

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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TURKEY: THE NEW ACTION PLAN IS A MISSED OPPORTUNITY TO REVERSE DEEP EROSION OF HUMAN RIGHTS

Turkey's President Recep Tayyip Erdoğan announced the long-awaited Action Plan on Human Rights in a public meeting on 2 March 2021. The President presented the plan as reflecting the "expectations of the nation", emphasizing the two-year long preparation of the action plan as a process of engagement in a participatory dialogue with relevant ministries and public institutions, members of the parliament, high courts, academia, business and civil society organizations among others.¹ The Plan, which was prepared by the Ministry of Justice, lays down 11 human rights principles to be followed by all institutions and organs of the state while performing their public duties and sets out nine aims, 50 goals and 393 activities are expected to be achieved over the next two years.²

The proposed human rights framework represents another missed opportunity for the Turkish authorities to display a strong commitment to addressing the root causes of the most crucial problems in Turkey's human rights situation. The Plan does not include any concrete measures to ensure full independence of the judiciary by removing the executive control that has become chronic in recent years including through constitutional changes. It does not foresee any concrete action to prevent politically motivated and punitive pre-trial detention and convictions under over broadly defined anti-terrorism laws that leave opposition politicians, political activists, journalists, and human rights defenders to face prison sentences solely for peacefully exercising their human rights. Crucially, it does not include a clear commitment to implement the decisions of the European Court of Human Rights (ECtHR).

Recent developments that took place less than 20 days after the announcement of the Human Rights Action Plan are indicative of the government's commitment to implement human rights in the country. On Saturday 19 March, Öztürk Türkdöğen, chairperson of Turkey's Human Rights Association (IHD), was arrested in a raid by police in his home together with 10 other individuals on the suspicion of 'membership of a terrorist organization'. He was released on the same day with judicial control measures including a foreign travel ban and requirement to report in person to the nearest police station twice a month. Later on, by a midnight Presidential Decree on 20 March 2021, Turkey withdrew from the Istanbul Convention, which was specifically designed for combating violence against women and domestic violence. This unacceptable decision constitutes a huge setback in the efforts to combat violence against women and deprives women of a vital instrument to prevent violence, protect victims and end the impunity of perpetrators, as aimed at by the Convention.

With ink barely dry on the new Human Rights Action Plan, these worrying developments and continuation of criminalization of human rights defenders and dissenting voices strongly demonstrate that the plan lacks a credible commitment to protect human rights in Turkey. It appears to be nothing more than an attempt to veil systemic human rights abuses in the country.

LACK OF MEANINGFUL COMMITMENT TO HUMAN RIGHTS PROTECTION

The 128-page Action Plan, as a whole, underlines the government's "constant commitment" to reform in the field of human rights since it came into power in 2002 and highlights the "significant progress" achieved over the last 18 years under each identified goal.³ While the targets and the activities outlined for each goal are presented as a means to address certain problems arising from legislation and their implementation, the Plan is not the outcome of a comprehensive analysis with concrete measures to address the underlying structural issues affecting human rights in Turkey. It also lacks measurable indicators to track the progress to be achieved over the next two years.

¹ <https://www.tccb.gov.tr/assets/dosya/2021-03-02-insanhaklari-en.pdf>

² <https://rayp.adalet.gov.tr/resimler/1/dosya/insan-haklari-ep-eng02-03-202115-16.pdf>

