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Post-monitoring dialogue with Turkey

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Rapporteur: Ms Josette DURRIEU, France, Socialist Group

Summary

When the Parliamentary Assembly decided to end its monitoring of Turkey in 2004, there were 12 outstanding points which still required action, and which have been the subject of regular post-monitoring dialogue since then.

The Monitoring Committee recognises that a process of major reform is taking place in Turkey against a complex background of political transition involving the judiciary and the army, the Kurdish question and regional instability, not least in neighbouring Syria. Economically, Turkey has achieved much in a context of global crisis, confirming its position as a regional power. It has become a "benchmark" for Muslim countries in the southern Mediterranean following the upheavals of the Arab Spring.

There have been many reforms between 2004 and 2013, but these only partially respond to the remaining problem areas set out by the Assembly, the committee believes. It assesses each of the 12 outstanding points in turn, welcoming Turkey's progress in bringing its legislation into line with the European Convention on Human Rights, promoting the cultural and linguistic rights of the Kurds, stepping up dialogue with religious communities and establishing the institution of ombudsman. But it also spells out the steps Turkey still needs to take if it is to successfully complete its reform programme, such as further reform of the Constitution and continuing revision of the Criminal Code, as well as progress on freedom of expression, pre-trial detentions, local and regional decentralisation and resolving the Kurdish question.

Overall, the committee concludes, legislative reform and institutional change in Turkey is ongoing but incomplete. The Assembly should continue to follow future changes closely, while reiterating the full support of the Council of Europe, and in particular its Venice Commission, to help Turkey successfully complete its reforms.

1. Reference to committee: Resolution 1115 (1997).

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A. Draft resolution[2]

1. In 2004, the Parliamentary Assembly decided to close the monitoring procedure concerning Turkey and open a post-monitoring dialogue, stating that it was confident that the Turkish authorities would continue the process of reform and implement those reforms adopted. The Assembly notes that Resolution 1710 (2010) on the term of office of co-rapporteurs of the Monitoring Committee now requires the Assembly to debate in plenary the implementation of Resolution 1380 (2004) on the honouring of obligations and commitments by Turkey.

2. There has been co-operation with Turkey in the framework of the post-monitoring dialogue and to verify the implementation of the 12 action requirements set out in paragraph 23 of Resolution 1380 (2004), namely: reforming the 1982 Constitution; lowering the electoral threshold of 10%; recognising the right of conscientious objection; establishing the institution of ombudsman; ratifying the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), the Framework Convention for the Protection of National Minorities (ETS No. 157), the European Charter for Regional or Minority Languages (ETS No. 148) and the revised European Social Charter (ETS No. 163) and accepting the provisions of the Social Charter not already accepted; completing the revision of the Criminal Code (in particular, respect for the need for proportionality arising from the case law of the European Court of Human Rights ("the Court") on freedom of expression and association); examining legislation dating from the period of the state of emergency; implementing the reform of local and regional government, and decentralisation; managing the return of persons internally displaced by the conflict in the 1990s; training of judges and prosecutors as well as the police and gendarmerie; lifting the geographical reservation to the Geneva Convention relating to the Status of Refugees; pursuing a policy of recognising the existence of national minorities living in Turkey and granting them the right to maintain, develop and express their identity and to apply it in practice; and continuing efforts to combat female illiteracy and all forms of violence against women.

3. The Assembly underlines that the process of major reforms is taking place against an extremely complex background in both domestic and external terms. Over the last ten years, since the AKP came to power, Turkey has entered a period of political transition characterised by redefinition of the role of the army, repositioning of the various branches of power (such as the judiciary), the opening of major trials (Ergenekon, Balyoz, KCK) which are having a profound effect on society and the key political, military and civil players, and the Kurdish question and PKK terrorism that has claimed over 40 000 victims. The Assembly also notes that, in an unstable Middle East, the Syrian conflict has far-reaching consequences in Turkey. The country has taken in over 220 000 refugees since 2011, in a remarkable display of solidarity.

4. The Assembly notes that the accession negotiations between Turkey and the European Union started in 2005. It welcomes the resumption of the discussions and the possible opening of new chapters, including Chapter 22 on regional policy and co-ordination of structural instruments in the negotiations in 2013. It believes 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 underpin the action of the Council of Europe.

5. The Assembly draws attention to the very significant economic achievements made in a context of global crisis. This is confirming Turkey's position as a regional power which is engaged multilaterally and has a vital role in strategic and energy terms. These are all factors which make the stability of Turkey vital to the whole of the eastern Mediterranean.

6. The Assembly also notes with interest that the "Arab Spring" revolutions have affected almost all the Muslim countries of the southern Mediterranean. Now, however, Turkey is the "benchmark" for these countries which are experiencing great instability. Hence the particular importance of continuing the expected reforms and bringing them to a successful conclusion.

7. The Assembly points out that although many reforms were carried out during the initial phase of the post-monitoring dialogue (2004-2010), they responded only partially to some of the 12 action requirements of Resolution 1380 (2004). In this connection, the Assembly notes:

7.1. the ad hoc reform of certain articles of the Criminal Code in 2005, and in particular amendment of Article 301 punishing attacks on the "Turkish identity and nation", the complete repeal of which is requested;

2. Draft resolution adopted unanimously by the committee on 20 March 2013.

7.2. the launch of training programmes for judges and prosecutors, mainly concerning the 2005 Criminal Code;

7.3. the 2007 constitutional reform, which has paved the way for the election of the President of the Republic by direct universal suffrage from 2014;

7.4. the adoption, since 2007, of measures to combat torture and degrading treatment and to train the security forces;

7.5. the reinforcement of the provisions of the Criminal Code concerning efforts to combat violence against women, the development of major training programmes since 2006 and the passage of the law on the protection of the family in 2007;

7.6. the passing of a law on foundations, which came into force in February 2008;

7.7. the passing of the "Law on Compensation for Damage arising from Terrorism and from the Measures Taken against Terrorism", which came into force in March 2008, and the launch of programmes for the return of displaced persons and several socio-economic development programmes in south-eastern Turkey;

7.8. the "democratic opening" towards the Kurdish community launched in 2009, which in particular opened up debate about the Kurdish question, expanded the use of the Kurdish language in the media and election campaigns and allowed the teaching of Kurdish in universities;

7.9. the holding of a constitutional referendum in September 2010, which led to the opening of the trials concerning the leaders of the coup d'état of 12 September 1980; reforming the appearance before civil courts of members of the military, including officers, and persons accused of crimes against the security of the State; increasing the number of members of the Constitutional Court and the High Council of Judges and Prosecutors; adoption of the principle of the establishment of the institution of ombudsman; introducing the right of individual appeal to the Constitutional Court in matters falling within the scope of the European Convention on Human Rights (ETS No. 5); and broadening the scope and the substance of trade union rights and the right to freedom of association;

7.10. the ratification of the revised European Social Charter in 2007.

8. The Assembly underlines that all the measures adopted must now be fully and rapidly implemented.

9. The Assembly therefore wishes to take a detailed look at the implementation of Resolution 1380 (2004) and analyse the reforms carried out over the subsequent period (2010-2013), as well as the reforms announced.

10. With regard to the reform of the Constitution, the electoral threshold and enabling Turkish citizens living abroad to vote:

10.1. The Assembly takes note of the establishment by parliament on 19 October 2011 of a 12-member conciliation committee with equal representation of the four parties in parliament. It is chaired by the Speaker of the Grand National Assembly, Mr Cemil Çiçek. Its purpose is to revise the Constitution inspired by the military following the 1980 coup d'état. The Assembly underlines in particular the exemplary nature of the membership of the committee and the consensus rule adopted for decision-making. It also welcomes the consultation of all the driving forces in Turkish society initiated by the conciliation committee, but nevertheless notes the difficulties in reconciling different positions on some fundamental principles such as citizenship and some key political issues such as decentralisation. While the initial intention and determination were commendable, the exercise is challenging. The Assembly expects the reform of the Constitution to be consistent with the standards set by the Council of Europe.

10.2. It is up to the Turkish institutions and the Turkish people to define the country's future democratic system and type of governance. The Assembly nevertheless invites the Turkish authorities to draw on the expertise of the European Commission for Democracy through Law (Venice Commission) before finalising the draft constitution. It is essential to safeguard the institutional balance of powers and the independence of the judicial system, clearly specify the appropriate checks and balances and affirm respect for fundamental rights and individual freedoms, while ensuring compliance with Council of Europe standards.

10.3. The Assembly reiterates its call on the Turkish authorities to take account of the Venice Commission's recommendations on lowering the electoral threshold of 10% – by far the highest in the 47 member States of the Council of Europe – so as to widen the participation in parliament of political parties, which play a key role in democracies.

10.4. The Assembly welcomes the fact that the Turkish authorities took the necessary measures to implement the parliament's decision of June 2012 and enable Turkish voters living abroad to vote in the 2014 presidential and 2015 parliamentary elections, and in future elections.

11. With regard to completing revision of the Criminal Code (in particular, respect for the need for proportionality arising from the case law of the European Court of Human Rights on freedom of expression and association), examination of the legislation dating from the period of the state of emergency and the training of judges and prosecutors as well as the police and gendarmerie:

11.1. The Assembly underlines that Turkey has implemented judicial reforms to bring its legislation into line with the European Convention on Human Rights, in particular with the adoption of the third package of judicial reforms in July 2012. In particular, the aim of these reforms was to strengthen the presumption of innocence and restrict pre-trial detention. It has to be said that, in spite of some releases on bail or under court supervision, the short-term results have not matched expectations. Persons being held in pre-trial detention, including elected members of parliament, still account for 23% of prisoners.

11.2. The Assembly welcomes the ratification, in September 2011, of the Optional Protocol to the United Nations Convention against Torture (OPCAT) and invites Turkey to introduce a national torture prevention mechanism.

11.3. While the Assembly notes the reforms undertaken in the area of juvenile justice, it is nevertheless awaiting the conclusions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning the treatment and conditions of detention of juveniles. The Assembly also urges the authorities to improve conditions in all Turkish prisons, in line with Council of Europe standards and practice.

11.4. In terms of freedom of expression, which is a very crucial issue, while underlining the reforms carried out under the "third package" to relax restrictions, the Assembly refers to Resolution 1920 (2013) on the state of media freedom in Europe. It reiterates its explicit request that Turkey conduct an in-depth review of the legal provisions and administrative measures relating in particular to the provisions of the Criminal Code and anti-terrorism legislation. The legislation on the Internet also needs to be clarified, in order to verify its compatibility with the case law of the European Court of Human Rights.

11.5. The Assembly strongly urges the parliament to make sure that the "fourth package of judicial reforms" submitted to parliament on 15 March 2013, the adoption of which is eagerly awaited, legitimately reinforces the exercise of freedom of expression and of the right to demonstrate and brings Turkish legislation (in particular, the Criminal Code and the anti-terrorism legislation) into line with the European Convention on Human Rights. It must necessarily reinforce the distinction between freedom of expression and terrorist propaganda. The Assembly calls for the repeal of Article 301 of the Criminal Code.

11.6. The Assembly also invites Turkey to continue the reforms undertaken in order to protect all fundamental and individual freedoms so that protecting the individual is made the focus of its human rights system.

11.7. The Assembly notes that the educational reform (the "4+4+4 system") increases the duration of compulsory schooling, which is a positive move. There is, however, some concern about the introduction of religious education from junior secondary level, as sections of "Imam Hatip schools" have been re-established there. This measure seems to be a departure from the principle of secularism based on respect for all religions, a principle endorsed by the Prime Minister. The Assembly will follow the implementation of the new system.

11.8. With regard to respect for the rights of gays, lesbians, bisexuals and transsexuals (LGBT), the Assembly asks Turkey to take every step, educational measures included, to combat all forms of discrimination and adopt appropriate legal and constitutional provisions. The Assembly hopes that these reforms concerning sexual orientation and gender identity will be fully implemented, in accordance with Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity.

11.9. The Assembly cannot but note that several human rights and fundamental freedoms issues remain problematic:

11.9.1. The Assembly deplores the fact that there has still been no legal outcome to the pre-trial detention of large numbers of members of parliament, mayors and local elected representatives. This situation clearly hampers the exercise of the mandates given to these elected representatives by citizens and requires an urgent legislative solution;

11.9.2. The Assembly calls on Turkey to respect fully the rights of the defence in the major trials (Ergenekon, Balyoz, KCK) which are being conducted by courts with special powers. These trials are simultaneously affecting elected representatives, members of the armed forces, university teachers, students, journalists and the Kurds. The Assembly is concerned by the high number of these trials;

11.9.3. In addition, the Assembly notes that arrests and pre-trial detention, notably of journalists, young people and students, raise serious concerns. It urges Turkey to adopt, without further delay, the necessary legislation to guarantee freedom of expression and the right to demonstrate, and to ensure that police action, if it is necessary, remains proportionate.

11.10. With regard to the dissolution of political parties, the Assembly invites Turkey, in line with the Venice Commission's 2009 recommendations, to renew efforts, in the context of the work on constitutional reform, to introduce a properly elaborated procedure based on strict criteria, such as condoning or inciting violence or overt threats to fundamental democratic values.

11.11. In terms of trade union rights, the Assembly takes note of the law passed on 19 October 2012. It notes the low number of unionised employees (less than 10%), namely 1 million out of 10 million. It draws attention to the high threshold of over 3% unionised employees in firms with over 30 employees for trade unions to be entitled to enter into collective bargaining. At present, this would mean that barely half of trade unions would be able to do so. The measure appears to be gradual, however, and is not due to be applied in full until 2018. The Assembly therefore asks Turkey to make sure that the new trade union legislation genuinely guarantees the exercise of the right to bargain collectively. It encourages Turkey to continue its discussions with the socio-economic partners and trade unions in order to lift the reservations entered into in respect of Articles 2.3, 4.1, 5 and 6 of the revised European Social Charter.

11.12. The Assembly underlines the obvious need to train judges and prosecutors. It encourages the authorities to continue and step up the programmes of compulsory in-service training for police and security service personnel. This is vital for ensuring that the new legislative measures are implemented effectively and account is taken of the case law of the European Court of Human Rights. The training of justice and security service personnel must be accompanied by a vital change in attitudes. The Assembly strongly urges Turkey to continue the co-operation established with the Council of Europe in these areas.

12. With regard to establishing the institution of ombudsman and recognising the right of conscientious objection and establishing an alternative civilian service:

12.1. The Assembly notes with satisfaction the establishment of an ombudsman, following the constitutional referendum of 12 September 2010 and the passing of the law of 14 June 2012, thereby honouring a specific request by the Assembly set out in the 12 action requirements. It nevertheless invites the Turkish Parliament to review the criteria for the selection and election of the ombudsman and deputy ombudsmen so as to ensure the credibility and effectiveness of this newly established institution and its funding.

12.2. The Assembly also welcomes the determined efforts by the Ministry of Justice to ensure that more account is taken of the case law of the European Court of Human Rights, improve supervision of the implementation of the Court's judgments and prevent repetitive violations of articles of the Convention. In particular, it welcomes the establishment of a compensation system in cases of excessive length of detention or proceedings, as well as the account taken of compliance with the Court's case law in the promotion of judges.

12.3. The Assembly welcomes the possibility opened up by the 2010 constitutional revision for individual appeals to the Constitutional Court regarding breaches of the rights enshrined in the European Convention on Human Rights and implemented since September 2012.

12.4. Given that this was one of the 12 action requirements, the Assembly is disappointed, however, that no steps have been taken to establish a legislative framework for conscientious objection and an alternative civilian service and thereby comply with the recent case law of the European Court of Human Rights on the matter.

13. With regard to implementation of the reform of local and regional government and decentralisation and the return of displaced persons:

13.1. The Assembly is convinced that continuing and increasing decentralisation will be a key factor in Turkey's development strategy, and also a possible response for resolving the Kurdish question. In this connection, it invites Turkey to implement Recommendation 301 (2011) adopted by the Congress of Local and Regional Authorities on 24 March 2011 and to continue the reforms in the area of decentralisation, in accordance with the European Charter of Local Self-Government (ETS No. 122), ratified by Turkey in 1992.

13.2. The Assembly notes with satisfaction the entry into force in March 2008 of Law No. 5233 on compensation for damage caused by terrorism. It encourages Turkey to continue its economic and social programmes for the lasting return of displaced persons, as provided for in the 12 action requirements.

14. With regard to the Council of Europe legal instruments mentioned in Resolution 1380 (2004):

14.1. The Assembly welcomes Turkey's ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) on 6 October 2004 and of the revised European Social Charter on 27 June 2007, in accordance with Resolution 1380 (2004).

14.2. The Assembly notes that Turkey has neither signed nor ratified the Framework Convention for the Protection of National Minorities or the Charter for Regional or Minority Languages, as requested by the Assembly in 2004. It urges Turkey to now consider signing these legal instruments.

14.3. The Assembly welcomes the adoption of the March 2010 circulars intended to improve access to asylum procedures, ensure better protection of vulnerable groups and provide better access for asylum seekers to the labour market. The Assembly hopes that the future law on aliens and international protection will improve conditions for foreigners irrespective of their status. It urges Turkey to continue its co-operation with the Office of the United Nations High Commissioner for Refugees (UNHCR) and reiterates its call to lift the geographical limitation to the 1951 Geneva Convention relating to the Status of Refugees. It also urges the international community to support Turkey's efforts to improve the reception and integration of refugees.

14.4. The Assembly is pleased to note the ratification, on 23 March 2012, of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196). It also takes the opportunity to reiterate its total condemnation of all acts of violence and terrorism. With regard to the terrorist acts related to the PKK, the Assembly reiterates that a political solution must be found to the Kurdish question and calls for the cessation of all violence – a precondition for any negotiations.

15. With regard to pursuing the policy of recognising the existence of national minorities living in Turkey and granting persons belonging to these minorities the right to maintain, develop and express their identity and to apply it in practice:

15.1. The Assembly points out that Turkey refers to the definition of minorities established by the Treaty of Lausanne of 24 July 1923, which considered minorities to be "Turkish nationals belonging to non-Muslim minorities". In addition, it should be noted that only the Jewish, Armenian and Greek Orthodox religious communities are in fact recognised as minorities by Turkey.

15.2. The Assembly welcomes the stepping up of dialogue with the religious communities and the recent measures to eliminate the problems encountered by non-Muslim minorities. The Assembly also notes the contribution made by the minorities to the work on the revision of the Constitution, which should ensure equality, in law and in practice, of all Turkish citizens, whatever their religion.

15.3. The Assembly welcomes the amendment of the Law on Foundations on 27 August 2011 aimed at facilitating the registration of real estate. It invites the Turkish authorities to finalise the process of return of property to religious communities.

15.4. With reference to the Venice Commission's opinion of March 2010 on the legal status of religious communities in Turkey and the right of the Orthodox Patriarchy of Istanbul to use the adjective "Ecumenical", the Assembly is pleased to note the discussions under way on the reopening of the Halki Orthodox seminary on Heybeliada Island.

15.5. While acknowledging that the recent reforms to Turkish legislation have improved relations with the non-Muslim religious communities, the Assembly invites Turkey to guarantee the fundamental right of freedom of religion, including the possibility for religious communities as such to obtain legal personality, which would secure access to justice and protection of property rights, in accordance with the Venice Commission's recommendations.

15.6. In this connection, the Assembly notes the stepping up of dialogue with the Alevi community, in particular regarding the recognition of the legal status of the Alevi places of worship (Cemevleri), teaching about the Alevi religion in schools and the return of confiscated property.

15.7. The Assembly also welcomes the substantial progress made since 2004 in terms of promoting the cultural and linguistic rights of the Kurds, including the use of languages other than Turkish in education, the media and election campaigns since 2011, and the option available since 2012 to choose the language used for defence purposes in court. While underlining its unequivocal condemnation of terrorism, the Assembly nevertheless notes that the imprisonment of thousands of Kurds – including local elected representatives and journalists – for alleged terrorism offences is weighing heavily on the settlement of the Kurdish question. The Assembly hopes that the ongoing judicial and constitutional reforms will produce a political solution here.

15.8. The Assembly welcomes the Turkish authorities' official resumption, in December 2012, of exploratory talks with the PKK leader. It takes note of the "peace process", which it believes is obviously the way forward in finding a political solution to the Kurdish question. The Assembly is aware that the process is fragile but nevertheless urges all those concerned to support efforts to bring the initiative to a successful conclusion.

16. With regard to continuing efforts to combat female illiteracy and all forms of violence against women:

16.1. The Assembly welcomes the advances in legislation made since 2005 and the reform of the Criminal Code with regard to combating violence against women, namely in terms of legislative provisions and awareness-raising measures. It praises Turkey's action in the preparation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, ETS No. 210). The Assembly notes that Turkey was the first country to ratify it in March 2012 and to pass a corresponding law. It has to be said, however, that violence against women remains a real problem.

16.2. The Assembly therefore underlines the need to make sure that the legislation is properly implemented, in particular through training for health-care professionals, police officers, prosecutors and judges, and to punish any breaches or lack of diligence on the part of institutions.

16.3. The Assembly encourages Turkey to continue its efforts to combat female illiteracy, which is a major obstacle to women's participation in public and economic life and means a greater risk of girls being exposed to physical, psychological and sexual violence. In this connection, the Assembly urges Turkey to combat early and child marriages, in accordance with Assembly Resolution 1468 (2005) on forced marriages and child marriages. It also calls for vigilance concerning the preservation of women's right to abortion.

16.4. The Assembly hopes that Turkey will reassert its commitment to strengthening *de facto* gender equality. It welcomes the inclusion of positive discrimination in favour of women in the 2010 constitutional amendments. The Assembly hopes that Turkey will enshrine full gender equality in its future Constitution and continue to be a benchmark in the region.

17. In conclusion, the Assembly underlines that Turkey is currently going through a period of political change and that the geopolitical context is particularly sensitive. The Assembly notes, however, that this process of legislative reform and institutional change is ongoing but incomplete as regards some key requirements of Resolution 1380 (2004). This process could lead to the drafting of a new constitution and the definition of a new political system, which the Assembly will assess in due course. It also assures Turkey of its full support in intensifying these democratic reforms.

18. Having regard to the local elections in 2014, the first election of the President of the Republic by direct suffrage in 2014 and the parliamentary elections in 2015, the Assembly resolves to follow developments in Turkey and present a comprehensive report on the post-monitoring dialogue with Turkey after those events. It reiterates the willingness of the Council of Europe, in particular the Venice Commission, to support the Turkish authorities' efforts.

B. Explanatory memorandum by Ms Durrieu, rapporteur

1. Introduction

1. The Parliamentary Assembly decided, in its Resolution 1380 (2004) on the honouring of obligations and commitments by Turkey, to close the monitoring procedure in respect of that country, recognising the progress made in the reform process and expressing its confidence in the Turkish authorities to continue and consolidate the reforms, whose implementation will call for major efforts to adapt laws and regulations in the years ahead.

2. In June 2008, the Assembly adopted Resolution 1622 (2008) on the functioning of democratic institutions in Turkey: recent developments, on the basis of a report presented by Mr Luc van den Brande (Belgium, EPP/CD)[3] and dealing in particular with the issue of the dissolution of political parties.

3. The Assembly decided to continue the post-monitoring dialogue with the Turkish authorities, via its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), on the 12 points which Turkey was invited to take into account in the context of the reform process undertaken by its authorities.[4]

4. Having been appointed rapporteur for post-monitoring dialogue with Turkey on 24 June 2010, I carried out a first fact-finding visit from 8 to 13 January 2011 in Istanbul, Diyarbakır and Ankara, took part in the observation of the parliamentary elections on 12 June 2011 and travelled to Van and Diyarbakir for this purpose. I later paid two visits, from 15 to 19 June 2012 (during which I visited Silivri prison) and from 5 to 9 November 2012, when I went to the Hatay Province on the Syrian border to visit the refugee camps of Yayladağı and Altınözü. During these visits in Turkey, I met with the highest authorities in the country, including the President of the Republic, Mr Abdullah Gül. I held lengthy talks with the Justice Minister, Mr Sadullah Ergin, during each of my missions, and I would like here to sincerely thank him for authorising my access to the Silivri prison on 18 June 2012, and facilitating my contacts with certain important detainees. He also enabled me to meet high-level judicial representatives. I was also able to meet many ministers, the Presidents of the Constitutional Court and the Supreme Court of Cassation, senior officials of the main political parties, religious leaders, non-governmental organisations (NGOs) and media officials, and I also insisted on talking to a range of civil society representatives.

5. I would like to thank the previous chairperson of the Turkish delegation to the Parliamentary Assembly, Mr Erol Aslan Cebeci, his successor, Ms Nursuna Memecan, and Mr Haluk Koç, as well as the members of the Turkish delegation for their valuable contributions to my work and the preparation of comments on my preliminary draft report.

6. The principal aim of these fact-finding visits was to verify the implementation of the 12 action requirements set out in Resolution 1380 (2004) and which will be discussed at length in this report. It should be noted, however, that the country is now engaged in a far-reaching political transition process that is both speeding up and, above all, changing the course of events.

7. A major aspect is the drafting of a new constitution, which will both enshrine the new foundations of Turkish democracy and establish a different system. The work on the constitution will result in a redefinition of powers, but we also expect to be given details of the checks and balances to be introduced. This progress report will therefore highlight actual progress made as well as numerous major gaps and shortcomings in terms of human rights and the rule of law. It will only make an initial assessment of the implementation of the 12 requirements in Resolution 1380 (2004) – and will necessarily emphasise the context in which these developments are taking place.

8. This interim report also incorporates the comments and observations presented by Mr Serhiy Holovaty (Ukraine, ALDE), at the time Chairperson of the Monitoring Committee, to the committee in April 2009 on the basis of his fact-finding visit to Turkey from 26 to 28 November 2008.[5] Furthermore, this report takes broad account of the extensive comments forwarded by the Turkish delegation as from November 2011 to the preliminary draft report prepared in June 2011 and to its revised version of January 2013.[6]

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3. Doc. 11660.
4. See Resolution 1380 (2004) on the honouring of obligations and commitments by Turkey, paragraph 23.
5. See AS/Mon (2009) 10 rev, information note declassified on 31 March 2009.
6. Comments of the Turkish delegation submitted on 13 March 2013, AS/Mon (2013) 05.

9. It needs to be reiterated that we have carried out these missions and produced this report in a crucial period of political transition, which will come to an initial end with the presidential election in 2014 and the parliamentary elections in 2015.

2. The internal political situation and identification of the main problems

2.1. Issues at stake in and results of the parliamentary elections of 12 June 2011

10. Parliamentary elections were held on 12 June 2011. I took part in the election observation mission undertaken by an Assembly delegation. The parties contesting the 12 June 2011 election were:

– the Justice and Development party (AKP), a party labelled as "Islamo-conservative" or "stemming from the Islamic movement" by its opponents, and as "conservative democrat" by its members, in power since 2002. The Prime Minister, Mr Erdoğan, was seeking a third term of office. He emerged in a stronger position following the referendum. Public opinion considers that significant reforms have been made by the AKP, which secured 50% of the vote in the 12 June 2011 election;

– the Felicity Party (Saadet) officially claims to follow an "activist political Islamist" line. However, this party has never obtained more than 5% of the vote;

– the Republican People's Party (CHP), a secular nationalistic and social-democrat party, invariably takes as its reference the founder of the Turkish Republic, Atatürk. It is the main opposition party. Its new leader, Kemal Kılıçdaroğlu, hoped to win 30% of the votes in the elections and obtained almost 26%;

– the Nationalist Movement Party (MHP) is a right-wing nationalist party. This party, which had obtained 14% of the vote in 2007, garnered 13% of the vote in 2011;

– the Peace and Democracy Party (BDP) is a pro-Kurdish opposition party, the successor of the Democratic Society Party (DTP), dissolved on 11 December 2009 by the Constitutional Court on the grounds that it was a focal point for activities undermining the independence and indivisible integrity of the State. What are its real and direct links with the terrorist organisation PKK and with which party or parties could the BDP have then formed a coalition? In Diyarbakır, the largest city in south-eastern Turkey, many people felt that a coalition would not be possible with the AKP or with the CHP, which was, in fact, very nationalistic. Given the election threshold of 10%, the Kurdish candidates stood as independent candidates, some under the "Labour, Democracy and Freedom Block" label. The BDP only obtained 6.5% of the vote, and in view of the 10% threshold, it is only represented in parliament by 35 independent elected representatives, including Leyla Zana, their emblematic candidate, whom I met on the day of the elections in Diyarbakir.

