TURKEY: DECRIMINALIZE DISSENT

TIME TO DELIVER ON THE RIGHT TO FREEDOM OF EXPRESSION

AMNESTY INTERNATIONAL

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Cover photo: Journalists and activists participate in a rally for press freedom and against the detention of journalists under anti-terrorism laws in the capital, Ankara, March 2011.
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INTRODUCTION

Freedom of expression is under attack in Turkey. Hundreds of abusive criminal prosecutions are brought every year against political activists, human rights defenders, journalists, lawyers and others. These prosecutions represent one of the most deeply entrenched human rights problems in Turkey today. Such cases are generally instigated against individuals who criticize the state or who express opinions contrary to official positions on sensitive issues. While there has been progress in allowing previously taboo subjects to be discussed more freely, such as criticism of the army, discussion of the position of minorities in Turkey and whether the massacres of Armenians in 1915 constitute genocide, a number of inherently problematic laws continue to be used to protect public officials from legitimate criticism and prosecute dissenting opinions on controversial issues in Turkish politics, most notably the conflict between the armed Kurdistan Workers' Party (PKK) and the Turkish Armed Forces and the Kurdish question more broadly. The most negative development in recent years has been the increasingly arbitrary use of anti-terrorism laws to prosecute legitimate activities including political speeches, critical writing, attendance of demonstrations and association with recognised political groups and organizations - in violation of the rights to freedom of expression, association and assembly.

In order to prevent these abuses from continuing, Turkey must overhaul the inadequate constitutional protection of the right to freedom of expression and provisions within the Penal Code and the Anti-Terrorism Law. In recent years, a succession of legislative reform packages have failed to bring about the fundamental change required. The third, and most recent, "judicial package", adopted in July 2012, made some limited improvements, most notably to offences used to prosecute journalists publishing articles about ongoing criminal investigations and prosecutions. The reform package also resulted in the conditional suspension of many cases that threatened the right to freedom of expression and lessened the penalties associated with other provisions.[1] However, it failed to address the underlying problem – namely, the definition of offences in law, which either directly violate the right to freedom of expression or are so broadly worded as to allow for abusive prosecutions.

Government statements initially indicated that the "Fourth judicial package" would seek to bring prosecutions of expression related offences in line with international human rights standards and the case law of the European Court of Human Rights. However, the draft law, currently before Parliament does not go nearly far enough. It proposes amendments to five offences frequently used in ways that violate the right to freedom of expression.[2] The proposals leave on the statute a number of laws that directly limit the right to freedom of expression that should be repealed entirely. Other offences that threaten the right to freedom of expression through their overly broad wording are not brought into line with international standards on the right to freedom of expression under the current proposals. If passed by Parliament in its present form, the "Fourth judicial package" would represent another missed opportunity to deliver genuine human rights reform.

This report is based on research that has included observing scores of trials, the review of hundreds of criminal cases that threaten the right to freedom of expression and interviews with civil society organizations, lawyers, academics, individuals under prosecution and public

officials. It provides an analysis of the current law and practice related to the most problematic articles threatening freedom of expression and makes concrete recommendations to the Turkish authorities and Parliament for the repeal or substantial amendment of articles in the Penal Code and anti-terrorism legislation that are needed bring Turkish law in line with international standards on the right to freedom of expression.

LEGAL PROTECTIONS TO THE RIGHT TO FREEDOM OF EXPRESSION

Turkey is party to both the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), which, in their Articles 19[3] and 10[4] respectively, guarantee the right to freedom of expression. States are allowed to apply certain limited restrictions to the right to freedom of expression, as set out in these instruments. As such, the instruments set out a strict three point test to ascertain if restrictions on the right to freedom of expression are compatible with a state's human rights obligations. Restrictions must aim at respecting the rights or reputations of others, or the protection of national security or of public order or of public health or morals. Any restrictions to the right to freedom of expression must be provided by law, be necessary and be proportionate to the aim pursued.[5] Amnesty International is concerned that many of the articles of Turkish Penal Law used to restrict the freedom of expression do not satisfy this test.

In some exceptional circumstances, international human rights law requires states to restrict particular types of expression. In this manner, Article 20 of the ICCPR states that: "1. Any *propaganda for war shall be prohibited by law* [and] *2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".* Restrictions that are imposed in compliance with Article 20 must meet the same strict tests as any other limitation on free expression, including a clear showing of necessity and proportionality.[6]

The United Nations Human Rights Committee (HRC) monitors compliance with the Covenant and has issued guidance on the interpretation of Article 19.[7] The European Court of Human Rights (ECtHR) has examined numerous criminal prosecutions in Turkey, and has repeatedly found violations of the right to freedom of expression. In 2012 judgments on Turkey represented more than 11 percent of the caseload examined by the court, the second highest (after Russia) of the 47 member states. Eight of Turkey's 123 cases were rulings finding violations to the right to freedom of expression, the highest number for any state.[8]

Prosecutions examined in this report also threaten other human rights protected by conventions to which Turkey is a party. In particular prosecutions brought due to conduct in the context of peaceful protest and association with recognized organizations may violate the rights to peaceful assembly and the right to freedom of association, set out in Articles 21 and 22 of the ICCPR and Article 11 of the ECHR.[9]

Where the authorities selectively implement legal restrictions on the right to freedom of expression only to individuals who express certain political opinions, or because of their belonging to another group, this may additionally violate the right to non-discrimination on grounds of political opinion.[10]

The right to freedom of expression is protected in Turkey's constitution. However, the restrictions imposed on this right are broader than those permissible in international law. The grounds on which freedom of expression can be restricted include [protecting] "…*the basic*

characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation." These provisions go beyond the permissible restrictions to the right to freedom of expression found in international law. The full Article 26 of the constitution states:

"Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licensing.

The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary."

The U.N. Human Rights Committee has been clear that restrictions on the right to freedom of expression are only permitted for the reasons explicitly cited in the Covenant: national security, public order, public health or morals, and respect for the rights and reputation of others.[11] Permissible restrictions on freedom of expression include such restrictions as are strictly necessary to prohibit advocacy of hatred that incites directly to violence or discrimination by advocating hatred, as stipulated in Article 20 of the International Covenant on Civil and Political Rights. Any other reasons, prima facie constitute impermissible restrictions on this right. It falls to the government to prove that restrictions are lawful, strictly necessary, and aimed at fulfilling one of the permissible objectives.

Separately to the process of judicial reform packages, the government has also signalled its intention to adopt a new constitution. Amnesty International urges the government and the Parliament to review the constitutional protection of the right to freedom of expression enshrined in Article 26, so as to ensure its consistency with international human rights standards.

PROSECUTIONS THREATENING FREEDOM OF EXPRESSION BROUGHT UNDER PENAL CODE ARTICLES

This section examines the Articles of the Turkish Penal Code that are most commonly used to restrict free speech and gives case examples of the kinds of expression that are criminalized in violation of Turkey's obligations under international human rights law. All the articles form part of the current Penal Code which came into force in 2005 and have been used to limit freedom of expression since this time.[12] In many cases the offences replaced very similarly worded articles in the previous Penal Code and have been a longstanding concern.

Several provisions directly limit the right to freedom of expression in a manner that is not permitted by international legal standards and are used to prosecute speech that is protected by international human rights law. Others are so broadly worded that they lend themselves to abuse, impermissibly limiting freedom of expression through their implementation. Indeed, the interpretation of law by judges and prosecutors is frequently arbitrary and not in line with Turkey's international obligations to respect the rights to freedom of expression, due process, and equality under the law.

In recent years, judges and prosecutors have tended to interpret some broadly written Penal Code provisions more in line with international standards on free speech and judicial guarantees. Critical references to the massacre of Armenians in 1915 are no longer certain to be prosecuted, and references to "Kurdistan" or referring to imprisoned PKK leader Abdullah Öcalan as "mister" (sayın, a frequently used term of respect equivalent to "mister") are now far less frequently prosecuted than they were only five years ago.[13] Where cases are opened, fewer lead to convictions. It remains common for prosecutions of identical speech to result in convictions in some courts and acquittals in others. This variable interpretation of the provisions leads to legal uncertainty.

It is also common for identical utterances to be prosecuted in different courts under different articles of the Penal Code. In some other cases, expression generally found not to constitute a crime under Penal Code Articles has been found to violate more serious anti-terrorism provisions. For example, the use of sayın to refer to imprisoned PKK leader Abdullah Öcalan has variously been found to be protected by the right to freedom of expression but also, by a separate court, to amount to terrorist propaganda.[14]

In many cases, individuals prosecuted for non-violent offences related to freedom of expression under the various Penal Code Articles examined below have been acquitted, and it is rare for those convicted to be imprisoned rather than fined. Even in such cases, however, the prosecutions impact negatively on the right to freedom of expression as they are often perceived as a form of judicial harassment. Indeed, many of those whose cases are included in this report have faced multiple prosecutions at any one time, contributing cumulatively to an oppressive environment in which the exercise of the freedom of expression on contested or

sensitive subjects always brings with it the risk of prosecution.[15]

ARTICLE 301: DENIGRATION OF THE TURKISH NATION

Article 301 of the Turkish Penal has long been one of the most problematic articles as far as freedom of expression is concerned. Up until 2008, the article criminalized "denigrating Turkishness". Reforms replaced "denigrating Turkishness" with "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" and added the additional requirement of the authorisation of the Minister of Justice before prosecutors could initiate proceedings.[16] Neither of these ostensible safeguards has been sufficient for the ECtHR to find the article compatible with the right to the freedom of expression as protected in the European Convention on Human Rights. In the case of *Altuğ Taner Akçam v. Turkey* the European Court found that a "system of prior authorisation by the Ministry of Justice in each individual case is not a lasting solution which can replace the integration of the relevant Convention standards into the Turkish legal system and practice."[17] The European Court went on to note that that "despite the replacement of the term "Turkishness" by "the Turkish Nation", there seems to be no change or major difference in the interpretation of these concepts because they have been understood in the same manner by the Court of Cassation. Accordingly, the legislator's amendment of the wording in the provision in order to clarify the meaning of the term "Turkishness" does not introduce a substantial change or contribute to the widening of the protection of the right to freedom of expression".[18]

In practice, as the case of Temel Demirer demonstrates, the amendment requiring permission from the Minister of Justice has reduced but not eliminated the use of the Article to prosecute criticism of the state in violation of the right to freedom of expression. Officials from the Ministry of Justice told Amnesty International that the Minister gave permission for 8 investigations to proceed in 2011 from a total of 305 requested by prosecutors.[19]

Temel Demirer is an academic and human rights defender. On 20 January 2007 he gave a speech at a protest in Ankara about the assassination the day before of Hrant Dink in which he said that he had been killed not just because he was Armenian, but also because he talked publicly about the massacres of Armenians in Turkey in 1915. He also made allegations about the state's role in the killing of Hrant Dink. On December 24 2007, he was indicted under Article 301 "Denigration of the Republic of Turkey" and Article 216 "Incitement to religious or racial hatred".

