Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

DECLASSIFIED[1]
AS/Pol (2016) 18rev
15 December 2016
Apdoc18rev_2016

Committee on Political Affairs and Democracy

Ad hoc Sub-Committee on recent developments in Turkey

Report on the fact-finding visit to Ankara (21-23 November 2016)

on the basis of a memorandum prepared by Mr Mogens Jensen, Denmark, Socialist Group, Chairperson of the *ad hoc* Sub-Committee

[1] On 15 December 2016, the Committee on Political Affairs and Democracy considered (Rule 49.4. of the Rules of Procedure of the Assembly) and declassified the report by the *ad hoc* Sub-Committee.

1. The context of the visit

1.1. Factual background: the coup attempt of 15 July 2016

1. On 15 July 2016, a group of officers within the Turkish Armed Forces attempted to overthrow the country's democratic institutions and abolish constitutional order with force and violence. According to the General Staff of the Turkish Army, 8 651 military personnel were involved, 35 planes including fighter jets of the Turkish Armed Forces, 37 helicopters, 246 armoured vehicles, including 74 tanks, and approximately 4 000 light weapons were used. The conspirators bombed the parliament and other public buildings, blocked roads and bridges in major towns, and issued a declaration on behalf of the "Peace at Home Council" on Turkish Radio and Television (TRT). President Erdoğan escaped an assassination attempt at his hotel in Marmaris. 248 people were killed and more than 2 200 injured.

2. Thousands of people demonstrated and joined the Turkish Army in confronting the plotters. Thus, the coup failed in the early morning of 16 July 2016. The conspirators within the army, police and other armed forces were disarmed and arrested. The attempted coup was unanimously condemned by the four political parties in the Turkish Parliament and civil society organisations, as well as by the international community. On 7 August 2016, President Erdoğan organised a meeting in Yenikapı with Prime Minister Binali Yıldırım, Chairperson of the Justice and Development Party (AK Party), Mr Kılıçdaroğlu, leader of the Republican People's Party (CHP), and Mr Bahçeli, leader of the Nationalist Movement Party (MHP). The leader of the Democratic Peoples' Party (HDP), Mr Demirtaş, was not invited to this meeting. On 9 August 2016, millions of Turks demonstrated to express their commitment to democracy.

3. The authorities, backed by a large consensus in society, immediately considered that the movement, led by the Islamic preacher living in voluntary exile in the United States, Fethullah Gülen, which was labelled a "terrorist organisation" in 2016, had masterminded the coup and that therefore State institutions needed to be cleansed of loyalists to this movement. In the official Turkish sources, the "Gülenist movement" or "network" is now denoted as "FETÖ/PDY" ("Fethullah Terror Organisation/Parallel State Structures", hereafter "FETÖ").

4. It is worth recalling that the "Gülenist movement" was for decades largely present in the public education, business sphere and charity foundations, and seen as an ally of the ruling AKP party. In April 2013, the then Rapporteur for the post-monitoring dialogue with Turkey, Ms Josette Durrieu, had already noted that, the influence of the "Gülenist movement" was said to "have infiltrated the public institutions and to seek to exercise an influence in society". At that time, this was considered by the then Chairperson of the Turkish delegation as "a serious claim" made "without any substantiated data".[2]

5. It was a few months later that a major conflict between the said movement and the ruling AKP party culminated in the 17-25 December 2013 scandal when allegedly the supporters of the movement tried to destabilise the government through accusations of corruption. The government responded with measures targeting some of the businesses linked to the movement as well as a large number of civil servants, military officers and judges suspected to have links to the movement who were subjected to disciplinary proceedings or transferred to other posts.

6. Today, the authorities consider that the 17-25 December 2013 scandal was actually a first coup attempt by the Gülenists and explain the limited effect of the measures taken then by the fact that Gülenists had already infiltrated various State institutions and occupied key positions. The authorities also argue that the so-called *Ergenekon* and *Balyoz* trials, in which a large number of persons, including army officers at the highest level, were convicted on the basis of at least partially fabricated evidence, were in fact one among many examples of manipulations carried out by Gülenists.

7. The authorities, invoking *inter alia* the testimony of some of the arrested plotters and various circumstantial evidence, have asked for the extradition of Mr Gülen from the United States. For his part, Mr Gülen has denied playing any role in the attempted coup and the United States have so far refused to extradite him.

8. The Council of Europe strongly condemned the coup attempt, paid tribute to the dead and wounded and their families and expressed solidarity with the Turkish people. The Organisation not only continued to follow closely developments in Turkey but also engaged itself immediately after the coup attempt in a dialogue with the authorities hoping for a rapid normalisation of the situation.

[2] See Doc 13160, 8 April 2013, para. 40 and Dissenting Opinion in Appendix, p. 58. See also below.

9. The Secretary General was the first international personality to visit Turkey in the aftermath of the failed coup (on 4 August), followed by the Chairperson of the Committee of Ministers (24 August) and the President of our Assembly (1-2 September). The European Committee for the Prevention of Torture (CPT) visited Turkey at the beginning of September, the Commissioner for Human Rights at the end of September and the Venice Commission in October.

10. All interlocutors from the Council of Europe have pointed out that it is the duty of the Turkish authorities to find who was involved in the coup attempt and their respective responsibilities and to punish them. They have, however, also stressed that all this needs to be done according to the principle of the rule of law upheld by the Council of Europe of which Turkey is one of the oldest members.

1.2. The origin and purpose of the visit

11. Our Committee's decision to accept an invitation from the Chairperson of Turkish delegation to the Assembly, Mr Küçükcan, to send a delegation to Turkey for a working visit to exchange views on the recent developments in the country must precisely be seen in the context of this ongoing dialogue between the Organisation and Turkey. It was prompted by the wish of the Committee to have quick and first-hand information on the ground, especially after the exchange of views it held with the Commissioner for Human Rights on his own visit to Turkey.[3]

12. The *ad hoc* Sub-Committee was set up on 13 October 2016 and was composed of 5 members of the Committee - one from each political group[4] - and myself, who in my capacity of Chairperson of the Committee, also acted as Chairperson of the *ad hoc* Sub-Committee.

13. We visited Ankara from 21 to 23 November 2016 (see the final programme of the visit in Appendix).

14. Following proposals made by members at the 7 November meeting of the Committee, the *ad hoc* Sub-Committee had asked to visit in prison the co-chairs of the HDP, Mr Selahattin Demirtaş and Ms Figen Yüksekdağ, as well as Mr Murat Sabuncu, Editor-in-Chief of the newspaper Cumhuriyet.

15. I particularly insisted on the need to meet in prison the two co-chairs of the HDP as a request to meet the leaders of all parliamentary groups was formulated and agreed to at the beginning of the preparations for the visit. The fact that, in the meantime, they had been detained should not be a reason to prevent our delegation from meeting them and I also insisted on the fact that the delegation could be flexible as regards dates and logistics for these meetings to take place as none of the detainees we wanted to meet was held in Ankara. Mr Demirtaş is held in Edirne, near the Bulgarian border, and Ms Yüksekdağ in Kocaeli, a prison some 150km east of Istanbul. As for Mr Sabuncu, he is held in Istanbul.

16. The Chairperson of the Turkish delegation reassured me that our request was transmitted to the Minister of Justice and we were hoping to receive a positive reply until the very last moment. Unfortunately, we did not receive the required authorisation in spite of our insistence.

17. All requested meetings in parliament were granted, including with the Deputy Speaker of Parliament and all parliamentary groups. At government level, after several last-minutes changes to our programme, we finally met Mr Nurettin Canikli, one of the five Deputy Prime Ministers of Turkey, and were thus given the opportunity to exchange views with a representative from the government at high level.