11. I note that, in these parliamentary elections, candidates were able to campaign in a language other than Turkish, which is a noteworthy step forward.

12. The decision by Turkey's Supreme Election Board (YSK) on 18 April 2011 to reject 12 independent candidates – and in particular some emblematic figures for the Kurdish electorate[7] – because of previous convictions related to terrorist activities, raised some disapproval. In view of the outrage this caused not only among Kurdish voters (resulting in violent rioting and the death of at least one person) but also throughout the entire political community, including the President of the Grand National Assembly, Mr Mehment Ali Şahin, the President of the Supreme Election Board, Mr Em, decided to review this (in theory irrevocable) decision on the condition that the candidates produced a certificate to the effect that they were not deprived of their civic rights

7. The 12 rejected independent candidates were former parliamentarians of the (now dissolved) Democratic Society Party, and two of them were symbolic figures for Kurdish voters: Leyla Zana and Hatip Dicle, Gültan Kışanak and Sebahat Tuncel (currently parliamentarians of the BDP), Ertuğrul Kürkçü, Isa Gürbüz, Salih Yıldız, candidates for the Labour, Democracy and Freedom Block supported by the BDP, Harun Özeren, Abdullah Kızıl, Çiçek Otlu, Nezir Sincar and Şerafettin Ef. It will be recalled that Leyla Zana and Hatip Dicle were arrested in March 1994 after Leyla Zana had attempted to take her parliamentary oath in Kurdish. Sentenced to 15 years' imprisonment for terrorist activities, they were released in 2004 (particularly as a result of pressure from the European Union, and following a judgment of the European Court of Human Rights on 17 July 2001, *Sadak and Others v. Turkey (No. 1)*, in which the Court held that the State Security Court in Ankara was not an independent and impartial tribunal within the meaning of Article 6 and that the three applicants had suffered "such major violations of their defence rights that they have been denied a fair trial"). Leyla Zana was awarded the European Parliament's Sakharov Prize in 1995.

after serving a prison sentence. Once this document had been produced, the YSK decided, on 21 April 2011, to authorise seven candidates (including Ms Zana, Ms Kışanak, Ms Tuncel and Mr Dicle) to stand in the 12 June 2011 elections.

13. It should be noted that the Constitutional Court had stated on 21 April 2011 that previous convictions were not a permanent obstacle to persons standing for election: "Prison sentences handed down against individuals by courts do not deprive them for the rest of their lives of the right to participate in elections." Prime Minister Erdoğan also reacted, announcing that the next parliament would need to review the structure of the YSK as part of a major judicial reform which would be launched after the 12 June 2011 elections.

14. The Assembly's pre-electoral delegation sent to Turkey on 18 and 19 May 2011 noted with satisfaction the strong economic progress made since 2007 and the efficient functioning of the Supreme Election Board, but voiced fears regarding the operation of the media, which are "reportedly applying self-censorship for fear of falling victim to a broad interpretation of the anti-terrorist legislation", and mentioned "reports of growing tension, violence, harassment, imprisonment and detention of Kurdish opposition supporters, including elected officials, and a loss of life in the east and south-east of the country", which were giving rise to grave concerns. The delegation also noted that the 10% threshold, by far the highest among the Council of Europe member States, remains the central issue that limits the representative nature of the legislature. In view of the uproar caused by the rejection, then re-admission, of certain candidates, the pre-electoral mission stressed the need for further improvement of the relevant legal basis.[8]

15. I had set out a number of personal findings from my observation of the polling stations in south-east Turkey, in Van and Diyarbakir (including Van prison), a troubled, indeed explosive area:

– the political parties and candidates had unequal levels of resources: the Prime Minister conducted an aggressive campaign at all levels, particularly on television;

– the freedom of the press was limited, some 50 journalists being detained at the time of the election;[9]

– political pluralism is impeded by the electoral threshold of 10%;

– the police were ubiquitous, even going into the polling stations.

16. The Assembly's *ad hoc* observation committee for the elections on 12 June 2011[10] concluded that the elections in Turkey had been democratic, properly organised, pluralistic, and conducted by professional and dedicated members of the electoral administration. However, it invited Turkey to reinforce freedom of the press, lower the current 10% threshold – it is "the highest in Europe [and] is clearly limiting the representative nature of the legislature in Turkey. It also affects the diversity of political discourse in the country" – in order to prevent any future distortions in the representative nature of the legislature, to ensure the exercise of the voting rights of Turkish citizens residing abroad by organising voting in the diplomatic and consular missions, to consider adopting new legislation authorising impartial local observers to participate in the process, to reinforce female participation and representation in political life (although it welcomed the improvements made during this election, with 78 seats held by women as compared with 46 previously) and to improve voting conditions for persons with disabilities.

17. The *ad hoc* committee also urged the new Turkish Parliament to adopt without delay legislation to improve the electoral system. This procedure should be conducted in consultation with all the political players involved and, if necessary, with the help of the European Commission for Democracy through Law (Venice Commission).

18. The ad hoc committee also considered the issue of eligibility of candidates and/or the exercise of the mandates of parliamentarians against whom charges had been brought.

19. The ad hoc committee noted the annulment of the election of a Kurdish candidate from Diyarbakir, Hatip Dicle, one week after the election, by the High Electoral Council, which described the facts as "propaganda in favour of a terrorist organisation" – a decision confirmed by the Appeal Court.

20. It should also be noted that members of the CHP, MHP and BDP in pre-trail detention had been authorised to stand in the elections and were elected, but their applications for release were turned down, which meant that they could not be sworn in and therefore could not exercise their mandates. This situation

8. Parliamentary elections in Turkey: statement by the PACE pre-electoral delegation, 18 May 2011.
9. See paragraph 158 below.
10. Doc. 12701 (Rapporteur: Ms Kerstin Lundgren, Sweden, ALDE).

had induced members of the CHP and BDP to refuse to take the oath on 28 June 2011 and to boycott parliament until a legal solution could be found for these MPs. Members of the CHP took their oath of office on 11 July 2011 after a joint AKP-CHP declaration stating that all political parties and parliamentarians should be in the Turkish Grand National Assembly. BDP members took their oath of office on 2 October 2011 following the party's collective decision. I note, however, that there is still no legal outcome to the pre-trial detention of these members of parliament for the moment: two CHP MPs and six BDP MPs are still in custody pending a judicial decision, while the MHP member, Engin Alan, was sentenced at first instance to 18 years' imprisonment in connection with the Balyoz case on 21 September 2012. As the ad hoc election observation committee points out, it is urgent that the Turkish authorities clarify the electoral provisions in order to prevent similar situations in future.

21. The AKP being almost certain to win the 12 June 2011 legislative elections, the central issue in these elections was its margin of victory: would it be enough to give the AKP the two-thirds majority in parliament (367 seats) needed to revise the Constitution, or would it force the AKP to work out a deal with the opposition parties before submitting the constitutional reform to a referendum? Would a broad AKP victory confirm Prime Minister Erdoğan in his resolve to establish a presidential system? By winning 327 seats (49.80% of the votes cast), the AKP consolidated its ruling position, even though it fell short of the qualified majority of 330 votes (for proposing a referendum) or 367 votes (for a parliamentary review of the Constitution). The election results will therefore force the AKP to come to a compromise with the opposition parties CHP (135 parliamentarians, with 25.98% of the votes cast) and MHP (53 parliamentarians, with 13.02% of the vote), as well as the 35 independent parliamentarians (6.59% of the vote), affiliated with the BDP.[11]

2.2. Recent developments in Turkey

2.2.1. Economic progress

22. Power would seem to have coalesced around the Justice and Development Party (AKP), which has been in power for over ten years. Turkish political life is thus marked by a great deal of stability combined with a particularly impressive economic boom, which is undeniably a major success for the AKP, as most of my dialogue partners confirmed; over the last ten years Turkey has seen an annual average growth rate of over 5.9%. The country has risen to 17th place worldwide, and the Prime Minister has set the goal of making it one of the 10 top economic powers by the year 2023, the centenary of the foundation of the Turkish Republic.

23. A decade of reforms and economic success has transformed the country: in economic terms, the government has completed an agreement with the International Monetary Fund (IMF), cleaned up the banking system and introduced strict budgetary discipline, restoring confidence and boosting growth. The country has achieved an annual rate of over 8% four times within a decade. Gross domestic product (GDP) per head of population has tripled in 10 years (increasing from US$3 500 in 2002 to US$10 400 in 2011).

24. Turkish economic growth stood at 8.5% in 2011. The economic crisis (which has hit the European Union, the country's main economic partner) is currently forcing Turkey to downscale its growth forecasts (3.2% in 2012). Economic expansion has led to a drop in unemployment (from 11% in 2011 to under 9% in 2012) and a reduction in the current deficit and the public debt (which accounted for 39% of GDP in mid-2012).

2.2.2. Redefinition of the role of the army and trials relating to the coups d'état

25. Above and beyond this economic success story, Turkey has in the past few years launched a process of transition and radical change after a period of 50 years of successive coups d'état aimed at military domination. The constitutional referendum of 12 September 2010 (see below) paved the way for redefining the bases of Turkish democracy, at a time of such major trials as the Ergenekon case, the redefinition of the role of the army, etc. This transitional period has been revisiting the past, and has obviously entailed some excesses and a severe "purging" process.

26. Alongside the judicial proceedings initiated over the last few years, parliament has set up a "parliamentary commission to investigate military coups and memorandums". The following information was provided by the Turkish delegation: "During its four-month mandate, the Commission heard testimonies from 165 individuals, including journalists, media owners, coup victims, former Chief of Staff Yaşar Büyükanıt and received a written response from Prime Minister Erdoğan. The Commission submitted its 1449-page report at

11. Doc. 12701, Appendix 5.

the end of 2012 to the Speaker of the Parliament, Cemil Çiçek. The report explores the causes of coups … and concludes with 20 suggestions."[12] The rapporteur did not know about this report during her last visit in November 2012.

27. This recent period has seen the dismantling of the Kemalist military establishment. Many high-ranking army officials and hundreds of officers have been arrested and sentenced since 2011 as a result of the investigations into – real or alleged – conspiracies and coups d'état.

– On 5 January 2012, the former Chief of Staff (2008-2010), General İlker Başbuğ, was arrested on suspicion of having approved the creation of 42 websites geared to disseminating propaganda against not only the AKP but also the Greek and Armenian communities. President Gül and Prime Minister Erdoğan expressed their surprise at his continued remand in custody (on 5 August 2012), after his application for release was turned down despite the new provisions of the Penal Code.

– In August 2012, the Supreme Military Council (YAŞ, Yüksek Askeri Şura) decided not to promote the accused officers and to retire 55 generals, 40 of whom are currently facing charges in conspiracy cases (Ergenekon, Balyoz, etc.). Members of the General Staff resigned en bloc in protest at the non-promotion of the generals facing conspiracy charges.

– Court proceedings were brought against the perpetrators of the 12 September 1980 coup d'état, leading the prosecutor, in January 2012, to call for the arrest of the two surviving senior officers responsible for this military coup,[13] General Kenan Evren (aged 86), the then Chief of Staff (and a future President), and General Tahsin Şahinkaya (aged 94), the then Commander of the air force, who were formally charged. The trial began on 4 April 2012 and is still continuing. The court decided on 6 April 2012, that the two Generals would not be arrested but tried under judicial control. In view of their state of health both defendants were authorised to testify by videoconference.

– In connection with proceedings in the case of the 1997 "postmodern coup",[14] a former Chief of Staff of the Turkish army, General Ismail Hakki Karadayi, was arrested on 3 January 2013 in Istanbul for his presumed role in a coup d'état in 1997 overthrowing the first Islam-leaning Head of Government in Turkey (he was subsequently released under judicial supervision due to the new provisions of the 3rd judicial package). His interrogation followed the imprisonment in April 2012 of the officer who had been Deputy Chief of Staff in 1997, General Çevik Bir, considered as the "brains" behind this putsch, and of almost 20 other officers prosecuted for "attempted overthrow of the Government or the use of force to partially or completely prevent the Government from operating". Çevik Bir informed the Court of the setting up of the West Study Group (BÇG), which was alleged, under the 28 February process, to have collected illegal information on the members of the government. Çevik Bir contended that General Karadayi had known about the BÇG, while the latter had denied this before the parliamentary commission of inquiry into the coups.

2.2.2.1. The Balyoz trial

28. The Balyoz ("Sledgehammer") trial,[15] which began in December 2010, involved 365 army officers charged with "attempted overthrow of the Government or the use of force and violence to prevent the Government from discharging its duties". On 2 and 3 August 2012, General Hilmi Özkök, Head of Staff from

12. AS/Mon (2013) 05, p. 6.

13. The National Security Board, set up by the handful of generals after the 1980 coup, imposed martial law until the 1983 elections. During this period, 650 000 people were detained and 230 000 put on trial. The military prosecutors applied for the death penalty against 7 000 persons and 50 were hanged. 14 000 Turks lost their citizenship and 30 000 sought refuge abroad. 299 prisoners died for "reasons unknown", and 14 died as a result of hunger strikes. 171 other individuals died as a result of acts of torture perpetrated by security forces. See: www.hurriyetdailynews.com/coup-leaders-banned-from-traveling-abroad-.aspx?pageID=238&nID=11768&NewsCatID=341.

14. The "postmodern coup" of 28 February refers to a military operation which drove the former Prime Minister Necmettin Erbakan to resign. On 28 February 1997, the National Security Board held a meeting during which the officers involved ordered tanks on to the streets of Sincan. This show of strength, accompanied by an ultimatum, was sufficient to force the government to stand down. The events of 1997 are often referred to in Turkey as the "postmodern coup d'état" because the generals managed to bring the government down without violence or bloodshed and did not replace the civilian administration with a military regime.

15. 195 Turkish military officers are accused of having plotted a coup to overthrow the Islamic-leaning government. The indictment accuses the suspects of having fomented, in 2003, a series of actions designed to destabilise the government, ranging from attacks against mosques to the crash of a Turkish fighter jet in a clash with the Greek air force, with the intention of creating a climate favourable to a military putsch.

2002 to 2006, testified during the Ergenekon proceedings and explained that the Balyoz Plan had been an academic exercise which had gone too far.[16] The trial was concluded on 21 September 2012 with 20-year prison sentences for three former generals,[17] 16- to 18-year prison sentences for 214 suspects, including Engin Alan, a MHP MP whom I met at Silivri prison in June 2012, and acquittals for 34 officers. This was the first trial of military officers, who had hitherto been regarded as the guarantors of the foundations of Atatürk's Republic, to be conducted by a civilian court. Since the beginning of the period of military coups in Turkey in 1960, this was the first time that such a coup attempt was tried in a court case and the perpetrators punished. The trial was also highly symbolical, in view, *inter alia,* of the number of officers convicted, and of the severity of the sentences passed. I note that the defence has not stopped challenging the fairness of the proceedings, particularly concentrating on the electronic prosecution evidence produced (documents allegedly produced in 2003 had apparently been drafted in a Windows 2007 environment; CDs had supposedly been produced by companies which did not exist at the time, etc.).[18] The convicted officers will be able to appeal to the Supreme Court of Cassation, then the Constitutional Court, and finally the European Court of Human Rights ("the Court").

2.2.2.2. The Ergenekon trial

29. The Ergenekon trial relating to a putative coup d'état in 2007 involves 275 defendants, 66 of whom have been remanded in custody, seeking to identify the presumed perpetrators of coups d'état and conspiracies against the constitutional order. It should be noted that many sectors of society accused of aiding and abetting the army action have now been drawn in, including journalists and academics, among them Professor Mehmet Haberal, a CHP MP, Mustafa Balbay, a CHP MP and journalist, and Fatih Hilmioğlu, former Vice-Chancellor of Inönü University in Malatya, whom I met in Silivri prison in June 2012.

30. Ergenekon is a particularly complex case concerning a clandestine ultranationalist organisation with multiple ramifications, making it an "octopus" which has systematically engulfed a wide variety of public figures. This case came to light thanks to the discovery of an arms cache (26 assault grenades) during a search carried out in June 2007 in Ümraniye, a district of Istanbul, and the recovery of extensive evidence highlighting the organisation's hierarchical structure – the military being considered as the main operators in the organisation, with civilians responsible for providing logistics and financial resources and ensuring propaganda – as well as its action plans[19] for overthrowing the government, which were found during the various searches.[20]

31. Ergenekon is a very controversial case: "an attempt by Islamo-conservatives to eliminate pro-secular opponents" for some, "a fight against the deep State" for others, this case has triggered a great deal of upheaval. The defendants have constantly denounced the fabricated evidence, based on fingerprints, and detentions which were deemed excessive by the persons concerned.

32. In connection with the complaints about the evidence produced, an application[21] has been submitted to the European Court of Human Rights by Ahmet Tuncay Özkan, journalist, owner of the Kanaltürk television channel and President of the "New Turkey Party", concerning his arrest and remand in custody on 23 September 2008. The Court issued its decision on admissibility on 13 December 2011, recalling that "it is not normally incumbent on it to impose its own appraisal of the facts in place of that of the domestic courts, which are better placed to assess evidence produced before them". The Court noted that "the applicant was deprived of his liberty on suspicion of being one of the active members of a criminal organisation called Ergenekon, who were thought to be engaged in activities aimed at the violent overthrow of the Government". The Court

16. http://ovipot.hypotheses.org/7689.
17. They are General Çetin Doğan, former Commander of the 1st Army, General Halil İbrahim Fırtına, former Commander of the Armed Forces, and Admiral Özden Örnek, former Navy Commander.
18. On this issue, the Turkish delegation refers to the reasoned judgment No. 2012/245 of the Istanbul 10th Assize Court on the Balyoz case of 27 December 2012, and in particular the section on "objections [of the culprits] of evidence and the procedure prosecution". See AS/Mon (2013) 05, p. 7.
19. In order to carry out its activities, the network in question had established practical action plans, some of which had been uncovered. Three of these action plans, Kafes (cage), Irtica ile mücadele (combating fundamentalism) and Sarıkız (the blonde), concerned the period preceding the military coup and had been mainly geared to preparing the ground in order to justify this operation. The action plan known as Yakamoz (moon reflected in the water) concerned the implementation of the actual military coup. Lastly, the action plan Eldiven (glove) concerned restructuring governmental power and the political institutions following the military coup. Decision on the admissibility in *Ahmet Tuncay Özkan v. Turkey*, Application No. 15869/09, www.echr.coe.int.
20. Prosecution submissions in the case of Ahmet Tuncay Özkan. See the decision on the admissibility in *Ahmet Tuncay Özkan v. Turkey*, op. cit.
21. *Ahmet Tuncay Özkan v. Turkey*, op. cit.

observes that the applicant was suspected in particular of having illegally procured several top-secret documents from various government departments responsible for national security, of having founded and directed a TV channel in order to broadcast programmes devised by the Ergenekon organisation, and of having stocked explosives at home for the organisation. The Court also notes that items of evidence such as phone tapping transcripts suggesting that the applicant had acted in this way on the instructions of military staff in the organisation, and documents and materials seized during searches, had been gathered by the prosecution before the applicant's arrest, on the strength of suspicions that he had committed the criminal offence in question, which is severely punished under the Penal Code. It can therefore be concluded that the applicant can be considered to have been arrested and detained on the basis of "plausible reasons for suspecting him" of having committed a criminal offence. The Court therefore considered that "there is nothing to suggest that in the present case the interpretation and application of the legal provisions relied upon by the domestic authorities were arbitrary or unreasonable to the point of making the arrest of the applicant unlawful".[22]

33. The 270th hearing in the Ergenekon trial took place on 14 December 2012. Thousands of demonstrators (members of the CHP, left radical groups and Kemalist organisations) demonstrated noisily inside and outside Silivri prison, leading to several suspensions of sittings; outside, demonstrators were dispersed with tear gas. The prosecutor did not present his final submissions as announced, but instead read out a fresh indictment. And so the proceedings continue.

34. It is, of course, for each State to take the necessary measures to combat impunity and to do justice to the victims of coups d'état. We can understand that the Turkish authorities are adopting all the requisite measures to ensure that justice is done. As the organisation Human Rights Watch pointed out in its September 2012 report, they should do their utmost to tackle the time frames set out in legislation, the intimidation of witnesses and all the other obstacles to prosecuting members of the security forces and civil servants for murders, disappearances and acts of torture.[23] But, at the same time, given the complexity of these big trials still conducted by special courts, it is fundamental that all conditions be assembled to ensure fair trials and the respect of the rights of the defence. In this respect, we note the principle of abolition of the special courts after the amendment of Articles 250, 251 and 252 of the Code on Criminal Procedure, as part of the 3rd judicial reform package of July 2011. However, we observe that the big ongoing trials, such as Ergenekon and KCK, continue to be conducted in special courts.

35. It should also be pointed out that the army's withdrawal seems to have been met with a positive response from the public – this is a move towards reinforcing civilian control. However, some observers and media are speculating about the deeper implications of this development – closer alignment with the standards of the western democracies or a new stage in the reinforcement of the authority of the regime? – and also point out that all traditional checks and balances are being gradually eroded – such as the press and the powers of the judiciary.

2.2.3. Religion and secularism

36. At this historical moment, when some aspects of the Turkish Republic founded by Atatürk are being redefined, the defence of secularism remains a significant dividing line in society. Strongly supported by the Kemalist opposition, part of the population fears that the adoption of new legislation and measures is a reflection of a political will to strengthen the position of Islam in society. The defence of secularism seemed thus to be challenged when the Higher Education Council (YÖK) asked lecturers not to exclude women wearing the Islamic headscarf from university (despite the 2008 Constitutional Court decision banning the wearing of the headscarf in universities, taking the same line as the European Court of Human Rights in the *Leyla Şahin v. Turkey* judgment of 10 November 2005). The newly set up rules of January 2011 regulating the sale of tobacco and alcohol were also perceived as a new attack on these freedoms.

37. In addition, the position of religion in the context of the educational reform has also led to fears and comments, not only coming from the opposition: this reform has resulted in an increase in the duration of compulsory schooling, which is now split into three periods of four years each (the so-called "4+4+4" system[24]), which is positive. However, it also allows Turkish pupils to enter "Imam Hatip" sections from junior secondary level. Although, as the Turkish delegation indicates, "Imam Hatip schools are official schools that are subject

22. It should be noted that the Court issued similar decisions on admissibility on 7 February 2012 in the cases of *Ercan Kireçtepe, Eren Günay and Emre Onat v. Turkey* (Application No. 59194/10) and *Mustafa Levent Göktaş v. Turkey* (Application No. 70026/10) (related to the Ergenekon trial) and on 10 April 2012 in the case *Çetin Doğan v. Turkey*. (Application No. 28484/10) related to the Balyoz trial.

23. www.hrw.org/fr/news/2012/09/03/Turkey-il-faut-mettre-fin-l-impunit-pour-les-meurtres-et-disparitions-aux-mains-d-a.

to the Ministry of Education... and employ the regular school curriculum designated by the Ministry in addition to offering extra hours of religious education classes",[25] under these circumstances, as the opposition states and part of public opinion fears, a slow process of strengthening of Islam could undermine the principle of secularism.

38. The opposition and some sections of society are expressing fears about growing control of the State. As indicated by the opposition in its comments, a series of nearly 40 decree laws issued in 2011 could "transform the administration … towards partisanship", one example being "the decree law according to which two thirds of the members of the Academy of Sciences are now appointed by institutions under direct Government control".[26] It has to be said that some meetings in universities did give this impression.

39. The nature of the ruling regime, which the Prime Minister describes as "democratic conservative", continues to raise questions, in Europe in particular.[27]

40. The influence of the Gülen Movement – an Islamist movement led by an imam and scholar, Fethullah Gülen, who is in voluntary exile in the United States – that is said to have infiltrated public institutions and to seek to exercise an influence in society, was an issue raised by many persons with whom I have spoken over the last two years.

2.2.4. Political prospects

41. The year 2013 will be a pivotal year for Turkey, in the run-up to the local (2014), presidential (2014) and parliamentary elections (2015). The AKP in particular will have to give fresh impetus to the party: many parliamentarians will not be able to stand in 2015 because of the internal AKP rule limiting the number of parliamentary mandates to three.

42. Following the 2007 constitutional reform, Turks will for the first time be electing the President of the Republic by direct universal suffrage in 2014, which will give him reinforced legitimacy and authority, whatever the results of the work on constitutional reform. In June 2012, the Constitutional Court ruled that after his current seven-year mandate, President Gül will be authorised to stand for the next elections for a five-year term. Differences of opinion have emerged between President Gül and Prime Minister Erdoğan over the past few months on a number of issues, such as the lifting of the parliamentary immunity of members of parliament, in rivalry which might reflect presidential ambitions on the part of both politicians.

43. The year 2013 should see the preparation of a draft constitution, which would be put to referendum. This is a phase which is crucial for Turkey's ongoing political and democratic evolution and the adoption of a civilian-oriented constitution, and which should guarantee respect for the rights and fundamental freedoms deriving from the obligations entered into by Turkey, a founding member of the Council of Europe. One of the options discussed, at the initiative of the AKP, could be the creation of a "presidential regime", which would increase the powers of the President of the Republic.

44. Prospects are currently emerging for settling the Kurdish question, with the resumption of talks between the secret services and the PKK leader, Abdullah Öcalan, since December 2012. These talks seem to be backed by virtually all the political parties, apart from the nationalist party MHP. This is an opportunity to lay the foundations for ending this conflict, which has caused tens of thousands of deaths on both sides. This initiative, politically spearheaded by the AKP, should also promote a process of appeasement of the southern and south-

24. The Turkish delegation drew attention to the fact that this education reform "makes it compulsory for children over 66 months of age to start primary school and increases the number of school hours to bring the standard up to OECD levels. It also allows the re-establishment of middle school sections of Imam Hatip schools, which were shut down by the National Security Council during the 28 February [1997] process through the introduction of eight-year compulsory education and were only allowed to operate on the high school level". See AS/Mon (2013) 05, p. 9.

25. AS/Mon (2013) 05, p. 9.

26. Ibid., p. 41.

27. The sociologist Ferhat Kentel has described AKP ideology as combining "Kemalism, statism, conservatism and possibly Islamism – although Islamism is not a dominant factor". Quoted by Nicolas Cheviron, "Dix ans au pouvoir pour le parti d'Erdoğan: une décennie de réformes et de succès économiques en Turquie", AFP Wirenews, 1 November 2012. A survey published in September 2012 by Bogazici University in Istanbul mentions a decline in religious practice in Turkish society. It shows that from 2006 to 2012, the percentage of Turks declaring that they prayed five times per day decreased from 33.5% to 28.2%.

eastern populations, given the complicated situation after the Uludere events.[28] The possible lifting of the immunity of BDP parliamentarians following their encounter with PKK activists in August 2011[29] could further raise tensions.

45. Lastly, there is some hope of relaunching Turkey's European integration process, which is currently being blocked by several European Union member States in connection with the opening of new negotiation chapters. They were halted during the Cypriot presidency of the European Union in the second semester of 2012, due to the Turkish boycott. Tangible progress is expected from both sides to relaunch the process of European integration, to which Turkey remains attached, despite the procrastination and obstacles which exist in such rapprochement.

3. International relations

46. In view of Turkey's geopolitical situation, I consider it worth mentioning, for information, the main thrusts of the country's foreign policy. This is necessary to define and understand the global context.

47. Turkey is a regional power that is repositioning itself. Turkish foreign policy was principally focused on the country's special relationship with the West (the United States, NATO, the European Union), and Turkey is a member of the principal Euro-Atlantic institutions. A turning point came with the arrival in power of the AKP in 2002 and the appointment of Ahmet Davutoğlu as Minister of Foreign Affairs in May 2009. Turkey became extremely active on a number of fronts, taking advantage of its geographically strategic location between the energy producer and consumer countries, its growing prosperity and its status as a secular, democratic Muslim State to establish itself as a regional power. Its multilateral foreign policy targets both West and East. Turkey's doctrine of "zero problems" with its neighbours was the key to the new strategy and the linchpin of the role it wished to play at regional level. It is also extending its co-operation to the countries of Africa.