Temel Demirer challenged the Justice Minister's decision to grant permission for the prosecution to go ahead and argued that the Minister had interfered with the independence of the judiciary when he said in a public statement "I will not allow the state to be called a murderer" apparently directing the judiciary on the case.[20] The criminal prosecution under Articles 216 and 301 had remained stalled awaiting the decision of the highest Administrative Court, the Council of State (Danıştay), regarding the legality of the Justice Minister's decision to allow the prosecution to proceed under Article 301. However, at a hearing on 19 February 2013, the criminal court hearing the 301 case ruled that it should be suspended for three years under the terms of the "Third judicial package" despite Temel Demirer's request that the Court issue a final verdict rather than a suspension. The prosecution will remain suspended for three years before being dropped. If Temel Demirer is found to have committed an expression related crime during the three year period, the suspended case will be re-opened. On leaving the courthouse Temel Demirer made a public statement repeating the words he spoke in 2007 that resulted in the case being opened against him. In March 2013 it was reported that Ankara police had sent notification to the prosecutor's office that Temel Demirer had again violated Article 301 by repeating

the statement. At the time of writing it was not known whether the prosecutor would request the permission of the Ministry of Justice to bring an investigation under Article 301 of the Penal Code.[21]

Article 301 continues to constitute a direct and impermissible limitation to the right to freedom of expression despite some cosmetic reforms made to the Article in 2008. Its partial reform in 2008 must now be brought to the only conclusion compatible with Turkey's international obligations – its repeal.

ARTICLE 318: ALIENATING THE PUBLIC FROM MILITARY SERVICE

Article 318 of the Turkish Penal Code criminalizes "Alienating the public from military service". It carries a maximum sentence of two years imprisonment, which can be increased by another year in the event of the offence being committed through the media.[22] As the multiple prosecutions of Halil Savda documented below illustrate, the article is frequently used to prosecute public support for the right to conscientious objection to military service voiced at street demonstrations or in newspaper articles.[23]

This Article does not satisfy the strict conditions for permissible restrictions of the right to freedom of expression under international human rights law, namely respect for the rights or reputation of others or the protection of national security, public order or public health or morals.[24] Even if the ostensible aim is the protection of national security, the provision is too broad and the connection with national security too remote to justify the sweeping restrictions imposed by this article. Indeed, conscientious objection, the promotion of which is directly targeted by this provision, is itself a recognized right under international human rights law.[25]

Article 318, and its predecessor, Article 155, have long been criticized by international human rights mechanisms. In *Ergin v. Turkey,* the European Court considered a case in which the applicant had been convicted under Article 155 of the previous Penal Code. The applicant had been convicted in 1998 on the basis of a newspaper article criticizing the ceremony marking conscripts' departure for military service. According to the Court "In literary language the author explained that the enthusiasm surrounding these departures was a denial of the tragic end suffered by some of the conscripts concerned, namely death and mutilation". The ECtHR found the conviction of the applicant did not meet a pressing social need, that the restriction was therefore not "necessary in a democratic society" and violated Article 10 of the ECHR (freedom of expression).[26]

As the Ministry of Justice does not provide disaggregated statistics per Penal Code Article it is impossible to state how frequently this Article is used. However, as of February 2013, a number of well-publicized ongoing cases under Article 318 illustrate the use of the Article to target criticism of the army and to prosecute public statements in support of the right to conscientious objection to military service (see for instance the case of Halil Savda, page 12).

A prosecution was also brought against *Taraf* newspaper journalist **Yasemin Çongar** for an article in the newspaper titled "I don't want to be a soldier" published on 10 November 2010. The article stated "Not every Turk is born a soldier but every day – a Turk – dies in this country because he is a soldier."[27] The case was opened following a complaint from the Office of the Head of the Armed Forces. In June 2012 Yasemin Çongar was acquitted of the offence.[28]

The draft "Fourth judicial package" put before Parliament proposes the following amendment to paragraph 1 of Article 318:

"People who urge those carrying out their military service to desert or suggest to those who are yet to carry out their military service to be dissuaded from carrying it out are imprisoned for six months to two years."

The amendment changes the definition of the offence from alienating the *public* from military service to dissuading those currently or yet to perform military service from doing so. Even in its amended form, the Article would continue to allow for the prosecution of those advocating conscientious objection in violation of Turkey's commitments under international human rights law.

Amnesty International recommends that Article 318 be repealed in its entirety on account of its imposition of restrictions to the freedom of expression that are not permissible under international human rights law.

Conscientious objector and human rights defender **Halil Savda** has been prosecuted and convicted on multiple occasions under Article 318 in protracted cases marked by delays typical of criminal cases within Turkey's justice system.

He was prosecuted under Article 318 of the Penal Code for a public statement he made in 2006 during a protest outside the Israeli embassy in Istanbul in support of the right to conscientious objection and two Israeli conscientious objectors in particular.[29] He received a 100-day prison sentence in June 2008 at a local court which was confirmed by the Supreme Court of Appeals (Yargıtay) in November 2010. His sentence was not executed for over two years, but in February 2012 he was imprisoned and served part of his sentence in prison in Doğubeyazıt in eastern Turkey. He was conditionally released half way through due to a change in the law on execution of sentences.

He also faces a further separate six-month prison sentence under Article 318 for voicing his support for the right to conscientious objection, handed down by a local court in June 2010, which, as of February 2013, is still being considered by the Supreme Court of Appeals.

In December 2012 Halil Savda was acquitted by local courts in two separate cases under Article 318. In one case he was prosecuted alongside activists **Mehmet Atak** and **Fahri Fatih**, **Ahmet Aydemir**, father of conscientious objector Enver Aydemir and his lawyer **Davut Erkan** following their participation in a street demonstration in January 2010 in support of conscientious objector Enver Aydemir. Evidence presented at the trial included slogans shouted at the demonstration by the defendants: "conscientious objectors for peace", "Release Enver Aydemir" and "everyone is born a baby". In the second case for which he was acquitted in December 2012, Halil Savda was accused of "Alienating the public from military service" by reading a press statement in January 2011 outside the Courthouse in Eskişehir on the day of a hearing in the above case. According to the indictment Halil Savda stated "We do not believe that alienating the public from military service is a crime, we believe that it is a democratic right like any expression. We will continue to commit this crime and expressed this also in court. We are saying it again here: We are saying to the people: be alienated from military service, in fact become ice-like, because when people are alienated from the military service, then peace will come about. When society is alienated from military service, freedoms are realised and the country democratized."[30]

According to the indictment reviewed by Amnesty International, no evidence was presented of speech that might constitute advocacy of hatred as defined in international law, or other misconduct that might legitimately be subject to state intervention.

ARTICLE 125: DEFAMATION

Article 125[31] of the Penal Code criminalizes defamation defined as attributing 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". It provides for a maximum penalty of two years imprisonment, or a fine. The Article carries additional penalties for defamation of public officials. Amnesty International is informed of dozens of prosecutions brought under this Article every year. In the absence of official statistics it is impossible to know the full extent of the numbers of prosecutions for defamation but it is likely that the number is far higher.

Article 125 is frequently used to prosecute criticism of the actions of politicians and other public officials, despite authoritative interpretations of international freedom of expression standards that require public officials to withstand greater public criticism than private citizens.[32] Journalists exposing human rights abuses and commenting critically on the actions of public officials are particularly at risk of prosecution. Prosecutors typically initiate investigations following complaints by public officials, who later bring civil claims for damages in addition to seeking a criminal conviction.[33] The Prime Minister in particular has brought a number of cases under this provision.[34]

It is rare for those convicted of criminal defamation to receive custodial sentences. In the vast majority of cases, convictions result in fines. Given the scale of the payments awarded, frequently in excess of 10,000 Turkish lira and the frequency of cases brought against journalists under Article 125, its existence and use are nonetheless likely to constitute a significant deterrent to criticism, thus to some extent shielding public officials from accountability with regard to their actions in fulfilling official functions.[35]

Examples of criminal defamation cases violating the right to freedom of expression include the case against Contemporary Lawyers Association (ÇHD) lawyer **Selçuk Kozağaçlı** who was prosecuted in February 2010 under Article 125 following a press statement in December 2009, calling for justice for the deaths of prisoners in the "return to life" (hayata dönüş) prison operation of December 2000 in which 30 prisoners and two soldiers died following the military intervention in 20 prisons across the country to end a prolonged hunger strike.[36] The prosecution was brought following a complaint from an Istanbul prosecutor's office and the Ankara Security Headquarters (Emniyet Güvenlik Şube Müdürlüğü). The press statement called for Ali Suat Ertosun, the General Manager of Prisons at the time of the "return to life" operation, to be brought to justice for his role in the deaths. Ali Suat Ertosun is now one of the most senior members of the judiciary, a Supreme Court of Appeals judge and a member of the High Council of Judges and Prosecutors (HSYK).[37] Selçuk Kozağaçlı was acquitted in the criminal case in 2011 but a civil claim for 25,000 TL (11,166 €) was brought following the decision. In January 2013 in a separate indictment, Selçuk Kozağaçlı was charged with membership of the banned leftist group, the Revolutionary Peoples' Liberation Party-Front (DHKP-C). As of February 2013 he remained in pre-trial detention. The outcome of the civil claim for damages was not known by his lawyers.

A prosecution was brought under Article 125 against writer **Yalçın Küçük** and responsible editor **Mehmet**

Bozkurt regarding a cartoon illustrating Yalçın Küçük's column in *Aydınlık* newspaper. The criminal case was opened following a complaint by the Prime Minister Recep Tayyip Erdoğan. The cartoon, published in the 28 September 2011 issue of the newspaper, shows the Prime Minister sitting up and chained to a United States flag.[38] In March 2012 the Court convicted Mehmet Bozkurt and sentenced him to 11 months and 20 days imprisonment, converted to a fine of 7000 Turkish Lira (approximately 3000 Euros). The Court acquitted Yalçın Küçük of the offence. The judgment was sent to the Supreme Court of Appeals but then suspended according to the terms of the "Third judicial package" without the Supreme Court of Appeals issuing a verdict.

