

The Congress of Local and Regional Authorities



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Local and regional democracy in Turkey

Monitoring Committee

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Summary

The purpose of this report on the situation of local and regional democracy in Turkey is to continue the monitoring of Turkey's obligations according to the European Charter of Local Self-Government that was undertaken in 2005.

In the light of visits to Turkey in 2008 and 2009 and the 2007 fact-finding mission on Southeast Anatolia, the report concludes that progress towards the reforms called for in 2005 has been particularly slow.

It is recommended that Turkey continue constitutional reforms towards decentralisation, notably by removing administrative tutelage and allowing the use of languages other than Turkish in the provision of public services. Turkey is encouraged to reduce the involvement of Governors in the Special Provincial Administrations and to carry through proposed reforms, especially the Villages Law and Revenues Law.

¹L: Chamber of Local Authorities / R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: European People's Party – Christian Democrats of the Congress
SOC: Socialist Group of the Congress
NR: Members not belonging to a Political Group of the Congress



A. DRAFT RECOMMENDATION²

1. The Congress of Local and Regional Authorities of the Council of Europe recalls that Turkey has been a member of the Council of Europe since 9 August 1949 and ratified the European Charter of Local Self-Government on 9 December 1992, with accession taking effect on 1 April 1993;

2. Refers to:

a. Article 2 para. 1b, of Statutory Resolution CM/Res(2007)6, which provides that one of the functions of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, para. 3 of Statutory Resolution CM/Res(2007)6, which provides that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Congress Resolution 299 (2010), which states that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities;

3. Recalls that the state of local and regional democracy in Turkey has been the object of a number of monitoring and fact-finding missions conducted by the Congress which have produced the Report³ and Recommendation 29 of 1997; an Information Report⁴ in 2001, a Report⁵ and Recommendation 176 of 2005 and the Information Report CG/INST (8) 27 in 2001. In addition, a special Congress fact-finding delegation went to Turkey in 2007 to investigate the situation in Sur/Diyarbakir and this resulted in Recommendation 229 (2007);

4. Takes note of the monitoring report on local and regional democracy in Turkey (CG/MON(19)5REV1) drawn up by the rapporteurs Mr Anders Knape (Sweden, L, EPP/CD), Vice President of the Congress, and Mr Herwig van Staa (Austria, R, EPP/CD), Chairman of the Institutional Committee⁶ of the Chamber of Regions, following three official visits to Turkey from 25 to 27 February 2008, 12 to 14 January 2009 and 10 to 11 May 2010. The rapporteurs were assisted in their task by Professor Chris Himsworth, consultant, Vice-Chairman of the Group of Independent Experts on the European Charter of Local Self-Government;

² Preliminary draft recommendation approved by the Monitoring Committee on 17 February 2011.

Members of the Committee:

L. O. Molin (President), *M. Abuladze*, *U. Aldegren*, *K. Andersen*, *L. Avetyan* (alternate: *E. Yeritsyan*), *A. Babayev*, *M. Barcina Angulo*, *V. Belikov*, *G. Bergemann* (alternate: *C. Vosschulte*), *M. Bepalova*, *P. Bosch I Codola*, *Z. Broz*, *A. Buchmann*, *X. Cadoret*, *M. Capdevila Allares*, *S. Carugo*, *D. Chichinadze*, *I. Ciontolo*, *B. Collin-Langen*, *M. Cools*, *J. Costa*, *D. Çukur*, *L. Dellai*, *M. De Lamotte*, *G. Doğanoglu*, *M. Fabbri*, *M. Gaju*, *V. Gebel*, *G. Geguzinskas*, *S. Glavak*, *S. Guckian*, *M. Guegan*, *M. Gulevskiy*, *H. Halldorsson*, *D. Heatley*, *J. Hepburn*, *B. Hirs*, *J. Hlinka*, *C. Hughes*, *A. Ibrahimov*, *J. Jalinska* (alternate: *M. Juzupa*), *S. James*, *A. Jaunsleinis* (alternate: *N. Stepanovs*), *M. Jegeni Yıldız*, *J-P Klein*, *I. Kulichenko*, *O. Arild Kvaløy*, *J. Landberg* (alternate: *M. Juhkamî*), *F. Lec*, *J-P Liouville*, *I. Loizidou*, *M. Magomedov*, *P. Mangin* (alternate: *J-M Belliard*), *T. Margaryan*, *G. Marsan*, *H. Marva*, *V. Mc Hugh*, *M. Merrill*, *I. Micallef*, *I. Michas*, *T. Mikus*, *K. Miskiniene*, *G. Mosler-Törnström*, *A. Muzio*, *A. Ocana Rabadan*, *V. Oluiko*, *R. Paita*, *G. Pieper*, *H. Pihlajasaari*, *G. Pinto*, *C. Radulescu*, *R. Rautava* (alternate: *S. Ruponen*), *H. Richtermocova*, *A. Rokofillou*, *D. Ruseva*, *S. Sallaku*, *V. Salygin*, *V. Sau*, *J. Sauwens*, *P. Schowtka*, *W. Schuster*, *D. Shakespeare*, *P. Shatri*, *M. Tamiros*, *A. Torres Pereira*, *V. Udovychenko*, *A. Ugues*, *G. Ugulava* (alternate: *P. Zambakhidze*), *A. Uss*, *V. Varnavskiy* (alternate: *A. Borisov*), *P. Van Der Velden*, *L. Vennesland*, *L. Verbeek*, *H. Weninger*, *K. Whitmore*, *J. Wiene*, *U. Wüthrich-Pelloli*, *N. Zeybekci*, *J. Zimola*, *D. Zmegac*.

N.B.: The names of members who took part in the vote are in italics.

Secretariat of the Committee : *S. Poirel*, *S. Cankocak* and *L. Nikoghosyan*

³ CG(4) 3 Part II.

⁴ CG/INST(8) 27.

⁵ CG(12) 25.

⁶ Following the Congress reform, the monitoring activities carried out by this Committee were taken over by the Monitoring Committee set up on 1st December 2010.

5. Thanks the governmental authorities, the Turkish Congress delegation and its Secretariat, elected representatives of municipalities of Turkey, the Turkish Union of Municipalities and the representatives of the Marmara Union of Municipalities, academics and representatives of political parties, non-governmental organisations and the international community in the country for the information provided and comments made during and after their meetings with the delegation;

6. Acknowledges the commitment by the Turkish government towards institutional change until 2005 and the legislative reforms carried out and started in this context and the fact that some of the reform projects have been continued;

7. Acknowledges the Turkish government's commitment to address the Kurdish issue through its Democratic Initiative.

8. Notes with regret the following problems in the functioning of local and regional democracy in Turkey:

a. the period of rapid legislative developments in 2004-2005 has been followed by a period of reduced activity and the pace of reforming change in the field of local and regional democracy has slowed;

b. the provisions on administrative tutelage have been maintained in Article 127 of the Turkish Constitution and other laws and thus remain an obstacle to the general Turkish decentralisation project;

c. the way that the existing criminal and anti-terrorism legislation is being implemented has a disproportionately destructive effect on the functioning of local and regional democracy in Turkey and the human rights of local and regional elected representatives;

d. no steps have been taken to implement Congress Recommendation 229 (2007), namely to permit municipal councils to use languages other than Turkish in the provision of public services when appropriate and to reform the Municipality Law to allow mayors and municipal councils to take "political" decisions without fear of proceedings being taken against them;

e. the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, the Charter for Regional and Minority Languages and the Framework Convention for the Protection of National Minorities have not been signed and ratified by Turkey;

f. the new Villages Law has not yet been finalized despite the fact that many former municipalities have lost that status and become villages through the recent Law on Establishing Districts in the Borders of Metropolitan Municipalities and Making Amendments in Some Laws No. 5747 of 2008;

