



Office for Democratic Institutions and Human Rights

REPUBLIC OF TURKEY

CONSTITUTIONAL REFERENDUM

16 April 2017

OSCE/ODIHR Limited Referendum Observation Mission
Final Report



Warsaw
22 June 2017

TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	INTRODUCTION AND ACKNOWLEDGMENTS	3
III.	BACKGROUND AND POLITICAL CONTEXT	4
IV.	REFERENDUM SYSTEM AND LEGAL FRAMEWORK.....	5
V.	REFERENDUM ADMINISTRATION	7
VI.	VOTER REGISTRATION.....	9
VII.	PARTY REGISTRATION AND PARTICIPATION IN THE REFERENDUM.....	10
VIII.	REFERENDUM CAMPAIGN	10
IX.	CAMPAIGN FINANCE.....	14
X.	MEDIA	15
	A. MEDIA ENVIRONMENT.....	15
	B. LEGAL FRAMEWORK AND MEDIA COVERAGE	16
	C. OSCE/ODIHR LROM MEDIA MONITORING	17
XI.	CITIZEN AND INTERNATIONAL OBSERVERS	18
XII.	COMPLAINTS AND APPEALS	19
XIII.	REFERENDUM DAY	20
	A. VOTING	20
	B. COUNTING, TABULATION AND ANNOUNCEMENT OF RESULTS	21
	C. POST REFERENDUM DAY COMPLAINTS AND APPEALS	22
XIV.	RECOMMENDATIONS	22
	A. PRIORITY RECOMMENDATIONS	22
	B. OTHER RECOMMENDATIONS	23
	ANNEX I: FINAL RESULTS	26
	ANNEX II: LIST OF OBSERVERS IN THE INTERNATIONAL REFERENDUM OBSERVATION MISSION.....	27

REPUBLIC OF TURKEY
CONSTITUTIONAL REFERENDUM
16 April 2017

OSCE/ODIHR Limited Referendum Observation Mission Final Report¹

I. EXECUTIVE SUMMARY

Following an invitation from the authorities of the Republic of Turkey to observe the 16 April 2017 constitutional referendum and based on its mandate, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a Limited Referendum Observation Mission (LROM) on 17 March 2017. The OSCE/ODIHR LROM assessed the compliance of the referendum with OSCE commitments, other international obligations and standards for democratic processes as well as with national legislation. For referendum day, the OSCE/ODIHR LROM was joined by a delegation from the Parliamentary Assembly of the Council of Europe (PACE) to form an International Referendum Observation Mission (IROM). Both institutions involved in this IROM have endorsed the 2005 Declaration of Principles for International Election Observation.

The statement of Preliminary Findings and Conclusions issued by the LROM concluded that the 16 April constitutional referendum “took place on an unlevel playing field and the two sides of the campaign did not have equal opportunities. Voters were not provided with impartial information about key aspects of the reform, and civil society organizations were not able to participate. Under the state of emergency put in place after the July 2016 failed coup attempt, fundamental freedoms essential to a genuinely democratic process were curtailed. The dismissal or detention of thousands of citizens negatively affected the political environment. One side’s dominance in the coverage and restrictions on the media reduced voters’ access to a plurality of views. While the technical aspects of the referendum were generally well administered and referendum day proceeded in an orderly manner, late changes in counting procedures removed an important safeguard and were contested by the opposition.”

The legal framework is focused on elections and is limited with regards to specifics on referenda. The Supreme Board of Elections (SBE) did not fully exercise its authority to regulate the process and provide a coherent legal framework adequate for holding a genuinely democratic referendum. Fundamental rights and freedoms that are unduly circumscribed by the Constitution and related legislation were further restricted by extraordinary state of emergency powers, and in particular by provincial governor decisions to restrict freedom of assembly and expression. Emergency decrees that amended referendum-related legislation exceeded the exigencies of the state of emergency and were not subject to appeal. Notwithstanding the constitutional provision to the contrary, the SBE decided these amendments would take immediate effect.

The procedure in which the constitutional amendments were passed in parliament met significant criticism. The state of emergency that restricted fundamental freedoms and the ongoing security operations in the southeast that resulted in several hundred thousand people fleeing their homes, led to questions as to whether the necessary conditions for a referendum were in place. Contrary to international good practice for referenda, the 18 proposed amendments affecting 72 articles of the constitution were voted on as a single package. Voters did not have the opportunity to make a choice about each of the distinct issues featured in the amendments and were simply asked to vote for a yes or no option. The state did not ensure that voters were provided with impartial or balanced

¹ The English version of this report is the only official document. An unofficial translation is available in Turkish.

information on the amendments and their potential impact, thus limiting their ability to make an informed choice.

The referendum was generally well administered by four levels of electoral bodies. However, the work of the electoral boards lacked transparency – sessions were closed to the public and observers, and only a limited number of decisions were published. Following the attempted coup in July 2016, three SBE members and 221 lower-level election board chairpersons were replaced as a result of their dismissals as judges. The political party representation on Ballot Box Committees was not fully balanced and was negatively affected by the rejection of over 170 chairpersons nominated by opposition parties.

More than 58 million voters were registered to vote, including over 2.9 million abroad. Voters were able to verify their entries in voter lists and request changes. However, those who had to flee their residence in provinces affected by security threats faced difficulties with their registration and the OSCE/ODIHR LROM was informed that some were unable to vote. Security zones in place in six provinces on referendum day had a potential impact on the participation of some 670,000 voters.

The law limits full participation in the referendum only to eligible political parties and does not regulate the involvement of other stakeholders, contrary to good practice for referenda. Further, the SBE decided that civil society organizations and professional associations are not permitted to hold campaign events. Ten of the 92 registered parties met the legal requirements to campaign, nominate observers, and enjoy other rights related to the referendum process. Two parties unsuccessfully appealed the decision that they were ineligible and one civil society initiative was unable to register as a party.

The campaign framework was restrictive, and the campaign imbalanced due to the active involvement of the president and several leading national as well as many local public officials in the ‘Yes’ campaign. This blurred the line between State and party contrary to paragraph 5.4 of the 1990 OSCE Copenhagen Document and was inconsistent with international good practice for public officials to refrain from excessive one-sided campaigning in referenda. Further, the misuse of administrative resources by public officials in the campaign violated national legislation and the commitment in paragraph 7.6 of the 1990 OSCE Copenhagen Document to ensure equal opportunities.

The OSCE/ODIHR LROM observed the obstruction of efforts of several parties and civil society organizations to support the ‘No’ campaign. The campaign rhetoric was tarnished by a number of senior officials equating ‘No’ supporters with terrorist sympathizers. In numerous cases, ‘No’ supporters faced bans of their campaign activities, police interventions and violent scuffles at their events. These violations contravene the commitment under paragraph 7.7 of the 1990 OSCE Copenhagen Document to ensure campaigning be conducted in a fair and free atmosphere as well as Council of Europe standards and other international obligations regarding freedom and equality in the campaign.

The legal framework for the referendum neither sufficiently provides for impartial coverage nor guarantees eligible political parties equal access to public media, contrary to paragraph 7.8 of the 1990 OSCE Copenhagen Document, Council of Europe standards, and other international obligations. The law gives preference to the ruling party and the president in the allocation of free airtime, and the SBE’s authority to sanction for biased coverage was repealed. Freedom of expression was further curtailed under the state of emergency; the arrest of an unprecedented number of journalists and the closure of a number of media outlets has led to widespread self-censorship. OSCE/ODIHR media monitoring results showed that the ‘Yes’ campaign dominated the media coverage.

The law does not guarantee effective redress for electoral board decisions. While the SBE reviewed some 50 complaints in a timely manner, the hearings were closed and decisions were not published. Some SBE decisions on complaints regarding the right to campaign did not provide sound legal redress, raising concerns about bias in the dispute resolution process. SBE decisions are not subject to judicial review, which is not in line with paragraph 5.10 of the 1990 OSCE Copenhagen Document. The continued dismissals and suspensions of judges and prosecutors in the referendum period impacted the independence of the judiciary.

The law does not provide for international and non-partisan citizen observation contrary to paragraph 8 of the 1990 OSCE Copenhagen Document, previous recommendations and international good practice. The efforts of political parties to observe the process varied, and civil society organizations significantly limited their support of observation efforts due to fear of repercussions. Following the attempted coup, 1,583 civil society organizations were dissolved, including some that previously supported observation efforts.

Referendum day proceeded in an orderly and efficient manner in the limited number of polling stations visited by the OSCE/ODIHR LROM. Some OSCE/ODIHR LROM observers were impeded in their observation during opening and voting when access was either not granted or limited. Police presence was widely reported in and outside polling stations and in some cases police were reportedly checking voter identification documents before granting access. The SBE issued instructions late in the day that significantly changed the ballot validity criteria, undermining an important safeguard and contradicting the law.

Following referendum day, a number of appeals of the SBE decision on the validity of ballots and requests for the annulment of results were submitted to the SBE, including a large number from individual citizens; all were rejected. Two opposition parties filed appeals with the Constitutional Court and a third unsuccessfully sought injunctive relief with the highest administrative court. Criminal complaints were also filed alleging misuse of office by SBE members. Opposition parties expressed their intent to take the case to the European Court of Human Rights.

II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from the authorities of the Republic of Turkey and based on its mandate, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a Limited Referendum Observation Mission (LROM) on 17 March to observe the 16 April 2017 constitutional referendum. The OSCE/ODIHR LROM was headed by Tana de Zulueta and consisted of 11 experts based in Ankara and 24 long-term observers deployed throughout the country. Mission members were drawn from 20 OSCE participating States.

The OSCE/ODIHR LROM assessed compliance of the electoral process with OSCE commitments, other international obligations and standards for democratic process, as well as with national legislation. In line with the OSCE/ODIHR's standard methodology for LROMs, the mission did not include short-term observers, and did not carry out comprehensive or systematic observation of election day proceedings. However, mission members visited a limited number of polling stations and followed the tabulation of results in some districts. This final report follows a Statement of Preliminary Findings and Conclusions released at a press conference on 17 April.²

² See all [previous OSCE/ODIHR reports on Turkey](#).

The OSCE/ODIHR LROM followed referendum day jointly with a delegation from the Parliamentary Assembly of the Council of Europe (PACE), headed by Cezar Florin Preda. The OSCE/ODIHR LROM remained in Turkey until 22 April and followed post-referendum developments.