International human rights standards put a high value on uninhibited expression in the context of "public debate concerning public figures in the political domain and public institutions."[39] The Human Rights Committee has been clear that the "mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties."[40] The use of defamation laws with the purpose or effect of inhibiting legitimate criticism of government or public officials violates the right to freedom of expression. Amnesty International opposes laws prohibiting insult or disrespect of heads of state or public figures, the military or other public institutions or flags or symbols (such as *lèse majesté* and *desacato* laws). Amnesty International also opposes laws criminalizing defamation, whether of public figures or private individuals, which should be treated as a matter for civil litigation. Public officials should not receive state assistance or support in bringing civil actions for defamation. Amnesty International therefore recommends that Turkey decriminalize defamation.

ARTICLE 215: PRAISING A CRIME OR A CRIMINAL

Article 215 of the Penal Code criminalizes "Praising a crime or a person because of the crime they committed" and is punishable by up to two years imprisonment.[41] The broad wording of this provision goes beyond the legitimate aim of criminalizing incitement to commit a criminal act, which is separately provided for in Article 217[42] and paves the way for prosecutions violating the right to freedom of expression. The application of Article 215 frequently exceeds the permissible restrictions on the freedom of expression set out in international standards. It has, historically, been widely used for instance to prosecute speech referring to imprisoned PKK leader Abdullah Öcalan as "mister" (sayın)[43], armed PKK members as "guerrillas" and the commemoration of leaders of 1960s radical left–wing groups.

In May 2012 the Supreme Court of Appeals overturned the conviction of **Selim Sadak** and **Hatip Dicle** under Article 215 for use of *"s*ayın*"* and "guerrilla" on the grounds that the speech was protected under the right to freedom of expression.[44] While the Supreme Court of Appeals judgment is positive, in the Turkish legal system, the jurisprudence of the Supreme Court is not binding on lower courts, this ruling does not therefore prevent lower courts convicting people on the basis of such speech in the future. Moreover, individuals referring to Abdullah Öcalan as "sayın" continue to be prosecuted under the more serious offence of "Making propaganda for an armed organization." Use of the words "Kurdistan" and "guerrilla" has frequently been used as evidence to substantiate charges of membership of a terrorist organization (see case of Ziya Çicekçi, page 30).

Article 215 is also used to prosecute publications on controversial subjects in which descriptions of individuals diverge from accounts put forward by the authorities. The case of Levent Yılmaz provides a striking example of this.

Cases under Article 215 include that against *Taraf* journalist **Levent Yılmaz** for an article entitled "Homo

Sacer olarak Abdullah Öcalan" (Abdullah Öcalan as homo sacer) published in the newspaper on 22 June 2011. In the article he described Abdullah Öcalan as a "leader, very popular but excluded person, a god for Kurdish people, a hero, as the only personality who make the Kurds connect with their past; a person whose statutes and busts would be erected; as a person who shall have his own history, narrative and institutes of the revolution; and as somebody whose name shall be given to streets and even airports".[45] The prosecution was also brought under Article 7/2 of the Anti-Terrorism Law "Making propaganda for a terrorist organization". In March 2012 Levent Yılmaz was acquitted of the offence by the local court.[46]

The following amendment to Article 215 is proposed within the "Fourth judicial package":

"In the case of a clear and present danger to public order as a result of praising a crime or a criminal, the person carrying out the offence will be punishable by up to two years imprisonment."

The amendment to Article 215 proposed within the "Fourth judicial package" ostensibly introduces a restriction based on a legitimate ground, the protection of public order. However, the Article remains extremely broad with significant potential for abuse. While potential for abuse would be reduced by clear guidelines to prosecutors on the human rights compliant application of such an offence, legitimately prosecutable acts could be brought under other Articles of the Penal Code.

Amnesty International therefore recommends that Article 215 of the Penal Code be repealed in its entirety.

ARTICLE 216: INCITEMENT TO HATRED OR HOSTILITY

Article 216 of the Turkish Penal Code currently reads as follows:

"(1) A person who openly incites groups of the population to breed enmity or hatred towards one another based on social class, race, religion, sect or regional difference in a manner which might constitute a clear and imminent danger to public order shall be sentenced to imprisonment for a term of one to three years.

(2) A person who openly denigrates section of the population on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to imprisonment for a term of six months to one year.

(3) A person who openly denigrates the religious values of a section of the population shall be sentenced to imprisonment for a term of six months to one year in case the act is likely to distort public peace."

This Article is extremely broad in scope, vaguely defined, and far wider than the permissible limitations to the right to freedom of expression under international human rights law. Nominally this provision is aimed at criminalizing incitement to hatred, in potential compliance with Article 20 of the International Covenant on Civil and Political Rights, paragraph 2) of which states that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". However, the overbroad definition and criminalization of "derogatory comments" in paragraph (2) makes it incompatible with Article 19 of the same Covenant which states that the only

permissible restrictions on the freedom of expression are those that are necessary for the respect of the rights and reputations of others and for the protection of national security or public order, health or morals.

As the European Court of Human Rights has stated in respect of the broadly similar provision on freedom of expression in the European Convention on Human Rights, "freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man [...] it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population."[47]

It follows that insults alone ought not to be prosecuted and nor should "derogatory comments" that are not advocacy of hatred constituting incitement to violence.

In practice, Article 216 has been used to prosecute criticism of dominant beliefs and power structures and has not, to Amnesty International's knowledge, been used to prosecute actual incitement to violence or discrimination against at-risk groups. In February 2012 Chair of the Parliamentary Human Rights Enquiry Commission, Ayhan Sefer Üstün criticized the application of Article 216 which he said was introduced in 2005 as a provision to combat hate speech but had not been applied as such by prosecutors.[48]

The case of Fazıl Say provides a particularly striking example of the kind of prosecution that Article 216 is currently used to bring. In April 2012 **Fazıl Say,** a pianist of international renown, was prosecuted under Article 216 for tweets he made mocking religious individuals and Islamic conceptions of heaven. The indictment lists nine tweets made or re-tweeted by Fazıl Say as constituting the "insult of religious values" as criminalized under Article 216/3 of the Penal Code. The tweets quoted in the indictment as representing evidence of the crime are the following: "Is God something for which you would live for, die for, or is it something for which you would become animal-like and kill for? Think about this"; "What if there is raki in heaven and not in hell, but there is Chivas Regal [a brand of whiskey] in hell and not in heaven? Then what will happen? This is actually the important question!!!"; "I am not sure if you have noticed, but where there is a louse, a non-entity, a low-life, thief or fool, they are all Islamists. Is this a paradox?"; "The muezzin recited the evening prayer in 22 seconds. *Pretissimmo con fuca!!!* What's your hurry? A lover? Rakı?"; "I am an atheist, and I am proud to say this with such ease"; "I am an atheist, I don't know about the rest"; "It is as if half the population are true atheists, and the other half are traumatic atheists (travmatik ateist), but don't know it yet!"; "You say that the rivers flow with wine, is heaven a tavern? You say that you will give every believer two very beautiful women, is heaven a brothel?"; "This evening, many people became atheists, many thanks to them".[49] As of February 2013, there had been two court hearings; a third was scheduled for 15 April.

Amnesty Internal urges the Turkish authorities to amend Article 216 without delay so as to ensure that the restrictions imposed on the freedom of expression are in line with those allowed by international law. In particular, Amnesty International recommends the repeal of paragraphs (2) and (3) which, in their current form, exceed the permissible restrictions on the freedom of expression.

PROSECUTIONS UNDER ANTI-TERRORISM LEGISLATION THREATENING FREEDOM OF EXPRESSION

"…the work of a terrorist organization doesn't just take place in the mountains, the plains, the cities, the streets, simply by setting itself up in back streets and callously attacking in the night, it is not solely armed terror. It has another wing. There is psychological terror, scientific terror. There is a back room, feeding terror. In other words, there is propaganda, there is terrorist propaganda. How does this get transmitted, maybe he is drawing a picture and reflecting it on the canvas, in a poem, in a column in the newspaper, in a joke. He cannot stop himself, he targets the soldier, [and] the police officer who are taking part in the fight against terrorism in his work, in his art in order to demoralize them. Those who fight terrorism are subjected to a struggle against them. The back room where terror is hovering about and conducting these activities, and the back room is Istanbul, Izmir, Bursa, Vienna, Germany, London, wherever it is, a rostrum in a university, an association, a civil society organization. I think the fight against the one in the mountains is easy and this back room weed and cress are all mixed up. They all look green. They are mixed up, some are poisonous, some very healthy. Which one is healthy which is poisonous, you only know when you eat it."
Then Minister of the Interior, **İdris Naim Şahin** addressing a police symposium on countering terrorism, 26 December 2011[50]

This section looks at the use of anti-terrorism provisions to criminalize conduct that is protected under international human rights law. It focuses on five provisions: Article 6/2 of the Anti-Terrorism Law "Printing or publishing of declarations or statements of terrorist organizations", Article 7/2 of the Anti-Terrorism Law "Making propaganda for a terrorist organization", Article 314 of the Penal Code "Membership of a terrorist organization" and the related Article 220/6 of the Penal Code which punishes those who "Commit crimes in the name of a [terrorist] organization and 220/7 which criminalizes "Knowingly and willingly assisting a [terrorist] organization".

Regional and international bodies including the Council of Europe's Commissioner for Human Rights, the Special Rapporteur on Human rights while Countering Terrorism and the Organization for Security and Co-operation in Europe (OSCE) in addition to Amnesty International and other national and international civil society organizations have consistently raised concerns regarding the impact of anti-terrorism prosecutions on the right to freedom of expression in Turkey.[51] A number of amendments to anti-terrorism legislation were made in 2010 and 2012, including the removal of child demonstrators from the scope of prosecutions under anti-terrorism legislation[52], greater discretion for judges to reduce sentences in respect of certain offences[53] and the repeal of Article 6/5 of the Anti-Terrorism

Law, which provided for the temporary suspension of periodicals.[54] However, these reforms – as with others affecting the right to freedom of expression – have left the key problem untouched. Turkey's law still contains articles with such broad and imprecise wording that prosecutions are still brought and convictions secured, solely on the basis of behaviour protected by the rights to freedom of expression, association and assembly including critical writing, political speeches, attendance at demonstrations and association with registered organizations perceived by the authorities to be sympathetic to armed groups.

