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Fact-finding mission on the situation of local elected representatives in Turkey

Monitoring Committee

Rapporteurs:¹ Anders KNAPE, Sweden (L, EPP/CCE)
Leendert VERBEEK, Netherlands (R, SOC)

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Summary

In February 2016 the Congress Bureau asked its rapporteurs on Turkey to conduct a fact-finding mission on the detention and removal from office of an increasing number of elected mayors and municipal councillors. Following the attempted coup of 15 July 2016, the new measures introduced in the framework of the State of Emergency resulted in dozens more local elected representatives being placed in pre-trial detention and replaced with persons appointed by the central authorities.

This report refers to the two fact-finding visits carried out by the rapporteurs in Turkey in October and December 2016. In particular, the report highlights the fact that most of the arrests of local elected representatives were made on the basis of accusations of terrorism, the definition of which is not in line with the practice of most Council of Europe member States. It also highlights the fact that the detention of elected mayors and their replacement by "mayors appointed by the central authorities" in more than fifty towns in south-east Turkey has had the effect of interrupting the practical exercise of local democracy in these municipalities. The report also stresses the subsequent reduction of local public services, including the closure of women's shelters and other services for women, children and families in need.

The draft recommendation asks the Committee of Ministers to invite the Turkish authorities, in particular, to ensure that the arrest of a local elected official is a measure duly substantiated in domestic law in conformity with Council of Europe standards, to examine the situation of local elected officials in pre-trial detention in the light of the European Convention on Human Rights and where appropriate with a view to their release, and to revise Turkish legislation in order to bring its definition of terrorism into line with European standards.

1 L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

RESOLUTION 416 (2017)²

1. At the meeting of 8 February 2016, the Congress Bureau asked its rapporteurs on Turkey to conduct a fact-finding mission to investigate the detention and removal from office of an increasing number of elected mayors and municipal councillors in Southeast Turkey, in the light of Turkey's commitments under the European Charter of Local Self-Government.
2. The Congress is aware of the threats that Turkey is facing, including an increase in terror attacks, the attempted coup of 15 July 2016, several million refugees within its borders and war on its borders. It categorically condemns all forms of terrorism and violent extremism. Nobody can deny that Turkey needs to take adequate and proportionate measures to protect itself and its institutions.
3. The Congress has set the fight against violent extremism as a priority activity and is convinced that local authorities have a unique and key role to play in this respect and that the healthy functioning of local democracy is an essential tool for facing these threats.
4. It believes, however, that the detentions and arrests of local elected representatives and the extensive resort to lengthy remand detention, within the framework of the fight against terrorism, are counter-productive and are weakening the capacity of Turkey to deal with the terrorist threats that it is facing.
5. The Congress is concerned that the replacement of elected mayors by "mayors appointed by the central authorities" is being accompanied by a reduction in local public services, and in particular the closure of women's refuges and other services for women, children and families at risk.
6. The Congress therefore,
 - a. reaffirms its commitment to working with the Turkish authorities to strengthen local democracy and to combat all forms of terrorism and violent extremism;
 - b. proposes that the Human Rights Commissioner, in the framework of his visits to Turkey, pays particular attention to the situation of elected mayors, notably in Southeast Turkey, including those former mayors who are now in prison;
 - c. suggests that the Venice Commission prepare an opinion on the constitutionality of the measures in Decree Law No. 674 which concern the exercise of local democracy in Turkey;
 - d. calls on the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) to pay particular attention to reports of closures of women's shelters by "mayors appointed by the central authorities";
 - e. asks the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to examine reports of inhumane treatment of detained local elected representatives in Turkey, notably their solitary confinement and systematic transfer to prisons far from their homes;
 - f. agrees to put the review of the situation of Nurhayat Altun, member of the Turkish delegation of the Congress, on the agenda of its Bureau meetings until the end of legal proceedings.

² Debated and adopted by the Congress on 29 March 2017, 2nd sitting (see Document [CG32\(2017\)13](#), explanatory memorandum), co-rapporteurs: Anders KNAPE, Sweden (L, EPP/CCE) and Leendert VERBEEK, Netherlands (R, SOC)

RECOMMENDATION 397 (2017)³

1. On 8 February 2016, the Congress Bureau asked its rapporteurs on Turkey to carry out a fact-finding mission to investigate the situation of local elected representatives in Southeast Turkey, in view of the increasing number of arrests, detentions and removal from office of elected mayors and municipal councillors.

2. The rapporteurs were particularly concerned to evaluate whether these developments affected Turkey's commitments under the European Charter of Local Self-Government (CETS No.122, hereafter "the Charter"), which it ratified on 9 December 1992, and which entered into force on 1 April 1993.

