Court held that the interference with the journalists’ right to freedom of expression, especially their right to impart information, had not been proportionate to the legitimate aim sought, had not met a pressing social need, and had not therefore been necessary in a democratic society; the interference had consisted in the seizure, retrieval and storage by the authorities of all of the magazine’s computer data, even data that was unrelated to the article, with a view to identifying the public-sector whistle-blowers. Lastly, the Court considered that this measure was such as to deter potential sources from assisting the press in informing the public on matters of general interest, including when they concerned the armed forces.

#### **4.3. Provisions of the Penal Code, and assessment by the Venice Commission**

45. We would find it relevant to upgrade the legal framework, as suggested by the Venice Commission in its recently adopted opinion on “The conformity with European human rights standards of Articles 216 (criminalisation of public incitement to hatred or hostility and degrading sections of the public), 299 (criminal liability for insults against the President of the Republic), 301 (criminalisation of the degradation of the Turkish Nation, the State of the Turkish Republic or the organs and institutions of the State) and 314 (criminalisation of the establishment, command or membership of an armed organisation) of the Turkish Penal Code as well as their application in practice”.<sup>63</sup> Further co-operation with the Council of Europe on the issue of freedom of expression would substantially contribute to alleviating the problems.

46. We enquired about the prosecutions initiated under Article 299 of the Penal Code (insult to the President and public officials) brought against journalists and academics, but also ordinary citizens. The Ministry of Justice provided us with extensive material on this question. While defamation does indeed exist in the criminal law of other member States, the magnitude of the problem in Turkey (almost 2 000 cases filed in two years) is by no means comparable to the situation in other countries, and might go well beyond the restrictions necessary in a democratic society that can be tolerated under Article 10 (freedom of expression) of the European Convention on Human Rights. We agree with the Commissioner for Human Rights that the

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61. “The Venice Commission expresses serious concern over statements made by the President of Turkey who has declared that he will not respect a recent judgment of the Constitutional Court of Turkey and has moreover threatened to abolish this Court. As a member State of the Council of Europe, Turkey is bound by the Council’s fundamental principles, that of democracy, the protection of human rights and the rule of law. These threats against the Constitutional Court of Turkey are in clear violation of the Council of Europe’s fundamental principles”, [Statement](#) on undue interference in the work of Constitutional Courts in its member States, adopted by the Venice Commission at its 106th plenary session (Venice, 11-12 March 2016).

62. Application No. 49085/07. [Decision](#) of the Court of 19 January 2016 (final). This case concerned the protection of journalistic sources, including when those sources were State officials highlighting unsatisfactory practices in their workplace. In 2007, the weekly newspaper *Nokta* published an article on the basis of “confidential” military documents about a system for classifying the media on the basis of whether they were “favourable” or “unfavourable” to the armed forces. The Court found a violation of Article 10.

63. CDL-AD(2016)002, Opinion on Articles 216, 299, 301 and 314 of the penal code of Turkey, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016) at the request of the Parliamentary Assembly. See [Resolution 2035 \(2015\)](#) on the protection of the safety of journalists and of media freedom in Europe.

application of Article 299 has become “abusive”,<sup>64</sup> and we follow the reasoning of the Venice Commission that the best option for the time being is to invite the Turkish authorities to repeal this article – given that “in case of unjustified attacks on the President, civil proceedings or only in the most serious cases, criminal proceedings based on the general provisions of the Penal Code concerning insult (art. 125 of the Penal Code) should be preferred to criminal proceedings based on Article 299”.<sup>65</sup>

47. We have taken due note of the arguments put forward by the Turkish authorities, which consider that Article 299 is necessary to protect the Head of State and that any insult against the President should be considered as a crime against the State.<sup>66</sup> We do not agree, however, with such a view, even though, as underlined by the Venice Commission, the Head of State should indeed remain protected from extreme forms of defamation, which is possible by using the civil and criminal law procedures that are meant to protect any citizen taking into account specifically established principles of freedom of expression with regard to public figures and political matters.<sup>67</sup>