In the absence of accurate, up-to-date and disaggregated official statistics from the Ministry of Justice regarding the number of terrorism related prosecutions, it is impossible to know the exact number of prosecutions by Article. However, partial information periodically provided by the Ministry of Justice indicates that tens of thousands of prosecutions are brought each year under anti-terrorism legislation and that the number has increased in recent years. Research carried out by the *Associated Press* in 2011 found that of approximately 30,000 convictions under anti-terrorism legislation worldwide since 2001, more than a third, approximately 12,000 had taken place in Turkey.[55]

Ministry of Justice statistics put the number of completed criminal investigations by Special Heavy Penal Courts with jurisdiction for organized crime, crimes against state security and terrorism at 68,108 in 2010 (the last year for which figures are available). Criminal prosecutions were opened against 36,364 people. Figures also show that the number of criminal investigations have increased tenfold since 2008. Between 2001-2007 criminal investigations were between seven and nine thousand per year. In 2008 the figure was 12,564 while in 2009 and 2010 criminal investigations were launched against 69,000 people each year.[56]

THE DEFINITION OF TERRORISM

Many of the problems relating to the use of anti-terrorism legislation to prosecute conduct in violation of the right to freedom of expression are reflected in the definition of terrorism contained in Article 1 of the Anti-Terrorism Law, which states that:

"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."[57]

As the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted following his 2006 mission to Turkey, this definition of terrorism is extremely broad and defines terrorism in terms of its aims without the requirement for tactics that amount to deadly or other grave violence against persons to be employed in the furtherance of these aims. As a result, anti-terrorism related offences "may put severe limitations on the legitimate expression of opinions critical of the Government or State institutions, on the forming of organizations for legitimate purposes, and on the freedom of peaceful assembly." [58]

Indeed, in practice prosecutions have frequently been brought against individuals who advocate political ideas that are shared by armed groups, even when the prosecuted individuals have not themselves advocated violence, hatred, or discrimination, and are not prosecuted for direct involvement in violent acts. Individuals have, for instance, been prosecuted under terrorism-related provisions in cases substantiated by their demands for education in the Kurdish language, greater regional autonomy, free education, an end to military operations against the PKK, the cessation of armed clashes between the army and the PKK, negotiated agreement to be reached on the Kurdish question, protests against police violence and other alleged human rights abuses and participation in funeral marches of PKK members.

A report published in 2012 by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism entitled "Ten areas of best practices in countering terrorism", recommended the following definition of terrorism, suggesting that any definition that went beyond it "would be problematic from a human rights perspective":

"Terrorism means an action or attempted action where:

1. *The action:*
   (a) Constituted the intentional taking of hostages; or
   (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or
   (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it; and

2. *The action is done or attempted with the intention of:*
   (a) Provoking a state of terror in the general public or a segment of it; or
   (b) Compelling a Government or international organization to do or abstain from doing something; and

3. *The action corresponds to:*
   (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or
   (b) All elements of a serious crime defined by national law."[59]

Amnesty International recommends that the Turkish authorities bring its national law definition of terrorism into line with this definition.

ARTICLE 314: MEMBERSHIP OF A TERRORIST ORGANIZATION

The problematic definition of terrorism reflects the understanding of terrorist activity expressed in the quote by the Turkish Minister of Interior at the start of this chapter. This view, which fails to distinguish between, on the one hand, peaceful protest, dissent and anti-state opinions and, on the other, violent activities in pursuance of the same goals is deeply entrenched amongst Turkish law enforcement and judicial officials and results in precisely the kinds of abusive prosecutions documented in this report.

This attitude and the definition of terrorism that flows from it has particularly significant implications for prosecutions for membership of a terrorist organizations under Article 314 of the Penal Code. Article 314 stipulates that membership of a terrorist organization is punishable with imprisonment for a term of between 10 and 15 years.[60] As the cases below demonstrate, conduct which is not itself criminal, or, on its face, evidence of a link with a terrorist organization, is often represented as such merely because the prosecution perceives it as having the same overall objective as a terrorist group. As a result, individuals have been prosecuted for membership of terrorist organization on charges relating solely to their engagement in peaceful and, in themselves, lawful pro-Kurdish activities.

Following a wave of arrests in Istanbul in October 2011, charges were brought against 193 individuals for their alleged membership of, or support for the banned Kurdistan Communities Union (KCK), a PKK linked organization. The defendants stand accused of taking part in activities on behalf of the Istanbul structure of the KCK. Among those being prosecuted is academic **Büşra Ersanlı** who has been charged with being a leader of the KCK under Article 314/1 of the Penal Code. The prosecution is largely based on her participation in the Political Academy of the Peace and Democracy Party (BDP), a recognized pro-Kurdish political party.[61] Prosecutors state that the Political Academy is an institution of KCK and operated with the purpose of teaching the ideology of the PKK and recruiting new members to it.[62]

The totality of the evidence against Büşra Ersanlı consists of information about her role with the Politics Academy, her participation in peaceful demonstrations seen by the authorities as supporting the aims of the KCK and various notes and documents, detailed below, found during a police search of her house, car and place of work.[63]

The police had Büşra Ersanlı's telephone tapped, and the prosecution listed the following information, based on those tapes, as evidence of her being a leader of the KCK in the indictment:[64]

She sent documents to the Politics Academy; she recommended others as persons to give lessons, she asked for the programme of the lessons; she expressed the intention to go to a 1 September world peace day demonstration (but didn't because she had other things to do) and expressed fears of the excessive use of force by police at the demonstration; she went on a (unspecified) journey with a person who had been to the demonstration; she rejected an invitation to appear on *Roj TV* to speak on the constitution, on the grounds that she was not available at that time and inquired whether others could speak on *Roj TV* in her place; she spoke about attending a sit-in protest supported by BDP (to protest no solution being found to Kurdish problem); she assisted students who wanted to study for a Masters degree at Marmara University (where she is an academic); she agreed to attend a round table debate at Heinrich Böll Stiftüng Association (an association funded by the German Green Party) on their invitation; she discussed media reports of military operations and KCK detentions with Sebahat Tuncel, a BDP parliamentarian; she talked about military operations with journalist Nuray Mert; she was invited via text message to a Human Rights Association (a leading Turkish NGO) meeting to protest Abdullah Öcalan not being able to meet with his lawyers.

From the search of her house, car and place of work the following information was found and presented as evidence in the indictment:[65]

A document, in which she stated that she had sent information to *Fırat News*, a pro-Kurdish news site alleged

by the authorities to be close the PKK, notes referring to "autonomy"; handwritten notes said by the prosecutors to relate to a 2008 conference held in Diyarbakır on the subject of "local administrations and women"- making references to reservations to the CEDAW convention, and steps leading to confederalism, which prosecutors say mirror the thinking of the KCK; documents with handwritten references to democratic autonomy and city councils (kent konseyleri), alleged to be part of KCK's structure; a publicly available document said to be "a draft women's constitution/contract" – alleged to be a KCK document. The indictment references a Party for a Free Life in Kurdistan (PJAK) website with this document stating that it has been sent out for discussion, documents on the activities of the academies across Turkey, a published magazine entitled "A thousand hopes for peace and democracy" (Barış ve demokrasi için bin umut).

Fellow academic **Ragıp Zarakolu** is also a defendant in the case, and the evidence against him is similarly based on his participation in the activities of the Politics Accademy.[66] Ragıp Zarakolu's membership of KCK is based primarily on his giving lectures at the Political Academy. However, he is charged under Article 220/7 of the Penal Code, which criminalizes "Knowingly and willingly assisting a terrorist organization". Evidence to substantiate Ragıp Zarakolu's lectures and other involvement with the academy consists of news items stating that Ragıp Zarakolu was present at the opening ceremony and at a graduation ceremony of the Politics Academy.[67] The news items quoted in the indictment make no reference to any mention of the KCK by Ragıp Zarakolu and simply serve to substantiate his attendance at the opening ceremony. Another speaker also present is reported by *Dicle News Agency* to have made a speech criticizing the KCK prosecution as unfair in that it is based solely on tapped telephone conversations and bugs at events and sought to prosecute legitimate political activities. In the report of Ragıp Zarakolu's speech he states that political academies, generally, have been an important spur to socialist movements around the world and that the creation of such an academy by the Kurds was meaningful. He stated that the German socialist movement had benefited greatly from such an academy and that there was a lot to be learnt from the Kurds and from the academies. He offered [unspecified] assistance to the academy. The news report of a Politics Academy graduation ceremony states that it was attended by the sister of a PKK member in addition to a BDP parliamentarian and lecturers including Ragıp Zarakolu. Graduations were those for lectures in "management" "philosophy" "quantum physics", "history of civilization", "history of the middle east", "political history of Turkey", "women's liberation ideology", "democratic ecological society", "capitalist modernity and democratic confederalism".

The only other item presented as evidence in the indictment is the statement of a witness, who apparently was seeking to have his sentence reduced or withdrawn according to the terms of "effective regret" through which those convicted of crimes can have their sentences reduced or removed by testifying against others.[68] The witness claims to have participated in the Politics Academy as a student but to have left after he discovered its true aims [assisting the PKK]. The witness alleges in the statement that the lectures taught the ideology of the PKK with the aim of recruiting members to the PKK. The indictment further stated in reference to the witness testimony that just as it was normal to have nails to repair a house or to buy a mobile telephone, these items could be used by the PKK in carrying out explosions. The prosecutor drew the comparison to Ragıp Zarakolu's lectures providing for the recruitment of armed members of the PKK and their urban cells.[69]

A police search of Ragıp Zarakolu's home, car and place of work uncovered handwritten notes recording the detention of individuals related to the KCK prosecution ahead of his arrest and other notes relating to politics with no connection to activities of the KCK.[70]

Büşra Ersanlı was released on bail in July 2012 following more than eight months of pre-trial detention. Ragıp Zarakolu was released on bail in April 2012. As of 8 March 2013, 25 court hearings had been held in the case.

Of the 193 defendants, 118 were still in pre-trial detention.

The case of Sultani Acıbuca is another example of activity related to the exercise of the rights to freedom of assembly, association and expression being considered evidence of membership of a terrorist organization. In Sultani Acıbuca's case, this activity consisted of participation in peaceful, pro-Kurdish demonstrations and participation in a social movement calling for an end to the armed conflict.

62 year-old **Sultani Acıbuca** is a member of the "peace mothers", a group made up of mothers who have lost sons or had sons imprisoned on both sides of the conflict with the PKK. On 9 June 2010 she was convicted of being a member of a terrorist organization on the basis of her attendance at six peaceful demonstrations in the western city of Izmir between January 2006 and March 2008 and a speech she made at one of these demonstrations. The speech called for peace and an end to the conflict between the PKK and the Turkish armed forces. The allegations set out in the indictment were based on police records of demonstrations, photographs of the demonstrations, and audio recordings.[71] As detailed below, the conduct which has been used as evidence to secure the conviction of Sultani Acıbuca is protected under the rights to freedom of expression, association and peaceful assembly.

