I. EXECUTIVE SUMMARY

The 16 April constitutional referendum is taking place under a declared state of emergency. Following the failed coup attempt in July 2016, fundamental freedoms have been curtailed and thousands of citizens have been detained or dismissed, including civil servants, judges, journalists and opposition party members.

The 18 proposed amendments will be voted on as a package, with only a yes/no option to the whole package presented to the voters on the ballot. If passed, the constitutional amendments would bring changes to the current parliamentary system. The office of prime minister will be abolished and some of the parliament’s oversight functions will be transferred to an executive presidency. The amendments will increase the number of seats in parliament and empower the president to fill some key positions in the judiciary by direct appointment. A simple majority of votes is required for the referendum to pass.

The legislation for the referendum is primarily the same as for elections and is limited with regard to the specificities of referenda, in particular concerning campaigning. Two decrees adopted under the state of emergency impact such aspects of the referendum process as impartial media coverage of the campaign and out of country voter registration. As the parliament has not approved the decrees yet, they cannot be appealed before the Constitutional Court.

The judiciary has primary responsibility for the administration of the referendum. In addition to the Supreme Board of Elections (SBE), there are three lower levels of electoral boards. Following the attempted coup, three SBE members and 221 lower-level election board chairpersons were replaced. In addition, in the southeast provinces at least 140 chairpersons nominated by the opposition parties were dismissed.

Citizens above the age of 18 have the right to vote, exceptions include active conscripts, military students, and those in prison for intentional crimes. Following an eight-day period for public scrutiny, voter lists were finalized on 10 March and there are a total of 58,291,898 registered voters, including 2,972,676 for the out-of-country voting.

The law only provides for the participation of eligible political parties in the campaign. On 11 February the SBE announced that 10 parties out of 95 registered have met the requirements; two parties that were not found to be eligible unsuccessfully appealed the decision. One civil society initiative applied for registration as a political party in order to participate in the referendum campaign, but has not yet been registered.

Political parties are expected to inform voters on the amendments and their potential impact. The ‘Yes’ campaign is led by the ruling party and supported by a number of leading national and lower level public officials, including the president. The ‘No’ campaign is predominantly conducted by the main opposition parties. OSCE/ODIHR LROM noted that supporters of the ‘No’ campaign faced campaign bans, police interventions, and violent scuffles at their events.
Since July, a total of 158 media outlets were closed leaving thousands of media workers jobless. The legal framework requires impartial coverage of the campaign but an emergency decree removed the SBE’s sanctioning authority for non-compliance. Eligible political parties are given free air-time on public media, with additional time allocated to the ruling party and the president. On 25 March the OSCE/ODIHR LROM commenced quantitative and qualitative monitoring of five television channels and three newspapers.

While lower-level election board decisions can be appealed, there is no judicial review of SBE decisions, including for the final results. Complaints received to date are mostly related to the relocation of polling stations in the southeast provinces and campaign issues.

While eligible political parties are able to have non-voting members on the electoral boards, the law does not provide for international or non-partisan citizen observation and all electoral board sessions are closed. Civil society organizations that observed past elections will either refrain or significantly limit their observation efforts.

II. INTRODUCTION

Following an invitation from the authorities of the Republic of Turkey and based on a recommendation of a Needs Assessment Mission conducted from 22 to 24 February, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a Limited Referendum Observation Mission (LROM) on 17 March. The LROM, led by Tana de Zulueta, consists of 11 experts based in Ankara and 24 long-term observers (LTOs), deployed on 25 March to 12 locations throughout the country. Mission members are drawn from 20 OSCE participating States. In line with ODIHR’s methodology, the LROM will not carry out a comprehensive or systematic observation of referendum-day proceedings, but intends to visit a limited number of polling stations on referendum day.

III. BACKGROUND

Turkey is a parliamentary republic with executive power vested in the Council of Ministers headed by the prime minister. The president is the head of state and holds limited functions and authority with respect to all three branches of government. Legislative power is exercised by the single-chamber 550-seat Turkish Grand National Assembly (parliament), which since the November 2015 general election comprises four political parties, including Justice and Development Party (AKP) with a majority of 317 seats, Republican People’s Party (CHP) with 134, People’s Democratic Party (HDP) with 59 and Nationalist Movement Party (MHP) with 40 seats.

