

## Memorandum on freedom of expression and of the media, human rights defenders and civil society in Türkiye

### Introduction

1. The present memorandum by the Council of Europe Commissioner for Human Rights (hereinafter, “the Commissioner”) addresses freedom of expression and of the media, and the situation of human rights defenders and civil society in Türkiye.
2. This memorandum was prepared on the basis of the continuous monitoring carried out by the Commissioner and her Office and information from various sources, such as international and national non-governmental organisations (INGOs and NGOs), human rights defenders, lawyers, journalists and media representatives, including during a series of online meetings organised in February 2024. The Commissioner extends her thanks to all interlocutors for their willingness to share with her their knowledge and views.
3. In this memorandum the Commissioner raises awareness about a critically hostile environment for dissent and severe restrictions of democratic freedoms of citizens and civil society at large in Türkiye. This memorandum does not purport to undertake an exhaustive analysis of all the issues at stake in these areas, but rather aims to outline the Commissioner’s main observations regarding, firstly, freedom of expression and of the media (section I) and, secondly, the situation of human rights defenders and civil society (section II). The Turkish authorities were notified of the Commissioner’s intention to carry out a visit to Türkiye on these issues. However, despite the Commissioner’s continued engagement with them to this end since November 2022, the authorities have not facilitated a visit.<sup>1</sup> In section III, as a follow-up to the Commissioner’s report on Türkiye from 2020,<sup>2</sup> the Commissioner shares some observations about serious, longstanding problems with regard to the independence and impartiality of the Turkish judiciary which lie at the heart of the lack of effective legal protection of human rights in the justice system, including in the areas covered in the previous sections.

### I. Freedom of expression and of the media

#### *General context*

4. From the outset, it is essential to underscore the significance of the human right to freedom of expression and the corresponding obligations that states bear in this regard. Freedom of expression is a fundamental human right enshrined in national constitutions and various international treaties, most notably the European Convention on Human Rights (ECHR). The unfettered and secure exercise of this right is critical for enabling both individual self-expression and the dissemination of information, which are vital components for citizens’ participation in a

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<sup>1</sup> According to Article 6.1 of the Council of Europe Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights “Member States shall facilitate the independent and effective performance by the Commissioner of his or her functions. In particular, they shall facilitate the Commissioner’s contacts, including travel, in the context of the mission of the Commissioner and provide in good time information requested by the Commissioner.”

<sup>2</sup> [Report](#) by Dunja Mijatović, Commissioner for Human Rights, following her visit to Türkiye from 1 to 5 July 2019, published on 19 February 2020.

democratic society. The intrinsic link between freedom of expression and democracy is further underscored by the fact that this right serves as a cornerstone for other human rights, such as the “Right to freedom of peaceful assembly and to freedom of association” (Article 11 ECHR), as well as the “Right to free elections” (Protocol No. 1, Article 3 ECHR). Consequently, any infringement upon the right to freedom of expression poses a direct threat to the democratic fabric of society, and Council of Europe member states have legal obligations to protect and promote freedom of expression, imposing only those restrictions that are legitimately justified under the Convention.

5. Freedom of expression and media freedom in Türkiye have been a preoccupation for the Commissioner and her predecessors for more than a decade.<sup>3</sup> In a memorandum on freedom of expression and media freedom in Türkiye, published in February 2017, the Commissioner’s predecessor noted that the space for democratic debate in Türkiye had shrunk alarmingly as a result of several factors, the first one being an increase in the judicial harassment of a large stratum of society (including journalists, members of parliament, academics and ordinary citizens), and the second, the actions of the government itself which had served to reduce pluralism and led to self-censorship. At the time, the previous Commissioner had called on the authorities to change course by overhauling criminal legislation and practice (as further explained below), by redeveloping judicial independence, and by reaffirming their commitment to protect free speech.
6. In her report on Türkiye published in 2020, the Commissioner expressed her concern over the authorities’ extensive use of problematic provisions in the Turkish Criminal Code and the Anti-Terror Law to suppress free speech. This includes, notably, Article 299 which deems it illegal to insult the President of the Republic, Article 301 on degrading the Turkish Nation, the state or its institutions (previously: degrading Turkishness), and Article 314 on membership of an armed criminal organisation. She notes with regret that these provisions remain widely used by the authorities despite the judgments of the European Court of Human Rights (hereinafter “the Court”) and the Venice Commission’s opinion on their chilling effect on freedom of expression in Türkiye, in defiance of extensive guidance provided by these bodies on steps to be taken by the authorities to remedy this situation.<sup>4</sup>
7. The Commissioner observes that the Turkish authorities’ negative stance vis-à-vis freedom of expression and freedom of the media and the high level of intolerance towards legitimate criticism about actions of the authorities and of elected officials have reached new, worrying levels and continue to manifest themselves through systematic pressure and legal action against journalists, human rights defenders, civil society and ordinary people. This has resulted in staggering levels of self-censorship and a lack of pluralism.

*Restrictions of freedom of expression and of the media, with a focus on internet censorship*

8. The Commissioner is particularly concerned about the sustained pattern of undue restrictions on the right to receive and impart information on the internet in Türkiye. She observes that the Turkish administrative authorities and courts continue to routinely have recourse to internet blocking. She further notes that the use made of these blocking measures in practice, against the general background relating to freedom of expression in Türkiye, reinforce the argument that they serve to deprive the Turkish public of access to different, dissenting, or critical points of view regarding matters of public interest.
9. The Commissioner regrets that the authorities have recently adopted legislation to grant additional sweeping powers to the regulatory Information and Communication Technologies Authority (ICTA/BTK). In this regard, the Commissioner notes that the Turkish Parliament adopted, in October 2022, a series of legislative measures amending the Internet Law (No. 5651), the Press Law, and the Turkish Criminal Code, which provide for further censorship and tightening of control over social media, including through severe fines. This legislation, and particularly the introduction

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<sup>3</sup> Report by Thomas Hammarberg, the Commissioner for Human Rights, [CommDH\(2011\)25](#), 12 July 2011; Memorandum on freedom of expression and media freedom in Türkiye, by Nils Muižnieks, the Commissioner for Human Rights, [CommDH\(2017\)5](#), 15 February 2017.