48. In May 2010, Foreign Minister Ahmet Davutoğlu summarised the objectives of Turkey's "zero problems" foreign policy for the next decade: fulfilling all the conditions for European Union accession and becoming an influential member of the European Union by 2023; continuing to promote regional integration through security and economic co-operation; being an influential broker in resolving regional conflicts; taking an active part in all international forums; playing a key role in international organisations and becoming one of the 10 largest economies in the world.[30]

3.1. Changing relations with the West

49. The special relationship between Turkey and the United States became strained in 2003 when Turkey refused to allow US troops to pass through its territory to enter Iraq. The visit by US President Barack Obama in April 2009 reactivated bilateral relations. However, relations again became troubled in 2010 when the US Chamber of Representatives adopted a draft "resolution on the Armenian genocide". Their relations also suffered from the position adopted by Turkey on the Iranian civil nuclear issue: the United States was upset by the Tehran Declaration and was disappointed at Turkey's vote in the United Nations Security Council on 11 June 2010 against the resolution imposing new sanctions on the Tehran regime. Today, contacts between the United States and Turkey are intense, especially on regional issues, Syria and Iraq being the main common concerns.

50. Turkey was the first State with a Muslim majority population to recognise the State of Israel in 1948. In 1996, a number of strategic agreements were signed, but relations came under strain after Israel's attack on Gaza in 2008. In January 2009, at Davos, Turkey's Prime Minister publicly condemned the Gaza War. The most serious incident was the operation launched by the Israeli army on 30 May 2010 against the humanitarian flotilla of the Free Gaza Movement and the Foundation for Human Rights and Freedoms and Humanitarian Relief (IHH), which was seeking to break Israel's blockade of the Gaza Strip. Nine Turkish citizens were killed by the Israeli army during the raid. This was followed by the Turkish authorities' firm condemnation of the attack and a clear shift in relations with Israel.

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28. On 28 December 2011, 34 young villagers who were engaged in smuggling operations with neighbouring Iraq, were taken by mistake for PKK members and killed in Uludere by the Turkish Army. See below.
29. On 17 August 2012, a video displayed on the Internet showed a meeting between MPs from the BDP party and PKK militants in south-eastern Turkey. See below.
30. Ahmet Davutoğlu, Minister of Foreign Affairs of Turkey, "Turkey's Zero-Problems Foreign Policy", article published in *Foreign Policy*, 20 May 2010.

3.2. Turkey's multilateral base

51. Turkey has a solid base in multilateral co-operation as a founder member of the United Nations (1945), the Council of Europe (1949) and the Organisation for Economic Co-operation and Development (OECD) (1960), and a member of North Atlantic Treaty Organisation (NATO) since 1952, of the Organization for Security and Co-operation in Europe (OSCE) since 1973, of the Black Sea Economic Cooperation since 1992, of the World Trade Organization since 1995 and of the G20 since 1999. It participates in the Union for the Mediterranean.

52. Recently, Turkey simultaneously presided over two of the Council of Europe's bodies: in 2010 and 2011 Mevlüt Çavuşoğlu was President of the Parliamentary Assembly, and Turkey chaired the Committee of Ministers from November 2010 to May 2011. President Gül was a member of the Assembly for almost ten years.

53. Turkey has also been an associate member of the European Union since 1963. In October 2005, the European Union opened negotiations to admit Turkey, but, so far, only 13 of the 35 chapters on which negotiations must take place have been opened, and only one closed. Turkish popular support for EU accession seems to be waning: whereas 73% of respondents considered EU membership to be a good thing in 2004, the number had dropped to 38% in 2010.[31] In 2013, the discussions could however resume with the possible opening of Chapter 22 of the accession negotiations, related to regional policy and co-ordination of structural instruments.

54. In the second half of 2012, Turkey decided to freeze its relations with the Cypriot presidency of the European Union and, in particular, did not participate in any of the meetings chaired by that presidency.

55. On 16 May 2012, the Commissioner for Enlargement launched the "Positive Agenda" and set up eight working groups to make progress on the reforms in the areas where there is an agreement between Turkey and the European Union. Turkey is the only candidate country not to have been granted visa liberalisation. Brussels is demanding better border controls and checks on irregular migrants.

56. The European Commission's 2012 progress report, which is particularly critical on questions relating to fundamental freedoms, has been given a less than warm welcome by Turkey, which regards it as biased. The Minister for European Integration, Mr Egemen Bağış, has, incidentally, produced his own progress report for 2012.

3.3. Relations with neighbouring countries

57. The Syrian crisis has led to a number of developments in Turkey. Its effects are many and varied for Turkey, notably because it had to face the arrival of 184 585 refugees as at 27 February 2013 (see below), but also from military personnel who have deserted Syria's regular army and, in particular, gone to the Apadyn camp, which has perhaps become a possible fallback base for the rebel army. [It should be recalled that relations with Syria were originally poisoned by Syrian support for the Kurdish PKK rebels. In October 1998, already, the two countries were on the verge of a military clash. The Adana Accords (1998) enabled closer ties to be initiated in 2001 and 2002. Turkey then became one of Syria's main economic partners, Syria opening up a corridor that was very important for Turkey's ability to access eastern markets. The two countries also have similar situations in their population structure: significant Kurdish, Alawite/Alevite communities. In addition, Syria enabled Turkey to play the role of broker in talks on the Golan Heights between Israel and Syria, which have been suspended for the time being following the Gaza conflict of 2008. The instability and repression in Syria had an immediate impact on Turkey. When the protests against the Damascus regime were gathering pace, the Turkish Prime Minister endeavoured to persuade the Syrian president to meet the population's reform aspirations. The rift occurred in August 2011. The criticism from Ankara then intensified. Turkey subsequently became increasingly active on the international stage, by hosting a large number of multilateral meetings, taking in civilian and military members of the Syrian opposition and doing a great deal to help the Syrian refugees arriving in large numbers. The downing of a Turkish fighter jet near the Syrian coast in June 2012 brought further pressure. On 3 October 1992, five Turkish citizens were killed as a result of cross-border artillery fire on Akçakale by the Syrian army. After both incidents, the North Atlantic Council was called for consultations by Turkey under Article 4 of the NATO Treaty. In January 2013, based on the North Atlantic Council decision of 4 December 2012, NATO began to deploy Patriot missiles in the south of the country at Turkey's request to protect Turkish territory from possible Syrian missile strikes. The United States, Germany

31. ESI, "A very special relationship", p. 18, 11 November 2010, www.esiweb.org.

and the Netherlands are taking part in this operation and sent six Patriot batteries in total together with relevant military personnel. Turkey intends to play a key role in talks both with the Syrian opposition and with Russia to find a transition solution and thus put an end to the conflict.

58. Since 2009, based on its "zero problems with neighbours" policy, Turkey established new mechanisms, like "High Level Strategic Cooperation Councils" with 12 countries (Azerbaijan, Bulgaria, Egypt, Greece, Iraq, Kazakhstan, Kyrgyzstan, Lebanon, Pakistan, Russian Federation, Tunisia and Ukraine). Turkey has also lifted visa requirements with many countries, seeking to ensure more people-to-people contacts.

59. The winds of democracy blew through several countries in the region (Tunisia, Egypt, Libya, Syria and Yemen) during the Arab Spring of 2011. This movement is providing Turkey – which is certainly a major economic power and has developed many political, diplomatic and commercial ties with these countries[32] – with an opportunity to reposition itself. Today, Turkey can be a "source of inspiration" for the Arab countries, proposing a political model that reconciles religious belief with a democratic State. Its position in the Middle East is more than ever that of a regional power which has a vital role to play.

60. The situation in Cyprus is deadlocked. Since 1974, Turkey has been occupying 37% of Cypriot territory, north of the Green Line, and has 40 000 soldiers on the island. The northern portion of the island was proclaimed an independent republic, the "Turkish Republic of Northern Cyprus (TRNC)"[33] in 1983. This zone is entirely dependent on Ankara's political support and economic aid (US$400 million/year). This zone has received diplomatic recognition only from Turkey. Turkey wishes to dissociate the issue of Cyprus from the European Union accession process and considers that its resolution is a matter for the United Nations. It backed the Annan Plan of 2004, which was rejected by Greek Cypriots, who voted 76% "No" in the referendum held in April 2004. Turkey wants a global solution to the issue under the auspices of the United Nations. However, in a report of November 2010, the European Commission noted the lack of progress in normalising bilateral relations with Cyprus and stated that Turkey had not met its obligation of full, non-discriminatory implementation of the Additional Protocol to the Association Agreement and had not removed all obstacles to the free movement of goods, including restrictions on direct transport links with Cyprus.[34] In 2012, the European Commission expressed regret that Turkey had continued to "issue statements objecting to drilling operations carried out by the Republic of Cyprus and threatening retaliation against oil companies that would participate in Cypriot exploration".[35] Turkey indicated that they have complained about violations of Turkish territorial waters in the Aegean sea by Greek naval/coast guard vessels.[36] Greece and Cyprus, for their part, have made a large number of formal complaints about continued violations of their territorial waters and airspace, including flights over Greek islands[37] by Turkish planes.

61. Relations with Greece have improved since George Papandreou came to power in 2009. Turkish Prime Minister Erdoğan visited Greece in May 2010. Exploratory talks with a view to settling the Aegean Sea disputed areas, the issue of the Greek minority in Turkey and the Turkish minority in Greece and action against illegal immigration are ongoing. The last explanatory talks were held on 28 January 2012. The recent meeting between the Turkish Prime Minister, Mr Erdoğan, and the Greek Prime Minister, Mr Antonis Samaras, on 1 March 2013 in Athens, could paved the way for an enhanced dialogue.

62. The reconciliation process with Armenia has slowed down. The so-called "football diplomacy" led to reciprocal visits by Presidents Gül and Sarkisian in 2008. Protocols on "the Establishment of Diplomatic Relations between Armenia and Turkey" and on "the Development of Bilateral Relations between Turkey and Armenia" were concluded and signed in Zurich in October 2009. The setting-up of a committee of Turkish, Armenian and Swiss historians to study the "events of 1915" ("the Armenian genocide") was proposed – but did not happen. However, the ratification of the protocols is today blocked. Turkey first wishes to see some progress in the frozen conflict in and around Nagorno-Karabakh involving Armenia and Azerbaijan.[38] The state of relations with the Armenians is closely linked to Turkey's relationship with Azerbaijan. It should be pointed out that the historical issue of the "1915 events" (and the recognition of the "Armenian genocide") remains a major obstacle in the reconciliation of Turkey with Armenia.

32. See www.lexpress.fr/actualites/1/monde/la-turquie-se-veut-source-d-inspiration-pour-les-arabes_ 1002941.html.
33. The only State recognised by the Council of Europe is the Republic of Cyprus.
34. SEC (2010)1327, Turkey 2010 progress report, 9 November 2010.
35. SWD(2012) 336 final, EC 2012 progress report on Turkey, 10 October 2012, p. 36.
36. See the comments of the Turkish delegation, AS/Mon (2013) 05.
37. European Commission's conclusions to its 2012 progress report.
38. Following the denomination of the OSCE Minsk Group, www.osce.org/mg.

63. Concerning the relationship with Iraq, many high-level bilateral visits have taken place in the last few years. Trade between the two countries has steadily increased. The Turkish authorities and the Kurdish authorities in northern Iraq have strengthened their ties in the last few years. Although Ankara believed, before 2009, that a regional Kurdish government in northern Iraq could reinforce the Kurds' strivings for autonomy in Turkey, the self-government of the Iraqi Kurds and the existence of an autonomous political entity, as laid out in the Iraqi constitution, named Kurdistan, are now once and for all recognised by Turkish diplomacy.

64. Relations between Turkey and Iran are sometimes complex. The countries are two major competing powers and economically interdependent. Close by are Afghanistan and Pakistan: a supply of natural gas for Turkey and access to the Black Sea and Europe for Iran. Turkey's relationship with Iran is today one of "measured co-operation". The AKP government has adopted a positive attitude to Iran that has had tangible results in terms of trade (US$22 billion in 2012) and human exchanges (1.9 million Iranians travelled to Turkey in 2011). Turkish diplomacy defends Iran's right to develop a nuclear programme and has devoted considerable efforts to keeping alive the prospect of an agreement with the international community. The 17 May 2010 Turkish-Brazilian declaration[39] and the proposals to enrich Iranian uranium came as a surprise, and Turkey opposed the toughening of sanctions against Iran in the United Nations Security Council shortly afterwards. In its relations with Iran, energy is a fundamental issue (30% of Turkish petroleum comes from Iran, which also supplies a third of the country's gas). It should be noted, however, that the deployment of Patriot missiles in January 2013 was considered a provocation by Tehran, which regards this as a threat.

3.4. Turkey's regional strategy

65. The authorities have stated their intention to reposition Turkey at the centre of regional politics in the Middle East, the Balkans, the Caucasus and Central Asia, to be a "global player" and to increase the number of its diplomatic representations in the world.

66. Concerning the Middle East, the aim is to stabilise a region with multiple problems (the end of the Syrian conflict, the position of the Hezbollah in Lebanon), to foster the peace process between Israel and the Palestinians, and to secure access to the Red Sea and Arabia by reinforcing co-operation with Jordan. Turkey is thus turning again towards the Muslim world and aiming to position itself as a leader of Sunni Islam. Turkey has sought to activate a new dynamic of co-operation and dialogue in the region after the uprisings of the "Arab Spring".

67. For Turkey, the Balkans are an important area of influence, owing to their shared historical heritage and the presence of numerous minorities of Turkish origin (in Bulgaria, Romania, "the former Yugoslav Republic of Macedonia", Kosovo,*[40] Albania, Bosnia and Herzegovina, etc.). It therefore has a very strong diplomatic presence and a desire for economic expansion (significant presence of Turkish companies on major projects in the region: construction and public works, building of airports, roads, etc.) and cultural expansion. It supports, either directly or indirectly, the Balkan countries' membership of the European Union and NATO. As far as this area is concerned, it is also worth noting the improvement in relations with Greece.

68. In the South Caucasus, Turkish policy is aimed at fostering a balance between Georgia and Russia and the resolution of the region's "frozen conflicts" (conflict in and around Nagorno-Karabakh involving Armenia and Azerbaijan). Turkey has very good relations with Azerbaijan ("two States, one nation"). Energy constitutes an important component of the bilateral relations, as a result of the implementation of the two pipeline projects, namely the Baku-Tbilisi-Ceyhan oil and the Baku-Tbilisi-Erzurum natural gas pipeline projects.

69. Regarding Iran, and the resolution of the nuclear issue, Turkey has sought to adopt a conciliatory attitude favouring dialogue (see above).

70. In Central Asia, the Turkish administration's policy has been a more qualified success. Relations with countries in the area tend to be bilateral in nature.

71. With regard to the Black Sea, in 1992 Turkey was the instigator of the Organisation of the Black Sea Economic Cooperation (BSEC), which has 11 member States.

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39. See the text of the joint declaration signed by Turkey, Iran and Brazil.

40. * All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

3.5. A new energy diplomacy

72. Turkey is a major transit country for gas and oil supplies between East and West. Projects currently under way are the BTC (Baku-Tbilisi-Ceyhan) gas pipeline, the BTE (Baku-Tbilisi-Erzurum) oil pipeline, the Nabucco gas pipeline (2009), the trans-Anatolian Pipeline TANAP (which will transit gas to Europe via the West Nabucco pipeline or the trans-Adriatic Pipeline TAP (to southern Italy via Greece)), the Turkey-Greece natural gas interconnector, the Caspian-Austria link via Turkey, Greece, Bulgaria, Hungary and Romania, the South-Stream project (a competitor of Nabucco), which is scheduled for implementation in 2018, supported by the Italians and the Russians and will link Russia and Bulgaria, the TGI (Turkey-Greece-Italy) gas pipeline and the TAP pipeline.

73. A new relationship with Russia is being developed, although rivalry subsists in the Caucasus, Central Asia, the Black Sea region and even the Balkans. Relations are being stepped up in the field of energy co-operation.

74. In conclusion to these preliminary observations, it seems that the closing of the monitoring procedure concerning Turkey in 2004 paved the way for the opening of negotiations with the European Union, which must be a cause for satisfaction. However, the prospect of Turkish EU accession has become somewhat blurred in recent years. A number of factors account for this: the stated reluctance of some EU member States, enlargement "fatigue" within the Union, the economic crisis, the deadlock over Cyprus, a sense that negotiations with the European Union are becoming bogged down and weariness of part of Turkish public opinion. There could be a risk that the lack of a prospect of Turkish integration in the European Union as an economic and political partner will undermine the desire for Europe. It is to be hoped that this process will be relaunched in 2013, with the announced opening of a new chapter of the accession negotiations (chapter 22) with the European Union.

4. Functioning of democratic institutions

4.1. Constitutional reform

75. In its Resolution 1380 (2004) the Assembly invited Turkey to "carry out a major reform of the 1982 Constitution, with the assistance of the Venice Commission, to bring it into line with current European standards".

4.1.1. The constitutional referendum of 12 September 2010

76. The adoption of the constitutional amendments package on 12 September 2010 paved the way for:

– the appearance before civil courts of members of the military, including officers, and persons accused of crimes against the security of the State or the constitutional order (with the jurisdiction of military courts henceforward being limited to crimes and offences committed in the performance of military duties);

– the possibility of appeal for officers dismissed from the army;

– the opening of the trial of the leaders of the coup d'état of 12 September 1980;

– increasing the number of members of the Constitutional Court from 11 to 17, three of whom would be appointed by parliament and 14 by the President of the Republic;[41]

– increasing the number of members of the High Council of Judges and Prosecutors (a council supervising the judiciary) from 7 to 21: 4 members of the High Council of Judges and Prosecutors, and the latter's Secretary General, are now appointed by the President of the Republic and 10 members (out of 21) are elected by more than 10 000 judges and prosecutors of first instance;

– granting new rights to civil servants (including the right to collective bargaining);

– positive discrimination vis-à-vis individuals requiring social protection, such as women, children and the elderly;

41. The President will select the candidates for the Constitutional Court from among the three lists of nominees, presented by the High Court of Appeals, the Council of State, the Military High Court of Appeals, the Military High Court of Administration and the High Education Council.

– the establishment of the institution of ombudsman;

– establishing the right of individual appeal to the Constitutional Court in matters falling under the scope of the European Convention on Human Rights (ETS No. 5, "the Convention");

– the restriction of military jurisdiction. Constitutional guarantee to prevent civilians from being tried by military courts;

– constitutional guarantees for the protection of personal data;

– constitutional guarantees to protect children's rights.

77. These amendments were intended to eliminate several shortcomings referred to in the judgments of the European Court of Human Rights, and to satisfy a whole series of recommendations put forward by the Commissioner for Human Rights, the Venice Commission, the European Commission against Racism and Intolerance (ECRI), the Monitoring Committee of the Assembly, the United Nations Committee on the Elimination of Discrimination against Women, the United Nations Committee on the Elimination of Racial Discrimination and several other international supervisory bodies as well as those indicated in progress reports and on other occasions.

78. The adoption of these amendments was followed by an Action Plan covering the legislative changes required by the constitutional amendment package that included new laws as well as amendments to existing laws, concerning *inter alia* the establishment, duties and functioning of the institution of ombudsman, the creation of the Turkish Human Rights Institute and an anti-discrimination and equality board (yet to be set up), the law on the High Council of Judges and Prosecutors (adopted by parliament on 11 December 2010 after consultation of the Venice Commission[42]), personal data protection, the law on civil service unions, the law on the establishment and working procedures of the Economic and Social Council, and the law on the establishment and procedural rules of the Constitutional Court adopted by parliament on 30 March 2011. Prime Minister Erdoğan had stated that the provisions of the new constitution must not fall short of the improvements introduced via the referendum.

79. This constitutional reform was welcomed by the Council of Europe, the European Union and the international community. However, the referendum was not preceded by a wide-ranging consultation process involving political parties and civil society in the broad sense, a fact which the European Commission also regretted in its progress report of November 2010, pointing out the essential need to implement these reforms in an open and transparent way and in accordance with European standards and that further significant efforts remain necessary in the sphere of fundamental rights.

80. The referendum on constitutional reform of 12 September 2010 initiated by the government of Prime Minister Erdoğan resulted in a 58% vote in favour. The opposition Republican People's Party (CHP) rejected the reform as a whole because of its opposition in principle to two amendments (of the 26 put to a referendum) enlarging the composition and modifying the functioning of the Constitutional Court and the High Council of Judges and Prosecutors. Furthermore, this referendum was not in compliance with the relevant recommendations of the Venice Commission, insofar as several amendments had been put to a vote which required a single response.[43]

81. The constitutional amendments of 12 September 2010 constitute a first positive step – despite the reserves made on the referendum. A more substantial constitutional reform is already on the political parties' agenda. In this connection, it can be recalled that, in its Resolution 1622 (2008) on the functioning of democratic institutions in Turkey: recent developments, the Assembly underlined the evident need for a new constitution, which should give rise to a "broad national debate involving all actors of society ... guarantee an appropriate system of checks and balances and give a prominent place to the protection of human rights and fundamental freedoms, in line with European standards, in order to fully ensure the democratic functioning of Turkey's institutions and the consolidation of its modernisation and reform process."[44]

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42. CDL-AD(2010)042, Interim opinion on the draft law on the High Council for Judges and Prosecutors, adopted by the Venice Commission at its 85th plenary session (17-18 December 2010).

43. The Venice Commission considers that "Electors must not be called to vote simultaneously on several questions without any intrinsic link, given that they may be in favour of one and against another. Where the revision of a text covers several separate aspects, a number of questions must therefore be put to the people", CDL-AD(2007)008, Code of Good Practice on Referendums, paragraph 30 of the Guidelines on the Holding of Referendums, adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007).

4.1.2. Drafting of a new constitution: progress of the work

82. The drafting of a new constitution was one of the key pledges made by the AKP in the 2011 election campaign. A "constitutional conciliation committee", chaired by the Speaker of the Turkish Parliament, Cemil Çiçek, began work on 19 October 2011. I have on more than one occasion drawn attention to the exemplary composition of this committee (3 members and 2 experts for each of the 4 political groups represented in parliament), which set out to prepare a draft constitution on a unanimous basis by the end of 2012.

83. The conciliation committee has carried out a remarkable consultation exercise encompassing all the driving forces in Turkish society. The initial phase of the work of the committee and its three thematic sub-committees, which ended on 30 April 2012, was used to gather data and canvas opinions across a wide section of the public.[45] Nearly 65 000 contributions from citizens or civil society organisations were submitted to the committee.[46]

84. Since 10 May 2012, the committee has begun drafting the new constitution. The Prime Minister had set 31 December 2012 as the deadline. At the end of 2012, the Speaker of the Parliament explained that the committee had discussed 71 constitutional articles. In the case of 23 of them, it had been able to reach a consensus. In the remaining articles, the various options had been placed in brackets and would be renegotiated. After consulting the leaders of the political groups, Mr Çiçek announced that the conciliation committee would continue operating beyond 31 December 2012, for a "reasonable" period – with mention being made in some quarters of March or April 2013. The draft constitution should then be submitted to public consultation, revised by parliament and put to referendum for adoption. On 19 February 2013, the committee decided to increase its working hours to seven hours per day, five days a week to speed up the drafting process.

85. My contacts with the Chair of the committee (and of Turkey's Grand National Assembly) and several members of the committee have shown me the extent of all committee members' determination to continue this work, despite some obvious sticking points and differences of opinion. Quite understandably, the committee is struggling to reach a consensus on the key issues that are apt to divide Turkey's political parties and/or Turkish society, such as the definition of citizenship, the place of the family in the Constitution, secularism, and above all the kind of regime that Turkey would wish to have:

– We note that the pro-Kurdish party BDP has put forward a proposal for a State based on "democracy autonomy" and the organisation of the country into 25 "autonomous regions", according to a system based on the Scottish model.

– Otherwise, the proposed "presidential system" presented by the AKP in November 2012, and inspired by the American and French systems, has provoked strong reactions and brought discussions within the committee to a standstill, all the opposition parties having expressed their disapproval. The parameters of such a system, which has the backing of Prime Minister Erdoğan, still have to be determined and clarified. The Prime Minister's statements on 17 December 2012 about the separation of powers, to the effect that this would prevent the government from providing better services to citizens, have fuelled some fears.

86. It is for Turkey to define the parameters of its future democratic system while at the same time ensuring the institutional balance of powers, the existence of countervailing powers, and respect for everyone's fundamental rights and individual freedoms. I can only commend all political forces in Turkey for their efforts drafting a new democratic constitution and encourage the Turkish Parliament to press ahead with its constitutional work and its consultation exercises, and to work closely with the Venice Commission to ensure that the draft constitution, which is submitted to the Turkish Parliament for approval, meets democratic standards.

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44. Paragraphs 15-17.

45. The three sub-committees held a total of 53 meetings with 15 political parties, 22 Turkish universities, 39 trade unions and 79 civil society organisations and foundations. The parliament further canvassed the opinions of 165 universities, 78 bar associations, 60 political parties, 18 municipal associations, 17 professional associations, 7 high courts, 7 civil service unions, the Radio and Television Supreme Council and the directorate of human rights, and e-mailed 14 538 associations, 4 000 foundations, 1 700 local and national radio stations, etc. The opportunity given to the Ecumenical Orthodox Patriarch, to the representative of the Armenian Patriarch of Turkey and other religious leaders to make a presentation to the constitutional conciliation committee was seen as an unprecedented development.

46. There is a website dedicated to the work of the conciliation committee: http://yenianayasa.tbmm.gov.tr.

4.2. Elections

87. In its Resolution 1380 (2004), the Assembly invited Turkey to "amend the electoral code to lower the 10% threshold and enable Turkish citizens living abroad to vote without having to present themselves at the frontier".

88. I note that the threshold requiring parties to win at least 10% of the votes cast nationally before they can be represented in parliament has not been modified. I mentioned this in January 2011 to the President of the Constitutional Court and to the Minister of Justice, who indicated that no change would take place before the elections in June 2011. When he addressed the Assembly on 13 April 2011, Prime Minister Erdoğan expressed the view that the 10% threshold "did not call Turkish democracy into question" and it continued to be applied "for the stability and the security of Turkey". He stated that the Turkish Government would reduce the 10% threshold when the time was right but it was really a decision for the people.[47]

89. The required threshold of 10%, by far the highest among the 47 member States of the Council of Europe, was indeed introduced to guarantee stability by avoiding excess fragmentation within parliament. It in fact restricts the representation of political parties in parliament. Many people believe that it was introduced with the Democratic Society Party (DTP) – and its mainly Kurdish electorate – in mind, so as to prevent its election to parliament.[48]

90. In its Resolution 1705 (2010), while acknowledging that "there is a variety of types of electoral systems throughout Council of Europe member States and each of them has advantages and disadvantages", the Assembly called on member States to "consider decreasing legal thresholds that are higher than 3%, and removing other obstacles, including high financial deposits, which bar minor parties or independent candidates from being represented in elected bodies".[49]

91. In its *Yumak and Sadak v. Turkey* judgment of 8 July 2008, the European Court of Human Rights examined the compatibility of the 10% electoral threshold with the right to free elections (Article 3 of Protocol No. 1) in the context of the 2002 elections. The Court considered that "in general a 10% threshold appears excessive" and concurred with the Council of Europe bodies that had stressed the threshold's exceptionally high level and recommended that it be lowered. It found that "[i]t compels political parties to make use of stratagems which do not contribute to the transparency of the electoral process".

92. In the case before it, however, the Court was not persuaded that "when assessed *in the light of the specific political context of the elections in question*, and attended as it is by correctives and other guarantees which have limited its effects in practice, the threshold has had the effect of impairing in their essence the rights secured to the applicants by Article 3 of Protocol No. 1" (the emphasis is mine) and found no violation of this article. In the instant case, therefore, the Court recognised that States have a margin of discretion[50] and allowed that the 10% threshold under Turkish law served a legitimate aim (avoiding excessive parliamentary fragmentation and facilitating the emergence of a governing majority), attended by guarantees and correctives (the possibility of standing as an independent candidate, enabling the election of a number of Kurd members of parliament).[51]

93. In my capacity as a member of the Council for Democratic Elections of the Venice Commission, I would point out that a threshold of around 6% has been recommended. I personally consider that in a democratic society it is essential to respect the voters' will and hence to guarantee the effective participation of legal political parties representing them. I would also point out that, when he addressed the Assembly in 2007, President Abdullah Gül undertook to reduce the 10% threshold and I regret that no progress has been made since. I do not have the impression, from my dealings with the majority party, that any changes are planned in this area, even though they have been called for by the opposition parties within the framework of the discussions on the new constitution.[52] I note that 95% of the votes cast (on a turnout of 87%) in the June 2011 parliamentary elections resulted in parliamentary representation and that the 10% threshold does not apply to

47. Report on the Assembly's sitting of 13 April 2011, http://assembly.coe.int/Mainf.asp?link=/Documents/Records/2011/E/1104131000E.