18. I would like to thank once again the Chairperson of the Turkish delegation, Mr Küçükcan, as well as the Secretariat of the delegation, for all their efforts to ensure the best possible meetings for the *ad hoc* Sub-Committee, as well as for the extended hospitality. My special thanks also go to the Danish Ambassador in Ankara, Mr Svend Olling, who kindly hosted a dinner with representatives from the diplomatic community in Ankara which allowed us to have an open and frank exchange of views on recent developments in the country.

[3] The 10-page memorandum by the Commissioner thus constituted an essential background information document for our talks in Ankara.

[4] On 7 November 2016 in Paris, the Committee approved the list of members of the Ad hoc Sub-Committee on recent developments in Turkey as follows: Mr Mogens Jensen (Denmark, SOC), Chairperson of the Committee on Political Affairs and Democracy; Ms Deborah Bergamini (Italy, EPP/CD); Ms Josette Durrieu (France, SOC); Ms Kelly Tolhurst (United Kingdom, EC); Ms Anne Brasseur (Luxembourg, ALDE) and Mr George Loucaides (Cyprus, UEL).

19. The visit allowed us to personally condemn the failed coup of 15 July and pay tribute to the 248 dead and the so many injured. It also allowed us to obtain updated information, from not only the government and parliamentary majority, but also the opposition, civil society and journalists, about political and human rights developments in the country in the aftermath of the failed coup, and in particular those linked to the scope of application of the now 12 decree-laws issued under the state of emergency.

20. We decided to focus our talks in Ankara on a selective list of issues and not to review all questions that are part of Turkey's post-monitoring dialogue or were raised in the most recent Assembly Resolution 2121 (2016) on *The functioning of democratic institutions in Turkey*, adopted last June, such as, for instance, the situation in South-Eastern Turkey. In this respect I was pleased to see that, after our visit, other Council of Europe bodies covered issues related to the situation in South-Eastern Turkey. In particular, the Commissioner for Human Rights has just published a new "Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey"[5]. The Congress of Local and Regional Authorities is following the issues related to the detention or dismissal of Mayors in South-Eastern Turkey or the appointment of "trustees" in municipalities in the region (numbers are provided below).

21. Some of the issues we discussed (such as parliamentary immunity or freedom of the media) had of course originated from earlier days and had accentuated in the aftermath of the failed coup.

22. I drafted the present memorandum which was shared with and approved by all members of the *ad hoc* Sub-Committee. I hope it will also be useful for the rapporteurs of the Monitoring Committee and the Presidential Committee for their future visits to the country, and can serve as a background document for the next Assembly debate on the situation in Turkey.

2. Measures taken by the Turkish authorities in the aftermath of the failed coup

23. Under the state of emergency (declared for three months on 20 July and prolonged for further three months starting from 19 October 2016) and while a derogation under article 15 of the European Convention on Human Rights (ECHR) is in force, a total of 12 decree-laws ("Decrees with Force of Law") were published to regulate a wide range of issues, well beyond the direct consequences of the coup attempt, which affect hundreds of thousands of persons. They provide for a comprehensive purging from the State apparatus of the persons allegedly linked to the conspiracy. They also simplify the rules of criminal investigation for terrorist-related activities.

24. Although figures may differ depending on sources, an overall picture of the purges following 15 July corresponds to the following.

- A total of approx. 125 000 were dismissed, including judges, police and army officers, teachers, professors, academics, other public officials, etc. In approx. 85 000 cases, persons were dismissed as a direct consequence of the publication of their name on an appendix to the decree-laws; 6 000 teachers were later re-integrated; of those dismissed, 10 130 officials, including 1 267 academics, were dismissed by the decree-laws published on 31 October, that is while a dialogue with the authorities was on-going and after the Commissioner for Human Rights memorandum was published;

- More than 15 000 persons, including 1 988 army officials, 7 586 members of the security forces and 5 676 other public officials working in various ministries and in particular the health and education sectors were dismissed by one of the latest decree-laws published on 22 November, while our delegation was holding talks in Ankara; 155 officials were reintegrated on the basis of the same decree;

- Tens of thousands have been arrested and prosecuted. During our visit to Ankara (on 23 November) the Minister of Justice announced that legal action had been taken against a total of 92 607 suspects, 39 378 of whom had so far been arrested, as part of the investigation into the failed coup attempt;

- 177 Media outlets were shut down, including a large number of pro-Kurdish media, but also Kemalist or left-wing media. Internet access restrictions have increased;

[5] The Memorandum, published by our Commissioner for Human Rights on 2 December 2016, which includes large references to our own Assembly Resolution 2121, provides updated information and concrete recommendations to the Turkish authorities calling them to stop the use of unprecedented months-long, round-the-clock curfews, affecting 1.6 million people and having led to the displacement of more than 350 000, investigate all allegations of human rights violations by State agents in an effective manner, thus ending impunity, and put in place comprehensive schemes for redress and compensation. See also the initial observations by Turkey on the Commissioner's Memorandum. See also the Venice Commission Opinion (CDL-AD(2016)010) and the recently published report by Amnesty International.

- More than 140 journalists have been detained; this includes the Editor-in-Chief of opposition newspaper Cumhuriyet Murat Sabuncu, the Chairperson and executive members of the Cumhuriyet Foundation, all accused of "committing crimes on behalf of "FETÖ" and the outlawed PKK without being a member" aiming to "conceal the truth with manipulation and publish stories that aimed to make Turkey ungovernable";

- 2 500 journalists have lost their jobs since 15 July 2016 and many more apply self-censorship in order to protect themselves;

- Approx. 2 100 schools, dormitories and universities have been shut down;

- Approx. 1 800 associations and foundations have been shut, including the closure of 370 civil society organisations accused of alleged links to "terrorism" on 11 November, of which 199 represent Kurdish civil society. The above-mentioned figure takes into account the fact that the decree-law published on 22 November closed down 375 associations and reopened 175. All movables, real estate assets, receivables and rights, and all documents and papers of foundations closed down were seized and transferred to the General Directorate of Foundations.

25. As regards more specifically the judiciary, the following figures about measures taken against judges and prosecutors have been provided by official sources:

- Currently, 2 410 judges and prosecutors are in detention, 769 are under judicial control, arrest warrants have been issued against 177, whereas 122 have been released;

- 3 693 judges and prosecutors have been suspended for three months as a precautionary measure. Among those, the suspension of 2 700 judges and prosecutors was extended for two additional months;

- By the decision of the High Council of Judges and Prosecutors (HSYK), according to statistics it provided as of mid-November 2016, a total of 3 673 judges and prosecutors have been dismissed from their positions, of whom 2 745 the day following the coup attempt; five members of the HSYK itself were removed and two members of the Constitutional Court were dismissed;

- By the decision of the HSYK, the suspension of 198 judges and prosecutors was lifted;

- YARSAV, the Turkish independent association of judges and prosecutors, which was functioning as a non-governmental organisation and is a member of the International Association of Judges (IAJ) and the European Association of Judges (EAJ), was dissolved and many of its leaders were arrested within days after the coup. On 19 October, while the IAJ and the EAJ were convened in Mexico for their annual conference and discussing the situation in Turkey, Mr Murat Arslan, the President of YARSAV, was arrested and put in detention.