3. Due to events in Turkey, including the 15 July 2016 attempted coup, the rapporteurs did not complete their mission until December 2016, holding a series of meetings in Ankara, Istanbul and Diyarbakir. At all stages of the process they enjoyed excellent co-operation with and support from the Turkish authorities and they thank these authorities for this help and support and for their willingness to dialogue with the Congress.

4. The Congress is well aware of the difficulties that Turkey is facing, including threats to its stability, an increase in terror attacks, the attempted coup, several million refugees within its borders and war on its borders.

5. The Congress categorically condemns all forms of terrorism and violent extremism. Nobody can deny that Turkey needs to take adequate and proportionate measures to protect itself and its institutions.

6. The Congress has set the fight against violent extremism as a priority activity and is convinced that local authorities have a unique and key role to play in this respect and that the healthy functioning of local democracy is an essential tool to combating these threats.

7. The Congress:

a. is concerned that the arrest and removal from office of many local elected representatives seriously risk damaging pluralist democracy at the local level and gravely weakening political parties and civil society;

b. believes that the detentions and arrests of local elected representatives and the extensive resort to lengthy remand detention, within the framework of the fight against terrorism, are counter-productive and are weakening the capacity of Turkey to deal with the terrorist threats that it is facing;

c. observes that most of the arrests of local elected representatives have been made on the basis of accusations of terrorism, the definition of which has been criticised by Council of Europe bodies, the European Union and other international organisations, and is not in conformity with the practice of most Council of Europe member States;

d. notes that the use of the Turkish Anti-Terror Law No. 3713 of 12 April 1991, principally with regard to declarations and opinions expressed, is having a negative impact on political pluralism and the practical exercise of local democracy in Turkey;

e. considers that the practice in most European States, including Turkey prior to September 2016, whereby elected mayors who are legitimately removed from office are replaced by a new mayor elected by the municipal council, is a sufficient safeguard against unlawful activity and deserves to be retained;

f. believes that Emergency Decree no.674, introduced on 1 September 2016 within the framework of the State of Emergency under Article 121 para. 3 of the Turkish Constitution, to enable the central authorities to appoint "unelected mayors" and place elected mayors under investigation, is incompatible with Turkey's commitments as a Party to the Charter, notably Article 3, according to which local government should be carried out under the authority of councils or assemblies elected freely by secret ballot;

g. notes that the detentions of elected mayors and their replacement by "mayors appointed by the central authorities" in 82 municipalities in Southeast Turkey has effectively suspended the practical exercise of local democracy in that region, with most municipal councils of those cities ceasing to function, and with almost six million Turkish citizens deprived of political representation at the local level, which constitutes a

³ See footnote 2

contravention of Article 7, para. 1 of the Charter (the free exercise of the functions of local elected representatives);

h. believes that the transfer of the powers and responsibilities of these municipal councils to “mayors appointed by the central authorities” amounts to a disproportionate form of administrative supervision, in abrogation of Article 8, para. 3 of the Charter;

i. is alarmed at reports that the co-mayor system has been declared illegal and that the designation of co-mayors is in itself considered to be a criminal act, by the letter of 11 November 2016 sent by the Interior Minister to Governors;

j. is concerned at the progressive reduction in local public services, and in particular the closure of women’s refuges and other services for women, children and families at risk. Such reductions in the services offered to citizens constitute an abrogation of Articles 4, para. 4 (full and exclusive powers for local authorities) and 9, para. 1 (local authorities to have adequate financial resources of which they may dispose freely) of the Charter.

8. In the light of the above, the Congress asks the Committee of Ministers to invite the Turkish authorities to:

a. rescind the legislative measures on “mayors appointed by the central authorities” and restore the capacity of municipal councils to choose a replacement mayor, if the mayor is removed from office;

b. ensure that the arrest of a local elected representative is a decision duly substantiated in domestic law, taken in conformity with the standards of the Council of Europe;

c. examine, with a view to their release, the situation of local elected representatives currently in pre-trial detention in order to ensure that it is in conformity with the European Convention on Human Rights and, where appropriate, proceed with their immediate release;

d. revise the ministerial instructions of 11 November 2016 with a view to decriminalising the appointment of co-mayors;

e. revise the Turkish legislation to align its definition of terrorism with European standards, notably the case law of the European Court of Human Rights;

f. take appropriate measures to ensure that Congress members and Turkish members of the Group of Independent Experts on the European Charter of Local Self-Government are free to carry out their work and can circulate freely for this purpose.