³ *Ibid.*

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According to the Plan, it was drafted taking into consideration judgments of the ECtHR, decisions of the Committee of Ministers of the Council of Europe (CoE), opinions of the Venice Commission, recommendations and decisions of the UN Human Rights Mechanisms and reports of all other relevant human rights institutions together with an analysis of the first Action Plan on Prevention of European Convention on Human Rights (ECHR) Violations. However, no proper evidence-based assessment of the implementation of the first Action Plan on the Prevention of ECHR Violations,⁴ in force between 2014-2019, seems to have been conducted. Noticeably, the new Plan does not contain any commitment to the implementation and enforcement of judgments of the ECtHR, binding under the Convention and crucial to remedy the violations in the cases of, among others, Osman Kavala and Selahattin Demirtaş. In both cases the ECtHR ruled that their pro-longed detentions were unlawful and served an “ulterior purpose” in violation of Article 18 in conjunction with Article 5 of the ECHR, calling on Turkey to release them immediately. In its four examinations of the case of Osman Kavala since September 2020, the CoE’s Committee of Ministers, responsible for monitoring the execution of the judgments of the ECtHR, has repeatedly called for Osman Kavala’s immediate release, given the ‘strong presumption’ that his current detention was a continuation of violations found by the Court.⁵ In its decision on the case of Selahattin Demirtaş, the Committee underlined that “the obligation of *restitutio in integrum* calls for the negative consequences of the violation to be eliminated without delay, including as regards the two sets of proceedings pending before Turkish courts”.⁶ Yet, the Turkish courts have been refusing to implement the European Court’s judgments and government officials have publicly stated that the judgments of the Court in both cases were not binding on Turkey.

The Plan fails to incorporate any concrete action as well as general measures to ensure compliance with the international human rights framework and to address major rights violations that have been frequently highlighted by the Council of Europe bodies and other human rights mechanisms such as the use of excessive force in dispersing peaceful demonstrations,⁷ ineffectiveness of investigations into deaths, torture and other ill-treatment by members of security forces,⁸ arbitrary arrests and pre-trial detention,⁹ including of journalists;¹⁰ or the composition of the Council of Judges and Prosecutors (HSK) which in large part facilitates the control and political influence of the executive over the judiciary leading to authorities bringing politically motivated charges, grossly unfair trials, convictions and sentences.¹¹

While the government states that the Action Plan is the outcome of a ‘participatory and transparent approach, containing those issues that gathered the broadest consensus from among a variety of ideas and proposals and was prepared in accordance with the international human rights framework’, it is unclear how these consultations were used to identify the shortcomings in human rights protection in Turkey, and how certain issues were prioritized over those outlined above. Overall, the absence of concrete and tangible proposals and commitments makes this a missed opportunity to provide a comprehensive plan for human rights change.

STRENGTHENING THE RULE OF LAW AND JUDICIAL INDEPENDENCE

Among its 50 aims, “Strengthening the Conception of the Rule of Law based on Human Rights” is set forth as the first aim in the new Action Plan. Human rights and the rule of law are closely intertwined, and they require an independent and impartial judiciary in order to ensure that human rights, as enshrined in national and international laws, are legally

⁴ <https://www.resmigazete.gov.tr/eskiler/2014/03/20140301-2-1.pdf>

⁵ [CM/Del/Dec\(2020\)1377bis/H46-38](#), 3 September 2020; [CM/Del/Dec\(2020\)1383/H46-22](#), 1 October 2020; Interim Resolution [CM/ResDH\(2020\)361](#), 3 December 2020, [CM/Del/Dec\(2021\)1398/H46-33](#), 11 March 2021.

⁶ [CM/Del/Dec\(2021\)1398/H46-40](#), 11 March 2021.

⁷ Oya Ataman group v Turkey (Application No. 74552/01)

⁸ Batı and others group v Turkey (Application Nos. 33097/96+)

⁹ Mergen and Others v. Turkey (Applications Nos. 44062/09, 55832/09, 55834/09, 55841/09 and 55844/09); Sabuncu and Others v. Turkey (Application No. 23199/17); Demirtaş v Turkey, No. 2 (Application No. 14305/17); Kavala v. Turkey (application no. 28749/18)

¹⁰ [Nedim Şener group v Turkey](#) (Application No. 38270/11)

¹¹ See CoE Commissioner for Human Rights’ report following her visit to Turkey from 1 to 15 July 2019, 19 February 2020, <https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>.