48. We find it useful to quote here the Venice Commission: it appears that “investigations, prosecutions, arrests and detentions on remand based on allegations of insult against the President of the Republic, are not only limited to expressions merely containing profanity. The investigations and prosecutions of journalists in particular, for having insulted the President in press articles related to the December 2013 corruption probe, to the Syrian refugee crisis, and against an opposition party leader, who protested against government policies in the context of the fight against terrorist propaganda, which are all related to debates on important matters of public interest”. The Venice Commission stressed that “the use of offensive, shocking and disturbing words especially within the context of a debate on matters of public interest, are guaranteed by the freedom of expression. There must be room for a robust public debate in a democratic society and that the value placed by the Court’s case law on political speech, including criticism of public figures, is particularly high, while a clear distinction should be made between criticism and insult amounting to wanton denigration or gratuitous personal attack”, for which a proportionate sanction would not, in principle, constitute a violation of the right to freedom of expression”. However, the prison sentences pronounced by courts [even against minors] are “very likely to create a chilling effect on society as a whole and cannot be considered proportionate to the legitimate aim pursued, i.e. protecting the honour and dignity of the President”.

49. We encourage the Turkish authorities to take into account the European consensus highlighted by the Venice Commission (and the Parliamentary Assembly as well<sup>68</sup>), which indicates that States should either decriminalise defamation of the Head of State or limit this offence to the most serious forms of verbal attacks against them, at the same time restricting the range of sanctions to those not involving imprisonment. We would also like to echo Council of Europe Secretary General Thorbjørn Jagland’s call to the 47 Council of Europe member States to ensure that their national legislation on defamation “does not lead to self-censorship of the media and does not weaken public debate”.<sup>69</sup>

50. Considering Article 216 (“Provoking the Public to Hatred, Hostility, Degrading”), the Venice Commission recalled that there is little scope under Article 10.2 of the Convention for restrictions on political speech or on debate on matters of public interest. The Venice Commission does not disregard the problems and difficulties that occur in the context of the fight against terrorism. However, in a democratic society, “the actions and omissions of the government must be subject to close scrutiny not only by the legislative and judicial authorities, but also by public opinion. Thus, even in relation to expressions containing very harsh criticism against government policies and which are hostile in tone, or offend, shock or disturb, resorting to criminal proceedings (including on the basis of Article 216) should only be possible if those expressions amount to incitement to violence. Those are the essential factors to be taken into consideration when examining the

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64. The Venice Commission noted that, according to the Ministry of Justice, during former President Abdullah Gül’s seven year term in office, 1 359 lawsuits were filed, but only 545 of them were prosecuted and no one was arrested. In only the first seven months of Mr Erdoğan’s presidency (between August 2014 and March 2015), 236 people were investigated, with 105 indicted and eight formally arrested under Article 299. The number of files submitted to the Ministry of Justice for permission to launch a prosecution on insult to the President increased from 397 in 2014 to 962 in the first six months of 2015 alone. The Ministry of Justice authorised prosecution in 486 files in the first six months of 2015, as compared to 107 in 2014. CDL-AD(2016)002, pp. 13/14.

65. CDL-AD (2016)002, paragraph 70.

66. The Minister of justice, Mr Bozdag, indicated in an interview that “[a]ccording to the constitution, the president is the head of Turkey and is the representative of the nation’s unity. Therefore any insult, regardless whether it be against his post or person, should not be considered as a part of crimes against people and honour. As with many other countries in Europe, we found that it was more fitting to consider this as a crime against the State”.

67. CDL-AD(2016)002, pp. 16-20.

68. See [Resolution 1577 \(2007\)](#) “Towards decriminalisation of defamation”.

69. [Statement](#) of Mr Jagland on the occasion of World press freedom Day, 3 May 2016.

'necessity' of an interference with the right to freedom of expression in a democratic society".<sup>70</sup> Therefore Article 216 should not be applied to punish non-violent but harsh criticism of government policies, but "rather to prevent racist statements in particular against national minorities that create an explicit and imminent danger to public security. Article 216(3) should not be applied to punish blasphemy, but limited to cases of religious insult that intentionally and severely disturbs public order and calls for public violence".<sup>71</sup>

51. Concerning Article 301 ("Criminalisation of the degradation of the Turkish Nation, the State of the Turkish Republic or the organs and institutions of the State"), the Venice Commission, like the Parliamentary Assembly previously,<sup>72</sup> acknowledged that some progress has been made in Turkey in recent years in particular with respect to the application of Articles 301 and 314 (in conjunction with Article 220) of the Criminal Code. However, in the absence of a well-developed case law, the Venice Commission considered that Article 301 is not specific enough to meet the requirements of predictability. It recommended that this provision be redrafted and further amended in order to make all the concepts used in it sufficiently clear and specific to satisfy the principle of foreseeability and legality. The article should also be interpreted by the domestic courts in line with the case law of the European Court of Human Rights. However, the Venice Commission expressed its doubts "as to whether the protection of State organs against discredit could be considered as pursuing the legitimate aim of protecting the public order, in the absence of incitement to violence by the perpetrator". The Venice Commission also recalled that the tools of criminal law "should be used with restraint by the State in the area of political speech and questions of general interest, and that in the absence of incitement to violence, the imposition of an imprisonment sentence fails to meet the requirement of necessity in a democratic society".<sup>73</sup>

