

# Wholehearted? Half-hearted?

## The response from the Parliamentary Assembly of the Council of Europe to recent developments in Turkey

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### Abstract

*The Parliamentary Assembly of the Council of Europe has limited tools of sanction and scrutiny at its disposal to respond to serious transgressions of member states. Since the failed coup attempt in Turkey and the government's subsequent crackdown, sanctions have barely been discussed, let alone used, in the Assembly. However, the monitoring procedure, the most significant tool of scrutiny, has been reopened in respect of Turkey—a step without precedent in the 70 years of the Assembly's existence. Drawing on documentary sources and interviews, this paper analyses the three key debates about Turkey in the Assembly since the failed coup d'état. The paper documents how Turkey has disputed any criticism of its actions and pushed back against all exceptional treatment as punitive and damaging to long-standing relations. It finds that political support for the Erdoğan regime has been unstable and, if anything, diminishing. The Assembly, like other Council of Europe bodies, has declined to endorse the Turkish authorities' version of the events of 15 July 2016 and their aftermath. Considering its limited powers and scandal-ridden recent history, we conclude that the Assembly's response to the decay of the rule of law in Turkey has been stronger than one might have expected.*

### 1. Introduction

The Turkish consulate and Permanent Representation to the Council of Europe (CoE) inhabit a monolithic and lavishly furnished building close to the European institutions in Strasbourg. It is described by the former CoE Commissioner for Human Rights, Nils Muižnieks, as a 'serious symbol' of Turkey's long-term commitment to Strasbourg, 'regardless of ... the extent of their cooperation with different bodies of the Council of Europe'.<sup>1</sup> That paradox is captured by the fact that the initial opening date of the 'superconsulate'<sup>2</sup> coincided with Turkey's decision, in late 2017, to abandon after only two

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<sup>1</sup> Interview, 17 July 2019.

<sup>2</sup> Rue 89 Strasbourg, [Les discrets forages du nouveau consulat de Turquie inquiètent](#), 23 September 2016. Construction was due to begin in 2014, and the opening was initially foreseen for the autumn of 2016. With works starting with a one-year delay, opening was postponed by one year. Concerns about the environmental impact of planned geothermal systems for the air conditioning system of the building, followed by a legal dispute

years the status of *grand payeur* or major contributor to the budget of the CoE.<sup>3</sup> This followed the award by the Parliamentary Assembly of the Council of Europe (PACE, ‘the Assembly’) of a prestigious human rights prize to a judge who had been detained for alleged ties with Fethullah Gülen<sup>4</sup> and, in April 2017, the most significant step in recent relations between Turkey and the CoE: the decision by the Parliamentary Assembly to reopen its monitoring procedure due to serious concerns about the lack of respect for human rights, democracy and the rule of law following the failed coup attempt of 15 July 2016 and the crackdown against alleged opponents during the state of emergency.<sup>5</sup> Monitoring involves regular visits by two rapporteurs and occasional plenary debates to ensure that a state’s problems are honestly assessed, and is the most stringent form of scrutiny available to the Parliamentary Assembly. This was the first time that any CoE member state had been brought back under monitoring, Turkey having been under the less intensive ‘post-monitoring dialogue’ with the Assembly since 2004. Adding to the paradox, between September 2017 and April 2019, Turkey’s list of candidates for Judge of the European Court of Human Rights was rejected twice by the relevant PACE (sub-)committee and failed to proceed a third time due to the withdrawal of a candidate, leading to a two year hiatus in filling the position.<sup>6</sup>

Drawing on documentary sources and interviews,<sup>7</sup> this paper describes and analyses the response of the Parliamentary Assembly to the decay in the rule of law and human rights protection in Turkey since July 2016. It discusses the tools of sanction (section 2) and scrutiny (section 3) at the Assembly’s disposal and discusses how they have—or have not—been used in respect of Turkey, in comparison to previous and concurrent crises and in conjunction with other CoE bodies, notably the CoE Commissioner for Human Rights and the Venice Commission, the CoE’s advisory body on constitutional matters. Throughout, we also examine how Turkish politicians have positioned themselves vis-à-vis interventions by Strasbourg bodies. Section 4 concludes with a discussion of the impact of the measures taken by the Assembly.

We also include two annexes to the paper: Annex A provides a timeline of key events in the relationship between Turkey and PACE from 2016 to the present, while Annex B presents a brief overview of the Assembly’s composition, functions and working methods.

## 2. The possibility of using sanctions

What sanctions are available to the CoE for states that commit serious transgressions, how have they been applied over the years, and how well-equipped is PACE in particular to confront states that flout

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between the consulate and the company in charge of the construction site, further delayed the opening until June 2019.

<sup>3</sup> Turkey’s contribution increased from €14 million in 2015 to €34 million in 2016; the size of Turkey’s delegation to PACE delegation grew from 12 to 18; and Turkish became a working language of the CoE.

<sup>4</sup> PACE, [Václav Havel Human Rights Prize 2017 awarded to Murat Arslan](#), 9 October 2017.

<sup>5</sup> For a synthesis of sources on the nature and scale of human rights violations since the coup attempt, see the Turkey Human Rights Litigation Support Project at <https://www.turkeylitigationsupport.com>.

<sup>6</sup> PACE, Elections of judges to the European Court of Human Rights – table of progress by Contracting Party, available at: <https://bit.ly/2YM1wgi>.

<sup>7</sup> Interviews were conducted (remotely) with the former CoE Commissioner for Human Rights, Nils Muižnieks, and a former rapporteur of the Committee on Legal Affairs and Human Rights, in the summer of 2019. Issues of protocol prevented us from interviewing CoE staff members.

the rule of law? This section addresses these questions in order to provide an understanding of what one might realistically have expected from the Assembly in relation to Turkey post-July 2016.

Under Article 8 of the CoE's Statute, any state that has 'seriously violated' Article 3 of the Statute, requiring commitment to the rule of law and human rights,<sup>8</sup> may be suspended from its rights of representation, or requested by the Committee of Ministers (CM) to withdraw from the CoE or expelled by the CM, subject to the prior agreement of the Assembly.<sup>9</sup> Greece, under military dictatorship, is the only state to have withdrawn from the CoE (in 1969, returning in 1974). This was done in anticipation of expulsion by the CM. No state has ever been expelled; indeed, Nils Muižnieks argues that the threshold is so high that 'it is virtually impossible for a country to be excluded' (he notes, for instance, that this sanction has not even been considered in respect of Russia's annexation of Crimea, discussed below).<sup>10</sup>

Lesser sanctions are also available to the Assembly, notably the non-ratification of the credentials of a national parliamentary delegation,<sup>11</sup> and it has used such sanctions even when the CM has been reluctant to act. Following the 1980 coup in Turkey, which was met with a 'slow and indulgent response' by the CM,<sup>12</sup> the Assembly excluded the Turkish delegation in May 1981 and, in January 1983, urged Turkey to 'refrain from using its voting rights in the Committee of Ministers until parliamentary democracy is fully restored'.<sup>13</sup> Elections in November 1983 paved the way for the sanction to be lifted in January 1984.<sup>14</sup> The egregious human rights violations during the Second Chechen War from 1999 again prompted the Assembly to take a tougher stance than the CM: in April 2000, PACE suspended the voting rights of the Russian delegation and pronounced that it was 'totally unacceptable' that the CM had not 'seriously considered the implications for Russian membership of the Council of Europe'.<sup>15</sup> However, less than a year after this bold intervention, in January 2001, the Assembly decided to confirm the credentials of the new Russian delegation on the basis that it deserved 'another chance to prove that it is willing—and able—to influence the situation in the Chechen Republic for the better'.<sup>16</sup>

The pattern of condemnation followed by compromise—or even capitulation—repeated itself with PACE's response to Russia's military occupation of Ukrainian territory, which led to the annexation of Crimea. In April 2014, PACE condemned Russia's actions as breaching the CoE Statute and Russia's

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<sup>8</sup> Article 3 states: 'Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council [...]'.  
<sup>9</sup> Committee of Ministers Statutory Resolution (51)30.

