

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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TURKEY: “JUDICIAL REFORM” PACKAGE IS A LOST OPPORTUNITY TO ADDRESS DEEP FLAWS IN THE JUSTICE SYSTEM

Following the end of the legislature’s summer recess, Turkey’s ruling AK Party submitted to Turkey’s Parliament a legislative package - dubbed the judicial reform package - on 30 September 2019.¹ The package, which amends 15 laws, fails to deliver government’s stated aim of “promoting and expanding rights and freedoms” through reform under its Judicial Reform Strategy announced in May 2019. Further amendments are expected to be brought to Parliament before the end of the year under a second “reform” package.

Proposed amendments represent cosmetic changes which fail to address the structural flaws in a judiciary buckled and broken under sustained political pressure. It would fail to prevent politically motivated and abusive pre-trial detentions and convictions without credible evidence that have become routine and do little or nothing to stem the tide of prosecutions that leave political activists, journalists and human rights defenders to face jail sentences simply for carrying out their work.

INDEPENDENCE OF THE JUDICARY

The legislative “reform” package fails to address the most crucial problems in Turkey’s judicial system, including the independence and impartiality of the judiciary. The proposal does not include any provision in this area that would remedy the extension of executive control over the judiciary that took place in the recent years through constitutional changes. Nor would it provide security to members of the judiciary to carry out their jobs in the face of prosecution, widespread arrests, dismissal and arbitrary transfer of judges and prosecutors, and abusive investigations and prosecutions of lawyers.²

In particular, amendments made to Article 159 of the Constitution in April 2017 extended the control of the executive over the Council of Judges and Prosecutors (HSK), the institution that plays a key role in the appointment, promotion, dismissal of and disciplinary sanctions against judges and prosecutors, by amending its composition and the procedure of appointing its members.

Over 4,000 judges and prosecutors were dismissed during the state of emergency by the HSK through extraordinary procedures for alleged links to “terrorist” organizations. Law 7145, adopted 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 dismissal for a further three years on the same vague grounds with a continuing risk for judges and prosecutors to be dismissed arbitrarily. These developments seriously undermined the independence and integrity of the judicial system.

FREEDOM OF EXPRESSION AND RIGHT TO PEACEFUL ASSEMBLY

Prosecutions aimed at silencing dissent without evidence of criminal wrongdoing are frequently brought under anti-terrorism laws in Turkey.³ Tens of journalists and other media workers remain in jail either in pre-trial detention or serving a custodial sentence.⁴ Some of those investigated and prosecuted under anti-terrorism laws have been convicted and sentenced to over ten years’ imprisonment with their legitimate journalistic work presented as if it were a criminal offence.

¹ Proposal for amendments in the Law of Criminal Procedures and other laws (Proposal No. 2/2215, date of submission to the Parliament: 30 September 2019).

² See for example, Amnesty International, *Turkey: Court’s decision to re-detain lawyers adds credence to allegations that their prosecution is politically motivated*, 27 September 2018, and Amnesty International, *Turkey: Conviction of lawyers deals heavy blow to right to fair trial and legal representation*, 20 March 2019.

³ For an analysis of the most problematic provisions under anti-terrorism laws, which facilitate abusive prosecutions and specifically hamper freedom of expression, see Amnesty International, *Turkey Decriminalize Dissent: Time to Deliver on the Right to Freedom of Expression*, 27 March 2013 (Index: EUR 44/001/2013): <https://www.amnesty.org/en/documents/EUR44/001/2013/en/>

⁴ Bia Media Monitoring Report covering second quarter of the 2019: <http://bianet.org/bianet/medya/210438-gun-gun-uc-aylik-medya-ifade-ozgurlugu-ihlalleri-tam-metin>. Bia Media Monitoring Report for the first quarter of 2019 reports that 106 journalists are in prison

The only amendment proposed in the package in this area adds “statements made within the limits of providing information or made with the purpose of criticism cannot be criminalized” to Article 7/2 of the Anti-Terrorism Law, which criminalizes “making propaganda for a terrorist organisation.” However, this vague wording is unlikely to remedy the current practice of Article 7/2 being routinely used to prosecute verbal and written statements, participating in peaceful protests or other similar activities that do not amount to incitement to violence, leaving the prosecuting authorities the margin to interpret what falls outside the remit of the article.