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enforceable. The Venice Commission identifies the necessary elements of the rule of law on which consensus was found as the following: legality, legal certainty, prohibition of arbitrariness, access to justice before independent and impartial courts, respect for human rights and non-discrimination and equality before the law.¹² Several of these substantial elements of the rule of law are set as separate principles, aims or goals under the new Plan.

The measures identified in the Plan to meet the aim of “Strengthening the Conception of Rule of Law Based on Human Rights” remain vague, abstract and confined to a review of legislation and practice on a regular basis, and to take necessary measures to strengthen the rule of law and the human rights in this respect, without clarifying what those measures are. Other measures include increasing the effectiveness of individual applications to the Constitutional Court or amending the legislation on political parties and elections, without addressing the fundamental problems that obstruct the rule of law in the country. The acceleration of the Visa Liberalization Dialogue with the EU is also presented as a measure to strengthen the rule of law; however, it is unclear how it would contribute to this declared aim.

With regards to the strengthening of the judicial independence and impartiality, the Plan promises to introduce safeguards for the appointment, promotion, and transfer of judges and prosecutors, and for the disciplinary procedures that may be applied to them. It foresees some general measures such as the strengthening of geographical guarantees against arbitrary or involuntary transferral and security of tenure of judgeships or the review of disciplinary infringements and sanctions applicable to judges and prosecutors. Although, if realized, these changes are important steps towards the establishment of an independent and impartial judiciary, the Action Plan does not elaborate any concrete action for arbitrary dismissals of judges and prosecutors. Over 4,000 judges and prosecutors including judges of the Constitutional Court and the Supreme Courts were dismissed following the attempted coup in 2016 through simplified procedures established via decrees with the force of law for having alleged links to “terrorist” organizations without any specific evidence or a fair process, having resulted in a wide range of human rights violations.¹³ Law No. 7145, adopted by the Parliament in July 2018 with the stated aim of enabling an effective fight against “terrorist” organizations after the end of the emergency rule, extended the possibility for dismissals of public sector workers deemed to have links with “terrorist organizations”, for a further three years with a continuing risk for judges and prosecutors to be dismissed arbitrarily.¹⁴ The ongoing possibility of the arbitrary dismissal of judges and prosecutors poses a major threat to the independence and impartiality of the judiciary, the rule of law and human rights protection. Article 26 of the Law No. 7145, which allows for the summary dismissal of public workers including judges and prosecutors should be repealed, however the Plan makes no mention of this possibility.

More importantly, the Plan does not elaborate any structural changes brought to the composition and the procedure for appointing members of the Council of Judges and Prosecutors (HSK)¹⁵, by the 2017 Constitutional amendments¹⁶ which are in conflict with the principle of independence and impartiality of the judiciary as they enable the executive power to exert political influence over the Council and interfere with criminal proceedings.¹⁷ Judges and prosecutors face undue

¹² Venice Commission, Report on the Rule of Law, CDL-AD(2011)003rev, 2011, para. 41.
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)003rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e)

¹³ See Amnesty International, No End in Sight: Purged Public Sector Workers Denied a Future in Turkey, 22 May 2017,
<https://www.amnesty.org/download/Documents/EUR4462722017ENGLISH.PDF>

¹⁴ See Amnesty International, Purged Beyond Return? No Remedy for Turkey’s Dismissed Public Sector Workers, 25 October 2018,
<https://www.amnesty.org/en/documents/eur44/9210/2018/en/>

¹⁵ The Council of Judges and Prosecutors (HSK) is the self-governing body in charge of the appointment promotion, transfer, discipline and dismissal of judges and prosecutors.