EXPLANATORY MEMORANDUM**Contents**

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INTRODUCTION⁴

1. The decision to conduct a fact-finding mission concerning the dismissals of mayors and local elected representatives in Turkey was taken on 8 February 2016 by the Congress' Bureau, well before the attempted coup of 16 July 2016. However, in particular in view of the legislative consequences following the declaration of the state of emergency, this event raised the profile of the mission and made the decision to conduct a fact-finding visit regarding the principles of the European Charter of Local Self-Government (CETS No. 122) still more relevant.⁵

2. It is important also to take account of the other tensions facing the Turkish authorities such as the intensification of the conflict in Syria, which lies on the country's doorstep, and the presence of millions of refugees in various regions within its borders.

3. The emergency legislation by decree law introduced following the attempted military coup on 15 July 2016 has had an impact on the situation of local elected representatives and mayors in particular. It has enabled new measures to be taken, primarily to deal with the consequences of the attempted coup and prosecute those responsible for this attempt, which must be condemned, but also to strengthen the existing anti-terror measures in general. Some of the measures concerned have a direct impact on the conditions in which local and regional democracy is exercised in Turkey.

4. Decree Law No. 674 of 1 September 2016 includes four articles which have a direct and permanent impact on the exercise of local democracy in Turkey. Three of the articles amend Municipalities Law No. 5393 of 3 July 2005:

- Article 38 supplements Article 45, paragraph 1, and provides that where a mayor, deputy mayor or council member is "suspended from duty or detained or banned from public service or his/her position as a mayor or member of council terminates due to the offences of aiding and abetting terrorism and terrorist organisations", a replacement "shall be assigned by the authorities".
- Article 39 supplements another article of Law no.5393 (Article 57). Where the governorship establishes that "disruption of service in a municipality or its affiliated entities affects or will affect negatively the fight against terrorism or violent activities", it provides that the governorship shall "perform the service concerned or have it performed through the Investment Monitoring and Co-ordination Department, the Provincial Special Administration or state institutions and organisations." This also applies to financial matters and it may lead to the confiscation of a municipality's resources. It further enables the state authorities to dismiss the staff concerned.
- Transitional Article 9 gives the greatest cause for concern on account of its retroactive effect, as it introduces on a temporary basis a provision enabling elected representatives already suspended before it came into force (and who had been replaced under ordinary law by an elected member of the municipal council) to be replaced by appointed officials.

5. The persons replacing elected representatives in their duties are one of the categories of "temporary administrators" who may be appointed to replace those usually in charge which were established under the Turkish Criminal Procedure Code, Law No. 5271 of 4 December 2004 in connection with combating terrorism.

6. It seems that the decree extends a general mechanism that already existed to elected representatives, while also seeking to amend and strengthen that mechanism. During the various discussions held by the Congress' delegation in Ankara, Diyarbakir and Istanbul, it was very clear that it was this new possibility of replacing elected representatives by appointed officials which was generating most criticism. These new provisions are in conflict with ordinary law, which provides for replacements to be elected by municipal councils themselves barring exceptional circumstances which make that impossible.

7. These recent developments follow a wave of dismissals of elected representatives, in particular in south-eastern Turkey, a trend which started long before the attempted coup and had already been a source of concern for the rapporteurs.

⁴ This explanatory memorandum was prepared with the help of Alain DELCAMP, honorary President of the Group of Independent Experts on the European Charter of Local Self-Government

⁵ At the 20 September 2016 meeting, the Bureau decided to extend the mandate of the fact-finding mission initially limited to Southeast Turkey to the whole of the country.

1. CONDUCT OF THE MISSION (3-4 OCTOBER AND 18-20 DECEMBER 2016)

8. The rapporteurs felt that the most appropriate way of conducting the various interviews necessary and gathering as comprehensive information as possible regarding the facts, the legal situation and the political climate in the country was to meet all political groupings and any organisations or individuals capable of helping them to form an opinion before talks with the Turkish government authorities. The rapporteurs therefore not only gathered more information about the actual circumstances of the dismissals but also examined the legal conditions under which these measures had been taken.

9. The rapporteurs wish to thank the Permanent Delegation of Turkey to the Council of Europe as well as the central authorities for their help and assistance with the preparation of the visit and all the discussion partners they met for their kind co-operation and the information supplied to the delegation during the meetings. They would underline that they were received by all the public and political authorities whom they wished to meet. The talks took place in a cordial atmosphere and the rapporteurs were able to ask all the questions they wanted to.