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

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

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

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

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

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

9. *The Congress recommends that the Committee of Ministers* invite the Turkish authorities to:

a. take steps, as part of the efforts undertaken towards further Constitutional reform, which we are confident are continuing, to improve the constitutional environment for strengthening decentralisation in the country, including the abolition of administrative tutelage maintained by both the Constitution and other laws and the introduction of greater freedom to use languages of choice in the public services;

b. take steps, as part of the efforts undertaken towards reform of the institutions and procedures of the criminal and anti-terrorism law, to reduce the vulnerability of the system of local and regional democracy to the impingement on the human rights of local and regional elected representatives;

c. complete the drafting and enactment of the new Villages Law;

d. implement the proposals for a new Revenues Law in respect of municipalities, Special Provincial Administrations and villages;

e. pursue the Government's Democratic Initiative, and in this context to implement Congress Recommendation 229 (2007), namely to permit municipal councils to use languages other than Turkish in providing public services and to reform the Municipality Law to allow mayors and municipal councils to take "political" decisions without fear of proceedings being taken against them;

f. take the necessary steps to reduce the involvement of Governors in the work of Special Provincial Administrations and the influence of Governors over the Special Provincial Administrations operations. This should include a removal or at least reduction of their influence in the Union of Special Provincial Administrations;

g. amend the law to restrict the grounds on which Ministry approval of overseas links for municipalities and Special Provincial Administrations may be withheld;

h. consider the re-examination of Turkey's obligations under the Charter of Local Self-Government with a view to the removal of the reservations entered in respect of many of its terms;

i. take steps to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No.207);

j. take steps to sign and ratify the Framework Convention for the Protection of National Minorities (CETS No.157);

k. take steps to sign and ratify the European Charter for Regional or Minority Languages (CETS No.148);

l. take the lead in further encouraging, through its training programmes and other means, the strengthening and support for the decentralisation programme;

m. change the law which imposes on municipalities compulsory membership of the Union.

10. *The Congress recommends that the Union of Turkish Municipalities take the lead in raising consciousness among its members in relation to their rights guaranteed under the Charter.*

11. *It recommends that the Parliamentary Assembly take account of the preceding observations and recommendations in monitoring the extent to which the commitments undertaken by Turkey have been honoured.*

B. EXPLANATORY MEMORANDUM

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I. Introduction

1. According to Article 2.3 of Statutory Resolution CM/Res(2007)6 of the Committee of Ministers of the Council of Europe, the Congress of Local and Regional Authorities (hereinafter "the Congress") shall prepare monitoring reports on the situation of local and/or regional democracy in the member states and in states which have applied for membership, on a regular basis.⁷ Monitoring standards are derived from the European Charter of Local Self-Government (CETS No.122). In respect of regional government, the Council of Europe's Reference Framework for Regional Democracy (November 2009)⁸, is also taken into account.

2. The state of local and regional democracy in Turkey has already been the object of a number of monitoring missions conducted by the Congress. These have produced the Report⁹ and Recommendation 29 of 1997; an Information Report¹⁰ in 2001 produced as a "Follow up" to

⁷ The Republic of Turkey joined the Council of Europe on 9 August 1949. It ratified the European Charter of Local Self-Government (hereinafter "the Charter") which came into force in respect of Turkey on 1 April 1993. It is represented in the Council of Europe's Congress of Local and Regional Authorities of Europe with 12 seats: six in the Chamber of Local Authorities and six in the Chamber of Regions.

⁸ This is not a binding text, but rather a set of guiding principles of regional democracy, adopted by the Council of Europe Conference of Ministers responsible for Local and Regional Government in Utrecht on 17 November 2009.

⁹ CG(4)3 Part II.

¹⁰ CG/INST(8)27.

Recommendation 29 (1997); and a Report¹¹ and Recommendation 176 of 2005. Although these monitoring projects all had the general purpose of examining the state of local and regional democracy in Turkey, a more specific recurring theme has been the particular conditions in the South-East of the country. These were a concern in the Report and Recommendation of 1997 and they, in large measure, prompted the need for the Information Report CG/INST(8)27 in 2001. In addition, a special Congress fact-finding delegation went to Turkey in 2007 to investigate the situation in Sur/Diyarbakir and this resulted in Recommendation 229 (2007).

3. In respect of the current monitoring process, Anders Knape (Sweden, EPP/CD) was reappointed as Rapporteur for local democracy and Hans-Ulrich Stöckling (Switzerland, ILDG) as Rapporteur for regional democracy. When Mr. Stöckling ceased to be a member of the Congress in November 2008, he was replaced as Rapporteur for regional democracy in Turkey by Herwig Van Staa (Austria, EPP/CD).

4. During their visits to Turkey in February 2008, January 2009 and May 2010, the Congress monitoring delegation met a number of representatives of the Turkish authorities at local, regional and central level (Government and Parliament), the national associations of the local and regional authorities (the Union of Municipalities and the Union of Special Provincial Administrations) as well as experts and representatives of non-governmental organisations and of the international community in Turkey (for detailed programmes of the three visits see appendix).

5. In carrying out their task, the Rapporteurs were assisted by Prof. Chris Himsworth, consultant (UK), Vice-Chairman of the Group of Independent Experts on the European Charter of Local Self-Government, and Tim Lisney (Congress Secretariat).

6. This report was prepared on the basis of the information received during the three visits to Turkey as well as on extracts from the relevant legislation and other information and documents provided by the representatives of the Turkish authorities, international organisations and experts.

7. The Rapporteurs wish to thank all those they met in Ankara and elsewhere in Turkey and others who supplied information essential to the preparation of this report. These include representatives of the Turkish Union of Municipalities and the Marmara Union of Municipalities, the Turkish Congress delegation to the Congress, the Provincial Council of Ankara, the Ministry of Interior, the Director General of Prisons, representatives of the four political parties currently represented in the National Parliament (the AKP, the CHP, the MHP and the BDP), the İstanbul Municipal Council and Ankara Metropolitan Municipality, the Turkish representative of the Group of Independent Experts on the European Charter of Local Self-Government and other academics from Ankara University and Marmara University İstanbul, the Human Rights Association of Turkey, the Mayor of Ankara, the Mayor of Diyarbakır, the Mayor of Sur municipality, the Governor of İstanbul and the Governor and Deputy Governor of Ankara, members of Parliament and the Head of the Turkish delegation to the Council of Europe's Parliamentary Assembly, representatives of Ayas municipality and Pınaryaka village, as well as representatives of several Embassies in Ankara.

II. The scope of the 2008-2010 monitoring exercise

8. The aim of this 2008-2010 review of the state of local and regional democracy in Turkey was to continue the monitoring of the implementation of the European Charter of Local Self-Government. This requires a structuring of the current report in a way which distinguishes between general matters and those based on the situation in South-East Anatolia. Thus, in section C, there is a brief recapitulation of the contents of the 2005 Report and Recommendation on the general state of local and regional democracy in Turkey followed by the findings produced by the delegation's 2008-2010 investigations. Then, in section D, there is a similar recapitulation of the contents of the 2007 Report and Recommendation together with the findings of the delegation's recent investigations. Section E contains some general concluding remarks.

¹¹ CG(12)25.