48. Document AS/Mon (2009) 10 rev.

49. Resolution 1705 (2010) on thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member States, paragraphs 7 and 22.3.

50. In this judgment, the Court noted that "the rules in this area vary in accordance with the historical and political factors specific to each State; the large variety of situations provided for in the electoral legislation of numerous member States of the Council of Europe shows the diversity of the possible options".

51. Application No. 10226/03, judgment of 8 July 2008, cited in CDL-AD(2010)007. The Chamber's decision was accompanied by a joint dissenting opinion by Judges Tulkens, Vajić, Jaeger and Šikuta.

independent candidates. Under the Constitution, moreover, members of parliament do not represent the province or electoral district where they were elected but rather society as a whole. It will be up to Turkey to determine its own electoral system. I note, however, that political representation in Turkey has really become much more stable over the past 10 years, which should enable the Turkish authorities to consider lowering the electoral threshold, as other countries have done,[53] and to thus widen the participation of the major political parties – which play a key role in democracies – within parliament. That would constitute a strong policy initiative and would clearly send an important signal vis-à-vis the Kurdish population. I would therefore invite the Turkish authorities to act on the recommendations of the Venice Commission and to lower the electoral threshold at the time of the next constitutional review.

94. Concerning voting by Turkish nationals living abroad, I first note with satisfaction that this is possible: Article 67 of the Constitution, and the subsequent Decree 4121 of 23 July 1995, establish the statutory foundations of practical measures to this end.[54] As I stated in the report I submitted to the Council for Democratic Elections on 16 June 2011, granting this right fosters the development of national and European citizenship[55] even if the right to vote abroad is not guaranteed *ipso facto* by Protocol No. 1 of the European Convention of Human Rights.[56]

95. At the time of the last elections on 12 June 2011, I had regretfully noted that there were *de facto* restrictions on the exercise of this right granted to Turkish nationals living abroad since they are required to present themselves at the border in order to vote. Postal voting was ruled out by the Constitutional Court in May 2008 on the ground that an amendment to the Elections and Electoral Lists Act in March 2008 was unconstitutional.[57] In 2011, the Turkish authorities had to abandon organising voting in diplomatic missions following a decision by the Supreme Election Board in late February 2011 that the infrastructure could not be put in place on time. This decision was criticised by the AKP, the CHP and civil society groups. I would also point out that, in January 2011, the Ministry of the Interior announced that security conditions in diplomatic missions in Germany prevented the organisation of voting there.

96. In May 2012, the Turkish Parliament enacted amendments to the Law on Elections to enable more than two million Turkish voters (that is 5% of the total electorate) living abroad to vote in the forthcoming presidential elections in 2014. This move is to be applauded in my view.

4.3. Local democracy

97. In its Resolution 1380 (2004), the Assembly invited Turkey to "reform local and regional government and introduce decentralisation in accordance with the principles of the European Charter of Local Self-Government (ETS No. 122); as part of the reform, to give the relevant authorities the necessary institutional and human resources and arrange redistribution of resources to compensate for the underdevelopment of certain regions, particularly south-east Turkey".

98. With regard to development of local and regional democracy, I refer to Recommendation 301 (2011) adopted by the Congress of Local and Regional Authorities on 24 March 2011, which draws attention to many difficulties, including in particular:

> *c. the way that the existing criminal and anti-terrorism legislation is being implemented has a disproportionately destructive effect on the functioning of local and regional democracy in Turkey and the human rights of local and regional elected representatives;*
>
> *...*
>
> *f. the new Villages Law has not yet been finalized despite the fact that many former municipalities have lost that status and become villages through the recent Law on Establishing Districts in the Borders of Metropolitan Municipalities and Making Amendments in Some Laws No. 5747 of 2008;*

52. The CHP proposes that the threshold be lowered to 5% in order to increase the representation of all the political groups present in Turkey (CHP's comments, November 2012).
53. Russia recently lowered its electoral threshold from 7% to 5%.
54. AS/Mon (2009) 10 rev, paragraph 31.
55. CDL(2011)027, report on out-of-country voting, by Ms Josette Durrieu (France) and Mr Laszlo Trocsanyi (Hungary), adopted by the Venice Commission on 17-18 June 2011. See in particular paragraphs 69 and 97.
56. See Sitaropoulos and Giakoumopoulos v. Greece, Application No. 42202/07, judgment of 15 March 2012.
57. AS/Mon (2009)10 rev, paragraph 31.

g. the law anticipated in 2005 on municipal revenues has not yet been enacted and the enactment of the more limited Law on Allocations from Tax Revenues under the General Budget to Special Provincial Administrations and Municipalities No.5779 has left municipalities even more heavily dependent upon centrally determined grants and introduced new financial disciplines;

h. the Special Provincial Administrations still have no access to any "own resources" for their funding which varies substantially from one province to another;

i. although the Governor has been removed from the presidency of the general council, his position remains distinctly anomalous as the chairman of the Special Provincial Administrations executive committee and puts the autonomy of provincial government into question in a situation where the Special Provincial Administration's chief executive is, in effect, an appointee of the central government;[58]

j. due to the high degree of involvement of Governors in Special Provincial Administrations, Governors appear to be the representatives of their Special Provincial Administrations in the Union of Special Provincial Administrations;

k. the overlapping roles of officials who hold (or have held) office in the Ministry but also serve the Union and/or the Turkish Delegation to the Congress which may be reducing the institutional distance between the Ministry and municipalities and thus (adversely) affecting the distinctive relationship between the two;

l. although the decision-making bodies of the Union are democratically elected and allow different political parties to be represented, the statutory requirement that all municipalities be obliged to be members of the national Union of Turkish Municipalities has been maintained, lending it an undemocratic character in its removal of choice from individual municipalities and causing legitimate resentment in municipalities who feel that their particular interests and concerns are inadequately represented by the majority of member municipalities whose views they do not share."

99. In the field of local democracy, despite the reforms undertaken since 2005 and the projects developed with the European Union to ensure their implementation,[59] progress appears to have been limited for the time being. I can only encourage the Turkish authorities to implement the recommendations of the Congress as soon as possible and, in the context of the future constitutional reform, to consider abolishing the provisions on administrative tutelage (Article 127 of the current Constitution) and other laws which, as the Congress says, remain an obstacle to the proposed general decentralisation in Turkey. I cannot therefore subscribe to the observations made by the Turkish delegation in its comments, to the effect that Article 127 of the Constitution as a whole, which also regulates the exercise of the power *of administrative tutelage* (the emphasis is mine) by the central government over local governments, is an assurance and not an impediment to decentralisation, in that it accords constitutional assurance to local governments.

100. I am also convinced that continuing and increasing decentralisation will be a key factor in Turkey's development strategy, and also in settling the Kurdish question.

101. The next local elections are to be held in spring 2014, when Turkey is also due to directly elect its president. The AKP had suggested bringing the local elections forward to autumn 2013, citing winter weather conditions which make it difficult to conduct an election campaign. This decision required an amendment to the Constitution. The opposition was not against the idea, although it did object to the proposed date. Despite the agreement of the MHP, the AKP has not managed to obtain the qualified majority needed to get the constitutional amendment adopted a year before the next elections.

58. The Turkish delegation wished to add that "[t]he general provincial assemblies in Turkey, which are the decision-making bodies of special provincial administrations, are formed by members that are elected in line with the criteria set forth by the Charter. The Executive Committee is an executive body chaired by the governor. It is made up of five General Provincial Assembly members, elected by the Assembly itself, and five department heads appointed by the governor. Considering Law No. 5302, it is evident that the governor and the executive committee function as a single executive body. The fact that the governor is a centrally appointed civil servant does not indicate special provincial administrations to be a branch of the central government, neither *de facto* nor *de jure*. Because the general provincial assembly, which is the decision-making body, is totally made up of members that are elected in line with the criteria set forth in the Charter". See AS/Mon (2011) 23 rev, p. 15.

59. See AS/Mon (2013) 05, p. 19.

102. While I was in Turkey in November 2012, parliament was considering the draft law on metropolitan municipalities, adopted on 6 December 2012, which increases the number of metropolitan municipalities from 16 to 29[60] and gives them bigger budgets, the aim being, according to the AKP, to achieve a more efficient system of municipal governance, expand the coverage of metropolitan municipalities to 70% of the population and strengthen municipal revenues. The new legislation involves a major reorganisation of the local and regional authorities concerned, with municipalities (belde) and villages in the provinces to lose their legal status as separate entities and become districts (mahalleler) of the metropolitan municipalities. The latter will also administer their province, whose provincial assemblies are being abolished. In provinces where there are no metropolitan municipalities, municipalities with fewer than 2 000 inhabitants are being abolished and are to become districts of municipalities. In the "Departments for Investment Monitoring and Co-ordination" (Yatırım İzleme ve Koordinasyon Başkanlığı) set up by the law on metropolitan municipalities, governors will be responsible for administering the funds transferred by central government.

103. The new legislation, which involves mergers of municipalities and electoral boundary changes a year before the upcoming local elections, has provoked sharp protests. This issue will most certainly be discussed by the Congress of Local and Regional Authorities of the Council of Europe. I note that the mayor of Şişli has appealed to the Constitutional Court against the decision to incorporate three of the town's neighbourhoods in the adjoining district of Sariyer.

5. Rule of law

5.1. Reform of the judiciary

104. The Assembly is pleased to note the co-operation Turkey has entered into with the Venice Commission to modify the judicial system following the constitutional reform and thereby bring its legislation into line with current European standards in accordance with Resolution 1380 (2004), paragraph 23.*i*.

105. The meetings with the Presidents of the Constitutional Court and the Supreme Court of Cassation and with the Minister for Justice I had in January 2011 afforded an opportunity to assess the constitutional reform approved by referendum on 12 September 2010, and in particular the reform of the Constitutional Court and the High Council of Judges and Prosecutors (HSYK) (whose Chair is the Justice Minister). The Venice Commission had expressed a number of reservations not only on the draft law on the High Council (passed by parliament on 11 December 2010) but also on Article 159 of the Constitution which sets out details of the membership and functioning of the High Council. The opposition fears that the arrangements for appointing members of the Constitutional Court and the High Council will give the AKP a strong grip on these bodies and represent a threat to their independence. The functioning of the judicial system was also discussed, in particular the excessive length of pre-trial detention and of proceedings, the overburdening of the courts and the creation of regional appeal courts. Concerning these last issues, Mr Ergin, the Justice Minister, announced on 12 January 2011 that nine regional courts would be set up in 2011, in addition to the three regional appeal courts which would be financed with European Union aid.

106. With regard to the High Council of Judges and Prosecutors, the Venice Commission acknowledged in its interim opinion[61] that the transfer of power from the Ministry of Justice to the High Council and the broadening of the latter's composition and increase in its independence represented a considerable improvement. However, it made a number of recommendations on revising the draft law and certain provisions of the Constitution. These were aimed at ensuring separation of powers between the judiciary and the executive by replacing the appointment of the four representatives by the President with appointment by parliament, ensuring a proper distinction between the functions of judges and prosecutors within the High Council and establishing a system for electing the members of the High Council which ensured broad and pluralistic participation, making sure that the powers of the High Council were exercised impartially and objectively so as to avoid any suspicions of political control of the institution and revising the powers of inspection and supervision (laid down in Article 159 of the Constitution) which were deemed too wide and too centralised.[62]

60. The 13 newly created metropolitan municipalities are Aydın, Balıkesir, Denizli, Hatay, Malatya, Manisa, Kahramanmaraş, Mardin, Muğla, Tekirdağ, Trabzon, Şanlıurfa and Van.
61. CDL-AD(2010)042, op. cit.
62. Ibid., paragraph 86.

107. With regard to the Law on Judges and Prosecutors of Turkey:[63]

– The Venice Commission has underlined that the transfer of powers of supervision from the Ministry of Justice to the High Council of Judges and Prosecutors (albeit a limited change) and the strengthening of the rights of defence of judges and prosecutors subject to disciplinary proceedings and complaints are a "step in the right direction". However, the Venice Commission notes that the draft legislation should further clarify the preconditions for disciplinary proceedings, as they could be abused to sanction judicial activities indirectly. The lack of provision for appeals against disciplinary sanctions is a major shortcoming in Article 159 of the Constitution and in the draft law. Article 33 of Law No. 6087 on the High Council of Judges and Prosecutors, which was adopted and entered into effect on 18 December 2010, now regulates investigations, objections and appeals relating to disciplinary proceedings. It now allows for the possibility of objecting to and reviewing disciplinary proceedings – but only in cases of dismissals.[64] This restriction was underlined by the Venice Commission.[65]

– The Venice Commission has also expressed reservations about the independence of justice, pointing out that the relationship between the executive in the form of the Ministry of Justice and the judiciary and prosecutors continues to give cause for concern and in some respects seems too close in a manner which may pose a risk to independence, in particular through the transfer of judges and prosecutors to work in the Ministry of Justice.[66] Certain aspects of the performance evaluation system also give rise to some concerns.[67] The function of supervision and monitoring of judges is not clearly defined and its scope is unclear, giving rise to concerns that it could be a means to undermine the independence of judges and prosecutors.

108. In addition, diverse socio-professional stakeholders, including the vice-president of the Association of Judges and Prosecutors (YARSAV), whom I met in June 2012, routinely raise the issue of the independence of the judiciary. It should also be noted that in its official comments, the CHP party said that "two critical clauses of the referendum rendered the High Council of Judges and Prosecutors dependent on the government, and the Constitutional Court gradually [dependent]. Any objective examination [of] the new rules for the composition of the High Council and the Constitutional Court can confirm this, and expectations based on promises of improvement in practice were doomed to fail and indeed failed". Moreover, "the MEDEL (Magistrats européens pour la démocratie et les libertés) report of July 2012 reflects some of the critical problems with respect to the independent functioning of the justice system".[68]

109. Measures have been adopted to make the judicial system more efficient: recruitment of judges; setting-up of regional courts to begin operating in 2013 in 15 provinces; creation of an electronic judicial network covering all courts, offices of public prosecutors, law enforcement offices and the Ministry of Justice, as well as enabling citizens to track the progress of their cases online, etc. The efficiency of these measures will have to be assessed.

5.2. Adoption of the 3rd package of judicial reforms in July 2012

110. On 18 January 2012 the Justice Minister, Sadullah Ergin, announced a package of judicial reforms (a hundred or so amendments relating *inter alia* to the Criminal Code, the Code of Criminal Procedure and the Anti-Terror Law) designed to make it more difficult for courts to issue detention orders for suspects before trial, to bring the legislation into line with the European Convention on Human Rights and to ease congestion in the courts. It was adopted in June 2012. Under the new legislation, courts will be required to provide concrete

63. CDL-AD 2011)004, Opinion of the Venice Commission on the draft Law on Judges and Prosecutors, adopted on 25-26 March 2011.
64. AS/Mon (2013) 05, p. 20.
65. CDL-AD(2011)004, paragraph 96: In its Interim Opinion (No. 600/2010), the Venice Commission has already criticised that the draft Law on HSYK has no provision for an appeal to a court of law against a disciplinary finding against a judge (or prosecutor), except where dismissal is the outcome. This problem is rooted in Article 159 of the Constitution, which should be amended.
66. Concerning this observation from the Venice Commission, the authorities explained that judges and prosecutors who work at the Ministry of Justice do so of their own accord and at their own request and that they do not practise their profession in any court during their posting at the Ministry. Such arrangements do not pose a risk to the principle of independence of the judiciary, therefore. See AS/Mon (2013) 05, p. 21.
67. On this specific issue, the Turkish authorities underlined that inspectors assess the performance of judges and prosecutors. The data related to the performances of courts and individuals is accessible in the National Judicial Network Information System (UYAP). See AS/Mon (2013) 05, p. 21.
68. AS/Mon (2013) 05, p. 41.

reasoning why detention is necessary. In 2011, there were about 57 000 inmates in prisons awaiting trial or final decisions from the Supreme Court of Appeal. The amendments also relate to Articles 6 and 174 of the Anti-Terror Law, classify Molotov cocktails as firearms and reduce sentences by half for those convicted of committing a crime on behalf of a terrorist organisation without being a member of it. The reforms have been dismissed by the opposition as ineffective however.

111. A set of reforms (called the "third package of judicial reforms)" was thus adopted by parliament on 30 June 2012 and enacted in July 2012.[69] These reforms are also aimed at easing the judiciary's workload by accelerating and hence shortening the judicial process. To that end, amendments are being introduced *inter alia* to the Criminal Code, Code of Criminal Procedure, Anti-Terror Law, Enforcement and Bankruptcy Law, Press Law, Law on the Council of State, Code of Administrative Procedure, Law on the Institute of Forensic Medicine, Law on the Court of Cassation, Law on Judges and Public Prosecutors, Law on Misdemeanours and the Law on Criminal Records.

112. I should list here some of the highlights of this package of reforms and new measures introduced by the authorities;[70] the effectiveness of their application in the immediate and short term, however, will have to be assessed.

– As regards freedom of expression and media, the widely criticised Article 6.5 of the Anti-Terror Law was abolished. According to the new legislation, "no suspension decisions will be given for publications which include propaganda of a terrorist organisation, praise the offence or the offender of a crime or publicly incite people to engage in crime within the framework of a terrorist organisation's activities". Suspects' access to the investigation files will be widened. Longer time limits to restore the balance between the rights of the victims and securing freedom of the press will be introduced. Provisions ordering an increase of penalties when the offence was committed through the press or a publication have been annulled. Penalties will be reduced for persons who are not members of a criminal organisation but who commit a crime on behalf of that organisation. For the crime of "violation of confidentiality", the scope of the term "confidentiality of investigation" will be narrowed by setting specific criteria for breach of confidentiality of the investigation. Reporting on investigations and prosecutions shall not constitute an offence unless the boundaries of the reporting mission are overstepped, and the custodial sentence will be replaced by a judicial fine. The new law addresses any crime related to the expression of a thought or opinion, or through the press or publications, committed before 31 December 2011 and that is punishable by a fine or a prison sentence of less than five years: depending on the state of the proceedings, investigation, prosecution or enforcement of the conviction will be suspended. If the suspected journalists do not reoffend within three years, their criminal record will be expunged. Should it not be the case, the penalty will be imposed or the investigation continue from where it left off.

– As regards the use of detention and judicial control, in the case of detention orders and decisions to extend a detention order or to reject an application for release, judges will be required to emphasise that the existence of strong suspicion of crime, and the existence of grounds for detention and the proportionality of the detention must be clearly indicated and supported by concrete reasoning, case by case. It is now possible for judges to apply judicial control for all types of crimes, regardless of the upper limit of sentences imposed.[71]

– As regards the fight against corruption, the law calls for full compliance with the recommendations of the Group of States against Corruption (GRECO) and for bribery to be redefined in a comprehensive way so that acts regarded as an abuse of authority, which carries a lower penalty, will in future be treated as bribery.

113. According to the Ministry of Justice, nearly 2 million cases were likely to benefit from the new provisions contained in Law No. 6352. The 3rd package of judicial reforms has yielded a number of notable results, such as the release of 30 053 pre-trial detainees[72] between July 2012 and January 2013, including, in July 2012, a lecturer in constitutional law, Ms Büşra Ersanlı (expert in the BDP intra-party constitutional committee), after

69. www.kgm.adalet.gov.tr/yargitaslak/yargi.html.

70. The information listed in this paragraph provided by the Turkish delegation, see AS/Mon (2013) 05, p. 21.

71. According to the data provided by the Ministry of Justice, the number of judicial control measures considerably increased, from 3 035 cases between 5 January 2012 and 4 July 2012 (namely seven months prior to the enactment of the "3rd package") to 7 218 cases between 5 July 2012 and 30 January 2013 (seven months after the enactment of the "3rd package"). See AS/Mon (2013) 05, p. 22.

72. Number of detainees in pre-trial detention released between 5 July 2012 (date of the enactment of the 3rd package) and 30 January 2013, provided by the Ministry of Justice, see AS/Mon (2013) 05.

over eight months in pre-trial detention in connection with the KCK trial, the publisher, Ragıp Zarakolu, and the former co-ordinator of the *Atilim* newspaper, Sedat Senoglu, on 6 September 2012, suspected of links with the MLKP (Marxist Leninist Communist Party), and who had spent six years in prison awaiting trial.[73]

114. The 3rd package also aimed to strengthen the presumption of innocence, and to restrict the grounds on which pre-trial detention orders may be issued. The authorities have stated that the accused are placed in pre-trial detention in "only 1% of these 3 million criminal cases launched every year". With the introduction of the 3rd judicial reform package, pre-trial detentions will account for 23.5% of incarcerations in December 2012.

115. The adoption on 11 April 2012 of Law No. 6291 on Probation, which paved the way for non-custodial sentences or the release and electronic tagging of certain prisoners nearing the end of their sentences, has led to the release of nearly 34 000 persons on probation, according to information supplied by the authorities in November 2012.

116. The 3rd reform package has not had the impact hoped for, however: many prominent figures who have contested the grounds for their incarceration and pre-trial detention (including in some major cases) have not been released. The members of parliament, for example, are still in prison.

117. The Minister of Justice has informed me that a 4th package of judicial reforms was in preparation. It was submitted to the parliament in March 2013. The aim is to remedy violations of the European Convention on Human Rights. The new package is expected to include amendments to the Criminal Code and to reinforce the distinction between freedom of expression/media freedom and terrorist propaganda. The package is therefore eagerly awaited and hopefully it will meet expectations. In the meantime, I was informed that an "action plan on the prevention of human rights violations" was being prepared by the Ministry of Justice and should soon be submitted to the Council of Ministers.[74]

118. In the criminal justice field, the reforms have led to the closure of 268 institutions which failed to meet international standards, to the establishment of 68 new penal institutions (with room for 14 500 inmates), 13 of them in 2012, to more frequent use of conditional sentences,[75] to the introduction of electronic tagging or to the deferral of sentences imposed on persons who have disabilities or are seriously ill. The incidents that occurred in 2012 in a number of prisons, however,[76] are a reminder that prison overcrowding remains a problem in Turkey, including notably in the facility in Urfa. The authorities have stated that increasing prison capacity will be a priority for the 2013 budget. This issue is likely to be examined this year by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which is due to carry out a periodic visit to Turkey in 2013.

119. The exercise of fundamental rights, in particular freedom of speech and assembly, is a major concern therefore, despite the progress that has been made since the entry into force of the 3rd package. I had long talks with the Minister of Justice, Mr Sadullah Ergin, whom I applaud for his determination to pursue the necessary reforms and incorporate the standards and case law of the European Court of Human Rights.[77] It should be recalled that there is still no legal outcome to the pre-trial detention of members of parliament and local elected representatives. This clearly hampers the exercise of the mandates given to these elected representatives by citizens and requires a legislative solution.

120. I also note that the constitutional reform approved on 12 September 2010 paves the way for individual appeals to the Constitutional Court regarding breaches of the rights enshrined in the European Convention on Human Rights. This remedy has been available since 24 September 2012 for matters covered by the Convention, and applies to decisions handed down by Turkish courts after 23 September 2012. As at 28

73. Among the other persons released were Vedat Kurşun, editor-in-chief of the Kurdish daily newspaper *Azadiye Welat*, Abdülmenaf Düzenci, owner of the Kurdish news website Yüksekova Gündem, and the journalists Cihan Gün, Naciye Yavuz, Kaan Ünsal, Musa Kurt and Halit Güdenoğlu from the magazine *Yürüyüş*.

74. AS/Mon (2013) 05, p. 22.

75. 104 662 people received conditional sentences in 2010, 130 402 in 2011 and 12 589 in 2012.

76. 13 inmates died on 17 June 2012 in a prison fire in the Sanliurfa province in eastern Turkey. It appears that the fire broke out following an altercation between inmates. A second fire was reported on 18 June in the juvenile ward of the same prison. 14 people were injured, one of them seriously. The same day, three fires were reported in E-type prisons in Adana and Gaziantep, and in a T-type prison in Osmaniye, following protests over poor conditions.

77. In this context, I was informed that a project is being carried out under the co-ordination of the Ministry of Justice in co-operation with the Council of Europe, Court of Cassation, the State Council and High Council of Judges and Prosecutors to improve the exercise of the freedom of expression and the media. AS/Mon (2013) 05, p. 22.

February 2013, the Constitutional Court had received 2 967 complaints: 261 were declared inadmissible, 165 were issued an administrative rejection and 11 were merged. No final decision has yet been made by the Constitutional Court on the remaining complaints.[78]

121. The Ministry of Justice has developed a "Judicial Reform Strategy" which aims to increase the efficiency of the system and the accessibility of justice. The number of judges and prosecutors has increased since 2002, which constitutes an important step in overcoming the problem of congestion in the courts and excessive length of pre-trial detention and proceedings. The Parliamentary Assembly highlights, however, one essential notion of this new strategy, which should "make the individual rather than the State" the focal point of the justice system.[79]

5.3. Right to conscientious objection and alternative civilian service

122. In Resolution 1380 (2004), the Assembly called on Turkey to "recognise the right of conscientious objection and establish an alternative civilian service". In 2009, the Assembly noted that "legislation on alternative civil service has not yet been introduced … [and] the continuing imprisonment of conscientious objectors in … Turkey is a matter of serious concern".[80]

123. Turkish domestic law does not recognise the right of conscientious objection and makes no provision for civilian service as an alternative to military service. Conscientious objectors face criminal prosecution, are liable to up to three years' imprisonment and may be subject to repeated convictions or held in isolation.[81]

124. Under Article 10 of the Constitution, "all individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such consideration. No privilege shall be granted to any individual, family, group or class." Article 72 of the Constitution provides: "National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in public service shall be regulated by law."

125. In its judgment *Ülke v. Turkey,*[82] the European Court of Human Rights concluded, however, that the many convictions and prison sentences imposed on the applicant for refusing to do his military service constituted degrading treatment in violation of Article 3 of the Convention. The Court held that Turkish law contained no specific provision regulating the sanctions provided for in the case of individuals who refuse to do their military service on grounds of conscience or religion and that the only rules applicable in this area seemed to be the rules of the Military Criminal Code that provide for punishments in general terms for disobeying the orders of a superior.[83]

126. It is pointed out that every State's obligation under Article 46, paragraph 1, of the Convention to abide by the Court's judgments involves the adoption of individual measures that put an end to the violations found and remove their effects for the applicant as far as possible, as well as general measures aimed in particular at preventing similar violations. In addition, Article 90 of the Turkish Constitution states that the European Convention on Human Rights takes precedence over Turkish law.

127. In its Resolution CM/ResDH(2007)109, the Committee of Ministers urged the Turkish authorities to take without further delay all necessary measures to put an end to the violation of the applicant's rights under the Convention and to adopt rapidly the legislative reform necessary to prevent similar violations of the Convention.[84] The Committee of Ministers, which is responsible for supervising the execution of Court judgments, noted in September 2012 that "as a result of the legislation in force, an investigation against the applicant for desertion is still pending and there is a theoretical possibility that the applicant could be subjected

78. Figures provided by the Turkish delegation, AS/Mon (2013) 05, p. 23.
79. Ibid.
80. Resolution 1676 (2009) on the State of human rights in Europe and the progress of the Assembly's monitoring procedure, paragraph 16.4.
81. This applied to prisoner İnan S, who has been convicted of "desertion" three times since 2001, and was arrested on 5 August 2010 and remanded in custody after notifying the military authorities of his refusal to perform military service in 2009. İnan S claims to have suffered ill-treatment and repeated beatings during his detention at Şirinyer military prison in İzmir. He has been sentenced to 35 months' imprisonment (Amnesty International).
82. Application No. 39437/98, judgment of 24 January 2006.
83. Document AS/Mon (2009) 10 rev, paragraphs 92-93.
84. Ibid., paragraphs 90-91. See also the Interim Resolution CM/ResDH(2009)45 – Execution of the judgment of the European Court of Human Rights in the case of *Ülke v. Turkey*

to further prosecution and conviction" and urged the Turkish authorities "to take the necessary legislative measures with a view to preventing the repetitive prosecution and conviction of conscientious objectors in order not only to exclude any possibility of the applicant's further prosecution and conviction but also to prevent similar violations in the future",[85] despite individual measures taken in the case of Mr Ülke.[86]

128. Any hope of rapid progress on the issue of conscientious objection did not seem likely during my last visit in November 2012, given the particular circumstances pertaining to compulsory military service and the context of a country caught up in a fight against terrorism and operations in the field. However, I take note that the authorities indicated, in March 2013, that "consultations between relevant authorities are ongoing for the general measures to be taken for the full execution of these judgments".[87] Moreover, the recent case law of the European Court of Human Rights might prompt the Turkish authorities to reconsider the issues of conscientious objection – I refer here to the *Bayatyan v. Armenia* judgment of 7 July 2011[88]– and of alternative civilian service. In this connection, it should be noted that, in its *Erçep v. Turkey* judgment of 22 November 2011,[89] the Court found that there had been a violation of Article 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights, and concluded that the absence in Turkey of an alternative to military service infringed the right to respect for conscientious objection. I note that a legislative amendment has now been made enabling male graduates to be exempted from military service in exchange for payment of a sum of money. But this does not solve the fundamental problem.