III. BACKGROUND AND POLITICAL CONTEXT

Prior to the referendum, according to the 1982 Constitution, Turkey was a parliamentary republic with executive power vested in the Council of Ministers headed by the prime minister. Legislative power is exercised by the single-chamber 550-seat Turkish Grand National Assembly (parliament), which since the November 2015 elections is comprised of four political parties.³ The president is the head of state and under the constitution prior to the referendum held limited functions.

Constitutional reform has featured in the domestic political agenda for over a decade.⁴ After a multi-party consensus was not reached between 2012 and 2015, a parliamentary process to amend the constitution was initiated by the governing AKP and supported by MHP in December 2016.⁵ On 21 January, the parliament voted to put the reform package to a referendum and on 11 February, the Supreme Board of Elections (SBE) set the date for 16 April.⁶ The CHP raised public concern over the regularity of the voting procedures in the parliament due to violations of secrecy of vote. The rushed manner in which the proposed amendments were passed in parliament, the debate that was criticized by many as a limited and not fully transparent whilst nearly a quarter of HDP parliamentarians were in prison as well as the absence of public consultation at an earlier stage, negatively affected confidence in the constitutional reform process.⁷

The constitutional reform package contained 18 amendments, which among others, proposed changes to the parliamentary system, the abolishment of the office of the prime minister and the transfer of some of the parliament's key oversight functions to an executive presidency, an increase in the number of seats in parliament to 600 and the empowerment of the president to appoint some high-level positions in the judiciary. The European Commission for Democracy through Law (Venice Commission) stated that the proposed amendments would result in a system where the separation of powers and the independence of judiciary are not assured, thus introducing a "presidential regime which lacks the necessary checks and balances required to safeguard against becoming an authoritarian one."⁸ Various stakeholders questioned whether the amendments should be put to a referendum given concerns about their procedural and substantive validity.

³ Four parties entered parliament after the November 2015 elections: the Justice and Development Party (AKP) with 317 seats, Republican People's Party (CHP) with 134, People's Democratic Party (HDP) with 59, and Nationalist Movement Party (MHP) with 40.

⁴ The most recent constitutional referenda were held in 2007 and 2010.

⁵ On 24 October 2016, 5 of 40 MHP members of parliament declared that they would reject the constitutional proposals. Several MHP parliamentarians were stripped of party membership.

⁶ On 20 December, the CHP and HDP issued a motion in the Constitutional Commission in parliament that challenged the amendments' constitutionality; it was rejected a day later.

⁷ Some 13 HDP deputies, including the party's two co-chairs, were in custody during the pre-referendum campaign, with one further arrest on 19 April. Since 4 November 2016, another 18 were arrested and released shortly after. Protesting these detentions, HDP members of parliament boycotted the parliamentary vote on putting the amendments to a referendum.

⁸ Venice Commission [Opinion on the amendments to the Constitution](#), adopted on 10-11 March 2017. According to the Venice Commission [Code of Good Practice on Referendums](#), texts put to a referendum must not be contrary to international law or to the Council of Europe's statutory principles (democracy, human rights and the rule of law). Moreover, texts put to referendum should be both procedurally and substantively valid "in order to prevent unlawful referendums".

The process of drafting and adopting constitutional amendments should fully respect the parliamentary procedures and be based on an inclusive and transparent process. Proposed amendments should be fully in line with Turkey's international commitments on democracy, human rights and the rule of law.

On 15 July 2016, a failed coup attempt left at least 241 persons dead and 2,194 injured.⁹ In response to the attempted coup as well as to a wave of terror attacks, on 21 July, the government declared a state of emergency, which it extended thrice in 90-day intervals.¹⁰ Mass arrests and the prosecution of over 100,000 persons under emergency decrees and continued detention of over 40,000 individuals as well as dismissals of over 150,000 civil servants, followed.¹¹ The state of emergency restricting fundamental freedoms as well as the security situation in the southeast resulting in several hundred thousand persons fleeing their homes, raised questions as to whether conditions were in place to hold a democratic referendum.¹²

IV. REFERENDUM SYSTEM AND LEGAL FRAMEWORK

Amendments to the Constitution require support of either a two-thirds vote in parliament or a three-fifths vote in parliament combined with the president submitting the amendments to a referendum. A referendum that results in a simple majority of votes in favour effects constitutional change.¹³ The 18 proposed amendments affecting 72 articles of the constitution were voted on as a single package, as required by the bill on the constitutional amendments. This did not provide voters the opportunity to make a choice about each distinct issue featured in the amendments, contrary to international good practice.¹⁴ There was no question on the ballot; voters were simply to vote either yes or no.

To further facilitate the expression of a voter's will, proposed constitutional changes that are not directly linked could be presented as distinct questions, which can be separately answered.

The conduct of referenda is mainly governed by the 1982 Constitution, 1961 Law on Basic Provisions on Elections and Voter Registers (Law on Basic Provisions), 1987 Law on Referendums on Constitutional Amendments (Law on Referendums), and the 1983 Law on Political Parties. The legal

⁹ [European Commission Turkey 2016 Report published on 9 November 2016.](#)

¹⁰ Based on the National Security Council's advice, the parliament voted to extend the state of emergency on 18 April, which was put into effect on 19 April.

¹¹ [The Parliamentary Assembly of the Council of Europe Committee on the Honouring of Obligations and Commitments by Member States](#) stated that the measures affected the judiciary, police, military, civil service, local authorities, academia, the media and the business community, shutting down over 1,000 institutions and private companies, whose assets were seized or transferred to public institutions. [According to the government](#), over 300 institutions have since been reopened and more than 35,000 public employees reinstated.

¹² In its opinion on the amendments to the Constitution, the Venice Commission noted that "the current state of emergency does not provide for the due democratic setting for a constitutional referendum." Paragraph 12 of the 1996 UN Human Rights Council (UNHRC) [General Comment 25](#) to the International Covenant on Civil and Political Rights (ICCPR) requires that "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected." [The Code of Good Practice on Referendums](#) states that "democratic referendums are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of movement inside the country, freedom of assembly and freedom of association for political purposes, including freedom to set up political parties."

¹³ The law provides for compulsory voting with a small fine for those who do not vote without acceptable excuse; however, this provision has not been enforced for a number of years.

¹⁴ One citizen complained to the Ombudsperson that the lack of opportunity to vote differently on the various proposals breached his freedom of expression. [The Code of Good Practice on Referendums](#) states that "Electors must not be called on to vote simultaneously on several questions without any intrinsic link, given that they may be in favour of one and against another. Where the revision of a text covers several separate aspects, a number of questions must therefore be put to the people."

framework is inadequate for the conduct of a genuinely democratic referendum. It focuses on elections and is limited in regards to specificities on referenda. For instance, the legislation does not establish a process for the formulation of referendum question(s), there is no obligation for the state to provide voters with impartial or balanced information on the referendum issues, the rights and equal opportunities for proponents and opponents are not provided, a level playing field for referendum campaigns is not sufficiently guaranteed, and the counting process is not fully regulated. In addition, previous OSCE/ODIHR recommendations on the legal framework relevant to the referendum process have not been addressed, including those on suffrage rights, campaign finance, lack of judicial review of election administration decisions, and the rights of observers.

The SBE did not fully exercise its authority to supplement the legal framework on its own initiative with its decisions and regulations to ensure clarity. Further, the SBE declined to provide interpretations on campaign rules and the relocation of polling stations when formally requested by stakeholders.¹⁵ Moreover, in some cases SBE decisions contravened the legislation.¹⁶

To ensure a framework that provides for the conduct of genuinely democratic referenda, the authorities should consider amending the constitution and relevant legislation. Amendments to the law should provide guarantees for the full participation of all stakeholders and equal opportunities and conditions for proponents and opponents in all aspects of the referendum process. Further, to enhance clarity of the framework, the SBE could fully exercise its regulatory authority in a manner consistent with the law.

The legal framework for the referendum was negatively impacted by the declared state of emergency and actions taken under it. The adoption of two emergency decrees permanently amended election-related laws going beyond the exigencies of the emergency: Decree 687 adopted on 9 February repealed the SBE's media sanctioning powers and Decree 680 adopted on 6 January amended a provision that affected the system of registration for out-of-country voters. In appeals lodged by CHP members of parliament, the Constitutional Court decided that it did not have jurisdiction to consider appeals of emergency decrees, which contradicted its previous decisions and effectively barred challenges to the referendum-related decrees.¹⁷ In addition, the parliament did not consider the decrees prior to the referendum or within the 30-day legal deadline, leaving their legal status uncertain and further limiting the opportunity for appeal.

Notwithstanding the constitutional provision that amendments to election legislation are not enforceable within one year of adoption, and contrary to international good practice, the SBE decided that the changes to the law would take immediate effect with regard to the conduct of the

¹⁵ The SBE received seven requests from stakeholders - private companies, public authorities, professional associations, and District Election Boards (DEB) - seeking clarification of campaign rules for non-eligible political parties and civil society organizations. Various DEBs submitted requests to the SBE for clarifications on authority to relocate polling stations.

¹⁶ For example, the decisions related to counting of unstamped ballots and immediate effect of the amendments made to the legislation one year before the holding of referendum.

¹⁷ The petitions challenged another two decrees claiming that they went beyond the exigencies of the state of emergency. In previous decisions, the Court ruled that while the Constitution precludes substantive review of emergency decrees, the Court has jurisdiction to determine if decrees are in fact emergency decrees and if not, to examine them in substance.

referendum.¹⁸ Under the adopted constitutional amendments, the application of this provision is suspended for the next parliamentary and presidential elections.

The authorities should refrain from using emergency decrees to amend the legal framework for referenda and elections, and the Constitutional Court should exercise its jurisdiction to consider if decrees go beyond the exigencies of the emergency. The safeguard of not enforcing legislative changes within one year of adoption should be adhered to, in line with international good practice.

Turkey is party to key international and regional human rights instruments and the Constitution provides that these commitments take precedence over domestic legislation. However, fundamental rights and freedoms including suffrage rights and the freedoms of expression, assembly and association, are unduly circumscribed by the Constitution and related legislation.¹⁹ With a state of emergency in effect during the referendum process, these freedoms were further curtailed. This included provincial governors exercising their extraordinary powers under the state of emergency to limit freedom of movement, association, assembly and expression in the campaign process (See *Referendum Campaign Section*).