¹⁶ With the amendments to Article 159 of the Constitution by the 2017 Constitutional referendum regarding the composition and procedures for appointing members of HSK, no member of the HSK is selected by their peers; four of the thirteen members are appointed by the President of the Republic, and the seven by the Parliament in which the President’s governing party and its coalition partner hold the majority; appointments by the Parliament does not require a procedure guaranteeing involvement of all political parties and interests; remaining two members are the Minister of Justice who chairs the Council and his/her deputy who would also be appointed and dismissed by the President. The Venice Commission in its opinion on the Amendments to the Constitution in 2017 found the proposed composition and procedures for appointing members of the HSK extremely problematic, putting independence of the judiciary in serious jeopardy and recalled that “according to European standards, at least a substantive part of the members of a High Judicial Council should be judges elected by their peers.” See Opinion of Venice Commission on the Amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017, CDL-AD(2017)005, 13 March 2017.

¹⁷ See CoE Commissioner for Human Rights’ Statement, 7 June 2017: Turkey: new Council of Judges and Prosecutors does not offer adequate safeguards for the independence of the judiciary; Opinion of Venice Commission on the Amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017, CDL-AD(2017)005, 13 March 2017

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pressure as they risk being transferred, dismissed or subjected to disciplinary investigations if they make decisions considered to be adverse by the government. This was the case in the Gezi Trial, as the HSK gave permission for the launch of an investigation into the panel of judges who acquitted the defendants on 18 February 2020, after the President publicly criticized the court's acquittal decision.¹⁸ The ECtHR's ruling that the pre-trial detention and other measures taken against Osman Kavala and Selahattin Demirtaş pursued "an ulterior purpose" under Article 18 of the ECHR also reveal the flaws in the judicial system, and the judicial practice of targeting critical voices to silence them through political prosecutions. The Committee of Ministers in its latest decision in the case of Osman Kavala confirmed that the findings of the Court under Article 18 of the Convention and the "presumption that this violation is continuing [...] reveal pervasive problems regarding the independence and impartiality of the Turkish judiciary" and "invited the authorities to take adequate legislative and other measures to protect the judiciary and ensure that it is robust enough to resist any undue influence, including from the executive branch".¹⁹

The restructuring of the HSK through the 2017 Constitutional amendments is presented in the Action Plan as a major reform that achieved impartiality and independence of the judiciary. On the contrary, these recent changes have deepened the executive's influence over the judiciary. As a whole, the Plan fails to demonstrate any real commitment to remedy these flaws and ensure an independently functioning judiciary that applies laws in line with human rights principles and implements the decisions of the high courts and European Court of Human Rights. For a properly functioning judiciary, the composition and appointment procedures of the HSK should be amended in a way which allows its members to dispense their duties free from political interference.

LEGAL FORESEEABILITY

The Venice Commission outlines the duty of States to respect and apply the laws that they have enacted in a foreseeable and consistent manner, requiring the laws to be formulated with sufficient precision to enable the individuals to regulate their conduct.²⁰

Turkey's anti-terrorism legislation includes an unacceptably broad definition of 'terrorism' and 'terrorist' acts lacking the level of legal certainty required by international human rights law. This leads to individuals being accused of 'terrorism' for a range of activities protected by the rights to freedom of expression, association and political participation.²¹ This anti-terrorism legislation has frequently been used against individuals who advocate political ideas that may be shared by groups the authorities describe as 'terrorist', even when the prosecuted individuals have not themselves advocated violence, hatred, or discrimination, and are not prosecuted for direct involvement in violent acts.²² Definitions of 'terrorism' in Article 1 and 'terrorist' offender in Article 2 of the Anti-Terrorism Law, enable the criminalization of legitimate acts in the absence of any strong evidence for criminal wrongdoing. Article 7/2 of the Anti-Terrorism Law, which criminalizes 'making propaganda for an armed terrorist organization', is routinely used to prosecute those who express their dissenting opinions. One of the most high-profile examples of the misuse of this legislation is the conviction of the member of parliament Ömer Faruk Gergerlioğlu for a tweet he had shared in 2016, two years before he was elected. On 17 March 2021, Gergerlioğlu was stripped of his parliamentary immunity after the Court of Cassation upheld his conviction and two and a half years prison sentence. Provisions of the Turkish Penal Code criminalizing 'terrorism' related offenses such as Articles 314 (membership of a terrorist organization), 220/6 (committing a crime in the name of a terrorist organization without being its member) and 220/7 (aiding a terrorist organization without being its member) are used by the courts to punish individuals as members of armed organizations without material proof of membership of such organizations. Especially since the coup attempt of July 2016, thousands of people including opposition politicians, activists, journalists, lawyers, human rights defenders, academics and other civil society actors have been subjected to unfounded investigations and prosecutions under 'terrorism' related