<sup>4</sup> See, for example, [Vedat Sorli v. Türkiye](#), judgment of 19 October 2021; [Altuğ Taner Akçam v. Türkiye](#), judgment of 25 October 2011; Venice Commission’s [Opinion No. 831/2015](#) on articles 216, 299, 301 and 314 of the Penal Code of Türkiye, adopted on 15 March 2016.

of a new provision on “false or misleading information” in the Turkish Criminal Code, has been criticised by the Parliamentary Assembly of the Council of Europe (PACE) and the Venice Commission.<sup>5</sup> In an urgent joint opinion on this provision, the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe stressed that, the interference with the freedom of expression, if enacted, would neither be “necessary in a democratic society” nor proportionate to the legitimate aims of prevention of disorder and protection of national security, of health and of rights of others, and that it was particularly concerned with the potential consequences of such provision, namely, the chilling effect and increased self-censorship, not least in view of the upcoming elections in June 2023.<sup>6</sup>

10. The Commissioner regrets that despite the abovementioned negative opinion of the Venice Commission on the provision of “false or misleading information”, the Turkish Constitutional Court rejected a request for its annulment on 8 November 2023. The Commissioner, however, finds particularly noteworthy that 6 of the 15 judges in the Constitutional Court, including the president of the Court, voted against the majority decision. In his dissenting opinion, Mr Zühtü Arslan, the President of the Constitutional Court, concluded that “There is almost only one aspect in the rule in question that is concrete, specific and predictable, which is that the prescribed sentence is one to three years imprisonment. Apart from this, the elements of the crime and the motive sought are completely abstract and open to interpretation and subjective assessments. The most important of these is the phrase ‘information that is not true’. The lack of clarity here is twofold. Firstly, what constitutes ‘truth’ is by its nature difficult to determine. Secondly, the area of knowledge that would determine whether or not something is “untrue information” is very wide [...]. In addition, all information related to the internal and external security, public order and general health may fall within the scope of this crime. Considering that these concepts are elastic and open to interpretation, it will be understood that the dissemination of almost any kind of information may be included in the scope of the crime.”<sup>7</sup>
11. Whilst there appear to be no publicly available official statistics on online content blocking, reports indicate that as of December 2022 more than 700 000 domains, 150 000 URL addresses, and 55 500 tweets were blocked in the country.<sup>8</sup> For example, one of the most popular Turkish social media platforms, Ekşi Sözlük, has reportedly been blocked by a court order several times.<sup>9</sup> Most recently, the platform was reportedly blocked on national security grounds following the devastating earthquake in February 2023, although it had been used to make calls to summon help and relief in the areas affected by the earthquake. Some renowned Turkish experts called this blocking an outright censorship.<sup>10</sup>
12. Other reported restrictions of access to information by the authorities following the earthquake included slowing down the internet and blocking some global social media platforms, such as Twitter and TikTok. Furthermore, the new provision on “false or misleading information” has been used against journalists, human rights defenders, and ordinary citizens, even when they have only made what may be considered as legitimate and justifiable criticisms online of the authorities’ response to the earthquake. To facilitate the tracking of such online information about the earthquake, the authorities reportedly created a mobile application which would allow users to report people who were believed to have produced or disseminated allegedly fake news or disinformation via the internet. The move has reverberated throughout the population and curbed freedom of expression online for vast swathes of society. The Commissioner finds it difficult to see

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<sup>5</sup> See, PACE [Resolution 2459 \(2022\)](#) on the honouring of obligations and commitments by Türkiye, adopted on 12 October 2022, para.10.7.

<sup>6</sup> Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, [CDL-AD\(2022\)034-e](#), on the draft amendments to the Penal Code regarding the provision on “false or misleading information”, adopted on 21 October 2022, para. 92.

<sup>7</sup> See Dissenting opinion of President Zühtü Arslan to the decision of the Turkish Constitutional Court (AYM), no. 2023/189 decision of 8 November 2023, published in the Official Gazette on 23 February 2024.

<sup>8</sup> Freedom of Expression Association (“İFÖD”), [EngelliWeb Report 2022: The Constitutional Court in the Shadow of Criminal Judgments of Peace](#), November 2023.

<sup>9</sup> Balkan Insight, [Turkish Court Blocks Popular Social Media Platform for Third Time](#), 14 December 2023.

<sup>10</sup> See Bianet, [Türkiye blocks access to popular social media platform Ekşi Sözlük](#), 21 February 2023.

how restrictions of such scope and magnitude can be seen as falling within the limitations permitted under Article 10 ECHR.<sup>11</sup>

13. The Commissioner and her predecessors have expressed their concerns about the vigorous application, by the Turkish broadcasting and regulatory authority, Radyo ve Televizyon Üst Kurulu (RTÜK), of the Law on the Establishment of Radio and Television Enterprises and their Media Services, which provides the RTÜK with a great degree of latitude in interpreting relevant principles and monitoring their respect by broadcasters. They pointed to several judgments of the Court which held that an administrative sanction imposed by the RTÜK had been arbitrary and violated procedural guarantees necessary for the respect of Article 10 ECHR.<sup>12</sup> Unfortunately, the use of fines by RTÜK continues to be an important tool in stifling critical reporting. One of the many recent examples of this type of censorship were fines imposed on news channels over critical coverage of the 2023 General Election in Türkiye, which prompted a reaction from the International Press Institute (IPI). The IPI [reiterated its call](#) on the government to end the country's crackdown on independent journalism and respect press freedom as an essential element of democracy.<sup>13</sup>
14. On a positive note, the Turkish Constitutional Court declared unconstitutional, and annulled, several provisions of the Internet Law (No.5651) in January 2024.<sup>14</sup> More specifically, the Court annulled a provision which provided for the possibility of applying Criminal Judgeships of Peace to remove online content upon individual complaints regarding the violation of personal rights of privacy without consideration for public interest. The Court also annulled a provision which gave the ICTA/BTK the power to take down content without a court order. The Court decided that the decision would enter into force nine months after its publication in the Official Gazette (in October 2024), concluding that there was a public interest to fill the legal gap before the decision came into effect. Whilst this decision was welcomed by some journalist organisations, which called it a step in the right direction on the path to legally protect the press and the free flow of information in the country,<sup>15</sup> many expressed concerns at the continuing use of these provisions by the authorities despite the ruling.

#### *Pressuring and stifling critical media and dissenting voices*

15. The Commissioner has noted reports about a further decline in media freedom, against the backdrop of almost 90% of media under government control and increased pressure and stifling of critical media, as mentioned above.<sup>16</sup> In the past year, 232 alerts regarding Türkiye were reported on the [Mapping Media Freedom](#) database, impacting 329 journalists, media workers or outlets, which made up a quarter of all the reported alerts in Europe.
16. Following their visit to Türkiye in October 2023, a group of international media freedom and journalist organisations led by the IPI and the IPI's Türkiye National Committee,<sup>17</sup> [reported](#) that the Turkish press freedom crisis had deepened further since the previous year. They also noted that journalists faced harassment and intimidation for their work, including arbitrary imprisonment and prosecution, whilst those responsible for attacks and threats against the press enjoyed alarming levels of impunity. These organisations noted that "the tragic February 2023 earthquakes laid bare efforts by the authorities to control news and information, with local media being particularly targeted".
17. Judicial actions restricting freedom of expression, with a pattern of dramatically increasing numbers of prosecutions and convictions against persons having exercised their right to freedom

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<sup>11</sup> See also, [Guidelines](#) of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted 26 September 2007.