52. With respect to Article 314 ("Membership of an armed organisation"), the established criterion in the case law of the Court of Cassation that acts attributed to a defendant should show "in their continuity, diversity and intensity" his/her "organic relationship" to an armed organisation or whether his/her acts may be considered as committed knowingly and wilfully within the "hierarchical structure" of the organisation, should have a strict application. In paragraphs 6 and 7 of Article 220 ("Establishing organisations for the purpose of committing crimes") (in conjunction with Article 314), the sentence "although he is not a member of that organisation, shall also be sentenced for the offence of being a member of that organisation" should be repealed. If this sentence in paragraph 6 and 7 is maintained, the application of Article 220 in conjunction with Article 314 should be limited to cases which do not involve the exercise of the rights to freedom of expression and assembly.

53. The Venice Commission concludes that "all four articles have to be applied in a radically different manner to bring their application fully into line with Article 10 [of the Convention] and Article 19 of the International Covenant on Civil and Political Rights (ICCPR)". The Commission underlines that prosecution of individuals and convictions, in particular by lower courts, which have a chilling effect on the freedom of expression, must cease. This is not sufficient if individuals are in some cases finally acquitted by the Court of Cassation after having been the subject of a criminal prosecution for several years. Moreover, the Venice Commission underlines the importance of States' positive obligation to create a favourable environment where different and alternative ideas can flourish. We share the Venice Commission's views that "the different kinds of measures taken by the authorities, including investigations, prosecutions and drastic custodial measures such as detentions constitute interference with the right to freedom of expression".<sup>74</sup> We therefore urge the authorities to put an end to these practices which do not comply with Council of Europe obligations.

#### **4.4. Other problematic issues pertaining to freedom of expression: scope of the Anti-Terror Law**

54. In addition to problematic provisions of the Penal Code, the Anti-terror Law also raises questions with regard to freedom of expression, due to an overly wide notion of terrorism. We understand that the current context is very sensitive, but we believe that the narrowing of the scope of this law would contribute to preventing criminalisation of statements covered by Article 10 of the Convention (as understood by the European Court of Human Rights), without undermining the *raison d'être* of anti-terrorism legislation, which is about the positive obligation to protect the right to life for each citizen.

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70. CDL-AD(2016)002, p. 11.

71. *Ibid.*, p. 13.

72. See [Resolution 1925 \(2013\)](#), paragraph 7, and [Doc. 13160](#), paragraphs 151-157.

73. CDL-AD(2016)002, p. 24.

74. *Ibid.*, p. 9.

55. While counter-terrorist measures are needed at a time when Turkey is under severe and daily terrorist threats and attacks, we are concerned that the notion of terrorism may be used beyond what is necessary and proportional in a democratic society. While there is no international definition of terrorism, member States must remember that “State security and fundamental rights are not competitive values; they are each other’s precondition”, as stated by the Venice Commission.<sup>75</sup> member States have a positive duty to take measures to protect people within their jurisdiction which, however, must be taken within the framework set out by international human rights law.<sup>76</sup> In the framework of the post-monitoring dialogue, the Assembly had invited Turkey to align its legislation, in particular the Penal Code, with the case law of the European Court of Human Rights on freedom of expression and association.<sup>77</sup> In the light of recent developments, this question must now be addressed as a matter of urgency. Steps were taken in the past, in the framework of different legislative packages, to distinguish what is to be considered as support to terrorism or incitement to terrorist activity and what falls under the scope of Article 10 of the European Convention on Human Rights (freedom of expression). In practice however, we observe that there is an extensive interpretation of anti-terrorism legislation, which does not help to address the Kurdish issue, for example.<sup>78</sup>