III. The report and recommendation of 2005 on local and regional democracy in Turkey

9. The Congress Recommendation 176 (2005) fell into two sections. In section A were some general comments and recommendations on the process of reform of both local and regional (provincial) government in Turkey. The Congress recognised the “clear signs of a commitment to a substantial institutional change” by the Government, as evidenced, in particular, by the enactment of the Law on Metropolitan Municipalities 2004, the Law on Municipalities 2005 and the Law on Unions of Municipalities 2005. But other reforms (including laws on village administration, municipal revenues and the public service) were still anticipated and it was recognised that more reforming measures were required and that Turkish political circles were rather divided about the general devolution project. The Congress recommended continued progress with the reform process, in close consultation with the Association of Turkish Municipalities.

10. In section B of Recommendation 176 the Congress made a number of more specific observations and recommendations - related, in each case, to the standards required by the Charter. These included the further transfer of powers to local authorities - especially smaller municipalities and villages (para. 11); steps to be taken to ensure the recruitment by local authorities of high quality staff (para. 13); in the light of evidence of unjustified state intervention in the supervision of local authorities (including the suspension and dismissal of mayors), the changing of Article 127 of the Turkish Constitution to ease state tutelage of local authorities (para. 15); the need for the reform of provision of financial resources for local authorities to bring Turkey into line with Article 9 of the Charter - authorities had insufficient financial resources and were too dependant on central government grants (para. 17); the need for greater use of local authorities’ consortia and unions to improve service delivery especially by small municipalities; for the Association of Turkish Municipalities to become a permanent partner of central government and for the requirement of Ministry authorisation for a municipality to join an international organisation to be lifted (para. 20).

11. On provincial administration, the Congress acknowledged progress in the removal of governors from the presidency of provincial general councils and the restructuring of provincial executive committees but took the view that the central state retained a significant degree of control over provinces and recommended that there should be greater decentralisation at provincial level and an expansion of provincial capacities (para. 22).

12. Mr Zekeriya Sarbak, Deputy Under-Secretary in the Ministry of the Interior, used his speech at the Congress Session of Spring 2008 (13 March) between the first and second visits to Turkey, to provide an official update on general developments in local and regional government in Turkey since 2005, with specific reference to points raised in the Congress Recommendations including Recommendation 176 (2005). He mentioned, *inter alia*, the draft law on revenues discussed below and the continuing work on a villages law. Supervision of authorities had been redefined and new instruments “introduced to ensure transparency and accountability in the functioning and decision-making processes of local authorities”. The contribution of the Law on Unions of Local Authorities was also referred to, as well as the operation of Article 127 of the Constitution.

13. In the light of the findings and recommendations of 2005, the principal focus of the rapporteurs’ investigations in 2008-2010 was on the extent of change in the laws and the institutions and practice of local and regional government in Turkey during the intervening period. They were concerned, in particular, to ascertain whether progress had been made towards greater Charter compliance in the areas found to be deficient in 2005. In the following paragraphs, they list their principal findings.

Constitutional reform

14. Although there have been some constitutional amendments in relation to other topics since 2005, there have been no amendments affecting local or provincial government. In particular, there has been no amendment of Article 127 and nor is any such specific amendment currently proposed. Instead, the focus seemed initially to be on the drafting of an entirely new Constitution for Turkey pursuant to earlier election undertakings by the ruling Justice and Development Party (AKP) in the course of which improved provision for the position of local and provincial government would be made. The rapporteurs were given to understand that a draft of a new Constitution had been produced by committees close to the AKP and this process was referred to by Mr Şarbak in his speech to the Congress in March 2008 (para. 12 above). However, it became apparent during the visit to Turkey in

January 2009 that progress towards a new Constitution was on hold. There had been political events in Turkey which had taken priority and which had tended to reduce the prospects for the cross-party co-operation which would greatly assist constitutional discussions.

15. More recently, however, a substantial package of constitutional reforms has been agreed by the Turkish Parliament. In early May 2010 amendments were approved, subject to a referendum proposed for July, which would reform, among others, the constitutional provision made for military courts, and appointments to the Constitutional Court and to the Higher Council of Judges and Prosecutors. A proposal to reform the constitutional rules for the banning of political parties was, at the same time, rejected by the Parliament. It is conceivable that the judicial reforms, if approved, might have some indirect effects for the conduct of local and regional self-government but none of the reforms is directly relevant to the concerns of the rapporteurs. In particular, no amendment to Article 127 has been proposed. The tutelage provision in Article 127 has a negative impact on the general Turkish decentralisation project. As noted below (para. 16), other existing constitutional provisions have been (in 2008) a barrier to specific reforms (the ombudsman and the transfer of functions to Special Provincial Administrations (SPAs)).

Legislative and structural reform

16. As mentioned above, the period prior to the 2005 Report and Recommendation was one of great legislative activity – although, in some cases, implementation was slowed or halted by challenges in the Constitutional Court. Since then, however, the pace has slowed. The law anticipated in 2005 on municipal revenues has not yet been enacted, although a more limited Law on Allocations from Tax Revenues under the General Budget to Special Provincial Administrations and Municipalities (Law No. 5779 of 2008) was enacted (see paras 35 and 41 below) and came into force on 1 July 2008. Five years on, the delegation has been informed that more radical reform (including new sources of own revenues for municipalities and SPAs) is still in the pipeline. The rapporteurs understand that there are no present plans to enact a new law on the public service (as also anticipated in 2005) - but see below (para. 28) for the Regulations on the Principles and Standards Governing Staff Structures issued in February 2007. In 2004 the Institutional Law on Public Administration was passed by the Parliament but was returned by the President on the grounds that many provisions were unconstitutional, mainly because of conflict with the principle of the indivisibility of the state. However, some of that draft Law's provisions have since been enacted into law. Rules on internal audit are in the Public Financial Management and Auditing Law (No. 5018). Provisions to transfer responsibility for museums as well as the Directorates for Sports and Youth to the SPAs are being planned. Constitutional amendment will be required before the Agriculture and Health Directorates can be transferred. Similarly, it has been established that constitutional amendment will be required before the post of ombudsman can be established in Turkey.

17. Another recent enactment has been the Scale Reform Law (Law on Establishing Districts in the Borders of Metropolitan Municipalities and Making Amendments in Some Laws No. 5747 of 2008). This Law was a further response to the position recognised in the Municipalities Law of 2005 (No 5393) which was that many municipalities in Turkey were too small to discharge their statutory functions effectively. Article 4 of that Law raised from 2000 to 5000 the minimum population for the establishment of a new municipality. Now the Law of 2008 was supposed to remove all municipalities of under 2000 population – although this been only 10% achieved, in part, at least, because of judicial decisions, and further progress has been abandoned, with reliance instead being placed on the use of unions for service provision in smaller municipalities. In addition all “first-tier” municipalities within the areas of metropolitan municipalities have been merged with district municipalities. In certain respects, the date of effect of these reforms was delayed by constitutional challenge.

18. In general, these reforms appear not to have been controversial. The need for restructuring was widely recognised. The rapporteurs, however, have four observations:

- (a) They are not satisfied that, given the extent of these reforms, the numbers of local authorities affected and the numbers of people affected, there was adequate consultation in accordance with Article 5 of the Charter.
- (b) They received complaints in some quarters about the new municipality boundaries introduced by the Law. On the one hand it may be the case that some newly formed district municipalities include

areas and populations which are separated by other municipalities, which may, in turn, complicate service provision.