<sup>12</sup> [CommDH\(2011\)25](#), 12 July 2011, para. 33; [CommDH\(2017\)5](#), 15 February 2017, para. 29.

<sup>13</sup> International Press Institute (IPI) General Assembly [Resolution](#) on Türkiye, 25 May 2023.

<sup>14</sup> Turkish Constitutional Court (AYM), [application no.2020/76](#), decision no.2023/172, decision of 11 October 2023, published on Official Gazette on 10 January 2024, para. 104-107.

<sup>15</sup> The Committee to Protect Journalists, [Statement](#): CPJ welcomes Turkish court's annulment of law that allowed takedown of online news , 11 January 2024.

<sup>16</sup> Reporters Without Borders (RSF), Türkiye [country page](#).

<sup>17</sup> The delegation also comprised representatives of the Committee to Protect Journalists (CPJ), the European Centre for Press and Media Freedom (ECPMF), Osservatorio Balcani e Caucaso Transeuropa (OBCT), and Reporters Without Borders (RSF).

of expression, continued unabated in 2023, with a particularly negative impact on the work of journalists and human rights defenders (see below). The authorities have continued their crackdown on journalists working for pro-Kurdish media.<sup>18</sup> They are currently on trial under terrorism-related charges. In April 2023, at least 10 journalists were amongst the 150 persons [arrested](#) in the raids carried out by Turkish police forces in 21 cities, which also targeted politicians, lawyers, artists, and others. In her [statement](#) following the raids, ahead of the May 2023 elections, the Commissioner called on the Turkish authorities to put an end to the hostile environment affecting human rights defenders, journalists, NGOs and lawyers and to stop silencing them by means of administrative and judicial action.

18. The Commissioner notes that most recently, on 13 February 2024, the homes of five journalists working for Kurdish-language media were raided and that these journalists were then put under house arrest or other judicial control measures, without being informed about the details of the investigation.<sup>19</sup> There are other cases too, such as indictment against two journalists on terrorism-related charges back in September 2023 for their reports on the appointment of a Constitutional Court member.<sup>20</sup> The systematic use of pretrial detention, which the Commissioner and her predecessors have repeatedly criticised, continues to be the norm, effectively resulting in punishment without conviction. One such example is journalist Dicle Müftüoğlu, co-chair of Dicle Fırat Journalists Association, who was released on 28 February 2024, after spending 303 days in pre-trial detention since her arrest during the abovementioned raids in April 2023. Journalists targeted with judicial means also continue to face egregious violations of their right to a fair trial. The Commissioner was informed about the Turkish courts' extensive reliance on "secret witnesses" in criminal cases against journalists and human rights defenders, which has undermined their enjoyment of guarantees of the right to a fair trial under Article 6 ECHR.
19. The Commissioner observes that Turkish journalists are also targeted by strategic lawsuits against public participation (SLAPPs) which aim to intimidate them and prevent them from carrying out their critically important work on raising issues of public importance. Like in other Council of Europe member states, these lawsuits often take the form of defamation lawsuits or criminal proceedings instituted by powerful or politically affiliated groups as a tool for stifling journalists. One notable example is journalist Çiğdem Toker who has reportedly been targeted with multiple lawsuits for damages amounting to millions of liras for reporting on corruption and misuse of public funds. In March 2022, The Coalition for Women in Journalism condemned the İstanbul Court's verdict ordering Çiğdem Toker to pay a fine of 30 000 Turkish liras (over 2 000 USD) for her article on the budget of İstanbul Metropolitan Municipality, calling it "an abuse of law to gag critical voices and journalists".<sup>21</sup>

#### *Safety and security of journalists*

20. It is of serious concern that international media organisations consider Türkiye as an unsafe country for journalists.<sup>22</sup> Threats, harassment, including by judicial means, physical attacks, and impunity for crimes committed against them are amongst the risks facing Turkish journalists. The Commissioner and her predecessors have consistently urged the authorities to increase their efforts to protect journalists from and conduct effective investigations into crimes against them, in line with their obligations under the European Convention on Human Rights.<sup>23</sup>
21. Türkiye features in the 2023 Annual Report of the Platform to promote the protection of journalism and safety of journalists, drawn up by the partner organisations to the Council of Europe. The report shows that in 2022, Türkiye had the highest number of detained journalists in Europe (52)

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<sup>18</sup> Media and Law Studies Association (MLSA), [16 journalists arrested in Diyarbakır: How and why?](#), 22 June 2022.

<sup>19</sup> The Council of Europe Platform for the Protection of Journalism and Safety of Journalists, [5 Journalists with Kurdish-language Media Under House Arrest or Judicial Control](#), [Alert No.18/2024](#), created 19 February 2024.

<sup>20</sup> Bianet, [Journalists handed international travel ban over report on controversial top court appointment](#), 7 September 2023; The Committee to Protect Journalists, [Turkish editor Furkan Karabay arrested for reporting on corruption trial of judiciary members](#), 2 January 2024.

<sup>21</sup> Other notable examples are mentioned in the [Rule 9.2 submission](#) for the 1459th meeting of the Committee of Ministers in the *Oya Ataman Group of Cases* (Application No. 74552/01) by MLSA, January 2023, p. 15.

<sup>22</sup> See, for example, The Committee to Protect Journalists, [Analysis: Drop in jailed Turkish journalists belies a long-simmering press freedom crisis](#), 13 February 2024.

<sup>23</sup> [CommDH\(2011\)25](#), 12 July 2011, para. 53; [CommDH\(2017\)5](#), 15 February 2017, para. 73.

followed by Belarus (32) and Russia (22).<sup>24</sup> As of February 2024, the Council of Europe [Platform for the Safety of Journalists](#), registered 19 journalists in detention and six pending cases of impunity for the murder of journalists, including the killing of Hrant Dink in 2007. According to a recent [survey](#), there is also a high perception of physical insecurity among journalists - almost 88% of journalists surveyed said that they felt “very unsafe” or “unsafe”.