10. During the visits in both October and December, they heard accounts from civil society through key figures from the press, the legal and judicial fields, past and present members of the Turkish delegation of the Congress and past and present Turkish members of the Congress Group of Independent Experts on the European Charter of Local Self-Government.

11. In Ankara, the rapporteurs met His Excellency, Sebahattin ÖZTÜRK, Vice-Minister of the Interior, accompanied by senior officials from his department responsible for local and regional government, security and the fight against terrorism, Mr Selahaddin MENTES, Deputy Undersecretary in the Ministry of Justice, and Mr Hairettin GÜNGÖR, Secretary General of the Union of Turkish Municipalities, and his staff. All these contacts underlined the shock which the recent political events have been for the Turkish people.

12. It is clear that the authorities are genuinely and legitimately concerned about the spread of terrorist activities. It is important to note that the Turkish authorities have a tendency to refer to relatively distinct factors under the term "terrorist": the background to and reasons for the attempted coup of 15 July; aspects imported from the war in neighbouring Syria, in which Turkey is now involved and which has seen a major influx of refugees into its territory, as well as attacks which may be linked to its involvement; and the persistence of the "Kurdish question", which many dismissals of elected representatives are connected with.

13. The attempted coup has therefore made it possible to the Turkish authorities to conduct a policy of seeking out the parties that it identifies as being responsible for terrorist activities, on a scale that is causing concern and may itself be a destabilising factor for the country, as noted by the Venice Commission.⁶

14. It has also served as a pretext for tightening up some arrangements which were not directly related to the events but could be useful for continuing previous measures with means facilitated by the state of emergency. As has already been noted, this factor cannot be dissociated from the new conditions created for the exercise of local and regional democracy, which are hard to link to the prosecution of those guilty for destabilising democracy at national level.

15. The impression which the rapporteurs gained between their two visits was one of increasing polarisation of the positions within Turkish society, making it all the more necessary for the Council of Europe in general and the Congress in particular to pay closer attention to the condition of local democracy in the country.

16. This is all the more necessary since the Turkish authorities have felt they have not received enough support from the international community and, in particular, from Europe regarding the crises facing them, especially in terms of combating terrorism. In this connection, some of the people the delegation met praised the visit by the Secretary General of the Council of Europe carried out immediately after the attempted coup.

⁶ Venice Commission, Opinion on Emergency Decree Laws nos. 667-676 adopted following the failed coup of 15 July 2016 in Turkey (Opinion No. 865/2016)

2. DISMISSALS OF LOCAL ELECTED REPRESENTATIVES

17. At least 65 municipal mayors or neighbourhood mayors have been dismissed, together with a large number of deputy mayors and municipal councillors. The number of Turkish citizens that these mayors represent is almost six million.

18. The vast majority of these mayors are members of, or close to, the HDP or the “People’s Democratic Party”, which largely represents the Kurdish community in spite of the very significant expansion of its electorate to other minorities since the parliamentary elections in June 2015. This expansion enabled the HDP to pass the 10%-threshold required for obtaining seats in the Turkish Grand National Assembly for the first time.

19. The dismissals are linked to the fight against terrorism in general rather than to accusations of involvement in the attempted coup. Many were carried out before the attempted coup and have given rise to concern on the part of the Congress from the beginning of last year. The reasons given to the rapporteurs for the mayors’ dismissal and, in many cases, arrest were alleged involvement in aiding and abetting terrorism, either materially (some are accused of having provided direct or indirect assistance using their municipalities’ resources) or through statements they made, or their involvement in certain meetings deemed to be favourable to the Kurdistan Workers’ Party (PKK) or, quite simply, calls for greater self-government for certain regions of south-eastern Turkey with a Kurdish majority.

20. Most of the charges brought against the mayors who have been dismissed and imprisoned refer to the Turkish Anti-Terror Law No. 3713 of 12 April 1991, and concern political statements made in the course of their duties rather than any misappropriation of municipal resources. The rapporteurs share the concerns of the Parliamentary Assembly and the Commissioner for Human Rights about “the alarming scale of recourse to an overly wide notion of terrorism to punish non-violent statements and criminalisation of any message that merely coincides with the perceived interests of a terrorist organisation”.⁷ The rapporteurs are concerned at the extensive interpretation of the Anti-Terror Law, which falls short of Council of Europe standards and leads to the criminalisation and prosecution of local elected representatives, as well as journalists and human rights defenders.

21. Four mayors belonging to other parties have suffered the same fate: one, representing the largest municipality affected, Adana – Turkey’s fifth-largest city located near the south coast with over 1.5 million inhabitants – belongs to the MHP, “Nationalist Action Party”. The three others are members of the majority AKP, “Justice and Development Party”. They come from a municipality in the province of Konya, in the southern central region, and from provinces in the north (Giresun and Erzurum). It should be noted that all the other municipalities with HDP mayors are either in the south-east or eastern central region of the country.