(c) They also received complaints that the drawing of the new municipal boundaries may have been manipulated for party political advantage.

(d) The fact that many former municipalities have now lost that status and become villages strengthens even further the case for reform of the Villages Law (see paras. 19 and 20 below).

19. It is understood that the Ministry of the Interior has in recent years been preparing a new Villages Law. A draft has been written and there have been consultations within and outside Government. It is expected that the draft will be formally adopted by the Government in the coming months and will then be introduced into the Parliament.

20. Although the Congress delegation has not seen a draft of the Law, it is understood that it will reform the organisational structures, the functions and the funding of villages. It is also expected to enable co-operation between smaller villages in the delivery of services. The details of this Law, when eventually promulgated, will be very important. One question is whether its coverage will include the small settlements outside villages. If not, those may be left with no local self-government below the level of the SPA.

21. Already achieved in 2005 was the enactment of the Law Abolishing the Directorate General of Village Affairs and Amending Certain Laws (No 5286). The central Directorate General of Village Affairs was abolished and the services it had discharged were transferred to the metropolitan municipalities in the Provinces of İstanbul and Kocaeli and to the special provincial administrations in the other provinces. The impact of this reform is discussed below (para. 41).

The powers/responsibilities of municipalities and villages¹²

22. As mentioned above, a concern in 2005 related to the weakness of municipalities (especially smaller municipalities) and of villages in terms of their powers and responsibilities. In the case of villages (where legislative reform has not yet been enacted), the rapporteurs believe that little has changed. This is serious because, although there have been substantial population shifts in Turkey in recent decades, there is also a substantial continuing rural population. Around 12 m people (17% of the total population) live in villages of which there are about 34,000 - with a further 47,000 smaller settlements. In those areas where there is no municipal government, village government is the only local self-government that exists below the level of the (regional) provincial government. If village government is weak or non-existent, then there can be no Charter-compliant local self-government in these areas. The impression of the rapporteurs is that, whether within or outside municipal areas, village government continues to be very weak both institutionally and financially. There are no guaranteed sources of revenue (although the salaries of *muhtars* – Headmen - but not councillors are paid by Central Government, via the Special Provincial Administrations) and reliance is placed on help with equipment etc. from the Governor/municipality.

23. The delegation is aware of two projects launched by the Ministry of the Interior to try to improve the delivery of local services in villages, in particular the provision of drinking water and roads. The Köydes project (2005) for villages and the Beldes project (2007) for municipalities with less than 10,000 inhabitants have provided funding to enable provincial and district governors as well as special provincial administrations to make additional provision for these services). In the case of Köydes, the full allocations have been 200 million TL in 2005, 2 billion TL in 2006, 2 billion TL 2007, 500 million TL in 2008, 500 million TL in 2009, and 525 million TL in 2010. In the case of Beldes, 300 million TL was allocated in 2007. There are differing views on the extent to which these projects actually assist in the creation of stronger local self-government. It can be argued that they do help because the Projects give rights to local elected people such as *muhtars* and members of special provincial assemblies to select the works which will be funded. These elected people can also determine the works which may be financed with the surplus, in comparison with the previous situation in which works were determined centrally by the Directorate General of Village Affairs. In order to guarantee transparency,

¹² Special Provincial Administrations are discussed in para 41 below.

the rapporteurs call on the Turkish authorities to continue to supervise closely these projects while allocating the funds and to carry out necessary investigations in case of complaints of discrimination.

24. As with the villages, the impression of the rapporteurs is that the actual working competences of small municipalities in Turkey are rather limited. This is, of course, an issue which is closely related to that of financial provision and to provision for co-operative working between municipalities (see paras. 34 and 36 below). A concern in 2005, which seemingly continues into 2010, is the position of those municipalities which are within the area of metropolitan municipalities. From the rapporteurs' observations of a rural area north of Ankara, service delivery in some small municipalities is very weak indeed. This is, of course, something which may improve with the abolition of the smallest municipalities under the Scale Reform Law 2008 (see para. 17 above).

25. The standard functions of municipalities are set out in Article 14 of the Municipalities Law as follows:

Mandatory functions:

Provided that these services are of a local community nature, municipalities deliver, or contract out the delivery of, services in the following areas:

- urban infrastructure facilities such as town planning, water supply, sewage and transport;
- geographic and urban information systems;
- environment, environmental health, hygiene and solid waste;
- police, fire fighting, emergency, rescue and ambulance services;
- urban traffic; funerals and cemeteries; tree planting, parks and green areas;
- housing;
- culture, art, tourism, publicity, youth and sport; social services and social assistance; weddings; vocational and skills training;
- economic and commercial development;
- metropolitan municipalities and municipalities with a population of more than 50,000 open shelters for women and children.

Optional functions:

- pre-school educational establishments
- build/commission state schools at all levels and equip/repair them
- health-care facilities
- conservation of cultural and natural assets
- support of students and sports clubs and sportsmen/sportswomen
- food banking

26. A power of "general competence" originally also contained in Article 14 was annulled by the Constitutional Court.

27. The rapporteurs consider that the functions listed in para. 25 might be too daunting for the smaller municipalities in Turkey and it seems that the enactment of the Scale Reform Law and its abolition of many of them recognised the same phenomenon. It will have to be seen whether all the remaining municipalities can discharge effectively their statutory burdens. At the other end of the scale, there are many large and well-resourced municipalities which could probably handle more service provision. At present the rapporteurs do not detect any great enthusiasm for expanded powers on the part of the Union of Municipalities but, if their financial position could be improved (see paras. 34 and 35 below), the rapporteurs believe that the case for expanded powers could be made.

Staffing in municipalities

28. Concerns expressed in 2005 have been addressed, in some measure at least, by the "Regulations on the Principles and Standards Governing Staff Structure in Municipalities, their Subordinate Bodies and Unions of Local Authorities" promulgated by the Ministry of the Interior and the State Personnel Department with effect from 22 February 2007. These provide for the way in which the posts of staff employed as municipal public servants and private-law employees of municipalities are created,

altered and abolished by municipal councils. Actual appointments are made by mayors (in the case of Secretary Generals to Metropolitan Municipalities, formally by the Ministry but on the proposal of the mayor) and reported to councils. Many different specialised staff may be appointed - including, in some categories, on a part-time basis.

Administrative supervision of municipalities

29. It has already been noted that the power of administrative tutelage/trusteeship by central government over local authorities as contained in Article 127 of the Turkish Constitution is an impediment to Charter compliance. This has to remain a continuing cause for criticism until constitutional reform is undertaken. In the meantime, however, the Law on Public Financial Management and Auditing (No. 5018) makes provision for both the internal and external supervision of municipalities.

30. Internal supervision is conducted by auditors on behalf of the mayor. External supervision is conducted by the Audit Court to ensure compliance of the acts and expenditure of municipalities with the law and with their “institutional purposes, targets and plans” and to report its findings to Parliament. In addition, under para. 77 of the Law, the Minister of the Interior may/must, in the case of deterioration of the whole financial management and auditing system or where indications of obvious misuse of authority or damage to the public interest has become apparent and either at the request of the mayor or with the approval of the Prime Minister, order the competent auditors to inspect the system of financial decision-making and procedures, in respect of lawfulness. Reports go to the Co-ordinating Council for Internal Supervision and the mayor for necessary steps to be taken. Non-financial procedures are also monitored by the Ministry of the Interior in relation to the lawfulness and to “internal consistency of the administration”. Separately para. 57 of the Municipalities Law (No. 5393) enables the Ministry of the Interior to refer to a district judge a question of whether a municipality’s services are seriously disrupted in such a way as to affect adversely the population’s health, tranquillity and welfare. If the judge so finds, the minister can request the mayor to remedy the situation, failing which the provincial governor can be requested to intervene and to provide the service.