The prosecution against Sultani Acıbuca was initiated in 2008. The indictment lists the following charges: being a member of a terrorist organization (Article 314 of the Penal Code), making propaganda for a terrorist organization (Article 7/2 of the Anti-Terrorism Law) and praising a crime or a criminal, (Article 215 of the Penal Code). The prosecution relied on evidence that Sultani Acıbuca was part of a group that shouted slogans that have been found by the European Court of Human Rights to fall within the permissible limits of the right to freedom of expression. They include "long live peace, long live Öcalan" and "Women want peace, not to fight".[72] In the speech, which prosecutors say praised criminal activities, Sultani Acıbuca called for peace.[73] In this speech, she said that the situation of martyrs (using the terminology typically employed by the Turkish state to refer to fallen members of the armed forces) and guerrillas (referring to armed members of the PKK) was the same, and called for Turkish and Kurdish mothers to unite. She also called on Prime Minister Erdoğan to send his son to the army, saying "poor families send their sons to the army, we don't want to fight with them. They should send their own sons to the army, they sent us out of our villages, out of our homes (referring to forcible displacement by the armed forces), our brides are Turkish, we gave our daughters to Turks, "long live the brotherhood of the people, long live the freedom of women".

Sultani Acıbuca was ultimately only convicted of membership of a terrorist organization for which she was sentenced to six years and three months in prison. The court did not convict her of making propaganda for a terrorist organization or praising a crime or criminals on the basis that these were "elements of the crime of membership of a terrorist organization for which she was convicted".[74] The court reached its decision to convict Sultani Acıbuca for membership of a terrorist organization on the basis that: she was a member of the peace mothers, a group the court said – without reference to any substantiating evidence - was developed by the PKK with the intention of making propaganda; that she carried out activities for this group in the province of Izmir; that she played an active role in these demonstrations and shouted slogans; that she made the (above described) speech which amounted to terrorist propaganda; and that she called out the slogans for others on the demonstration to repeat.[75]

The prosecution did not provide any evidence of a connection between the group and the PKK beyond the fact that the demonstrations took place and were publicized by *Roj TV*, a foreign based channel which in other cases described in this report is alleged to be linked to the PKK.

The court concluded that Sultani Acıbuca's conduct, taken as a whole, amounted to a "consistent participation" in different types of the organization's activities; and that taking into consideration her "leading role within the crowd", it had been established that she was a member of a terrorist organization.[76] As of February 2013 the case remains pending at the Supreme Court of Appeals.

ARTICLE 220/6: COMMITTING A CRIME IN THE NAME OF A TERRORIST ORGANIZATION

Article 220/6 of the Turkish Penal Code allows the state to punish individuals who have not been proven in court to be members of terrorist organization as though they were, if deemed to have performed a criminal act "in the name of an organization". In full, the Article reads:

"A person who commits a crime in the name 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."

Courts have used this Article as the basis for imposing increased sentences for supposedly criminal activity with little evidence, either of the commission of a recognizably criminal offence or any demonstrable link to a "terrorist organization". As with direct membership cases, the evidence presented for having committed a crime "in the name of an organization" frequently amounts to nothing more than participation in demonstrations, or the writing of pro-Kurdish articles.

The prosecution of **Vedat Kurşun** is illustrative of many of the threats to freedom of expression posed by prosecutions brought under Article 220/6. The prosecution was based solely on the content of newspaper articles published between February 2007 and June 2008 which the court of first instance found to constitute "Making propaganda for a terrorist organization" yet even on the basis of the court's description of the evidence it is clear that the content does not represent propaganda for war or any other advocacy of violence.[77]

In January 2009 Vedat Kurşun, responsible editor and owner of *Azadiya Welat,* Turkey's only Kurdish language newspaper was prosecuted under Article 220/6 for "Committing a crime in the name of a terrorist organization" and multiple counts of "Making propaganda for a terrorist organization" under Article 7/2 of the Anti-Terrorism Law. After the charges were issued, he was taken to prison for pre-trial detention on 30 January 2009, where he remained for the next two and half years. The court combined 33 separate indictments in one prosecution.[78] In May 2010, Vedat Kurşun was convicted of infringement of both Articles. The court sentenced Vedat Kurşun to twelve years in prison under Article 220/6.[79] Under the provisions for "Making propaganda for a terrorist organization", the Court convicted Vedat Kurşun on 103 counts, sentencing him to one year and six months imprisonment for each occasion. The sentences were 154 years and six months for propaganda and 12 years imprisonment for membership. The total sentence for Vedat Kurşun, therefore, was 166 years and six months.[80]

Amnesty International has not reviewed in full all the newspaper articles presented in the case but has read all the excerpts considered relevant by the authorities and presented as evidence in the case. The 13 May 2010 judgment in the case regarding Vedat Kurşun raises concerns on a number of levels. Vedat Kurşun was convicted of "Committing a crime in the name of a terrorist organization" solely on the basis of newspaper articles and despite the lack of any evidence linking him to a proscribed organization.[81] He was also convicted of multiple counts of "Making propaganda for a terrorist organization" on the basis of newspaper articles which, at least in the excerpts presented, do not represent advocacy of violence – and which ought, therefore,

to have constituted protected speech under the right to freedom of expression.[82] The Court considered the articles to be propaganda on behalf of the PKK on account of their references to the east and south-east of Turkey as "Kurdistan", "guerrillas" in reference to armed members of the PKK and their descriptions of Abdullah Öcalan as "people's leader" and "leader of the KCK". In addition, a substantial part of the evidence presented in the case was that the newspaper published statements by the PKK without any discussion of the content of the statement or whether it constituted advocacy of violence.[83]

In its final judgment, the court cited a 2008 judgment of the General Penal Board of the Supreme Court of Appeals' ruling, stating:

"On participation in actions where there is a general call from the organization publicized in the media of the organization, it is not necessary to establish that there was instruction to an individual to establish that they were acting in the name of a terrorist organization in order to sentence according to the provisions for membership of a terrorist organization in addition to the crimes committed as part of the action they participated in".[84]

The court went on to consider the content of the newspaper articles in *Azadiya Welat* was in itself sufficient evidence to convict Vedat Kurşun of committing a crime in the name of a terrorist organization and without establishing any additional evidence, or intent either to advocate violence or to participate in the activities of the PKK.

On 22 February 2011 the Supreme Court of Appeals, rejected the lower court's application of Article 220/6, and ruled that the evidence presented [the content of the newspaper articles] was not sufficient to secure a conviction under the offence of "Committing a crime in the name of a terrorist organization".[85] The Supreme Court of Appeals, however, upheld Vedat Kurşun's conviction for "Making propaganda for a terrorist organization" under Article 7/2 of the Anti-Terrorism Law, but ruled that he should not be sentenced separately for each of the 103 counts. Following the overturning of the judgment by the Supreme Court of Appeals, the local court in June 2011 acquitted Vedat Kurşun under Article 220/6 and sentenced him to 10 years and 6 months imprisonment under Article 7/2 of the Anti-Terrorism Law.[86] In July 2012, after more than two years and six months of detention, the local court confirmed the decision of the Supreme Court of Appeals and the sentence of 10 years and six months for "Making propaganda for a terrorist organization". The Court also ruled that Vedat Kurşun should be released under the terms of the conditional suspension of sentences brought into law under the terms of the "Third judicial package".[87]

Amnesty International considers that 220/6 is neither necessary for the prosecution of individuals for genuinely terrorist-related offences, nor, in practice, applied in such a way as to uphold the right to freedom of expression. Amnesty International therefore recommends that the Article be repealed and that legitimate prosecutions be brought instead under other, existing Penal Code articles requiring proof of membership or intent to assist a terrorist organization.

ARTICLE 220/7: ASSISTING A TERRORIST ORGANIZATION

Article 220/7 of the Turkish Penal Code criminalises assisting a terrorist organisation. Unlike Article 220/6, it is a self-standing offence that does not require the commission of a further criminal act. Like Article 220/6, however, it allows for the sentencing of those convicted under it as though they were members of the organisation they are found to have assisted. In full the article reads:

"A person who knowingly and willingly assists the organization but is not within the hierarchical structure of the organization is punished as a member of the organization. The punishment given for membership can be reduced by one third, depending on the nature of the assistance given."

As with Article 220/6, this Article is often used to prosecute conduct protected by the rights to freedom of expression, association and assembly. Indeed, the choice of prosecutors to prosecute under 220/6 or 220/7 often appears arbitrary, with similar behaviour sometimes prosecuted under one, sometimes under the other – and sometimes under Article 314 (criminalizing membership of a terrorist organization) directly. As with prosecutions under 220/6, when prosecutors seek to convict a person under Article 220/7 they often do not provide evidence demonstrating a link to a terrorist organization, nor do they attempt to prove that the accused was engaged in any criminal offence, or in aiding and abetting, other than supposedly assisting the proscribed organization.

It is incumbent on the Turkish authorities to ensure that Article 220/7 is not used to bring prosecutions that violate the rights to freedom of expression, association and assembly or other human rights. To this end, the government should issue and publish guidelines for prosecutors that set out clear criteria for when assisting an armed group 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. Short of evidence of such acts, no inference should be drawn from someone undertaking a lawful act, such as for example participating in a peaceful demonstration. This is so, even if such acts benefit, through lawful means, goals shared by a terrorist organization. The motive of the individual who is carrying out the lawful acts is irrelevant: anyone carrying out a lawful act which does not aid and abet the planning or commission of a crime should not be criminalized on the sole basis of their political convictions.

The prosecution of **Ahmet Şık** and **Nedim Şener** is another example of polemical, anti-government writing, which should be protected as free expression, being used as evidence of the author's participation in terrorist crimes. Ahmet Şık and Nedim Şener are among the journalists currently being prosecuted as part of the "ODATV case." ODATV is a news website critical of the government which is accused of supporting the activities of the "Ergenekon armed terrorism organization" "as part of its media structure".[88]

Both Ahmet Şık and Nedim Şener are investigative journalists with a history of uncovering abuses by public officials. Both have previously been prosecuted for their investigative journalism. In the ODATV case Ahmet Şık and Nedim Şener are accused under Article 220/7 of the Penal Code for "Knowingly and willingly supporting a terrorist organization". They were detained on 3 March 2011 and released from pre-trial detention on 12 March 2012. As of March 2013, their trial was ongoing.

The indictment in current case describes Ergenekon as an armed terrorist organization with the aims of creating chaos and disorder through economic crisis, ethnic conflict and terrorism, weakening the state and making the country ungovernable to enable the overthrow of the government by force.[89] It describes various media outlets as being either formed with the purpose of assisting this strategy or having been taken under the control of and directed by Ergenekon. It is alleged that under the direction of Yalçın Küçük, a defendant in the main Ergenekon prosecution, the ODATV news website carried out its broadcast activities to influence the public according to the [political] goals and aims of the Ergenekon armed terrorist organization.