<sup>10</sup> N. Muižnieks, 'The Council of Europe's Response to Recent Democratic Backsliding', *European Yearbook of Human Rights* (Intersentia, forthcoming).

<sup>11</sup> [PACE Resolution 1115 \(1997\)](#), Setting Up of an Assembly Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), 29 January 1997, para 12.

<sup>12</sup> P. Leach, 'The Parliamentary Assembly of the Council of Europe' in Schmal and Breuer (eds) *The Council of Europe: Its Law and Policies* (OUP 2017) 166-211 at 192.

<sup>13</sup> [PACE Resolution 794 \(1983\)](#), Situation in Turkey, para 20.5.

<sup>14</sup> K. Dzehtsiarou and D. Coffey, 'Suspension and Expulsion of Members of the Council of Europe: Difficult Decisions in Troubled Times', *International and Comparative Law Quarterly* 68, 2019, 443-476 at 455-56.

<sup>15</sup> [PACE Resolution 1221 \(2000\)](#), Conflict in the Chechen Republic, 29 June 2000 at para 20.

<sup>16</sup> [PACE Resolution 1241 \(2001\)](#), Credentials of the delegation of the Russian Federation, 25 January 2001, para 2.

accession commitments.<sup>17</sup> Consequently, it suspended the voting rights of the Russian delegation as well as its right to be represented in various PACE leadership bodies and participate in election observation missions.<sup>18</sup> The Assembly stopped short, however, of revoking the delegation's credentials, in order to keep dialogue open and avoid a 'return to the pattern of the Cold War'.<sup>19</sup> In response to this limited sanction, in 2017 Russia cancelled its annual payment of some €33 million to the CoE—more than 10 percent of member states' contributions.<sup>20</sup> The Assembly later expressed its 'strongest dissatisfaction at being forced to make ... massive cuts' to its budget, partly because of the Russian move.<sup>21</sup> From January 2016 to 2019, the Russian parliament opted not to submit credentials for the annual process of ratification by PACE, fearing the humiliation of their being rejected and effectively leading to a 'self-induced suspension of representation' in the Assembly.<sup>22</sup> In June 2019, PACE voted to ratify the credentials of the Russian delegation, declaring that the Assembly remained 'committed to dialogue as a means of reaching lasting solutions'.<sup>23</sup> This prompted one commentator to lament that '[t]he Assembly has not only lost this fight, but also part of its credibility by permitting Russia to return without attaching any "internal sanctions"'.<sup>24</sup>

The Assembly's credibility was already severely strained following credible reports that current and former members, including PACE President Pedro Agramunt, had worked in favour of the Azerbaijani government in exchange for cash and gifts—a long-held suspicion confirmed in 2018 by an independent investigatory body set up by the Assembly itself.<sup>25</sup> The inquiry also identified a 'lack of transparency and sufficient regulation' of the procedures for appointing members of Committees and rapporteurs.<sup>26</sup> Meanwhile an unauthorised trip to Syria by Agramunt with Russian and other parliamentarians in March 2017 led to him being stripped of his powers and later resigning as President.<sup>27</sup>

These developments led a former rapporteur of the Committee on Legal Affairs and Human Rights ('Legal Affairs Committee') to observe that in the period under consideration in this paper, the Assembly was at an unusually low ebb:

The mood was terrible and the momentum of PACE in terms of having an institutional say within the Council of Europe was very low. The credibility of the Parliamentary Assembly was very much in question.<sup>28</sup>

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<sup>17</sup> [PACE Resolution 1990 \(2014\)](#), Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation, 10 April 2014, para 4.

<sup>18</sup> *Ibid*, para 15.

<sup>19</sup> *Ibid*, para 14.

<sup>20</sup> Dzehtsiarou and Coffey (n14) 459.

<sup>21</sup> [PACE Resolution 2208 \(2018\)](#), Modification of the Assembly's Rules of Procedure: the impact of the budgetary crisis on the list of working languages of the Assembly, 16 March 2018, para 5.

<sup>22</sup> Dzehtsiarou and Coffey (n14) 458.

<sup>23</sup> PACE [Resolution 2292 \(2019\)](#) Provisional version: Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian Federation, 26 June 2019, para 7.

<sup>24</sup> L. Glas, '[Russia Left, Threatened and Won: Its Return to the Assembly Without Sanctions](#)', Strasbourg Observers, 2 July 2019.

<sup>25</sup> Council of Europe, [Report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly](#), 1 April 2018.

<sup>26</sup> *Ibid*, p. x.

<sup>27</sup> PACE News, [Pedro Agramunt resigns as PACE President](#), 6 October 2017.

<sup>28</sup> Interview, 17 June 2019.

Nils Muižnieks attributes this lost momentum not only to the proximate cause of troubled relations with (among others) Russia, Turkey and Azerbaijan, but also to longer-term structural reasons related to the deterioration in the quality of parliaments Europe-wide:

[The Assembly] used to play a lead role. It used to push the Committee of Ministers to go further. It no longer does that. So I think that, to be honest, [PACE has] ... abdicated what used to be its leading role pushing for a stronger response from the CoE and upholding standards.<sup>29</sup>

The political enfeeblement of the Assembly has been evident, Muižnieks notes, in its muted response to rule of law ‘backsliding’ in Hungary and Poland.<sup>30</sup> One of the main tools of scrutiny—the monitoring procedure—has not even been discussed in respect of Poland and in 2013 was debated, but rejected, in respect of Hungary.<sup>31</sup> In neither case was suspending voting rights or urging the CM to consider expulsion ever on the agenda of the Parliamentary Assembly.

Against this backdrop, it is unsurprising that, since 15 July 2016, no CoE body has invoked the possibility of suspending the credentials of the Turkish delegation, still less suspending or terminating Turkey’s membership of the CoE. The only references to the former option were from two PACE delegates (Zsolt Németh, a Hungarian member of the centre-right European People’s Party / Christian Democrat (EPP) group; and René Rouquet, a French Socialist) who both opposed the idea, arguing (respectively) in a debate on 13 October 2016 that ‘dialogue is the way ... to proceed’<sup>32</sup> and that suspending Turkey’s credentials would be ‘hasty and inopportune’.<sup>33</sup> In respect of the latter option, only the Belgian Socialist delegate Petra De Sutter in January 2019, questioning the effectiveness of monitoring alone (‘it looks as though Turkey does not care about the monitoring’), alluded to the possible consequences of the government continuing with its crackdown, venturing that Turkey was ‘putting at stake even its membership of this Council through its treatment of opposition politicians.’<sup>34</sup> The clearest (albeit still implicit) threat of expulsion came in the wake of some Turkish politicians’ call for the reinstatement of the death penalty, which raised a red flag and led the Assembly to call on the Turkish Parliament not to ‘jeopardise Turkey’s membership of the Council of Europe’ by moving towards restoring capital punishment.<sup>35</sup>

While sanctions have been eschewed, tools of scrutiny have been used, most significantly the reopening of the monitoring procedure in April 2017, as discussed in the next section.

### 3. The response of PACE to events in Turkey

The political bargaining that precedes the Assembly taking a position on an alarming human rights situation in a CoE member state can only be fully exposed if one delves into the decisions to hold extraordinary plenary debates, the content and tone of these debates, the positions taken by political

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<sup>29</sup> Interview, 17 July 2019.

<sup>30</sup> Muižnieks (forthcoming) (n10).

<sup>31</sup> Ibid.

<sup>32</sup> PACE, 2016 Ordinary Session (Fourth part), Report of the thirty-fourth sitting, Thursday 13 October at 10 a.m., Doc. [AS \(2016\) CR 34](#).

<sup>33</sup> Ibid.

<sup>34</sup> PACE, 2019 Ordinary Session (First part), Report of the eighth sitting, 24 January 2019 at 3.30 p.m., Doc. [AS \(2019\) CR 08](#).