22. There is a degree of similarity with situations previously condemned by the Congress rapporteurs, in particular in the 2007 fact-finding report on the situation in Sur / Diyarbakir,⁸ and in the 2011 monitoring report on the situation of local democracy in Turkey.⁹ In all these cases, the dismissals or arrests of mayors (in particular those of Sur and Diyarbakir) concerned the south-east of the country and were connected with the Kurdish question, even though the state of emergency had not been declared at the time.

23. These developments are not substantially new in themselves, apart from their being more systematic and taking place in a context where the authorities this time are justifying their action on the grounds not only of the situation in the south-east but also of a number of new circumstances, in particular the state of emergency.

24. One feature of these measures, which the Congress already drew attention to in its 2014 report on Leyla GÜVEN,¹⁰ is the excessive resort by the Turkish authorities to remand detention, which often extends for several years. None of the 90 “co-mayors” in prison¹¹ have been convicted of any offence and most of them have yet to be put on trial. Since, according to the lawyers representing the accused, most of the charges against these elected representatives relate to ideas that they have expressed, such detention cannot be justified. The rapporteurs underline that the Council of Europe Commissioner for Human Rights

⁷ [Parliamentary Assembly Resolution 2121 \(2016\) - The functioning of democratic institutions in Turkey, 22 June 2016](#)

⁸ [Report of the Congress Fact-Finding Mission To Turkey \(8 - 10 August 2007\) - Local Democracy in Turkey - Situation in Sur / Diyarbakir \(South-East Anatolia, Turkey\)](#)

⁹ [Congress Report on the situation of local and regional democracy in Turkey, March 2011, CG20\(6\)](#)

¹⁰ [Resolution 367 \(2014\) - The situation of Leyla Güven and other local elected representatives in detention in Turkey](#)

¹¹ As of 29 March 2017.

has recently reminded the Turkish authorities of the importance of respecting the presumption of innocence (Article 6, para. 2 of the European Convention of Human Rights).¹²

25. The rapporteurs are also concerned at what appears to be a systematic practice of placing the mayors in prisons which are very far from their homes, which makes contact with their lawyers and families extremely difficult, as well as reports that many of those concerned were placed in solitary confinement for long periods after their detention).

26. What is new are the justifications given for the prosecutions of local elected representatives and in particular the use of the state of emergency to increase the possibilities for intervening in the operation of Turkish local authorities.

27. The possibility of systematically replacing arrested or dismissed mayors with appointed officials is particularly symptomatic of the weakening of local democracy in Turkey. In the largest municipalities, the decision is taken by the governor – who may assign the task of “trustee”¹³ to one of his vice-governors – and in the smaller municipalities by the vice-governors (“caimakan”) themselves. Those appointed are usually local government officials but, in particular in the case of the replacement of municipal council members, individuals who are close to, or are members of, the ruling party, have replaced the arrested or dismissed elected representatives.

28. The meetings which the Congress delegation held during its visits were particularly informative regarding the way in which the new measures concerning mayors and municipal councillors have been applied. In succession, the delegation met the “caretaker mayor” of Diyarbakir, several legal experts, including the lawyers of the arrested or dismissed elected representatives, local elected representatives from the HDP, the main elected representative of the AKP at local level, the governor of Diyarbakir, members of the Union of Municipalities of South-East Anatolia and civil society representatives.

29. In November 2016, the two “co-mayors” of the city of Diyarbakir were placed in detention. They were replaced by a “caretaker mayor” appointed by the government, who himself is a former vice-governor and who heads the municipality with the assistance of five appointed administrative officials, without convening the municipal council. Many staff have been suspended or dismissed. The new security cordon around the town hall makes normal access to municipal services very difficult.

30. The delegation’s attention was drawn to the special case of the dismissals of “co-mayors”, 90 of whom have been dismissed and imprisoned according to the Union of Municipalities of South-East Anatolia.¹⁴ The majority of them are women.

31. The term “co-mayor” does not appear in Turkish legislation. The practice was introduced in municipalities in the Kurdish region after the last local elections, with a view to promoting gender parity, having both a female and male elected representative at the head of each municipality. According to the Vice-Minister of the Interior,¹⁵ the authorities in Ankara had tolerated this practice for the sake of conciliation. The “co-mayors” were particularly active in seeking to change management methods and encourage greater decentralisation.

