

TURKEY

New Law on the Prosecution of Civil Servants: not a major step towards ending impunity for torturers

The Law on the Prosecution of Civil Servants which dated from the Ottoman era was an extraordinary obstacle to bringing perpetrators of human rights violations to justice. It gave a local administrative board established under the provincial governor the power to decide whether or not to prosecute members of the security forces for any offence other than intentional killing. This law was replaced by Law No. 4483 on the Prosecution of Civil Servants and other Public Employees, which was adopted by the Grand National Assembly of Turkey (TBMM) on 2 December 1999 and entered into force on 5 December. In the wake of the Helsinki European Council 1999 the Turkish government launched this new law as an important change aimed at making it easier to hold civil servants accountable.

Having studied the new law, Amnesty International has concluded that this law is not a major step towards ending impunity for torturers. Under the new law it is still not possible to open an investigation against civil servants who commit a crime unless their superior grants permission. Whereas according to the old law this decision was to be taken by a local administrative board, the new law provides for a differentiated system with the decision to be taken by the related superior (depending on the case this can be, for example, the provincial governor, the Prime Minister, the State President, the President or the Secretary General of the parliament). “When chief public prosecutors receive any information or complaint about offences in the frame of this law committed by civil servants or other public employees or when they learn about such an incident, they will not take any action other than determining the evidence that needs to be compiled immediately and that may disappear. Without taking the statement of the [suspect] they will forward the document to the relevant authority and request permission for an investigation.” (Article 4 of Law No. 4483)

Amnesty International is aware that the Turkish Constitution (Article 129) requires that “prosecution of civil servants and other public employees for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law”. Amnesty International has recommended previously that the decision whether or not to prosecute security officials for torture, “disappearance” or extrajudicial execution should be taken only by prosecutors and judges, which is not ensured by the new law.

Article 2 (1) of Law No. 4483 defines that the law is applied for “crimes committed by civil servants and other public employees who are performing their principal and continuous duties required by public services conducted by the state and other public entities in accordance with the principle of general administration.” Amnesty

International would welcome authoritative interpretation by the higher courts that this article excludes human rights violations from the procedure foreseen in the law. The organization has been informed that a previous decision of the Appeal Court ruled that those responsible for human rights violations such as torture were protected by the provisions of the former law. In fact, Amnesty International has received recent documents indicating that the former law was indeed applied in alleged torture cases. The organization has received documents showing that under the new law, permission was not given to prosecute the security officials involved in an incident in Ankara Central Closed Prison on 26 September 1999 in which 10 prisoners died.¹

According to Article 2 (2) special provisions apply for certain groups. Amnesty International seeks clarification as to which are these groups and what is the nature of these special provisions. According to Article 2 (3) “general provisions apply for incidents of being caught in the act of a crime that requires heavy punishment”. It seems to Amnesty International that this stipulation would be applicable to police officers violating human rights in rare cases only. The organization also queries which provisions would apply in such a case.

Amnesty International’s comments on some details of the law

1. Amnesty International notes the strict time limits (30 days plus one extension of a further 15 days) set for the relevant authority to decide whether or not an investigation can be opened against a civil servant (Article 7 of the new law). Appeals against this decision have to be made in 10 days and to be decided within three months (Article 9). Thus the final decision is taken after five months at the latest. This is an improvement in comparison with the previous law that allowed cases to wait for long periods for a decision on prosecution.

¹ An appeal against this decision was accepted by the local court in May 2000. In June the Turkish Parliamentary Human Rights Commission gave a press statement on their report on the incident and concluded that excessive force had been used.

2. According to Article 4 of the new law the information and complaint about civil servants and other public employees must not be abstract and general, and the individuals and/or incident must be mentioned when passing on information or making complaints or they will not be processed. Amnesty International is concerned that in cases of torture, “disappearance” and extrajudicial execution it may be difficult or even impossible to name individuals. This is due to the nature of the cases. The difficulty is increased by the routine practice of blindfolding detainees in police or gendarmerie custody in Turkey, which prevents detainees identifying the perpetrators. Furthermore, where there is no regular registration of both detainees and staff on duty, obstacles to identifying the individuals and proving the incident are increased.² Amnesty International calls upon the Turkish authorities to ensure that in these cases information or complaints need only describe the incident, not the perpetrators and urges the authorities to end the practice of blindfolding and ensure proper registration.
3. Article 15 stipulates that if at the end of the preliminary investigation or at the end of the trial it is understood that a fictitious accusation has been made against civil servants, based on enmity, hatred or slandering, an investigation of those who made the unjust claims will be initiated directly. Amnesty International understands the need for protection of civil servants against unjust claims. However, due to several mechanisms documented by Amnesty International,³ investigations and trials of those suspected of human rights violations rarely end with a punishment. An example of the risks citizens face in attempting to hold agents of the state responsible for their abuses is the prosecution of three human rights defenders who uncovered evidence that the security forces had committed a massacre near the small village of Güçlükonak, __rnak province, in southeast Turkey.⁴ Amnesty International is concerned that Article 15 of the new law could lead to more such investigations and trials opened against human rights defenders. It should be

² Documenting incidents of torture or ill-treatment is often a difficult task because of the obstacles placed in the way of those who wish to obtain independent, impartial and competent medical reports.

³ *Turkey: The duty to supervise, investigate and prosecute*, April 1999, AI Index: EUR 44/24/99.

⁴ For details on this case please see the above report, p. 31, or *Turkey: Birds or earthworms*, AI Index: EUR 44/24/98, June 1998. For recent examples of harassment of people involved in the investigation and prosecution of torture cases see the Turkey chapter of *Concerns in Europe January-June 2000*, July 2000, AI Index: EUR 01/03/00.

ensured by the Turkish authorities that acquittal or the decision of the prosecutor not to prosecute (*takipsizlik karar_*) does not automatically lead to an investigation against the complainant. In the report “*Turkey: The duty to supervise, investigate and prosecute*”, Amnesty International has given detailed recommendations on how to end impunity for those responsible for human rights violations.

Amnesty International’s recommendation

Amnesty International strongly recommends that the decision whether or not to prosecute security officials for torture, “disappearance” or extrajudicial executions should be taken only by prosecutors and judges.