26. As regards the MPs and co-Mayors from the HDP the following figures are available as of 29 November:

- The immunity of 154 MPs, from all political parties, was lifted in May 2016 and was largely raised as an issue of major concern in the Assembly Resolution 2121 (2016). A total of 810 criminal cases have been brought against MPs from all political parties. However, whereas this concerns only 9% of AKP parliamentarians, 23% of MHP's and 38% of CHP's, it concerns 55 out of 59 members of the HDP parliamentarians, i.e. 93%, including all 4 members from HDP of the Turkish delegation to our Assembly. In its opinion of 14-15 October 2016, the Venice Commission stated that the "the inviolability of these Members of Parliament should be restored";[6]

- 10 MPs from the HDP, including, as was said above, its co-Chairs, Mr Demirtaş and Ms Yüksekdağ, are currently in pre-trial detention on dozens of charges including those related to terrorism. More specifically: on 4 and 7 November, 13 MPs from the HDP, including the two co-Chairs, were arrested as they had refused to follow the summons of the prosecutors to be interrogated in relation to the criminal cases against them. Three of them were subsequently released. According to the HDP, at least one of the parliamentarians arrested, Mr Idris Baluken, had never been summoned by a prosecutor. On 8 November "the HDP decided to withdraw from all legislative activities in response to the arrest of its co-chairs and eight other deputies". This decision

[6] See CDL-AD(2016)027. See also Assembly Resolution 2121 (2016) and the statement by the Monitoring Committee of 9 November 2016. See also below, section 3.

was later reversed thus allowing MPs from the HDP party to participate, on 22 November, in the vote against the bill aiming at condoning sexual violence against the girl-child if the rapist married the victim (a bill which was sent back to the Committee and subsequently withdrawn). Two more MPs from the HDP party were arrested on 12 December in the aftermath of the Istanbul terrorist attack on 10 December, including the Deputy Chairperson of the HDP. Hundreds of party members have also been arrested.

- 55 co-Mayors from the Peace and Democracy Party (BDP, a sister party to HDP) are under arrest, 42 other were arrested and then released, and a total of 70 have been dismissed. "Trustees" are appointed to 38 municipalities.

3. Issues raised and main findings

3.1. The declaration of state of emergency and the adoption of emergency decree-laws

27. It must be underlined from the outset, that, throughout the visit, our delegation was assured of the firm commitment of all interlocutors to Council of Europe membership and values and we reiterated our own commitment to an open dialogue.

28. The Turkish officials we met made a clear distinction between the attitudes of the Council of Europe and of the European Union towards Turkey.[7] We were also informed that during the meeting of the NATO Parliamentary Assembly, which was held in Istanbul just prior to our visit, the Foreign Minister, Mr Mevlüt Çavuşoğlu, told participants that President Erdoğan had specifically asked the Ministers to ensure implementation of recommendations emanating from Council of Europe bodies.

29. In all meetings with officials both from government and parliament we heard how important and urgent it was for Turkey not only to respond firmly to the attempted coup, given the wide infiltration of the "FETÖ" supporters in Turkish institutions, but also to effectively fight terrorism in all its forms.

30. The Deputy Prime Minister told us that the threat posed by Gülenists had not disappeared and many interlocutors pointed out that Turkey faced four terrorist organisations: "FETÖ", the PKK, Daesh and YPG (People's Protection Units). We were told that the state of emergency and the decree-laws were in line with the Turkish Constitution and Council of Europe principles and standards. Ms Fatma Benli, Deputy Chairperson of the Human Rights Committee of the Grand National Assembly of Turkey, assured us that there was no systematic human rights violation in Turkey, either related to the state of emergency or not.

31. As already said above, the Turkish authorities whom we met had no doubt that the "movement" led by Fethullah Gülen, which is now denominated as "FETÖ", had masterminded the coup attempt of 15 July. The name of the "Parliamentary Inquiry Committee on the 15 July Coup attempt of the Fethullah Gülen Terrorist Organization (FETÖ)" is a clear indication of such certainty. To our questions, our interlocutors referred to a number of confessions given by some of those arrested after the attempted coup and gave us no other information.

32. In a letter the Chairperson of the Turkish delegation, Mr Küçükcan, sent me when I was finalising this memorandum, with the request to distribute it to all members of the Committee, which I did, he reproduces some confessions given by arrested members of the army, police and the judiciary. They give indications as to the structure of this secret organisation and the means of communication among its members or the methods used by the "FETÖ" to recruit new members, to penetrate State institutions and collect funds. Mr Küçükcan concludes by reiterating that the emergency measures taken by the government in the aftermath of the coup attempt were "necessary and proportional" and comply with Council of Europe standards.

33. For their part, our interlocutors from the opposition, civil society and media, while they all condemned the attempted coup and recalled their unanimous rejection already in the first hours which followed it, denounced the scope of subsequent measures as an attempt to silence any critical opposition in the country. We were told that there was no rule of law in Turkey which had become an intelligence State. Judges, including at the highest level, were handing down verdicts under fear of arrest. For some of our interlocutors, a counter-coup was in the making. We were told that if Europe did not take a strong stance, the situation would continue to deteriorate and soon Europe would experience a flow of asylum seekers from Turkey.

34. Some spoke of an atmosphere of fear being installed in all walks of life. Claims were made that ill-treatment or even torture, which was already a serious problem before the coup attempt, was much worse

[7] Although the European Parliament adopted its Resolution of 24 November 2016 asking for the temporarily freezing of the negotiation talks when we were leaving the country, it was already anticipated in the country.

now.[8] This was in particular due to the fact that risks of ill-treatment were enhanced by the measures adopted after the coup which had removed crucial safeguards against abuses. This was so, for instance, with respect to police custody without the person being brought before a judge which could now be extended up to 30 days (and in practice it often went even beyond that time-limit), the fact that access of detainees to a lawyer could be restricted for up to 5 days, restrictions to the right to a lawyer of their own choice or their right to confidential conversations with their lawyers.

35. For our part, we agreed that it was the duty of the State to identify and punish those responsible for the attempted coup which has left a trauma in the society. It was also the State duty to protect its citizens from terrorist attacks whatever their origin and fight terrorism in all its forms.

36. The most recent double terrorist attack in Istanbul, just after the end of a football match on Saturday, 10 December, which left 44 persons dead, including 39 police officers, and injured more than hundred, is yet another sad confirmation of the terrorist threats Turkey is facing[9]. Responsibility for this attack was later claimed by the "Kurdistan Freedom Hawks" (TAK). I strongly condemn this latest heinous terrorist attack, extend my condolences to the families of the victims and send my wishes for a swift recovery to the wounded.

37. As our Assembly has stated so many times, for the fight against terrorism to be effective, it has to be fought within the framework of the rule of law and respect the values upheld by the Council of Europe, including Turkey, one of its oldest members.

38. The same is true for Turkey's duty to identify and punish those responsible for the coup attempt of 15 July: its response must be strong and firm but framed within the rule of law and in respect of its own Constitution and international law.

39. In this respect, in our meetings in Ankara, we reiterated that neither we nor any other Council of Europe body have questioned the decision of the Turkish authorities to declare a state of emergency and to derogate from the European Convention of Human Rights (ECHR) in such a context. As the Venice Commission has concluded in its more recent Opinion on the emergency decree-laws[10], the Turkish authorities had been "confronted with a dangerous armed conspiracy and had good reasons to declare the state of emergency and give extraordinary powers to the Government".

40. However, our delegation also recalled in all meetings that, despite the state of emergency and the declaration of derogation under article 15 of the ECHR, this Convention continued to apply in Turkey and any measures taken under the state of emergency must comply with it. It will ultimately be for the European Court of Human Rights to decide whether the criterion of proportionality of the measures taken has been respected in individual cases against Turkey that will come before it.

41. The specific challenges the emergency decree-laws raise from a rule of law and human rights perspective have been thoroughly analysed by both the Commissioner for Human Rights and most recently the Venice Commission which both have issued specific recommendations to the Turkish authorities how to address them.

42. In his conclusions, the Commissioner while acknowledging the need for decisive and rapid action to respond to the threat posed by the coup plotters, insisted on "the urgency of reverting to ordinary procedures and safeguards, by ending the state of emergency as soon as possible". Until then, he called on the Turkish authorities "to start rolling back the deviations from such procedures and safeguards as quickly as possible, through a nuanced, sector-by-sector and case-by-case approach".