Supervision of villages

31. Under the terms of the Law on Special Provincial Administration, villages are supervised by provincial and district governors - at least half of villages must be inspected by district governors each year. Decisions of a muhtar can be set aside if “not in the village’s interests”. A muhtar who does not perform his duties “properly” can be suspended. But the governor cannot take decisions in a muhtar’s place and, if a decision is set aside, reasons must be given.

Suspension from office and the dissolution of municipal councils¹³

32. Under the terms of the Constitution, the Minister of the Interior can suspend from office “local authority organs” or their members in respect of which a criminal investigation is opened on a prosecution brought on account of an offence connected with their functions, as a provisional measure pending final judgment. A municipal council may be dissolved by the Supreme Administrative Court following notification by the Ministry of the Interior if it neglects to perform statutory functions in time and this impedes or delays the municipality’s work or it takes decisions on “political issues”¹⁴ unrelated to its functions.

33. The delegation was supplied with some facts and figures on suspensions of mayors and dissolutions of councils. It appears that, between August 2004 and November 2007, 13 mayors were suspended and, during 2006-08, 5 councils were dissolved. In May 2010, three mayors were in a state of suspension – two following convictions for bribery/corruption and court orders; one currently subject to criminal investigation, also for corruption.

¹³ See also section D below.

¹⁴ See also section D below.

Financial provision for municipalities

34. A big concern in 2005 was the lack of adequate financial provision for municipalities and too great a dependence (especially by smaller municipalities) on central government grants. Because the principal reforming Law on Revenues has not yet been enacted, this is a position that has not changed in 2010. The delegation received sustained complaints from the Association of Municipalities that, with the exception of a limited number (perhaps four) metropolitan municipalities, the level of funding was inadequate. Funding is skewed in favour of the large urban areas.

35. However, the Law on Allocations from Tax Revenues (No 5779 of 2008 - see para. 16 above) has been enacted. This has given ordinary municipalities 2.85% of the total general budget tax revenues collected. This is distributed by the Bank of Provinces by reference principally to the population of the municipality (80%) and then to its "development index"(20%). The allocation of a "development index" is done by reference to broad categories of degrees of development generated by the State Planning Organisation. The rapporteurs' understanding is that this reform has indeed benefited municipalities by up to 20-30%. On the other hand:

(a) This leaves Turkish municipalities even more heavily dependent upon centrally determined grants. Their "own resources", although theoretically derived from a wide range of local taxes and charges, amount to only a small percentage of their annual revenue. It is to be expected that this position will change significantly when the principal new Law on Revenues is enacted.

(b) Prior to Law No. 5779, Central Government power was unlimited regarding deduction of funds earmarked for local administrations, due to their accumulated debts. The new legislation improves the situation in favour of local administrations by limiting the power of the Central Government to a maximum of 40%."

Local authorities' right to associate (Art. 10 of the Charter)

36. It was already noted in Recommendation 176 of 2005 that the new Law on Associations/Unions should provide increased opportunities for local authorities to co-operate by means of consortia in the discharge of some of their functions. It appears that some such opportunities for the formation of such unions have indeed been taken and the delegation was supplied with the following figures:

Types of Union	Those whose members are all villages	Those whose members include municipalities and Special Provincial Authorities	Total
Infrastructure Unions	1	119	120
Unions of Municipalities		78	78
Drinking Water Unions	116	43	159
Irrigation Unions	105	292	397
Unions for Service to Villages Delivery	908		908
Others	6	97	103
Total	1,136	629	1,765

It is, however, difficult to assess the significance to be attached to these facts and figures.

37. The same Law now provides the statutory basis for the formation of the Union of Turkish Municipalities. This is evidently a flourishing organisation, with all 2947 municipalities as its members, whose aims and activities include the representation and defence of the interests of its members, the scrutiny of laws before and during the parliamentary process, and the training of municipality staff. The Congress delegation heard of substantial engagement by the Union in the training of municipality staff, using the Charter of Local Self-Government as a benchmark.

38. In many respects the Union has, it seems, become the permanent partner of central government in the preparation of local government policy. On the other hand, the delegation is also aware that, in relation to some recent legislative proposals (notably the draft Law on Allocations), the Union was left unconsulted. On the other hand, following discussion with both officials in the Ministry of the Interior

and representatives of the Union of Municipalities, the rapporteurs are now aware that, more recently, communications between the Ministry (and also, as necessary, some other Ministries) and the Union have improved. The Union no longer complains that it is not consulted on relevant legislative and administrative initiatives. In addition to the domestic policies and proposed legislation of the Ministry, there is a continuing need for a substantial involvement of municipalities in the EU accession process. Although there have been complaints by the Union that the Ministry supplies it with inadequate information on the Ministry's proposals, there was also an acknowledgement on the part of the Union that it is sometimes insufficiently proactive in seeking to engage fully with its Central Government counterparts. It is possible that two particular factors contribute to this situation:

(a) The current domination of both Central Government and the Union by a single political party (the AKP) may be leading to a greater use of internal contacts within the party, rather than structured consultation and discussion between the institutions.

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

39. Separately, the delegation believes that thought should be given to the repeal of the statutory requirement that all municipalities are obliged to be members of the national Union. The rapporteurs can see the advantage of this to the Union in that it automatically boosts membership and membership subscriptions. It also ensures that, when all municipalities benefit from advantages secured by Union lobbying, all are also seen to have contributed to the effort. They can also see the advantage to the Ministry in being able to claim that for the Ministry to talk to the Union is to talk (notionally, at least) to all municipalities in Turkey. The rule of compulsory membership does, however, have an undemocratic character in its removal of choice from individual municipalities and be the cause of legitimate resentment by municipalities who feel that their particular interests and concerns are inadequately represented by the majority of member municipalities whose views they do not share. The rapporteurs understand that some ten municipalities are currently resistant to Union membership.

40. A particular complaint in Recommendation 176 was that the prior authorisation of the Ministry of the Interior was required for a municipality to join an international organisation. The rapporteurs understand that this requirement has not been lifted and repeat their recommendation that it should be.

Special Provincial Administrations (SPAs)

41. Recommendation 176 of 2005 welcomed the changes made to improve provincial administration in Turkey. These had included strengthened powers and, in particular, the ending of the former inappropriate domination of the Governor as the president of the provincial general council. There are, however, several remaining issues with SPAs:

(a) Although the Governor has been removed from the presidency of the general council, his position remains distinctly anomalous as the chairman of the SPA's executive committee. There are rules for the resolution of differences between the executive committee and the council but there are bound to be continuing difficulties for the autonomy of provincial government in a situation where the SPA's chief executive is, in effect, an appointee of central government whose principal function is the discharge of State/central government functions in the province. Thus, critics argue that SPAs, despite the legislative changes, remain an arm of the governorship. Article 29 of the Law on SPAs formally designates the governor as "head of the SPA and the representative of its legal entity". And Article 30 provides inter alia for the governor to manage and administer the SPA; to appoint personnel; and to represent the SPA "in the public offices and ceremonies". The current position of the Governor does not reflect the spirit of the principles set out in the Council of Europe's Reference Framework for Regional Democracy.

