



Resolution 2260 (2019)¹

Provisional version

The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?

Parliamentary Assembly

1. The Parliamentary Assembly reiterates that a political opposition in and outside parliament is an essential component of a well-functioning democracy, and that freedom of expression of members of parliament is an essential part of democracy. It also recalls that parliamentary immunity – in accordance with Assembly [Resolution 1601 \(2008\)](#) on procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament, and the standards of the European Commission for Democracy through Law (the Venice Commission) – is a fundamental protection for the parliamentary institution and an equally fundamental guarantee of the independence of elected representatives, which is necessary for them to exercise their democratic functions without fear of interference from the executive or judiciary.

2. The Assembly recalls the widespread concerns expressed over recent developments in the democratic situation in Turkey and the deterioration of the situation of rule of law, democracy and human rights as reflected in Assembly [Resolution 2121 \(2016\)](#) and [Resolution 2156 \(2017\)](#) on the functioning of democratic institutions in Turkey which resulted in the reopening of the monitoring procedure.

3. The Assembly has notably expressed its concern over 154 parliamentarians being stripped of their immunity in May 2016 which has affected disproportionately the Peoples' Democratic Party (HDP); the impact on freedoms of expression, assembly and association, the media and local democracy of decree-laws passed under the state of emergency between July 2016 to July 2018; the constitutional reforms of 2017; the hasty organisation of early presidential and parliamentary elections in June 2018 and the reform of the electoral law that immediately preceded them, as well as perennial challenges to freedom of expression including the anti-terror law and its broad interpretation and Articles 299 and 301 of the Penal Code.

4. The Assembly recalls that the very essence of parliamentary work is to address all issues of public importance, including those which are sensitive or controversial but need to be addressed. In that context, the Assembly expresses its concern about the detention and imprisonment of opposition parliamentarians and former parliamentarians in Turkey, including former deputy and former HDP co-chair Selahattin Demirtaş, deputy Leyla Güven, who is also a former member of the Council of Europe Congress of Local and Regional Authorities, and former deputy and Assembly member Ertuğrul Kürkçü. In particular, the Assembly is very concerned that detained MP Leyla Güven has been on indefinite hunger strike since 8 November 2018 and deeply regrets that politicians are forced to resort to such ultimate means to draw attention to their plight in the absence of genuine political debate and dialogue.

5. The Assembly's concern about Mr Demirtaş' detention has been confirmed by the Chamber of the European Court of Human Rights which, in its November 2018 ruling (not final), found that it had been established beyond reasonable doubt that the extension of Mr Demirtaş's detention, especially during two

1. *Assembly debate* on 24 January 2019 (8th Sitting) (see [Doc. 14812](#) and [addendum](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Ms Marianne Mikko and Mr Nigel Evans). *Text adopted by the Assembly* on 24 January 2019 (8th Sitting).



crucial campaigns, namely the referendum and the presidential election, had pursued the “predominant ulterior purpose of stifling pluralism and limiting freedom of political debate, which was at the very core of the concept of a democratic society.”

6. The Assembly thus considers that these developments, taken together, have increasingly diminished, obstructed or undermined the ability of opposition politicians to exercise their rights and fulfil their democratic roles both inside and outside parliament. The action undertaken by the authorities to render oppositional parties inoperative, especially during election campaigns, has further undermined their capacity to take part in the democratic debate.

7. In addition, the Assembly reiterates its concerns about the restriction of the rights of opposition politicians at local level, in particular those connected to the Kurdish question, notably the replacement of over 90 elected mayors from the HDP or its sister party by government-appointed trustees, in contravention of the European Charter of Local Self-Government (ETS No. 122). This has seriously undermined the functioning of local democracy, especially in south-east Turkey. The Assembly calls on the Turkish authorities to co-operate with the Congress to resolve these issues and implement Congress Resolution 416 (2017) and Recommendation 397 (2017).