On 15 July 2016, Turkey experienced a failed coup attempt that left 241 casualties and at least 2,194 people injured. It was followed by mass arrests and the prosecution under emergency decrees of over 100,000 and subsequent detention of over 40,000 individuals, as well as dismissals of over 150,000 civil servants. Thirteen HDP deputies, including the party’s two co-chairs, remain in custody, with

1 See previous OSCE/ODIHR reports on Turkey.
3 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.
the latest detained on 23 March. A state of emergency was enacted on 21 July and then extended twice, most recently for another 90 days starting on 19 January. Terrorist acts and the ongoing security operations in the country’s southeast, as well as general tension following the attempted coup and the state of emergency, have raised concerns for a number of OSCE/ODIHR LROM interlocutors about whether appropriate conditions are in place to hold a referendum.

The constitutional reform package contains 18 amendments which, among other things, bring changes to the current parliamentary system. The office of prime minister will be abolished and some of the parliament’s oversight functions will be transferred to an executive presidency. The amendments will increase the number of seats in parliament to 600 and empower the president to fill some key positions in the judiciary by direct appointment. The European Commission for Democracy through Law (Venice Commission) has stated that the proposed changes 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”. Many OSCE/ODIHR LROM interlocutors raised concerns about the rushed manner in which the proposed amendments were passed in parliament and a lack of broad and inclusive public consultation.

IV. THE REFERENDUM SYSTEM AND LEGAL FRAMEWORK

Amendments to the Constitution require 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 favor of the amendments, effects the constitutional change. The proposed 18 amendments affecting 72 articles of the constitution will be voted on as a single package. There will be no question on the ballot, voters will simply be asked to select yes or no to the package.

The referendum 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. Past OSCE/ODIHR recommendations, including on suffrage rights, campaign finance, lack of judicial review, and rights of observers, remain unaddressed. The legislation is focused on elections and is limited with regard to the specificities of referenda, in particular concerning the participation of civil society and other stakeholders in the campaign. The Supreme Board of Elections (SBE) has authority to supplement the legal framework with its decisions and regulations. However, it has declined to provide interpretations regarding campaign rules when formally requested by stakeholders.

Two emergency decrees amended election-related laws – one repealed the SBE’s media sanctioning powers and one amended a provision that affected the registration of out-of-country voters. While

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4 Since 4 November 2016, another eighteen were arrested and released shortly after.
5 The government replaced elected mayors from 53 municipalities with government appointees, including 49 mayors from the opposition Democratic Regions Party (DBP).
6 Venice Commission Opinion on the amendments to the Constitution, adopted on 10-11 March.
7 The Ombudsperson received a complaint from a citizen on 26 February claiming that the lack of opportunity to vote differently on the different proposals breached his freedom of expression.
8 The SBE received 6 requests from private companies, public authorities, professional associations and DEBs seeking clarification of campaign rules for non-eligible political parties and civil society actors.
9 Out of 21 emergency decrees, 16, including those that directly impact the referendum process, were not considered by parliament within the 30-day legal deadline excluding the opportunity for a constitutional appeal.
the constitution provides that any amendments to election legislation are not enforceable within one year of adoption, the SBE decided that these changes take immediate effect.10

Fundamental freedoms are guaranteed by the Constitution, although it contains restrictive provisions and permits legislation to establish limitations on the rights and freedoms essential to a democratic referendum. The Law on State of Emergency gives extraordinary powers to provincial governors to limit freedom of movement, association, assembly, and expression.11

V. THE REFERENDUM ADMINISTRATION

The judiciary has primary responsibility for the administration and supervision of referendums. The referendum is administered by four levels of electoral bodies: the SBE, 81 Provincial Election Boards (PEBs), 1,080 District Election Boards (DEBs), and 174,512 Ballot Box Committees (BBCs).12

The SBE is a permanent body that consists of 11 members, including one woman, elected by and from judges of the Court of Cassation and the Council of State. Political parties have the right to appoint non-voting members to electoral boards, and all four parliamentary parties are represented at the SBE. Since the last parliamentary election, eight SBE members were replaced, all chosen by newly appointed judges: five due to the expiry of their terms, and three are in custody. A series of emergency decrees led to vast replacements at all levels of the referendum administration: 9 PEB chairpersons were dismissed, and two placed in custody, 143 DEB chairpersons were dismissed, and 67 placed in custody. Over 500 electoral board staff were also placed in custody.

To date, the SBE has complied with all legal deadlines and adopted some 149 decisions, out of which 35 were made public on the SBE official website. The law does not require that electoral board sessions be open to the public but non-voting political party members are entitled to be present. Otherwise, all electoral board sessions are closed for observation.