¹⁸ According to the government's latest communication to the CoE Committee of Ministers on 19 January 2021, a preliminary examination is still ongoing to determine if there are sufficient reasons to launch a disciplinary investigation against the judges.

¹⁹ [CM/Del/Dec\(2021\)1398/H46-33](#), 11 March 2021.

²⁰ Venice Commission, Report on the Rule of Law, CDL-AD(2011)003rev, 2011, para. 44.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)003rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e)

²¹ [OL TUR 13/2020](#), 26 August 2020. (Joint Letter of UN Special Procedures to Turkish Government)

²² <https://www.amnesty.org/en/documents/eur44/1161/2019/en/>

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charges. The Plan does not offer any critical review and amendment of anti-terrorism legislation to ascertain compliance with international human rights law nor does it include any measures against its abuse. Primarily, the Plan aims to strengthen the legislation and regulations related to business and work life under the aim of “legal foreseeability and transparency” by solely laying out economic and financial measures to increase confidence in the legal system among foreign and national investors.

PROTECTION OF FUNDAMENTAL RIGHTS

The new Action Plan does not provide for any concrete general measure to tackle the main human rights issues identified by the European Court of Human Rights, and currently pending before the Committee of Ministers, namely the right to life, the prohibition of torture, the right to liberty and security, the right to a fair trial and the rights to freedom of expression, peaceful assembly and association. The Plan does not introduce any concrete measures to effectively protect human rights based on a critical review of the serious violations that occurred during the implementation of its predecessor, between 2014 and 2019, the Action Plan on the Prevention of ECHR Violations, which had aimed to eliminate the reasons leading to violations of rights safeguarded by the ECHR and to reduce the number of judgments against Turkey rendered by the ECtHR.²³ Measures envisaged in the new Plan to strengthen the rights to a fair trial, to freedom of expression, to peaceful assembly and association and liberty and security are identified either in very narrow and technical terms or listed too vaguely such as confined to reviewing the existing legislation in light of international human rights standards. Concerning the arbitrary deprivation of liberty of people for peacefully exercising their human rights in the absence of any compelling evidence of criminal activity, the Action Plan promises to bring the requirement of “concrete evidence” as a ground for detention orders in respect of catalogue crimes, which is already a requirement in the so-called law.²⁴ The emphasis highlights how certain existing measures are simply not implemented in practice, without providing for a process to ensure their application. As a positive step, the Plan introduces the system of vertical appeal against the decisions of criminal judgeships of peace concerning pre-trial detention and other “preventive measures”,²⁵ the implementation of which needs to be seen in practice.

Following the coup attempt in 2016, a state of emergency was declared for two years, and Turkey had derogated from some of its obligations under article 15 of the ECHR. In this period, 32 decrees with the force of law were introduced with direct effect on key human rights and the functioning of the criminal justice system including restrictions on the rights to defence and to a fair trial, The impact of such decrees on the rights of individuals to a fair trial and exercise of their human rights have been grave. Many of the legal changes have remained in force following the lifting of the state of emergency and have been continuously used to crack down on human rights.