56. The prosecution of academics who signed a peace declaration calling for an end to the military campaign in south-east Turkey and accusing the government of breaching international law (“We shall not be part of this crime!”) is another example that raises serious questions about the scope of the anti-terror law. Of the initial 1 128 signatories of the declaration, 495 academics are under investigation. On 14 January 2016, the police reportedly briefly detained 27 of them. The Council of Europe Secretary General issued, on 15 January 2016, a statement expressing his concern about these arrests.<sup>79</sup> Four petitioners (Esra Mungan, Muzaffer Kaya, Kivanç Ersoy and Meral Camcı) were arrested and detained on 16 March 2016 on charges of “terrorist propaganda” (Article 7/2 of the Anti-Terrorism Law). The prosecutor in the first hearing decided to drop the charges of terrorism, and considered launching an investigation under Article 301 of the Penal Code (insulting the State) – subject to the authorisation of the Minister of Justice. In the meantime, the four academics were released on 22 April 2016. Disciplinary and criminal proceedings had been launched against other petitioners for a statement calling for an end to violence, which, for the Commissioner for Human Rights, fell within the boundaries of free speech, whether one agreed with their message or not.<sup>80</sup>

57. We are also concerned that human rights defenders advocating peaceful solutions are targeted by smear campaigns. In Diyarbakir, we enquired about the investigation into the killing of the Head of the Diyarbakir Bar Association and prominent human rights defender, Tahir Elçi, who was shot on 28 November 2015. We were assured by the Chief Prosecutor that the investigation was ongoing, although his lawyers had complained about not having access to his file and the evidence, which had been ignored by the investigators. The circumstances remain unclear, with police forces and PKK militants involved in the fighting (including shooting) in the vicinity of the place where Mr Elçi was staying, a few moments after he made a call for a peaceful resolution of the Kurdish issue.

58. We are also concerned about information received concerning the arrest of two Turkish lawyers, Ms Ayşe Acinikli and Mr Ramazan Demir on charges of “membership of an illegal organisation” (i.e. the Kurdistan Workers’ Party (PKK)), reportedly for events that took place between 2011 and 2014. They have been questioned about interviews they gave in the media, complaints they lodged before the European Court of Human Rights and visits to their clients. The reasons behind the alleged offences that led to the searches and arrests were not disclosed. To date, the case file on the arrests remains confidential pursuant to Article 153.2 of the Turkish Criminal Code Procedure (No. 5271). They have been held in pretrial detention since 22 March 2016.<sup>81</sup>

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75. CDL-AD(2006)015.

76. CDL-AD(2010)022, Report on counter-terrorism measures and human rights, adopted by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010). This report was proposed following a request made by the Parliamentary Assembly in 2008, in the context of concerns raised by draft legislation with regard to counter-terrorism in the United Kingdom.

77. [Resolution 1380 \(2004\)](#), paragraph 23.6, calls on Turkey to “complete the revision of the Criminal Code, with the Council of Europe’s assistance, bearing in mind the Assembly’s observations on the definitions of the offences of insulting language and defamation, rape, honour crimes and, more generally, the need for proportionality arising from the European Court of Human Rights’ case law on freedom of expression and association”.

78. The debate on the lifting of parliamentary immunity started in this context, encompassing statements of members of parliament who were being prosecuted on charges of terrorism.

79. CDL-AD(2016)002, p. 8.

80. Statement of the Commissioner for Human Rights, 14 April 2016.

81. <https://www.fidh.org/en/issues/human-rights-defenders/turkey-judicial-harassment-of-nine-lawyers-members-of-the-association>.

59. The Assembly also notes that, in the framework of the fulfilment of the 72 benchmarks for visa liberalisation, the European Commission required Turkey to “revise – in line with the ECHR and with the European Court of Human Rights case law, the EU *acquis* and EU member States’ practices – the legal framework as regards organised crime and terrorism, as well as its interpretation by the courts and by the security forces and the law enforcement agencies, so as to ensure the right to liberty and security, the right to a fair trial and freedom of expression, of assembly and association in practice”.<sup>82</sup> This issue gave rise to a lot of controversy in the EU-Turkey negotiations, as President Erdoğan and the then EU Minister Volkan Bozkir ruled out any changes to the Anti-Terror Law.