(b) The functions of SPAs are defined in Article 6 of the SPA Law of 2005. Some (including a power to provide "services to respond to other needs within the borders of the province") are exercisable throughout the province. Others are exercisable only in those areas outside the borders of municipalities. The delegation is concerned, in particular, about those functions of SPAs in the areas

outside municipalities, as mentioned above (para. 20). Although operating primarily at a regional level, SPAs become, in the absence of local self-government apart from the weak villages, the principal supplier of local services. There is regional government but very little local self-government.

(c) As also mentioned above (para. 16) some responsibilities are being transferred from central government departments to the SPAs. The functions of the former Directorate General of Village Affairs have already been transferred and these are to be joined by functions in relation to museums and sport. One concern expressed to the rapporteurs, however, has been that the transferred functions have been inadequately funded.

(d) As regards finance, like the municipalities, the SPAs have been affected by the Law on Allocations from Tax Revenues (Law No. 5779). This provides for distribution: 50% according to the population of the province; 10% by surface area; 10% by the number of villages; 15% by the rural population and 10% according to the provincial “development index”. (For the “development index”, see para. 35 above.) SPAs, however, await the new substantive law on revenues. In the meantime, SPAs have no access to “own resources” for their funding – something which contravenes the Reference Framework for Regional Democracy. Funding varies very substantially from one province to another.

(e) One particular consequence of the high degree of involvement of Governors in SPAs is in relation to the Union of SPAs. The Union comprises all 81 Governors plus 81 elected SPA council members. This gives the Central Government a substantial dominance of an association of regional authorities.

IV The report and recommendation 229 of 2007

42. As already mentioned in para. 2 above, a recurring sub-theme in the Charter monitoring of Turkey since 1997 has been the situation in South-East Anatolia. The specific circumstances which led to the Congress fact-finding mission to Turkey in August 2007 were as set out in para. 2 of the Report of that mission¹⁵.

“2. The immediate background to the Bureau’s decision included concerns raised by two letters from Mr Osman Baydemir (Mayor of Diyarbakır and President of the Union of South East Anatolia Municipalities) of 18 September 2006 (to Mr Skard, President of the Congress) and 14 March 2007 (to Mr Bohner, Secretary General of the Congress). The concerns related to legal proceedings mayors and municipalities notably: a case against 56 mayors for supporting Roj TV (a station broadcasting in the Kurdish language) in a letter to the Prime Minister of Denmark; a case against Mr Baydemir for a press conference given by him; and a case against the Mayor and Council of the Sur Municipality (in Diyarbakır) for decisions taken to provide information in Kurdish. These letters had been followed by a decision on 14 June 2007 to remove the Mayor of Sur (Mr Abdullah Demirbaş) from office and to dissolve the Council; a letter of 19 June from Mr Wim Deetman, Mayor of the Hague and President of the “City Diplomacy” Committee of the UCLG to Mr Skard requesting that a Congress delegation visit Turkey; and a visit by Mr Demirbaş to Strasbourg on 26 June to meet members of the Congress Secretariat.”

43. The principal focus of the mission was on the case of the Sur Mayor and Council but the opportunity was taken to investigate and report on some “broader contextual considerations”. As to the Sur Municipality, the Rapporteurs¹⁶ took the provisional view that, especially in the light of Congress Recommendation 12 (1995) on Romania and Recommendation 20 (1996) on monitoring the implementation of the Charter, the dissolution of the Council and the dismissal of the mayor were not a proportionate response to what had occurred.

44. On the “broader contextual considerations”, taking into account views expressed by a wide range of different sources as well as the facts of a large number of Kurdish language events in Turkey and the relevant law (especially Arts 30 and 44 of the Municipality Law), the view was taken that the

¹⁵ CG/BUR (14) 29 REV 2.

¹⁶ The Rapporteurs on the current monitoring exercise plus Ms Irina Pereverzeva (Russian Federation, L, SOC).

current law was unsustainable. Recommendation 229 (2007) contained the following substantive paragraphs:

- “5. Notes the following problems in the functioning of local democracy in Turkey:
- a. the Turkish authorities permit a restrictive interpretation of “Turkish identity” which limits the cultural rights and freedoms of those Turkish citizens who use languages other than Turkish;
 - b. the measures taken against local authorities for using languages other than Turkish in the provision of public services are not being applied consistently to all languages;
 - c. the Municipality Law allows courts to prosecute mayors and municipalities and remove them from office for having made “political” decisions; whereas Article 3, paragraph 1, of the European Charter of Local Self-Government foresees that local government “has the right and the ability (...) to regulate and manage a substantial share of public affairs under their own responsibility”;
 - d. Turkey has not signed and ratified the Council of Europe’s Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages;
6. Recommends that the Turkish authorities:
- a. permit municipal councils to use languages other than Turkish in the provision of public services when appropriate;
 - b. reform the Municipality Law to allow mayors and municipal councils to take “political” decisions without fear of proceedings being taken against them;
 - c. sign and ratify the Council of Europe’s Framework Convention for the Protection of National Minorities;
 - d. sign and ratify the European Charter for Regional or Minority Languages;
7. Recommends that the Committee of Ministers transmit this recommendation to the Turkish authorities;
8. Recommends that the Parliamentary Assembly take account of the preceding observations and recommendations in monitoring the extent to which the commitments undertaken by Turkey have been honoured.”

45. In the light of the 2007 Report and Recommendation, the task of the current monitoring exercise was to investigate and report on events which had taken place since August 2007 and to establish whether there had been any legislative or other response to Recommendation 229. It should be noted that, in the course of the intervention referred to in para. 12 above, Mr Zekeriya Sarbak expressed his view that, in addition to the possibility of constitutional change, Turkey could be examining the possibility of signing the Charter for Regional and Minority Languages and the Framework Convention for the Protection of National Minorities after the current work on constitutional amendments was concluded.

46. The principal findings deriving from the delegation's enquiries during 2008-2010 can be divided into two stages. By the time of the visit to Turkey in 2009, it was apparent that there had been (a) no practical developments in the direction of the reinstatement of local self-government in Sur in advance of the local elections of 29 March 2009; and (b) no steps taken to implement the recommendations referred to in para. 44 above.

47. As to Sur, following the dismissal of the mayor and the suspension of the council, a decision was made by the Supreme Elections Board in January 2008 not to hold new elections in Sur - apparently on the grounds that there was then a period of less than 12 months before the next (normal) elections in March 2009. The basis of this decision is obviously questionable but, whatever its legality, its clear consequence was that Sur had no form of elected self-government for the extended period from 14 June 2007 to March 2009. The government of Sur was in the hands of the appointed Deputy Governor. However, the former mayor, Mr Demirbaş, was a candidate in the elections and indeed won the election to be mayor once again.

48. More broadly, a rather confused situation on Kurdish language recognition was also emerging in 2009. On the one hand, warnings and prosecutions for language “misuse” were continuing and there was no prospect of legislative change. On the other hand, a Kurdish language TV channel (TV6) had

been established, although its potential benefits were being viewed cautiously as long as the general lack of recognition of the language by the state continued.

49. The second period since the local elections of March 2009 which the delegation has been able to monitor in 2010 has been one of four, sometimes conflicting, developments:

(a) The Government of Turkey launched in November 2009 its Democratic Initiative, often referred to as the “Kurdish opening” although, as formally announced, it contained no direct reference to the Kurds or the Kurdish conflict. As explained by the Minister of the Interior, Beşir Atalay, the proposed reforms would include the full freedom to use languages other than Turkish (and the establishment of a new Living Languages Institute), fewer military checkpoints in the South East, new human rights bodies (a Turkish Human Rights Agency, an Anti-Discrimination and Equality Board and a commission for complaints about the security forces), and the return to their homes of people driven from them by fighting.

