

# AMNESTY INTERNATIONAL

## Public Statement

AI Index: EUR 44/011/2005 (Public)

News Service No: 072

23 March 2005

### **Turkey: Concerns about new Penal Code should be addressed**

In recent days, press groups in Turkey have articulated their concerns regarding the new Penal Code which is due to come into effect on 1 April. Professional bodies such as the Press Council and Society of Turkish Journalists have called on the government to urgently review the new law which they are concerned will restrict press freedom. Justice Minister Cemil Cicek has stated that the government may review the legislation. Amnesty International shares these concerns and urges the government to take further steps to bring Turkish law into line with international human rights law and standards related to freedom of expression.

While the new Penal Code has introduced many positive changes - most notably in the removal of gender-discriminatory articles - it still contains numerous restrictions on fundamental rights. Some provisions, which the authorities had used before to breach international standards related to freedom of expression, were carried over from the old Penal Code. For example, Article 159 which criminalized acts that "insult or belittle" various state institutions, and which Amnesty International has repeatedly called for to be abolished, reappears as Article 301 of the new Penal Code in the section entitled "Crimes against symbols of the states sovereignty and the honour of its organs" (Articles 299 - 301). Amnesty International is concerned that this section could be used to criminalize legitimate expression of dissent and opinion.

In other cases, new articles have been introduced which appear to introduce new restrictions to fundamental rights. For example, Article 305 of the new Penal Code criminalizes "acts against the fundamental national interest". The written explanation attached to the draft, when the law passed through Parliament, provided as examples of crimes such acts as "making propaganda for the withdrawal of Turkish soldiers from Cyprus or for the acceptance of a settlement in this issue detrimental to Turkey... or, contrary to historical truths, that the Armenians suffered a genocide after the First World War". Amnesty International considers that the imposition of a criminal penalty for any such statements - unless intended or likely to incite imminent violence - would be a clear breach of international standards related to freedom of expression

Many of the provisions in the new law envisage higher sentences if the "crime" has been perpetrated through the press and raise the possibility of custodial sentences for journalists. Chair of the Press Council Oktay Eksi has evaluated the new law as "an unfortunate reversal from the point of freedom of expression and of the press".

#### **Background:**

The new Penal Code was presented by the government as a less restrictive and democratic piece of legislation and hastily passed by Parliament in September 2004 as a result of pressure from the European Union. This pressure appears to have resulted in insufficient consultation with members of civil society, such as press and human rights groups, and may have contributed to the continuing problems in the law.

Amnesty International is also concerned about aspects of the Penal Code which are related to areas other than freedom of expression. For example, Article 122 of the draft of the new Penal Code which forbids discrimination on the basis of "language, race, colour, gender, political thought, philosophical belief, religion, denomination and other reasons" was amended at the last moment so that "sexual orientation" was removed from the draft. Amnesty International is therefore concerned that discrimination on the basis of sexuality was therefore not criminalized in the new law.

In addition, Amnesty International is concerned that the statute of limitations (the time limit) still applies in trials in which individuals are accused of torture. While the new law has extended this time limit, trials against alleged torturers are frequently deliberately delayed and therefore dropped through this provision thereby contributing towards a climate of impunity. Given the frequency with which this happens and the status of torture as a peremptory norm of general international law, Amnesty International considers that there should be no statute of limitations for the crime of torture.