The constitutional and legislative framework should be reviewed and amended to ensure broad guarantees of fundamental rights and freedoms, only permitting restrictions that have the character of an exception and that are proportionate to a legitimate aim and necessary. State of emergency legislation should ensure that rights and freedoms are only limited to the extent strictly necessary for the exigencies of the emergency.

V. REFERENDUM ADMINISTRATION

The referendum was generally well administered by the four levels of electoral bodies: the SBE, 81 Provincial Election Boards (PEBs), 1,080 District Election Boards (DEBs), and some 175,000 Ballot Box Committees (BBCs).²⁰ All legal deadlines were met. Positively, the SBE produced voter information material on how and where to vote.

The SBE is a permanent body that consists of 11 members elected by and from judges of the Court of Cassation and the Council of State. All four parliamentary parties exercised their right to nominate non-voting members to the SBE. Out of 228 decisions adopted by the SBE, 190 were not published, including on the number of ballots to be printed.²¹ Despite previous recommendations, meetings of the SBE and lower boards were only open to non-voting party members, not observers or the media, which limited transparency.²²

¹⁸ [The Code of Good Practice on Referendums](#) provides that any amendments to referendum legislation should not be applied during the year following their enactment. Three complaints were unsuccessfully lodged with the SBE by two opposition parties and a citizen that argued the inapplicability of the changes on grounds that the substance of the decree was beyond the exigency of the emergency or that the constitution prohibits immediate enforceability. Two SBE members dissented on the decision to immediately apply the repeal of SBE's media sanctioning powers, arguing that the power remains intact until 2018 as per the constitution.

¹⁹ Further, the constitution does not establish rights for minorities.

²⁰ Some 389 BBCs were established in penitentiary institutions, 3,210 out-of-country and 4,178 at customs gates.

²¹ A total of 12.7 million ballots were printed for the referendum. The remaining 64.7 million ballots that were used had been printed for the second round of the 2014 presidential election. Due to the short timeframe between the two rounds for the for the 2014 presidential election the SBE printed ballots with yes/no option in case if only one candidate would have run in the second round. However, two candidates ran and the ballots were retained.

²² The OSCE/ODIHR LROM was invited to observe one board session of the DEB in Uskudar, and a session of the out-of-country DEB in Ankara.

To increase public confidence in the work of the referendum administration, the SBE could consider measures to enhance transparency, including promptly publishing all decisions, including those on complaints and appeals, making board sessions open to observers and the media and publishing session agendas in advance.

PEBs have three members and are chaired by the most senior judge in the province. DEBs are chaired by a judge and include two civil servants and four representatives of political parties. BBCs are formed for each electoral process and consist of a chairperson and six members – two civil servants and five representatives of political parties. The law does not provide for equal gender representation in the administration; women chaired 20 per cent of lower-level electoral boards (41 per cent at the district level) and there is only one female member of the SBE.

Since the last parliamentary elections, eight SBE members were replaced, all chosen by and from newly appointed judges: five due to the expiry of their terms, and three due to being in custody. A series of emergency decrees that included the dismissal of thousands of judges led to vast replacements at all levels of the referendum administration: 9 PEB chairpersons were dismissed and 2 more placed in custody, 143 DEB chairpersons were dismissed and 67 more placed in custody. Over 500 electoral board staff at all levels were also placed in custody.

The law does not envision an opportunity for balanced representation of the proponents and opponents of the proposed amendments in the referendum administration, as recommended by international good practice.²³ Despite that, of the BBC members nominated by political parties, 52 per cent were put forward by parties supporting the ‘Yes’ campaign and 48 per cent by those supporting the ‘No’ campaign. The SBE did not provide requested information on the party representation of BBC chairpersons.

Consideration could be given to introducing a system that provides for balanced representation of the proponents and opponents of proposed amendments in the referendum administration and allowing non-political party stakeholders to submit nominations.

According to the Law on Basic Provisions, BBC chairpersons are appointed from “well-reputed and literate persons.” For the first time, the SBE took a decision providing instructions to DEBs on the application of the ‘good reputation’ requirement to BBC nominees. At the request of a few DEBs, the SBE confirmed that the ‘well-reputed’ requirement applied and that DEBs could investigate BBC nominees with regard to prior convictions or on-going investigations. At least 170 BBC chairpersons nominated by the HDP were excluded due to alleged ‘bad reputation’.²⁴ According to the law, BBC membership was to be finalized by 29 March, although the OSCE/ODIHR LROM was informed of several instances in which referendum officials were detained and dismissed after this deadline.²⁵

²³ [The Code of Good Practice on Referendums](#) states that “the fact that referendums do not necessarily entail a divide along party lines but may involve other political players means a choice must be offered, as regards the membership of electoral commissions, between balanced representation of the parties and balanced representation of the proposal’s supporters and opponents.”

²⁴ Positively, in response to complaints, the SBE overturned two DEB decisions for blanket rejections of HDP nominees for BBC members in Van and Edrine.

²⁵ In Konak, a BBC chairperson was detained for alleged terrorist affiliation on 12 April. Three DEB members and 11 BBC members representing the HDP were detained on the same grounds on 13 April in a number of provinces in the southeast.

VI. VOTER REGISTRATION

Every citizen who has reached the age of 18 by referendum day has the right to vote. Active conscripts, military students, citizens declared legally incompetent or banned from civil service by a court, and those serving prison sentences for intentional crimes are ineligible to vote. The ban on military students and conscripts, and the blanket restrictions of voting rights for the latter three categories are disproportionate and at odds with OSCE commitments and other international obligations and standards.²⁶ At least 570,000 citizens were ineligible to vote.²⁷

The European Court of Human Rights (ECtHR) has ruled in two cases that Turkey's disenfranchisement of all prisoners convicted of intentional crimes is too broad and must be made proportionate to the crime committed.²⁸ On 15 February, the SBE adopted a decision that partially addressed the rulings of the ECtHR on suffrage rights and clarified that those with convictions who are not currently in prison are allowed to vote even if their sentence is not fully executed.

Voting rights for military students and conscripts should be reinstated and other blanket restrictions on suffrage rights should be reconsidered. The election legislation should be harmonized with the objectives of the CRPD, to ensure the full voting rights of persons with mental disabilities, including the right to request assistance to vote from a person of their choice. Disenfranchisement of prisoners should be proportionate to the crime committed.

Turkey has a passive voter registration system. The voter register is managed by the SBE based on personal data from the civil registry maintained and updated daily by the Ministry of Interior (MoI). Voters were able to verify their entries in voter lists in person and through the SBE website, resulting in 467,984 changes. Eligible parties could also request voter lists for verification. Despite previous OSCE/ODIHR recommendations, the range of sensitive personal data made available on voter lists remains unregulated. No changes to voter lists were allowed after 10 March, contrary to international good practice.²⁹ The SBE reported a total of 58,291,898 registered voters, including 2,972,676 abroad.

Special security zones were in place in a few provinces in the southeast affecting some 670,000 voters on referendum day.³⁰ Local authorities in the southeast confirmed that police stationed near polling stations were instructed to check voter identification documents to identify those wanted for arrest. In the pre-referendum period, a number of OSCE/ODIHR LROM interlocutors raised concerns that this might deter voters from voting. Concerns were also raised about registration of those who had to flee their residence, whose number, according to various sources cited by the United Nations High

²⁶ Paragraph 7.3 of the 1990 [OSCE Copenhagen Document](#) calls on participating States to “guarantee universal and equal suffrage to adult citizens”, while paragraph 24 provides that restrictions on rights and freedoms must be “strictly proportionate to the aim of the law”. Article 29 of the 2006 [Convention on the Rights of Persons with Disabilities](#) requires States to “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others”. See also Paragraph 14 of [General Comment No. 25 to the ICCPR](#).

²⁷ Including 276,292 active conscripts and students of military schools, 194,788 declared mentally incompetent by a court decision, and 100,950 prisoners.

²⁸ See [Soyler v. Turkey](#), application no. 29411/07, 17 September 2013 and [Murat Vural v. Turkey](#), application no. 9540/07, 21 October 2014.

²⁹ The 2002 Venice Commission [Code of Good Practice in Electoral Matters](#) states that, except for on election day, “there should be an administrative procedure – subject to judicial control – or a judicial procedure, allowing for the registration of a voter who was not registered.” The SBE rejected two requests for addition to voters list after 10 March: one voter complained that decision on his mental incapacity does not explicitly cancel his voting right, another voter complained that her mental capacity was restored by court decision and wanted to be reinstated in the voters list.

³⁰ According to the MoI, security zones were in place in Batman, Bingol, Hakkari, Kars, Mardin, Tunceli.

Commissioner for Human Rights, was between 355,000 and 500,000 persons.³¹ The OSCE/ODIHR LROM was informed by civil society organizations that some of these voters were unable to vote.

VII. PARTY REGISTRATION AND PARTICIPATION IN THE REFERENDUM

The law does not provide for broad stakeholder participation in the referendum process, as only eligible political parties are entitled to fully participate in the campaign, nominate observers, access the voter register, and lodge complaints. To participate, a party must be registered with the Supreme Court Chief Prosecutor's Office (SCCPO) and have an organizational structure in at least half of the provinces and one-third of the districts in those provinces, and have held a party congress not less than six months prior to the referendum.³² In addition, there are limitations on the content of a party's platform.³³ These eligibility criteria unduly limit political pluralism, and run contrary to paragraph 7.6 of the 1990 Copenhagen Document.³⁴ Further, the SCCPO has unduly wide powers to dissolve political parties.³⁵

In the context of referenda, consideration should be given to ensuring free and equal participation of all stakeholders, including civil society, in all aspects of the process.

Following an SCCPO investigation, 19 parties eligible to compete in the November 2015 parliamentary elections were found ineligible to participate in the referendum. The SCCPO referred to local prosecutors at least 11 of these parties alleging that they provided false information on their organizational structure, and some parties were penalized. Based on information from the SCCPO, the SBE approved the participation of 10 of 92 registered parties.³⁶ The People's Liberation Party and the Liberal Democrats Party lodged complaints with the SBE and SCCPO, respectively, claiming that they fulfilled eligibility criteria; both claims were rejected.³⁷ A civil society initiative advocating in favor of the 'No' campaign tried to register as a political party to obtain full political participation rights in the process. Having filed its registration documents on 6 February, it remained unregistered throughout the process.