22. The Commissioner is also concerned about the difficult situation facing exiled Turkish journalists. She notes disquieting reports according to which the authorities intimidate exiled journalists and prevent them from carrying out their work in different ways, including by putting requests to Interpol for the issuance of Red Notices, thus depriving journalists of access to consular services, or by initiating smear campaigns against them. Some exiled journalists have also reportedly faced physical attacks.<sup>25</sup>
23. Furthermore, the Commissioner has recently expressed her serious concerns over the situation of women journalists in Türkiye, due to a significant number of [online](#) and offline threats and attacks against women journalists.<sup>26</sup> According to the abovementioned survey, 72% of women journalists in Türkiye reported having been subjected to online violence, including harassment, sexist insults, smear campaigns, and death threats.<sup>27</sup>
24. In conclusion, the Commissioner considers that the situation regarding media freedom and freedom of expression in Türkiye to be deeply worrying, with numerous, blatant violations of principles enshrined in the case-law of the Court, and standards of the Council of Europe, as well as other relevant international standards, for which the justice system cannot provide redress in most cases. As time goes by with the authorities failing to address these violations, the damage that these cause to media freedom and freedom of expression in Türkiye leaves an increasingly deep mark, leading to self-censorship by both citizens, including the younger generation, and journalists, as well as the rest of the media which is not controlled by or sympathetic to the government and the ruling political party. An unfavourable environment for journalism and an impoverished and one-sided public debate is the consequence. The Commissioner considers that practically all her recommendations and those of her predecessors on these issues remain highly relevant and require the authorities' urgent action.

## II. Human Rights Defenders and Civil Society

25. In her abovementioned report from 2020, the Commissioner observed that the already challenging situation faced by Turkish civil society and human rights defenders had steadily deteriorated over the years, notably following the declaration of a state of emergency in Türkiye in July 2016, and that it had not improved since the state of emergency had been lifted in July 2018. She noted many forms of pressure on human rights defenders, including the tightening of an already repressive legal and regulatory framework; the outright closure of civil society organisations without any court decision or an effective remedy; toxic political discourse and smear campaigns in pro-government media; and numerous criminal proceedings against human rights defenders.
26. The Commissioner finds it deeply regrettable that the effects of the state of emergency have not been reversed and that they continue to impact in a profoundly negative way the work of human rights defenders and civil society. This situation has been exacerbated by new restrictive legislation, as discussed above, aimed at reducing to silence any dissenting voices, particularly those of human rights defenders. The lack of effective implementation of the judgment of the Court in the case of *Osman Kavala against Türkiye*, in which the Commissioner has made several interventions, is the clearest illustration of the hostile approach of the Turkish authorities towards

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<sup>24</sup> [2023 Annual Report](#) of the Platform to Promote the Protection of Journalism and Safety of Journalists entitled “War in Europe and the fight for the right to report”, 7 March 2023, p. 43.

<sup>25</sup> Reporters Without Border (RSF), [Erdogan's persecution of journalists does not stop at Türkiye's borders](#), 6 May 2023.

<sup>26</sup> The Commissioner's [Human Rights Comment](#): No space for violence against women and girls in the digital world, 15 March 2022.

<sup>27</sup> Media and Law Studies Association's report entitled “[Journalism in Turkey: I Don't Feel Safe](#)”, published on 7 August 2023, p. 18.

human rights defenders and civil society.<sup>28</sup> In its judgement of 10 December 2019 the Court concluded that Kavala's detention pursued an ulterior purpose, namely to reduce him to silence as a human rights defender. The Commissioner reiterates that it is deeply worrying that the indictment lists Kavala's contacts with the Institution of the Commissioner for Human Rights (and other Council of Europe bodies) as evidence of criminal behaviour. In September 2023, in the case related to Gezi Park events, the Court of Cassation upheld Osman Kavala's conviction of "attempting to overthrow the government" and confirmed his sentence of aggravated life imprisonment without parole. Kavala has been unjustly detained, and then imprisoned, since 18 October 2017. The Court of Cassation also upheld 18-year imprisonment of four other human rights defenders in this case, namely Can Atalay (see below), Tayfun Kahraman, Mine Özerden and Çiğdem Mater, and overturned the convictions and 18-year prison sentences of Ayşe Mucella Yapıcı, Hakan Altınay, and Yiğit Ekmekçi and ordered a retrial. Although a first instance court upheld their acquittal and lifted all judicial control measures against them in February 2024, it will continue to examine their responsibility under Law No. 2911 on Public Meetings and Demonstrations.<sup>29</sup>

### *The legal status and funding*

27. In her 2020 report, the Commissioner noted that the legal framework for the work NGOs was strict, complex, and scattered throughout many laws, and that it raised several questions of compatibility with the relevant European standards.<sup>30</sup> Following up on this work, in a [letter](#) she addressed to the authorities in March 2021, the Commissioner raised several concerns regarding the entry into force of the Law on the Prevention of the Financing of Proliferation of Weapons of Mass Destruction (Law no. 7262) in December 2021, which introduced amendments to the Laws on Associations and on Aid Collection. The Commissioner noted that this law could further stifle dissenting voices and tighten the government's control on civil society fundraising activities.<sup>31</sup>
28. The Commissioner regrets that despite the conclusions of the Venice Commission about its incompatibility with international human rights standards,<sup>32</sup> the law remains in force and its implementation continues. This law, along with the implementation of other legislation governing the work of civil society organisations, continues to pose a serious challenge for their work. As already noted by the Commissioner,<sup>33</sup> these organisations are forced to rely extensively on fundraising, since public funds appear to be allocated exclusively to NGOs which espouse the same values as the government and do not criticise official policy, in a non-transparent way that excludes rights-based civil society organisations.
29. Rights-based organisations, particularly, have been subjected to repeated audits, inspections, and fines, whilst some of their members have been systematically targeted through judicial means (see below). Consequently, some organisations have experienced considerable difficulties in retaining members, including those serving on their boards.<sup>34</sup> According to her interlocutors, this situation

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<sup>28</sup> [Third party intervention](#) by the Commissioner for Human Rights, under Article 36 paragraph 3, of the European Convention on Human Rights, in the case of *Mehmet Osman Kavala v. Turkey*, [CommDH\(2018\)30](#), 20 December 2018 (Application no. 28749/18); [Submission](#) by the Commissioner for Human Rights under Rule 9.4. of the Rules of the Committee of Ministers for the supervision of the execution of judgements in the case of *Kavala v. Turkey* (application no. 28749/18, judgment of 10 December 2019), [CommDH\(2020\)14](#), 18 June 2020; [Submission](#) by the Commissioner for Human Rights in proceedings before the European Court of Human Rights pursuant to Article 46 § 4 of the European Convention on Human Rights in the case of *Kavala v. Turkey* (application No. 28749/18, judgment of 10 December 2019), [CommDH\(2022\)9](#).

<sup>29</sup> See Front Line Defenders, [Court of Cassation upholds the convictions of human rights defenders involved in the Gezi park protests](#), October 2023. For more information on Law No. 2911 on Public Meetings and Demonstrations, see paras. 40 ff.

<sup>30</sup> [CommDH\(2020\)1](#), *op.cit.*, para. 131.