129. Bearing in mind these developments in case law and despite national security imperatives, I hope that in its efforts to bring itself into line with the European Convention on Human Rights, Turkey will make progress on this issue, introduce a right to conscientious objection and make provision for an alternative civilian service.

5.4. Ratification of Council of Europe conventions

130. In Resolution 1380 (2004), the Assembly called on Turkey to "ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the revised European Social Charter and accept the provisions of the Charter which it has not already accepted".

131. The Assembly welcomes Turkey's ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime on 6 October 2004 and of the revised European Social Charter (ETS No. 163) on 27 June 2007, subject to reservations to Articles 2.3, 4.1, 5 and 6. The representatives of the Ministry of Labour whom I met in November 2012 told me that Turkey was working towards lifting these reservations but this was proving difficult, particularly with regard to the trade union rights of military personnel.

132. On 23 March 2012, Turkey also ratified the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), which came into force on 1 July 2012.

133. For the time being, Turkey has neither signed nor ratified the Framework Convention for the Protection of National Minorities (ETS No. 157)[90] or the European Charter for Regional or Minority Languages (ETS No. 148)[91] and the matter would not appear to be on the agenda. It should be recalled that the definition of minorities (in this case, religious ones) was established by the Lausanne Treaty of 24 July 1923, and their rights are enshrined in Articles 10 and 24 of the Turkish Constitution. These communities may manage schools, religious foundations and charitable organisations belonging to their respective communities. Non-Muslim communities may also teach their own languages in their schools.

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85. Decision of the Ministers' Deputies concerning the judgment in *Ülke v. Turkey*, 1150th meeting, 26 September 2012. See also the Interim Resolution CM/ResDH(2009)45, op. cit.

86. The Ministry of Justice indicated that the Eskişehir Military Criminal Court had decided to lift the arrest warrant issued against Mr Ülke, based on the case law of the European Court of Human Rights. His name was removed from the list of persons wanted by the police and the applicant is said to be able to exercise his civil rights without hindrance, obtain a passport and travel abroad. See AS/Mon (2013) 05, pp. 23 and 26.

87. AS/Mon (2013) 05, p. 12.

88. Application No. 23459/03, judgment of 7 July 2011 concerning the limited recognition of right to conscientious objection for the applicants, who were Jehovah's Witnesses.

89. Application No. 43965/04. The case related to the refusal by the applicant, who was a Jehovah's Witness and a conscientious objector, to perform his military service for reasons of conscience.

90. The Framework Convention has been signed by all the member States of the Council of Europe apart from Andorra, France, Monaco and Turkey and ratified by 39 member States.

91. The Charter for Regional or Minority Languages has been signed by eight member States and ratified by 25.

134. Turkey regularly points out that its situation is similar to that of France with regard to regional or minority languages,[92] given the centralised nature of its government. While Turkey, like France, does not recognise national minorities within the meaning of the Framework Convention for the Protection of National Minorities, adjustments in the area of access to language teaching would nevertheless allow greater account to be taken of the cultural identity of minorities. In this respect, I welcome the progress that has been made in recent years in the use of languages other than Turkish in education or the judicial system (see below). I note that the current demand of the Kurds is for teaching in, and not just of, Kurdish, and that this demand has not yet been satisfied.

5.5. The security forces and the judicial system

135. In Resolution 1380 (2004), the Assembly called on Turkey to "continue the training of judges and prosecutors as well as the police and gendarmerie, with the Council of Europe's assistance".

5.5.1. The security forces

136. In 2009, the previous rapporteur noted the fourth Interim Resolution[93] on the execution of the judgments of the European Court of Human Rights, the progress made and outstanding issues regarding the Court's 175 judgments and decisions relating to Turkey delivered between 1996 and 2008.[94] The Committee of Ministers had then decided to close the examination of these issues in view of the measures taken, especially: the improvements in procedural guarantees during police custody; the improvement in the training of members of the security forces; the direct effect of the Convention; the prompt and efficient implementation of the "Law on Compensation of the Losses Resulting from Terrorism and from the Measures Taken against Terrorism", and the training of judges and prosecutors.[95] At the same time, with reference to enhancing the criminal liability of members of the security forces, the Committee of Ministers considered that Turkish legislation remains ambiguous regarding the requirement to obtain administrative authorisation to prosecute members of the security forces in cases involving allegations of serious breaches of the law other than allegations of torture and ill-treatment.

137. The previous rapporteur did, however, note an obvious contradiction between the government's stated "zero tolerance" policy aimed at the total eradication of torture and other forms of ill-treatment and the different testimonies given. At my request, the authorities provided me with updated information on the measures taken since 2009, including the installation of image and sound recording systems in 217 detention rooms and 100 interrogation rooms between 2007 and 2013, the organisation of in-service training of security forces and standardisation of intervention methods (in co-operation with the relevant authorities in Germany and Austria). The authorities stressed that the number of trials against persons suspected of torture and the number of disciplinary decisions against persons suspected of torture had decreased.[96]

138. In its report published on 31 March 2011 following its 5th periodic visit (4-17 June 2009), the CPT noted that the downward trend seen in recent years in both the incidence and the severity of ill-treatment by law enforcement officials seems to be continuing. Nevertheless, a number of credible allegations of recent physical ill-treatment had been received, mainly concerning excessive use of force during apprehension. The CPT also expressed serious concern about the inadequate provision of health care to prisoners and a dramatic shortage of doctors in prisons. As regards conditions of detention, many of the prisons visited were overcrowded, barely coping with the ever-increasing prison population. Furthermore, the possibilities for organised activities (such as work, education, vocational training or sports) were limited for the vast majority of prisoners, including juveniles.

139. In their response to the CPT's recommendations, the Turkish authorities indicated that they had issued a circular to all central and provincial security units highlighting the need to avoid ill-treatment and the excessive use of force. They informed the CPT that the unit for adult males in Edirne had been closed down.

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92. I note, however, that the ratification of the Charter for Regional or Minority Languages, signed by France in 1999, was one of the undertakings made by the future French President, François Hollande, during his election campaign.
93. CM/ResDH(2008)69.
94. The cases involved deaths as a result of excessive use of force by members of security forces, failure to protect the right to life, the death and/or disappearance of individuals, ill-treatment and the destruction of property. The judgments also referred to the lack of effective domestic remedies concerning the applicants' complaints.
95. AS/Mon (2009) 10 rev, paragraph 70.
96. AS/Mon (2013) 05, p. 24.

140. In their response, the Turkish authorities also provided information about the various measures taken to implement the CPT's recommendations concerning the above points,[97] including "training on human rights provided to the members of the Gendarmerie" and "the installation of surveillance cameras in detention centres, which is almost completed".[98]

141. On this point, it should be mentioned that in February 2011, following the constitutional referendum of 12 September 2010, Turkey adopted the Optional Protocol to the United Nations Convention against Torture (OPCAT). The convention, which Turkey ratified in September 2011, requires governments to set up national torture prevention machinery and report regularly on measures taken to apply the protocol. The implementation of the measures taken will require a lot of vigilance.

142. It should be noted that in its Chamber judgment of 20 November 2012 (which is not yet final) concerning the case (which occurred in 2000) of the inmates in Bayrampaşa Prison (Istanbul), *Erol Arikan and Others v. Turkey,*[99] the Court found that there had been a violation of Article 2 (the right to life). The case related to injuries sustained by the applicants during the "Return to Life" operation conducted by the security forces on 19 December 2000 in about 20 Turkish prisons, including Bayrampaşa Prison, in order to end hunger strikes by prisoners in protest against a plan for F-type prisons, which provided for smaller living units for prisoners. The applicants complained about the manner in which the authorities had prepared and conducted the operation and alleged that the force used on that occasion had been disproportionate. They also accused the State of having failed in its obligation to protect the lives of persons placed under its control.

5.5.2. Training of judges and prosecutors and application of the European Convention on Human Rights by judges

143. It should be noted first of all that following its revision in April 2004, Article 90 of the Turkish Constitution now provides that international human rights conventions take precedence over any national legislation incompatible with their provisions.

144. The authorities indicated that the reform process has resulted in the initiation of training programmes[100] for officials responsible for implementing these laws, enforcement officers (police and the gendarmerie), and the judiciary at all levels. We were told that some 8 500 judges and prosecutors have been trained through seminars.

145. The failure by Turkey to execute the judgments of the European Court of Human Rights remains a matter of concern, as highlighted by Christos Pourgourides (Cyprus, EPP/CD) in his recent report:[101] some 1 232 cases are pending before the Committee of Ministers, representing 15% of the Committee's case load. The longest-standing ones concern the impossibility of reopening proceedings for Court judgments delivered prior to 4 February 2003 (following the *Hulki Güneş v. Turkey* judgment of 19 June 2003), the repeated imprisonment of Mr Osman Murat Ülke for conscientious objection (judgment of 24 January 2006),[102] freedom of expression, excessive length of detention on remand and the actions of the security forces and issues concerning Cyprus. With the newly introduced legislation in the field of human rights (see supra), the government expects to reduce considerably the number of cases against Turkey before the European Court and the Committee of Ministers. In relation to the execution of the *Hulki Güneş* judgment, a draft law allowing the reopening of proceedings in the applicants' cases is expected to be brought before the parliament in the framework of the fourth reform package.

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97. See www.cpt.coe.int/documents/tur/2011-03-31-eng.htm.
98. AS/Mon (2013) 05, p. 24.
99. *Erol Arikan and Others v. Turkey*, Application No. 19262/09. Bayrampaşa Prison was closed in 2002.
100. From 2004 to 2012, five projects were implemented with the Council of Europe on "Judicial Modernisation and Penal Reform" (2004-2007), "Support to the implementation of human rights reforms" (2006-2007), Training for Turkish lawyers on the Convention (2006-2008), "Support to Court Management System in Turkey" (2007-2009) and "Dissemination of Model Prison Practices and Promotion of Prison reform in Turkey" (2009-2012), for a total amount of more than 19 million euros. Further information on the training programmes carried out by the Ministry of Justice and the Turkish Justice Academy and the HSYK is available in document AS/Mon (2013) 05, pp. 23-24
101. Doc. 12455.
102. See section 5.3.

146. It should be noted in this connection that under legislation which came into force on 1 January 2011, remand prisoners must be released after five years (10 years in terrorism cases) if their trials have not taken place. The Minister of Justice, Sadullah Ergin, has said that 14% of the applications before the European Court of Human Rights concern the excessive length of proceedings, which also gave rise to claims for compensation by the applicants.[103]

147. On his visit to Turkey in January 2012, the President of the Assembly, Mr Mevlüt Çavuşoğlu, pointed out that some effort was still required to complete the judicial reform and reduce the number of cases brought before the European Court of Human Rights.[104] In this connection he called on the authorities to make full use of the Council of Europe's legal and technical expertise, particularly that of the Venice Commission and other specialised Council of Europe bodies. The reform of the judicial system, the amendment of several provisions of the Criminal Code and the anti-terror law (see below) and training for judges and public prosecutors are all keys to bringing judicial practices in Turkey into line with European standards.

148. Several measures have been taken to ensure that more account is taken of the European Convention on Human Rights and that the implementation of its judgments is properly supervised, including the following: the establishment in August 2011 of a Directorate of Human Rights at the Ministry of Justice, charged with preparing cases brought before the Court in co-operation with the Ministry of Foreign Affairs and taking the necessary measures for the Court's judgments to be executed; the preparation by the Ministry of Justice of an action plan for the prevention of abuses in the human rights field designed to reduce the number of cases brought before the Court; the establishment in March 2012 of a website (inhak.adalet.gov.tr) providing access to judgments of the European Court of Human Rights concerning Turkey and other countries translated into Turkish; and lastly, the adoption of the Law on "settlement of certain cases brought before the European Court of Human Rights through a compensation system", which came into force on 19 January 2013, should make it possible to offer compensation within nine months for complaints of excessive lengths of detention or proceedings filed with the Court before 23 September 2012, before they are heard in Strasbourg.[105]

149. Training courses have also been held by the Council of Europe for military courts. In recent months, 370 civilian judges and 50 military judges, prosecutors and advisers have attended seminars to raise awareness about the European Court of Human Rights and its case law. Exchanges of good practices have been arranged between European countries, and 24 members of the Military Court of Appeal and 24 members of the Military High Administrative Court (AYİM) took part in a training seminar.

150. Following a mission by the envoy of the Secretary General of the Council of Europe, Mr Gérard Stoudmann, the "Project on freedom of expression and media" was launched by the Council of Europe with funding from the Council of Europe Human Rights Trust Fund. It was concluded with a high level conference on freedom of expression on 5 February 2013, notably in the presence of the Ministry of Justice, Mr Ergin, the high judicial authorities of Turkey and the Secretary General of the Council of Europe, Mr Thorbjørn Jagland. The project on increasing respect for freedom of expression in the judiciary (January 2012-December 2013) includes study visits to Germany, the United Kingdom and Spain for 120 judges, training courses for judges and prosecutors on freedom of expression, including courses at the Justice Academy and secondments to the European Court of Human Rights.

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103. In a decision of 13 December 2010, the 10th Chamber of the Council of State ordered the Ministry of Justice to pay the sum of 50 000 Turkish lira in damages in respect of the excessive length of the proceedings concerning the wife and daughter of the complainant, Sadik Cetin, who were killed in a car accident. After 15 years of proceedings, the trial had still not been held.

104. According to the figures published by the European Court of Human Rights in January 2013, some 17 000 Turkish cases were pending before the Court in 2012, or 13% of the total number of cases (Turkey is in second place in this respect, behind Russia, which has about 29 000 cases pending before the Court), whereas in 2011 there were 15 950. In 2012, the Court delivered 123 judgments (concerning 134 applications), 117 of which found at least one violation of the European Convention on Human Rights. See www.echr.coe.int.

105. 3 500 cases of this type are currently pending before the Court. Decisions on compensation will be taken by a committee made up of four judges and public prosecutors and a representative of the Treasury. Appeals against such decisions may be lodged with the Ankara Regional Administrative Court.

6. Human rights

6.1. Revision of the Criminal Code, freedom of expression and association

151. In its Resolution 1380 (2004), the Assembly called 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".

152. The authorities underline that the new Turkish Criminal Code promulgated in 2005 introduced a more liberal approach to freedom of expression. The enforcement of Article 301 on public denigration of the Turkish nation, the State, the government, judicial institutions, parliament, the military or security organisations did, however, pose certain difficulties, which led to it being amended in May 2008 to remedy them. This recent amendment of Article 301 made enforcement subject to a dual safeguard: criminal proceedings may only be initiated with the authorisation of the Minister of Justice; even if authorisation is granted, the prosecutor has the discretionary power not to prosecute. In 2009, however, the Assembly noted that "the reform of Article 301 of the Criminal Code has by no means lifted all the restrictions on the freedom of expression":[106] according to the Turkish authorities, Article 301 of the new Criminal Code was used to bring 1 072 proceedings between June 2005 and April 2008 and led to the conviction of 192 people,[107] while, between 2008 to 2012, there were 2 115 applications for an investigation permit; 114 were allowed, 66 files were closed, 78 cases are still ongoing – and 10 people were convicted for violating Article 301.[108]

153. The considerable pressure brought to bear on the press by the authorities (judges, the military and police officers) was carried out in pursuance of Article 301 of the Criminal Code which sanctions attacks on the "Turkish identity and nation", with sentences of up to three years' imprisonment. The amendments introduced in 2008 have not brought about sufficient improvement. Moreover, Articles 285 (relating to "breach of confidentiality") and 288 (relating to attempts to "influence a fair trial") of the Criminal Code were additions to this broad range of legislation restricting the freedom of expression which needed to be reviewed. The strict observance of the fundamental and universal human rights enshrined in the European Convention on Human Rights must be upheld by all Council of Europe member States, and consequently by Turkey as well.

154. A third package of judicial reforms was introduced, amending Articles 285 and 288 of the Criminal Code, which are referred to in most cases in which journalists covering sensitive cases are detained. Pecuniary penalties may now be imposed instead of prison sentences and publications may no longer be prohibited. Furthermore, prison sentences of three to five years imposed in cases of media offences and crimes of opinion committed before 31 December 2011 have been suspended for a time and will be quashed provided that the journalists do not offend again during this period. According to the Turkish authorities, this measure may affect some 5 000 cases relating to journalists.

155. With regard to Article 301 of the Criminal Code, despite the amendments adopted in 2008 which restricted the implementation of this article in practice,[109] the European Court of Human Rights found against Turkey in its *Altuğ Taner Akçam v. Turkey* judgment of 25 October 2011. Its view was that "the wording of Article 301 of the Criminal Code, as interpreted by the judiciary, was too wide and vague and did not enable individuals to regulate their conduct or to foresee the consequences of their acts. Despite the replacement of the term 'Turkishness' by 'the Turkish Nation', there was apparently no change in the interpretation of these concepts".[110] This case law leads us to request the abolition of Article 301.

156. It should be noted that the third package of judicial reforms also made it possible to lift the ban on 453 of the 645 books, newspapers and leaflets which had been censored by the courts or the government before 31 December 2011. This is a positive development, which will enhance freedom of expression.

106. Resolution 1676 (2009) on the state of human rights in Europe and the progress of the Assembly's monitoring procedure, paragraph 13.4.
107. AS/Mon (2010)10 rev, paragraph 47.
108. AS/Mon (2013) 05, p. 27.
109. Proceedings based on Article 301 of the Criminal Code are now subject to the authorisation of the Minister of Justice. Eight cases were initiated in 2011, whereas 297 were refused.
110. See extracts from the relevant press release.

157. The authorities have indicated that many seminars on freedom of expression have been held for judges and prosecutors since 2004 and in-depth training courses on the enforcement of the Criminal Code from the angle of the European Convention on Human Rights are held in co-operation with the European Union and the Council of Europe.

158. It seems, however, that freedom of assembly and of expression comes up against serious obstacles. According to the 2010 report by the Human Rights Protection Monitoring Centre, in late 2009, 1 415 people were in detention and 369 had been arrested and subsequently released as a result of their taking part in a demonstration. Members of the opposition, journalists and civil society activists, including human rights activists, continue to face prosecution and conviction (in 2009, 355 people were sentenced for the exercise of the right to freedom of expression, and 18 newspapers were suspended temporarily). The banning of certain Internet sites (such as YouTube for a period) and the blocking of 4 662 others also caused for concern.[111]

159. Several measures concerning Internet access have triggered many reactions: in April 2011, the Information and Communication Technologies Authority (BTK) decided to introduce filters which would require Internet subscribers to choose a level of protection. This decision is being appealed against before the Council of State on the initiative of the IPS Communication Foundation, an offshoot of the Bianet alternative website. The measure will apply from 22 August 2011. Moreover, in April 2011, the TIB administrative authority ordered Internet service providers to remove websites with domain names contain one of the 138 words[112] which "generally suggest that the website is in violation of the eight crimes listed in Law No. 5651", according to the authorities.[113] These measures had come on top of the blocking of websites under this law already mentioned above[114] and were perceived as censorship in Turkey, sparking strong protests among sections of the Turkish population, especially young people.

160. The authorities informed me that the concerns expressed by the public regarding Internet filters had been taken into account and the Information and Communication Technologies Authority had amended the regulation of February 2011, a new version of which had been adopted in August 2011. Amendments had been made so that filters were now explicitly optional and only persons wishing to subscribe to a particular service would have to make a request. If users wished to keep their current standard subscription, they would not need to do anything. The initial version of the regulation provided for four types of filter (standard, family, child-proof or domestic) but this had now been reduced to two – child-proof or family. The testing phase had been put back and was due to end in November 2011, when the system was to become available to all users.

161. In its (non-final) Chamber judgment of 18 December 2012 in the case of *Ahmet Yıldırım v. Turkey,*[115] the European Court of Human Rights found that there had been a violation of Article 10 (on freedom of expression) of the Convention. It held that a measure restricting access to the Internet which was not governed by a strict legal framework regulating the scope of a ban and affording the guarantee of judicial review to prevent possible abuses constituted a violation of freedom of expression.

111. Under Law No. 5651 on the Internet of May 2007, YouTube was blocked for almost two and a half years. Three cases were brought before the European Court of Human Rights. Information presented at the European Commission's Speak Up Conference on 5 May 2011 by Dr Yaman Akdeniz, associate professor at Istanbul Bilgi University.

112. The list includes (common) words and names such as "skirts", "blond", "Adrianne", "gay", "animals", "confidential", and "sister-in-law". Information presented at the European Commission's Speak Up Conference on 5 May 2011 by Dr Yaman Akdeniz, associate professor at Istanbul Bilgi University.

113. AS/Mon(2013)05, p.27.

114. Detailed information about the blocking of websites in Turkey is available in the OSCE publication "Report of the OSCE Representative on Freedom of the Media on Turkey and Internet Censorship", prepared by Dr Yaman Akdeniz, associate professor at Istanbul Bilgi University.

115. Application No. 3111/10. Chamber judgment of 18 December 2012. Denizli Criminal Court had brought criminal proceedings against the owner of a website accused of insulting the memory of Atatürk, which resulted in access to this site being blocked. The court had initially ordered the blocking of access in accordance with Law No. 5651, under which courts could order access to content published on the Internet to be barred if there were sufficient reasons to suspect that the content gave rise to a criminal offence. However, the administrative authority responsible for implementing the order (the TİB) had sought an order from the court for the blocking of all access to Google Sites, which hosted not only the offending site but also the applicant's site. The Court found that there was no evidence that Google Sites had been informed that it was hosting content held to be illegal, or that it had refused to comply with an interim measure concerning a site that was the subject of pending criminal proceedings.

162. The application of anti-terrorist legislation focuses notably, and primarily, on persons of Kurdish origin and those sympathising with the Kurds. There is a need to review certain imprecise articles (Article 7.2 of Law 37/3) which make no distinction between the fact of expressing agreement with certain political goals (those of an organisation, the PKK, recognised as a terrorist organisation by Turkey, the European Union and the United States) and defending that organisation and its violent methods.

163. The case of the writer, Pınar Selek, is highly symbolic. Part of Ms Selek's work as a politically committed sociologist and feminist had been to conduct research on the PKK. She was arrested and tortured to force her to reveal her sources, then charged with complicity in a bombing attack in connection with the explosion on the Egyptian market in Istanbul in July 1998 (which has been found in expert reports to have been an accident). She was acquitted in court three times (in 2000, 2006 and 2011). On each of these occasions the prosecuting authorities appealed. The trial, which was due to resume on 1 August 2012 in the 12th Assize Court, was adjourned to 22 November 2012. These proceedings, which have been going on for 15 years, are tantamount to judicial harassment of Pınar Selek. On 24 January 2013, Pinar Selek was given a life sentence by the 12th High Court of Assize (by a 2 to 1 vote), based on some expert reports ordered. The motivation of the court, including the dissenting opinion of the chief judge, was published on 6 March 2013. Pinar Selek has appealed and the proceedings are ongoing.[116]

164. The leaders of human rights associations whom we met – the Human Rights Joint Platform (IHOP), the Human Rights Association (in Diyarbakir, Ankara and Antakya), Amnesty International, Helsinki Citizens Assembly, the Mazlumder and Tum–Bel–San associations in Diyarbakir and the LGBT association Kaos GL – gave information about the type of proceedings initiated, the organisations and the individuals targeted, such as "Mothers for Peace", conscientious objectors, lawyers, trade unionists... The Lambaistanbul association which defends the rights of gay, lesbian and transgender people, which had been banned in May 2008, was however allowed to continue operating in April 2009 following a new trial. In the light of these various declarations, it should be noted that there are recurrent instances of searches, arrests and detentions of human rights defenders. It is up to us to pay close attention to this matter.

165. I was also struck by the following information concerning the situation of journalists, obtained in the course of my visits:

– On 30 September 2010, the Freedom for Journalists Platform (comprising 14 media associations) set up that year reported that 50 press workers were being held in prison.[117] The platform indicated that a gradual increase in the number of investigations, court cases, physical assaults and threats against journalists, as well as concerns over the ongoing cases related to the murder of journalists Hrant Dink and Cihan Hayırsever, and the banning and confiscating of publications, meant that there were fears that the crackdown on the media could intensify further in the future.[118]

– In February/March 2011, 10 journalists and writers, including Ahmet Şık and Nedim Şener, were arrested and their homes were searched. Three other journalists were arrested later. All are known critics of the AKP. Mr Şık and Mr Şener are suspected of belonging to the Ergenekon network, even though they have always denounced the existence of a "deep state" and of anti-democratic elements in the armed forces. Copies of the unpublished manuscript of Ahmet Şık's book on the Gülen religious community have been confiscated by the police.

– Speaking before the Parliamentary Assembly on 13 April 2011, Prime Minister Erdoğan referred to the cases of 26 journalists and said that their imprisonment was not related to their journalism but to their involvement in an attempted coup. Regarding the confiscation of Mr Şener's manuscript, the Prime Minister said that when people threw bombs or committed crimes, the situation was clear, but making lists of everything that was needed for making bombs, whether in terms of the explosives or of assembling them, was also a crime. When there was information about a potential threat, the security forces surely had a duty to intervene to prevent the crime.[119]

– The indictment against 14 suspects in the Ergenekon case, including Ahmet Şık and Nedim Şener, was issued on 9 September 2011. Şık and Şener, who are accused of "assisting an armed terrorist organisation", will be tried and could be sentenced to seven and a half to 15 years' imprisonment. The

116. "Detailed court ruling reveals judges' disagreements in Selek case", Hurryiet Daily News, 6 March 2013.
117. The list of journalists imprisoned may be consulted at: www.freemedia.at/site-services/singleview-master/5241.
118. www.freemedia.at/site-services/singleview-master/5212/.
119. Report of the sitting of 13 April 2011, http://assembly.coe.int/Mainf.asp?link=/Documents/Records/2011/E/1104131000E.htm.

indictment against Ahmet Şık states that the confiscated document, entitled "The Imam's Army" [editor's note, Imam Fethullah Gülen] was to be published under the false name of "Sabri Uzun", "in keeping with the Ergenekon armed terrorist organisation's general strategy to thwart the legal proceedings initiated against it, as described in the document "National Media 2010".[120]

– In the ODATV case, the hearing of which I attended in Istanbul on 18 June 2012, 14 people were charged and the journalist, Müyesser Yıldız, was released on 18 June 2012. Ahmet Şık and Nedim Şener were released in March 2012. Soner Yalçin, who is the owner of the ODATV site, was released (but prohibited from leaving the country) on 28 December 2012 and questions the influence of the Gülen movement. The accused journalists claimed that the confiscated documents had been transferred to their computers by means of a virus. In January 2012, following expert appraisals carried out by Turkish and American university institutes in December 2011, the court ordered, in January 2012, the Scientific and Technological Research Council of Turkey (TUBITAK) to prepare an independent study. Its first report submitted in September 2012 was inconclusive so it was asked to prepare another and, in November 2012, it concluded that the documents had been transferred by external peripherals but they were not linked to the viruses found on the computers.