<sup>35</sup> PACE [Resolution 2156 \(2017\)](#), The functioning of democratic institutions in Turkey, 25 April 2017, para. 8.

groups, the strategic use of amendments, and voting records.<sup>36</sup> In this section, we examine key moments where the Assembly has decided to make Turkey the focus of debate (3.1). On the basis of verbatim accounts of relevant debates and voting records, we then explore how the various bodies, and individual PACE delegates, have referred to the events of 15 July 2016 and the perceived justification or otherwise for the measures taken under the state of emergency (3.2). We proceed to examine the debate surrounding the reopening of monitoring, including the position taken by different political groups in the Assembly (3.3). Finally we discuss the synergy—or disjuncture—in the responses to the Turkish crisis of different bodies within and beyond the CoE (3.4).

### 3.1 Using the Assembly's extraordinary debate procedures

In its quarterly part sessions, the Parliamentary Assembly may, in addition to ordinary debates, exceptionally hold either an 'urgent' debate or a 'current affairs' debate on matters that have not been placed on the draft agenda by the PACE Bureau.<sup>37</sup> Since July 2016, three debates have been held focusing solely on the situation in Turkey:

- 13 October 2016: current affairs debate on 'The situation in Turkey in the light of the attempted coup d'état';
- 25 April 2017: ordinary debate on 'The functioning of democratic institutions in Turkey', which led to the decision to reopen the monitoring procedure;
- 24 January 2019: urgent debate on 'The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member state?'<sup>38</sup>

The decision to hold—or not hold—an urgent or current affairs debate is itself politically significant. Urgent debates are rare, especially those focused on a specific country rather than a theme,<sup>39</sup> and are thus an important indicator of the Assembly's concern about severe problems in a state. It is notable, then, that on 10 October 2016, during its first part session following the failed coup, the Assembly decided *not* to hold an urgent debate on Turkey which had been requested by the ALDE group (Alliance for Liberals and Democrats in Europe), but instead opted to hold a current affairs debate. Yves Cruchten, a Socialist delegate from Luxembourg, deplored the decision not to hold an urgent debate, which would have given delegates the opportunity to vote on a resolution: holding a current affairs

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<sup>36</sup> The verbatim records of Assembly debates are available online at <https://bit.ly/2OSq4jm>. Voting results, too, are part of the public record.

<sup>37</sup> An urgent debate can be requested by the CM, a PACE committee, one or more political groups, or twenty or more representatives. The adoption of the urgent procedure requires a two-thirds majority of Assembly members voting. If the urgent procedure is adopted, the Assembly refers the item to a committee of the Assembly for report. Reports normally contain a resolution and/or a recommendation addressed to the CM, which will be voted on in the Assembly. A current affairs debate, in turn, may be requested by at least twenty representatives, a political group, a national delegation or a committee. The Assembly may hold only one such debate in each part-session and it is limited to 90 minutes. At the end of a current affairs debate, the Assembly does *not* vote but the Bureau may subsequently propose that the subject be referred to the appropriate committee for report.

<sup>38</sup> For reasons of space, we exclude the discussion of Turkey in the context of thematic debates.

<sup>39</sup> Between 2016 and June 2019, 16 out of 30 requests for urgent procedure debate were accepted. Ten of these requests concerned a specific country situation, and half of those (five) were accepted. During the same time period nine out of 20 current affairs debate requests were accepted (five requests were country-specific, three of which were accepted).



debate, he argued, 'is hardly more significant than a late-night TV chat show – and we diminish ourselves by so doing'.<sup>40</sup> Given that more than 100,000 teachers, professors, judges, police officials and civil servants and 125 independent journalists had been suspended or imprisoned on the mere suspicion of being Gülenists, he added, 'The gloves need to come off'.

On 23 January 2017, a proposed urgent debate on 'The functioning of democratic institutions in Turkey' again failed to reach the required two-thirds majority, despite the request having been made by both the Assembly's Monitoring Committee and the Committee on Political Affairs and Democracy. Those voting against may have been persuaded by the argument that an urgent debate would have damaged the Assembly's relationship with Turkey; indeed, the AKP delegate Talip Küçükcan sought to reassure Assembly members that 'Your voice is heard in Turkey and will be heard more effectively if you continue a positive and constructive dialogue with us'.<sup>41</sup>

### 3.2 Response to the events of 15 July 2016 and their immediate aftermath

The official narrative presented by the Turkish authorities following the events of 15 July 2016 was unequivocal: addressing the Parliamentary Assembly in October 2016, Mevlüt Çavuşoğlu, Minister for Foreign Affairs and former PACE President, called the 'treacherous' attempted coup 'the bloodiest form of terrorism', an act committed by 'enemies of democracy', an 'alliance of evil'.<sup>42</sup> Emphasising the geopolitical pressures facing Turkey, with war at its borders and three million refugees on its territory, Mr Çavuşoğlu equated the coup plotters directly with Daesh (also known as Isis), the Kurdistan Workers' Party (PKK) and Kurdish formations in northern Syria, asserting that, '[t]hey are all evil; they are all terrorist organisations. We must fight against all of them'.<sup>43</sup> These themes have been echoed consistently by AK Parti (AKP) delegates in the Assembly; Talip Küçükcan, then Chair of the Turkish delegation to PACE, stated in a debate in October 2016, '[w]e will chase them wherever they are, whether inside or outside Turkey, whether they are called intellectuals, or this or that. This is an existential matter for us, and we will chase them'.<sup>44</sup> Mr Küçükcan also rejected criticism of Turkey, lamenting what he called a 'growing Erdoğan-phobia in Europe'. AKP delegates have routinely rejected criticism, either using personal narratives to suggest that critics failed to understand Turkey's situation ('I was right there, 30m away from where the bomb dropped in the Turkish Parliament. I survived the event just by chance'<sup>45</sup>), or even angrily attacking individual critics ('I do not usually speak this loudly but it is really getting on my nerves').<sup>46</sup> Minister Çavuşoğlu, however, insisted that Turkey remained committed to the CoE, noting that it was the first international organisation he had visited after 15 July 2016.<sup>47</sup>

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<sup>40</sup> PACE, Doc. [AS \(2016\) CR 34](#) (n32).

<sup>41</sup> PACE, 2017 Ordinary Session, (First part), Report, First sitting, Monday 23 January 2017 at 11.30 a.m., Doc. [AS \(2017\) CR 01](#).

<sup>42</sup> PACE, 2016 Ordinary Session, (Fourth part), Report, Thirty-second sitting, Wednesday 12 October 2016 at 10 a.m., Doc. [AS \(2016\) CR 32](#).

<sup>43</sup> *ibid.*

<sup>44</sup> Talip Küçükcan, PACE, Doc. [AS \(2016\) CR 34](#) (n32).

<sup>45</sup> *ibid.*

<sup>46</sup> The Chair of the Turkish delegation, Akif Çağatay Kiliç, challenged the Chairperson of the Group of the Unified European Left, Tiny Kox from the Netherlands, to call the PKK a terrorist organisation. PACE, Doc. [AS \(2019\) CR 08](#) (n34).

<sup>47</sup> PACE, Doc. [AS \(2016\) CR 32](#) (n42).

Unsurprisingly, the Turkish opposition struck a very different tone in the Assembly. While universally condemning the coup attempt, opposition delegates spared no criticism of the official response to it. HDP member and spokesman for the Unified European Left (UEL) group, Hişyar Özsoy, went so far as to accuse President Erdoğan of staging a ‘counter coup’ and the government of ‘terrorising society, producing a climate of fear, chaos and insecurity’.<sup>48</sup> The same term—‘counter coup’—was used by CHP delegate Ayşe Gülsün Bilgehan.<sup>49</sup> Several Turkish opposition politicians denounced the government’s ‘witch hunt’ against suspected Gülenists.<sup>50</sup> In the light of this evident partisanship, it appears surprising that only two PACE members—HDP member Ertuğrul Kürkçü, later prosecuted on terrorism charges himself, and French Socialist and long-standing co-rapporteur on Turkey for the Monitoring Committee, Josette Durrieu—challenged the official account of the events of 15 July. Ms Durrieu’s question to the Foreign Minister about what proof the government had that Gülen was behind the attempted coup was met with an angry response by the latter who said that the evidence was ‘crystal clear’.<sup>51</sup>

In the light of these clearly demarcated positions of the Turkish delegates, what position did the Assembly take? How forcefully has it condemned both the failed attempt to overthrow the government and the decision to declare a state of emergency, and how prone was it to endorse the official version of who was behind the events?