VIII. REFERENDUM CAMPAIGN

The Law on Basic Provisions does not sufficiently regulate the conduct of referendum campaigns. While there are rules about access to media and campaign space and a prohibition on the use of administrative resources, stricter campaign rules aimed at ensuring more equitable campaign opportunities apply only during the final seven days. These rules include provisions on the allocation of free airtime for parliamentary parties and the president, additional bans on the use of administrative

³¹ UNHCR [Report on the human rights situation in South-East Turkey](#) from February 2017.

³² These requirements do not apply to parties with a parliamentary group with at least 20 members in parliament.

³³ For instance, there is a ban on promoting the existence of minorities in the party platform.

³⁴ [Paragraph 7.6](#) states that political parties and organizations will be provided with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment. See also Principle 7 stated in the [2010 OSCE/ODIHR - Venice Commission Guidelines on Political Party Regulation](#).

³⁵ In January 2016, the ECtHR [ruled](#) in a case lodged by the Democratic Society Party that Turkey's ban of the party on alleged grounds of affiliation with a terrorist organization violated the right to free association and free elections under the European Convention on Human Rights.

³⁶ The ten eligible parties are: AKP, CHP, Felicity Party, Free Cause Party, Grand Union Party, HDP, Homeland Party Independent Turkey Party, MHP and Motherland Party.

³⁷ The complaints were rejected on grounds of insufficient organizational structure; the SBE refused to consider the supporting evidence lodged with the complaint and relied only on the documents provided by the SCCPO.

resources by officials and a prohibition on holding state events and making statements related to public works.

To ensure an equitable campaign environment, consideration could be given to extending the more stringent campaign prohibitions, including on the misuse of administrative resources and official positions, to apply for the duration of the pre-referendum period.

The law only protects the rights of and provides opportunities to campaign to eligible political parties. While the broader legal framework for freedom of assembly and expression applies to other stakeholders, including private individuals and civil society, the SBE decided that only eligible parties are entitled to hold campaign meetings and declined to clarify whether others may campaign through other means.³⁸ Citing the state of emergency or broad concerns about public security, some provincial governors banned or introduced a permission requirement for campaign events organized by actors other than the 10 eligible political parties.³⁹

The campaign was highly visible across the country, especially in large population centres. Campaign means included posters, banners, billboards, as well as buses and trucks clad in campaign slogans. Large-scale rallies and smaller meetings were observed, and most campaigners relied on the Internet and social media platforms to supplement their campaign activities.⁴⁰

Contrary to the Code of Good Practice on Referendums, the authorities did not provide voters with impartial information setting out the arguments of the supporters and opponents of the proposed amendments. Nor did the state provide voters with balanced campaign material from the two sides, thus leaving eligible parties to fill this gap and negatively affecting voters' ability to make an informed choice.⁴¹ Civil society was generally barred from providing public information about the proposed amendments.⁴² Some stakeholders, including civil society organizations, nonetheless engaged in door-to-door campaigning.

To enhance voters' ability to make an informed choice and in accordance with international good practice, the state could consider providing impartial or balanced information on proposed amendments and their potential impact ahead of referendum day.

The campaign was characterized by the absence of a level playing field. The significantly more visible 'Yes' campaign, led by the governing AKP and to some extent the MHP, was supported by several leading national and many lower-level public officials, including the prime minister and the president, who under the 1982 Constitution was required to remain non-partisan and perform his duties without

³⁸ For instance, in one case the SBE found that PEBs and DEBs do not have the authority to restrict others from campaigning, but did not take an actual position on other stakeholders' campaign rights. Responding to a complaint, the SBE made a subsequent decision that only eligible parties are entitled to hold public campaign meetings.

³⁹ Ankara and Samsun Governors banned campaigning by all stakeholders other than the ten eligible parties; more general bans of public events were put in place by provincial governors in Adana, Diyarbakir, Isparta, and Van.

⁴⁰ The OSCE/ODIHR LROM observed 35 campaign events.

⁴¹ [The Code of Good Practice on Referendums](#) states: "Administrative authorities must observe their duty of neutrality, which is one of the means of ensuring that voters can form an opinion freely (...) The authorities must provide objective information." The Directorate General of Press and Information printed 15,000 copies of information material promoting the amendments and addressing a number of objections, including those raised by the 'No' campaign.

⁴² The president of the Turkish Union of Bar Associations faced obstacles and public criticism from the president in his efforts to conduct a nationwide civic education on the amendments.

bias.⁴³ The president became the face of the ‘Yes’ campaign and toured the country extensively, holding nearly daily events in support of the amendments. These instances blurred the line between party and State, contrary to paragraph 5.4 of the 1990 OSCE Copenhagen Document and were contrary to international good practice.⁴⁴

To enhance the integrity and public confidence in the process, authorities should implement safeguards to ensure a clear separation between the State and parties, and prevent public officials, including the president, from using the advantage of their office for campaigning purposes. Civil society and professional associations should be permitted to conduct civic education activities on referendum proposals.

Cases of misuse of administrative resources were observed countrywide by the OSCE/ODIHR LROM and widely reported in independent media.⁴⁵ Public ceremonies, such as historical remembrance celebrations or those opening infrastructure projects were used for campaigning, with some interlocutors alleging that public sector employees and university students were required to attend.⁴⁶ In many cases, either entire districts or specific institutions declared holidays, while municipal transport was made free on the days such events were held.⁴⁷ In some speeches, the president and other officials linked the government’s future support for the host region to the outcome of the referendum.⁴⁸ These cases further diminished equal opportunities, thus contravening paragraph 7.6 of the 1990 OSCE Copenhagen Document.⁴⁹

⁴³ The OSCE/ODIHR LROM observed the president campaigning in conjunction with the inauguration of public works on 16 March in Sakarya; on 18 March in Çanakkale; on 28 March in Samsun; on 1 April in Diyarbakir; on 2 April in Ankara; on 5 April in Bursa and on 6 April in Adana. The SBE received one complaint regarding the president’s campaign, but decided that it has no authority over the president. Under the post-referendum constitution, the provision requiring the president to remain non-partisan is to be repealed.

⁴⁴ [Paragraph 5.4](#) provides for a clear separation between the State and political parties; in particular, political parties will not be merged with the State. Furthermore, [the Code of Good Practice on Referendums](#) states that “public authorities (...) must not influence the outcome of the vote by excessive, one-sided campaigning.”

⁴⁵ The prime minister and several ministers also used public works inauguration ceremonies for campaigning, as observed by the OSCE/ODIHR LROM on 1 April in Van and 6 April in Gaziantep. Several mayors campaigned or used official municipality websites to campaign, including in Rize, Sile and in Umraniye. The OSCE/ODIHR LROM also observed cases of misusing administrative resources, including: the use of public buses and vehicles for campaigning in Adana, Bursa, Kars, Rize and Zonguldak provinces. ‘Yes’ campaign materials were observed on a municipality building in Balıkesir, public school buildings in Istanbul’s Uskudar district, Istanbul’s city walls (UNESCO heritage site), university dormitories and the building of the Directorate General of Press and Information. Similarly, the OSCE/ODIHR LEOM noted Samsun mayor’s campaign-themed poster displayed during the president’s visit, ‘Yes’ banners put up by Ordu municipality for the president’s 13 April visit, the Canik mayor’s ‘Yes’ mural banner, as well as the Sivas municipality’s infrastructure-themed ‘Yes’ posters.

⁴⁶ An interlocutor provided video footage of empty offices in the Atakum municipality during working hours on 28 March, noting that municipal authorities in Carsamba and two other districts declared district holidays that coincided with the president’s visit to Samsun of 28 March. School classes were cancelled on 7 April in Adana, with pupils and their parents allegedly encouraged to participate in the president’s event. Furthermore, the OSCE/ODIHR LROM obtained a copy of a letter from the education department granting Ordu schools a half day off during the president’s 13 April visit to the city. In another case, the OSCE/ODIHR LROM obtained a copy of a letter from Van district administration encouraging students to attend the prime minister’s campaigning event. Similarly, the district education secretary in Giresun dispatched instruction to schools cancelling classes for the afternoon of 13 April, coinciding with the president’s rally.

⁴⁷ Free public transport was provided by municipal authorities when major events used for campaigning purposes were held, as observed on 28 March in Samsun, on 2 April in Ankara, on 5 April in Bursa and in Adana on 7 April.

⁴⁸ The president’s speeches in Diyarbakir on 1 April and Bursa on 7 April and the prime minister’s speech in Kars on 31 March.

⁴⁹ [Paragraph 7.6](#) states that political parties and organizations will be provided with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment. [The Code of Good Practice on Referendums](#), states that “there must be no use of public funds by the authorities for campaigning purposes, in order to guarantee equality of opportunity and the freedom of voters to form an opinion.”

The ‘No’ campaign was predominantly conducted by the main opposition parties, the CHP and HDP, with the latter significantly crippled in its ability to campaign given that hundreds of its members remained in prison, including its two co-chairpersons, close to a dozen parliamentarians and 83 mayors. The ‘No’ campaign was also supported by some civil society groups, smaller parties and several former MHP parliamentarians, who campaigned jointly under a ‘Turkish Nationalists Say No’ slogan.

Supporters of the ‘No’ campaign faced a number of undue limitations on their freedom to campaign.⁵⁰ Many ‘No’ campaigners suffered physical attacks.⁵¹ A large number were arrested, most often on charges of organizing unlawful public events or insulting the president.⁵² Some ‘No’ campaigners faced difficulties renting premises for events or had their events cancelled by the authorities or venue proprietors, often on short notice.⁵³ The HDP’s campaign poster and postcards featuring the party’s imprisoned co-chairs and a campaign brochure were banned for breaching the country’s anti-terror and press laws, while a Kurdish song was disallowed on grounds that it violated principles of integrity of the state and Turkish as official language.⁵⁴ These obstructions contravened paragraph 7.7 of the 1990 OSCE Copenhagen Document.⁵⁵

Authorities should undertake effective campaign oversight and conduct thorough investigations into all campaign-related offences, including interference in campaign activities, threats and intimidation, and the misuse of administrative resources. Campaign regulations should be fully adhered to and perpetrators prosecuted for applicable criminal and administrative offences.