(b) On the other hand, in December 2009 the Kurdish political party known as the DTP was closed down by order of the Constitutional Court on the grounds that it had become a “focal point of activities against the indivisible unity of the state, the country and the nation”. A successor party, the BDP, was quickly established but one continuing consequence of the closure of the DTP is that two of its most prominent members (MPs Ahmet Türk and Aysel Tuğluk) along with 35 other party members were banned from participation in politics for a period of five years. Former members of the DTP have filed an application to the European Court of Human Rights challenging the closure.

(c) 2009-2010 has also been a period during which a high level of violence in the South East of the country has recurred.

(d) Most prominently for the purposes of this report, the period since the elections of 2009 has been one in which substantial numbers of people have been detained in prison on grounds of alleged terrorist involvement. Three waves of arrests took place in April, September, and December 2009. On 14 April some 50 people (mostly DTP members) were arrested and detained. On 11 September, a further 18 people were detained. On 24 December more than 80 people were detained, and then on 28 December an additional 24. The group arrested in September included Şeyhmus Bayhan, Chair of Diyarbakır SPA Council and a substitute member of the Congress. The group arrested in December included Leyla Güven, Mayor of Viranşehir and a permanent member of the Congress, together with, once again, Abdullah Demirbaş, the Mayor of Sur.¹⁷ It was only in 2009 that the members of the Kurdish party (at that time the DTP) were included in the Turkish Congress delegation. The rapporteurs understand that, in total, some 1,500 people are now being held in detention without charge or trial, of whom eight are current mayors of municipalities, nine are former mayors, 39 are municipal councillors and 12 are SPA councillors. In addition to all the detentions pending charges and trial, there have also been some high profile prosecutions for allegedly terrorist related activities affecting prominent local politicians. In particular, in April 2009, the Mayor of Diyarbakır, Osman Baydemir, and the Mayor of Batman, Nejdet Atalay, were both sentenced to ten months imprisonment for disseminating PKK propaganda (describing its militants as “guerrilla fighters”). Both have appealed. In the meantime, Mr Baydemir has had a ban on foreign travel imposed by the court.

50. It is difficult to overstate the extent of the effect of the huge number of pre-trial detentions on the working of the BDP and on the working of the democratic system (and, in particular, the local and regional democratic system) in the South-East of Turkey. They raise different concerns than those raised by the application of the severe language policies earlier described. These cases derive from the application of Turkey’s anti-terrorist legislation and they fit into a much wider picture of the political and military conditions of Turkey than can be captured by this report which has to be confined to the condition of local and regional democracy. The rapporteurs do, however, have to take account of the consequences for local and regional democracy of the loss of this large number of elected officials and others. They have not the powers or capacity to investigate and report generally on the operation of Turkey’s anti-terrorist legislation. They have also taken account of the observations of Central Government officials and others that the implementation of that legislation is a matter for the separate

¹⁷ At the time of the delegation’s visit in May 2010, Mayor Demirbas was in such bad health that he had been hospitalised. Later in the month he was released from prison on medical grounds – a development welcomed in a Declaration by the Congress Bureau of 21 May.

institutions of the prosecution service and the judiciary. On the other hand, with their focus on the effect on elected officials and on the institutions of democracy, the rapporteurs have to take into account the disproportionately destructive effect of the implementation of the anti-terrorist legislation, measured by general European standards. Drawing upon existing legal sources in the jurisprudence of the European Court of Human Rights¹⁸ and independent commentaries on the human rights situation in Turkey,¹⁹ they are aware that the current difficulties derive from a mixture of factors including: broadly drawn definitions of offences in the criminal code, the zealotry of the police and prosecution authorities, the readiness of courts to imprison on remand for periods of up to two or three years pending trial (producing a situation in which over half of Turkey's prison population of nearly 120,000 are unconvicted remand prisoners), and the consequent overloading of the prison and court systems. Overall, these factors produce a situation which has a disproportionately oppressive effect on the rights of those held as suspects, one significant casualty of which is local and regional democracy in South Eastern Turkey.

V. Conclusions and recommendations

51. During its visits to Turkey in February 2008, January 2009, and May 2010 the delegation was struck by the extent to which there was agreement among its informants from all quarters that the pace of reforming change had slowed. The period of rapid legislative developments in 2004 and 2005 has been followed by five years of reduced activity – explained, in part at least, by the preoccupations of the AKP Government with its own struggle against Party closure during 2008, the constitutional reform initiative of 2009 - 2010, the referendum campaign of the summer of 2010, and, shortly, the campaign for the 2011 national elections. There is also a similarly shared consensus that rapid institutional change in Turkey will, in any event, always be difficult. The social, political and cultural inheritance of the founding principles of the Republic which place such a heavy emphasis (reinforced in the 1982 Constitution) on a unitary and indivisible state make the pursuit of decentralisation and the implementation of regional and local self-government very difficult. Those who oppose reform find security in the unitary principle and readily point out the potential dangers of reforms which might have a domino effect in the direction of the dismantling of the state. They have tradition and a conservative political class and bureaucracy on their side. On the other hand, the commitment to further reform, encouraged by the reforms already achieved in the Law on Municipalities, the SPAs, Unions and more recently on Scale Reform and the Allocation of tax Revenues, remains very much alive. It is, in particular, the declared will of the government to reform the Villages Law and to strengthen the financial base of local and regional self-government.

52. Based on the findings already described in this Report and bearing in mind the rules and principles of the Charter of Local Self-Government and the Reference Framework for Regional Democracy, the rapporteurs would recommend that:

(a) In the efforts undertaken in Turkey towards further Constitutional reform (whether eventually by the drafting a new Constitution or the further amendment of the existing Constitution) steps should be taken to improve the constitutional environment for strengthening decentralisation in the country (including the abolition of administrative tutelage – maintained by both the Constitution and other laws) (para. 15) and the introduction of greater freedom to use languages of choice in the public services (paras. 44 and 45).

(b) As part of a wider strategy for the reform of the institutions and procedures of the criminal law and procedure of Turkey, the disproportionate vulnerability of the system of local and regional democracy to the impingement on the human rights of elected officials must be reduced.

(c) The Government should consider the re-examination of its obligations under the Charter of Local Self Government with a view to expanding its commitment to be bound by its terms.

¹⁸ See, in particular, *Cahit Demirel v Turkey* (No 18623/03) 7 July 2009. In that case, the Court wrote of “a systemic problem arising out of the malfunctioning of the Turkish criminal justice system and the state of Turkey's legislation”. See also *Yakisan v Turkey* (No 11339/03) 6 March 2007.

¹⁹ See the Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, (CommDH(2009)30, 1 October 2009) and also his press release of 26 May 2010, following his visit to Turkey during the previous three days.