Furthermore, ensuring individuals are not criminalized for exercising their freedom of expression in Turkey requires a wider overhaul of the anti-terrorism legislation and cannot be remedied by amending one provision. The definition of terrorism in Turkey’s anti-terrorism law is overly broad, vague and lacks the level of legal certainty required by international human rights law. Fundamentally, it defines terrorism broadly, and by its political aims, leaving the definition rife for misuse.⁵

For example, similar to Article 7/2, Article 6/2 of the Anti-Terrorism Law, which criminalizes “printing or publishing of declarations or statements of terrorist organizations” also includes vague concepts of threat and coercion without specifying in respect of these a link to violence. As such, Article 6/2 allows for the prosecution of individuals for publishing statements that do not amount to incitement to violence.

Provisions criminalising membership of a terrorist organization have also led to abuses, such as Article 220/6 and 220/7 of the Turkish Penal Code, which allow the state to punish individuals as though they were members of a terrorist organization, even when they have not been proven in court to be members.⁶

Similarly, according to Article 2 of the Anti-Terrorism Law, persons can be found guilty of membership of a terrorist organization without being a member of the organization if found to have committed a crime ‘in the name of such an organization’.⁷

These “anti-terrorism” provisions have frequently been brought 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.

Several provisions of Turkey’s Penal Code directly limit the right to freedom of expression in a manner that is not permitted by international legal standards. These include:

- Article 301, which criminalizes denigration of “the Turkish nation, the state of the Republic of Turkey, the Turkish Parliament (TBMM), the government of the Republic of Turkey and the legal institutions of the state;”
- Article 318, which criminalizes alienating the public from military service;
- Article 215, which criminalizes praising a crime or a criminal going beyond the legitimate aim of criminalizing incitement to commit a criminal act;⁸

(41 convicted, 30 on trial, 22 on appeal, 13 yet to be indicted) as of 1 April 2019: <https://bianet.org/bianet/medya/208044-gun-gun-uc-aylik-medya-ifade-ozgurlugu-ihlalleri-tam-metin>.

⁵ Anti-Terrorism Law No. 3713, Article 1: “Terrorism is any kind of act done by a person or persons belonging to an organization with the aim of changing the characteristics of the Republic as defined in the Constitution, the political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening, destroying or seizing State authority, eliminating fundamental rights and freedoms, damaging the internal and external security of the State, public order or general health by means of coercion and violence; pressure, intimidation, deterrence, suppression or threats.”

⁶ Article 220/6 of the Penal Code punishes those who “commit crimes in the name of a [terrorist] organization and 220/7 criminalizes “knowingly and willingly assisting a [terrorist] organization.”

⁷ Law No. 3713, Article 2 defines a “terrorist” offender as “any person, who is a member of organizations formed to achieve the aims specified under Article 1, and who commits a crime in furtherance of these aims in concert with others or individually, or who is a member of the organizations even if s/he does not commit the targeted crime. The second paragraph of the Article continues that “persons, who commit a crime in the name of the organization are also considered as terrorist offenders, even if they are not members of a terrorist organization.”

⁸ Article 217 of the Penal Code separately criminalizes incitement to commit a criminal act. Amnesty International considers the wording of Article 215 extremely broad with a potential to abuse even though it states that the person carrying the offence will be punishable by up to two years imprisonment “in the case of a clear and present danger to public order as a result of praising a crime or a criminal”

- Article 216/2 that criminalizes “denigrating section of the population on grounds of social class, race, religion, sect, gender or regional differences”
- Article 216/3 that criminalizes “denigrating the religious values of a section of the population;”
- Article 125 that criminalizes attribution of an “act or fact to a person in a manner that may devalue that person’s honour, dignity or prestige or.... An attack on someone’s honour, dignity or prestige by swearing” and
- Article 299 which criminalizes insulting the President.

These Articles of the Penal Code have frequently been used to prosecute and punish peacefully expressed dissenting opinions; public support for the right to conscientious objection to military service voiced at street demonstrations or in newspaper articles; criticism of dominant beliefs and power structures, and criticism of the actions of politicians and other public officials and they must be repealed.

The law on meetings and demonstrations (No. 2911) is also in urgent need of reform since it is used routinely and arbitrarily to ban peaceful assemblies and criminalize people’s participation in them. However, the law does not feature in the legislative package despite frequent assurances made by the Turkish authorities to the Council of Europe that it will amend the law in order to implement rulings of the European Court of Human Rights that have found Turkey in violation of the right to peaceful assembly.⁹

This is a violation of international law and standards. Both the European Convention of Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) require Turkey to safeguard the rights to freedom of expression and the right to peaceful assembly.¹⁰

PRE-TRIAL DETENTION:

At the end of 2018, the total number of detainees in prison pending trial was 57,000; over 20% of the total prison population.¹¹ A total of 44,690 people were in prison on “terrorism” related charges,¹² including journalists, political activists, lawyers, human rights defenders and others caught up in the crackdown following the 2016 coup attempt that has vastly exceeded the legitimate purpose of investigating those responsible and bringing them to justice. Lengthy pre-trial detention without credible and sufficient evidence of wrong doing is routinely used to punish individuals perceived as opposing the government.