32. Some of the interlocutors drew the attention of the Congress’ delegation to some of the first measures adopted by the appointed mayors, such as the closure of crèche facilities and refuges for women victims of domestic violence, which are contrary to the recommendations of the Committee of the Parties to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, the ‘Istanbul Convention’), currently chaired by Turkey.

12 [CommDH\(2016\)35. Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, 7 October 2016](#)

13 “Kayyum” in Turkish, translated as “trustee” in English. Some official texts use the term “caretaker”.

14 As of 31 January 2017.

15 The Congress’ delegation met Mr Sebahattin ÖZTÜRK on 20 Decembre 2016.

33. Among the “co-mayors” who have been imprisoned, mention should be made of a member of the Congress, Ms Nurhaya ALTUN, “co-mayor” of Tunceli, who was arrested on 17 November 2016, shortly after her participation in the 31st plenary session of the Congress, and who is detained in Kocaeli F-type prison.¹⁶

34. In addition to elected representatives, the work of the Congress has also been affected by the travel restrictions imposed on academics in the wake of the attempted coup. A Turkish member of the Congress Group of Independent Experts was unable to attend the 2016 annual meeting of the Group held on 22-23 September, having not received the required authorisation to travel to Strasbourg.

3. THE LEGAL BASIS FOR THE DISMISSALS

35. The rapporteurs refer to the memorandum¹⁷ drawn up by the Commissioner for Human Rights following his visit to Ankara from 27 to 29 September 2016. The legal context in which the dismissals of elected mayors and, above all, their replacement by mayors appointed by the central authorities took place needs to be examined. It is also necessary to assess the impact of these dismissals with regard to the ratification of the European Charter of Local Self-Government by Turkey.

A. General legal remarks

36. The Turkish Constitution, which was adopted by referendum on 7 November 1982, includes provisions on preventing or punishing “abuse of rights”. These provisions are actually much more detailed than in most European constitutions.

Examples include:

- Chapter 1, Section III, of “Part 2 (“Fundamental Rights and Duties)” is entitled “Prohibition of abuse of fundamental rights and freedoms”, under which Article 14 provides that “None of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights (...)”. Moreover, before the rights are even set out, Article 15 (“Suspension of the exercise of fundamental rights and freedoms”) provides that “In times of war, mobilisation, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating [from] the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated”.
- Chapter IV, “Political Rights and Duties”, includes a provision that “the statutes and programmes, as well as the activities of political parties shall not be contrary to the independence of the State, its indivisible integrity with its territory and nation (...)”.
- States of emergency are dealt with in Articles 119 to 121 in Chapter 2 (“The Executive Power”) of Part 3 (“Fundamental Organs of the Republic”). A state of emergency may be declared, in particular “in the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence (...)” for a period not exceeding six months but which may be extended for successive periods of four months. The introduction and extension of a state of emergency must be approved by the Grand National Assembly. During the state of emergency, “the Council of Ministers, meeting under chairpersonship of the President of the Republic, may issue decrees having the force of law on matters necessitated by the state of emergency” (Article 121).

37. A state of emergency entails significant restrictions on the possibilities for judicial review. In particular, restrictions may be placed on the conditions for application of stays of execution of administrative acts (Article 125 of the Constitution). Moreover, decree laws are neither administrative nor legislative acts. Therefore they cannot be not subject to appeal in practice or in law. Article 148 on the Constitutional Court is worded accordingly and provides that “decrees having the force of law issued during a state of emergency, martial law or in time of war shall not be brought before the Constitutional Court alleging their

¹⁶ As of 31 January 2017.

¹⁷ [Commissioner for Human Rights, Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, October 2016](#)

unconstitutionality as to form or substance". The Decree Law No. 674 of 1 September 2016 was issued under this legislation. The conformity of this Decree with the requirements of the Constitution has not yet been established.¹⁸

38. Questions may, however, be asked about it being used as a means of introducing measures restricting local self-government by replacing elected representatives with appointed officials. Article 15 of the Constitution stipulates that emergency decrees should not violate Turkey's obligations under international law, which must include its undertakings as a State party to the European Charter of Local Self-Government. Emergency decrees, by nature, should only apply for the duration of the State of Emergency and should therefore not seek to modify other laws, which would then give them a permanent effect.¹⁹

39. The delegation was told that the proposal to replace the dismissed elected representatives by appointed officials had been put forward in parliament in the first half of 2016, but had been withdrawn before the summer because of the reservations expressed by the four political groups. The measure was subsequently introduced by emergency decree after the attempted coup on 15 July 2016.