8. It should be noted that the worsening of the situation of opposition politicians takes place in a context marked by continuous restrictive measures introduced by the authorities with a view to silencing notably journalists, judges, prosecutors, lawyers, academics and other dissenting voices,

9. The Assembly is nevertheless confident that certain fundamental prerequisites for democracy remain strong, including a diversity of opinions in different components of society, Turkish citizens’ willingness to mobilise for their democracy and their aspiration for genuine choices between candidates, parties and political programmes. It hopes that Turkey can maintain and build upon these foundations in the tradition of the pluralistic democracy that prevailed for most of the almost one hundred years since the republic was established.

10. The Assembly welcomes the Turkish authorities’ continuing constructive engagement with the Council of Europe, notably through the informal Working Group between the Council of Europe and the Turkish Ministry of Justice. It is, however, disappointed and concerned at President Erdoğan’s assertion that Turkey was not bound by the Chamber judgment of the European Court of Human Rights in the case of Mr Demirtaş, despite the obligation to implement Court judgments set out in Article 46 of the European Convention on Human Rights (ETS No. 5).

11. The Assembly therefore calls on the Turkish authorities to:

11.1. respect fully the rights of opposition politicians in a democracy, including the freedoms of expression, association and assembly, and in particular to:

11.1.1. protect and respect parliamentary immunity, in accordance with Assembly [Resolution 1601 \(2008\)](#) on procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament as well as with the standards of the Venice Commission;

11.1.2. release Leyla Güven due to her parliamentary immunity until the end of her mandate, in the light of the recent decision rendered by the Supreme Court of Cassation with respect to the detention of deputy Enis Berberoğlu;

11.1.3. release MPs and former MPs whose immunity was stripped in 2016 in violation of the Council of Europe standards until the completion of the review of their legal case;

11.1.4. amend the anti-terror law so as to ensure that its implementation and interpretation comply with the Convention, as interpreted by the European Court of Human Rights;

11.1.5. to repeal Article 299 and further amend Article 301 of the Penal Code, in accordance with the recommendations of the Venice Commission;

11.1.6. fully implement the judgment of the European Court of Human Rights in the case of *Demirtaş v. Turkey* (No. 2);

11.1.7. follow up the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf(2018)11), with regard to Mr Abdullah Öcalan and other prisoners at Imralı F-Type High-Security Closed Prison;

11.2. revise the electoral legislation in accordance with the recommendations of the Venice Commission to ensure that elections can be not only free, but also fair and conducted in an environment conducive to freedom of expression and freedom of the media;

11.3. in that context, lower the 10% electoral threshold, which impedes the ability of the opposition to be represented in parliament and undermines its pluralistic nature;

11.4. co-operate with the Assembly in organising visits by its authorised representatives to detained and imprisoned current and former parliamentarians;

11.5. in close co-operation with the Council of Europe and strict compliance with Council of Europe standards:

11.5.1. finalise and implement the judicial reform strategy so as to ensure the full independence of the judiciary, including through reform of the Council of Judges and Prosecutors;

11.5.2. finalise and implement a new Human Rights Action Plan so as to ensure effective protection of Convention rights and freedoms, as interpreted by the Court, and prompt and full implementation of Court judgments.

11.6. review the constitutional reforms of 2017 with a view to restoring proper balance of and effective separation between the executive, legislative and judicial branches of power, on the basis of the analysis set out in the opinion of the Venice Commission.

12. The Assembly calls on the Turkish authorities to address the above concerns as a matter of priority and resolves to follow the progress in the framework of the ongoing monitoring procedure. It stands ready to co-operate with the Turkish delegation and authorities on the implementation of all its recommendations, in the framework of its monitoring procedure.

13. The Assembly, in the event of non-compliance by the Turkish authorities with the relevant conditions set out in this resolution, commits itself to addressing to the Committee of Ministers a future recommendation for application of the procedure set out in Article 46.4 of the European Convention on Human Rights with regard to Turkey.