## 5. Functioning of the judiciary

60. In its [Resolution 1925 \(2013\)](#), the Assembly highlighted the many steps taken by the AKP government in the last few years to reform the justice system and bring it into line with Council of Europe standards. However, in the two last years, and especially after the disclosure of the alleged corruption cases in December 2013, which highlighted the alleged role of four ministers and the son of the then Prime Minister Mr Erdoğan, the Monitoring Committee has observed worrying developments with respect to the rule of law and the independence of the judiciary. This bolstered the perception that the justice system is State controlled, as shown by the adoption of amendments to the Turkish Criminal Code and Code of Criminal Procedure and, in particular, the restructuring of the Supreme Council of Judges and Prosecutors:

- the amendment to Article 116 of the Code of Criminal Procedure. The expression “reasonable doubt” was changed to “strong doubt based on concrete evidence” on 21 February 2014, at the time of the corruption investigations, then changed back to “reasonable doubt” on 2 December 2014 before the police operation on 14 December 2014;
- the amendment to Article 153 of the Code of Criminal Procedure on the defence counsel’s access to preliminary procedural files, adopted by the parliament on 2 December 2014 in its Omnibus Act;
- the creation, on 18 June 2014, of the system of “criminal peace judgeships”, conferring on them sole authority for taking decisions on “questions associated with investigations and appeals against decisions”, especially decisions on custody, arrests, property seizures and search warrants – since these decisions could not be appealed before a higher court.

61. During our visit, we addressed the issue of the functioning and the independence of the judicial system. We were informed about assessments and declarations by the Bureau of the Consultative Council of European Judges (a Council of Europe consultative body), the Commissioner for Human Rights, the Venice Commission and GRECO. They share concerns about the independence of the judiciary due to the latest changes in the Turkish Criminal Code and Code of Criminal Procedure, the restructuring of the Supreme Council of Judges and Prosecutors and the creation of “criminal peace judgeships” in 2014, in the aftermath of the disclosure of the alleged corruption cases in December 2013. We discussed these issues with the Turkish authorities, as well as the Association of Judges and Prosecutors (Yarsav, a member of the International and European Association of Judges) and another association, the Platform for Unity in the Judiciary, which had differing views on this matter.

### 5.1. Need to strengthen the independence of the judiciary

62. There is mounting concern about the lack of independence of the judiciary, which was echoed by the Bureau of the Consultative Council of European Judges on 12 June 2015 following the suspension and arrest of Judge Özçelik and Judge Başer<sup>83</sup> and the declaration of the Venice Commission adopted at its meeting on 19 and 20 June 2015,<sup>84</sup> in which it called on the Turkish authorities to review the measures taken against the judges and prosecutors concerned; further revise the Law on the High Council of Judges and Prosecutors to reduce the influence of the executive within it; outlaw any interference by the High Council with pending cases; and provide judges with legal and constitutional guarantees against transfers against their will, except

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82. The Head of the EU Delegation, Ambassador Haber, explained that “the Turkish notion of terrorism is much wider than other countries’. For example, people indicted of terror crime in Turkey can be counted as [using] freedom of expression. And then this person under visa liberalisation can go to Europe and can apply for asylum and most probably be accepted. This is not the only concern but just an example [of] why we need this kind of harmonisation”, [www.hurriyetdailynews.com/expert-level-talks-ongoing-in-brussels-to-overcome-terror-impasse-with-turkey-eu-envoy.aspx?pageID=238&nID=99141&NewsCatID=510](http://www.hurriyetdailynews.com/expert-level-talks-ongoing-in-brussels-to-overcome-terror-impasse-with-turkey-eu-envoy.aspx?pageID=238&nID=99141&NewsCatID=510).

83. Comments by the Bureau of the CCJE on letters sent by various judges and international, European and national associations of judges to the Council of Europe and to its Consultative Council of European Judges concerning, *inter alia*, the suspension and arrest of Judge Özçelik and Judge Başer in Turkey, CCJE-BU(2015)5, 12 June 2015, p. 6.

in cases of reorganisation of the courts. During our meetings, we noted that the expected reform of the Supreme Court of Cassation and the Council of State, which would lead to the decrease, by half, of the number of its members, fuelled further concern about the selection of the judges who would remain in these bodies, and the independence of these institutions in the future.

63. In its March 2016 report, GRECO examined corruption prevention in respect of members of parliament, judges and prosecutors. It provided a useful analysis of the structure and functioning, but also the complex internal procedures, related to transfer, promotion and disciplinary measures against judges and prosecutors, that are likely to cast a shadow on the independence of the judiciary. In particular, the role of the Minister of Justice (even if limited, according to the statutes of the High Council of Judges and Prosecutors) and, more generally, of the executive, remains a source of concern, and raises suspicion of the executive's interference in the judiciary. The report highlights that the appointment of the elected members of the HCJP in 2014, the use of disciplinary proceedings, including the dismissal of a number of members of the judiciary, and the potential influence of the executive on this body, has further triggered the debate concerning the role and the independence of the HCJP, which seriously undermines the trust of the public in its judicial institutions. The recommendations issued by GRECO tackle the lack of independence of the judiciary and call on Turkey to implement the recommendations, in particular to strengthen the security of tenure of judges and to ensure that evaluations of the performances of judges and prosecutors, as well as disciplinary procedures against them, are free from undue influence.