<sup>31</sup> The Commissioner's [letter](#) to the Minister of Interior and the Minister of Justice of Türkiye, 10 March 2021.

<sup>32</sup> Venice Commission's opinion on the compatibility with international human rights standards of Law No. 7262 on the "Prevention of Financing of the Proliferation of Weapons of Mass Destruction", [CDL-AD\(2021\)023](#), adopted on 2 July 2021.

<sup>33</sup> The Commissioner's [letter](#) to the Minister of Interior and the Minister of Justice of Türkiye, 10 March 2021.

<sup>34</sup> The Observatory for the Protection of Human Rights Defenders and Human Rights Association's [joint report](#), "Drowned in Procedure, Sentenced to Fail: Administrative Harassment Against Civil Society in Türkiye", published in June 2022, p. 26; Amnesty International's [briefing paper](#) entitled "Turkey: Terrorism financing law has immediate 'chilling effect' on civil society", 19 October 2021.

has prompted some international donors to cut back their financial support. The Commissioner finds this situation particularly worrying, considering how crucially important this support has been for the survival of rights-based organisations and human rights work in Türkiye. It is regrettable that due to increasingly scarce funding, some civil society organisations have had to scale down their activities, whilst other smaller, local organisations have had to close, having been unable to bear the administrative and financial burdens resulting from this situation.<sup>35</sup>

### 30. *Judicial action targeting human rights defenders*

31. The Commissioner reiterates that the most acute problem facing human rights defenders in Türkiye is a widespread pattern of judicial actions and criminal proceedings targeting them for their lawful and legitimate activities. She observes that Turkish prosecutors continue to be the driving force behind the pattern of use of spurious charges against human rights defenders for conducting legitimate activities. The Commissioner and her predecessor have made several calls on the authorities to end the criminalisation of civil society activities and to refrain from misusing anti-terror and other provisions of the Criminal Code against human rights defenders, journalists, and other dissenting voices.<sup>36</sup> Concerns about a crackdown on critical voices, including human rights defenders, members of civil society, journalists, lawyers, and political opponents have been expressed by many other actors, including the PACE, the European Parliament, and INGOs.<sup>37</sup>
32. There have been numerous allegations of intimidation, threats and physical violence by law enforcement agents against human rights defenders, civil society representatives and journalists in the aftermath of the earthquake in 2023.<sup>38</sup> The Commissioner refers in this regard to the communication from July 2023 of the UN Special Rapporteurs on the situation of human rights defenders, on the promotion and protection of the right to freedom of opinion and expression, on the rights of peaceful assembly and association and on the independence of judges and lawyers, which brought to the authorities' attention the alleged attack, possibly amounting to torture, by the police against Aytekin Aktas, of the Progressive Lawyers Association, whilst he attempted to carry out his professional duties as a human rights lawyer. The communication also referred to the alleged repression of the Life Watch movement<sup>39</sup> by the Gendarmerie, which in some cases involved threats and physical violence.<sup>40</sup>
33. Following her visit to Türkiye in 2019, the Commissioner has continued to follow closely criminal proceedings targeting human rights defenders and has been alarmed by the unprecedented levels of such action to date. It has been reported that in 2022 alone, 1 143 human rights defenders appeared before judges in 105 different criminal cases for their activities in the field of human rights.<sup>41</sup> The extent of this problem becomes evident when examining the information according to which there are currently 143 different criminal cases pending against Eren Keskin, a well-known lawyer and human rights defender, as well as co-chair of the Turkish Human Rights Association (İHD). Many other members and executives of the Human Rights Association, including its former co-chair, Öztürk Türkdoğan, have been investigated and prosecuted for their social media posts. The Commissioner notes that the President of the Turkish Medical Association, Şebnem Korur Fincancı, who is also an executive board member of the Human Rights Foundation of Türkiye, has been subjected to multiple criminal cases. In January 2024 her conviction for "making propaganda

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<sup>35</sup> See for example, the Observatory for the Protection of Human Rights Defenders and Human Rights Association's [joint report](#) "Drowned in Procedure, Sentenced to Fail: Administrative Harassment Against Civil Society in Türkiye", p. 17.

<sup>36</sup> See most recently, [Statement](#) by the Commissioner for Human Rights, 5 May 2023.

<sup>37</sup> See, for example, PACE [Resolution 2459 \(2022\)](#), 12 October 2022; The European Parliament's 2022 Report on Türkiye, [P9\\_TA\(2023\)0320](#), adopted on 13 September 2023; Freedom House, Election Vulnerability Index, Pre-elections assessment [report](#) on Türkiye, 2023; Human Rights Watch, [Turkey: Pre-Election Crackdown on Kurds](#), 25 April 2023.

<sup>38</sup> See, for example, Front Line Defenders published [a statement](#) calling for the end of harassment of HRDs in earthquake region; Human Rights Foundation of Turkey's [Report](#) on Human Rights Violations Aftermath of the Earthquakes in Turkey (6th – 27th February 2023), March 2023.

<sup>39</sup> The "Life Watch" movement started in April 2023 in the Hatay province in response to the hazardous practices adopted in the earthquake crisis management. The initiative seeks to draw attention to the health and environmental risks associated with this management.

<sup>40</sup> [Joint letter](#) of the UN Special Rapporteurs to the Turkish authorities, 19 July 2023.

<sup>41</sup> Human Rights Foundation of Türkiye (TIHV), [Report](#) on Repression, Obstacles and Challenges Faced by Human Rights Defenders in Türkiye in 2022, p. 2.

for a terrorist organisation” was upheld by a second instance court, but she was initially acquitted in the case of Özgür Gündem newspaper, although this decision was overturned back in 2019 and the trial is presently ongoing. In this case she is being prosecuted, along with journalist Erol Önderoğlu and academic Ahmet Aziz Nesin, for her work as editor at Özgür Gündem newspaper during a country-wide solidarity campaign in 2016.<sup>42</sup>