166. In a press statement of 25 August 2011, the Ministry of Justice stated that it had examined the list of 72 journalists who were reported by the Turkish journalists' trade union to have been arrested and sentenced and found that 3 had not been arrested, 6 had been released, 36 were facing criminal charges (only four of whom had been imprisoned for "propaganda for a terrorist organisation" which could be considered to fall into the category of offences committed by means of the press) and 18 had been sentenced. In addition, 27 of these journalists had been accused of offences which were unconnected with the work of a journalist such as "membership of a terrorist organisation". The Ministry concluded that 59 of the 63 journalists who had been arrested and sentenced had not been arrested or sentenced for alleged offences committed by means of the press, in other words for their writings or work as journalists. They had actually been arrested or sentenced for offences which had nothing to do with the press.[121]

167. A number of international organisations reacted to the situation of detained journalists, including the European Commission[122] and the European Parliament.[123]

168. On 4 April 2011, Dunja Mijatovic, OSCE Representative on Freedom of the Media, published a study mentioning 57 imprisoned journalists, noting that 700 to 1 000 journalists were at risk of being imprisoned and underlining the need to reform the law on the media.[124] Ms Mijatovic pointed out that most journalists were imprisoned on the basis of Articles 5 and 7 of the anti-terror law relating to articles of the Criminal Code on terrorist offences and organisations, or assisting members of or making propaganda in connection with such organisations and Article 314 of the Criminal Code on establishing, commanding or becoming a member of an armed organisation with the aim of committing certain offences; and that media outlets were often regarded by the authorities as the publishing organs of illegal organisations. Reporting about sensitive issues (terrorism, anti-government activities) was deemed to constitute support for them and imprisoned journalists were held in F-type high-security prisons along with the most dangerous criminals.

169. Following the invitation issued on 13 April 2011 by Prime Minister Erdoğan, the Secretary General of the Council of Europe, on 30 May 2011, appointed Gérard Stoudmann as his Special Envoy to assess the situation of freedom of expression in Turkey, which led to the launch of a number of co-operation programmes with the Council of Europe.

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120. Comments by the Turkish delegation, op. cit.

121. www.basin.adalet.gov.tr/duyuruveaciklamalar/pressrelease.html.

122. In a report dated 9 November 2010, the European Commission concluded that the number of prosecutions of journalists (in particular in the Ergenekon case) and the unjustified pressure exerted on the media were undermining press freedom in practice.

123. In its Resolution of 9 March 2011 on Turkey's 2010 progress report (Rapporteur: Ria Oomen-Ruijten, EPP, NL), the European Parliament expressed its concern "about the deterioration in freedom of the press, about certain acts of censorship and about growing self-censorship within the Turkish media, including on the internet" and its "concern at the fact that broadcasting may be stopped on grounds of national security without a court order or a ruling by a judge". It noted "with concern the practice of bringing criminal prosecutions against journalists who communicate evidence of human rights violations or raise other issues in the public interest" and deplored "the repeated and disproportionate recourse to closure of websites".

124. See www.osce.org/fom/76373. Ms Mijatovic explained that she noted that some details in her study could not be determined accurately, the reasons for the imprisonment of the journalists not always being in the public domain.

170. In his report of 10 January 2012 on the effects of the administration of justice on human rights protection in Turkey, the Commissioner for Human Rights, Thomas Hammarberg, said he was concerned about the way certain offences relating to terrorism and membership of a criminal organisation are defined in Turkish legislation, leaving room for a very wide interpretation by courts. "Terrorism poses enormous challenges and difficulties, but it should be fought while fully respecting human rights. Prosecutors and judges need to be further sensitised to the case law of the European Court of Human Rights, concerning in particular the distinction between terrorist acts and acts falling under the scope of the rights to freedom of thought, expression, association and assembly".[125]

171. Furthermore, I was concerned about the decision taken by the Constitutional Court on 2 May 2011, declaring Article 26 of the Law on the Press unconstitutional. This article set the deadline for prosecuting journalists at two months (for daily newspapers) and four months (for the other media) following publication, respectively. Revocation of Article 26 is liable to greatly increase the number of new investigations against journalists (which totalled 4 139 in 2010, according to statistics provided by the Ministry of Justice in November 2010) and to create a "permanent threat of criminal lawsuits being initiated against journalists expressing critical views", in the words of Dunja Mijatovic, OSCE Special Representative on Freedom of the Media.[126] I note that although the repeal of Article 26, which was originally planned, was abandoned, the time limit for prosecuting journalists has been increased to four months (for daily newspapers) and six months (other media).[127]

172. With regard to the amendments to the Criminal Code (in particular Articles 215, 217, 238, 301 and 314) and the anti-terrorist legislation (in particular Articles 5 and 7), I reiterate the request made by the Assembly in 2004. I invite the Turkish authorities, in co-operation with the Council of Europe, to conduct an in-depth review of the legal provisions and administrative measures and verify their compatibility with the case law of the European Court of Human Rights. In this connection, compulsory in-house training of judges and prosecutors with a view to ensuring the effective, uniform application of this legislation, taking into account the case law of the European Court of Human Rights, seems to me to be essential.

173. Finally, I refer to the requests made by the Assembly to Turkey in Resolution 1920 (2013) on the state of media freedom in Europe,[128] adopted in January 2013, in particular regarding the abolition of Article 301 of the Penal Code.

174. In its Resolution 1380 (2004) the Assembly invited Turkey to "undertake, with the Council of Europe's assistance, a comprehensive examination of the legislation dating from the period of the state of emergency, particularly that relating to associations, trade unions and political parties, to ensure that as far as possible it reflects the spirit of recent reforms".

6.1.1. Dissolution of political parties

175. Restrictions on freedom of association concern the dissolution of political parties, most recently the Democratic Society Party (DTP), which was dissolved in 2009 following a decision by the Turkish Constitutional Court.[129] In its Resolution 1622 (2008) "Functioning of democratic institutions in Turkey: recent developments", the Assembly pointed out that the drafting of a new – civil – constitution had become necessary and called on Turkey to continue co-operating with the Venice Commission to "envisage introducing stricter criteria for the dissolution of political parties, such as condoning or inciting violence or overt threats to fundamental democratic values".

176. In an opinion dated 2009, the Venice Commission stated: "It is for the appropriate Turkish institutions to make the necessary amendments to the national constitution and legislation ..." so that "the instrument of party closure is transformed from being part of the operative constitution to become a genuine safety valve, to be invoked only in truly extraordinary circumstances." The Venice Commission specified that it would "advocate a

125. See the Commissioner for Human Rights' press release.
126. Statement by Dunja Mijatovic, OSCE Special Representative on Freedom of the Media, 17 May 2011, www.osce.org/fom/77587.
127. Information provided by the Turkish delegation, AS/Mon (2013) 05.
128. Resolution 1920 (2013) on the state of media freedom in Europe and Doc. 13078 (Rapporteur: Mr Mats Johansson, Sweden, EPP/CD).
129. See AS/Mon (2009) 10 rev.

system under which the competence of the Public Prosecutor to initiate procedures concerning party closure is subject to some form of democratic control. Furthermore, one might want to consider introducing a general threshold in the form of a strict principle of proportionality and more clearly defined standards of proof".[130]

177. During my visit to Ankara on 12 January 2011, I was suprised to learn that the Constitutional Court not only could easily, though with a qualified majority, dissolve political parties, but it could also simultaneously dismiss democratically elected members of parliament. The members concerned were given their mandate by the people, not by the party, and they should be able to maintain it until the next election, whatever the political circumstances. I noted that the Minister of Justice said that these provisions had been "abrogated by amendment". This remains to be clarified and monitored.

178. I regret that the government's attempt to introduce a more sophisticated procedure for dissolving political parties (which would have required parliament's authorisation) failed reach a consensus in the parliament and was not submitted to the voters in the referendum. I invite the Turkish authorities to re-examine this issue and revise the legislation, taking into account the Venice Commission's recommendations.

6.1.2. Legislation on associations and trade unions

179. The authorities have indicated that the constitutional amendments of September 2010 broaden the scope and the substance of trade union rights and the right to freedom of association. These amendments take into consideration the International Labour Organization conventions concerned and the relevant judgments of the European Court of Human Rights. Simultaneous membership of several trade unions will henceforth be possible, and trade-based restrictions will no longer apply. Article 54 of the Constitution, whereby a trade union that organises a strike is liable for any material damage, has been repealed. The right to collective bargaining has been extended to all civil servants and workers in the public sector. Law No. 6356 on trade unions and collective agreements for civil servants was adopted on 4 April 2012. As a result of the constitutional amendment, the Economic and Social Council is now a constitutionally recognised consultative body.

180. Resolution CM/ResDH(2010)117[131] on execution of the judgment of the European Court of Human Rights in the case of *Tüm Haber Sen and Çınar v. Turkey*[132] noted the progress made concerning the foundation of trade unions by civil servants. Law No. 4688 on civil service unions, as amended by Law No. 5198 of 24 June 2004, guarantees trade union freedom to civil servants.

181. The new law on trade unions was adopted on 19 October 2012. During my talks in November 2012 with the President of the Istanbul Chamber of Commerce, representatives of the Association of Turkish Commerce and Industry (TÜSIAD), the President of the Confederation of Public Service Employees (KESK) and the Secretary General of the Confederation of Progressive Trade Unions of Turkey (DISK), I noted that this new law provokes fears both among employers, who are apprehensive about a more powerful trade union movement, and among trade unions because of the representativeness thresholds that are to be gradually introduced. I note, however, how weak the trade union movement is (in January 2013, 1 million of the country's 10,8 million employees (ie 9.21%) were trade union members, and 68.17% of public servants were trade union members).[133] In a country in which 95% of businesses are SMEs, trade unions are required to reach a representativeness threshold of 3% in companies with 30 employees or more to be entitled to sign a collective agreement and, as things stand, this excludes 39 trade unions from collective bargaining. For the moment, 43 trade unions are authorised to sign collective bargaining agreements. A transition period has been introduced for these trade unions, during which no threshold requirement will be applied. The 3% threshold will start to be applied in July 2018 for trade unions that are members of confederations.[134]

182. There are restrictions on trade union rights however. For instance, in May 2012, the government adopted a law which withdrew the right to strike from employees in the civil aviation sector. According to the information sent by the authorities in the meantime, this article was repealed with the adoption of Law No. 6356 that entered

130. CDL-AD(2009)006, Opinion on the constitutional and legal provisions relevant to the prohibition of political parties in Turkey, paragraphs 12 and 13.
131. http://cmiskp.echr.coe.int/tkp197/view.asp?item=12&portal=hbkm&action=html&highlight=turquie&sessionid=72018927&skin=hudoc-fr.
132. Application No. 28602/95, judgment of 21 February 2006, final on 21 May 2006. The Court held that there had been a violation of Article 11 of the Convention on account of the dissolution of the applicant trade union on the sole ground that its founders were public-sector contract staff.
133. Figures given by the Turkish delegation, AS/Mon (2013) 05, p. 29.
134. Ibid.

into effect on 1 January 2013, which limits the restrictions on strikes to "vital services".[135] Some occupational categories, such as the civilian staff working for the Ministry of Defence, are not permitted to set up or join trade unions. The CHP regretted that the new trade union regulations did not address the issue of compulsory arbitration, prohibitions and restrictions with regard to the right to strike, particularly the right to general strikes and sympathy strikes, and that they did not offer any means of settling the long-term disputes (dating back several years) on the subject of authorisation.[136]

183. In its 2012 progress report,[137] the European Commission also notes that high thresholds for entering into collective bargaining continue to significantly restrict the possibility of collective agreements and consequently impede the full exercise of the right to bargain collectively.

184. With regard to the lifting of reservations to the revised European Social Charter, representatives of the Ministry of Labour have confirmed to me that the work is under way to do so, while admitting that achieving this will be difficult, particularly as regards the establishment of trade union rights for military personnel.

6.1.3. Children's participation in protests

185. In its 2010 report, Amnesty International pointed out that "since 2006, thousands of children in Turkey, sometimes as young as 12 years old, have been prosecuted under the anti-terrorist legislation for their alleged participation in demonstrations. These protests, principally concerning issues of concern to the Kurdish community, often gave rise to violent clashes with the police. Following their arrest, many Kurdish minors were detained in centres for adults, without their detention being registered and without allowing them access to a lawyer or to notify their families, for periods that could range from a number of months to a year. These children were rarely given access to education, health care or leisure activities. Many of them stated that they had been ill-treated or tortured during their arrest and detention."[138]

186. The Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, had already raised this question in a letter sent to the Minister of Justice, Mr Ergin, on 8 June 2010. In his reply of 1 July 2010, the minister detailed the amendments being made to the system, in particular the requirement that all minors should be brought before the juvenile courts and the measures taken to prevent the imprisonment of minors found guilty and sentenced.[139] I note the progress made in this field with regard to juveniles[140] and access to education and health care, according to the information send by the authorities.[141]

187. A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an *ad hoc* visit to Turkey from 21 to 28 June 2012, the main aim of which was to examine the treatment and conditions of detention of juveniles held in prisons, taking into account the recent allegations of ill-treatment of juvenile prisoners at Pozantı Prison. The delegation visited Ankara-Sincan Juvenile Prison, to which all the juveniles previously held at Pozantı Prison had been transferred, as well as Istanbul-Maltepe Juvenile Prison and the juvenile units of Diyarbakır and Gaziantep E-type Prisons. The delegation also talked to the Turkish authorities about the fires which had broken out in June in several prisons in central and south-eastern Turkey, resulting in a number of severe casualties.[142]

188. In addition, the right of students to demonstrate is often repressed using tear gas or water cannons, as was the case during the demonstrations at the Middle East Technical University (METU) in December 2012. Legitimate questions can be raised about the systematic and disproportionate use of force to break up and suppress these demonstrations. I have also talked to the Minister of Justice about the questions and concerns raised by the indictment of a young Franco-Turkish and Kurdish student, Sevil Sevimli, arrested and then conditionally released after three months' detention pending trial, and required to remain in Turkey. In

135. Ibid., p. 30.
136. Comments by the CHP, November 2011.
137. Progress report on Turkey presented by the European Commission on 10 October 2012, SWD(2012)336 final, p. 65.
138. Amnesty International, www.amnesty.fr/index.php/agir/campagnes/enfants/agir/turquie_tous_les_enfants_ont_des_droits.
139. www.coe.int/commissioner.
140. Although the law passed by parliament in July 2010 improved the situation of juveniles, other laws remain unchanged, including Article 220/6 of the Criminal Code (concerning crimes committed on behalf of the PKK), used in conjunction with Article 314/2 against demonstrators. See: Protesting as a Terrorist Offense – The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey, Human Rights Watch, 1 November 2010, www.hrw.org/node/93926.
141. AS/Mon (2013) 05, p. 30.
142. www.cpt.coe.int/documents/tur/2012-07-02-eng.htm.

November 2012, she could have been given a long prison sentence (the prosecutor had recommended 32 years' imprisonment), like other students arrested after participating in demonstrations, which are often legal (and then charged with very serious offences such as membership of a terrorist organisation). On 15 February 2013, Sevil Sevimli was sentenced to five years and two months in prison for "disseminating propaganda for a terrorist organisation and committing crimes on behalf of the organisation". She was authorised to leave the country, pending her appeal trial. I expressed my concern at the number of students in prison. In this connection, the Minister of Justice told me that as of 8 November 2012, only 87 students had been arrested. The figure of 2 800 students in prison relates to young prisoners who have begun or are continuing their studies during their imprisonment.

6.2. Institution of the Ombudsman

189. In its Resolution 1380 (2004), the Assembly invited Turkey to "establish the institution of ombudsman".

190. The Assembly welcomed the fact that the constitutional revision of 12 September 2010 paved the way for the creation of an ombudsman institution. For information, a law on the Ombudsman passed by parliament on 28 September 2006 was declared unconstitutional by the Constitutional Court on 25 December 2008, upon an application by the President of the Republic. On 14 June 2012, the parliament passed the law on the creation of the ombudsman institution.

191. On 30 October 2012, the parliament received 25 candidatures for the post of principal ombudsman, and 783 candidatures for the five deputy ombudsman posts. A joint committee, composed of members of the Petitions and Human Rights Committee, drew up a shortlist of three candidates for the post of principal ombudsman, which was then submitted to parliament for a vote.

192. On 27 November 2012, Mehmet Nihat Ömeroğlu was elected ombudsman by the parliament. We would have liked to be in a position to welcome the completion of the process of creating an institution which is so important for defending the rights of all citizens; however, the appointment of Mr Ömeroğlu as ombudsman has, since his election, given rise to numerous questions and criticisms; in addition to the procedural objections raised by the opposition (regarding the selection criteria and transparency), it emerged that Mr Ömeroğlu was a former member of the Court of Cassation which, in July 2006, had confirmed the conviction of the Turkish-Armenian writer Hrant Dink for "denigrating Turkish identity", under Article 301 of the Criminal Code. On this issue, the European Court of Human Rights[143] found that there had been a violation of the right to freedom of expression in 2010. The criticism raised by human rights associations and the opposition regarding the election of this former judge to the position of Ombudsman, as well as the appointment of his five deputies, who could be close to the AKP, could well undermine the credibility of this new institution, which would be extremely damaging.

193. In the coming months, the institutional structures will be put in place to enable the Ombudsman to carry out his role to the full. It is to be hoped that, in accordance with Recommendation R (85) 13 of the Committee of Ministers on the institution of the Ombudsman,[144] the necessary resources will be made available to ensure that the Ombudsman can fulfil his role in defence of citizens. It should be noted, in this connection, that a report is being prepared in the Parliamentary Assembly on "Strengthening the institution of Ombudsman in Europe"[145] which will also discuss the establishment of the Ombudsman in Turkey.

194. Two additional bodies have been or are being set up: a "National Human Rights Institution of Turkey (NHRI), established by parliament in June 2012, with its members appointed in September 2012, tasked with carrying out research, drafting recommendations and investigating human rights violations; and a committee to monitor the law enforcement agencies – a bill in this connection has been submitted to parliament. In order to gauge the effectiveness of these new bodies, it will be necessary to verify the arrangements for appointing its members, the resources that will be available to them and how independently they will be able to act.

143. Dink v. Turkey, (Applications Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09) 14 September 2010 (final) (French only). "In the light of these explanations, the Court finds that the Court of Cassation's confirmation of Fırat [Hrant] Dink's guilt, taken alone or combined with the lack of any measures protecting him against an attack from extreme nationalist militants, constituted interference in the exercise of his right to freedom of expression protectd by paragraph 1 of Article 10." (unofficial translation).
144. Adopted by the Committee of Ministers on 23 September 1985 at the 388th meeting of the Ministers' Deputies.
145. See motion for a recomendation, Doc. 12639 (Rapporteur: Mr Jordi Xuclà i Costa, Spain, ALDE).

6.3. Refugees and asylum seekers

195. In its Resolution 1380 (2004), the Assembly asks Turkey to "lift the geographical reservation to the 1951 Geneva Convention relating to the Status of Refugees and implement the recommendations of the Council of Europe Commissioner for Human Rights on the treatment of refugees and asylum seekers".

196. One of the striking features of recent times has been the massive arrival of refugees from Syria (more than 180 000 as of 20 February 2013). During my visit to the province of Hatay and the Yayladağı (5 900 refugees) and Altınözü (1 200 refugees) camps located 100 km from Aleppo in November 2012, I was able to see for myself the measures taken by Turkey to accommodate the 110 000 Syrian refugees then living in the camps. The reception of the refugees (whom the Turkish call "guests under provisional protection") is outstanding, bearing in mind the extremely difficult material conditions (one of the camps is located in a former tobacco factory with individualised "containers", and the other is a tented camp). Considerable effort has been made and the health and security aspects seem to be well under control. In particular, I noted the fact that schooling had been arranged along with care provision for children at all levels. We should applaud the action taken by Turkey – which is costing them for the moment over US$600 million – and by the Turkish Red Crescent, and the exemplary solidarity of the Turkish people.

197. According to UNHCR figures, asylum requests increased by 50% between June 2011 and July 2012, with 30 000 refugees and asylum seekers (primarily from Afghanistan, Iraq, Iran and Somalia) having been registered in Turkey. To these must be added the 150 000 "Syrian guests" housed in camps, and 70 000 Syrians living on Turkish territory. The UNHCR estimates that, in all, Turkey could have some 335 000 refugees and asylum-seekers in 2013.[146]

198. Like the Commissioner for Human Rights, Thomas Hammarberg,[147] I welcome the adoption of the circulars on "refugees and asylum seekers" and on "combating illegal immigration" of 19 March 2010, intended to improve access to asylum procedures, ensure better protection of vulnerable groups such as children separated from parents, women victims of gender-based violence and the elderly or disabled, and to ensure better access for asylum seekers to the labour market, while encouraging the authorities to satisfy themselves that these circulars are uniformly applied throughout the territory.

199. The geographical reservation excludes non-European citizens from the scope of the 1951 Geneva Convention relating to the Status of Refugees. I take note of the current preparation of a new law on aliens and international protection, intended to improve further the conditions for foreigners irrespective of status. This draft law, drawn up with the UNCHR's assistance, should result in significant and systematic improvements, complying with international standards, based on the principle of non-discrimination and non-refoulement, and ensuring that asylum seekers have access to medical services, education and social assistance.[148] Nonetheless, it became clear from my talks with the Chair of the Human Rights Committee, Mr Ayhan Sefer Üstün, that Turkey has no plans to lift its reservation to the Geneva Convention, in view of the current efforts to improve the legal framework.

200. Mention should also be made of the reinstatement, on 21 June 2012, of readmission agreements, providing for the return of Turkish illegal migrants or migrants having transited in Turkey. This, in the words of Mr Bağış, Minister for European Integration, is a major step towards the abolition of the visa regime applied to Turkish citizens by EU member States, which the Turkish authorities regard as unfair.[149] The National Action Plan for the adoption of the EU *acquis* in the field of asylum immigration (Türkiye Ulusal Eylem Planı) signed in 2005 with the European Union, also provides for the suspension of the geographical reservation to the Geneva Convention.

201. The new law could significantly improve the protection of asylum seekers and refugees, and I hope that it can be ratified as soon as possible. I believe Turkey should be supported in its efforts to improve the reception of these refugees and I urge Turkey to continue its co-operation with the UNHCR.

202. In its Resolution 1380 (2004), the Assembly invited Turkey to "move from a dialogue to a formal partnership with United Nations agencies to work for a return, in safety and dignity, of those internally displaced by the conflict in the 1990s".

146. www.unhcr.org/50a9f82e20.html.
147. Letter from Thomas Hammarberg, Commissioner for Human Rights, to the Minister of the Interior Mr Atalay on 8 June 2010, CommDH(2010)26.
148. www.unhcr.org/pages/49e48e0fa7f.html.
149. Turkey is the only EU candidate country which does not benefit from a liberalised visa regime.

203. The programme “return to the villages and rehabilitation plan” implemented in 14 provinces[150] from 1994 to 2005 led to the return of 187 861 out of the 386 360 displaced persons, according to the Minister of Interior.[151] An additional programme for the 13 remaining provinces is under consideration, as action plans.

204. Following the decision of the European Court of Human Rights in 2004, Law No. 5233 on compensation for damage caused by terrorism came into force in March 2008. Since then, 247 729 applications out of 360 660 have been dealt with, almost 140 000 of which have received a positive response (representing a total of approximately two million Turkish lira) with 100 000 having been rejected.[152] The State Security Courts have been abolished.

205. The return programmes have been accompanied by several programmes for the socio-economic development of the region (with financial and tax incentives granted to investors in the region), such as the South-East Anatolia Project (GAP) in 2012 on irrigation, road transport, health care, education, business development and women’s empowerment, accounting for 14.2% of public investment in 2010; support for 1 000 projects in the field of employment, social inclusion and culture, targeting disadvantaged groups between 2008 and 2010 under the Social Support Programme (SODES) for the provinces in the east and south-east; a rural infrastructure support project (KOYDES) on drinking water, the launch of the project for integrated rural development in 2007 to regenerate and develop 500 villages in Diyarbakır, Batman and Siirt, totalling 50 million dollars; and development of the road network in southern and south-eastern Turkey (with a network expanding from 580 km of roads in 2002 to 3 586 km in 2010); and the ongoing or completed construction of new airports in Batman, Bingol, Iğdır, Hakkâri and Şırnak.

206. I welcome Turkey’s efforts to carry on its programme for the return of displaced persons and encourage the Turkish authorities to deploy fresh initiatives, which should include promotion of regional development, to ensure the lasting return of these persons.

6.4. Rights of minorities, cultural rights and protection of minorities

207. In its Resolution 1380 (2004), the Assembly invited Turkey to “pursue the policy of recognising the existence of national minorities living in Turkey and grant the persons belonging to these minorities the right to maintain, develop and express their identity and to apply it in practice”.

6.4.1. Minorities recognised by Turkey

208. In accordance with the Lausanne Treaty of 1923, the Turkish authorities recognise, as minorities, “Turkish nationals belonging to non-Muslim minorities”. In fact, Turkey recognises the Jewish, Armenian and Greek Orthodox communities as “minorities”, but not the other denominational communities (such as Roman and Syriac Catholics, Protestants, the evangelical churches, etc.). They do not recognise ethnic differences between “Turkish nationals” as the definition of another type of minority.

209. The authorities have stressed that Turkish citizens belonging to the non-Muslim minorities benefit *inter alia* from positive discrimination in education. Educational institutions for Turkish citizens belonging to non-Muslim minorities are governed by the law of 2007 on private teaching establishments.[153] The property rights of non-Muslims have also been strengthened in the context of the current reform process. The Turkish Parliament has passed a new law on foundations, which took effect in February 2008, consolidating the situation of foundations attached to non-Muslim communities as regards the international aspects, particularly the system of donations and financial and/or material assistance from abroad, registration of their real estate and their representation in the Council of Foundations − the guiding body of the Directorate General for Foundations. As a result of this law, 181 real estate assets were registered in the name of foundations attached to non-Muslim communities and the land registries related to 150 properties were corrected.[154]

150. Adıyaman, Ağrı, Batman, Bingöl, Bitlis, Diyarbakır, Elazığ, Hakkâri, Mardin, Muş, Siirt, Şırnak, Tunceli and Van.
151. Reply of 6 July 2010 from the Minister of the Interior, Mr Batalay, to the letter of 8 June 2010 from the Commissioner for Human Rights, CommDH(2010)31.
152. European Commission 2011 progress report.
153. This right is nevertheless reserved for Turkish citizens: in response to the query by the Commissioner for Human Rights in his letter of 21 March 2011 (CommDH(2011)15), the Turkish Minister for Education, Ms Çubuçu, confirmed on 15 April 2011 (CommDH(2011)16) that only children belonging to the religious minorities recognised by the Treaty of Lausanne and holding Turkish citizenship may enter the schools run by these minorities. In this instance, the Commissioner expressed regret that Armenian migrant children could not have access to an education in Armenian offered by the Armenian community owing to their nationality.

210. With regard to religious minorities, it should be noted that, on 13 May 2010, the Prime Minister published a circular, confirming that all Turkish citizens belonging to the various religious faiths were an integral part of Turkey, and calling on all administrative authorities to act with the utmost vigilance to completely eliminate the problems encountered by non-Muslim minorities.

211. In addition, Section 11 of the law on foundations was amended on 27 August 2011 in order to improve the situation of foundations attached to non-Muslim communities with regard to the registration of their real estate.

212. The amended law provides that the real estate assets of non-Muslim community foundations registered under the 1936 Declaration with the "owner" section left empty or registered in the name of the Treasury, the General Directorate of Foundations, or special municipal and provincial administrations for reasons other than sale, barter or expropriation, as well as cemeteries and fountains registered in the name of public institutions, will be entitled to be registered in the name of non-Muslim community foundations upon application of the interested parties. Furthermore, compensation for the real estate of foundations registered in the name of third parties will be paid at the market value. Applications for the return of property under the 2011 law could be submitted up to 27 August 2012. 116 foundations requested the return of 1 560 assets. A total of 111 assets have been returned and compensation paid for 15 other assets. This process is ongoing. It is worth noting in this connection the decision of 10 January 2013 by the Council of Foundations (part of the Directorate-General for Foundations) to return 190 hectares of land to the Halki Greek Orthodox seminary.

213. The process of return of property continues. Moreover, it is unreservedly supported by the opposition party CHP. In some cases, the process comes up against various difficulties, resulting from the size of the community responsible for administering the assets in question[155] or the burden of proof falling to the foundations and the difficulty in gaining access to the archives, highlighted by the Hrant Dink Foundation, which nevertheless felt that the implementation of the 2011 law was a significant step towards eliminating the discriminatory policies pursued over the years. I also note, from the talks I had with Mr Vingas, the first non-Muslim representative elected to the Directorate of Foundations, that there is considerable hope placed in the constitutional reform process which should, above all, ensure equality, in law and in practice, of the rights of all citizens, whatever their religion.

