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TÜRKİYE: NEW JUDICIAL PACKAGE LEAVES PEOPLE AT CONTINUED RISK OF HUMAN RIGHTS VIOLATIONS

Amnesty International is concerned that the new legislative package entitled “Amendments to the Code of Criminal Procedure and Various Laws and Decree-Law No. 659,” commonly known as the “8th Judicial Package,” falls short of human rights standards. The proposed amendments passed through the Parliamentary Justice Commission without significant changes and are currently in front of the Turkish Parliament awaiting vote.

The “8th Judicial Package” which consists of 42 articles amending at least 10 separate laws, was ostensibly introduced “to eliminate the procedural problems in the judiciary and to prevent loss of rights.”¹ The new package -as was the case with preceding reform proposals - continues to fail to address the most significant and structural/systematic issues at the root of the persistent erosion of human rights in Türkiye, including the breakdown of the rule of law and the independence of the judiciary.² As the text stands, it also does not fully implement legal changes arising from key pertinent Constitutional Court rulings, in particular with regards to the amendments to the Article 220/6 of the Turkish Penal Code.

The authorities have announced that further legislative proposals and changes to the Constitution of the Turkish Republic will be introduced after the local elections on 31 March 2024. Amnesty International calls on the Turkish authorities to address the systemic problem of a lack of human rights protection in the country through structural judicial reforms, including reforms restoring the independence and impartiality of the judiciary.

CHANGES TO THE ARTICLE 220/6 OF THE TURKISH PENAL CODE

The 8th Judicial Package proposes amendments to paragraph 6 of Article 220 of the Turkish Penal Code, which is used to criminalize committing a crime in the name of an armed/terrorist organization and currently states “any person who commits a crime on behalf of an organization, without being a member of that organization, is punished as a member of the organization. The punishment for membership of an organization can be reduced by up to one half. This provision shall only be applied in respect of armed organizations.”

On 26 October 2023, in its judgment No: 2023/183, the Constitutional Court ruled Article 220/6 to be unconstitutional, arguing that Article 220/6 is not sufficiently clear and foreseeable to prevent arbitrary applications by public authorities thereby not meeting the principle of legality of crimes and punishments. The Constitutional Court decided that the prohibited acts and the punishments for these acts must be clearly stated in the law without leaving any room for doubt as to the protection of fundamental rights and freedoms is based on foreseeability.³ The Court also stated that the conviction of an individual under Article 220/6 means that the individual who commits a crime in the name of an armed/ terrorist organization may face more severe penalties than provided for in Article 314 (membership of an armed/terrorist organization) of the

¹ Law Proposal (2/2023) and the Justice Commission Report of Karabük Member of Parliament Cem Şahin and İstanbul Deputy Şengül Karslı and 124 Members of Parliament on Amendments to the Criminal Procedure Code, Some Laws and the Decree Law No. 659, <https://cdn.tbmm.gov.tr/KKBSPublicFile/D28/Y2/T2/DosyaKomisyonRaporunuVerdi/cfb35b8a-65cc-44e7-b1bc-4764e98175b9.pdf>.

² Amnesty International, “Turkey: “Judicial reform” package is a lost opportunity to address deep flaws in the justice system,” 8 October 2019, <https://www.amnesty.org/en/documents/eur44/1161/2019/en/>, Amnesty International, Amnesty International, “Turkey: 4th judicial reform package fails to address deep flaws in the judicial system,” 15 September 2021, <https://www.amnesty.org/en/documents/eur44/4726/2021/en/>.

³ Constitutional Court Decision, Judgement No: 2023/183, 26 October 2023, paragraph 22, page 5, <https://normkararlarbilgibankasi.anayasa.gov.tr/Dosyalar/Kararlar/KararPDF/2023-183-nrm.pdf>

Turkish Penal Code.⁴ Furthermore, the court argued that “if the crime committed is related to the exercise of fundamental rights, the broad interpretation due to the vagueness of the concept *in the name of an organization* creates a chilling effect on the exercise of fundamental rights, such as freedom of expression, freedom of assembly and association or freedom of religion and conscience.”⁵

Amnesty International has consistently criticized the authorities’ use of the current Article 220/6 (committing a crime in the name of an armed/terrorist organization without being its member) and Article 220/7 (knowingly and willingly assisting an armed/terrorist organization without being its member), of the Turkish Penal Code to prosecute individuals as a member of an armed organization without clear and convincing evidence to indicate what specific acts constitute committing such crimes. Further, the organization has called on the Turkish authorities to repeal or amend of the articles 220/6 and 220/7 in line with their international legal obligations by setting out clear criteria for when committing a crime in the name of an armed/terrorist organization or assisting an armed/terrorist organization can be criminalized, including requiring that such acts must also be an internationally recognizable offence, including when it directly involves the planning or commission of such a crime.⁶

Articles 220/6 and 220/7 are interpreted in conjunction with Article 314 of the Turkish Penal Code, which criminalizes the establishment and command of, as well as the membership in an armed organization. Specifically, Article 3 and 4 of the Anti-Terrorism Law (Law No: 3713) list the articles under the Turkish Penal Code and other laws that are punishable as “terrorism” crimes, including Article 314.⁷ Amnesty International has documented that such overly broad and vague anti-terrorism laws are used to prosecute and convict people without credible and sufficient evidence for their real or perceived critical opinions and so as to silence, harass and intimidate dissenting voices in Türkiye, in violation of the rights to freedom of expression, association and assembly.⁸