On 12 October 2016, during the first part session following the attempted coup, the now disgraced PACE President Agramunt failed to mention the crackdown, being content instead to refer to the multiple challenges Turkey was facing. His conciliatory tone was deplored the next day by the abovementioned Socialist delegate Yves Cruchten because Agramunt had ‘said not a single word’ about the fact that ‘Turkey is drifting even further away from democracy and moving in the direction of absolutism’.<sup>52</sup>

When the Assembly itself had its first opportunity to vote on a resolution on the matter, which was not until the April 2017 debate which brought Turkey back under monitoring (see 3.3), the failed coup was firmly condemned as ‘a dangerous armed conspiracy’ which had been ‘traumatic for Turkish society’ and gave President Erdoğan ‘a legitimate reason to declare a state of emergency and give extraordinary powers to the government’.<sup>53</sup> In neither this nor the earlier (current affairs) debate of October 2016 did any individual member of the Assembly, including Turkish opposition delegates, state that the decision to declare a state of emergency on 20 July 2016 was illegitimate. However, concerns were raised in October 2016 by ALDE, UEL and Socialist delegates in particular about the ‘misuse’<sup>54</sup> of the coup attempt and the state of emergency to bring in disproportionate measures that flouted the rule of law. By April 2017, several delegates called expressly for the state of emergency to be lifted.<sup>55</sup>

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<sup>48</sup> PACE, Doc. [AS \(2016\) CR 34](#) (n32).

<sup>49</sup> Ayşe Gülsün Bilgehan (CHP/Socialists, Democrats and Greens group (SOC)), *ibid.*

<sup>50</sup> Ayşe Gülsün Bilgehan, Haluk Koç (CHP/SOC), *ibid.*

<sup>51</sup> PACE, Doc. [AS \(2016\) CR 32](#) (n42).

<sup>52</sup> PACE, Doc. [AS \(2016\) CR 34](#) (n32).

<sup>53</sup> PACE [Resolution 2156 \(2017\)](#), The functioning of democratic institutions in Turkey, 25 April 2017, paras. 1 and 2.

<sup>54</sup> Nikolaj Villumsen (Demark, UEL), PACE, Doc. [AS \(2016\) CR 34](#) (n32).

<sup>55</sup> See, e.g. Anne Kalmari (Finland, ALDE), PACE, 2017 Ordinary Session (Second part), Report of the twelfth sitting, Tuesday 25 April 2017 at 10.00 a.m., [Doc. AS \(2017\) CR 12](#).



In respect of who was behind the failed coup attempt, a majority of delegates resisted AKP attempts to manoeuvre the Assembly into endorsing the official narrative. This is evident if we look at how AKP delegates sought—unsuccessfully—to influence the wording of Assembly resolutions by introducing amendments. A staggering 62 amendments were tabled to the April 2017 draft resolution on reopening monitoring, 35 of which were put forward by AKP members, all but two of which were defeated. One such amendment would have introduced language into the draft resolution acknowledging that the ‘Fetullah Gülen Terrorist Organisation’ or ‘FETÖ’ had infiltrated the state apparatus for many years and ‘attempted a bloody coup d’état’, resulting in Turkey ‘fac[ing] the danger of civil war and chaos.’<sup>56</sup> Instead, the final resolution recalled that the Gülen movement was ‘a former ally of the ruling party operating legally until 2014’.<sup>57</sup> The resolution also rejected the Turkish government’s insistence that Gülen was to be equated with terrorist groups such as Daesh, deliberately omitting Gülen from a list of perpetrators of ‘repeated terrorist attacks’.<sup>58</sup>

In summary, while the Assembly united in condemnation of the failed coup and in the initial justification for declaring a state of emergency, it resisted giving wholesale backing to the Turkish government’s version of events. Moreover, delegates’ concerns escalated by April 2017 to the point where they took the unprecedented step of reopening the monitoring procedure which had been lifted more than a decade earlier.

### 3.3 The decision to reopen the monitoring procedure

The decision to bring Turkey back under monitoring was, recalls Nils Muižnieks, recalls:

Politically, ... the strongest step. The [Turkish government was] furious because they saw themselves as a big, important country, a *grand payeur*. They were almost a founding member [of the ECHR]. To reopen monitoring was a bridge too far.<sup>59</sup>

The tone of the debate was set early on: while proponents of reopening monitoring insisted that the measure was intended to be supportive, the Turkish government and its allies viewed it as punitive and counter-productive. On 12 October 2016, a Danish ALDE delegate, Michael Jensen, warned Minister Çavuşoğlu that ‘many of us’ want monitoring reopened ‘so you can get helpful advice to become a democratic European again’.<sup>60</sup> The minister retorted: ‘People in Turkey think that you are with the coup plotters when you speak as you do’. Mr Jensen raised the matter again in the current affairs debate the next day, stating that Turkey had crossed numerous ‘red lines’ which necessitated the reopening of monitoring ‘not as a punishment of the Government of Turkey, but because we want to stand up for the citizens of Turkey’.<sup>61</sup> In April 2017, co-rapporteur for the Monitoring Committee, Marianne Mikko, likewise described the reopening of monitoring as ‘an offer of genuine cooperation’ rather than a sanction.<sup>62</sup> Proponents of monitoring differed in tone only as to the likely *impact* of the move: French Socialist René Rouquet described it as a ‘symbolic measure’ rather than a ‘solution to

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<sup>56</sup> PACE, The functioning of democratic institutions in Turkey, Collection of written amendments (Revised version), 25 April 2017, [Doc. 14282](#), Amendment 20. The amendment was rejected with 38 votes in favour, 103 against and 9 abstentions, see the Assembly’s voting results, Vote on Amendment 20, <https://bit.ly/31pYpHS>.

<sup>57</sup> PACE [Resolution 2156 \(2017\)](#) on The functioning of democratic institutions in Turkey, 25 April 2017, para. 14.

<sup>58</sup> *Ibid.* para. 5.

<sup>59</sup> Interview, 17 July 2019.

<sup>60</sup> PACE, Doc. [AS \(2016\) CR 32](#) (n42).

<sup>61</sup> PACE, Doc. [AS \(2016\) CR 34](#) (n32).

<sup>62</sup> PACE, Doc. [AS \(2017\) CR 12](#) (n55).

the crisis',<sup>63</sup> while Danish UEL delegate Ulla Sandbaek ventured that it 'at least may prevent the worst attack on democracy in Turkey'.<sup>64</sup>

For their part, AKP delegates have assigned no value whatsoever to the monitoring process, repeatedly warning that it risks harming the Assembly's relationship with Turkey and complaining that Turkey has been unfairly picked on<sup>65</sup> by an Assembly that has been 'hijacked by ... anti-Turkey representatives'.<sup>66</sup> Monitoring is thus cast as 'an efficient tool to target and punish certain member States', which purportedly reflects a 'biased and unbalanced approach'.<sup>67</sup>

Turkey has not been without allies among political groups in the Assembly. The European Conservatives (EC) and EPP have tended to support Turkey's position, while the ALDE, Socialists, Democrats and Greens (SOC), and UEL groups have been less favourable and at times highly critical. As we shall see, however, these positions have not been monolithic, with outliers on all sides in the voting on the decision to reopen monitoring.