43. For its part, the Venice Commission, after a detailed analysis of the emergency decree-laws, concluded that whereas there were good reasons to declare a state of emergency, "the measures taken by the Government went beyond what is permitted by the Turkish Constitution and by international law".

44. When we visited Turkey, the Venice Commission Opinion had not been prepared. Reading the opinion that was issued on 12 December 2016, I realise that most of the concerns we raised with the Turkish

[8] See in this respect the report by the Human Rights Watch and the preliminary observations and recommendations of the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr Nils Melzer, on his official visit to Turkey, 27 November – 2 December 2016. The report following the CPT visit to Turkey in early September 2016 has not yet been published.

[9] See statements by the President of the Parliamentary Assembly and of the Secretary General of the Council of Europe, 11 December 2016.

[10] Venice Commission Opinion (CDL-AD(2016)037).

authorities during our visit are confirmed and shared by this distinguished body of constitutional law experts, which of course underwent a much more thorough and legal analysis of the issues at stake.

45. For our part, with respect to the emergency decree-laws, we stressed our concerns as to their extremely wide scope of application, the use of vague terms such as "*contacts*", "*relations*" or "*connections*" and the way they were being implemented. In particular, we drew attention to the fact that the decrees impose sanctions or measures, affecting the lives of hundreds of thousands of persons, including not only of those directly concerned but also of their families, in a permanent manner that is not limited in time to the emergency of the situation. We did not receive a satisfactory answer to the question why hundreds of thousands of civil servants had to be dismissed rather than suspended and why a little less than two thousand associations had to be liquidated instead of being put under temporary State control.

46. We also questioned the fact that both serious administrative sanctions with a permanent character, such as collective dismissals, and arrests and detention measures seem to be decided upon weak or in some cases seemingly non-existent evidence and vague criteria.

47. We were thus told that a simple denunciation might lead to someone being sent to prison. A list of 16 criteria, which have however not been officially published, were used to identify those suspected of having connections, relations and contacts with "FETÖ". They include a special communication application called ByLock, which persons had on their mobile telephones, or the fact that a person had made a monetary contribution to the Gülenist Bank Asya after the 15-23 December 2013 events, or the fact of having been promoted in a short period of time or to special positions in a manner that goes beyond the natural flow of events. Those whose children studied in a Gülenist school after the 15-23 December 2013 events were also under suspicion, even if such schools had been perfectly legal until 2016.

48. We pointed out that, in her dissenting opinion to the report of 2013 on the post-monitoring dialogue with Turkey, the then Chairperson of the Turkish delegation had referred to the Gülen movement and had stated that "the fact that someone adheres to a given movement does not disqualify them from becoming a member of the security forces or any public service. They can only be held accountable for wrongdoings if they engage in an act in breach of Turkish law and regulations."[11] Unfortunately this seems no longer to be the line followed by the Turkish authorities.

49. This is even more clearly demonstrated in the Opinion which the Venice Commission has just adopted. While acknowledging alleged connections of some of the public servants to the Gülenist network or other organisations considered as "terrorist", the Commission confirms our concerns that the concept of "connections" has been too "loosely defined and did not require a meaningful connection with such organisations," which may reasonably cast doubt in the loyalty of public servants. Thus the Commission stressed that, even assuming that some members of the Gülenist network participated in the failed coup, that should not be used to extend criminal and disciplinary liability to all those who had some contact with the network in the past.

50. We also reiterated the recommendation by the Commissioner for Human Rights and insisted on the need to render much more transparent the criteria to be retained to prove membership of "FETÖ" and other terrorist organisations, the degree beyond which contacts with these organisations can incur sanctions, as well as all kinds of information and evidence the authorities must assess to establish liability.

51. As regards more specifically the issue of dismissals of judges, the Turkish authorities informed us that the judiciary, together with the army, had been one of the institutions which had been most "infiltrated" by "FETÖ". This explained the extremely high number of 3 673 judges who were dismissed, of whom some more than 2 700 the day following the coup attempt. In this respect, we were reminded that it was Gülenist judges who had conducted the *Ergenekon* and *Balyoz* trials, in which convictions of a large number of persons, including army officers at the highest level, were based on at least partially fabricated evidence (see also above).

52. For our part, we underlined the specificity of dismissals of judges in relation to other public officials, as their independence is guaranteed at the constitutional and international levels, and drew attention to the "chilling effect" within the judiciary that such dismissals had. The confessions of some judges, including at the highest level, cannot justify in themselves the responsibility of such a high number of judges in the country for the coup attempt. Every decision leading to the dismissal of a judge needs to be individualised and reasoned, refer to verifiable evidence and the procedure before the HSYK must respect at least minimal standards of

[11] See footnote 1.

due process. We drew the argument precisely from the *Ergenekon* and *Balyoz* trials to show how careful one should be when evaluating evidence.

53. We raised in particular the case of the UN judge Aydin Sefa Akay, who was arrested in September 2016, in breach of his immunity, and whose continuing detention was preventing the UN specialised body of which he was a member to function normally. We also asked the reasons why the President of the YARSAV Independent Association of Judges and Lawyers, Mr Murat Arslan, was detained pending trial. In both cases, we did not receive satisfactory answers.

54. We also raised the issue of the procedure followed whereby collective dismissals of tens of thousands of persons, made on the basis of lists appended to emergency decree-laws, did not refer to verifiable evidence, related to each individual case. According to the Venice Commission Opinion, "the speed with which those lists appeared implies that the collective dismissals were not accompanied even by a minimum of procedural safeguards." In any event, as the Commissioner for Human Rights has also underlined, as a minimum, persons should be able to have access to evidence against them and make their case before a decision is taken.

55. The authorities informed us that there were Committees in the districts, ministries and at the Prime Minister's office which reviewed complaints and reinstated those unjustly dismissed. Approx. 200 officials and judges had been reintegrated on the basis of such procedure. We noted this information with satisfaction but we wondered how effective such procedures could be if no verifiable evidence is made available. We would like to receive more detailed information on how these Committees function and which cases they cover. We would also like to have more information on how decisions on reintegration are taken.

56. In any event, for our delegation, a core issue was the availability of effective legal remedies and ultimately judicial review for the more than hundred thousand persons, such as public officials, judges, police or military officers, teachers, professors, etc., who were dismissed in the aftermath of the coup, including some 85 000 persons whose names were published on lists appended to the decree-laws. Those dismissals apparently are not subject to judicial review by the ordinary courts, or, at least, the accessibility of the judicial review remains a matter of controversy, as the Venice Commission has also confirmed in its recent Opinion. "Such method of purging the State apparatus creates a strong appearance of arbitrariness", has concluded the Venice Commission and I cannot but share this conclusion.

57. All this is even more worrying as it is still unclear whether even the Constitutional Court will have the power to thoroughly review the constitutionality of the emergency decree-laws, in particular on the basis of individual applications brought before it. In this respect it is worth recalling the important role that the Constitutional Court has played in safeguarding human rights in Turkey since the right of individual petition to this Court for violations of human rights was introduced.

58. The fact that the Constitutional Court has rejected a review of the emergency decree-laws *in abstracto*, following applications filed by opposition MPs (prior to their approval by parliament), did not exclude this Court's competence to decide on individual petitions brought by individuals affected by the emergency decree-laws *in concreto* (before or after their approval by parliament), a competence that, for the Venice Commission, the Constitutional Court did have.