64. We were also informed by various authorities that the State continued to “purge” the system of alleged members of the Gülen Movement, a former ally of the government, which was later labelled a terrorist organisation by Turkey. This affects in particular the police and the judiciary and has led to a number of prosecutions, transfer of personnel, and disciplinary procedures against these alleged members, which leaves us with a number of questions.

65. The Commissioner for Human Rights pointed out that the fight against this presumed terrorist organisation within the judiciary may have weakened its independence.<sup>85</sup> “In this respect, we had worrisome information from Yarsav that 680 judges are currently being investigated for their alleged links to the ‘parallel State structure’, based on the decisions they took as judges and prosecutors” (see for example the suspension and arrest of Judge Özçelik and Judge Başer, supra). “Fifty-three judges were standing trial due to their activity and 300 judges and prosecutors were being investigated on the basis of comments posted on social media.” Yarsav also pointed out that 6 000 judges and prosecutors had been transferred these past two years, while the Platform for Unity in the Judiciary (a government-sponsored platform created in 2014 before the elections of the elected members of the HSYK, which won the majority of the seats) recalled that 1 500 judges and prosecutors are usually moved on a yearly basis.

## **5.2. Challenges of the Constitutional Court decisions**

66. The Assembly has praised on various occasions the role played by Turkey's Constitutional Court to uphold fundamental rights; in particular thanks to the mechanisms of individual appeals to the Constitutional Court, which were introduced in Turkey by an amendment to the Constitution in 2010. The decisions resulting from this process have on several occasions been discussed, if not challenged by the President of the Republic. Recently, the Constitutional Court was fiercely criticised by Mr Erdoğan after the court decided, on 25 February 2016, to release *Cumhuriyet* Editor-in-Chief, Can Dündar, and Ankara Office Chief, Erdem Gül (see supra) from pretrial detention. The Constitutional Court ruled that, in the light of the case law of the European Court of Human Rights, Mr Dündar and Mr Gül's rights had been violated, and that the earlier ruling on their arrest lacked sufficient justification. President Erdoğan vowed he would continue to stand against the top court's verdict in line with his presidential duty to protect the Constitution.<sup>86</sup> The Venice Commission expressed its “serious concern over statements made by the President of Turkey who has declared that he will not respect a recent judgment of the Constitutional Court of Turkey and has moreover threatened to abolish this Court. As a member State of the Council of Europe, Turkey is bound by the Council's fundamental

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84. The declaration referred to the dismissal, by the High Council of Judges and Prosecutors (HSYK), of the prosecutors who led the investigations into corruption cases in December 2013, the arrest of judges Özçelik and Başer, the suspension of the prosecutors who gave the orders to stop and search lorries bound for Syria, and the authorisation given by the HSYK for their arrest. Venice Commission [Declaration](#) on Interference with Judicial Independence in Turkey, adopted on 20 June 2015.

85. Statement of the Commissioner for Human Rights, 14 April 2016.

86. President Erdoğan said that he was “responsible for monitoring the orderly and harmonious work of State bodies, the implementation of the constitution and representing the unity of the State and the people of the Republic of Turkey. Those who would exceed the boundaries of its authority will have to face [him]”.

principles, that of democracy, the protection of human rights and the rule of law. These threats against the Constitutional Court of Turkey are in clear violation of the Council of Europe's fundamental principles".<sup>87</sup> During our discussion at the Constitutional Court, we were however pleased to learn that all of the decisions issued following individual applications had been implemented.

### 5.3. The issue of the "criminal peace judgeship"

67. We had the opportunity to meet the Deputy Chief Prosecutor of Ankara and four "criminal judges of peace" to discuss this newly-created institution, which raises some questions.