In October 2016, Ian Liddell-Grainger of the EC group struck a stridently supportive tone towards President Erdoğan: 'The President of Turkey has every right to clamp down', he argued, '[He] has asked for more powers ... Let him have his powers'.<sup>68</sup> It is the larger EPP group, however, which the abovementioned former Legal Affairs Committee rapporteur recalls as being the most formidable defender of the Turkish government; he ventured that 'the positioning ... and language ... adopted by EPP members was such that there was almost no room for discussion. It was [as if] we had a wall in front of us'.<sup>69</sup> In October 2016, the abovementioned EPP spokesman Zsolt Németh opined that 'solidarity is needed rather than artificial pressure. There should be no suspension of credentials or monitoring threat towards Turkey'.<sup>70</sup> He maintained this view in April 2017, arguing that 'symbolically stigmatising' Turkey by reopening the monitoring procedure could lead it to 'retreat from the Council of Europe, as Russia has retreated'.<sup>71</sup>

While the EPP's formal position in the debate of 25 April 2017 was to oppose reopening the monitoring process, Mr Németh acknowledged that some of its members had dissenting opinions. Indeed, some EPP delegates broke rank by adopting strikingly condemnatory language towards the Turkish government. French delegate Nicole Duranton, for example, took issue with President Erdoğan's allegation that the CoE and OSCE delegation sent to observe the constitutional referendum on expanding presidential powers a week earlier—of which she was a member—had supported 'terrorist activities'; she was 'deeply shocked and appalled by the accusation, which is unconscionable'.<sup>72</sup> The 'brutal and disproportionate' measures taken in the post-coup period, she added, justified the reopening of monitoring. French EPP member, Bernard Fournier, also supported the move in order to 'show solidarity with a people who signed up to the values of the Council of Europe as early as 1950'.<sup>73</sup>

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ziya Altunyaldiz (AKP), PACE, Doc. [AS \(2019\) CR 08](#) (n34).

<sup>66</sup> Zafer Sirakaya (AKP/member not belonging to a political group), *ibid.*

<sup>67</sup> Emine Nur Günay (AKP/member not belonging to a political group), *ibid.*

<sup>68</sup> PACE, Doc. [AS \(2016\) CR 34](#) (n32).

<sup>69</sup> Interview, 17 June 2019.

<sup>70</sup> PACE, Doc. [AS \(2016\) CR 34](#) (n32).

<sup>71</sup> PACE, Doc. [AS \(2017\) CR 12](#) (n55).

<sup>72</sup> *Ibid.*

<sup>73</sup> *ibid.*

Yet another EPP delegate, Boriana Åberg from Sweden, echoed this position and argued that PACE may even need to enlarge its mandate to ‘bring an end to persecution’ in Turkey.<sup>74</sup>

The ensuing voting on the draft resolution to reopen monitoring revealed the disunity in the EPP. Amendment 51, which was tabled by AKP members and would have deleted the paragraph calling for the reopening of monitoring, was defeated by 103 votes to 65 with 14 abstentions. Notably, it failed to win the support of more than half of EPP delegates (with 21 opposing it, 26 supporting it and nine abstaining).<sup>75</sup> The EC lined up more solidly behind the AKP (24 in favour, four against and one abstention). A majority of ALDE, SOC and UEL delegates opposed the AKP amendment, with the UEL taking the clearest stance (17 opposed and one abstention). When it came to voting on the final resolution, the AKP had fewer allies still, the decision to reopen monitoring being approved by 113 to 45 with 12 abstentions.<sup>76</sup> Of the 26 EPP delegates who had supported the AKP’s move to block the reopening of monitoring through Amendment 51, only eight eventually voted against the resolution, the rest voting for it (seven), abstaining (two) or absenting themselves from the vote (nine).

This defeat for the AKP’s position came despite the evident organisation of Turkey’s pro-government PACE delegates. The former Legal Affairs Committee rapporteur whom we interviewed recalls that the Turkish delegation, supported by the Turkish permanent representation, invariably

came to Strasbourg extremely [well] prepared ... They were able to resist—not always to win, they [did lose]—but the level of position that they showed was impressive. It was not amateurish.<sup>77</sup>

This degree of organisation is indicated in the way in which the AKP allies—notably those from Azerbaijan—appeared to be reading from the same script, both literally and figuratively. Azerbaijani delegates have been almost sycophantic in their praise for their allies in the Turkish government, referring to Turkey as a ‘family member’<sup>78</sup> and even embracing the same rhetoric—referring, for example, to the ‘Fetullah Gülen Terrorist Organisation’ and praising the Turkish authorities for ‘doing their best to restore democracy’.<sup>79</sup> Scorn has also been turned on critics of the Erdoğan regime; on 24 January 2019, Azerbaijani delegate Samad Seyidov, EPP spokesman, lambasted the authors of a PACE report on the plight of opposition politicians in Turkey as ‘people who use privileges, immunities and mandates to try to present themselves as politicians’.<sup>80</sup> There is no little irony in this, given that Mr Seyidov had been found, in the Assembly’s corruption investigation, of having breached the PACE members’ Code of Conduct relating to the duty to act with ‘integrity and honesty’.<sup>81</sup> Azerbaijanis’ positioning vis-à-vis Turkey, just as that of their Armenian colleagues, reflects how matters debated in the Assembly are refracted through the lens of their dispute over Nagorno-Karabakh. For their part,

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<sup>74</sup> *ibid.*

<sup>75</sup> PACE, The functioning of democratic institutions in Turkey, Collection of written amendments (Revised version), 25 April 2017, [Doc. 14282](#), Amendment 51. The amendment was rejected with 65 votes in favour, 103 against and 14 abstentions; see the Assembly’s voting results, Vote on Amendment 51, <https://bit.ly/31yc9Aq>.

<sup>76</sup> *Ibid*, Vote on Resolution, <https://bit.ly/2TtKDB7>.

<sup>77</sup> Interview, 17 June 2019.

<sup>78</sup> Vusal Huseynov (EPP), PACE, Doc. [AS \(2017\) CR 12](#) (n55).

<sup>79</sup> Samad Seyidov, PACE, Doc [AS \(2016\) CR 34](#) (n32).

<sup>80</sup> PACE, Doc. [AS \(2019\) CR 08](#) (n34).

<sup>81</sup> [Report of the Independent Investigation Body](#) (n25) paras. 588 and 748.

Armenian delegates—aligned with the Turkish opposition—have compared Erdoğan to Stalin<sup>82</sup> and his regime to the medieval Inquisition,<sup>83</sup> and echoed the use of the term ‘counter-coup’.<sup>84</sup>

The determined nature of the pro-government ‘campaign’ within PACE is also visible in the number of AKP delegates or their allies who succeeded in speaking in PACE debates on a first come, first served basis. In the urgent debate on 24 January 2019, out of a total of 23 speakers, almost half were avowedly supportive of the Erdoğan regime (eight from the AKP; one from Erdoğan’s coalition partner, the Nationalist Movement Party (MHP) and two from Azerbaijan). Their dominance of the debate, however, was not reflected in the voting: the resolution which urged Turkey to implement various recommendations to ensure the protection of the democratic rights of the opposition, was opposed by only 20 delegates, all of them from Turkey or Azerbaijan.<sup>85</sup> Nor, in this case, did the AKP even try to soften the resolution by way of amendments. We can only speculate whether this was because defeat already seemed certain.

Several EPP delegates were highly critical with group’s spokesman, Polish delegate Aleksander Pocij, lamenting that ‘the entire system is in the process of being dismantled in Turkey and ... the rights of the opposition are not guaranteed’.<sup>86</sup> Alarm had also grown about the harassment of current and former PACE delegates; ALDE spokeswoman Gyde Jensen of Germany described it as ‘unacceptable that representatives of this Assembly are being intimidated by the long arm of the Turkish regime’.<sup>87</sup> UEL spokesman Tiny Kox of the Netherlands highlighted the plight of three HDP politicians: the abovementioned honorary PACE member, Ertuğrul Kürkçü, who had been sentenced on terrorism charges; former member Filiz Kerestecioğlu, who was prosecuted for a question she had asked in the Assembly about the Turkish invasion of Northern Syria; and current member Feleknaş Uca who, Kox argued, risked arrest when she returned home after her participation in the part session. These accounts of harassment against Turkish opposition PACE members are corroborated by the former Legal Affairs Committee rapporteur that we spoke to, who recalled that the abovementioned Ms Bilgehan had been denied permission to travel on PACE business on account of the positions she had taken in the Assembly.