59. So far some 45 000 individual applications have been brought before the Constitutional Court and their number may reach 100 000 by the end of the year. We were informed that the legal questions pertaining to these applications are no more than 20 and thus, once a decision in principle is taken, the rest of the applications in the same group ("pilot cases") could be concluded quickly. However, there are legal complex issues, which are analysed in the Venice Commission Opinion, and on which the Constitutional Court has not yet pronounced itself.

60. In the meantime, a decision by the European Court of Human Rights issued only a few days ago, rejected as inadmissible the application filed by a teacher, who was dismissed after publication of his name on a decree-law, for the reason that he had not exhausted domestic remedies and in particular had not filed an individual petition before the Constitutional Court. The Strasbourg Court considered that the fact that the Constitutional Court had pronounced itself on the constitutionality of a law in the context of a review of constitutionality *in abstracto* did not prevent the individuals from filing an individual petition before it to challenge the individual measures taken in implementation of this law.

61. This judgment reinforces the call of the Venice Commission on the Constitutional Court to consider all questions related to its competence as a matter of urgency and adopt "pilot judgments" which could clearly address questions of competence and give clear guidance on the exhaustion of domestic remedies. Of

course, its judgments will affect the case law of the Strasbourg Court, which, in case the Constitutional Court denies competence to judge individual petitions of persons affected by the decree-laws, would then consider that this domestic remedy is not effective and applicants would not be expected to have exhausted it. This would of course mean that, in deviation from the principle of the subsidiarity of the Convention rights, thousands of cases emanating from the state of emergency in Turkey, instead of being judged by domestic judges, would have to be decided by an international court, our European Court of Human Rights.

62. In the meantime, given the persistent lack of clarity about the most essential issue of access to justice for the more than a hundred thousand public servants who have been dismissed directly by or on the basis of the decree-laws, the Secretary General of the Council of Europe has proposed, as a temporary solution, the creation of an independent *ad hoc* body for the examination of individual cases of dismissals and other associated measures. The essential purpose of that body would be to give individualised treatment to all cases. It will have to respect the basic principles of due process, examine specific evidence and issue reasoned decisions. It should be independent, impartial and be given sufficient powers to restore the status quo and where appropriate provide compensatory remedies. Its decisions should be subject to judicial review.

63. Our delegation supported the proposal of the Secretary General and raised it in all our meetings. We were thus happy to hear from Deputy Prime Minister Canikli of the intention to set up a Committee which would review all cases of dismissals of public officials and whose decisions would be ultimately subject to judicial review, in line with recommendations by the Secretary General of the Council of Europe. He said that he could not give us a precise timing ("when the fire is over" was the expression used). We hope to receive more concrete information from the authorities on their plans in respect of this proposal which was also supported by the Venice Commission in its recent Opinion.

64. We also discussed with our interlocutors some of the many criminal law aspects of the emergency decree-laws, in particular to the extent that these decrees restrict personal freedom and rights of the defence (access to lawyer etc.) in a manner that seems to be disproportional with the aim, especially as the risk of a renewed coup weakens as time passes.

65. For instance, a 30-day police custody, i.e. detention without a court order, is far too long a period, in the light of such case law, even taking into account exceptional circumstances and a valid derogation (the Strasbourg Court has allowed police custody in such cases for up to 7 days); the same is true for the restriction of the right to access to a lawyer for 5 days or possible limitations on the access of a detained suspect to a lawyer of his/her choice. These provisions in the decree-laws would not pass the test of proportionality of the Strasbourg Court in light of its current case law and should therefore be modified as a matter of priority.

66. Last but not least, our interlocutors often compared the state of emergency in Turkey to the situation in France. We pointed out however that the two situations were in fact quite different: contrary to what was the case in Turkey, France was not ruled by decree-laws and the state of emergency was strictly monitored by the parliament and by the judiciary, as well as by the Ombudsman and the Human Rights National Institution. In addition, the measures taken so far in France cannot be compared to those taken in Turkey, in terms of their scope, the number of persons directly or indirectly affected, the number of human rights interfered and the severity of this interference. Moreover, freedom of the press had not been affected in France.

67. In conclusion, it is recalled that the main purpose of the state of emergency is to restore the democratic legal order. Democratic legitimacy of the government is put at risk when the emergency powers are used for too long. I therefore hope that, despite the scale and gravity of the coup attempt of 15 July, Turkish democracy will soon return to its normal functioning, not only by putting an end to the state of emergency, but by redressing the consequences of exceptional measures with permanent character to the extent they were not justified. The Council of Europe has put at the disposal of the Turkish authorities all its arsenal of bodies to help them in this endeavour. If the latest opinion by the Venice Commission leaves no doubts as to the disproportionality of the measures taken by the government under the state of emergency, the Commission itself, but also the Commissioner for Human Rights and the Secretary General, have issued specific recommendations whose implementation would allow to redress this situation.

3.2. Other issues raised

- Freedom of the media

68. Freedom of the media, which was already an issue of major concern in Turkey, has further suffered as a direct result of the 15 July coup attempt. As seen above, more than 140 journalists are currently detained, including the editor in chief of the prominent opposition newspaper Cumhuriyet, as well as writers, and a little

less than two hundred media outlets have been closed down, including a large number of pro-Kurdish media, but also Kemalist or left-wing media. As was said above, we repeatedly asked to visit in detention the editor-in-chief of the Cumhuriyet, Mr Murat Sabuncu, but were not allowed.

69. Despite concerns about individual cases, we raised with our interlocutors the "chilling effect" on media that such measures had in general, the fear and polarisation to which they contributed. We stressed that pluralism of the media, as well as of civil society in general, was vital to establish trust of the people in democratic institutions in Turkey precisely when the latter had recently been seriously threatened.

70. We repeatedly heard from the authorities that not a single journalist was in prison for their journalistic work, but most of them were detained on terror-related charges either in connection with "FETÖ" and/or other terrorist organisations. Thus the Editor-in-Chief of opposition newspaper Cumhuriyet, Mr Murat Sabuncu, the Chairperson and executive members of the Cumhuriyet Foundation are all accused of "committing crimes on behalf of "FETÖ" and the outlawed PKK without being a member" aiming to "conceal the truth with manipulation and publish stories that aimed to make Turkey ungovernable". In this respect, I refer to our Assembly Resolution 2121 (2016) which has *inter alia* reiterated concerns about the extensive interpretation of the Anti-Terror Law, in violation of Council of Europe standards, and its call made already in 2013 for Turkey to review its definitions of offences related to terrorism and membership of a criminal organisation.

71. Our visit took place only one week after the Rapporteur of the Committee of Culture, Science, Education and Media, Mr Ariev, visited Turkey before finalising his report on *Attacks against journalists and media freedom in Europe*, which was later, on 8 December 2016, approved by the Committee. I welcome the statement by the Minister of Culture and Tourism of Turkey, reported in this text, that writers, journalists and cartoonists should not be tried in detention like murderers[12] and urge for their release pending trial.

72. For its part, our Committee, at its meeting of 7 November, requested the Venice Commission to produce an opinion on the measures provided in the recent emergency decree-laws in Turkey with respect to the freedom of the media. We will therefore return to this issue after the adoption by the Venice Commission of its Opinion on this specific issue., et

- The supervisory role of parliament

73. The role the parliament should play in supervising the application of the state of emergency and of the measures taken by the government under the emergency decree-laws was naturally for our delegation a matter of priority.

74. Thus, in all our meetings in parliament we insisted on the fact that it is not enough for the parliament to approve the emergency decree-laws within a specific time-limit. The parliament should also have an active role in regularly supervising the implementation of the decree-laws and responding to criticisms. As said above, we also drew attention to the situation in France where parliamentary scrutiny of the state of emergency was very close and where members of parliament were using all means at their disposal, such as hearings, questionnaires, *in situ* controls, requests for transmission of evidence etc., to control the implementation of emergency measures by the government.