The Law of Criminal Procedures (No. 5271) currently allows on remand imprisonment for a period ranging from 1,5 years to 7 years depending on the type of alleged crime.¹³ Article 18 of the package amends Article 102 of this law by introducing further limits specific to the period before the prosecution commences. According to this, suspects under investigation for crimes outside the jurisdiction of the heavy penal courts can be held in pre-trial detention for up to six

⁹ See for example, communications from the Government of Turkey concerning the Oya Ataman group of cases, 17 September 2013 at para. 18 and 11 January 2018 at paragraphs 64 and 65: <https://rm.coe.int/168077c5dc>. In the case of Oya Ataman vs. Turkey (Application no. 74552/01, Decision of 5 December 2006), the court found a violation of the right to peaceful assembly (Article 11 of the ECHR).

¹⁰ European Convention on Human Rights and Fundamental Freedoms; Article 10 (Freedom of Expression) and Article 11 (Freedoms of Assembly and Association); International Covenant on Civil and Political Right: Article 19 (Freedom of Expression) and Article 21 (Right of peaceful Assembly)

¹¹ Figures were provided at the plenary of Turkey’s Grand National Assembly on 13 December 2018 in relation to 2019 budget of the Directorate General for the Prisons and Detention Centres by the member of parliament, İbrahim Yurdunu Seven, representing the AKP. Page 55 of the transcript of the plenary is available at: https://www.tbmm.gov.tr/develop/owa/tutanak_sd.birlesim_baslangic?P4=23206&P5=H&page1=55&page2=55&web_user_id=17267610.

¹² The figure was listed by Minister of Justice, Abdülhamit Gül, at the plenary of Turkey’s Grand National Assembly on 13 December 2018. Page 143 of the transcript of the plenary is available at: https://www.tbmm.gov.tr/develop/owa/tutanak_sd.birlesim_baslangic?P4=23206&P5=H&page1=143&page2=143&web_user_id=17267610.

¹³ According to Article 102 of Law of Criminal Procedures, suspects can be held in prison on remand for one year with the possibility of extension for maximum six months if the alleged crime falls outside the jurisdiction of the heavy penal courts. For crimes under the jurisdiction of heavy penal courts, this period is maximum two years with the possibility of extension up to three more years (a total of maximum five years including the extension), while in the case of terror-related crimes, the pre-trial detention period can be extended for up to five years (a total of maximum seven years including the extension).

months, while those investigated under more serious crimes can be kept in prison for up to one year except those investigated for terrorism related crimes, in which case they can be held up to 2 years before an indictment is prepared and submitted to the court. Proposed changes further reduce pre-trial detention for minors. These periods, however, continue to be excessive for depriving individuals of their liberty without being convicted of a crime and fail to address the current reality that people are held in abusive and extended pre-trial detention without evidence of criminal acts that is punitive in nature. Pre-trial detention must only be imposed in exceptional circumstances, and children must never be remanded pending trial. People arrested on suspicion of criminal acts should not, as a general rule, be held in custody pending trial.

Both the ECHR and the ICCPR provide safeguards against prolonged pre-trial detention, which are being systematically violated by Turkey.¹⁴

ARBITRARY DISMISSALS FROM PUBLIC SECTOR

129,411 public sector workers¹⁵ were arbitrarily dismissed by emergency decree following the 2016 coup attempt and were publicly labelled as having “links to terrorist organizations”, in lists attached to executive decrees, without any individualized reasoning. Almost 120,000¹⁶ of them continue to be banned from working in the public sector and cannot leave the country because their passports have been cancelled. Many are facing destitution and tremendous social stigma. Some of them have been entirely cut off from access to their professions.¹⁷ Those dismissed from their jobs include soldiers, police officers, teachers, doctors and others in the public sector. Hundreds of academics, who signed a peace petition in 2016, have been prosecuted, dismissed from academic institutions and banned from public service. Despite the end of the state of emergency they are still deprived of a valid passport, unable to travel or to engage in academic work at home or abroad. A recent Constitutional Court decision in July 2019 found that the convictions of academics on charges of “making propaganda for a terrorist organization”, because of their support of the petition violated their right to freedom of expression.