⁵⁰ For example, on 21 March in Manisa, municipal police prevented CHP members from handing out campaign materials; on 26 March in Van, an HDP campaign vehicle was stopped by police for noise pollution; on 30 March, activists of the Ankara Bar Association were prevented by police from distributing campaign materials. On 29 March, a policeman in Ankara instructed volunteers of a student association that only political parties were permitted to campaign.

⁵¹ For instance, on 19 March, a dissident MHP ‘No’ campaign event was disrupted by an angry mob in Mersin province; a similar attack took place on 21 March in Nigde province; on 21 March in Gaziantep, four ‘No’ campaigners were attacked while distributing leaflets; on 26 March, a ‘No’ rally faced a violent disruption in Yozgat; on 9 April police stopped three assailants from entering the campaigner’s event in Bafra; on 27 March, CHP’s ‘No’ campaign posters were destroyed and campaign truck’s tires slashed in Kutahya province; on 3 April in Batman province, two gunmen injured the driver of an HDP campaign truck. According to the MoI, between 16 February and 12 April there were a total of 139 campaign related incidents, out of which 67 were directed at political parties, including 45 directed at AKP.

⁵² On 22 March a student who posted a ‘No’ campaign video was detained for allegedly insulting the president; on 23 March students who were planning a cycling campaign tour in favour of the ‘No’ campaign were arrested for organizing an unlawful event in Davutpaşa; on 26 March in the Samadag district four members of the Social Liberty Party were detained for four days for allegedly holding an unauthorized campaign event; on 27 March a high-school student distributing ‘No’ flyers in the Antakya district was taken into custody for allegedly insulting the president; on 8 April, a sound technician and an HDP campaigner were arrested in Adana.

⁵³ Among others, the CHP in Konya was not able to rent premises for its meeting on 22 March; a ‘No’ vote event scheduled for 1 April in the Izmir province was cancelled by the authorities with only one day notice; in Muş province, the 2 April HDP rally had to be relocated to a smaller town after permission was denied to hold the event in Muş city; staff of the MHP ‘No’ campaign informed the OSCE/ODIHR LROM that they cancelled several events because of inability to rent premises or reserve accommodation. The Sinop Bar Association was denied the use of the city’s largest auditorium space (sports centre) for its referendum-related informational event, although the venue was used on 18 March as venue for a ‘Yes’ campaign event. On 31 March, the Trabzon branch of Democratic Party was denied permission to hold a campaign meeting on grounds that it is not one of the ten eligible parties.

⁵⁴ In most cases, campaign materials were banned based on Article 7 of the Anti-Terror Law and article 25/2 of the Press Law. The song was additionally banned on grounds that it violated some provisions of Article 3 of the constitution.

⁵⁵ [Paragraph 7.7](#) states that participating States will “ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution.”

The campaign rhetoric was emotionally charged and divisive. The ‘Yes’ campaign stressed the need for a strong executive in the face of unprecedented domestic and international challenges. ‘No’ campaigners often presented the proposed amendments as a threat to Turkey’s parliamentary tradition and its democracy overall. In the context of the campaign, several senior politicians and civil servants, including the president, the prime minister and the Antalya deputy public prosecutor, equated the ‘No’ campaign or its supporters with terrorist sympathizers or the July 2016 attempted coup plotters.⁵⁶ Some also branded foreign powers whose politicians expressed critical attitudes to the proposed amendments as the country’s enemies.⁵⁷

IX. CAMPAIGN FINANCE

State financing of political parties is distributed proportionally each year to all political parties that received at least three per cent of the nationwide vote in the last parliamentary elections. Despite previous OSCE/ODIHR and Council of Europe’s Group of States against Corruption (GRECO) recommendations, campaign and party financing remains insufficiently regulated.⁵⁸ The law only restricts the amount and the nature of donations, but does not limit general party and campaign-related spending or require the use of a dedicated bank account. There is no reporting requirement during the campaign period and political parties must report their campaign expenses only as part of their annual financial reports to the Constitutional Court, which has oversight responsibility. Contrary to international commitments and good practice, these reports are not made public and only summarized audit reports are published online.⁵⁹ Moreover, there are no specific provisions regulating campaign finance for referenda, where normally only two sides compete. In the campaign period, representatives of several political parties claimed to have insufficient funds to actively participate in the campaign.

In line with international good practice and previous OSCE/ODIHR and GRECO recommendations, authorities could consider establishing periodic, timely and transparent reporting of campaign income and expenditures, and require the timely publication of the reports. In addition, consideration could be given to enhancing the effectiveness of oversight, introducing campaign spending limits, and requiring the establishment of dedicated bank accounts for campaign-related transactions.

⁵⁶ The OSCE/ODIHR LROM observed the president drawing parallels between ‘No’ vote supporters and terrorists on 28 March in Samsun, on 2 April in Ankara, on 5 April in Bursa, on 12 April in Erzurum, on 14 April in Konya, and on 15 April in the Umraniye district of Istanbul. The prime minister made similar remarks at campaign events observed on 22 March in Iğdir, on 31 March in Kars, and on 6 April in Osmaniye. Other officials equated ‘No’ vote supporters with terrorists of coup plotters, for example the mayor of Erzurum on 12 April.

⁵⁷ For instance, speaking on 28 March in Samsun, on 2 April in Ankara; on 3 April in Rize and 14 April in Konya, the president accused a number of European countries of standing behind the ‘No’ campaign in what on one occasion he described as a ‘Crusade’ against Turkey. The prime minister described Turkey’s European partners as adversaries at a rally in Kars on 31 March, Diyarbakir on 1 April and at Osmaniye on 6 April. The negative rhetoric vis-à-vis the EU reflected a tense atmosphere that ensued after some member states barred Turkish politicians from holding campaign events on their soil. Campaigning abroad is prohibited under the law.

⁵⁸ The [GRECO Interim Compliance Report from 4 February 2015](#) noted that the majority of past recommendations have not been implemented

⁵⁹ [Article 7.3 of the 2003 United Nations Convention against Corruption](#) states that “Each State Party shall also consider taking appropriate legislative and administrative measures, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.” According to [the Code of Good Practice on Referendums](#), “political party and referendum campaign funding must be transparent.”

X. MEDIA

A. MEDIA ENVIRONMENT

Television is the main source of information. Despite the large number of officially registered media outlets (approximately 8,500), the diversity of viewpoints presented is limited.⁶⁰ With the exception of a few independent mainstream and online outlets, the media landscape is dominated by the public Turkish Radio and Television Corporation (TRT), the State news agency - Anadolu Agency, and by private television channels and dailies that are often owned by business groups that depend on public contracts. At national and provincial levels, a majority of media outlets were seen by OSCE/ODIHR LROM interlocutors as favouring the 'Yes' campaign or as biased.⁶¹ Of the few outlets able to cover the 'No' camp independently, they often self-censored their coverage.⁶² The HDP and CHP reported to the OSCE/ODIHR LROM of having difficulty with access to media nationwide and in some provinces.⁶³

Since the July 2016 coup attempt, 158 media outlets have been closed, including 60 television and radio stations, 19 newspapers, 29 publishing houses and 5 press agencies, which the Venice Commission has described as a "mass liquidation of media outlets".⁶⁴ The majority of the 150 journalists in detention as of 16 April were arrested following the attempted coup.⁶⁵ Arrests continued during the referendum period, with many ongoing prosecutions of journalists for alleged links with terrorist-labeled organizations.⁶⁶ This surge of closures, arrests, and prosecutions contravenes paragraph 7.8 of the 1990 OSCE Copenhagen Document and international standards for media freedom, and has resulted in widespread self-censorship.⁶⁷

⁶⁰ The number of registered media outlets according to the Directorate General of Press and Information, as of 11 April: 8,592 (2,731 newspapers; 4,071 other printed press; 731 television channels; 1,059 radio stations).

⁶¹ OSCE/ODIHR LROM conducted monitoring of the following television channels: *A Haber*, *CNN Türk*, *Fox TV*, *Show TV*, and *TRT1*, as well as newspapers: *Hürriyet*, *Sabah*, *Sözcü*. Additionally, as reported to the OSCE/ODIHR LROM in Samsun (all local dailies), Erzurum, Gaziantep, Bursa, as well as in Adana, where a local newspaper said they were covering the 'Yes' campaign because they needed AKP advertisements.

⁶² *Sözcü*, a major pro-opposition daily, informed OSCE/ODIHR LROM that since the newspaper is cited in the main indictment case against the *Gülen* organization they are under "huge pressure" and self-censor. *Cumhuriyet*, a leading national independent daily, admitted to OSCE/ODIHR LROM of resorting to self-censorship due to the detention and prosecution of 11 of its journalists suspected of supporting terrorism.

⁶³ In addition to concerns raised by both parties at the national level, the HDP reported difficulties in Van and Eskisehir and the CHP reported similar difficulties in Bursa.

⁶⁴ See the [Memorandum on freedom of expression and media freedom in Turkey \(Commissioner for Human Rights, Council of Europe\)](#) from 15 February 2017. The Directorate General of Press and Information cancelled the press cards of 777 journalists, 621 of them for alleged connections to terrorists, without a court decision. According to a statement by the [Office of the UN High Commissioner for Human Rights on 13 April](#), the closure of such a high number of media outlets "has not only caused thousands of journalists to lose their jobs and livelihoods, but has also undermined possibility of an informed debate over the referendum proposals."

⁶⁵ See the [Opinion on the Measures Provided in the Recent Emergency Laws with Respect to Freedom of the Media, Venice Commission](#), adopted on 10-11 March 2017.

⁶⁶ Two staff members of *Cumhuriyet*, were arrested on 5 April, while another 11 *Cumhuriyet* journalists, in detention since October 2016, will have their cases go to trial in July for alleged links to terrorism. A total of 32 TRT staff members were arrested on 8 April.

⁶⁷ [Paragraph 7.8](#) of the OSCE Copenhagen Document provides that "no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process". ICCPR Article 19, 2 states that "Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kind". Paragraph 13 of the [General Comment 34](#) notes that "The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion".

Authorities should refrain from applying anti-terrorism legislation to prosecute journalists based solely on the content of their reporting. When prosecuted, charges should be fully substantiated and pre-trial detention should remain the exception and limited in time.