That really scared me because we tend to imagine that the Parliamentary Assembly should be a safe haven for people sharing not necessarily the same political opinions, but at least the same vision of parliamentary democracy. Obviously, that was not the case.<sup>88</sup>

The ‘long arm’ of the regime also reached the European Court of Human Rights: former Commissioner Muznieks recalled that several of his office’s former Turkish interlocutors—mainly seconded from the government to the Court’s Registry—had been arrested and detained.

Since January, no further debates on Turkey have been held or proposed that would allow us to ‘take the temperature’ of the Assembly. Certainly, the voting figures in January suggest that, if anything, the already unstable political support for the regime in the Assembly has waned, with the Azerbaijani

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<sup>82</sup> Ayşe Gülsün Bilgehan (CHP/SOC) and Samvel Farmanyan (EPP), PACE, Doc. [AS \(2016\) CR 34](#) n(32).

<sup>83</sup> Naira Zohrabyan (EPP), PACE, Doc. [AS \(2019\) CR 08](#) (n34).

<sup>84</sup> Samvel Farmanyan (EPP), PACE, Doc. [AS \(2016\) CR 34](#) n(32).

<sup>85</sup> See the Assembly’s voting results, Vote on resolution, <https://bit.ly/2MeJ6hP>.

<sup>86</sup> PACE, Doc. [AS \(2019\) CR 08](#) (n34).

<sup>87</sup> *Ibid.*

<sup>88</sup> Interview, 17 June 2019.

members being its only reliable allies. Dutch Socialist delegate Tineke Strik, capturing the mood of delegates, was unconvinced by the Turkish majority's assertion that their delegation was willing to listen to the Assembly. Despite the lifting of the state of emergency, she stated, '[t]he rule of law is seriously flawed: people have no access to impartial justice, and checks and balances are failing...' She added that '[i]f none of our incentives work, we should consider the use of less positive measures', without specifying what these might be.<sup>89</sup> If the Turkish authorities have failed to listen to PACE, have other CoE bodies, exerted greater impact? The next section addresses this question with reference to the Commissioner for Human Rights and the Venice Commission.

### 3.4 Synergies between Council of Europe institutions and beyond

The tone struck by the (then) Commissioner Nils Muižnieks, the Venice Commission and the Parliamentary Assembly (if not its former President Pedro Agramunt) in respect of the events of 15 July 2016 and their immediate aftermath was broadly similar. Indeed, PACE appears to have followed the Venice Commission in referring to the failed coup attempt as a 'dangerous armed conspiracy'.<sup>90</sup> At the same time, none of the three CoE bodies chose to endorse the Turkish government's narrative of events in respect of the perpetrators of the coup attempt. In his first statement after the failed coup on 20 July 2016, the Commissioner 'condemn[ed] in the strongest possible terms the contemptible attempt to overthrow the democratically elected government in Turkey' but was silent on the matter of who was behind it.<sup>91</sup> He was also alarmed by images showing torture and ill-treatment being inflicted on suspected perpetrators. In a reply issued the same day, the Turkish Ambassador to the CoE 'deeply [regretted]' the Commissioner's 'prejudicial remarks' and again insisted that the 'plotters' were linked to the 'Fetullah Gülen Terrorist Organisation'.<sup>92</sup> In its first detailed appraisal of the July 2016 events published in December 2016, the Venice Commission acknowledged that 'a very large segment of the Turkish society shares the view of the Turkish authorities on the role of the Gülenist movement' but added that 'Mr Gülen himself instead denies playing any role in the coup'.<sup>93</sup> As we have seen, PACE likewise chose to remain agnostic on the matter in its first vote on the matter in April 2017, whilst not explicitly challenging the official Turkish account.

How, then, have the various CoE bodies interacted in their response to events in Turkey? The clearest example of interaction is the request by PACE committees for Venice Commission opinions. Since the attempted coup d'état, the Commission has prepared seven opinions on Turkey (compared with nine opinions issued between 2004 up to mid-July 2016), six of which were requested by the Parliamentary Assembly. Four of the requests came from the Monitoring Committee, leading to opinions on

- electoral reform in December 2018;<sup>94</sup>

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<sup>89</sup> PACE, Doc. [AS \(2019\) CR 08](#) (n34).

<sup>90</sup> Venice Commission, Turkey - Opinion on Emergency Decree Laws N°s 667-676 adopted following the failed coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session, 9-10 December 2016, [CDL-AD\(2016\)037-e](#), para 225. See above (n53) for PACE's use of the same term in its 25 April 2017 resolution.

<sup>91</sup> Commissioner for Human Rights, [Situation in Turkey](#), 20 July 2016.

<sup>92</sup> [Letter from the Permanent Representation of Turkey to the Council of Europe](#), 20 July 2016.

<sup>93</sup> *Ibid*, para 14.

<sup>94</sup> Venice Commission, Turkey - Joint Opinion of the Venice Commission and ODIHR on Amendments to the electoral legislation and related "harmonisation laws" adopted in March and April 2018, adopted by the Council for Democratic Elections at its 64th meeting (Venice, 13 December 2018) and by the Venice Commission at its 117th Plenary Session (Venice, 14 and 15 December 2018), [CDL-AD\(2018\)031-e](#).

- constitutional reform to create a presidential system and the related referendum in March 2017;<sup>95</sup>
- criminal peace judgeships,<sup>96</sup> also in March 2017;<sup>97</sup> and
- emergency decree laws following the failed coup in December 2016.<sup>98</sup>

The Committee on Political Affairs and Democracy also requested an opinion on emergency decree laws with respect to freedom of the media, which was issued in March 2017.<sup>99</sup> Meanwhile, President Agramunt on behalf of the Assembly requested an opinion on challenges to the scope of the privileges and immunities enjoyed by PACE members, which was issued in October 2016.<sup>100</sup>

These opinions have variously been referred to in debates in the Parliamentary Assembly, although infrequently. Where they are invoked, it is to give ballast to the approach being taken; for example, in April 2017, co-rapporteur for the Monitoring Committee, Marianne Mikko, opening the debate on the reopening of monitoring, emphasised that the report under debate was based inter alia on Venice Commission opinions, as well as reports by the Commissioner.<sup>101</sup> In the same debate, Lord Anderson, a UK Socialist delegate, likewise referred to a ‘chorus of concern’ by CoE institutions.<sup>102</sup> The Turkish government’s sensitivity to critical Venice Commission opinions is indicated by the fact that former PACE President and ALDE delegate, Anne Brasseur, felt the need to defend the Commission from a smear issued by ‘eminent Turkish authorities’ that it issued political rather than legal opinions: ‘[O]ur Assembly’s task is to protect the Venice Commission’, Brasseur stated. ‘If we doubt the opinions of the Venice Commission, we might as well just quit.’<sup>103</sup>

As to the impact of its opinions, the Venice Commission provides information on follow-up—or lack of it—to three of the decisions noted above.<sup>104</sup> The Commission’s numerous recommendations to reform the criminal peace judgeships to address their lack of independence and impartiality was met with no action. Similarly, a raft of reforms proposed to protect freedom of the media under the state of emergency remained unimplemented while the emergency lasted, save for restoration of legal personality of a few media outlets. Finally, Turkey had taken no action in response to the Commission’s

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<sup>95</sup> Venice Commission, Turkey - Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017, adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017), [CDL-AD\(2017\)005-e](#).

<sup>96</sup> The Criminal Peace Judgeships were established in June 2014 with the exclusive authority to authorise searches, seizures, appointments of trustees, disclaimer trials, pre-trial detention and release or continuation of detention.

<sup>97</sup> Venice Commission, Turkey - Opinion on the duties, competences and functioning of the criminal peace judgeships, adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017), [CDL-AD\(2017\)004-e](#).

<sup>98</sup> Venice Commission, [CDL-AD\(2016\)037-e](#), (n90).

<sup>99</sup> Venice Commission, Turkey - Opinion on the Measures provided in the recent Emergency Decree Laws with respect to Freedom of the Media, adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017), [CDL-AD\(2017\)007-e](#).