40. Interlocutors of the rapporteurs said that the decree law should only have been used in connexion with the failed coup attempt and the search for those responsible.

41. The dismissals and replacements of mayors must be seen in the context of tens of thousands of dismissals of judges, prosecutors, military personnel and civil servants and the closure of NGOs and media outlets.

42. In this respect, like the other categories of individuals concerned, the mayors have suffered on account of an inadequate definition of terrorist offences and, as the Commissioner for Human Rights pointed out in his report, the "very far-reaching, almost unlimited discretionary powers" introduced by the decree laws "for administrative authorities and the executive in many areas, by derogation from general principles of rule of law and human rights safeguards ordinarily applicable in a democratic society". For instance, the delegation was told that the replacement of municipal councillors in certain municipalities in the south-east had altered the majority within the councils.

43. The measures taken against local elected representatives under the state of emergency can be likened to a new stage in a kind of "recentralisation". These measures risk infringing the exercise of local democracy in Turkey, moving the country away from its commitments in terms of implementation of the European Charter of Local Self-Government.

B. Evolution of tutelage in Turkey and the European Charter of Local Self-Government

44. Without going back over the reservations expressed by all the successive regimes since the proclamation of the republic in respect of any claims for autonomy, Article 127 of the Constitution still shows clear mistrust of local self-government: "Loss of status and objections regarding the acquisition of the status of elected organs of local administrations shall be decided by [the] judiciary. However, as a provisional measure until the final court judgment, the Minister of Internal Affairs may remove from office those organs of local administration or their members against whom an investigation or prosecution has been initiated on grounds of offences related to their duties".

45. Furthermore, according to Article 127 of the Constitution, "The central administration has the power of administrative tutelage over the local administrations in the framework of principles and procedures set forth by law with the objective of ensuring the functioning of local services in conformity with the principle of the integrity of the administration, securing uniform public service, safeguarding the public interest and meeting local needs properly".

¹⁸ Venice Commission, Opinion on Emergency Decree Laws nos. 667-676 adopted following the failed coup of 15 July 2016 in Turkey (Opinion No. 865/2016)

¹⁹ Venice Commission, Opinion on Emergency Decree Laws nos. 667-676 adopted following the failed coup of 15 July 2016 in Turkey (Opinion No. 865/2016)

46. This mistrust therefore extends far beyond the issue of the state of emergency, and the Congress of Local and Regional Authorities' repeated calls for the supervision to be relaxed and reduced have not been acted upon.²⁰ No constitutional reform programme seems to be planned at present regarding this aspect.

47. On the contrary, it could be said that the most recent local and regional government reforms have gone in the opposite direction. The 2012 reform transforming 30 of the country's 81 provinces into "metropolitan areas" considerably boosted the powers of central government by assigning it responsibility for co-ordination.

48. Article 22 of the Decree Law of 1 September 2016 complements this trend by permanently introducing a new article to the law on provincial administration requiring provincial authorities, municipal authorities, villages and other public institutions to respond to governors' requests concerning their infrastructure and related installation decisions.

49. According to the opinion issued before the coup by the Venice Commission rapporteurs²¹ on the legal framework governing curfews in Turkey, the Turkish authorities acknowledged themselves that they would have preferred to employ a broad interpretation of Law No. 5442 on Provincial Administration (Article 11 c) rather than refer to the constitutional rules on the declaration of a state of emergency. This clearly reflects an underestimation of the generally accepted spirit of the Charter, which must govern the relations between central government and local authorities.

50. The issues relating to the implementation of the measures under the state of emergency affect several provisions of the Charter directly or indirectly and must therefore be assessed in the light of those provisions, even though other equally legitimate and serious considerations must be taken into account, namely the state of insecurity in Turkey and the need to maintain the proper functioning of the public authorities.

51. However, the action taken by Turkey to safeguard democracy and its institutions should be appropriate and proportional. The rapporteurs emphasised that point to their discussion partners from the government.

52. The situation created by the state of emergency and the decrees adopted in this context affect certain articles of the Charter, and notably:

- The Preamble to the Charter itself, in particular the clause that "local authorities are one of the main foundations of any democratic regime", which means that an effective role must be defined for them in the structure of the state and citizens must be able to take part in their administration.
- Article 3, which provides that local authorities' effective right and ability to manage their own affairs requires "councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage."
- Article 4, para. 4: "Powers given to local authorities [...] may not be undermined or limited by another, central or regional, authority except as provided for by the law". This means that if exceptional measures have to be taken, they must be temporary in nature and ratified by the legislative body, namely parliament, at the earliest opportunity.
- Article 7: "The conditions of office of local elected representatives shall provide for free exercise of their functions [...] Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles."
- Article 8: "Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute [...] Administrative supervision [...] shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect."