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 chair and six members – two civil servants and five representatives of political parties. For the first time, the SBE took a decision that provided guidance for DEBs on applying the ‘good reputation’ requirement provided in the law for the selection of BBC members. In some of provinces in the southeast at least 140 chairpersons nominated by the HDP were dismissed due to alleged ‘bad reputation’.13

Out-of-country voting commenced on 27 March and will continue until 9 April in 120 polling stations located in 57 countries. For the first time, out-of-country voters will be able to cast their vote in any out-of-country voting location irrespective of their place of registration.

10 Two complaints on the issue of the applicability of these changes were unsuccessfully filed. One of the proposed constitutional amendments temporarily repeals for the next parliamentary and presidential elections the provision that the amendments to election legislation cannot be enforced for one year following their adoption.

11 For example, on 24 March, the Ankara Governor issued a directive banning a professional association from setting up campaign stands on the grounds of “public safety and order” under the Law on State of Emergency.

12 A total of 3,182 BBCs will be established out-of-country, 4,192 at customs gates, and some 460 will be established in penitentiary institutions.

13 According to the Law on Basic Provisions, BBC chairpersons are appointed from “well-reputed and literate persons.” On DEBs’ request the SBE confirmed that the ‘well-reputed’ requirement applies and that DEBs may investigate the nominees for BBCs with regards to prior convictions or on-going investigations.
VI. VOTER REGISTRATION

Every citizen, who has reached the age of 18 by the day of referendum, has the right to vote, with the exception of active conscripts, military students, and those serving prison sentences for intentional crimes. At least 570,000 citizens are ineligible to vote. On 15 February, the SBE adopted a decision that partially addressed the rulings of the European Court of Human Rights 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.

Turkey has a passive voter registration system. The voter register is managed by the SBE based on personal data from the civil registry maintained by the Ministry of Interior (MOI) and updated daily. Between 18 and 26 February, voters had the opportunity to verify their data in the voter lists, in person and through the SBE website. As a result, 467,984 changes were introduced, including 25,526 new entries and 442,458 address changes. Voter lists were finalized on 10 March. The SBE reported a total of 58,291,898 registered voters, including 2,972,676 for the out-of-country voting.

Special security zones are in place in parts of four provinces in the southeast affecting some 295,000 voters. According to various sources cited by the United Nations High Commissioner for Human Rights, between 355,000 and 500,000 people had to flee their residence. Some OSCE/ODIHR LROM interlocutors expressed concerns regarding their ability to change their voter registrations.

VII. PARTY REGISTRATION AND PARTICIPATION IN REFERENDUM

On 11 February the SBE approved the participation in the referendum campaign of 10 political parties based on information from the Supreme Court Chief Prosecutor’s Office (SCCPO). Following SCCPO investigation, 19 parties that were eligible to compete in the November 2015 elections were found ineligible to participate in the referendum. Two of these parties, the People’s Liberation Party and the Liberal Democrats Party, lodged complaints with the SBE and SCCPO, respectively, claiming they fulfilled the eligibility criteria. Of the two complaints on the matter, one was dismissed and the other did not receive a response. 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, they remain unregistered.

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14 Others ineligible to vote are those declared legally incompetent by a court and those banned from civil service.
15 Including 194,788 declared mentally incompetent by a court decision, 276,292 active conscripts and student of military schools and 100,950 convicts.
16 See Soyler v. Turkey, application no. 29411/07, 17 September 2013 and Murat Yural v. Turkey, application no. 9540/07, 21 October 2014.
17 In Kars, Batman, Gaziantep and Mardin.
19 Political parties are registered by the SCCPO. In addition to the parties with a parliamentary group with at least 20 members in parliament, in order to be entitled to equitable campaign opportunities and to nominate observers, a party must 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. The ten eligible parties are: AKP, Motherland Party, Independent Turkey Party, Grand Union Party, CHP, HDP, Free Cause Party, MHP, Felicity Party, and Homeland Party.
20 For the People’s Liberation Party the SBE found that the party lacked the required organizational structure. The Liberal Democrat Party complained to SCCPO, who did not respond.
21 On 2 March, two CHP MPs forwarded questions to the MoI regarding the registration status of the initiative.
VIII. CAMPAIGN AND CAMPAIGN FINANCE

The Law on Basic Provisions regulates the conduct of the referendum campaign. It bans the use of public resources for campaign purposes and, in the eight days preceding the referendum, prohibits holding state events or making statements about public works. The law protects the rights and provides opportunities to campaign only to eligible political parties. While the broader legal framework for freedom of assembly and expression applies to other stakeholders, including individuals and civil society organizations, the SBE has taken the position that only eligible parties are entitled to hold campaign meetings and has so far declined to decide whether others may campaign through other means.  

