

PUBLIC

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UA 121/05 Freedom of expression/torture/prisoners of conscience

TURKEY Writers, journalists, human rights defenders

A new version of the Turkish Penal Code (TPC) currently before the Turkish parliament for approval may be used to unnecessarily restrict the right to freedom of expression and could result in people being jailed as prisoners of conscience. It also leaves open the possibility of discrimination on grounds of sexual orientation within the law, and retains obstacles to prosecutions for torture.

The new TPC has been presented as a reforming measure designed to improve human rights protection in Turkey, as it attempts to bring its laws into line with the requirements for membership of the European Union. While the new TPC does propose many positive changes – for example, it increases the punishment for those convicted of torture – it contains numerous restrictions on fundamental rights. Provisions covering freedom of expression, which have been used in the past to prosecute people or imprison them as prisoners of conscience, remain. Article 159 of the old TPC, which criminalized acts that "insult or belittle" various state institutions, is one that Amnesty International has repeatedly called on the authorities to abolish. It reappears as Article 301 of the new TPC in the section entitled "Crimes against symbols of the state's 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.

New articles have been introduced which appear to introduce restrictions to fundamental rights. Article 305 of the new TPC criminalizes "acts against the fundamental national interest". The explanation attached to the draft, when the law was first presented to Parliament, provided as examples of such crimes, "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 violence - would be a clear breach of international standards safeguarding freedom of expression.

The law was supposed to enter into force on 1 April 2005. However, in the face of forceful objections by Turkish journalists that the TPC could be used to greatly restrict their activities and even imprison them, the government agreed to delay this until 1 June 2005 in order to make amendments. On 3 May, the ruling Justice and Development [AK] party submitted its proposed changes to the draft TPC. While some small changes have been made – mainly the removal of provisions that allowed for increased sentences when breaches of the code took place in the media – most of the restrictive articles remain and have not been changed. In at least one instance, the ruling party is apparently trying to introduce even greater restrictions: for example, the proposal suggests that Article 305 should be altered to explicitly allow for the prosecution of "foreigners" as well as Turkish citizens

Article 122 of the draft, which forbids discrimination on the basis of "language, race, colour, gender, political thought, philosophical belief, religion, denomination and other reasons" originally listed "sexual orientation", but this was removed from the draft at the last moment. Amnesty International is therefore concerned that discrimination on the basis of sexuality is not criminalized in the new law.

In addition, Amnesty International is concerned that the statute of limitations (the time limit) still applies in trials of people accused of torture. While the new law has extended this time limit from seven-and-a-half years to 10 years, it is common for trials of alleged torturers to be deliberately protracted and ultimately abandoned because of this provision, thereby contributing to a climate of impunity. Given the frequency with

which this happens, Amnesty International considers that there should be no statute of limitations for the crime of torture.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

- expressing concerns about the draft new TPC, much of which may be used to unnecessarily restrict fundamental human rights and which may lead to people being imprisoned for the peaceful exercise of their right to freedom of expression;
- welcoming the amendments tabled by the ruling AK party but stating that these seem to be insufficient to guarantee the right to freedom of expression in Turkey;
- urging the authorities to listen to the concerns of press and human rights groups, and take further steps to amend or abolish problematic articles of the TPC, such as Articles 305 and 301;
- expressing concern that the statute of limitations remains for crimes of torture and ill-treatment;
- asking the authorities to take steps to ensure that discrimination on the basis of sexual orientation is prohibited.

APPEALS TO:

Prime Minister

Mr Recep Tayyip Erdoğan
Office of the Prime Minister
Başbakanlık
06573 Ankara
Turkey

Salutation: Dear Prime Minister

Fax: + 90 312 417 0476

Leader of the Republican People's Party

Mr Deniz Baykal
Leader of the Republican People's Party
Cumhuriyet Halk Partisi
Çevre sokak No:38
Çankaya, Ankara
Turkey

Salutation: Dear Sir

Fax: +90 312 467 0996

COPIES TO:

Foreign Minister and State Minister for Human Rights

Mr Abdullah Gül,
Office of the Prime Minister
Basbakanlik
06573 Ankara, Turkey

Fax: + 90 312 287 8811

and to diplomatic representatives of Turkey accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 24 June 2005.