68. As noted by the previous rapporteur,<sup>88</sup> the "criminal judges of peace" ("super judges") with extended powers were created in June 2014, in the wake of the "fight against the parallel State". During our meeting with four criminal judges of peace, it was explained that these judges review prosecutorial acts and administrative acts. They deal notably with cases of defamation and publication on, and blocking of websites. They can decide on the launch of investigations (based on "reasonable suspicion") and pretrial detention (based on "strong suspicion") for crimes that can be punished by at least two years of imprisonment. They combine the function of investigative judges and "judges of the liberties", deciding on arrests, seizures, wiretaps and searches, pretrial detention and release from pretrial detention. These judges are appointed by the High Council of Judges and Prosecutors.<sup>89</sup>

69. The decisions of "criminal judges of peace" can be appealed to another criminal peace judgeship, the ruling being thus issued by another criminal judge of peace, which raises question about fair process. As an example, Mr Dundar explained that they appealed their pretrial detention, in vain, to ten different criminal judges of peace, before being released after the decision of the Constitutional Court (which referred to the case law of the European Court of Human Rights). We understood that these courts act as "closed circuit" courts. We fear that this institution might be considered as "special jurisdiction", which would be problematic, after Turkey abolished the special courts in 2010, which were dealing with the so-called "coup cases" and subsequent mass trials (Ergenekon, Bayloz, etc.), which later proved to have been fabricated.<sup>90</sup>

70. "Criminal judges of peace" consider that their monitoring of the prosecutorial and administrative acts provide the necessary procedural safeguards, taking into account the case law of the European Court of Human Rights. The Constitutional Court confirmed, in 2014, the constitutionality of Law 5235 and its appeal procedure.<sup>91</sup> However, upon his return from Turkey, the Commissioner for Human Rights pointed out that a number of problematic measures had been taken by "criminal judges of peace". While they were supposed "to improve the protection of human rights in criminal proceedings", there were "strong indications that these judicial formations may be having exactly the opposite effect, and seemed to have caused many violations in their own right".<sup>92</sup> An opinion of the Venice Commission on this judicial institution would be welcome.

71. In conclusion, the Assembly urges Turkey to further co-operate with the Council of Europe, and notably take account of the recommendations by GRECO when implementing the Judicial Reform Strategy, which aims to establish a more reliable justice system, to execute judicial services in an independent and impartial way and to conclude trials within a reasonable time. In this respect, we welcome, as a first step, the adoption

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87. [Declaration](#) adopted by the Venice Commission on undue interference in the work of constitutional courts in member States at its 106th plenary session (Venice, 11-12 March 2016).

88. AS/Mon (2015) 18 rev.

89. For Amnesty International, but also for a number of our interlocutors, criminal judges of peace are perceived as being close to the executive, in the context of the reshuffling of the judicial institutions after December 2013, and the politically motivated appointments and transfers of judges and prosecutors. See Amnesty international [country report](#) on Turkey 2015/2016. The Constitutional Court, in its decision of 14 November 2014, dismissed however similar allegations raised in the constitutional challenge, saying that it cannot be alleged in objective terms that such judges are not impartial.

90. On 21 April 2016, the Supreme Court of Appeal revoked the decision on the Ergenekon Case with 275 suspects on grounds of non-compliance with both procedural and substantive law. It considered "not being able to submit concrete evidence to prove the Ergenekon Organisation's existence", a reason to annul the decision on substantive grounds. Unlawful wiretapping and searches as well as declarations of anonymous witnesses and wiretapping of MİT (National Intelligence Agency) members have been considered procedural revocation grounds. <http://bianet.org/english/law/174095-supreme-court-of-appeal-annuls-ergenekon-decision>.

91. The Constitutional Court, in its [judgement on 14 November 2014](#), unanimously rejected the application for annulment of Article 10 of Law No. 5235 on the establishment of a criminal judiciary of peace; and, by a majority, rejected the application for annulment of sub-paragraphs (a) and (b) of Article 268/3 of Law No. 5271 on the procedure of appeal against the rulings of these judiciaries.

92. Statement of the Commissioner for Human Rights, 14 April 2016.



of the “Action Plan on Enhancing Transparency and Strengthening the Fight Against Corruption (2016-2019)” on 30 April 2016 aimed at addressing these issues. We were not able, however, at this stage, to examine it in detail.

## 6. Concluding remarks

72. This report has identified a number of challenges Turkey is currently facing due to the unstable geopolitical context, terrorist attacks that we strongly condemn, and the refugee crisis. We recall that Turkey is a founder member of the Council of Europe, and remains a strategic partner for Europe. Therefore the Turkish legislation and legal practices in force are expected to comply with Council of Europe standards in the fields of democracy, human rights and the rule of law.