- (d) The Ministry of the Interior should complete its work to enact the new Villages Law (para. 20). (Separately, the rapporteurs have heard criticism of the current system of “village guards” and hope that they will be replaced in the broader reforms.)
- (e) Similarly, the proposals for a new Revenues Law (in respect of municipalities, SPAs and villages) should be carried forward and implemented (paras. 16, 35 and 41(d)).
- (f) Steps should be taken further to reduce the involvement of Governors in the work of SPAs and the influence of Governors over the SPAs’ operations (para. 41(a)). This should include a reduction/removal of their influence in the Union of SPAs (para. 41(e)).
- (g) The Government should seek to amend the Law on Unions to remove the need for Ministry approval of overseas links for municipalities (and SPAs) (para. 40).
- (h) The Union of Turkish Municipalities should take responsibility (shared with that of the Central Government) for further improving the conditions for fuller and better consultation by Central Government on local government matters (para. 38).
- (i) The Union and the Government should give consideration to changing the law which imposes on municipalities compulsory membership of the Union (para. 39).
- (j) The Union should be more ambitious in asserting the claims of local government and, in doing so, liaise fully with regional unions of municipalities and with the Union of SPAs.
- (k) In addition, the Municipalities Union should take a lead responsibility in the raising of consciousness among its members in relation to their rights guaranteed under the Charter.
- (l) The recommendations contained in Recommendation 229 (2007) (paras. 44 and 45 above) are repeated.
- (m) The Government should take the lead in further encouraging, through its training programmes and other means, the strengthening and support for the decentralisation programme.

APPENDIX**Programme of the first monitoring visit of the Congress of Local and Regional Authorities
on local and regional democracy in Turkey****(Ankara, 25-27 February 2008)****Congress delegation:**

Mr Anders KNAPE	Rapporteur on local democracy, Vice-President of the Congress, Sweden
Mr Hans-Ulrich STÖCKLING	Rapporteur on regional democracy, State Advisor / Government of Canton St. Gallen, Switzerland
Prof. Christopher HIMSWORTH	Consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government, Professor of Law, University of Edinburgh, United Kingdom

Monday 25 February 2008 (Ankara)

- Prof. Ruşen KELEŞ, member of the Group of Independent Experts to the European Charter of Local self-Government
- Mr Yavuz MİLDON and other members of the Turkish national delegation to the Congress and members of the Executive Board of the Turkish Union of Municipalities of Turkey

Tuesday 26 February 2008 (Pınaryaka, Ankara)

- Mr Latif ÇELEBİ, village headman (muhtar) of Pınaryaka and representatives of the Ayas village council
- Mr Osman BAYDEMİR, Mayor of Diyarbakır Metropolitan Municipality, Mr Abdullah DEMİRBAŞ, former Mayor of Sur municipality and Ms. Gültan KIŞANAK, Member of Parliament, Diyarbakır
- Mr Emrullah EREN, President of the Provincial Council of Ankara and other members of the Provincial Council
- Mr Aldo DE LUCA, acting Head of Mission of Switzerland, Embassy of Switzerland, and with Human Rights correspondents from several Foreign Missions to Turkey

Wednesday 27 February 2008 (Ankara)

- Press Conference

**Programme of the second monitoring visit of the Congress of Local and Regional Authorities
on local and regional democracy in Turkey**

(Istanbul - Ankara, 12-14 January 2009)

Congress delegation:

Mr Anders KNAPE	Rapporteur on local democracy, Vice-President of the Congress, Sweden
Dr Herwig VAN STAA	Rapporteur on regional democracy, President of the Regional Parliament of Tyrol, Austria
Prof. Christopher HIMSWORTH	Consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government, Professor of Law, University of Edinburgh, United Kingdom

Monday 12 January 2009 (Istanbul)

- Prof. İbrahim KABOĞLU
- Mr Muammer GÜLER, Governor of İstanbul Province
- Mr Ahmet SELAMET, acting President of the Municipal Council, other representatives of İstanbul Metropolitan Municipality and Mr Murat DAOUDOĞLU, Director of the Marmara Union of Municipalities

Tuesday 13 January 2009 (Ankara)

- Meeting in the Ministry of Interior of Turkey with:
 - Mr Hasan CANPOLAT, Deputy Undersecretary
 - Mr Ercan TOPACA, General Director for Local Authorities
 - Mr. Hasan Hüseyin CAN, Deputy General Director for Local Authorities
 - Mr. Okay MEMİŞ, Head of Department
 - Mrs Gaye DOĞANOĞLU, acting Head of the Turkish Congress delegation
 - Mr. Murat ZORLUOĞLU, Secretary of the Turkish Congress delegation
- Prof. Rusen KELEŞ, Member of the Group of Independent Experts to the European Charter of Local Self-Government
- Mr. Melih GÖKÇEK, Mayor of Ankara and Mr Oktay ŞENDUR, Secretary General of Ankara Metropolitan Municipality
- Mr Erdoğan AYGENÇ, Deputy Governor of Ankara
- Prof. Baskın ORAN, Professor for International Relations at the Faculty of Political Science, Ankara University
- Mr Osman BAYDEMİR, Mayor of Diyarbakır Metropolitan Municipality and Mr Abdullah DEMİRBAŞ, former Mayor of Sur
- Mr Aldo DE LUCA, acting Head of Mission of Switzerland, Embassy of Switzerland, and with Human Rights correspondents from several Foreign Missions to Turkey

Wednesday 14 January 2009 (Ankara)

- Mr Osman BAYDEMİR, Mayor of Diyarbakır Metropolitan Municipality and Mr Abdullah DEMRBAŞ, former Mayor of Sur
- Mrs Gaye DOĞANOĞLU, acting Head of the Turkish Congress delegation and other members of the Turkish Congress delegation; Mr. Murat ZORLUOĞLU, Secretary of the Turkish Congress delegation, and representatives of the Union of Municipalities of Turkey
- Mr Mevlut ÇAVUŞOĞLU, Head of the Turkish delegation to the Parliamentary Assembly of the Council of Europe
- Mr Ziyaeddin AKBULUT, Chairman of the Commission of Internal Affairs of the Turkish Parliament

**Programme of the third monitoring visit of the Congress of Local and Regional Authorities
on local and regional democracy in Turkey**

(Ankara, 10-11 May 2010)

Congress delegation:

Dr Herwig VAN STAA	Rapporteur on regional democracy, Chair of the Institutional Committee of the Congress, Austria
Mr Anders KNAPE	Rapporteur on local democracy, Vice-President of the Congress, Sweden
Prof. Christopher HIMSWORTH	Consultant, Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress, Professor of Law, University of Edinburgh, United Kingdom

Monday 10 May 2010

- Mr Ercan TOPACA, Governor-Director General, General Directorate for Local Authorities, Ministry of Interior
- Mr Kemal ÖNAL, Governor of Ankara
- Mr Nizamettin KALAMAN, Director General, General Directorate of Prisons and Detention Houses, Ministry of Justice,
- Mr Osman BAYDEMİR, Mayor of Diyarbakır Metropolitan Municipality
- Meeting with Mr Hayrettin GÜNGÖR, Secretary General of Union of Turkish Municipalities (TBB);
- Mrs Gaye DOĞANOĞLU, Head of the Turkish Delegation to the Congress;
- Members of the Turkish Delegation and the TBB

Tuesday 11 May 2010

- Mr Metin KAŞIKOĞLU, Deputy Chairman of Justice and Development Party (AKP)
- Mr Onur ÖYMEN, Deputy Chairman of Republican People's Party (CHP)
- Mr Metin ÇOBANOĞLU, Deputy Chairman of Nationalist Movement Party (MHP)
- Mr Demir ÇELİK, Deputy Chairman of Peace and Democracy Party (BDP)
- Mr Bengi YILDIZ, Member of Parliament, BDP
- Ms Aysel TUĞLUK, former DTP Member of Parliament
- Ms Semira VARLI, Chair of the Provincial Council of Van
- Mr Öztürk TÜRKDOĞAN, President of Human Rights Association of Turkey
- Representatives of Foreign Missions in Ankara