34. Stressing the important role lawyers play in serving the cause of justice the Commissioner is concerned that lawyers and representatives of bar associations continue to be targeted by judicial means, including on the assumption of “guilt by association” in terrorism-related cases, a concern the Commissioner has already addressed in her 2020 report. This highly problematic approach has had tragic consequences in the case of Ebru Timtik, one of the lawyers of the Progressive Lawyers' Association, who died in a hospital in Türkiye after 238 days on hunger strike in August 2020. In this regard, the Commissioner stressed that Ms Timtik’s death was a tragic illustration of the human suffering caused by a judicial system in Türkiye that had turned into a tool to silence lawyers, human rights defenders and journalists, through systematic disregard for the most basic principles of the rule of law.<sup>43</sup> Furthermore, in a [letter](#) she addressed to the authorities in June 2021, the Commissioner noted the criminal investigations against the Istanbul, Ankara and Diyarbakir Bar Associations on the charge of “inciting the population to enmity or hatred and denigration” in relation to their statements condemning the homophobic language used by the head of the Religious Affairs Directorate in April 2020. In the same vein, the Commissioner noted reports that in January 2023, an investigation was launched against the presidents of 12 bar associations for their joint statement calling for an end to Türkiye’s military operations in Syria and Iraq.<sup>44</sup>
35. The Commissioner notes that, in June 2023, the Istanbul 35<sup>th</sup> Heavy Criminal Court acquitted four human rights defenders of all charges in the retrial of the “Büyükkada case” which concerns the former chair of Amnesty Türkiye, Taner Kılıç, who spent 15 months in pre-trial detention before being released, and 10 human rights defenders who participated in a cyber-security workshop in July 2017. Whilst she finds this development positive, the Commissioner is concerned that the prosecutor has appealed the acquittal judgment, and proceedings are still pending. The execution of the judgment of the Court, finding violations of Article 5 and 10 ECHR in the case of Taner Kılıç in relation to his unlawful pre-trial detention on account of acts directly linked to his activity as a human rights defender, is pending before the Council of Europe Committee of Ministers.

#### *Crackdown on women’s rights and LGBTI organisations*

36. In her reaction to Türkiye’s withdrawal from the Istanbul Convention, the Commissioner [called](#) it an ill-advised decision which undermines women’s rights and sends the wrong signal to all women in Türkiye and beyond and she called on the authorities to reconsider it. In addition to being a serious setback for the protection of women from violence and women’s rights in general, the withdrawal has had serious consequences for the work of women human rights defenders and civil society organisations advocating for women’s and LGBTI rights.
37. The Commissioner refers in this regard to the observations of the UN Committee on the Elimination of Discrimination against Women (CEDAW) that women human rights defenders and activists, including those advocating for the rights of lesbian, bisexual, transgender and intersex women, and women journalists are often subjected to arrest, physical assault, threats, intimidation, harassment, and the freezing of assets. CEDAW also notes with concern reports indicating that civil society organisations are facing violence, harassment, and legal repression for allegedly “acting against the law and against morality”.<sup>45</sup>
38. The Commissioner notes in this context a lawsuit filed in April 2022 seeking the closure of We Will Stop Femicide Platform, a prominent NGO working on the protection of women’s rights and LGBTI

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<sup>42</sup> Media and Law Studies Association (MLSA), [Özgür Gündem solidarity editors trial postponed again in its seventh year due to 'incompleteness'](#), 20 February 2024.

<sup>43</sup> [Statement](#) by the Commissioner for Human Rights, 28 August 2020.

<sup>44</sup> Turkish Minute, [Türkiye investigates chairs of 12 bar associations for insult due to statement on military operations](#), 25 January 2023.

<sup>45</sup> The UN Committee on the Elimination of Discrimination against Women (CEDAW), [Concluding observations on the eighth periodic report of Türkiye](#), CEDAW/C/TUR/CO/8, adopted in June 2022, para. 40.

rights, on allegations of “actions against law and morality”. Whilst the Istanbul Civil Court rejected a closure request in September 2023, this case has had a further serious chilling effect on women’s rights organisations and civil society.<sup>46</sup> Another notable example brought to the Commissioner’s attention relates to police raids on the homes of 24 women human rights defenders carried out in March 2022 in connection with their activism, including their participation in peaceful demonstrations during International Women’s Day on 8 March 2022. In an urgent [letter](#) to the UN special procedures of the Human Rights Council, a group of Turkish civil society organisations called for effective investigations to be conducted into the allegations of inhuman and degrading treatment during arrest, police custody and pre-trial detention of 11 human rights defenders from the group who were detained following the raids.

39. In her abovementioned letter to the authorities from June 2021, the Commissioner noted that the pattern of use of judicial proceedings to silence human rights defenders, NGOs, and lawyers as well as to curtail civil society activism, has increasingly affected those who have stood up for the rights of LGBTI people. She regrets that the situation has since further deteriorated, due to increasingly hostile public discourse about LGBTI people and the authorities’ policies with the purported aim of combating “LGBTI values” and “fighting homosexuality”.<sup>47</sup> As the Commissioner could observe, homophobic statements were dominating political narrative in the pre-electoral period of 2023, in which LGBTI communities were presented as a security threat to the nation, as well as a threat to the family and culture of the country.<sup>48</sup>
40. The Commissioner has been seriously concerned about the level of smear campaigns, vilification, stigmatisation and other hostile actions against members of LGBTI communities and LGBTI human rights defenders. Amongst other cases illustrating this situation, the Commissioner’s attention was drawn to the ongoing administrative proceedings for the closure of the Tarlabası Association, an organisation working on women’s and children’s rights. This case is reportedly based, *inter alia*, on allegations that the association became active in pursuing goals “against morality and law” and “has turned it into a centre where many crimes are committed due to its programmes on sexuality education for children and youth”.<sup>49</sup>

*Impact of restrictions of the right to freedom of peaceful assembly on the work of human rights defenders and civil society*

41. The Commissioner finds that the right to freedom of peaceful assembly, guaranteed under the European Convention on Human Rights, has been seriously undermined in Türkiye by systematic bans, heavy policing, including the excessive use of force, mass arrests and the frequent use of charges with respect to violating Law No. 2911 on Public Meetings and Demonstrations against participants.<sup>50</sup> In 2022 alone, 949 such charges were reportedly brought in 53 different cases against human rights defenders, which points to a dangerous trend towards criminalising the right to peaceful assembly in Türkiye.<sup>51</sup> The Commissioner’s interlocutors stressed that in addition to restricting the work of human rights defenders, this situation has impacted negatively on large strata of society, including students and academics, workers and physicians all of whom have faced serious consequences for participating in public assemblies on issues of public interest, such as the dire economic situation or environmental degradation.

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<sup>46</sup> The Observatory for the Protection of Human Rights Defenders, the Human Rights Association and the Human Rights Foundation of Türkiye published a [joint report](#) entitled “Uncertain and Eerie”: Closure Cases Against Associations in Türkiye”, December 2023.

<sup>47</sup> Balkan Insight, [Türkiye Introduces 'Family' Course in Schools to 'Fight' Homosexuality](#), 12 September 2023.

<sup>48</sup> [Statement](#) by the Commissioner for Human Rights, 5 May 2023.

<sup>49</sup> See further details in the [report](#) “Uncertain and Eerie”: Closure Cases Against Associations in Türkiye”, p. 14.