B. LEGAL FRAMEWORK AND MEDIA COVERAGE

The Constitution provides for the right of freedom of expression, but contains undue limitations and permits further restrictions in the Anti-Terrorism Law, Criminal Code, Press Law and other legislation. The vague provisions are often used as grounds for the prosecution and imprisonment of journalists.⁶⁸ Furthermore, the Criminal Code contains broad defamation provisions, including with regard to the Turkish Nation and State, and provides special protection for public figures, including the president. These provisions limit freedom of expression and are not in line with OSCE commitments and other international obligations and standards.⁶⁹ The OSCE Representative on Freedom of the Media (RoFM) recently called on the authorities “to respect their obligations on freedom of the media”, and the Commissioner for Human Rights of the Council of Europe asked the government “to reverse the numerous infringements of freedom of expression.”⁷⁰ Freedom of expression has been further curtailed by the legal framework for the state of emergency.⁷¹

The legal framework should be amended to bring it in line with OSCE commitments and international obligations to ensure full protection of the principle of freedom of speech and the press and to decriminalize defamation, libel, and insult of state officials.

The legal framework did not provide equal access for the ‘Yes’ and ‘No’ sides of the campaign, and neither guarantees eligible parties equal access to the media nor provides for impartial coverage. The law provides for paid political advertisement during the campaign, but the lack of campaign expenditure limits contributed to parties having unequal opportunities to reach the voters.⁷² The law grants each parliamentary party 20 minutes of free airtime on the public broadcaster, with an additional 10 minutes reserved for the ruling party.⁷³ The president is also entitled to two 10-minute speeches on the public broadcaster including the last slot for a public appeal, which he officially

⁶⁸ See [PACE Resolution 2156](#) of 25 April 2017 asking the Turkish authorities, “to repeal, revise or ensure a strict interpretation of Article 216 (criminalizing public incitement to hatred or hostility and degrading sections of the public), Article 299 (insulting the President of Republic), Article 301 (degrading the Turkish nation, the State of the Turkish Republic, the organs and institutions of the State) and Article 314 (membership of an armed organisation) of the Penal Code, as well as internet law No. 5651, in accordance with the opinions of the Venice Commission of 2015.” See also [Venice Commission Opinion 831/2015 on Articles 216, 299, 301 and 314 of the Penal Code of Turkey](#), adopted on 11-12 March 2016, stating that “all articles subject to the present opinion provide for excessive sanctions and have been applied too widely, penalising conduct protected under the ECHR, in particular Article 10 and the related case-law as well as conduct protected under Article 19 ICCPR.”

⁶⁹ [Paragraph 5.1](#) of the OSCE Copenhagen Document states that “free elections that will be held (...) under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives”. ICCPR Article 19-2 states that “Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kind.” Paragraph 19 of the General Comment 34 notes that “State parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.”

⁷⁰ See the OSCE RoFM [press release from 1 March 2017 and the Visit Memorandum of the Council of Europe’s Commissioner for Human Rights from 15 February 2017](#).

⁷¹ Decree 671 affects the Electronic Communications Law by restricting the media in case of an emergency situation; Decree 680 modifies the Law on the Establishment of Radio and Television by adding more conditions for the licensing of media service providers.

⁷² On 15 April, two national newspapers ran paid campaign advertisements in violation of the legal prohibition of paid political advertising after 14 April.

⁷³ TRT offered free airtime on TRT1 and TRT *Haber*, the two main national public television channels, and on *Radyo1*, the main national public radio channel.

renounced.⁷⁴ These provisions give preferential treatment to the president and the ruling party and do not ensure equal treatment before the law, contrary to paragraph 7.6 of the 1990 OSCE Copenhagen document.

In line with the principle of equal opportunity, authorities could consider elaborating guarantees for equal access to public and private media for the proponents and opponents of the referendum, and for impartiality of their coverage.

The Radio and Television Supreme Council (RTSC) submitted weekly media monitoring reports to the SBE. While the RTSC reports to the SBE included violations detected in their monitoring, no action was taken, as an emergency decree repealed the SBE's authority to sanction private media if they fail to provide impartial coverage.⁷⁵ This decree may effectively contravene paragraph 7.8 of the 1990 OSCE Copenhagen Document and international standards, as it does not guarantee equal access to the media for political parties and limits voters' ability to make an informed choice. Several political parties, including CHP and HDP, complained to the SBE and RTSC about their access to public and private media.⁷⁶

Requirements for impartial coverage of the campaign by both public and private media must be fully enforceable. An appropriate body should be given the authority in law to oversee media coverage of the campaign with the power to apply sanctions.



C. OSCE/ODIHR LROM MEDIA MONITORING

The OSCE/ODIHR LROM media monitoring findings showed that the campaign was visible in all national media. Three of five monitored television stations, including TRT1, favored the 'Yes' campaign.⁷⁷ The 'Yes' campaign featured prominently in the public and private media, with 76 per cent of total airtime on television and 77.5 per cent of space in the press, predominantly positive in tone, whereas the 'No' campaign received only 23.5 per cent of total airtime and space, mostly neutral in tone. The AKP took out 64 per cent of all paid advertisements time on monitored media outlets.

The AKP was also given preferential treatment with 33.5 per cent of total airtime/space, whereas the CHP, MHP and HDP were covered less with 19 per cent, 2.3 per cent and 0.6 per cent of total airtime/space, respectively.⁷⁸ The AKP received positive coverage on TRT1 and *A Haber*, and mostly

⁷⁴ On 14 April, TRT1 and TRT *Haber* each broadcasted a 1 hour and 37 minutes interview with the president, outside of the free airtime propaganda, during which he discussed the merits of the constitutional reform.

⁷⁵ The RTSC informed the OSCE/ODIHR LROM that from 16 February to 7 April a total of 89 cases of violations by the public and private radio and television channels were detected in their monitoring, with 55 reported to the SBE mostly due to breaches of impartiality. RTSC reports reviewed by the OSCE/ODIHR LROM showed that, from 16 February to 29 March, the RTSC detected 70 violations and reported them to the SBE, including 62 in favour of the 'Yes' campaign with two involving TRT *Haber*. The SBE in its related decisions stated that it has no legal basis to take action on the violations.

⁷⁶ The HDP sent three complaints to the RTSC, the last on 9 May, alleging disproportionate coverage on the public channel TRT *Haber* in favour of the president and the 'Yes' campaign and an almost total absence of HDP. The CHP complained to RTSC that the TRT and 10 other television channels aired AKP political advertisements during their coverage of campaign events. The RTSC did not review any of these complaints as of 11 May. On 27 March, the Patriotic Party complained to the SBE about the limited access of the 'No' campaign to public TRT and other private channels; the SBE rejected the complaint.

⁷⁷ In addition to its referendum news coverage, TRT1 aired, from 25 March to 13 April and for a total of 110 minutes, two editorial programmes titled "Referendum Guide" and "What is the right?" explaining referendum amendments in a mostly positive tone.

⁷⁸ Motherland Party, Independent Turkey Party, Free Cause Party, and Homeland Party did not receive any coverage on television or newspapers. Felicity Party and Grand Union Party received 0.04 per cent and 0.02 per cent of total coverage on television, respectively, and the Felicity Party received 0.1 per cent of total coverage in newspapers.

positive on Show TV. The tone of the CHP's coverage was negative on *A Haber*, partly negative on TRT1, and partly positive on Show TV, CNN *Türk*, and Fox TV.

The president and prime minister were dominant in television coverage with 29 and 18 per cent of total airtime, respectively, whereas opposition leaders were significantly less visible.⁷⁹ The public broadcaster complied with its requirement to provide free airtime. Coverage of civil society was extremely limited on television. In the press, civil society organizations that supported the 'No' campaign received more coverage (3.5 per cent) than those supporting the 'Yes' campaign (1.6 per cent). After the end of the campaign in the media on 15 April, the majority of media monitored refrained from political coverage, with the exception of two outlets favoring the 'Yes' campaign.⁸⁰

XI. CITIZEN AND INTERNATIONAL OBSERVERS

Contrary to paragraph 8 of the 1990 OSCE Copenhagen Document, previous OSCE/ODIHR and PACE recommendations, and the Venice Commission's codes of good practice, the legislation does not provide for international and non-partisan citizen observation.⁸¹ Only eligible political parties are entitled to nominate observers, and their efforts varied in scope – the AKP and CHP observed widely, whereas the HDP reported difficulties in recruiting observers due to fears of negative consequences for party sympathizers.

Following the attempted coup, 1,583 civil society organizations were dissolved, including at least three that supported observation efforts during the last elections. The SBE rejected accreditation requests from two civil society organizations.⁸² As in the past, civil society organizations who wished to observe volunteered as observers for political parties or simply remained in polling stations with self-produced identification cards or as voters. Some civil society organizations that had engaged in observation of past elections either refrained or significantly limited their observation efforts due to the tense political and security situation.

Despite the lack of a legal provision, the authorities invited the OSCE and PACE to observe the referendum. A total of 40 members from the OSCE/ODIHR LROM and 23 from PACE were accredited by the SBE. Additionally, the SBE reported that eight delegates from the Parliamentary Assembly of Turkic-Speaking Countries, and two officials from Madagascar enjoyed 'guest' status that enabled them to observe.

The legislation should be amended in accordance with OSCE commitments and international good practice and explicitly provide for international and citizen non-partisan observation.

⁷⁹ The leader of the CHP 9.9 per cent; the leader of the MHP 3.2 per cent and all other party leaders or spokespersons, including the HDP, received less than one per cent or did not get any coverage at all in the media monitored.

⁸⁰ *A Haber* and *Sabah* broadcasted editorial content in favour of the 'Yes' campaign, during the ban on coverage of the referendum campaign in the media from 18:00 on 15 April to 18:00 on 16 April.

⁸¹ [Paragraph 8](#) states that "The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for states in which elections are taking place." The [Code of Good Practice on Referendums](#) recommends that "Given the distinctive nature of referendums, in that they divide not only parties but also other groupings, representatives of the proposal's supporters and opponents - including representatives independent of the parties - and observers appointed by both sides should have access to polling stations during both the voting itself and counting."

⁸² The Human Rights Association and the Association for Monitoring Equal Rights.