The evidence against Ahmet Şık presented in the indictment is based largely on a draft manuscript written by him and due to be published as a book entitled "The Imam's Army" (Imamın Ordusu).[90] The manuscript, which has since been published, alleges the existence of a network within state institutions and civil society made up of followers of the Turkish Islamic scholar in exile, Fetullah Gülen, a supporter of the Justice and Development party (AKP) government.[91] There is no allegation that the book praises Ergenekon, its strategy or that it proves that Ahmet Şık plays an active role in the organization. The indictment alleges that the book was prepared with the aim of supporting the goals of Ergenekon. It cites as evidence of this the fact that a draft of the book was discovered on computers belonging to ODATV and that it is discussed in a word document, found at the same time, entitled "national media 2010," also found on ODATV computers.[92] The authorities claim the book is Ergenekon's organizational strategy document.[93] Defendants in the case who are journalists working for ODATV reject the charges and additionally contest the authenticity of the strategy document, claiming that it was planted on the computer. The indictment alleges the book was commissioned by the Ergenekon terrorist organization and alleges that the strategy document refers to the organization's attempts to influence Ahmet Şık as part of its strategy.[94] However, in the strategy document, there is no reference to an active part played by Ahmet Şık in the Ergenekon organization.

In addition to the book manuscript and the disputed word document, prosecutors also presented as evidence a tapped telephone conversation in which Ahmet Şık discusses the possibility of his arrest following media reports of raids that uncovered the draft of his book in ODATV computers.

Police conducted raids on Ahmet Şık's home, the offices of his lawyers, publishing house and *Radikal* newspaper where he previously worked in an effort to seize copies of the unpublished book. No evidence of any connection between Ahmet Şık and Ergenekon or even with ODATV was discovered in the raids or tapped telephone calls.

Ahmet Şık also faces prosecution based on a statement he made when he was released from pre-trial detention. In the statement he criticizes the prosecution against him as politically motivated, unfair and based on his work as a journalist. According to the indictment he said: "… I am simply saying where we were and I will carry on from where I left off. From now on, if this is a war, then the war is starting now. Everyone should mind their step. There is no justice here. Those who have cooked up this conspiracy will end up in prison." Prosecutors argue that this statement constituted a threat against the judiciary. The indictment states: "(…) it is understood in the context of the whole of the investigation that, the above section contained in the statements of the suspect is outside the boundaries of criticism and freedom of thought, that the acts of threat of the suspect who has been detained and prosecuted for membership of an armed terrorist organization are of a nature to go beyond personal strength, using the frightening power created by existing organizations or those presumed to exist; his acts of defamation have been realized through an attack in a way that undermines the honour, dignity and respectability of public officials who have been victimized by attributing to them a concrete act or a fact, the suspects continued actions are indicating the consistent intent in committing the offence, (…) were notable."[95] The basis of the charge is the assumption that Ahmet Şık is part of the "Ergenekon armed terrorist organization" that uses violent methods and that as a result his statement refers to actual violence as opposed to using the words "war" as a euphemism for judicial action. The charge fails to take into account Ahmet Şık's statements that he is the victim of a politically motivated prosecution due to his work as journalist.

As a result of the above statement, Ahmet Şık is additionally being prosecuted under Article 106 of the Penal Code (making violent threats) on the grounds that the statement represents "marking judges and prosecutors as targets of a terrorist organization and making threats".

The evidence in the case presented against Nedim Şener for "Knowingly and willingly supporting a terrorist organization" consists of a tapped telephone conversation in which an ODATV employee calls him regarding a news story and other tapped phone conversations between Nedim Şener and ODATV defendants Hanife Avcı and Soner Yalçın about matters not related to any crimes.[96] The indictment also states that the police discovered a draft copy of Nedim Şener's book "Ergenekon belgelerinden Fetullah Gülen ve Cemaat" (Fetullah Gülen and his followers from Ergenekon documents), in the digital archives of ODATV.[97] This is presented as evidence of his participation in the media structure of Ergenekon. The disputed word document, referred to above, also refers to "Nedim" said by prosecutors to refer to Nedim Şener alleged to substantiate the fact of his participation within the "Ergenekon armed terrorist organization". In addition Nedim Sener is accused of contributing, on behalf of Ergenekon, to the book by ODATV defendant Hanife Avcı "Haliçte yaşayan Simonlar" which explores the network of Fetullah Gülen followers within the state and Ahmet Şık's book The Imam's Army.[98]

ARTICLE 7/2: MAKING PROPAGANDA FOR A TERRORIST ORGANIZATION

Article 7/2 Of the Anti-Terrorism Law currently reads as follows:

"Any person making propaganda for a terrorist organisation shall be punished with imprisonment from one to five years. If this crime is committed through means of printed press or broadcasting, the penalty shall be increased by one half. In addition, editors-in-chief (…) who have not participated in the perpetration of the crime shall be punished with a judicial fine from one thousand to fifteen thousand days' rates.

The acts and behaviours below are also punished under this Article:

a) Partial or complete covering of the face during meetings and demonstrations that have been turned into propaganda of the terrorist organization for the purpose of hiding one's identity.

b) In a manner to indicate being a member or a supporter of a terrorist organization, even if it isn't during a meeting or a demonstration;

1. *hanging or carrying symbols, images or signs of the organization,*
2. *chanting slogans,*
3. *broadcasting with megaphones,*
4. *wearing a uniform with symbols, images or signs of the organization."*

On account of its broad wording and the prevailing attitudes of prosecutors and judges, the application of this Article frequently fails to distinguish between supporting political aims which are shared by a terrorist organization and are protected by the right to freedom of expression from statements that promote violent acts and methods and which ought, indeed, to be criminalized.

The draft "Fourth judicial package" proposes the following amendments to Article 7/2 (changes in bold):

"Any person making the propaganda for the methods of a terrorist organization ***constituting coercion, violence or threats through legitimising or praising or encouraging the use of these methods*** *is sentenced to one to five years in prison. If this crime is committed through means*

of printed press or broadcasting, the penalty shall be increased by one half. In addition, editors-in-chief (…) who have not participated in the perpetration of the crime shall be punished with a judicial fine from one thousand to fifteen thousand days' rates.

The acts and behaviours below are also punished under this Article:

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>
> *b) In a manner to indicate being a member or a supporter of a terrorist organization, even if it isn't during a meeting or a demonstration;*
>
> > *1. hanging or carrying symbols, images or signs of the organization,*
> > *2. chanting slogans,*
> > *3. broadcasting with megaphones,*
> > *4. wearing a uniform with symbols, images or signs of the organization."*

The proposed amendments do narrow the offence and might therefore prevent some of the types of abusive prosecutions under the Article in its current form, such as the prosecution of statements in support of political aims that are shared by armed groups. However, the proposed amendment is still too broad insofar as it includes the vague concepts of threat and coercion without specifying in respect of these a link to violence. As a result, there remains the real possibility that this Article would be used to prosecute statements that do not amount to incitement to violence. Furthermore, the extremely problematic paragraph b) would remain in force allowing the current abuses seen under the Article (for instance, see case of Sultani Acıbuca, page 22) to continue. Paragraph b) should be removed entirely as it imposes far greater restrictions on the right to freedom of expression than are permissible under international human rights law.

The first paragraph should be amended in such a way as to explicitly require propaganda for violent criminal methods.

It would certainly be legitimate for the authorities to prosecute statements that amount to making propaganda for war, or any other sort of advocacy of hatred that constitutes incitement to violence or discrimination. Such statements are not protected by the right to freedom of expression; indeed, as noted above, Article 20 of the International Covenant on Civil Political Rights expressly requires their prohibition. However, in cases reviewed by Amnesty International, Article 7/2 has been used to prosecute non-violent opinions in violation of the right to freedom of expression.

Cases reviewed by Amnesty International frequently relate to prosecutions of journalists in the mainstream national media for commentary on issues related to Kurdish rights and politics. In particular, issues related to the PKK, interviews with PKK leaders, or publicizing statements made by the PKK or other armed groups frequently result in prosecution. Some editors and journalists writing in pro-Kurdish newspapers have repeatedly been prosecuted under Article 7/2 and other terrorism-related offences including Article 6/2 of the Anti-Terrorism Law for "printing or publishing a notice or statement of a terrorist organization"

though the published scripts do not advocate violence or incite hatred. The authorities have also prosecuted, under Article 7/2, non-violent expression in the context of speeches at political rallies and demonstrations related to Kurdish rights and politics and left wing groups perceived by the authorities to be sympathetic to armed groups (see for example the case of Sultani Acibuca page 22).

In cases reviewed by Amnesty International, courts have issued convictions under Article 7/2 for "Making propaganda for a terrorist organization" by wrongly interpreting permissible restrictions to the right to freedom of expression found in international law, ignoring the established case-law of the ECtHR. For example, slogans shouted at demonstrations, such as "long live President Öcalan" (Biji Serok Apo) referring to imprisoned PKK leader Abdullah Öcalan, have repeatedly been found by the ECtHR to be protected by the right to freedom of expression.[99] Prosecutions for shouting these slogans continue under Article 7/2 (see case of Sultani Acıbuca, page 22) despite the rulings of the ECtHR finding previous convictions for the same conduct to violate the right to freedom of expression.

In a number of cases reviewed by Amnesty International, domestic courts have cited ECtHR cases *Zana v. Turkey* and *Sürek v. Turkey.*[100] In these two cases the ECtHR found that the prosecutions under Article 7/2 did not represent a violation of the right to freedom of expression[101] as the statements in questions were deemed to advocate violence. In the ECtHR case of *Zana v. Turkey* the applicant had made a statement in support of the violent tactics used by the PKK. The ECtHR quoted the statement made to the media as "I support the PKK national liberation movement; on the other hand, I am not in favour of massacres. Anyone can make mistakes, and the PKK kill women and children by mistake …"[102] In the case of *Sürek v. Turkey* the ECtHR ruled that "there is a clear intention to stigmatize the other side to the conflict by the use of labels such as "the fascist Turkish army", "the TC murder gang" and "the hired killers of imperialism" alongside references to "massacres", "brutalities" and "slaughter". In the view of the ECtHR the "impugned letters amount to an appeal to bloody revenge by stirring up base emotions and hardening already embedded prejudices which have manifested themselves in deadly violence." This coupled with the fact that the letters attacked named individuals who might potentially be victims of violent revenge, lead the Court to find that the statements represented advocacy of violence and that the interference in the applicant's right to freedom of expression was justified.[103] In the cases where domestic courts cited the *Zana v. Turkey* and *Sürek v. Turkey* verdicts to justify convictions, the speech was very different, constituting discussion of the PKK that did not advocate violence as (see, for instance, the case Aydın Budak below).