In practice, civil society campaign activities are largely confined to social media, although some groups have displayed materials and/or held meetings.

While the campaign rhetoric has been highly polarizing, the intensity of campaign activities varies across Turkey. Flyers, posters and banners have appeared in larger cities and towns, buses and trucks clad in campaign slogans can also be seen on the streets of many municipalities. The ‘Yes’ campaign is led by the governing AKP and to some extent the MHP. It is manifestly supported by several leading national and lower level public officials, including the prime minister, several other ministers, and the president, who under the constitution is required to remain non-partisan and perform his duties without bias. The SBE received one complaint regarding the president’s campaign activities and decided it has no authority over the president. Cases of misuse of resources have been reported in the media and observed by OSCE/ODIHR LROM observers.

The ‘No’ campaign is predominantly conducted by the main opposition party CHP, the HDP, as well as by a number of MHP members of parliament, grouped in what is informally known as the “Turkish Nationalists Say ‘No’” campaign.

So far, the campaign is characterized by polarization and some restrictions. The fact that a number of political leaders and activists remain behind bars has seriously curtailed some groups’ ability to campaign. As of now, in several cases, ‘No’ supporters have faced police interventions while campaigning; a number were also arrested on charges of insulting the president or organizing unlawful public events.

For instance, on 21 March, municipal police prevented CHP members from handing out campaign materials in Marisa; on 22 March, a law student from Istanbul University who posted a ‘No’ campaign video online was detained for allegedly insulting the president; on 23 March, in Davutpaşa (Istanbul Province) a group of students who were planning a cycling campaign tour in favour of the ‘No’ campaign were arrested for organizing an unlawful public event; on 27 March, a high-school student who was distributing 'No' campaign fliers in Antakya (Hatay province) was taken into custody for allegedly insulting the president. On 30 March, activists of the Ankara Bar Association were prevented by police from distributing campaign materials on an instruction issued by the Ankara Governor.

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22 For instance, the PEB Samsun and one of the DEBs in the province, both sent letters to the Provincial Directorate of Security stating that it is prohibited for everyone except eligible parties to campaign. The SBE later decided that PEBs and DEBs lacked the authority to do so.

23 OSCE/ODIHR LROM observed a campaign event featuring the president in Samsun on 26 March, held in conjunction with an inauguration of a large public works project, with free transportation provided by city authorities. On 16 March, the president also held a rally at Sakarya after he attended the joint inauguration ceremony of 43 local projects. On 18 March, the president attended a ceremony to start the construction of a bridge and used the occasion to campaign.

24 For instance, Istanbul city walls (UNESCO Historical Heritage) were covered with a large ‘Yes’ poster; in the Bolu province, cars and trucks with state or municipal official license plates were used to display ‘Yes’ campaign billboards; ‘Yes’ campaign posters were displayed on university dormitories in Istanbul and on the building of the Directorate General of Press and Information; the mayor of Rize has shared ‘Yes’ campaign videos on the municipality’s web page.

25 For example, on 21 March, municipal police prevented CHP members from handing out campaign materials in Marisa; on 22 March, a law student from Istanbul University who posted a ‘No’ campaign video online was detained for allegedly insulting the president; on 23 March, in Davutpaşa (Istanbul Province) a group of students who were planning a cycling campaign tour in favour of the ‘No’ campaign were arrested for organizing an unlawful public event; on 27 March, a high-school student who was distributing 'No' campaign fliers in Antakya (Hatay province) was taken into custody for allegedly insulting the president. On 30 March, activists of the Ankara Bar Association were prevented by police from distributing campaign materials on an instruction issued by the Ankara Governor.
Turkish as official language. Violent scuffles have also been reported at several ‘No’ campaign events.26

Political parties are expected to inform voters on the amendments and their potential impact. Overall, the ‘Yes’ campaign stresses the demand for unity and a strong executive in the face of domestic and international challenges. The ‘No’ campaign generally presents the proposed amendments as a threat to the gains of 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 Antalya deputy public prosecutor equated the ‘No’ campaign or its voters with terrorist organizations or the July 2016 attempted coup plotters.

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 general election. Campaign financing is not comprehensively regulated in the law, which only restricts the amount and the nature of donations, but does not limit general party and campaign-related spending. Political parties must report their campaign expenses as part of their annual financial reports to the Constitutional Court, which has oversight responsibility for political party financing, but the reports are not made public and only summarized audit reports are published online. Representatives of several political parties claim to have insufficient funds to actively campaign.