XII. COMPLAINTS AND APPEALS

Decisions of lower electoral boards can be appealed by all stakeholders except civil society organizations to higher boards, up to the SBE.⁸³ Decisions of the SBE are not subject to judicial review, including decisions that may breach constitutionally-protected rights and the decision on the final results.⁸⁴ This leaves the referendum process and results under the final authority of an administrative body, challenging the constitutionally guaranteed separation of powers, and contrary to paragraph 5.10 of the 1990 OSCE Copenhagen Document and international good practice.⁸⁵ In addition, the law does not establish a framework for lodging campaign-related complaints, creating uncertainty for stakeholders regarding the dispute resolution process. Therefore, the legal framework does not fully guarantee effective redress for referendum disputes.

To provide for an effective means of redress of referendum disputes, the legal framework should be amended to provide the right to review SBE decisions by an independent judicial body.

The SBE received some 50 complaints in the pre-referendum period, which were considered in a timely manner, but the dispute resolution process lacked transparency as hearings were closed and decisions were not published.⁸⁶ In some cases, the SBE's written decisions did not provide sufficient or sound legal reasoning for the decisions. Many complaints were lodged by opposition parties against DEB decisions in the southeast to relocate polling stations on the basis of security and on the rejection or dismissal of BBC member nominations for lack of 'good reputation.' The SBE generally satisfied these complaints, overturning DEB decisions and noting that relocating polling stations outside of precincts is not provided for in law and that the rejections and dismissals had not been based on concrete evidence of each individuals 'bad reputation'.

While many cases of campaign interference and misuse of administrative resources were noted by the OSCE/ODIHR LROM, few complaints were lodged due to diminished confidence in the resolution of disputes by the referendum administration, courts and law enforcement bodies. Some stakeholders expressed concerns with regards to repercussions for lodging complaints. Complainants were not provided sound legal redress by the SBE in key cases that concerned the right to campaign. For instance, the SBE upheld a DEB decision denying a member of parliament who supported the 'No' campaign the right to hold a campaign event, on the grounds that non-party stakeholders are not entitled to hold outdoor campaign meetings. This decision had broad implications, as it effectively banned campaigning by civil society organizations, many of which supported the 'No' campaign. Three SBE members gave dissenting opinions on the matter.⁸⁷ The SBE refused to consider the

⁸³ With the exceptions that PEB decisions related to the formation of DEBs and BBCs, and DEB and PEB decisions on voter registration are final and cannot be appealed.

⁸⁴ In 2015, the Constitutional Court ruled that the constitutional provision stating that SBE decisions are final and not subject to judicial review also precludes individual petitions to the Constitutional Court against the SBE for alleged violation of fundamental rights and freedoms, a redress avenue that was established in 2010.

⁸⁵ [Paragraph 5.10](#) states that "Everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity." Under Article 2.3(a) of the ICCPR States obligated themselves "To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." The [Code of Good Practice on Referendums](#) states that "The appeal body in referendum matters should be either an electoral commission or a court. In any case, final appeal to a court must be possible."

⁸⁶ The decisions were not issued to concerned stakeholders in a timely manner with delays up to several weeks. The OSCE/ODIHR LROM received information from the SBE prior to the issuance of decisions and obtained copies of decisions once issued. The SBE generally considers its decisions on complaints to be matters of private not public interest, and therefore not subject to publication.

⁸⁷ The dissenting members stated that civil society is a key stakeholder in a referendum and that it has the right to campaign under the broader legal framework.

substance of a similar complaint lodged by a professional association against a governor's ban of its campaign activities.⁸⁸ In two key cases, the SBE did not effectively address the role of the president in the campaign.⁸⁹

Complaints lodged with lower-level election boards mainly concerned breaches of campaign rules, particularly regarding 'Yes' campaign posters in impermissible locations such as public buildings and infrastructure, or incidents where campaign materials were removed or destroyed. While lower boards upheld some of these complaints, their decisions were not always enforced leaving complainants without redress. Further, some DEBs imposed unnecessary obstacles to lodging complaints.⁹⁰

As the judiciary has primary responsibility for the referendum administration and adjudication of referendum-related disputes, the independence of the judiciary is crucial to ensure a genuinely democratic referendum process. The recent dismissals of 3,979 judges and prosecutors, which represents almost one-third of the judiciary, including five from the judicial oversight body and numerous high court judges, impacted the independence of the judiciary in the referendum period.⁹¹ In April, an additional 45 judicial officials were dismissed, and on 4 April, three judges and a prosecutor were suspended and put under investigation for a decision to release 21 journalists detained following the coup attempt.

XIII. REFERENDUM DAY

A. VOTING

In the limited number of polling stations visited by international observers, referendum day was generally organized in an efficient manner despite the majority of the visited BBCs not being fully staffed. In most cases, BBC members followed procedures. During opening and voting, some OSCE/ODIHR LROM observers were impeded in their observation; access was either not granted or limited and decisions on access were often taken by persons who were not BBC members.

A few security incidents, including one involving a BBC member and several voters, were reported. In the pre-referendum day period, local authorities confirmed that police stationed near polling stations would be instructed to check voter identification documents to identify those wanted for arrest. Civil society organization reported three cases where voters were checked before accessing the polls, and it was directly observed by OSCE/ODIHR LROM in one case. A general police presence both outside and inside polling centres was noted in most observations.

To ensure voters are able to vote free from intimidation and fear of retribution, the police presence in and around polling stations should be limited to ensuring public order and safety.

Out-of-country voting took place between 27 March and 9 April in 57 countries. For the first time, out-of-country voters could cast their vote in any voting location abroad irrespective of their place of

⁸⁸ A review by an administrative court in the same matter was estimated by the court to take over a year

⁸⁹ One complaint concerned the president's campaign in breach of his constitutional duty to remain impartial and his misuse of administrative resources on which the SBE decided that it did not have authority over the president with respect to his campaign activities. In the other complaint, the SBE allowed the use of the president's photo on the campaign posters of the ruling party.

⁹⁰ For instance, a DEB informed an opposition party that multiple alleged violations were not permitted in the same complaint; for each banner in an undesignated place a separate complaint had to be lodged.

⁹¹ About half of those dismissed remain in custody. Figures were provided to the OSCE/ODIHR LROM by the High Council of Judges and Prosecutors.

registration. OSCE/ODIHR LROM did not observe the voting abroad but was present at the counting of these votes that was held in Ankara on 16 April.

B. COUNTING, TABULATION AND ANNOUNCEMENT OF RESULTS

While a few procedural errors were noted, in the limited instances of observation by the OSCE/ODIHR LROM, the counting and tabulation processes were generally assessed positively. The SBE adopted two decisions granting an AKP request that referred to a ‘wide’ number of occurrences of unstamped ballots.⁹² The decisions were to consider ballots improperly stamped by the BBC and those without a BBC control stamp as valid. These instructions were communicated via mobile text message to electoral boards, with the latter instruction given after the counting of votes in some BBCs had commenced.⁹³ These decisions undermined an important safeguard against fraud and contradicted the law that explicitly states that such ballots should be considered invalid. The DEB responsible for counting out-of-country ballots decided not to implement the new counting instructions.⁹⁴ Inconsistencies in the implementation of last minute changes challenged the principle of equality of the vote enshrined in paragraph 7.3 of the 1990 OSCE Copenhagen Document.⁹⁵

Referendum day procedures, particularly on counting should not be subject to changes on referendum day. All potential violations with regard to the implementation of referendum day procedures should be thoroughly investigated.

The SBE was unable to provide the number of ballots affected and stated that since party-nominated BBC members signed the protocols the issue was closed with no opportunity to appeal the SBE decision.⁹⁶ The BBC results protocols did not include formulas to check counting figures and did not provide a breakdown of the reasons for invalidating votes, which further limited transparency.

During tabulation, OSCE/ODIHR LROM observers visited the SBE’s results monitoring centre. Political parties could monitor results online and results were posted in the centre. Significant discrepancies were observed in the official data and results reported by the media. In a decision taken on referendum day, the SBE authorized the announcement of referendum results by the media from 18:01 instead of 21:00, as required by law.⁹⁷

To facilitate access to the results and increase confidence in the process, the SBE could consider publicly releasing preliminary data by BBC during tabulation. To enhance transparency, results protocols could contain more detailed information, including the number of invalid ballots.

At 23:25 on 16 April, the SBE announced the preliminary results were in favour of ‘Yes’ but did not provide any figures. On 27 April, the SBE reported final results with detailed figures - ‘Yes’ received 51.41 per cent and ‘No’ 48.59 per cent.

⁹² The AKP submitted a request to the SBE to count unstamped ballots after the count had started in the east of the country. According to the CHP representative to the SBE, he reported the issue of widespread occurrences of unstamped ballots to the SBE early in the voting process, but the SBE did not take any action to correct the irregular practice. A representative of the Turkish Union of Bar Association’s call centre informed the OSCE/ODIHR LROM that many complaints received on referendum day concerned unstamped ballots.

⁹³ The OSCE/ODIHR LROM was informed that the Ipekyolu DEB received the notification 25 minutes after the counting started, the PEB in Samsun reported that it did not receive any instructions from the SBE.

⁹⁴ On 27 April, the [SBE announced](#) that a total of 1,325,682 voters took part in voting abroad.

⁹⁵ [Paragraph 7.3](#) provides for “universal and equal suffrage to adult citizens.”

⁹⁶ The CHP alleged that there were potentially over a million affected ballots.

⁹⁷ When asked for the grounds of the decision, the SBE Chairperson explained that the SBE had to take the decision because a number of television channels had already started to broadcast results before 18:00 that day.

C. POST REFERENDUM DAY COMPLAINTS AND APPEALS

Following referendum day, a series of complaints were filed to different bodies by opposition parties, civil society and professional associations. Amongst the complaints were two criminal complaints lodged against SBE members for misconduct in office regarding the SBE's decision to count unstamped ballots as valid.⁹⁸

Three parties chose to use the opportunity for internal appeal of SBE decision and appealed the results on the basis of inequitable campaign conditions and referendum day irregularities, particularly the SBE's decision to count as valid unstamped ballots.⁹⁹ A citizen's initiative to challenge the results due to the SBE's decision led to thousands of individual appeals submitted to the SBE and an online petition calling for the cancellation of the results gathered almost 500,000 signatures.¹⁰⁰ The SBE rejected all appeals, with one dissenting member.¹⁰¹

Although the Constitutional Court previously ruled that SBE decisions are not subject to judicial review, two parties appealed the results to the Constitutional Court and one unsuccessfully sought injunctive relief from the Council of State, the highest administrative court. The two main opposition parties have indicated their intention to take the matter to the ECtHR.¹⁰² High-level officials have publicly dissuaded opposition parties from formally challenging the results and cautioned the courts, including the ECtHR, not to take jurisdiction over such cases.¹⁰³

XIV. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to enhance the conduct of referenda and elections in Turkey and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic processes. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations that remain to be addressed, in particular in the final report from the June and November 2015 parliamentary elections. The OSCE/ODIHR stands ready to assist the authorities of Turkey to further improve the referenda and electoral process and to address the recommendations contained in this and previous reports.¹⁰⁴

A. PRIORITY RECOMMENDATIONS

1. The constitutional and legislative framework should be reviewed and amended to ensure broad guarantees of fundamental rights and freedoms, only permitting restrictions that have the

⁹⁸ As of publication, no responses were received in these cases.