<sup>100</sup> Venice Commission, Turkey – Opinion on the suspension of the second paragraph of Article 83 of the Constitution (parliamentary inviolability), adopted by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016), [CDL-AD\(2016\)027-e](#).

<sup>101</sup> PACE, Doc. [AS \(2017\) CR 12](#) (n55).

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Information on follow-up is available at <https://bit.ly/2P27Qfg>.



conclusion that the 2017 constitutional amendments represented ‘a dangerous step backwards in the constitutional democratic tradition of Turkey’ and ought not to have been pursued. By contrast, the creation in January 2017 of the Commission of Inquiry for State Emergency Practices to examine complaints from those adversely affected by emergency decrees can be attributed in part to the Venice Commission’s recommendation for such a body,<sup>105</sup> alongside the intervention of the CoE Secretary General. We note, however, that the independence of this body was soon questioned by the Commission itself.<sup>106</sup>

In contrast to both PACE and the Venice Commission, the Commissioner for Human Rights is, as Muižnieks notes, ‘nimble enough to be able to engage in a timely manner with ... rapid backsliding’.<sup>107</sup> He recalls that in respect of Poland and Hungary, while, as noted above, PACE had abdicated its role, the ‘Commissioner could often flag problematic issues immediately and the [Venice Commission] would then provide a more elaborate analysis later’.<sup>108</sup> He detects the same dynamic with respect to interventions on Turkey since July 2016. His visit to Turkey in September 2016 and ensuing memorandum on the state of emergency<sup>109</sup> ‘very much laid the groundwork and anticipated a number of the themes that were subsequently raised by the Venice Commission and others’.<sup>110</sup> Momentum was maintained with two further memoranda in December 2016 on the human rights implications of anti-terrorism operations in south-eastern Turkey<sup>111</sup> and in February 2017 on threats to freedom of expression.<sup>112</sup> Subsequently, Muižnieks recalls, his office decided to use third party interventions at the ECtHR on cases concerning media freedom,<sup>113</sup> the plight of opposition politicians<sup>114</sup> and civil society activists,<sup>115</sup> and counter-terrorism operations<sup>116</sup> ‘to magnify points that we were trying to make in other fora’.<sup>117</sup> The Commissioner also had an unusual degree of contact with the Parliamentary Assembly in the months after the coup attempt, exchanging views with the Committee on Political Affairs and Democracy Committee on 10 October 2016 and the Monitoring Committee on 23 January 2017.<sup>118</sup>

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<sup>105</sup> Venice Commission, [CDL-AD\(2016\)037-e](#) (n90), para 228.

<sup>106</sup> Venice Commission, [CDL-AD\(2017\)007-e](#) (n99), paras 84-90.

<sup>107</sup> Muižnieks (forthcoming) (n10).

<sup>108</sup> Ibid.

<sup>109</sup> Commissioner for Human Rights, [Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey](#), 7 October 2016.

<sup>110</sup> Interview, 17 July 2019.

<sup>111</sup> Commissioner for Human Rights, [Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey](#), 2 December 2016.

<sup>112</sup> Commissioner for Human Rights, [Memorandum on freedom of expression and media freedom in Turkey](#), 15 February 2017.

<sup>113</sup> Third party intervention by the Council of Europe Commissioner for Human Rights, CommDH(2017)29, 10 October 2017; <https://bit.ly/2hPotr0>.

<sup>114</sup> Third party intervention by the Council of Europe Commissioner for Human Rights, CommDH(2017)33, 2 November 2017; <https://bit.ly/303JLGO>.

<sup>115</sup> Third party intervention by the Council of Europe Commissioner for Human Rights, CommDH(2018)30, 20 December 2018; <https://bit.ly/2N55NER>.

<sup>116</sup> Third party intervention by the Council of Europe Commissioner for Human Rights, CommDH(2017)13, 25 April 2017; <https://rm.coe.int/168070cff9>.

<sup>117</sup> Interview, 17 July 2019.

<sup>118</sup> Ibid.

The nimble-footedness of the Commissioner also ensured that he engaged with institutions of the European Union, in particular the European Parliament (EP), to a greater extent than the Parliamentary Assembly. Muznieks attended several EP hearings on Turkey and called the coordination between his office and the EP ‘one of the best examples of synergy between my work and that of the EU’.<sup>119</sup> He ventured that his unequivocal stance that European institutions must not subordinate human rights concerns to migration-related pressure from Turkey resonated with the EP, while also noting that it was easier for the EU to take a ‘tough stance’ on a non-member state than on one of their peers. His conclusions had been backed strongly by the EP rapporteur on Turkey, Kati Piri. For her part, Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission since November 2014, publicly stated that Turkey should implement the Commissioner’s recommendations.<sup>120</sup>

By contrast, the former Legal Affairs Committee rapporteur regretted the lack of contact between PACE and the EP:

There should be better alignment of the two parliamentary assemblies ... on the specific responsibilities of the Council of Europe. For the years that I spent in Strasbourg, I never saw anything close to that.<sup>121</sup>

Such liaison, he added, could be instigated in the form of at least twice-yearly meetings between the bureaux of the two bodies in order to coordinate priorities.

## 4. Conclusion

We alluded in the Introduction to the paradox between Turkey’s stated commitment to the CoE, manifested in its imposing headquarters in Strasbourg, and the fracturing of relations that has occurred since July 2016. While Turkey initially ‘played at wanting to continue a dialogue’, recalls Nils Muižnieks, his interaction with senior ministers convinced him that ‘it really made no difference. They seemed very intent on continuing with the path they were taking’.<sup>122</sup> Indeed, Turkey has over time disputed *any* criticism by PACE of its actions and pushed back against *all* exceptional treatment—culminating in the reopening of the monitoring procedure—as punitive, unfair and damaging to long-standing relations.

The Turkish authorities have sought to use all avenues open to them within PACE instrumentally to deflect or defer scrutiny and criticism, evinced by the remarkable number of amendments submitted by AKP delegates to the April 2017 draft resolution that resulted in the reopening of monitoring. That virtually all of these amendments failed, however, points to the limited political support for the regime in the Assembly and delegates’ refusal to endorse wholesale the official version of the events of July 2016. Moreover, what support existed in April 2017, when 65 delegates were willing to side with the AKP in rejecting the reopening of the monitoring procedure, had dissipated by January 2019, to the

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<sup>119</sup> *ibid.*

<sup>120</sup> *ibid.*

<sup>121</sup> Interview, 17 June 2019.

<sup>122</sup> Interview, 17 July 2019.

point that the report on repression of opposition politicians was opposed only by AKP and Azerbaijani delegates.

Turkey's attempts to instrumentalise PACE have been called out and strongly resisted by some Assembly members: Anne Brasseur warned that she saw 'from different sides a tactic to destroy our Assembly – attempts to destroy what we have'.<sup>123</sup> Delegates have also expressed outrage at the apparent contempt by President Erdoğan for the Council of Europe, whose mission to observe the April 2017 referendum had been told by the President to 'know your place'.<sup>124</sup> Nikolaj Villumsen, UEL spokesperson, equated this threat with an assault on the whole Assembly.

Should we accept such an assault? No. That leaves us no option but to act. Either we stand up for the values of the Assembly, or we 'know our place' under the command of President Erdoğan.<sup>125</sup>

The strength of this rhetoric is remarkable in view of the enfeebled state of the Assembly during the period under discussion. We alluded, in section 2, to the systemic and proximate causes for the decline in the Assembly's authority, which had reached its lowest point in recent history with the corruption scandal and PACE's capitulation to pressure to restore the credentials of the Russian delegation without reimposing any sanctions. How, then, has the Assembly performed in its response to the decay of the rule of law in Turkey?

The former Legal Affairs Committee rapporteur referred to above recalls that the Assembly displayed 'peaks of energy' during Plenary sessions but that momentum dissipated between its quarterly meetings because delegates lack the proactive attitude required to sustain coordination:

It was a very reactive ... attitude. ... And that was probably one of the elements that was missing in 2017, at the peak of the crisis, when we did not sufficiently ... organise ourselves so that in between sessions we could occupy public space.<sup>126</sup>

Pressure could have been maintained, he added, through the coordinated use of both social and traditional media. In addition, delegates could have done more to offer peer-to-peer support to Turkish opposition colleagues. He also called for members of different political groups to work across party lines within and between sessions. Turkey, he concludes, should have been chosen for this kind of 'priority treatment':

Turkey would probably have been number one on my list because we had seen such a deterioration of the conditions of the rule of law in the country following July 2016 that justified, in my opinion, a different kind of position.