IX. THE MEDIA

The Constitution provides for the right to freedom of expression but permits undue restrictions in the Anti-Terrorism Law, Criminal Code, Press Law and other legislation. 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. The vague provisions can be used as grounds for the prosecution and imprisonment of journalists. Freedom of expression has been further curtailed by the closure of numerous media outlets and the arrest of journalists following the failed coup attempt as well as the legal framework for the state of emergency.27 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.”28

The media landscape is dominated by outlets, which are often owned by private groups with interests in business sectors that depend on public contracts and government regulation. Since the July events, a total of 158 media outlets have been closed, including 60 television and radio stations, 19 newspapers, 29 publishing houses and five press agencies,29 which the Venice Commission described a “mass liquidation of media outlets”. More than 150 journalists have been arrested during the state

26 On 22 March, the MHP ‘No’ campaigner Meral Aksener’s speech was interrupted by an angry mob in the Nigde province; on 26 March the Sinan Ogan’s (also MHP) rally faced a violent disruption by the party’s youth group; on 27 March, the CHP’s ‘No’ campaign posters were destroyed and campaign truck’s tires slashed in Balikesir province.

27 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.


29 See the Memorandum on freedom of expression and media freedom in Turkey (Commissioner for Human Rights, Council of Europe) from 15 February 2017.
of emergency, and the majority said to still be detained as of 31 March. Further, according to the OSCE RoFM, “10,000 members of the media lost their jobs and thousands are currently awaiting trial for their critical tweets or other social media posts.”

The legal framework for the referendum obliges media to present impartial coverage of the campaign and guarantees eligible political parties equal access to the media. However, an emergency decree removed the SBE’s power to sanction private media if they fail to provide impartial coverage. The Radio and Television Supreme Council (RTSC) submits weekly reports to the SBE on violations detected in their monitoring of the media. The law also provides for paid political advertisement during the campaign under equal conditions. Each parliamentary party is granted 20 minutes of free airtime on public broadcaster for campaign purposes, with an additional 10 minutes reserved for the ruling party. The president is also entitled to two 10-minute speeches on the public broadcaster but on 28 March he officially renounced the free airtime.

On 25 March, the OSCE/ODIHR LROM commenced qualitative and quantitative monitoring of five television channels and three newspapers.

X. COMPLAINTS AND APPEALS

The legal framework provides for the right to appeal decisions of lower electoral boards to the higher boards. However, there is no right to judicial review of SBE decisions, including for the final results. While the law does not establish a process for lodging campaign-related complaints, in practice such complaints are mainly filed with the election boards.

The SBE received some 26 complaints, mainly from opposition parties challenging DEB decisions to relocate polling stations in the southeast provinces on the basis of security; these complaints were generally satisfied. Other complaints concerned campaign-related issues, such as obstructions and limitations on campaign activities.

The CHP members of parliament challenged two decrees claiming that they went beyond the exigencies of the state of emergency. The Constitutional Court refused to consider the petitions, which effectively limited possibilities for challenging other emergency decrees, including those on referendum matters.

XI. CITIZEN AND INTERNATIONAL OBSERVERS

By law only the eligible political parties may nominate observers. Their observation efforts will vary in scope: AKP and CHP aim to observe widely, whereas HDP will have limited observation. The legislation does not provide for international and citizen non-partisan observation. Two civil society organizations applied for accreditation and were rejected. Following the attempted coup, 1,583 civil society organizations were dissolved, including at least three that supported the observation efforts.
during the last elections. Some civil society organizations which observed past elections will either refrain from observation or significantly limit their efforts due to the overall political and security situation.

XII. OSCE/ODIHR LROM ACTIVITIES

The OSCE/ODIHR LROM commenced its work in Ankara on 17 March. The mission has met with the Ministry of Foreign Affairs and other government officials, the SBE, public institutions, representatives of political parties, media, civil society, and the international community. The Head of Mission also traveled to Diyarbakir, where she met with electoral boards, party representatives, local authorities and civil society representatives. The 24 LTOs follow referendum process at the regional level, attend campaign events and have meetings with local authorities, election boards, local branches of political parties, and civil society, as well as with regional media. The OSCE/ODIHR LROM intends to co-operate with the Parliamentary Assembly of the Council of Europe (PACE) who will deploy its observer delegation for referendum-day observation.

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