In 2016, the Venice Commission adopted an opinion on articles 216, 299, 301 and 314 of the Turkish Penal Code, where it also addressed the concerns relating to Articles 220/6 and 220/7, which are regularly used in conjunction with Article 314. The Commission recommended that Articles 220/6 and 220/7 are amended to remove the reference to “although he is not a member of that organization, will also be sentenced for the offence of being a member of that organization” so that “those who commit the crimes indicated in the paragraphs 6 and 7 would not be sanctioned as members of an armed organization under the Article 314, but by other, separate sanctions.”⁹ Further the Commission also stated, if the Article is not amended as such, the authorities should consider limiting the application of Article 220 in conjunction with Article 314, to cases which do not involve the exercise of the rights to freedom of expression and assembly.¹⁰

⁴ Constitutional Court Decision, Judgement No: 2023/183, 26 October 2023, paragraph 32, page 7, <https://normkararlarbilgibankasi.anayasa.gov.tr/Dosyalar/Kararlar/KararPDF/2023-183-nrm.pdf>

⁵ Constitutional Court Decision, Judgement No: 2023/183, para 33, page 7. (emphasis in original)

⁶ Amnesty International, *Turkey: Decriminalize dissent: Time to deliver on the right to freedom of expression*, 27 March 2013, <https://www.amnesty.org/en/documents/eur44/001/2013/en/>, Amnesty International, “Turkey: “Judicial reform” package is a lost opportunity to address deep flaws in the justice system,” 8 October 2019, <https://www.amnesty.org/en/documents/eur44/1161/2019/en/>, Amnesty International, “Turkey: Deepening backslide in human rights: Amnesty International submission for the UN Universal Periodic Review”, 35th Session of the UPR Working Group, January 2020, <https://www.amnesty.org/en/documents/eur44/0834/2019/en/>, Amnesty International, “Turkey: 4th judicial reform package fails to address deep flaws in the judicial system,” 15 September 2021, <https://www.amnesty.org/en/documents/eur44/4726/2021/en/>

⁷ Articles 3 and 4 of Anti-Terrorism Law (Law No: 3713) entered into force on 12 April 1991, <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.3713.pdf>.

⁸ Amnesty International, *Turkey: Weaponizing Counterterrorism: Turkey exploits terrorism financing assessment to target civil society*, 18 June 2021, <https://www.amnesty.org/en/documents/eur44/4269/2021/en/>, Amnesty International, *Turkey: Weathering the storm: Defending human rights in Turkey’s climate of fear*, 26 April 2018.

⁹ Venice Commission, Opinion on Articles 216, 299, 301, and 314 of the Penal Code of Turkey, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), paragraph 120. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e)

¹⁰ Venice Commission, Opinion on Articles 216, 299, 301, and 314 of the Penal Code of Turkey, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e)

In 2018, in the case of *Işıkırık v. Turkey*¹¹, the European Court of Human Rights also concluded that, without the proof of material elements of actual membership to an armed organization, Article 220/6 “was not foreseeable in its application since it did not afford the applicant legal protection against arbitrary interference” and thus resulted in violation of the complainant’s right under the Article 11, right to freedom of peaceful assembly, of the European Convention on Human Rights.¹²

The 8th Judicial Package refers to the Constitutional Court ruling in its reasoning but does not abide by and implement the ruling to repeal Article 220/6. Instead, the proposed amendment revises Article 220/6 as “any person who commits a crime on behalf of an organization, without being a member of that organization, will be additionally sentenced to imprisonment from two years six months up to six years. The punishment can be reduced by half depending on the nature of the crime committed. This provision will only be applied in respect of armed organizations.” Thus, the proposed amendment removes the sentence “is punished as a member of the organization” and replaces it with “will be additionally sentenced to imprisonment from two years six months up to six years.” The package also proposes amendments to the Article 314 of the Turkish Penal Code and to Article 7/5 of the Anti-Terrorism Law No: 3713 to comply with the amendment made in Article 220/6.

The amendment to Article 220/6 does not fully address the pre-existing concerns to ensure clarity and foreseeability to better protect the human rights of those accused of crimes because the proposed article continues to lack clear criteria for when committing a crime in the name of an armed organization can be criminalized, thus does not offer safeguards based on international standards against arbitrary interference by public authorities.

Amnesty International repeats its call to repeal Article 220/6 of the Turkish Penal Code and to amend Article 220/7 of the Turkish Penal Code to set out clear criteria for when assisting an armed/terrorist organization can be criminalized, including the requirement that such assistance must either in and of itself be a recognizable criminal offence, or be directly linked to the planning or commission of one.

Amnesty International calls on the Turkish authorities to reform its overly broad anti-terrorism legislation and other relevant laws that are instrumentalised to target people seen as dissenting in Türkiye and bring them in line with international human rights law and standards. Amnesty International also calls on the Turkish authorities to take all necessary measures to ensure the promotion and protection of human rights in the country by restoring a judicial system that guarantees the respect for everyone’s fundamental rights and freedoms in a fair and independent manner.

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¹¹ European Court of Human Rights (ECtHR), *Işıkırık v. Turkey*, Application 41226/09, 9 April 2018, <https://hudoc.echr.coe.int/eng?i=001-178506>

¹² ECtHR, *Işıkırık v. Turkey*, para 70.