⁹⁹ In addition, the Association for Republic Women lodged a complaint to the SBE requesting invalidation of the results. The SBE refused to consider the appeal on the grounds that civil society organizations do not have a right to seek redress against decisions of election administration bodies.

¹⁰⁰ In the days following the referendum, small-scale civil protests nationwide against the results were observed by the OSCE/ODIHR LROM and reported in the media, including at the SBE premises on the eve of referendum day.

¹⁰¹ The dissenting member stated that the SBE acted beyond its authority by making the decision to validate the unstamped ballots in contravention of the law. To ensure the integrity of the results, the member noted that the legal provision that unstamped ballots are invalid should have been fully respected. He further raised concern over the acceptance of the results as the number of unstamped ballots is unknown and the public perception is that 2.5 million ballots could be affected.

¹⁰² Appeals were in an effort to procedurally exhaust all domestic remedies as required by the ECtHR. As of publication, the Constitutional Court did not issue rulings on the matters.

¹⁰³ See statements from the [Prime Minister](#) and the [Minister of Justice](#).

¹⁰⁴ According to the paragraph 24 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves "to follow up promptly the ODIHR's election assessment and recommendations".

character of an exception and that are proportionate to a legitimate aim and necessary. State of emergency legislation should ensure that rights and freedoms are only limited to the extent strictly necessary for the exigencies of the emergency.

2. The process of drafting and adopting constitutional amendments should fully respect the parliamentary procedures and be based on an inclusive and transparent process. Proposed amendments should be fully in line with Turkey's international commitments on democracy, human rights and the rule of law.
3. In the context of referenda, consideration should be given to ensuring free and equal participation of all stakeholders, including civil society, in all aspects of the process.
4. To ensure a framework that provides for the conduct of genuinely democratic referenda, the authorities should consider amending the constitution and relevant legislation. Amendments to the law should provide guarantees for the full participation of all stakeholders and equal opportunities and conditions for proponents and opponents in all aspects of the referendum process. Further, to enhance clarity of the framework, the SBE could fully exercise its regulatory authority in a manner consistent with the law.
5. To enhance the integrity and public confidence in the process, authorities should implement safeguards to ensure a clear separation between the State and parties, and prevent public officials, including the president, from using the advantage of their office for campaigning purposes. Civil society and professional associations should be permitted to conduct civic education activities on referendum proposals.
6. Authorities should refrain from applying anti-terrorism legislation to prosecute journalists based solely on the content of their reporting. When prosecuted, charges should be fully substantiated and pre-trial detention should remain the exception and limited in time.
7. Referendum day procedures, particularly on counting should not be subject to changes on referendum day. All potential violations with regard to the implementation of referendum day procedures should be thoroughly investigated.

B. OTHER RECOMMENDATIONS

Legal Framework

8. To further facilitate the expression of a voter's will, proposed constitutional changes that are not directly linked could be presented as distinct questions, which can be separately answered.
9. The authorities should refrain from using emergency decrees to amend the legal framework for referenda and elections, and the Constitutional Court should exercise its jurisdiction to consider if decrees go beyond the exigencies of the emergency. The safeguard of not enforcing legislative changes within one year of adoption should be adhered to, in line with international good practice.

Referendum Administration

10. To increase public confidence in the work of the referendum administration, the SBE could consider measures to enhance transparency, including promptly publishing all decisions,

including those on complaints and appeals, making board sessions open to observers and the media and publishing session agendas in advance.

11. Consideration could be given to introducing a system that provides for balanced representation of the proponents and opponents of proposed amendments in the referendum administration and allowing non-political party stakeholders to submit nominations.

Voter Registration

12. Voting rights for military students and conscripts should be reinstated and other blanket restrictions on suffrage rights should be reconsidered. The election legislation should be harmonized with the objectives of the CRPD, to ensure the full voting rights of persons with mental disabilities, including the right to request assistance to vote from a person of their choice. Disenfranchisement of prisoners should be proportionate to the crime committed

Campaign

13. To ensure an equitable campaign environment, consideration could be given to extending the more stringent campaign prohibitions, including on the misuse of administrative resources and official positions, to apply for the duration of the pre-referendum period.
14. To enhance voters' ability to make an informed choice and in accordance with international good practice, the state could consider providing impartial or balanced information on proposed amendments and their potential impact ahead of referendum day.
15. Authorities should undertake effective campaign oversight and conduct thorough investigations into all campaign-related offences, including interference in campaign activities, threats and intimidation, and the misuse of administrative resources. Campaign regulations should be fully enforced and perpetrators prosecuted for applicable criminal and administrative offences.

Campaign Finance

16. In line with international good practice and previous OSCE/ODIHR and GRECO recommendations, authorities could consider establishing periodic, timely and transparent reporting of campaign income and expenditures, and require the timely publication of the reports. In addition, consideration could be given to enhancing the effectiveness of oversight, introducing campaign spending limits, and requiring the establishment of dedicated bank accounts for campaign-related transactions.

Media

17. The legal framework should be amended to bring it in line with OSCE commitments and international obligations to ensure full protection of the principle of freedom of speech and the press and to decriminalize defamation, libel, and insult of state officials.
18. In line with the principle of equal opportunity, authorities could consider elaborating guarantees for equal access to public and private media for the proponents and opponents of the referendum, and for impartiality of their coverage.

19. Requirements for impartial coverage of the campaign by both public and private media must be fully enforceable. An appropriate body should be given the authority in law to oversee media coverage of the campaign with the power to apply sanctions.

Citizen and International Observers

20. The legislation should be amended in accordance with OSCE commitments and international good practice and explicitly provide for international and citizen non-partisan observation.

Complaints and appeals

21. To provide for an effective means of redress of referendum disputes, the legal framework should be amended to provide the right to review SBE decisions by an independent judicial body.

Referendum Day

22. To ensure voters are able to vote free from intimidation and fear of retribution, the police presence in and around polling stations should be limited to ensuring public order and safety.
23. To facilitate access to the results and increase confidence in the process, the SBE could consider publicly releasing preliminary data by BBC during tabulation. To enhance transparency, results protocols could contain more detailed information, including the number of invalid ballots.

ANNEX I: FINAL RESULTS¹⁰⁵

Total number of registered voters	58,291,898
Total number of votes cast	49,798,855
Total number of valid votes	48,936,604
Total number of invalid votes	862,251
Turnout (percentage)	85.43

Vote	In Country	Out of Country	Customs Gates	Total	Percentage
YES	24,325,633	778,833	52,997	25,157,463	51.41
NO	23,203,316	530,988	44,837	23,779,141	48.59
Total	47,528,949	1,309,821	97,834	48,936,604	100

¹⁰⁵ As published on the SBE website on 27 April 2017.

ANNEX II: LIST OF OBSERVERS IN THE INTERNATIONAL REFERENDUM OBSERVATION MISSION

SHORT-TERM OBSERVERS

Parliamentary Assembly of the Council of Europe

Cezar	Preda	Romania	Head of Delegation
Alev	Korun	Austria	MP
Vusal	Huseynov	Azerbaijan	MP
Nikolaj	Villumsen	Denmark	MP
Jaak	Madison	Estonia	MP
Anne	Kalmari	Finland	MP
Nicole	Duranton	France	MP
Josette	Durrieu	France	MP
Andrej	Hunko	Germany	MP
Mechthild	Rawert	Germany	MP
Andrea	Rigoni	Italy	MP
Florian	Kronbichler	Italy	MP
Predrag	Sekulić	Montenegro	MP
Arkadiusz	Mularczyk	Poland	MP
Duarte	Marques	Portugal	MP
Pierre-Alain	Fridez	Switzerland	MP
Nigel	Evans	United Kingdom	MP
Marianne	Mikko	Estonia	Co-rapporteur
Stefan	Schennach	Austria	Co-rapporteur
Ingebjørg	Godskesen	Norway	Co-rapporteur
Anne	Godfrey	United Kingdom	Secretariat
Nathalie	Bargellini	France	Secretariat
Bogdan	Torcătoriu	Romania	Secretariat

LONG-TERM OBSERVATION MISSION

OSCE/ODIHR LROM CORE TEAM

Tana	De Zulueta	Italy	Head of Mission
Meaghan	Fitzgerald	United States of America	
Stefan	Szwed	Poland	
Ivan	Tsikota	Belarus	
Marla	Morry	Canada	
Alain	Chabod	France	
Carlo	Pappalardo-Fischer	Italy	
Kyle	Bowers	United States of America	
Roman	Railean	Romania	
Tomasz	Janczy	Poland	
Iwona	Tulin	Poland	
John Wayne	Pilgrim	Canada	

OSCE/ODIHR LONG-TERM OBSERVERS

Clemens	Droessler	Austria
Peder	Larsen	Canada
Tereza	Lewis	Czech Republic
Roman	Stanek	Czech Republic
Karin	Bergquist	Denmark
Paavo	Pitkaenen	Finland
Olivia	de Guerry	France
Khalil	Zerargui	France
Ingo	Buettner	Germany
Hans	Kaboth	Germany
Julia	Ruppel	Germany
Suhail	Ahmad	Ireland
Ricardas	Ramoska	Lithuania
Gandolgor	Sainkhuu	Mongolia
Hans	Haddal	Norway
Silje	Hagerup	Norway
Robert	Hall	Sweden
Lars	Lagergren	Sweden
Nicolas	Heyum	Sweden
Hans-Jurg	Pfaff	Switzerland
Martin	Minder	Switzerland
Alexander	Anderson	United Kingdom
Roger	Bryant	United Kingdom
Francis	McGinley	United Kingdom

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it coordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).