214. Several emblematic gestures made towards religious minorities are to be welcomed. For the first time since 1952 a Minister of State, Deputy Prime Minister, Bülent Arınç, visited Greek Orthodox Patriarch Bartholomew I on 3 January 2011, followed by the visit of the Foreign Affairs Minister, Mr Davutoğlu, on 3 March 2012. He said that Turkey was considering the Patriarch's request to reopen the Halki Orthodox seminary on Heybeliada Island, which had been a major centre of theological learning for over a century prior to its closure in 1971 under a law placing all universities under State control. The Armenian Church of Van has been restored. Instructional books in Armenian have been distributed free of charge. Moreover, Prime Minister Erdoğan has publicly stated that Christians must not be ill-treated.[156] Religious ceremonies have been held in the Sumela monastery in Trabzon since 2010, in Armenian churches in Akdamar (Van) and Diyarbakır. Representatives of religious minorities have been invited to contribute to the work of the Conciliation Committee tasked with drafting the new constitution.

215. It should also be noted that the new law on metropolises of 6 December 2012 added a clause to Law No. 5393 on municipalities, enabling them to construct, maintain and restore places of worship.

216. It will be recalled that in 2008 the Parliamentary Assembly adopted Resolution 1625 (2008) on Gökçeada (Imbros) and Bozcaada (Tenedos): preserving the bicultural character of the two Turkish islands as a model for co-operation between Turkey and Greece in the interest of the people concerned, which the Turkish authorities are invited to implement. In this respect, the Turkish authorities mentioned notably the reopening of the Greek elementary school of Gökçeada in January 2012.[157]

217. In March 2010, the Venice Commission adopted an opinion on the legal status of religious communities in Turkey and the right of the Orthodox Patriarchy of Istanbul to use the adjective "Ecumenical".[158]

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154. AS/Mon (2013) 05, p. 35.
155. Laki Vingas, in charge of minority foundations in the Directorate of Foundations, referred to this problem in connection with the Greek minority in Turkey. See: www.hurriyetdailynews.com/minorities-given-entire-asset-rights.aspx?pageID=238&nID=36898&NewsCatID=339.
156. www.economist.com/node/17632939?story_id=17632939&fsrc=rss.
157. AS/Mon (2013) 05, p. 35.
158. CDL-AD(2010)005, Opinion adopted by the Venice Commission at its 82nd plenary session (12-13 March 2010).

218. While acknowledging that the recent reforms to Turkish legislation have improved the lot of the non-Muslim religious communities, the Venice Commission notes that, according to the European Court of Human Rights, the fundamental right of freedom of religion secured by Article 9, read in conjunction with Article 11 of the European Convention on Human Rights, provides *inter alia* the possibility for religious communities as such to obtain legal personality, whereas in Turkey they may only set up foundations or associations in support of the religious community. The Venice Commission points out that the possibility of obtaining legal personality is important, especially for securing access to justice and protection of property rights.

219. The Venice Commission further considers that any breach of the Orthodox Patriarchy's right to use the title "Ecumenical" would constitute a violation of the Orthodox Church's independence under Article 9 of the Convention. The Commission finds no indication that the Turkish authorities prevent the Patriarchy from using this title and that they are under no positive obligation to use it themselves. The Commission does not, however, see any concrete or legal reasons which would prevent the authorities from addressing the Ecumenical Patriarchy by its historic and generally recognised title.

220. Apart from this clarification, several advances are to be noted, as emphasised by the Commissioner for Human Rights, Thomas Hammarberg, concerning the return of the former orphanage on Büyükada Island to the Ecumenical Patriarchate on 20 November 2010, following the judgment of the Court,[159] the religious celebrations in the Monastery of Sumela at Trabzon and in the Armenian church on Akdamar Island in August and September 2010, the adoption of circular No. 2010/13 instructing the administrative authorities to pay close attention to the protection of non-Muslim cemeteries and to the execution of court rulings on property disputes between non-Muslim foundations and the State, and the instructions issued to the authorities responsible for instituting proceedings against publications containing material inciting hatred and hostility towards non-Muslim communities.

221. During my visit in January 2011, I had an opportunity to meet representatives of various religious communities (Jewish, Armenian Turkish, Alevi, Syriac Orthodox). I also met His Holiness Bartholomew I, the Ecumenical Patriarch, in November 2012.

222. At our talks, the Ecumenical Patriarch expressed his confidence in the dialogue with the Turkish Government, emphasised the current government's openness towards minorities and welcomed the progress made regarding the granting of Turkish nationality to the Metropolitans[160] and the return of certain property. Nonetheless, he expressed regret that the seminary of Halki, closed since 1971, had not yet reopened. Lastly, he told me of his hopes for the discussions on the concept of religious minorities and citizenship and the prospect of equality between all Turkish citizens being enshrined in the future constitution.

223. The contacts I had with the Jewish community in January 2011 confirmed that the relations cultivated between their community and the Turkish Government are satisfactory on the whole, despite a more tense geopolitical context than in 2008. These representatives again conveyed their anxiety over the rise of anti-Semitism and sundry acts of vandalism towards the community and the hate speech broadcast by certain extremist media, conveying indiscriminate parallels between Israel and Judaism.

6.4.2. The Alevi community

224. The demands of the Alevi community retain their current relevance. To recapitulate, Alevism, one of the branches of Islam, is Turkey's second religious belief after Sunni Islam with 15 to 20 million members, about a third of the Turkish population. In particular, the implementation of the *Hasan and Eylem Zengin v. Turkey*[161] judgment of the European Court of Human Rights of 9 October 2007 on the obligatory teaching of religion and

159. Case of *Fener Rum Patrikliği (Ecumenical Patriarchy) v. Turkey* (Application No. 14340/05). The applicant claimed that the entry in the property register of a piece of immovable property which he had owned for more than half a century under the name of the Büyükada Greek boys' orphanage foundation, currently managed by the Turkish administrative authorities, was an act of arbitrary confiscation infringing his rights secured by the Convention. The Court found a violation of Article 1 of Protocol No. 1.

160. 21 Metropolitans obtained Turkish nationality, see AS/Mon (2013) 05, p. 35.

161. In a case brought before the Strasbourg Court by an Alevi student and his father, the Court held that there had been a violation of the applicant's right to education as guaranteed in Article 2 of Protocol No. 1 to the European Convention on Human Rights. The violation originated in a problem relating to the implementation of the religious instruction curriculum in Turkey and the lack of appropriate means of ensuring respect for parents' beliefs. The Court said that, in executing this judgment, Turkey should bring the Turkish education system and the relevant domestic law into line with Article 2 of Protocol No. 1, and that this would be an appropriate form of redress.

morals was discussed with the Alevi community. The execution of this judgment was also broached by the Commissioner for Human Rights, Thomas Hammarberg, in his letter to the Turkish authorities of 16 December 2010, in which he expresses regret at the lack of financial aid to the Alevi community and the failure to recognise Alevi places of prayer (cemevi) as places of worship, and stresses that the right to educate Alevi children in accordance with the religious convictions of Alevi parents must be respected (following the *Zengin v. Turkey* judgment).

225. The Turkish authorities replied that, in the context of the interfaith dialogue opened with the representatives of the non-Muslim communities, seven workshops co-ordinated by the Minister of State, Mr Celik, had been organised with the Alevi community. A consensus has been reached that the legal status of the Alevi places of worship needed to be recognised (a legal committee has been set up and has prepared a detailed report on the present position and the requisite measures, now being examined by the Minister of State), and the lesson content for religious and moral instruction needed to be reviewed: following the judgment in the case of *Hasan and Eylem Zengin v. Turkey*, religious and moral instruction was replaced when school resumed in 2007 by a course including references to the beliefs of the Alevi-Bektashi. However, the consultations revealed the need to revise the textbooks on religious and moral instruction. Having regard to the opinions of the representatives of the Alevi, Jaaferi (Caferi) and Nusayri communities, a new commission has been created. The revised course, approved by the Minister for Education on 31 December 2010, was introduced in 2011-2012 and embodies various themes.[162]

226. The Alevis' demands were repeated to me during my visit in November 2012, and related to recognition of a legal status for their places of worship (cemevi), the teaching of Alevi religious education by Sunnis, an end to obligatory religious education at school, the return of confiscated property, the eventual abolition of the Diyanet (the central administration in charge of cults), and reform of the electoral system to ensure better representation of Alevis in parliament. It should be noted that several incidents, reflected in the press, targeted Alevi families in 2012.

227. In the *Sinan Isik v. Turkey* judgment concerning the "religion" endorsement on identity cards (deemed contrary to Article 9 of the European Convention on Human Rights on freedom of thought, conscience and religion),[163] the European Court of Human Rights held that removal of the box for religion could constitute a suitable form of redress ending the violation found. The Turkish authorities indicated in February 2011 that a revision of identity cards was in progress.[164]

6.4.3. The Kurdish issue

6.4.3.1. The situation in south-eastern Turkey until 2012

228. The Turkish authorities, in accordance with the Treaty of Lausanne of 1923, recognise "non-Muslim Turkish nationals" as minorities, as indicated in paragraph 208, but they do not recognise ethnic differences between "Turkish nationals" as the definition of another type of minority. However, it is on the basis of their ethnic identity that the Kurds assert their difference and seek recognition.

229. Constitutionally, citizens in Turkey are "Turkish citizens". The definition of the term "citizenship" is therefore at the heart of the Conciliation Committee's discussions and is perhaps one of the key issues to be resolved. The Kurdish demands would correspond to another definition, for instance "citizen of the Republic of Turkey".

230. The Kurdish problem is the most difficult that the country has to deal with. The period 2011-2012 was marked by an upsurge in violence following the June 2011 parliamentary elections. The increase in PKK terrorist acts and the intensification of military operations in southern Turkey (particularly in the Şemdinli region (Hakkâri province), an area which the PKK sought to control), led to hundreds of deaths on both sides. The think-tank "International Crisis Group" referred to 700 fatalities in the 14 months of fighting up to September 2012.[165] The situation is further aggravated by an international context conducive to a strengthening of the PKK's rear bases in northern Iraq and northern Syria.

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162. Reply by the Ambassador of Turkey to the Council of Europe to the Commissioner for Human Rights, 1 February 2011, www.coe.int/commissioner.
163. Application No. 21924/05, judgment of 2 February 2010.
164. Reply by the Turkish authorities of 3 February 2011 to the letter from the Commissioner for Human Rights of 16 December 2010, CommDH(2011)6.
165. Turkey: the PKK and a Kurdish settlement, Europe Report No. 219, 11 September 2012, International Crisis Group.

231. On 28 December 2011, 34 young villagers, who were engaged in smuggling operations with neighbouring Iraq, were mistaken for PKK members and were killed in Uludere by the Turkish air force, which acknowledged its mistake. The authorities expressed their "deepest sorrow"[166] over the incident and offered financial compensation to the families, which was refused. A parliamentary investigation committee was set up and administrative and judicial processes continue. For the time being, however, it has not yet been clearly established where the responsibility lies and these acts remain unpunished. The whole of Turkey has been shocked by this tragedy and it is imperative that now, one year later, the matter be fully elucidated so that justice can be done.

232. On 12 August 2012, a member of parliament from the opposition party, CHP, and member of the Human Rights Committee, was kidnapped by the PKK. This was the first abduction of a member of parliament, joining a long list of teachers, engineers and soldiers kidnapped by the PKK. The CHP called for an extraordinary parliamentary sitting on 14 August 2012. Because there was no quorum, as a third of MPs must be present at the opening, this sitting did not take place. The AKP and MHP had said that they refused to take part so as not to encourage the PKK to pursue its terrorist activities.

233. The dissemination on 17 August 2012 of a video showing a meeting between MPs from the BDP party and PKK militants in south-eastern Turkey caused considerable agitation. The Prime Minister urged the judiciary to take all necessary steps to lift the immunity of these MPs. The matter was referred by the prosecutor to the Ministry of Justice, and then to parliament. The procedure is still ongoing. Lifting the immunity of these MPs is the subject of much debate and the Kurdish MPs from the AKP have made it known that they do not wish to support this approach. The investigation of case files on lifting of immunities submitted to the Turkish Parliament has, for the time being, been postponed due to the ongoing peace process.

234. The Kurdish question has become even more sensitive following recent developments in Syria: the new stance adopted vis-à-vis the Massoud Barzani crisis, the closer ties between Iraqi and Syrian Kurds, and the links which Turkish Kurdish organisations have established with the PYD, a Syrian Kurdish organisation close to the PKK, in the north of Syria, are all matters of concern for the Turkish authorities.

235. The "democratic opening" begun by the Turkish Government in 2009 has somewhat run out of steam. It had made it possible to open up the debate on the Kurdish issue, allowed Kurdish to be used in the public sphere, in the media and in election campaigns, and had meant that Kurdish could be taught in universities. Of note, in this connection, were the following:

– the introduction of Kurdish teaching and private lessons for learning local languages and dialects in 2003/2004 in Şanlıurfa, Batman, Van, Adana, Diyarbakır, İstanbul and Kızıltepe (Mardin). Most of these cities are situated in south-eastern Turkey. However, all these courses were subsequently closed down by their founders and owners owing to lack of interest;

– postgraduate education in Kurdish provided by the Mardin Artuklu University. The Higher Education Board (YÖK) authorised the opening of a Kurdish Language and Literature Department in Muş Alparslan University in 2011;

– The broadcasting in languages and dialects used traditionally by Turkish citizens in their daily lives by Turkish Radio and Television (TRT) and private television channels and radio stations. Broadcasting in local languages and dialects includes news, music and documentaries in Bosnian, Kirmanchi, Zaza, Circassian and Arabic for a maximum of 60 minutes per day and five hours per week on radio and 45 minutes per day and four hours per week on television;

– the permission given since 7 March 2006 by the RTUK to several private radio stations and television channels to broadcast in Kirmanchi and Zaza. They began broadcasting in these dialects on 26 March 2006;

– the decision taken by Supreme Audiovisual Council dated 30 May 2006, authorising the broadcast of musical works and films without any time limit throughout the day;

– the entry into force of the Law on Compensation of Damages Arising from Terrorism in March 2008.

236. However, the repeated violations of freedom of expression and assembly (see above), the organisation of mass trials (such as the KCK trial)[167] and the resumption of terrorist acts have undermined this policy of openness. The claims expressed in Diyarbakır related primarily to the teaching of and in Kurdish. The

166. AS/Mon (2013) 05, p. 32.

rapporteur attempted to meet some of those held in prison, in particular Muharrem Erbey, Vice-President of the Turkish Human Rights Association. The request was a little late but was submitted to all the relevant local authorities, including the prosecutor's office and the Governor of Diyarbakır. The request was also sent on that day to the relevant directorate of the Ministry of Justice for the attention of the Minister. I did not receive a reply to my request. This should be noted.

237. My visit to Diyarbakır on 10 January 2011 provided an opportunity to discuss the Kurdish issue with the authorities and civil society representatives, at a time coinciding with the resumption of the trial of 151 human rights activists, elected representatives and journalists. The tragic events in south-eastern Turkey and the terrorist acts which have left 40 000 people dead have been traumatic for Turkey.

238. With regard to the teaching of Kurdish, it emerged from my exchange of views on 12 January with Mr Hüseyin Çelik, Vice-President of the AKP and former Minister of Education and Culture, that the optional teaching of Kurdish in schools was being considered. This would be an expansion of the freedoms already granted, subject to the outcome of discussions by officials of this party, which it would appear they have agreed to enter into – in any case the proposal was not ruled out. I note that, for the CHP, it is essential that Turkish remains the official language of the country. On the other hand, the party believes that the teaching and learning of Kurdish should be authorised, in line with each individual's preferences.[168]

239. My own opinion was that the possibility offered to candidates of conducting an election campaign in a language other than Turkish was consistent with this process of outreach which must be continued and enhanced.

240. The claims of the Kurds also concerned the permission for plaintiffs to use their mother tongue. The adoption, in November 2012, of a law allowing the use of a language other than Turkish, in which the plaintiffs expresses themselves better, is a positive response. All the other problems relating to the Kurds fall quite naturally into the debate on reform of the Constitution and should therefore find the requisite political response, including in the context of devolution in accordance with the European Charter of Local Self-Government.

241. Concerning the use of languages at local level, the Congress of Local and Regional Authorities, in Recommendation 301 (2011), recommended that the Committee of Ministers invite the Turkish authorities to "pursue the Government's Democratic Initiative, and in this context to implement Congress Recommendation 229 (2007), namely to permit municipal councils to use languages other than Turkish in providing public services and to reform the Municipality Law to allow mayors and municipal councils to take 'political' decisions without fear of proceedings being taken against them" (paragraph 9.*e*).

242. Moreover, the Congress deplored the fact that "no step had been taken to implement Congress Recommendation 229 (2007), namely to permit municipal councils to use languages other than Turkish in providing public services and to reform the Municipality Law to allow mayors and municipal councils to take 'political' decisions without fear of proceedings being taken against them". Moreover, Turkey had neither signed nor ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, the Charter for Regional or Minority Languages and the Framework Convention on the Protection of National Minorities.[169]

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167. The trial of the KCK ("Union of Communities in Kurdistan") opened in Diyarbakır on 9 June 2010. The KCK is regarded as a political front for the Kurdistan Workers' Party (PKK). 151 prominent Kurdish figures, of whom a great many were elected representatives of the Peace and Democracy Party, including the Mayor of that city (meanwhile acquitted), human rights activists and representatives of associations appeared in court. In January 2011, 103 accused were in prison, some since April 2009. The accused were charged with "disrupting the unity of the State and the integrity of the nation", "membership and leadership of a terrorist organisation" or "aiding and supporting a terrorist organisation". When the trial opened, the accused spoke in Kurdish. The lawyers' request concerning the use of the Kurdish mother tongue for the defence of the accused was rejected by the 6th High Court in Diyarbakır. Since then the trial has been adjourned several times. On 3 January 2012, an initial verdict was given against those arrested in 2009 during an extensive clampdown which resulted in the detention of hundreds of Kurdish oppositionists, or thousands according to Kurdish organisations. The 6th Assize court in Diyarbakır handed down prison sentences ranging from three months to 17 years to 40 Kurdish militants, whom it considered to be guilty of belonging to a terrorist organisation.

168. Comments by the CHP, AS/Mon (2011) 23.

169. Recommendation 301 (2011) of the Congress, paragraph 8.*e*.

6.4.3.2. The victims of terrorist acts of the PKK

243. It should be noted that PKK terrorism has claimed 40 000 lives over the last three decades and traumatised the entire population, as can be strongly sensed. The PKK has been recognised as a terrorist organisation by the European Union, NATO and some countries such as the United States, the United Kingdom and Canada in particular.

244. We roundly condemn the acts of violence perpetrated by the PKK, which especially affect the civilian population, including in schools, and seek to establish a climate of terror among civilians. The settlement of the Kurdish question presupposes the cessation of all violence, a precondition for any negotiations.

245. I also note that the violence continues. On 10 January 2013, three female Kurdish militants, including Sakine Cansiz, the co-founder of the PKK in 1978 and a close Öcalan associate, were assassinated at the "Kurdish information centre" In Paris. These assassinations were unanimously condemned, including by Prime Minister Erdoğan and the Deputy Prime Minister and government spokesman, Mr Arinç. It will be the responsibility of the French authorities to investigate this case. It is my hope that this intolerable violence will not now jeopardise the continuation of the talks initiated by the Turkish authorities. Let us call on everyone responsible to do their utmost to bring about a political solution to this issue and ensure that this solution is enshrined in the future constitution.

6.4.3.3. The case of Abdullah Öcalan

246. The state of health of Abdullah Öcalan, held since February 1999 in the type F closed high-security prison on Imralı Island, had raised concern among the members of the Assembly[170] and received special attention during Mr Holovaty's last visit to Turkey in 2008.[171] It should be noted that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment carried out a visit to the prison on 26 and 27 January 2010. The delegation inspected the conditions under which Abdullah Öcalan and other inmates were held, the group activities available to prisoners and the application of prisoners' right to receive visits from their close family and lawyers. All prisoners were interviewed by the delegation. The visit was made subsequent to the recent provision of new custodial premises on the island and to the transfer there of five additional prisoners from other prisons.

247. In its report published on 9 July 2010, and on the basis of the information gathered, the CPT noted the progress made and concluded that Abdullah Öcalan's conditions of detention had improved compared with those observed in 2007 during the last visit, noting that the prisoner had been moved to a structure where contacts with other prisoners and access to a wide range of activities were possible. The CPT also noted improved access for lawyers and family members to Imralı Island. The CPT accordingly decided to close the procedure commenced in March 2008 under Article 10.2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment while continuing to keep track of the situation of Abdullah Öcalan and the other Imralı prisoners, and retaining the possibility of reopening this procedure should the improvements not prove to be sustained.[172]

248. However, information on the situation of Abdullah Öcalan since July 2011 has been somewhat worrying and would seem to indicate that he has once again been placed in solitary confinement, denied access to his layers, and allowed extremely limited contact with his family. An end to Öcalan's solitary confinement was one of the three demands made by the 700 or so Kurdish prisoners on hunger strike, which ended after 68 days from September to November 2012, as a result of an extraordinary appeal from Öcalan. This repositioned Öcalan in the negotiations for the disarmament of the PKK, with Öcalan claiming to be the sole speaking partner for continuation of the negotiations. PKK officials have said that Öcalan's transfer from Imralı would undoubtedly be a precondition for any further negotiations.

6.4.3.4. Recent political initiatives to solve the Kurdish problem since summer 2012

249. In recent months, in view of the resurgence of violence perpetrated by the PKK and the operations carried out by the army, several political initiatives have been taken and are worthy of mention.

170. Doc. 11271, motion for a resolution presented by Lord Russell Johnston and others concerning Mr Abdullah Öcalan's state of health.
171. AS/Mon (2009) 10 rev, paragraphs 132-136.
172. CPT/Inf(2010)20, paragraph 36, www.cpt.coe.int/documents/tur/2010-20-inf-eng.pdf.

250. In June 2012, the CHP opposition party suggested that a multi-party parliamentary committee be set up, assisted by a group of wise persons, tasked with discussing how to resolve the Kurdish question by means of a "road map". On 6 June 2012, the CHP leader, Mr Kılıçdaroğlu, was received by Prime Minister Erdoğan, who welcomed the initiative, leaving it to the CHP to persuade the MHP and the BDP to support this initiative. This failed.

251. In June 2012, Prime Minister Erdoğan met the MP Leyla Zana, the symbol of Kurdish political resistance, who expressed her confidence in the Prime Minister's commitment to solving the Kurdish question. Nonetheless, this approach gave rise to criticism within the pro-Kurdish BDP party.

252. The Speaker of Parliament, Mr Çiçek, had drawn up an 11-point document aimed at obtaining "a national consensus against terrorism" to resolve the Kurdish question. However, this did not receive the hoped-for response among the political class, including among the members of the AKP.

253. In November 2012, after 68 days on hunger strike, the approximately 700 Kurdish prison inmates involved ended their action following an appeal by Abdullah Öcalan. The authorities have given consideration to the three demands of the hunger strikers: 1) the draft law on the use of a language other than Turkish in courts, even where the accused are proficient in the official language, should be examined in 2013; 2) the question of teaching Kurdish and the use of a language other than Turkish in public life has been referred to the work on revision of the Constitution; 3) with regard to the end to Öcalan's solitary confinement demanded by the strikers, the Minister of Justice has assured me that Abdullah Öcalan would have access to his lawyers for civil law matters (he takes the view that once tried and convicted, Öcalan no longer needed to see his lawyers, which the latter refute, referring to pending cases before the European Court of Human Rights) and that moreover he has access to his family.

254. During my visits, I spoke to some of the 70 Kurdish AKP MPs, most of whom had been elected in the eastern and south-eastern regions of Turkey.[173] They told me of the difficulties they faced in carrying out their parliamentary office, the attacks they were subjected to, and their position vis-à-vis the Kurdish question. It clearly emerged from these discussions that these parliamentarians were of the opinion that a proposal for a solution to the Kurdish question could only come from the Kurds themselves. I also noted that their position was, within the AKP, less categorical than that of the Prime Minister, when for example they raised the issue of lifting the immunity of the 10 BDP MPs who had met PKK activists in summer 2012.

255. I note that Prime Minister Erdoğan had a long meeting on 13 December 2012 with the AKP MPs from 13 provinces in southern and eastern Turkey. According to information published in the press, it would appear that agreement had been reached on the use of more inclusive language vis-à-vis the Kurds, the continuation of reform, the drawing up of a new road map for the Kurdish question and, with regard to lifting the immunity of the BDP MPs, the commitment to avoiding a repetition of a situation which had already occurred in March 1994.[174] Following the escalation of violence in 2011 and 2012, and the hard-line statements of the Prime Minister and certain members of the government vis-à-vis the Kurds, this meeting could also seek to lay the foundations of a repositioning of the AKP in the predominantly Kurdish regions, with a view to the 2014 and 2015 elections.

256. In December 2012, talks between the Turkish secret services and Abdullah Öcalan, which were suspended in 2011 at the end of the failed "Oslo process", were resumed on the island of Imrali. The current talks (also known as the "Imrali process") could result in the submission of a road map setting out plans for, among other things, disarming the PKK and the cessation of hostilities and enabling PKK activists to leave Turkey and settle in third countries other than members of the European Union or Turkey's neighbours. As regards Mr Öcalan's conditions of detention, Prime Minister Erdoğan has on several occasions ruled out his being placed under house arrest or allowed to leave the island of Imrali, which is one of the PKK's demands. A general amnesty for PKK activists has also been refused, although the CHP would not seem to be opposed to this provided that it also covers the people convicted in the Ergenekon and Balyoz trials.

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173. In 2007, the AKP won 53.14% of the votes in the south-east Anatolia region, and 54.64% of votes in eastern Anatolia (with the BDP obtaining 24% of votes). En 2011, AKP obtained in these regions respectively 51% of votes (34% for the BDP) and 52% (23% for the BDP). The AKP won the most votes in nine of the 19 provinces in eastern Anatolia and in five of the nine provinces in south-east Anatolia.

174. On 2 March 1994, the Turkish Parliament decided to lift the parliamentary immunity of eight Kurdish MPs, six of whom belonged to the Party for Democracy (DEP); some were arrested, others fled the country. See Resolution 1041 (1994) on the consequences of the dissolution of the Party for Democracy (DEP) in Turkey and Doc. 7112 (Rapporteur: Mr Erik Jurgens, Netherlands, SOC).

257. Pursuant to these talks, and for the first time since 1999, two members of parliament, Ayla Akat Ata of the BDP and Ahmet Türk, an independent and Co-Chair of the Democratic Society Congress (DTK), were given permission by the Minister of Justice to visit Abdullah Öcalan on the island of Imrali on 3 January 2013.[175] A second delegation consisting of three BDP parliamentarians, Sırrı Süreyya Önder, Pervin Buldan and Altan Tan, was authorised to meet Abdullah Öcalan on 23 February 2013.

258. I wish to note that the approach initiated by Mr Erdoğan in favour of the resumption of talks meets with the approval of the major players in Turkish political life – especially the CHP and the BDP – with the exception of the nationalist party MHP. This is a development that should be monitored and supported.

6.5. Gays, lesbians, bisexuals and transsexuals (LGBT)

259. We have received information about difficulties encountered by the gay, lesbian, bisexual and transsexual community (LGBT).[176] I refer in particular to the report by Mr Andreas Gross (Switzerland, SOC) on "Discrimination on the basis of sexual orientation and gender identity".[177] For instance, on 10 March 2009, a recognised transsexual human rights militant, a leading light of the association Lambda Istanbul, was fatally stabbed. It was the second recent murder of a member of this organisation. Between January and May 2009, five murders of transsexuals were reported in Turkey, incidents which are part of a regular pattern – for example, 15 gay men and transsexuals were reportedly murdered between January and October 2007.[178] NGOs have condemned this atmosphere of violence founded on gender identity in Turkey. Investigation of the violent acts committed against LGBT people, prosecution of the suspects and passing of effective legislation for ensuring equality are essential measures to take in order to end these murders.