<sup>50</sup> The Observatory for the Protection of Human Rights Defenders & Human Rights Association’s [joint report](#) “A Perpetual Emergency: Attacks on Freedom of Assembly in Türkiye and Repercussions for Civil Society”, published in July 2020; [Joint submission](#) by 33 NGOs and Bar associations pursuant to Rule 9.2 of the Committee of Ministers’ Rules for the Supervision of the execution of judgments of Oya Ataman group (Oya Ataman v. Turkey (74552/01) and 73 Repetitive Cases), 23 January 2023.

<sup>51</sup> Human Rights Foundation of Türkiye (TIHV), [Report on Repression, Obstacles and Challenges Faced by Human Rights Defenders in Türkiye in 2022](#), p. 3.

42. The case of Saturday Mothers/People<sup>52</sup> is symptomatic of this situation and of a broader problem of non-implementation of the judgments of the Constitutional Court (see below). As noted by the Commissioner and other international actors,<sup>53</sup> despite two judgments of the Turkish Constitutional Court<sup>54</sup> (in 2019 and 2020) which upheld the right to freedom of peaceful assembly of Saturday Mothers/People, only in November 2023 was a group of 10 of their members allowed to gather in front of the Galatasaray High School, after five years of being deprived of this right at this location. The Commissioner regrets, however, that the police blockade on Galatasaray Square continues, whilst criminal proceedings are ongoing against members of Saturday Mothers/People for the violation of Law No. 2911 on Public Meetings and Demonstrations.<sup>55</sup>
43. The Commissioner has shared her concerns with the authorities that LGBTI communities have been prevented from exercising their right to peaceful assembly due to sweeping restrictions on LGBTI events that the authorities at different levels have enforced over the years.<sup>56</sup> She observes with regret that despite her recommendations to the authorities, severe restrictions and bans continue to be imposed on LGBTI events, as part of the authorities' general crackdown on LGBTI activities and human rights defenders. The Istanbul Pride march and many other Pride events were banned again during the month of June 2023 and in previous years, whilst hundreds of participants at various gatherings which were held despite the official bans were arrested and subjected to various criminal proceedings. At the same time, in June 2023, the authorities allowed counter events to be held which were organised under the platform "Big Family Meetings" and purported to promote "the institution of family" and "family values", but which in fact were actively engaged in spreading hatred against LGBTI people and those who support them.
44. The Commissioner is also concerned that peaceful assemblies focusing on women's rights have consistently faced bans and heavy policing. It is regrettable that the International Women's Day march in Istanbul has been banned for the last eight years and stresses the need for the authorities to investigate all cases where excessive use of force has been used against participants during the peaceful assemblies organised in recent years despite the ban.
45. The Commissioner is further concerned about restrictions on the right to peaceful assembly of environmental human rights defenders and activists. She has been informed of the criminal charges brought against environmental activists and protesters following a series of peaceful protests against plans to expand a coal mine which threaten the Akbelen Forest, near İkizköy. The charges of obstructing security forces by resisting them, damaging public property, taking part in an illegal assembly or demonstration with weapons or violating the law on assemblies and demonstrations have been used against protesters. In March 2023, this prompted a reaction from the UN Special Rapporteur on the situation of human rights defenders when she referred to the case of the Turkish environmental human rights defender Füsün Ergün who was charged with preventing public duty, after being forcibly removed from a peaceful protest, and who now faces up to 4 years in prison.<sup>57</sup>
46. In conclusion, the Commissioner stresses that the judicial actions targeting Turkish civil society, human rights defenders and lawyers remains the most worrying manifestation of a continuous and concerted pressure exerted on human rights defenders, in a deliberate attempt to silence them

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<sup>52</sup> The Saturday Mothers/People is a group of human rights defenders who, every Saturday at noon for a half an hour, gather in Istanbul's Galatasaray Square holding photographs of their loved ones who were victims of enforced disappearances or political murders during the 1980s and 1990s. The group's access to Galatasaray Square in Taksim has been denied since August 2018. See, Freedom House, [Press Release: Türkiye : Detention of Saturday Mothers Represents Arbitrary, Unlawful Crackdown on Peaceful Dissent](#), 27 June 2022.

<sup>53</sup> [Statement](#) by the Commissioner for Human Rights, 5 May 2023; The European Commission's [Türkiye report of 2023](#), 8 November 2023; Amnesty International's [campaign](#) for Saturday Mothers; The Bar Human Rights Committee of England & Wales (BHRC) and ARTICLE 19's joint submission of an [expert opinion](#) in the case of Saturday Mothers/People before the first instance court, November 2021.

<sup>54</sup> Turkish Constitutional Court decisions of 16 November 2022 in the case of [Maside Ocak Kışlakçı](#) (application no. 2019/21721), and in the case of [Gülseren Yoleri](#) (application no. 2020/7092), decision of 29 March 2023.

<sup>55</sup> See Amnesty International's [letter](#) to the Minister of Ali Yerlikaya, 17 November 2023.

<sup>56</sup> The Commissioner's [report](#) on Türkiye, [CommDH\(2020\)1](#), 19 February 2020; The Commissioner's [letter](#) to the Minister of Interior and the Minister of Justice of Türkiye, 24 June 2021.

<sup>57</sup> The UN Special rapporteur Mary Lawlor's [statement](#) on the criminal prosecution against environmental HRD, Füsün Ergün, for her participation in the İkizköy Akbelen Resistance, 26 March 2023.

and prevent them from reporting on ongoing human rights violations in Türkiye. This approach reflects the authority's perception of human rights work as a threat to security and public order. There is an urgent need for the authorities to focus on creating an enabling environment for the work of human rights defenders and civil society.

### **III. Observations about the independence and impartiality of the judiciary and the protection of human rights in the justice system**