73. The terrorism and security operations have led to enormous suffering by civilians. There is an urgent need to deescalate the violence by political dialogue. The cycle of violence is likely to nurture resentment and hate. The Assembly is deeply concerned that the tensions and clashes among the communities could spread to other parts of Turkey. It urges the PKK to stop its terrorist attacks and lay down its arms. The Assembly also urges all those involved to resort to political means to stop the escalation of violence. The Turkish Parliament, which could provide a political forum for peace resolution, should consider putting in place mechanisms to resume the peace process, including a joint, cross-party parliamentary commission, or a “truth and reconciliation” commission that would allow for a fresh impetus and the healing of past traumas. Political solutions need to be discussed in parliament by all the political forces involved. A due system of parliamentary inviolability – which excludes statements inciting hatred, violence or the destruction of democratic rights and freedoms – is thus necessary to ensure that issues of public interest can be debated by elected representatives without fear of executive or judicial interference.

74. A number of recently adopted amendments to the legislation or the Penal Code remain problematic. The Turkish authorities explained that they drew inspiration from legislation developed in other Council of Europe member States to draft the latest legislation pertaining to internal security and restrictions of freedoms when fighting terrorism, etc. We should however stress that such legislation – which always requires finding an adequate balance between public order and citizens’ individual freedoms – needs to be assessed in an overall political and legal context, and include mechanisms to avoid or redress any possible abuses. All of the concerns outlined in our report are inherently serious in terms of democracy, the rule of law and respect for human rights. Taken separately, they would already warrant close scrutiny by the Assembly. In the present context, with a weak system of checks and balances, the accumulation of all these recent developments pertaining to freedom of the media and of expression, erosion of the rule of law and the alleged human rights violations in relation to the anti-terrorism security operations in south-eastern Turkey, constitute a threat to the functioning of democratic institutions and the country’s commitments to and its obligations towards the Council of Europe.

75. Restrictions on the freedom of media and of expression have increased well beyond the scope of Article 10 of the European Convention on Human Rights, and seriously undermine access to and provision of balanced and accurate information based on investigative and independent journalism.

76. The role of the Minister of Justice and, more generally, the possible interference of the executive in the judicial system, remains a source of concern and raises suspicion about the role and the independence of the High Council of Judges and Prosecutors, which plays a key role in ensuring the independence of the judiciary, and in building citizens’ confidence in their judicial institutions, which are all too often perceived as an instrument to curb dissenting voices. This seriously undermines the trust of the public in its judicial institutions.

77. The Assembly notes that EU integration remains a strategic goal for Turkey. It therefore reiterates its belief that the opening of additional chapters, in particular Chapter 23 (judiciary and fundamental rights) and Chapter 24 (justice, freedom and security), would help consolidate the reform process and reinforce several actions undertaken by the Council of Europe for Turkey to align its legislation and practice with Council of Europe standards.

78. We thus encourage the Turkish authorities to further co-operate with the Council of Europe and the European Union to redress the shortcomings in its legislation, address systemic problems, and prevent numerous cases from reaching the European Court of Human Rights in the years to come. We consider that the ongoing co-operation between the Council of Europe and the Turkish authorities on Strengthening the Individual Application System of the Constitutional Court, Strengthening the Capacity of the Turkish Judiciary on Freedom of Expression (in co-operation with the Turkish Justice Academy), and on Strengthening Judicial Ethics (in partnership with the High Council of Judges and Prosecutors) will be extremely valuable.

79. As co-rapporteurs, we expect to travel back to Turkey by the end 2016. The present report did not address all the requirements included in the post-monitoring dialogue with Turkey, notably the revision of the Constitution. We will thus continue to follow the situation in the framework of the post-monitoring dialogue with Turkey and assess on that occasion the progress made on the issues raised in the present report. We would also like to encourage Turkey to address without further delay the issues raised in this report, while stressing that the Council of Europe, and in particular the Venice Commission, remain at the disposal of the Turkish authorities. We firmly believe that Turkey needs to overcome the current challenges and reconnect to its reform agenda

80. It appears that the latest developments pertaining to freedom of the media and of expression, erosion of the rule of law and the alleged human rights violations in relation to the anti-terrorism security operations in south-east Turkey constitute a threat to the functioning of democratic institutions and the country's commitments and obligations towards the Council of Europe. The Assembly should thus continue to follow closely the issues raised in this report, in particular the situation in south-east Turkey with respect to human rights, on the basis of information provided by its Monitoring Committee. The Assembly should also urge the Turkish authorities to fulfil the remaining requirements pertaining to the post-monitoring dialogue with the Parliamentary Assembly.