260. I encourage Turkey to take every step, educational measures included, to combat all forms of discrimination, those founded on sexual orientation among them, adopt the relevant legal and constitutional provisions, and finally, ensure their full implementation. In that respect, I draw attention to Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity.[179]

6.6. Combating illiteracy and violence against women

261. In its Resolution 1380 (2004), the Assembly invites Turkey to "continue efforts to combat female illiteracy and all forms of violence against women".

262. Violence against women remains a persistent problem in Turkey, as in all the Council of Europe member States. According to a study made by the organisation Human Rights Watch, 42% of women over 15 years of age in Turkey and 47% of country-dwelling women have undergone physical or sexual violence at the hands of their spouse or partner at least once in their lives.[180]

263. I should like to commend the major legislative advances achieved over the last few years: the new 2005 Penal Code prescribing life imprisonment for the perpetrators of murders prompted by custom/honour. The General Directorate of Women's Affairs has launched intensive programmes and campaigns for training and awareness raising, some aimed at police officers and magistrates, on gender equality and violence against women, including "honour crimes".

264. The 2005 Penal Code contains provisions intended to strengthen the protection of women, and classifies sexual offences among "crimes against persons" and no longer "crimes against society". Sexual assault on one's spouse is treated as an offence. There are legislative provisions against sexual harassment in the workplace. The law on protection of the family (1998, amended in 2007) and its implementing decree (2008), as well as the law on combating violence against women, adopted on 9 March 2012, have extended and

175. At the same time, the official request submitted by three of Öcalan's lawyers was refused, with the office of the Bursa prosecutor citing transport problems to reach Imralı. http://bianet.org/english/human-rights/143295-kurdish-deputies-meet-ocalan-in-imrali-island.
176. See, in particular, the Human Rights Watch publication "We need a law for liberation – gender, sexuality, and human rights in a changing Turkey", May 2008. www.hrw.org/reports/2008/turkey0508/.
177. Doc. 12185.
178. Human Rights Watch, May 2008, report entitled "We need a law for liberation – Turkey"; see also Lambda Istanbul, "Call for action", April 2009.
179. Adopted by the Committee of Ministers on 31 March 2010.
180. Human Rights Watch report, "He loves you, he beats you", 4 May 2011.

diversified protective measures for women. Two national action plans on the themes "Combating domestic violence against women (2007-2010)" and "Gender equality (2007-2013)" are being implemented with the participation of all stakeholders.

265. I was told of many initiatives in the field of combating violence against women, in particular the training programmes that have been run since 2006,[181] the introduction of a system for collecting data in police stations on domestic violence, the signing of an agreement between the Ministry for Family Affairs and Social Policies and the Ministry of the Interior regarding the training of gendarmes working in rural areas, including on so-called "honour" crimes, the activities of the parliamentary Committee on Equal Opportunities for Women and Men established in 2009, the setting up of violence prevention and monitoring centres (Şiddet Önleme ve İzleme Merkezleri) open full-time in 14 pilot provinces[182] offering legal, psychological and financial aid to victims and providing rehabilitation programmes for the perpetrators of violence.

266. There should also be greater capacity to offer victims accommodation. In February 2013, 95 centres could accommodate 1925 female victims of violence, but demand is increasing.[183] The law on municipalities provides for the creation of women's shelters in all towns with more than 50 000 inhabitants. The capacity of these centres should be increased to 3 000 places by 2015.

267. Turkey's contribution, including that of the Grand National Assembly, to the Council of Europe Campaign "Stop domestic violence against women" (2006-2008) deserves commendation. The launching in 2006 of the parliamentary dimension of the Council of Europe campaign proceeded under the aegis of the Assembly's Committee on Equal Opportunities for Women and Men, chaired at the time by Ms Gülsün Bilgehan (Turkey, SOC). It was during the Turkish Chairmanship of the Committee of Ministers that the Council of Europe Convention on preventing and combating violence against women and domestic violence was opened for signature. Turkey was one of the first countries to sign it, in Istanbul on 11 May 2011 – and the first country to ratify it in March 2012, and was undeniably a prime mover in advancing the preparation of a European legal instrument designed to protect women better.

268. The question of violence against women in Turkey was addressed in the *Opuz v. Turkey* judgment delivered on 9 September 2009[184] in which the European Court of Human Rights criticised the authorities' lack of diligence and the ineffectiveness of the judicial measures taken against the perpetrator of the violence. It concluded that the Turkish authorities had failed to preserve the life of the applicant's mother (violation of Article 2) and not honoured their obligation to take protective measures in respect of the applicant in the form of effective prevention shielding her from the grave bodily injuries inflicted on her by her ex-husband (violation of Article 3). In the ambit of Article 14 (prohibition of discrimination), the Court ascertained for the first time that the applicant had proved that domestic violence chiefly affected women and that the widespread and discriminatory inaction displayed by the Turkish courts created a favourable climate for this violence. Considering the circumstances, the Court held that the violence inflicted on the applicant and her mother was to be considered founded on sex and therefore constituted a form of discrimination against women.

269. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and the impunity enjoyed by the aggressors, as found in the instant case, indicated that there was insufficient commitment to take appropriate action to address domestic violence. Thus there was a violation of Article 14 in conjunction with Articles 2 and 3". Today Ms Opuz, still threatened by her ex-husband, is under close protection.[185]

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181. According to the information provided by the authorities, training has been given to 45 000 police officers, 65 000 health-care professionals, 326 judges and prosecutors at the family courts, and 12 000 imams (and 100 000 by 2015).
182. İstanbul, Ankara, İzmir, Bursa, Denizli, Antalya, Mersin, Adana, Samsun, Trabzon, Gaziantep, Şanlıurfa, Diyarbakır and Van. This initiative is due to be extended to all 81 provinces by 2015.
183. Figures provided by the Turkish authorities, AS/Mon (2013) 05. In 2011, 4 195 women and 1 578 sought a place in a shelter. In the first nine months of 2012, there were almost 4 500 women (and 1 930 children) who did so, according to a parliamentary reply given by Social Affairs Minister, Fatima Şahin.
184. Application No. 33401/02. The mother of the applicant, Nahide Opuz, was shot down in 2002 by H.O, the former husband of Nahide Opuz, after both women had been subjected to repeated acts of violence and death threats between 1995 and 2002 (including the attempted murder of the mother of Ms Opuz), and lodged a complaint on several occasions and asked for her ex-husband to be placed in detention.
185. Ein Bodyguard schützt vor dem prügelnden Ex-Mann, AFP, 11 May 2011.

270. Despite the passage of the law on the protection of the family in 2007, the organisation Human Rights Watch pinpoints numerous shortcomings: the law excludes from its scope divorced or unmarried women, the response of the police and justice authorities in the event of a complaint being lodged is inadequate, and there are too few shelters for victims of violence and insufficient monitoring of the measures to keep abusers away from victims.[186]

271. On 9 March 2012, in parallel to the ratification of the "Istanbul Convention", a new law to help combat violence against women was passed by parliament, following consultation with women's organisations that were very much involved throughout the legislative process. This law seeks to improve the effectiveness of the assistance provided to victims of domestic violence with due regard for human rights and gender equality, granting temporary financial assistance to women and their children residing in centres, including financial assistance for childcare, enhanced protection for the victims of domestic violence given death threats, steps to rehouse victims and the possibility of acquiring a new identity, and penalties for civil servants who fail to take the appropriate measures when informed of instances of domestic violence.

272. Despite the clearly stated commitment of the Minister, implementation of these arrangements has so far been inadequate and the law is not sufficiently applied by judges and prosecutors. It is essential to strengthen training in this field and to punish any breaches or lack of diligence on the part of institutions. There are too many tragedies suffered by women who had asked the authorities in vain for help.[187]

273. Lastly, I would add that combating violence against women should be seen in the context of promoting gender equality. Clearly, progress has been made but women's participation in parliament (4.4% in the general elections of 2002, 9.4% in 2007, then 14.2% en 2011), in local government (0.6%) and on the labour market is still poor. The government has only one woman, Ms Şahin. Only two of the 81 provinces are governed by women (Tunceli and Aydın). Women's participation on the labour market was 30.5% in 2011 (as opposed to 63% in the European Union).[188] It is important to ensure the implementation of the labour code related notably to non-discrimination and wage equality and to continue the programmes to help people find employment initiated in recent years (financial aid, tax incentives for women starting businesses, access to microcredit, setting up a Women Entrepreneurs Council in the Turkish Chamber of Commerce, etc.). On this subject, I refer to the Resolution by the European Parliament, adopted on 22 May 2012, on a 2020 Perspective for Women in Turkey.[189]

274. Female illiteracy is another major obstacle to women's participation in public and economic life, to their empowerment and to their financial independence. The Minister for Family Affairs and Social Policies estimates the number of illiterate women to be three million, of whom 2.3 million are aged 50 or more. Eliminating illiteracy is one of the stated objectives of the government's Vision 2023. Financial aid for girls to attend primary and secondary school (the aid being paid to mothers) is provided for families most in need and awareness-raising campaigns for the education of girls aged 6 to 14 have been run in conjunction with UNICEF. Over one million women and girls attended literacy programmes between 2008 and 2010, including in the regions of the south and the south-east where literacy rates among women rose from 60% in 2000 to 70% in 2010. These measures have resulted in an increase in the primary school attendance rate (from 92.4% in 2001-2002 to 99.3% in 2010).

275. In its awareness-raising campaign[190] against early and child marriages,[191] the UNFPA highlights the link between poverty, illiteracy, child brides and the greater risk of girls being exposed to physical, psychological and sexual violence. Such marriages remain a problem in Turkey: child marriages account for one in three marriages. In 50% of cases, these are marriages between illiterate boys and girls. I refer to the

186. www.hrw.org/en/news/2011/05/04/turkey-women-left-unprotected-violence.
187. One example is the case of Ayşe Paşalı, murdered on 7 December 2010 by her former husband, despite the fact that she had sought, in vain, the protection of the authorities on six occasions. As she was no longer married, she did not qualify for appropriate protection.
188. On average, 12.8% of Turkish women are registered as employers or are self-employed, 51% receive a monthly salary or daily wage (undeclared) and 35% are identified as "domestic helpers". Comment from the CHP, November 2011.
189. A7-0138/2012, www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0212+0+DOC+XML+V0//EN.
190. "Turkey's never ending tragedy: Child Brides", UNFPA Turkey, October 2012.
191. Article 124 of the revised 2002 Civil Code raised the statutory minimum age to 17 years for women, like for men. It also states that "marriage of a person (both men and women) of the age of 16 is allowed by the court decision based on exceptional circumstances". In Turkey – child marriage, UNFPA information sheet, October 2012.

work of the Parliamentary Assembly on this issue,[192] which is a clear violation of human rights and children's rights, and I welcome the fact that the Conciliation Committee has given thought to including preventing such marriages in the future constitution.

276. I also note that the Ministry of State for Women and Family Affairs was replaced in 2011 by the Ministry for Family Affairs and Social Policies,[193] emphasising the priority attached to promoting the family, a key issue often underscored by Prime Minister Erdoğan. His encouragement for women to have at least three children and the controversy which erupted in 2012 on the questioning of the right to abortion,[194] which have alarmed women's associations, call for the utmost vigilance.

277. The Global Gender Equality Gap Report 2012 – which measures "economic participation and opportunities", "educational outcomes", "health and survival" and "political capabilities" – ranks Turkey 124th out of 135 (slightly up from 2010 when Turkey was ranked 131st).[195]

278. It is to be hoped that the future constitution will establish gender equality and full respect for women's rights, and that legislation will create the conditions for the effective exercise of those rights, ensuring greater participation in public and economic life, access to employment through measures making it possible to reconcile motherhood and a career, and zero tolerance with regard to violence against women. The constitutional revision of September 2010 now authorises positive discrimination. It is up to Turkey to seize this legal opportunity to launch ambitious and innovative initiatives, substantially improve the position of women in Turkish society, and make gender equality and women's contribution to economic life a vehicle for growth – if Turkey wishes to be ranked among the top ten powers in the world.

7. Conclusions

279. This progress report, which we present in 2013 following the resumption of our missions in 2011, must be set in the context of severe domestic upheaval (the Kurdish problem, the crisis in Syria) and Turkey's political transition (revision of the constitution) which will come to an initial end with the 2014 presidential election and the 2015 parliamentary elections.

280. We have deliberately emphasised Turkey's complicated internal and external political situation as this will make it possible to gain a better understanding of the current problems. Turkey finds itself in a transition phase that continues to evolve.

281. It should also be noted that Turkey is a Muslim country that combines democracy with Islam while affirming respect for the principle of secularism enshrined in the Constitution, an approach which is observed with interest, in particular among the countries undergoing "Arab Spring" revolutions, which are trying to find a way forward.

282. For the moment, we should note the far-reaching reform of the army and the major trials in progress that affect all key political and civil players – elected representatives, the press, university teachers, students, journalists, and, of course, the Kurds. A purge is taking place.

283. Some requirements set out in Resolution 1380 (2004) concerning the post-monitoring dialogue with Turkey have been met, such as the creation of the institution of ombudsman or the ratification of certain important instruments, such as the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime or the revised European Social Charter. It should also be noted that Turkey was the first country to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the "Istanbul Convention"), and that is a positive step.

192. See Resolution 1468 (2005) on Forced marriages and child marriages.
193. Bianet, 18 May 2011, "What We Need is a Women Ministry", http://bianet.org/english/women/130059-what-we-need-is-a-women-ministry.
194. The Prime Minister had suggested reducing the period during which an abortion was possible – currently 10 weeks – to four weeks, expressing his view that "each abortion is an Uludere" (reference to the deaths of 34 young people on the Iraqi border in 2011), which infuriated many woman, from all parties. Following heated debates in parliament and civil society, the authorised period was kept at 10 weeks, and the Ministry of Family Affairs said that an information clip for those requesting abortion was in preparation which would provide full information. New legislation henceforth limits caesarean sections, very widespread in Turkey.
195. http://www3.weforum.org/docs/GGGR12/MainChapter_GGGR12.pdf.

284. While significant progress has been made, there are still major reforms to be completed which form key points of Resolution 1380 (2004). The following still have to be finalised:

– the reform of the Constitution: after the 2010 constitutional referendum, this task has been the responsibility of a "conciliation" committee since 2011. Work is in progress and the new constitution is eagerly awaited. It will perhaps define the nature of a new system of governance. This point is therefore vital;

– lowering of the electoral threshold of 10%;

– recognition of conscientious objection;

– ratification of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages;

– completion of the reform of the Criminal Code (ongoing debate about the 4th package of judicial reforms, discussions about strengthening freedom of expression, repeal of Article 301, etc.);

– continuation of training of judges and prosecutors;

– reform of local and regional government and decentralisation;

– lifting of the geographical reservation to the Geneva Convention relating to the Status of Refugees.

285. We should, however, emphasise the significant progress made in the field of justice, with the "3rd package of judicial reforms" in 2012, the reform of the Penal Code now taking place and the discussions going on in parliament about the "4th package of judicial reforms". The authorities should be encouraged to continue these efforts, which have been judged insufficient by a public with greater expectations.

286. We note that the adoption of the "4th package of judicial reforms", being considered by the parliament, once again arouses the same expectations. It should help to bring Turkish legislation into line with the European Convention on Human Rights. The training of judges, prosecutors and police officers is an absolute priority for ensuring that these new laws are actually enforced. If these reforms are to be fully implemented, it will be essential to ensure that the mindsets and methods of those required to enforce the law change at the same time.

287. The political system itself is set to change and has yet to be defined. Will it be presidential? We will know the answer to this question when the current work on drawing up the constitution has been completed, and we will then ascertain the extent of the powers provided for, the situation regarding checks and balances and the actual nature of the system.

288. Let us remind Turkey that it is imperative for the Turkish State to protect individual freedoms and make the individual the focus of its human rights protection system, since this is the very foundation of a genuine democracy.

289. During this decisive period, it will be necessary to be even more vigilant and provide Turkey with the assistance it needs. It will therefore be particularly advisable to have recourse to the Venice Commission's expertise, in order to ensure that the institutional balances and the guarantee of constitutional freedoms comply with the Council of Europe's standards.

290. The current events in Syria will have further political, military and human repercussions in Turkey. Refugees continue to flock to the south of the country and the province of Hatay, where there are now more than 180 000 in the accommodation centres. They are being remarkably well looked after, and Turkey's efforts, which cast a different light on our sometimes highly critical view of this country and its human rights practices, must be applauded. This gives us good reason to believe and to hope that Turkey is able to change its current practices in the other areas mentioned above both with regard to human rights and the handling of certain political situations.

291. The Kurdish issue is major problem and can only be solved by political means.

– We firmly condemn all forms of violence, and we deplore the deaths of 40 000 people and the recent assassination of three Kurdish militants in Paris.

– We have taken note of the real progress made in terms of recognising the linguistic and cultural rights of the Kurds.

– We urge that the "Imrali process" negotiations be continued, as would seem to be the wish of Prime Minister Erdoğan and a majority of political players. This involves negotiation with all interlocutors who have to work together to bring about a solution to this problem.

292. It is essential that solutions be found to external problems, especially that of Cyprus, in what purports to be a united Europe, and within the Council of Europe, of which the two States concerned are members. However, the negotiations are currently deadlocked. It is to be hoped that initiative resumes, notably under the auspices of the United Nations. Let us hope that the discovery of significant gas deposits in the eastern Mediterranean will not increase tensions. Peace in Europe still depends on the stability of the southern Mediterranean and the entire Balkan area and it will remain fragile for as long as various latent conflicts (border disputes, ethnic and political disputes), such as the Cyprus question, are not settled.

293. Turkey, a founder member of the Council of Europe, is a candidate for EU membership. It should be noted that the accession negotiations seem likely to resume in 2013. Let us hope that the process leading to EU membership, to which Turkey aspires, will progress favourably with the opening of Chapter 22 (Regional policy and co-ordination of structural instruments) in the negotiations and perhaps the opening of additional chapters, in particular Chapter 23 (judiciary and fundamental rights) and Chapter 24 (justice, freedom and security). That would consolidate the process of reforms in Turkey.

294. As far as foreign policy is concerned, Turkey is having difficulty in firmly establishing its multilateral position. The "zero problems" doctrine in respect of its neighbours has its limits. It would seem that Turkey's desire to hold an important regional position extends beyond the Middle East, in particular to the Balkans and Africa.

295. Its strategic position at the crossroads of the main networks carrying gas and oil resources from neighbouring countries (Caucasus, central Asia, Iran) leads Turkey to engage in active energy diplomacy.

296. We consider Turkey to be a key regional power. It is a benchmark for many countries involved in the revolutions triggered by the "Arab Springs". Turkey therefore has a duty to push forward and carry through its democratic reform process.

Appendix – Dissenting opinion by Ms Nursuna Memecan (Turkey, ALDE), Chairperson of the Turkish delegation to the Parliamentary Assembly of the Council of Europe[196]

Monitoring and post-monitoring reports are written to support member States in pursuing reforms to achieve the highest democratic standards. This can only be achieved through constructive, objective and factually accurate reports that can be taken seriously and utilised effectively by monitored countries.

During the last decade, which also includes the period of post-monitoring dialogue, Turkey has continued on its path towards more democracy, undertaking crucial reforms and largely satisfying the 12 requirements laid out in Resolution 1380 (2004), hence leaving no justification for Turkey to remain in the dialogue process. This has also been emphasised by the rapporteur in her comments at the committee meeting.

However, the report unfortunately contains certain factual mistakes, unsubstantiated claims and subjective assessments despite our prior efforts to correct them during the preparation phase. We therefore take this opportunity to submit this dissenting opinion in order to do justice to the report.

1) In paragraph 10, the rapporteur suggests that the AK Party is labeled “Islamo-conservative” or “stemming from the Islamic movement” by its opponents and “conservative-democrat” by its members. There is no political terminology such as “Islamo-conservative” and it is unclear where the rapporteur has found evidence for making such claims, thus creating unnecessary confusion. The AK Party defines itself as “conservative-democrat” in its party by-laws, which is a political ideology defending limited powers to prevent authoritarianism and locates fundamental rights and freedoms at the core of its political vision.

2) The rapporteur makes a very serious claim in paragraph 40, suggesting that the Gülen movement has infiltrated the security forces, without any substantiated data. Furthermore, the fact that someone adheres to a given movement, community or association does not disqualify them from becoming a member of the security forces or any public service. They can only be held accountable for wrongdoing if they engage in an act in breach of Turkish laws and regulations.

3) In the absence of any evidence of change in Turkey’s relations with the West, the rapporteur refers to relations only with the United States in paragraph 49 and Israel in paragraph 50, making the title of this section out of place.

4) Regarding the issue of 138 banned domain words on the Internet in Turkey, the listing of these words aims to provide assistance to hosting providers in identifying content that may contain an offence and remove the website without need for a prohibition. There have been no prohibitions based on these words and no such prohibition will go into effect.

5) Regarding paragraph 162, the allegation that “The application of anti-terrorist legislation focuses notably, and primarily on persons of Kurdish origin and those sympathising with the Kurds” is misleading. The Turkish judiciary delivers its judgments without taking into account the origin of citizens. Such an incriminatory claim towards the Turkish legal system has to be based on objective data.

6) Regarding paragraph 183, the allegation that children prosecuted under the anti-terrorist legislation for their alleged participation in demonstrations are taken into custody without families being informed and without allowing them access to a lawyer carries no validity and lacks reliable sources.

7) Regarding paragraph 228, where it is stated that the “Turkish authorities ... do not recognise ethnic differences between ‘Turkish nationals’ as the definition of another type of minority”, it must be noted that minorities in Turkey are defined by the Lausanne Peace Treaty of 1923. Therefore, Turkish authorities are bound by Turkey’s current legislation and its constitutional system, which is based on equality regardless of origin before the law.

8) The assumption that secularism is being eroded by the AK Party government, which opponents also use to create an environment of fear, is completely unfounded. Secularism is defined in the Turkish Constitution and in the past decade there has been no law or policy implemented to breach this principle. Religion has not been a platform employed by the AK Party in the elections, nor would such an attempt be welcomed by the Turkish people who overwhelmingly support a secular system in Turkey. In his remarks in Cairo, following the

196. In accordance with Rule 49.4 of the Assembly’s Rules of Procedure (“The report of a committee shall also contain an explanatory memorandum by the rapporteur. The committee shall take note of it. Any dissenting opinions expressed in the committee shall be included therein at the request of their authors, preferably in the body of the explanatory memorandum, but otherwise in an appendix or footnote”).

revolution in 2011, Prime Minister Erdoğan advised Egypt to adopt a secular constitution and emphasised that there was nothing to fear about secularism. Having witnessed the Prime Minister's promotion of the principle of secularism on a global scale, it is difficult to understand claims in the report that secularism is under threat in Turkey.

With regard to reforms in the education system, Imam Hatip schools are seen as a threat to secularism by the rapporteur in paragraph 37. Imam Hatip schools have been in existence in various forms since 1924. While initially established to educate imams and religious personnel, the schools later evolved into institutions that teach regular high school curricula created by the Ministry of Education, with additional religious education classes. This encouraged many families who wanted their children to obtain religious education alongside other topics to enroll them in these schools. During the 28 February coup, the National Security Council introduced eight-year compulsory education, which shut down the junior high school sections of Imam Hatip schools. In addition, graduates of these schools were put at an unfair disadvantage if they wanted to attend university programmes other than their own area of study. While amendments in 2011 abolished the unequal treatment in university entrances, the 4+4+4 educational reform re-established the junior high school section of Imam Hatip schools. The Ministry of Education curriculum is mandatory for all students in all junior high schools, including Imam Hatips. The difference is that Quran, Life of the Prophet and Basic Religious Principles subjects are mandatory in Imam Hatip schools while they are offered as an elective in other schools. Today, there are many successful graduates of Imam Hatip schools in various sectors including business, education, journalism and politics.

Here we greatly regret references used by the rapporteur, such as the statement "a slow process of strengthening of Islam", which have an Islamophobic connotation. Such arguments lie exactly at the heart of rising fears and resulting discrimination in Europe and around the world towards Muslims and their religious beliefs. The fact that people have strong religious beliefs, in whichever faith, is nothing to condemn while it is discriminatory to present such beliefs as a threat.

9) Defining major trials dealing with the past, such as Ergenekon or Balyoz as "purging" is disappointing. These cases aim to bring to justice perpetrators of military coups and anti-democratic interventions, thus significantly strengthening civilian authority over the military, which should be applauded and not downplayed by words like "purge". In fact, when considering the draft resolution the committee has decided to delete the word "purge" in relation to these cases.

10) Regarding the currently detained members of parliament, it must be underlined that they were arrested before the elections and charged with crimes against State security. These persons were included in the candidate lists while they were in prison in an effort to release them in case they were elected.

11) Concerning the claims about the KCK case, more information is necessary to clearly emphasise the nature of this organisation, as laid out in the indictment presented by the prosecutors of the case. The KCK (Kurdish Communities Union) is a parallel State structure with organic links to the terrorist organisation PKK. The KCK was established in 2007. The indictment demonstrates that Abdullah Öcalan is the leader of the terrorist organization PKK/KCK and Murat Karayilan, the leader of the military wing of the terrorist organisation, is the head of its executive body. It is made up of so-called legislative, judicial and executive branches that operate under the so-called "KCK Constitution". These parallel structures are in violation of the sovereignty of the Turkish State and are being fought against.

12) The new structure of the High Council of Judges and Prosecutors (HSYK) is largely compatible with the common principles outlined in the relevant documents of the Venice Commission, the Consultative Council of the European Judges and the European Network of Councils of Judiciary (ENCJ) which was achieved as a result of the Constitutional amendments of 2010 resulting in a total overhaul of the concerned institution. Therefore, the claims that the Turkish judiciary has critical problems and the aforementioned reforms are doomed to failure have no legitimate basis.

13) It is difficult to understand why the report refrains from using the term "terrorist" for members of the terrorist organisation PKK, which is recognised as a terrorist organisation by the European Union and the United States and the term "PKK militant" is replaced with "PKK activists" – a term accorded to individuals who prefer to limit their methods to peaceful ones. A section on Abdullah Öcalan, who is the imprisoned leader of the terrorist organisation PKK, is given a place in the report although the issue is not relevant to the post-monitoring commitments of Turkey. We highly regret that such a biased approach towards an internationally recognised terrorist organisation takes place in a post-monitoring dialogue process report of the Parliamentary Assembly.

14) In the report, it is stated that, in stark contradiction with the historical truths, Turkey has been occupying 37% of Cyprus. It should be underlined that the "Republic of Cyprus", which was established by the 1960 Treaties as a Partnership State of Turkish Cypriots and Greek Cypriots as co-founders and the Island's co-owners, was destroyed by the Greek Cypriots and followed by mass killings of Turkish Cypriots. Turkey, in line with its rights and obligations stemming from the 1960 Treaty of Guarantee, intervened to save the Turkish Cypriot people from ethnic cleansing.

15) In the report the term "Armenian Genocide" is used to refer to the events of 1915. It must be emphasised that "Armenian Genocide" is merely a claim and not an established historical truth. Turkey has been proposing since 2005 to address the issue of historical differences with Armenia through joint historical studies. Moreover, the Protocols signed in October 2009 between Turkey and Armenia stipulate to "implement a dialogue on the historical dimension with the aim to restore mutual confidence between the two nations, including an impartial scientific examination of the historical records and archives to define existing problems and formulate recommendations".

16) The call on Turkey to lift the limitation on the 1951 Geneva Convention relating to the Status of Refugees has no legal basis. Based on Article 1B of the Geneva Convention, it is a right for Contracting Parties of the Convention to opt for geographical limitations. Such a limitation does not constitute an impediment for provision of durable solutions to persons seeking international protection. The European Court of Human Rights provided that the geographical limitation cannot be assessed as discrimination with regard to the rights guaranteed under the European Convention on Human Rights.[197]

17) To call on Turkey to lower its 10% election threshold has no legal, conventional or contractual basis other than individual preferences. The European Court of Human Rights has not found any violation regarding the 10% threshold in Turkey. The fact that in the last parliamentary elections in Turkey, 95% of the votes cast (on a turnout of 87% which is rare in Europe) resulted in parliamentary representation and that the 10% threshold does not apply to independent candidates should be taken into account.

197. Judgment of the European Court of Human Rights in the case of A.*G. and others v. Turkey*, Application No. 40229/98, 15 June 1999.