In the event, Turkey could be seen as a 'case study as to what PACE could do better'. Given these weaknesses, those Assembly members who pushed for the reopening of monitoring deserve recognition for taking this unprecedented step. As Nils Muižnieks ventures, along with not ratifying

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<sup>123</sup> PACE, Doc. [AS \(2017\) CR 12](#) (n55).

<sup>124</sup> BBC News, [Turkey referendum: Erdogan dismisses criticism by monitors](#), 18 April 2017.

<sup>125</sup> PACE, Doc. [AS \(2017\) CR 12](#) (n55).

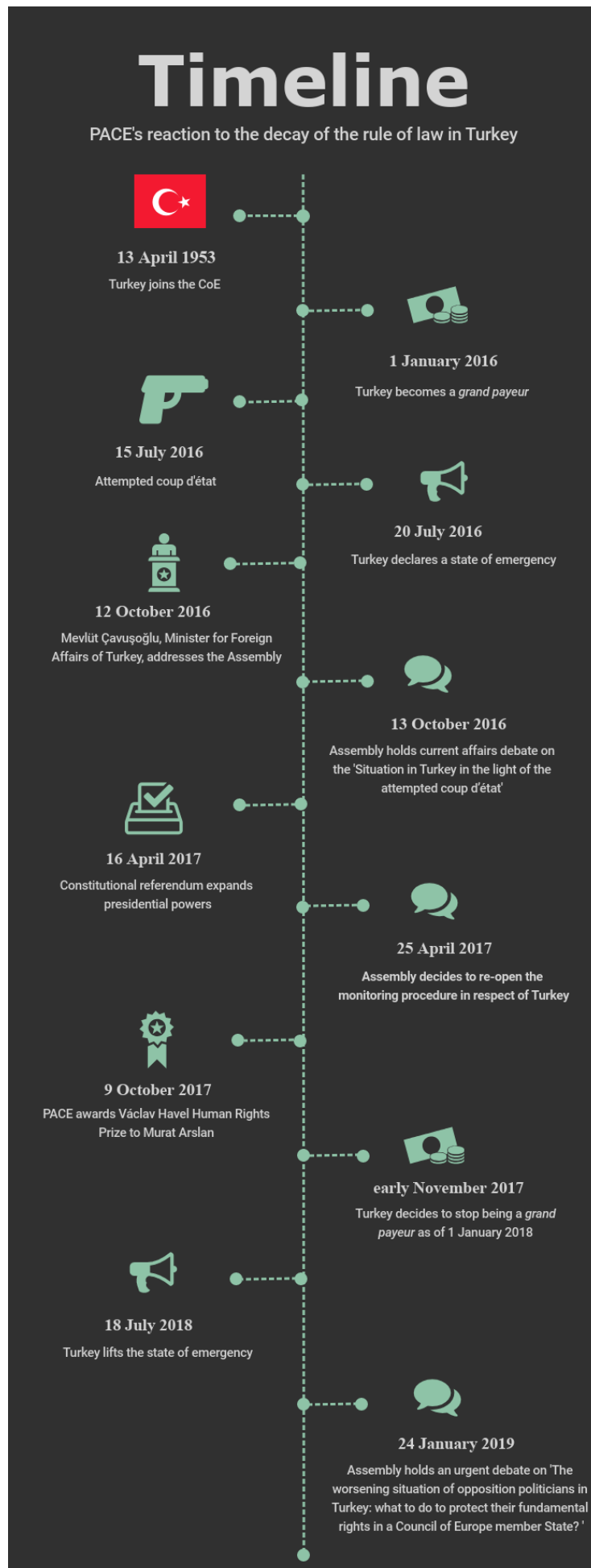
<sup>126</sup> Interview, 17 June 2019.

the credentials of a delegation, 'this is the biggest weapon that PACE has. And it didn't use it with regard to Poland and Hungary, which I find regrettable. So the fact that it did it with regard to Turkey I think is very good'.<sup>127</sup> Given Turkey's resistance to external pressure, the tangible impact of PACE monitoring may lie less in any immediate change of course by the regime than in the support it provides to those struggling to defend their country against ongoing attacks on the rule of law.

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<sup>127</sup> Interview, 17 July 2019.

## Annex A: Timeline



## Annex B: The Parliamentary Assembly of the Council of Europe – its composition, function and working methods<sup>128</sup>

### Composition

The Parliamentary Assembly of the Council of Europe (PACE, the Assembly) is one of the Council of Europe's (CoE) two statutory organs and acts as its deliberative body. It is composed of **324 representatives** (and an equal number of substitutes) from the parliaments of the 47 CoE member states. Each country, depending on its population, has **between two and eighteen representatives** from both ruling and opposition parties.

### Functions

The Assembly **elects** the judges of the European Court of Human Rights and the Commissioner for Human Rights, as well as the Secretary General and Deputy Secretary General of CoE and its own Secretary General. Among the Assembly's other key functions is to **monitor** to what extent member states honour the commitments into which they entered when joining the CoE, and to help them comply with these obligations. Persistent failure on the part of a state to do so may result in the Assembly refusing to ratify, or withdrawing, the **credentials** of that state's national delegation to PACE. As a last resort, PACE may **recommend suspension** of the country's membership of the CoE.

### How the Assembly works

PACE meets **four times a year** for a week-long plenary session in Strasbourg. Its work is prepared by **nine permanent committees** and a Bureau comprising the President of the Assembly, the 20 Vice-Presidents, the Chairpersons of the

six political groups and the committee Chairpersons. The overwhelming majority of members belong to one of **six political groups**:

EPP/CD – Group of the European People's Party  
SOC – Socialists, Democrats and Greens Group  
EC – European Conservatives Group  
ALDE – Alliance of Liberals and Democrats for Europe  
UEL – Group of the Unified European Left  
FDG – Free Democrats Group

The Assembly adopts three types of texts: **recommendations** addressed to the Committee of Ministers, **resolutions** expressing its own viewpoint and **opinions** on membership applications, draft treaties and other texts submitted by the Committee of Ministers.

### Trajectory of a PACE report

#### 1. TABLING OF A MOTION FOR A RESOLUTION OR RECOMMENDATION

A group of parliamentarians (at least 20) tables a motion for a resolution or recommendation on a specific subject

#### 2. REFERENCE TO A COMMITTEE

The motion is examined by the PACE Bureau which proposes to the Assembly to refer it or not to the relevant committee.

#### 3. COMMITTEE EXAMINATION

A rapporteur is appointed. The draft report is examined by the committee. Following this discussion, the committee adopts a draft resolution and/or draft recommendation.

#### 4. DEBATE ON THE REPORT

The report is presented by the rapporteur and debated by the Assembly.

#### 5. VOTE ON AND ADOPTION OF THE TEXT

At the end of the debate, the draft text – which can be amended – is voted on and adopted or rejected by the Assembly.

### The Assembly's nine permanent committees

- *Political Affairs and Democracy*
- *Legal Affairs and Human Rights*
- *Social Affairs, Health and Sustainable Development*
- *Migration, Refugees and Displaced Persons*
- *Culture, Science, Education and Media*
- *Equality and Non-Discrimination*
- *Honouring of Obligations and Commitments by Member States (Monitoring)*
- *Rules of Procedure, Immunities and Institutional Affairs*
- *Election of Judges to the European Court of Human Rights*

<sup>128</sup> For more detail, see the Assembly's website (<http://www.assembly.coe.int/>); its brochure on the work of PACE (<https://bit.ly/31MMvrF>); Leach (n12); and PACE, [National parliaments as guarantors of human rights in Europe](#), Handbook for parliamentarians (Strasbourg: Council of Europe, 2018).