²⁰ [Congress Recommendation 301 \(2011\)](#) and [Explanatory memorandum on the situation of local and regional democracy in Turkey, CG20\(6\)](#)

²¹ [CDL-AD\(2016\)010 – Turkey – Opinion on the legal framework governing curfews, 14 June 2016](#)

- Article 9, which establishes local authorities' entitlement to "adequate financial resources of their own, of which they may dispose freely within the framework of their powers."
- Article 11, which establishes the existence of a "right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation." Admittedly, Turkey did not ratify this article, but this obligation is based, first of all, on a more general one under ordinary law (and also international law), i.e. the obligation to afford all citizens the right to an effective legal remedy, which may only be restricted on a temporary basis and in a limited manner as provided for in the European Convention on Human Rights.

53. This last provision of the Charter is particularly relevant today since there have been many accounts of individuals being arrested and detained without there being sufficient charges against them. Given their suddenness alone, the mass "purges" of national and local administrative bodies and even judicial bodies (some 3,000 judges and prosecutors) could not have been carried out in accordance with the fundamental principles of individual offences and penalties and the presumption of innocence.

APPENDIX

Programme of the first visit (3-4 October 2016)

**Monday 3 October 2016
Ankara**

- 10:15 – 12:00** **Meeting with AKP members**
- **Erol KAYA**, Vice-President of AKP responsible for local authorities, MP and former mayor
 - **Hayrettin GUNGOR**, Secretary General of UMT
- 14:00 – 15:30** **Meeting with HDP members**
- **Hişyar OZSOY** – MP for Bingol, Vice co-chair of HDP
 - **Gülnar KISANAK** - Co-chair of GABB and Mayor of Diyarbakır Metropolitan Municipality
 - **Tuncer BAKIRHAN** - Co-chair of GABB and Mayor of Siirt
 - **Gülistan AKEL** - Dismissed Co-mayor of Batman
 - **Serra BUCAK** - Member of the Congress and member of municipal assembly of Diyarbakır
- 16:00 – 18:30** **Meeting with CHP members**
- **Seyit TORUM**, MP, Vice-chairman responsible for local government
 - **Kemal KILICDAROGU**, MP, CHP General President
- 19:00 – 20:00** **Meeting with diplomats**, hosted by **Kees VAN RIJ**
Ambassador of the Netherlands

**Tuesday 4 October 2016
Ankara**

- 10:30 – 12:00** **Meeting with Ulas BAYRAKTAR**, Mersin Universitesi, Dept. Public Administration, member of the Group of Independent Experts on the European Charter of Local Self-Government
- 12:30 – 14:00** **Lunch with Rusen KELES**, Former member of the Group of Independent Experts on the European Charter of Local Self-Government
- 14:30 – 16:30** **Meeting with Sadir DURMAZ**, MP, Deputy Leader of the MHP Party

Programme of the second visit (18-20 December 2016)

Sunday 18 December 2016 Istanbul

- 20:30** **Dinner with**
 - **Hasan AKGUN**, Member of the Congress, and Mayor of Büyükçekmece / Istanbul
 - **Yavuz MILDON**, former President of the Congress
 - **Abdülhamit PEHLİVAN**, Director of International Relations
 - **Erkan AKYOLLU**, Advisor of International Relations

Monday 19 December 2016 Diyarbakır

- 12:30 - 13:30** **Meeting with Cumali ATILLA**, Caretaker Mayor of Diyarbakır
13:45 - 14:45 **Lunch with lawyers representing imprisoned mayors**
15:00 - 16:00 **Meeting with HDP local elected representatives**
16:15 - 16:45 **Meeting with AKP local elected representatives**
17:00 - 18:00 **Meeting with Huseyin AKSOY**, Governor of Diyarbakır
18:15 - 19:15 **Meeting with Union of Southeastern Anatolia Region Municipalities (GABB)**
19:30 - 20:30 **Meeting with civil society representatives**

Tuesday 20 December 2016 Ankara

- 10:30 - 12:00** **Meeting with Sebahattin ÖZTÜRK**, Vice Minister of the Interior
12:15 - 13:45 **Lunch with diplomats based in Ankara**, hosted by **Lars WAHLUND**, Ambassador of Sweden
14:00 - 15:00 **Meeting with Selahaddin MENTES**, Deputy Under-Secretary of the Ministry of Justice
15:30 - 16:30 **Meeting with Hayrettin GÜNGÖR**, Secretary General, Union of Municipalities of Turkey