Article 2 of the legislative proposals amends Turkey’s Passport Law (No. 5682) by adding it a new provision that would allow the Ministry of Interior to issue passports for public sector workers dismissed under the state of emergency for having “links to terrorist organizations” unless there is a court order barring them from foreign travel. However, proposed language is too vague to guarantee consistent implementation as it leaves discretion to the Ministry. For instance, it conditions the possibility of issuing a passport to the outcome of a police investigation, but does not describe what the findings of such police investigation should entail in order to deny issuing of a passport.

AMNESTY INTERNATIONAL’S RECOMMENDATIONS FOR LEGISLATIVE CHANGES

The legislative package submitted to Turkey’s Parliament under the new judicial reform strategy risks being another missed opportunity to bring the country’s laws in line with international human rights standards, which ensures people in Turkey are not vulnerable to abuses of their rights, including the rights to fair trial, to liberty and to freedom of expression and assembly.

¹⁴ ICCPR Article 9(3):

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

¹⁵ Those dismissed include police officers, military personnel, teachers, academics, healthcare professionals, and media workers.

¹⁶ 3,733 dismissed public sector workers were reinstated during the state of emergency through subsequent executive decrees. The approximate number of those banned from public service is calculated by deducting the total number of positive decisions by the State of Emergency Inquiry Commission (6,700) as of 29 August 2019 from the remaining 125,678. See the official website of the State of Emergency Inquiry Commission: <https://soe.tccb.gov.tr/>

¹⁷ Permanently purging people from all work in the public sector or their profession infringes on their right to work, and in the long term may threaten their right to an adequate standard of living. The routine cancellation of passports violates the right to freedom of movement, while the lack of an effective appeal procedure threatens the right to a fair trial and an effective remedy. Amnesty International, *No End in Sight: Purged Public Sector Workers Denied a Future in Turkey*, 22 May 2017. See also, a third party intervention the Turkey Litigation Support Project, Amnesty International, ARTICLE 19 and PEN International submitted before the European Court of Human Rights on 5 March 2019 on the key case concerning the cancellation of passports of three academics from Turkey – Alphan Telek, Edgar Şar and Zeynep Kivilcim: https://www.article19.org/wp-content/uploads/2019/03/ECHR_532019-TELEK-and-2-others-v-Turkey-Intervention_A19.pdf

Amnesty International calls on the legislators in Turkey to use the “judicial reform packages” to at minimum:

- Guarantee the independence and impartiality of the judiciary in law and in practice; including through constitutional and legislative changes that would remove the executive’s influence over the judiciary.
- Amend the definition of “terrorism” in Article 1 and “terrorist” offender in Article 2 of the Anti-Terrorism Law in line with international human rights law and standards;¹⁸
- Repeal Articles 301 (Denigrating the Turkish Nation), 318 (Alienating the public from military service), 215 (Praising a crime or a criminal), 125 (Criminal defamation) and 299 (Insulting the President) of the Penal Code;
- Repeal or amend paragraphs 6 and 7 of Article 220 (Committing a crime in the name of an organization) of the Penal Code, by setting out clear criteria for when assisting an armed group can be criminalized, including requiring that such assistance must itself be an internationally recognizable offence, including when it directly involves the planning or commission of such a crime;
- Repeal or amend Article 6/2 (Printing or publishing declarations/statements of a terrorist organization) and Article 7/2 (Making propaganda for a terrorist organization) of the Anti-Terrorism Law to ensure they are precisely and clearly formulated and can no longer be used to prosecute people merely for the peaceful expression of their views;
- Repeal paragraphs 2 and 3 of Article 216 of the Penal Code (Incitement to hatred or hostility) to ensure that they can no longer be used to prosecute people merely for the peaceful expression of their views.
- End the routine use of lengthy pre-trial detention and ensure that all detentions are regularly reviewed by an independent and impartial court and that detainees have access to a lawyer and to adequate information to be able to effectively challenge their detention;
- Ensure the protection of human rights, including to work, freedom of movement, health, housing and to an adequate standard of living, especially following disciplinary proceedings resulting in suspension or dismissal from the public sector. Ensure that disciplinary proceedings are held in accordance with established fair trial rights.

¹⁸ For an analysis of these provisions as well as those listed under recommendations concerning freedom of expression, association and the right to peaceful assembly, see Amnesty International, *Turkey Decriminalize Dissent: Time to Deliver on the Right to Freedom of Expression*, 27 March 2013 (Index: EUR 44/001/2013): <https://www.amnesty.org/en/documents/EUR44/001/2013/en/>