Over the last five years, unlawful restrictions on the right to freedom of peaceful assembly and the use of excessive force to repress protests have become a routine.²⁶ Broadly worded, vague anti-terrorism laws have been used to criminalize many for their dissenting opinions despite the absence of any material evidence that they committed a recognizable criminal offence. In all these respects, the introduced measures under the Plan fail to bring substantive solutions to the grave deterioration of human rights in Turkey since 2016. It further does not contain any measures to ensure effective, impartial and prompt criminal investigations into credible allegations of deaths, torture and other ill-treatment by state officials, allegations which have seriously increased over the last six years.²⁷

²³ <https://www.resmigazete.gov.tr/eskiler/2014/03/20140301-2-1.pdf>

²⁴ Article 100 (1) of the Code on the Criminal Procedures: If there are facts that tend to show the existence of a strong suspicion of a crime and an existing “ground for arrest”, an arrest warrant against the suspect or accused may be rendered.

²⁵ The existing system of horizontal appeals among small number of criminal judges of peace of the same level within each region or courthouse against each other’s detention orders was considered by the Venice Commission as problematic, not providing sufficient guarantees that the appeal would be impartially examined. See Venice Commission, Opinion on the Duties, Competences and Functioning of the Criminal Peace Judgeships, 13 March 2017.

²⁶ See Amnesty International, *Weathering the Storm, Defending Human Rights in Turkey’s Climate of Fear*, 26 April 2018, <https://www.amnesty.org/en/documents/eur44/8200/2018/en/>

²⁷ Amnesty International Briefing, *Turkey: End Abusive Operations under Indefinite Curfews*, 21 January 2016

<https://www.amnesty.org/download/Documents/EUR4432302016ENGLISH.pdf>; Amnesty International, *Turkey: Independent Monitors Must be*

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For an effective protection of human rights and to prevent future violations, Turkish authorities should not only ensure immediate implementation of the judgments of the ECtHR but also take all necessary measures, including through legislative changes, to apply fair trial safeguards and to end prolonged and arbitrary use of detention and prosecutions against those who are exercising their human rights. Restrictive measures on the exercise of human rights which were issued under the state of emergency and have remained in force after its lifting, should be repealed. Real commitment to end impunity for serious human rights violations should be displayed in practice.

CONCLUSION

The proposed Human Rights Action Plan, which does not address the major shortcomings of human rights protection in Turkey, is substantially a missed opportunity.

The Plan fails to provide a comprehensive framework to reverse the deep erosion of human rights in Turkey and does not go beyond the recognition of “protecting and promoting human rights as the principal duty of the State”. It remains a plan of precatory promises without addressing any significant and structural issues affecting human rights and criminal justice system in Turkey.

In order to eliminate the root causes of the violations of human rights safeguarded by the ECHR and other international human rights conventions to which Turkey is a party, Amnesty International calls on the Turkish authorities to take more concrete measures to ensure judicial independence and the promotion and protection of human rights including by:

- Refraining from interfering in criminal proceedings and enable members of the judiciary to apply the law independently;
- Guaranteeing the independence and impartiality of the judiciary in law and practice, including through constitutional and legislative changes that would remove the executive’s control over the judiciary;
- Ensuring the implementation of the judgments of the ECtHR and immediately and unconditionally releasing Osman Kavala and Selahattin Demirtaş from their arbitrary detention;
- Bringing all articles of the Turkish Penal Code, the Anti-Terrorism Law and other laws including the law on Meetings and Demonstrations that are currently used to restrict the rights of people in Turkey in line with international human rights law;
- Ending the routine use of arbitrary detention and prosecution of politicians, activists, journalists, human rights defenders and others solely for peacefully exercising their rights to freedom of expression, association and peaceful assembly;
- Ensuring effective investigation and prosecution of all allegations of torture and other ill-treatment and excessive use of force by law enforcement officers and other public officers and guaranteeing that those suspected to be responsible are brought to justice in fair trials.