75. We asked in particular our interlocutors whether the "inter-party parliamentary oversight committee", composed of representatives of all parliamentary groups, which was announced by the authorities after the declaration of the state of emergency had been set up.

76. The Chairperson of the "Parliamentary Inquiry Committee on the 15 July Coup attempt of the Fethullah Gülen Terrorist Organization (FETÖ)", Mr Reşat Petek, told us that the decree-laws were already scrutinised by the plenary of the parliament (the Grand National Assembly of Turkey) and the state of emergency was properly monitored in Turkey; therefore a specialised Committee was not necessary. The Committee he was chairing was investigating the responsibilities for the failed coup, a quite different matter.

77. However, we received no concrete information on how, in practice, the parliament had been scrutinising the implementation of the state of emergency and of the decree-laws. Neither were we given any example of a case where, following a proposal by the opposition, a significant change was introduced during the parliamentary debate. Also, it appears that the Sub-Committee on prisons, who had normally the mandate to visit detainees, did not exercise this oversight with relation to detainees related to the coup attempt.

[12] I refer to Mr Ariev's report as it includes references to the conclusions on the visit to Turkey by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr David Kaye.

78. Moreover, as regards the time-limit within which the parliament is to approve the state of emergency and the emergency decree-laws, we were informed that: the declaration of the state of emergency was immediately approved by parliament, which was convened on the same day, on 20 July 2016, although it was in summer recess. However, the same was not done with respect to the approval of the decree-laws.

79. According to the Turkish authorities, the 30-day time-limit within which parliament must approve the emergency decree-laws started running from the moment the parliament returned from the summer recess, namely on 1 October. Thus, the first decree-law, enacted on 22 July 2016, was approved by parliament on 1 October, that is more than two months later. It is difficult to understand why the Speaker of Parliament or the President did not use their power to summon the parliament again, to allow it to discuss immediately the emergency decree-laws, as it was done for the declaration of the state of emergency, although the decree-laws were in practice much more important than the formal declaration of the state of emergency.

80. Subsequent decree-laws were also approved with delays, within periods longer than 30 days after the end of the summer recess or their enactment. It is difficult to understand why the parliament did not consider matters of such a high importance as urgent ones having recognised itself a nation-wide state of emergency.

81. In this respect, I share the concern of the Venice Commission that, in such circumstances, "the *ex post* parliamentary control lost some of its effectiveness" and its conclusion that "following the declaration of the state of emergency, for over two months, the Government was *de facto* permitted to legislate alone, without any control by Parliament or the Constitutional Court and in the absence of material limits to the Government emergency powers".

- Lifting of parliamentary immunity and detention of members of parliament

82. It is natural that, as parliamentarians, we are very sensitive to issues related to the lifting of immunity of colleagues from the Turkish parliament and, even more so, to the arrest and detention of ten members of parliament from the second largest opposition party HDP, including its co-Chairs, Mr Demirtaş and Ms Yüksekdağ. We therefore discussed these issues in all our meetings with the government and parliament being of course fully aware that the former issue, namely the lifting of immunity of MPs, was already raised prior to the coup attempt of 15 July. In any event, the two issues are inter-linked as the fact that the immunity from prosecution of the ten MPs from HDP had already been lifted, allowed their automatic arrest and detention, without any further procedure or discussion in parliament, once they refused to follow the summons of the prosecutors to be interrogated in relation to the criminal cases against them, including terror-related charges.

Lifting of parliamentary immunity

83. I recall that, on 20 May 2016, entered into force an amendment, voted by parliament in April, suspending a constitutional provision whereby immunity was lifted for all requests for the lifting of immunity that were transmitted to parliament by the date of the publication of the amendment (and not for later cases).

84. The procedure, which led to the lifting of immunity of 154 MPs for a total of 810 files, was highly criticised in Assembly Resolution 2121, adopted in June 2016.

85. The authorities and parliamentary majority told us that the lifting of immunity through the constitutional amendment concerned MPs from all political groups, including the ruling AKP party; the CHP opposition party had also voted in favour of the amendment; also, the latter did not concern immunity for statements and speeches made in parliament (parliamentary non-liability) but lifted immunity for acts committed outside parliament (parliamentary inviolability), including statements. Dealing one by one with the cases against so many MPs for so many files would have taken too long and would have unduly burdened the agenda of the parliament.

86. Referring also to the Venice Commission Opinion, issued in October 2016,[13] upon the request of the Assembly, and presented orally at our Committee meeting in Paris, on 7 November, by the Secretary of the Venice Commission, Mr Thomas Markert, I would like to summarise the main arguments for which I continue to believe that the inviolability of members of the Turkish parliament should be restored:[14]

[13] See CDL-AD(2016)027-e.
[14] See also Assembly Resolution 2121 (2016).

- although it concerned in theory MPs from all groups, the amendment disproportionally affected opposition parties and in particular the HDP, as it led to the lifting of immunity of 55 out of 59 of its members, i.e. 93%, including all 4 members from HDP of the Turkish delegation to our Assembly;

- although it is true that the constitutional amendment did not touch parliamentary non-liability for statements made within the parliament, it did cover statements made by MPs outside parliament, including in connection with their function. Actually most of the 810 files concerned by the lifting of immunity relate to freedom of expression of MPs. However, such freedom is an essential part of democracy and MPs should be protected also when they speak outside parliament. Pursuing non-violent political goals, such as regional autonomy, cannot be the subject of criminal prosecution. In this respect, the representatives of the HDP told us that "democratic autonomy", some sort of self-government, was part of their electoral programme, which had been legally approved and, therefore, arguing in favour of this, should not lead to prosecution for "terrorist propaganda" as was so often the case. Only speech that calls for violence or directly supports the perpetrators of violence should lead to criminal prosecution;

- the procedure that was followed was inappropriate: immunity was lifted in a 'one shot' measure, through suspension of a constitutional guarantee, limited to all pending files against 154 identifiable MPs at a certain point in time (not those brought before nor those after), thus violating the principle of equality; MPs from CHP told us that they had voted in favour of the amendment not to give the impression that they had something to fear or hide from justice but admitted that the procedure was wrong;

- the timing as such was badly chosen: as the Venice Commission noted, "the current situation in the Turkish judiciary makes this the worst possible moment to abolish inviolability";

87. In conclusion, to avoid overburdening the parliament and respect the principle of equality among all MPs, it is much preferable, as the Venice Commission has suggested, to restore parliamentary inviolability lifted as a result of a constitutional amendment and, instead, simplify the procedure for lifting immunity for individual MPs ensuring however, for all of them, a case-by-case examination based on merits.

Detention of members of parliament

88. As was said above, the authorities told us that the MPs from HDP, including its co-Chairs, were arrested because they refused to follow the summons of the prosecutors to be interrogated in relation to the criminal cases against them, including terror-related charges. Other MPs, including from opposition parties, who had responded positively to summons and accepted to be interrogated, had not been arrested. For their part, the detained MPs justified their refusal to reply to summons invoking precisely their parliamentary inviolability and the fact that it was lifted "in violation of the Turkish Constitution and international law".

89. The representatives of the HDP we met insisted on the unlawfulness of their colleagues' detention who were often accused for "terrorist propaganda" or "membership of terrorist organisation" simply for statements emanating from their party's programme or for their political opinions.

90. In any event, I cannot understand why our request to see the detained co-Chairs was refused and why requests by other foreign delegations, composed of MPs or representatives of political parties, have also been refused. I can neither understand why all detained MPs, including the co-Chairs, are kept under conditions of solitary confinement in high security prisons.