Amnesty International calls on the Turkish authorities to amend Article 7/2 so as to ensure that it only prohibits advocacy of incitement to violence in line with international human rights law standards.

In 2008 **Aydın Budak**, mayor of the Cizre municipality in south-eastern Turkey, made a speech attributing improvements in the situation in Turkey to the unilateral ceasefire declared by the PKK and criticizing the state's record in failing to do anything to improve the situation. Aydın Budak also criticized the state for failing to negotiate a peaceful settlement and ignoring opportunities provided by the PKK to negotiate. On 20 May 2008 Aydın Budak was convicted of "Making propaganda for an armed organization" under Article 7/2 of the Anti-Terror Law.[104] In its reasoned judgment the Court concluded that the speech (the sole piece of evidence) amounted to a public provocation to commit a terrorist offence within the terms of the Council of

Europe Convention on the prevention of terrorism noting that the Convention does not require direct advocacy of terrorist offences.[105] However, the Court provided no evidence to demonstrate an intent to incite violence as required by the Convention and relied solely on the text of the speech which explicitly supported a ceasefire.[106] The Court held that by referring to members of the PKK as peace ambassadors and stating that it was necessary to negotiate with Abdullah Öcalan, the speech represented propaganda for the PKK's violent actions and methods. The Court sentenced him to ten months imprisonment after reductions and the removal of his rights to stand for election or hold public office.[107] The conviction and sentence was upheld by the Supreme Court of Appeals in March 2012. As of February 2013 an application to the European Court of Human Rights was pending.

The case of Ziya Çiçekçi is typical of the kind of legitimate if contentious analysis and commentary on Kurdish related issues that is liable to prosecution under Article 7/2.

In 2010 the Istanbul 17th Special Heavy Penal Court convicted newspaper editor **Ziya Çiçekçi** under Article 7/2 of the Anti-Terrorism Law for "Making propaganda for a terrorist organization". The conviction related to two articles published in the pro-Kurdish *Günlük* newspaper entitled "Say stop to operations", opposing military operations against the PKK, and "PKK; is it Pekeke or Pekaka?", referring to the pronunciation of PKK in Kurdish and Turkish respectively. The article expressed the view that those who pronounced it Pekeke (Kurdish pronunciation) were more in favour of peace than those that did not.[108] These newspaper articles represent analysis and criticism that do not incite violence.

"Say stop to operations" is quoted by the Court:

"They [the operations] are supporting the mentality of the State that is aiming to eliminate the problem by smashing the Kurdish Freedom Movement. The approach that has its roots in the hatred of Öcalan and the PKK and that states 'if the PKK didn't exist and guerillas didn't fight, this problem would be resolved much more easily' is ludicrous."

The Court quotes from the following passage of the text of "PKK; is it Pekeke or Pekaka?" as constituting "Making propaganda for a terrorist organization".

"There is indeed this truth: Those who are of the view that the Kurdish issue should be democratically resolved or that Kurdish people's rights should be guaranteed under the law pronounce PKK generally as 'Pekeke'. Those who do not want the Kurdish issue to be resolved pronounced it as 'Pekaka'."

On the basis of these statements, the Court sentenced Ziya Çiçekçi to one year and six months imprisonment. As of February 2013 the case remains pending at the Supreme Court of Appeals. Ziya Çiçekçi has also been convicted under Article 6/2 of the Anti-Terrorism Law "printing or publishing declarations or statements of terrorist organisations" (see below). He is also being prosecuted for membership of a terrorist organization as part of a KCK trial.[109] At a hearing in February 2013 he was released following 14 months of pre-trial detention.

ARTICLE 6/2: PRINTING OR PUBLISHING OF DECLARATIONS OR STATEMENTS OF TERRORIST ORGANIZATIONS

Article 6/2 of the Anti-Terrorism Law criminalizes the "printing or publishing of declarations or statements of terrorist organizations".[110] It allows for sentences of between one and three years imprisonment.

The current wording of Article 6/2 is even broader than that of Article 7/2 since it makes no reference to the content of the statement by the "terrorist" organization whatsoever, or the intent of the subsequent of publisher. This Article is written in such a broad manner that it can be used to prosecute the publication of any statement coming from a representative from a group considered "terrorist", irrespective of its specific content – or the context in which it is quoted. Indeed, on its face, it reads as a strict liability offence.[111] As such it represents an undue limitation to freedom of expression and is applied as such in practice. While the publishing of a statement of an organization may well amount to advocacy of violence depending on its content and the context of its publication, any legitimate prosecution under Article 6/2 could also be made under an amended Article 7/2.

The draft "Fourth judicial package" proposes the following amendment to Article 6/2(changes in bold):

Those who print or publish declarations or statements of terrorist organisations ***constituting coercion, violence or threats through legitimising or praising or encouraging the use of these methods*** *shall be punished with imprisonment from one to three years.*

The proposed amendment to Article 6/2 mirror those proposed to Article 7/2 of the Anti-Terrorism Law and suffer the same weaknesses. While it does narrow the offence to prevent the prosecution of any publication of the statement of an armed group, irrespective of its content, the definition of the offence remains too broad and open to abuse. It would still allow for the prosecution of individuals for publishing statements that do not amount to incitement to violence. Even in this amended form therefore, Article 6/2 would continue to impose restrictions on freedom of expression that are not permissible under international human rights law. Amnesty International therefore recommends that this Article, which is open to abuse and serves no legitimate purpose that cannot be met by other Penal Code articles, be repealed.

In several recent cases reviewed by Amnesty International brought under Article 6/2 for "printing or publishing the statements of terrorist organizations", courts did not seek to justify the interference with the right to freedom of expression in terms of the permissible limitations to this right found in international law. The case of Ziya Çiçekçi described below (a separate prosecution to the one brought under Article 7/2 described above) is typical of other recent judgments analyzed by Amnesty International, in which courts have applied Article 6/2 in a manner that is incompatible with the right to freedom of expression. Ziya Çiçekçi was convicted under Article 6/2 for a newspaper article that did not amount to incitement of hatred or advocacy of violence, in violation of the right to freedom of expression.

In December 2011, Ziya Çiçekçi was convicted of "printing or publishing declarations or statements of terrorist organisations" under Article 6/2 of the Anti-Terrorism Law by the 17th Istanbul Heavy Penal Court for an article published on 13 September 2011 in the pro-Kurdish newspaper *Özgür Gündem*, entitled "They are trampling on the law at Imralı" (İmralı'da hukuklarını çiğniyorlar).[112] The article featured extracts from an interview with Murat Karayılan, a leader of the PKK. In the interview Murat Karayılan criticized the prison conditions of imprisoned PKK leader Abdullah Öcalan, including the fact that he had not been allowed to meet with his lawyers and was being held in solitary confinement. In its judgment the Court described Murat Karayılan as head of the Executive Committee of the KCK. It also referred to *Fırat News* agency (from where the interview

originated), which it considered a media organ of the PKK. It concluded that the article published a statement of a terrorist organization. It offered no further analysis of the content of the statements or the broader context of the article in which they were quoted; indeed, such an analysis is not required to satisfy the elements of the offence.[113] Ziya Çiçekçi was sentenced to 10 months imprisonment after discretionary reductions.[114] In September 2012, the case was suspended under the terms of the "Third judicial package".

RECOMMENDATIONS

Amnesty International urges the Turkish government to:

- Repeal Article 301 of the Penal Code (Denigrating the Turkish Nation);
- Repeal Article 318 of the Penal Code (Alienating the public from military service);
- Repeal Article 215 of the Penal Code (Praising a crime or a criminal);
- Repeal Article 125 of the Penal Code (Criminal defamation);
- Amend Article 216 of the Penal Code (Incitement to hatred or hostility) by repealing paragraphs 2 and 3 so as to ensure that only advocacy of hatred constituting incitement to violence is prosecuted;
- Amend the definition of terrorism Article 1 of the Anti-Terrorism Law so as to bring it in line with the definition proposed by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;
- Repeal Article 220/6 of the Penal Code (Committing a crime in the name of an organization);
- Repeal Article 6/2 of the Anti-Terrorism Law (Printing or publishing declarations/statements of a terrorist organization);
- Amend Article 7/2 of the Anti-Terrorism Law (Making propaganda for a terrorist organization) so as to ensure that it only prohibits advocacy of incitement to violence
- Adopt guidelines for prosecutors on the application of Article 220/7 of the Penal Code that set out clear criteria for when assisting an armed group 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.
- Amend Article 26 of the Constitution so as to ensure that the permissible grounds for restricting the right to the freedom of expression are consistent with international human rights standards.

ENDNOTES

[1] Law on Legal Amendments Required to Enhance the Efficiency of Judicial Services and Suspension of the Proceedings and Penalties for Crimes Committed via the Media and the Press, Law No. 6352, entered into force on 2 July 2012. The bill contained 107 articles and three temporary articles. A number of articles frequently used in prosecutions that threaten the right to freedom of expression were repealed or amended as part of the reform package. Penal Code Articles 285 and 288 that had frequently been used to unfairly prosecute journalists writing regarding ongoing criminal cases both amended. The revised Article 285 offers greater protections against improper use requiring the reporting of the investigation to "a) violate... the right to presumption of innocence...confidentiality of communications or the right to a private life..." or "b) to obstruct the investigation's discovery of the (material) truth." The amendments made changes to Article 288, requiring that the attempt to influence a fair trial must be made with the intent of provoking a false statement or judgment or procedure in violation of law, and providing for convictions to be sentenced to fines rather than imprisonment as previously. Article 6/5 of the Anti-Terrorism Law was repealed as part of the reform package. The Article provided for the temporary suspension of publications including the future editions of entire newspapers the content of which is unknown. The offences contained within Article 220 of the Penal Code, which are used to prosecute individuals "as if they were members of a terrorist organization" (see pages 23-27 of this report) were unchanged but the sentencing under the Articles was amended, providing judges with the option to reduce sentences by a half (220/6) and a third (220/7). The Third judicial package also provided in its Temporary Article 1 for the temporary suspension of investigations, prosecutions and sentences relating to offences committed before 31 December 2011 that were; committed though the press or broadcast media or otherwise related to the expression of ideas; carry a term of imprisonment of no more than five years.

[2] Draft Law on Amendments to Certain Legislation in the context of Human Rights and Freedom of Expression, sent to Parliament on 7 March 2013. Articles 5-10 of the reform package relate to amendments of offences frequently used in prosecutions that threaten the right to freedom of expression.