47. The Commissioner reiterates that the independence of the judiciary and the right to a fair trial, including access to justice and the presumption of innocence, are core components of the rule of law which, together with individual freedom and political liberty, is one of the three "principles which form the basis of all genuine democracy" according to the Preamble of the Statute of the Council of Europe. They are also the absolute precondition for the enjoyment of human rights.
48. In her 2020 report on Türkiye, the Commissioner provided a detailed assessment of the administration of justice and the protection of human rights in the justice system. She made several recommendations concerning the need to ensure the structural independence of the Council of Judges and Prosecutors (HSK), specifying that judges should be recruited, appointed, transferred, promoted, investigated, disciplined or dismissed according to clear, public and foreseeable criteria, whilst using transparent procedures in which the executive's role is drastically and fundamentally reduced.
49. The Commissioner further pointed to the need for the authorities to address numerous long-standing problems in the criminal justice system, such as the misuse of detentions on remand and the lack of respect for basic principles of law, including the presumption of innocence, no punishment without crime and non-retroactivity of offences, or not being judged for the same crime twice over. She also stressed the need for an urgent and complete overhaul of the Turkish Criminal Code and Anti-Terror Law, making full use of the clear case-law of the Court as well as the precise recommendations of the Venice Commission and the Commissioner's Office on specific provisions of these laws.
50. The Commissioner also called on the authorities of Türkiye to take urgent measures to neutralise the effects of emergency decrees in terms of access to justice and to an effective remedy, legal certainty, and foreseeability. In the same vein, the authorities were called upon to promptly implement the goals in their Judicial Reform Strategy to improve compliance with the case-law of the Constitutional Court, not only regarding individual measures, but also more generally. In her various, subsequent interventions, mentioned in this memorandum, the Commissioner reiterated her concerns about a wide range of serious problems affecting the Turkish justice system.
51. Consistent reports received by the Commissioner confirm strong partiality of the judiciary to political interests and a systemic lack of independence of the Turkish judiciary. In this connection, the Commissioner notes that in 2022, the Council of Europe's Group of States against Corruption (GRECO) concluded as regard judges and prosecutors that "the current level of compliance with the recommendations remained globally unsatisfactory". GRECO also noted that "[...] the executive has kept a strong hold over a number of key areas regarding the running of the judiciary, including: the process of selecting and recruiting candidate judges and prosecutors; reassignments of judicial officeholders against their will; disciplinary procedures; and training of judges and prosecutors."<sup>58</sup>
52. In the same vein, in its resolution from 2023, the PACE called on the authorities to urgently improve the legal framework and conditions for respecting the rule of law, the independence of the judiciary, the protection of human rights and compliance with the Court's judgments within Türkiye, so that judges can act in accordance with their constitutional roles secure in the knowledge that their independence cannot be interfered with; that judges and prosecutors are not enabled or do not feel encouraged to misuse the law for ulterior motives; and to ensure that systemic failures are

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<sup>58</sup> Council of Europe Groups of States against Corruption (GRECO)'s third interim compliance report on Türkiye, [GrecoRC4\(2022\)5](#), adoption in March 2022, para.94.

addressed, including through urgent reform of the Council of Judges and Prosecutors, using the relevant expertise of the Council of Europe.<sup>59</sup>

53. Concerning the specific issue of competence and powers of the Council of Judges and Prosecutors (HSK), which lie at the heart of the problem regarding the lack of independence of the Turkish judiciary, the Commissioner refers to the most recent observations of the Committee of Ministers concerning the implementation by Türkiye of general measures in the *Kavala* case. The Committee “deeply regretted the apparent lack of political will to acknowledge the need for legislative and other measures to bring the structure of HSK in line with Council of Europe standards”, referring to relevant opinions of the Venice Commissioner and GRECO in this regard.<sup>60</sup>
54. The Commissioner remains concerned about the resistance of Turkish courts to comply with the case-law of the Constitutional Court. This problem has been compounded by repeated verbal attacks on the Constitutional Court by public officials. The President of the Republic recently publicly expressed his dissatisfaction with the recent rulings of the Constitutional Court on Article 9 of the Internet Law (No. 5651) and in the case of opposition MP Can Atalay, calling them “incomprehensible” and “unsettling”. This situation has been compounded by the refusal of the Court of Cassation to implement the latter judgement and by its request for the opening of a criminal investigation into the judges of the Constitutional Court who voted in favour of the judgment. The Commissioner considers this recent example of the systemic problem of non-implementation of the judgments of the Constitutional Court seriously damaging for the rule of law and public trust in the justice system and constitutional order.
55. The problem of non-compliance with the judgments of the Constitutional Court extends to the Turkish parliament. The Commissioner’s attention was drawn to the lack of action by the Turkish parliament when it came to amending Article 220 (6) of the Turkish Criminal Code (committing a crime on behalf of a terrorist organisation without being a member of the organisation), in line with the relevant pilot judgment of the Constitutional Court, finding that a conviction under this article did not meet the requirement of legality. The Constitutional Court eventually found a violation in the other 103 pending cases of individuals who were convicted based on this provision. The Commissioner regrets, however, that, as noted above, this offence continues to be widely used by the authorities, especially against human rights defenders and journalists.
56. The Commissioner considers that this situation represents a serious setback for the Turkish constitutional order and the rule of law and undermines the effectiveness of the Turkish Constitutional Court as a remedy for human rights violation in Türkiye, an issue she raised in her 2020 report. This situation is compounded by a persistent pattern of delays in adjudicating cases which are more sensitive or controversial in nature, such as the case of *Selahattin Demirtaş* whose application has been pending before the Constitutional Court since 2019,<sup>61</sup> despite the Committee of Ministers repeated calls on the authorities in this regard.
57. The Commissioner considers that the findings of her 2020 report continue to be relevant today and reiterates that the situation regarding the independence and impartiality of the judiciary currently poses an existential risk to the rule of law in Türkiye and, by extension, to the respect for all human rights guaranteed under the European Convention on Human Rights. Numerous criminal investigations, proceedings, detentions, and sentences faced by Turkish human rights defenders and journalists point to a widespread pattern of misuse of the judicial process to silence human rights defenders and discourage civil society activism, as recognised explicitly by the Court.

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<sup>59</sup> See, PACE [Resolution 2459 \(2022\)](#) on the honouring of obligations and commitments by Türkiye, 12 October 2022, para 9; PACE [Resolution 2347 \(2020\)](#) on new crackdown on political opposition and civil dissent in Türkiye: urgent need to safeguard Council of Europe standards, 23 October 2020, para. 6.3.

<sup>60</sup> Council of Europe Committee of Ministers, 1483<sup>rd</sup> meeting, 5-7 December 2023 (DH), Committee of Ministers’ Notes [CM/Notes/1483/H46-37](#) for the supervision of the execution of the judgment of *Kavala* against Türkiye (Application No. 28749/18).

<sup>61</sup> Council of Europe Committee of Ministers, 1459<sup>th</sup> meeting 7-9 March 2023 (DH), Interim Resolution [CM/ResDH\(2023\)36](#) adopted in relation to the execution of the judgment of *Selahattin Demirtaş* (No. 2) against Türkiye (Application no. 14305/17).

58. In conclusion, to bring about meaningful change, it is essential for the Turkish authorities to engage constructively with civil society, review and revise restrictive laws, free human rights defenders, journalists, activists and others who are imprisoned for exercising their freedom of expression, respect and implement the judgements of the Constitutional Court and the European Court of Human Rights and ensure impartiality and independence of the judiciary. Strengthening human rights protections, promoting dialogue and inclusivity, and fostering a culture of respect for diverse opinions are crucial steps towards enhancing human rights in Türkiye. It is the Commissioner's sincere hope that the willingness to undertake the process to reverse the currently critical situation will materialise soon.