91. According to information I received after our visit, Mr Demirtaş, is held in a cell in the prison block allocated for members of outlawed jihadist organisations (ISIS and Al-Qaida) and the mafia, thus putting his safety at risk. I also received allegations about regular violations of his right to legal counsel, as well as about the increasing criminalisation and harassment of lawyers defending HDP members of parliament, thus weakening the possibilities for their legal defence.

92. It is also clear that, kept under such conditions of isolation, all detained MPs are prevented from exercising any of their parliamentary activities or express their political opinions, although they are in detention pending trial and benefit from the presumption of innocence.

93. In times when democracy is threatened, it is extremely important to ensure national unity and engage in a national dialogue and reconciliation. Detaining 10 MPs of the second opposition party and having lifted the immunity of many other parliamentarians does not send the right message for Turkish democracy.

94. I therefore urge the Turkish authorities to release, pending trial, the detained MPs and, in the meantime, allow delegations from our Assembly and other relevant bodies of the Council of Europe and the international

community to visit the MPs in detention, including the co-Chairs of the HDP. I also hope that the CPT could soon visit them, as part of an *ad hoc* visit, in supplement of their visit which took place in September 2016 prior to their arrest and detention.[15]

- Death penalty

95. As statements about a possible reintroduction of the death penalty were made following the coup attempt of 15 July, including at the highest level, we made it clear in all our meetings that the death penalty was incompatible with CoE membership. Although we could understand emotional reactions after a brutal and violent coup attempt, this issue should not even be debated in one of the oldest members of the Organisation; this was one of the limits that could not be crossed. This message seems to have been heard.

96. In fact, although the Deputy Prime Minister told us that 75% of the population was in favour of the reintroduction of the death penalty, we were reassured by the Chairperson of the Turkish delegation that this issue was not in the programme of the AKP and therefore there was no way that it would be on the agenda of the parliament.

- Constitutional reform

97. As our mandate covered "recent developments in Turkey", we could not but raise with our interlocutors in parliament an issue of absolute topicality, namely the on-going talks for constitutional reform with a view to introducing a presidential system.

98. The Vice-chairperson of the AKP recalled that the constitutional reform had already started in 2007. He told us that the new constitution would not be presidential, such as in the USA, or semi-presidential, such as in France. It would be submitted to the people by referendum even if this was not compulsory, namely even in case it was approved by two-thirds majority. To our question, he underlined that the first four articles of the constitution (including secularism) would not be changed. He confirmed that they were working together with the MHP on the constitutional reform while CHP was opposing it. Our interlocutors from MHP explained that the reform of the constitution aimed at redefining the role of the President, now that he was elected directly.

99. For their part, interlocutors from the opposition party CHP considered that Turkey, if the constitutional reform went ahead in the current direction, would be pushed into a new regime, which would destroy a 150 year-old democratic tradition. The HDP has also categorically opposed the planned constitutional changes.

100. A number of constitutional amendments were finally submitted to parliament a couple of days ago, i.e. on 10 December, following a deal between AKP and MHP. They need to be approved by 330 MPs (three-fifths of the chamber) to be put forward to a referendum. An approval by two-thirds of the Parliament (367 MPs) would allow proposals to be directly enacted without a referendum. The AKP and MHP have 317 and 39 MPs in parliament respectively.

101. Subject to the accuracy of our information, on the basis of media sources, the draft provides that the President will become the Head of State and Government (the post of Prime Minister will be abolished), and can also retain links to his or her political party. He will appoint and dismiss ministers. He will be able to call for referenda and issue decrees with force of law that need to be confirmed by parliament. He can be subjected to impeachment proceedings (various majorities are foreseen in this respect).

102. It is also foreseen that in the future a MP will be elected together with a possible substitute. Individuals with relations to the military are ineligible to run for election. The powers of parliament to scrutinise ministers and hold the government to account are abolished. The obligation of ministers to answer questions orally in parliament is also abolished. The High Council of Judges and Prosecutors (HSYK) will be restructured with half of its members elected by parliament and the remaining by the President. Furthermore, military high courts will be abolished.

103. The constitutional referendum may be held in Spring 2017, but the new Constitution will only come fully into force after the 2019 presidential elections, according to the draft. In the future, the President will be elected for a maximum of two five-year terms, a new cycle to start as from 2019.

[15] See also the call for release of the detained MPs by the Monitoring Committee of 9 November and the statement by the IPU of 8 November. See also the European Parliament Resolution of 24 November 2016 on EU-Turkey relations.

104. Unaware of any concrete proposals during our visit, we urged our colleagues in the Turkish Parliament to ensure that, whatever the system they chose, checks and balances would be respected. This was an essential precondition of any democratic system. What I read now does not seem to go along that direction. Subject to the accuracy of information, it is unclear how checks and balances will be ensured.

105. Also, constitutional amendments should be prepared following an as much as possible wide public consultation. It is difficult to imagine how the debate on constitutional amendments aiming at changing the nature of the regime in the country will be undertaken while a state of emergency is in force and hundreds of thousands of persons are affected by the emergency measures. It is not sufficient to adopt the draft after formal cessation of the state of emergency; the whole process should be carried out in a calmer societal environment, in particular as no clear reasons seem to exist for this process to be rushed through.

4. Concluding remarks

106. I thank the Turkish delegation for its invitation and for its hospitality and I reiterate our Committee's and the whole Assembly's availability for dialogue. Turkey has been a member of the Council of Europe since the beginning of the Organisation and should remain a member of our family. The fact that the Council of Europe has not only condemned the coup attempt and expressed solidarity to the Turkish people, but has also, in the immediate aftermath, been present in the country and engaged in dialogue with the authorities and all main actors of the society seems to be appreciated by all sides.

107. To sum-up our visit in a few sentences, whereas all our interlocutors with no exception were unanimous in condemning the coup attempt of 15 July 2016, we were confronted with two totally different versions as regards its aftermath:

- On the one hand, government and parliamentary majority representatives insisted on the need to respond firmly to the attempted coup, given the wide infiltration of the "FETÖ" supporters in Turkish institutions, but also to effectively fight terrorism in all its forms. They all seemed to be convinced that the exceptional circumstances justified all measures taken in the aftermath of the coup attempt, which they believed were in line with the Turkish Constitution and the European Convention on Human Rights and with Turkey's commitment to the values upheld by the Council of Europe.

- On the other hand, our interlocutors from opposition, civil society and media, accused the government of using their right (and duty) to investigate the coup attempt and to punish those involved to silence all critical voices. If the country's authoritarian drift had been source of serious concern before, they now denounced a total crackdown, which goes far beyond what is necessary to respond to the coup attempt and avert the risk of repetition, and targets various sectors of the society, including judges, academics, parliamentarians, mayors and the media.

108. In all our meetings, our delegation insisted that it is the right and duty of the State to identify and punish those responsible for the coup attempt. It is also its duty to protect its citizens and fight terrorism in all its forms. Both challenges have to be responded to strongly and firmly but responses can only be ultimately effective if given in the framework of the rule of law and the values upheld by the Council of Europe. This is not altered by the fact that Turkey faces a real terrorist threat as the latest tragic terrorist attack in Istanbul sadly confirmed once more.

109. In the light of the findings of our visit and the subsequent publication of the Venice Commission Opinion, there is no doubt that, if the declaration of a state of emergency and the granting of extraordinary powers to the government was justified to respond to the armed conspiracy and the brutal coup attempt of 15 July, the measures taken by the government, in interpreting too widely these powers, went beyond what is allowed by both the Turkish Constitution and the international law.

110. Our delegation was, in particular, alarmed by the fact that both serious administrative sanctions with a permanent character, such as dismissals, affecting more than hundred thousand persons and also family members, and criminal law measures, such as arrests and detention of tens of thousands, seem to be decided upon weak or in some cases seemingly non-existent evidence and vague criteria. We also insisted on the need to respect the presumption of innocence principle and defence rights and thus to abolish restrictions to the right to access to a lawyer for up to 5 days or to judicial control of police custody for up to a maximum of 30 days.

111. The Council of Europe has put at the disposal of the Turkish authorities all its arsenal of bodies to help them ensure that Turkish democracy return rapidly to its normal functioning, not only by putting an end to the state of emergency, but also by redressing the consequences of exceptional measures with permanent

character to the extent they were not justified. I urge the Turkish authorities to implement the specific recommendations issued by the Council of Europe bodies, including our own Assembly, the Secretary General, the Commissioner for Human Rights, the Venice Commission and the CPT.

112. Our delegation particularly insisted on the need to ensure effective legal remedies and ultimately judicial review to those dismissed in the aftermath of the coup, including those whose names were published on lists appended to the decree-laws. In this respect, we noted with satisfaction that the government intended to set up, in due course, a Committee which would review all cases of dismissals of public officials and whose decisions would be ultimately subject to judicial review, in line with recommendations by the Secretary General. We also noted with satisfaction that hundreds of officials and judges were reintegrated on the basis of existing procedures.

113. In the memorandum I have summarised other issues our delegation raised with respect to:

- *freedom of the media*: we were alarmed by the number of detained journalists, editors and writers, the closure of hundreds of media outlets and the "chilling effect" such measures had on freedom of the media in general. I reiterate that pluralism of the media, which should be accessible to all political forces in the country, is vital to establish trust of the people in democratic institutions in Turkey precisely when the latter had recently been seriously threatened. I call on the authorities to release, pending trial, all journalists and writers.

- *the role of parliament*: delays in the approval by parliament of emergency decree-laws have weakened the effectiveness of parliamentary control. It is also regrettable that the "inter-party parliamentary oversight committee", which was announced by the authorities after the declaration of the state of emergency, was not set up, as well as the fact that the Sub-Committee on Prisons does not visit detention places of detained persons arrested in relation to the coup attempt.

- *the lifting of parliamentary immunity*: I urge the parliament to restore the inviolability of MPs, lifted as a result of a constitutional amendment last May, in breach of the principle of equality, and instead consider the proposal by the Venice Commission to simplify the procedure for lifting immunity of individual MPs ensuring, however, for all of them, a case-by-case examination based on merits.

- *detention of MPs*: our delegation strongly regretted that despite our repeated calls we were not given the possibility to visit the detained co-chairs of the HDP party. I urge the Turkish authorities to release pending trial the detained MPs and in the meantime allow delegations from our Assembly and other relevant bodies of the Council of Europe and the international community to visit them in detention. In times when democracy is attacked, such as after such a serious coup attempt, it is extremely important to ensure national unity and engage in a national dialogue and reconciliation. Detaining 10 MPs of the second opposition party, after having lifted the immunity of so many of its parliamentarians, does not send the right message for Turkish democracy.

- *death penalty*: we made it clear in all our meetings that the death penalty is incompatible with membership of the Council of Europe. None of our interlocutors contested this.

- *constitutional reform*: I reiterate the call our delegation made during our visit to ensure that checks and balances are ensured, an essential precondition of any democratic system. Important constitutional amendments, such as those leading to a regime change from a parliamentary to a presidential system, should be subject to as a wide public consultation as possible, once the state of emergency has ceased, and should not be rushed through the parliament. I hope that the Turkish parliament will engage in talks with the Venice Commission which could precisely offer advice of how checks and balances could be ensured before approval of the draft and submission to popular referendum.

114. In conclusion, I feel that close scrutiny and dialogue must continue in order to help our Turkish colleagues fulfil their commitments under the ECHR and fully comply with Council of Europe principles and standards, including in dealing with the aftermath of the coup attempt of 15 July. It is therefore my opinion that the Assembly should debate the functioning of democratic institutions in Turkey at its next session, in January 2017.

115. In the light of current developments, I find it necessary that the Assembly decides to re-open the monitoring procedure for Turkey, currently subject to a post-monitoring dialogue. At the same time, it is my position that challenging the credentials of the Turkish parliamentary delegation would not only be erroneous but also counterproductive. It would target majority and opposition members from the Turkish parliament alike, harm the dialogue that has been engaged and could lead to distancing the country from the Organisation. I believe that instead we should count on the continuing and full co-operation with the Turkish parliamentary delegation. These proposals have been approved by all members of the *ad hoc* Sub-Committee, being understood that it will of course be for the Assembly to take any decisions.

Appendix: **Programme of the visit of the *ad hoc* Sub-Committee on recent developments in Turkey Ankara, Turkey, 21-23 November 2016**

Monday 21 November 2016

18.00 – 19.45 Meeting with representatives of civil society

20.00 Working dinner hosted by Mr Svend OLLING, Danish Ambassador to Turkey, with the participation of:

Mr Kyriakos LOUKAKIS, Ambassador of Greece
Mr Christopher John COOTER, Ambassador of Canada
Mr Vegard ELLEFSEN, Ambassador of Norway
Mr Georges FABER, Ambassador of Luxembourg
Mr Ludovico SERRA, Deputy Head of Mission, Embassy of Italy
Mr Christophe PARISOT, Deputy Head of Mission, Embassy of France
Mr Philip Scott KOSNETT, Deputy Head of Mission, Embassy of USA
Ms Katrine THORUP, Political Officer, Embassy of Denmark
Mrs Ann Kjær OLLING, Hostess
Ambassador Svend OLLING, Host
Mr Michael INGLEDOW, Head of the Council of Europe Office in Ankara

Tuesday 22 November 2016

09.30 – 10.30 Meeting with journalists

13.00 – 15.00 Working Luncheon hosted by Chair of the "Parliamentary Inquiry Committee on the 15 July Coup attempt of the Fetullah Gülen Terrorist Organization (FETÖ)", Mr Reşat PETEK, with the participation of Selcuk OZDAG (Justice and Development Party, AK Party), Emine NUR GUNAY (AK Party), Zeynel EMRE (Republican People's Party, CHP), Burhanettin UYSAL (AK Party), and Mehmet ERDOGAN (Nationalist Action Party, MHP)

15.30 – 16.30 Meeting with Mr Nurettin CANIKLI, Deputy Prime Minister

18.15 – 19.00 Meeting with the Deputy President of the High Council of Judges and Prosecutors, Mr Mehmet YILMAZ and other members

19.45 – 20.00 Meeting with Mr Hişyar ÖZSOY, Peoples' Democratic Party, HDP

20.30 Dinner hosted by Mr Talip KÜÇÜKCAN, Head of the Turkish Delegation to PACE, in honour of the *ad hoc* Sub-Committee

Wednesday 23 November 2016

08.30 – 09.30 Meeting with Ms Öykü Didem AYDIN, Associate Professor at the Hacettepe University Law School and member of the Venice Commission

10.00 – 10.45 Meeting with the Deputy Speaker of the Grand National Assembly of Turkey (GNAT), Mr Ahmet AYDIN

10.45 – 11.00 Tour in the GNAT (buildings damaged by the bombs of Coup plotters)

11.05 – 11.50 Meeting with Mr Mustafa ELİTAŞ, Deputy Chair of the AK Party Group and other members

11.55 – 12.40 Meeting with Mr Levent GÖK, Deputy Chair of the CHP Group, Mr Özkan YALIM, Mr Onursal ADIGÜZEL, and Mr Niyazi Nefi KARA

12.45 – 13.30 Meeting with Mr Engin AKÇAY, Deputy Chair of the MHP Group, and Mr Arzu ERDEM

13.30 – 14.30 Working Luncheon hosted by Ms Fatma BENLİ, Deputy Chairperson of the Committee on Human Rights Inquiry, with the participation of other members of the Committee