[3] Turkey ratified the ICCPR on 23 September 2003, Article 19 of the ICCPR states that everyone should have the right to hold opinions without interference, and exercise their right to freedom of expression through any medium of their choice. Restrictions made to these rights must be both provided by law and necessary *"(a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals."* The full text is available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

[4] Turkey ratified the European Convention on Human Rights (ECHR) on 18 May 1954. Article 10 of the Convention provides that everyone has the right to freedom of expression without interference by public authority. The Article also states that *"The exercise of these freedoms, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."* The full text is available at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf

[5] General Comment No. 34 on Article 19, para. 22 clarifies that restrictions are not allowed on grounds

not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. The full text is available at http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

[6] See General Comment No. 34, para. 50 ("The acts that are addressed in article 20 are all subject to restriction pursuant to article 19, paragraph 3. As such, a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3").

[7] The Human Rights Committee addresses concerns and makes recommendations to states parties on their submission of regular reports on steps taken to implement the Covenant. Full text of the International Covenant on Civil and Political Rights (ICCPR) available here http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

[8] See European Court of Human Rights, *Annual Report 2012, Provisional version,* page 153. Available at http://www.echr.coe.int/NR/rdonlyres/9A8CE219-E94F-47AE-983C-B4F6E4FCE03C/0/2012_Rapport_Annuel_EN.pdf

[9] Article 21 of ICCPR provides that *"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."*

Article 22 clearly states that *"(1.) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. (2.) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. (3.) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention".*

Article 11 of the European Convention on Human Rights (ECHR) provides that *"(1.) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. (2.) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State".*

[10] Article 2.1 of ICCPR provides that *"Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

[11] General Comment 34 of the Human Rights Committee clearly underlines the specific conditions

required to justify any restrictions on freedom of expression in paragraph 22: *"Paragraph 3 lays down specific conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality. Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated"*

[12] Turkish Penal Code, Law No. 5237 entered into force on 1 June 2005

[13] In 2008, then Minister of Justice Mehmet Ali Şahin said that over 7,000 people had been prosecuted for referring to Abdullah Öcalan as "sayın". See Bianet, *Türkiye İki Yılda 7.884 Kişiyi "Suçu, Suçluyu Övmek"ten Yargıladı*. Avaialble at http://bianet.org/bianet/bianet/111597-turkiye-iki-yilda-7-884-kisiyi-sucu-sucluyu-ovmekten-yargiladi;

[14] See for example the case of Mehmet Güzel. He was among many activists who took part in a campaign to protest the prosecution of people for use of "Sayın Öcalan". As part of the campaign he wrote in 2008 to the Office of the Chief Prosecutor stating "If to say sayın is a crime then I too say sayın Öcalan and commit this crime and warn you of it myself". As a result he was prosecuted under Article 220/6 of the Penal Code "Committing a crime in the name of an organization") and Article 7/2 of the Anti-Terrorism Law "Making propaganda for a terrorist organization". In December 2011 he was convicted of making propaganda for a terrorist organization and sentenced to 10 months in prison by the local court (judgment of 29 December 2011, no 2011/555).

[15] See for example the case of Halil Savda, page 12.

[16] *Article 301 – (Amended by Law 5759 of 30 April 2008/Article 1)* Insulting the Turkish nation, the Turkish Republic, the institutions and organs of the state (1) Public 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 state, shall be punishable by imprisonment of between six months and two years. (2) Public denigration of the military or security authorities shall be punished according to the terms of paragraph (1). (3) Expression of thoughts intended to criticize shall not constitute a crime. (4) The investigation of this crime is subject to the permission of the Minister of Justice.

[17] European Court of Human Rights, *Altuğ Taner Akçam v. Turkey* (Application no. 27520/07), judgement of 25 October 2011, para. 77. Available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107206

[18] Ibid, para. 92

[19] Meeting with officials from the Ministry of Justice, Ankara, February 2012.

[20] The Minister of Justice later said that he made the comments in his personal capacity not as a Minister of State. See Radikal, *Devletime katil dedirtmem*, 17 November 2008. Available at http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=908737&CategoryID=77

[21] See Bianet, *Gazeteci Demirer'e Bir 301 Daha*, 12 March 2013. Available at http://www.bianet.org/bianet/ifade-ozgurlugu/145020-gazeteci-demirer-e-bir-301-daha

[22] *Article 318 - Alienating the public from military service* (1) Any person who encourages, or conducts propaganda which would have the effect of discouraging the public from performing military service,

shall be punishable by imprisonment of between six months to two years. (2) Where the act is committed through the press or broadcasting, the penalty shall be increased by one half.

[23] See Amnesty International, *Turkey: Time to recognise right to conscientious objection*. Available at http://www.amnesty.org/en/library/info/EUR44/010/2012/en

[24] Any such restrictions must additionally be provided by law, strictly necessary and proportionate to the aim pursued.

[25] The right to refuse military service for reasons of conscience is inherent in the notion of freedom of thought, conscience and religion as laid down in a number of international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) to which Turkey is a party. The Grand Chamber if the European Court of Human Rights ruled in *Bayatyan v. Armenia* (Application no. 23459/03) in July 2011 that the state had violated the right to freedom of thought, conscience and religion (Article 9). Judgement available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105611

[26] See European Court of Human Rights *Ergin v. Turkey* (No. 6), (Application no 47533/99), judgment of 4 May 2006, para. 35. Available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-75327; Article 155 of the former Turkish Penal Code reads: "It shall be an offence, punishable by two months' to two years' imprisonment and a fine ... to publish articles inciting the population to break the law or weakening national security, to issue publications intended to incite others to evade military service..."

[27] The reference plays on the Turkish proverb "Every Turk is born a soldier"

[28] Judgment of 14 June 2012. As of February 2013 the written reasoned judgment was not available.

[29] See Amnesty International, Turkey: Turkish human rights defender imprisoned: Halil Savda. Available at http://www.amnesty.org/en/library/info/EUR44/004/2012/en

[30] Indictment no. 2011/3291, 2 August 2011

[31] *Article 125 - Defamation* (1) A person who undermines the honour, dignity or respectability of another person or who attacks a person's honour by attributing to them a concrete act or a fact, or by means of an insult shall be sentenced to imprisonment for a term of three months to two years, or punished with a judicial fine. In order to convict for an insult made in the absence of the victim, the act must have been witnessed by at least three persons. (2) If the act is committed by means of a spoken, written or visual message addressing the victim, the perpetrator shall be sentenced to the penalties set out above. (3) If the offence of defamation is committed: a) against a public official in connection with their duty; b) in response to expression, modification, efforts for dissemination of one's religious, political, social, philosophical beliefs, thoughts and opinions, the individual's compliance with the rules and prohibitions of his religion, c) by reference to the holy values of a person's religion, the penalty shall be not less than one year. (4) (Amended by Law 5377 of 29 June 2005 /Article 15) Where the defamation is committed in public, the penalty shall be increased by one sixth. (5) (Amended by law 5377 of 29 June 2005 /Article 15) Where public officials working as Board Members are exposed to defamation, and the allegation is connected with their public status or the public service they provide, the offence is deemed to have been committed against the Members of the Board. However, in this case the provisions indicated in the article on consecutive crimes do apply.

[32] Paragraph 38 of the Human Rights Committee's General Comment 34 clearly states where "...the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to

justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. Accordingly, the Committee expresses concern regarding laws on such matters as, lese majesty, desacato, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration." Full text available at http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

[33] Article 24 of the Civil Code provides for the circumstances in bringing civil claims for insult. "Persons whose individual rights are infringed in contravention to legislation are entitled to request judges to protect their individual rights against the perpetrators of the infringement/violation. All infringements of individual rights are illegal, unless they are based on consent by the victim, are justified by superior private or public interest or they are carried out in order to fulfil an authority granted by law."

[34] In addition to the case below, see for instance the case brought against a 17 year old for a post regarding the Prime Minister on the social networking site, Facebook. In July 2012 He was sentenced to 11 months and 20 days in prison. As of September 2012 the case remained pending on appeal. See Sabah, *Erdoğan'a hakarete hapis cezası*, 21 July 2012. Available at http://www.sabah.com.tr/Yasam/2012/07/21/basbakan-erdogana-hakarete-hapis-cezasi

[35] 10,000 Turkish Lira is equivalent to approximately 4,250 Euros

[36] See Amnesty International, *Turkey: Restrictive laws, arbitrary application - the pressure on human rights defenders*. Available at http://amnesty.org/en/library/info/EUR44/002/2004/en

[37] The High Council of Judges and Prosecutors has a number of competencies, including admitting, appointing and promoting judges; selecting judges and prosecutors to sit on cases being heard at the higher courts, and overseeing the lower courts; and deciding on proposals by the Ministry of Justice concerning the abolition of a court or an office of judge or public prosecutor, or changes in the jurisdiction of a court. The Minister of Justice serves as chairman of the high council alongside the Undersecretary of the Ministry of Justice, three members from the Court of Cassation, and two members from the Council of State.

[38] Indictment no. 2011/18397, 4 November 2011

[39] See General Comment No. 34, para. 38. Available at http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

[40] Ibid

[41] *Article 215 - Praising a crime and a criminal* (1) A person publicly praising a crime or a person on the basis of the crime he has committed, shall be punished with imprisonment for up to two years.

[42] Article 217 of the Turkish Penal Code states "Any person who openly provokes people not to obey the laws is punished with imprisonment from six months to two years, or imposed punitive fine, if such act causes potential for public peace."

[43] In 2008, then Minister of Justice Mehmet Ali Şahin said that over 7,000 people had been prosecuted for referring to Abdullah Öcalan as "sayın". See Bianet, *Türkiye İki Yılda 7.884 Kişiyi "Suçu, Suçluyu Övmek"ten Yargıladı,* 26 December 2008. Available at http://bianet.org/bianet/bianet/111597-turkiye-iki-

yilda-7-884-kisiyi-sucu-sucluyu-ovmekten-yargiladi; and Bianet, *Yargıtay: "Sayın" ve "Gerilla" Demek İfade Özgürlüğü,* 21 May 2012. Available at http://bianet.org/bianet/ifade-ozgurlugu/138488-yargitay-sayin-ve-gerilla-demek-ifade-ozgurlugu

[44] Ibid

[45] Indictment no. 2011/328, 12 July 2011, page 1

[46] Judgment no. 2012/66, 29 March 2012

[47] *Handyside vs UK,* application no 5493/72, Judgment of 7 December 1976

[48] Ayhan Sefer Üstün made the comments following a demonstration in Istanbul in February 2012, commemorating the 1992 Khojaly Massacre of Azerbaijani citizens by Armenian soldiers. Protestors shouted slogans praising the person convicted of shooting Hrant Dink and carried placards reading "You are all Armenians, You are all bastards" mocking the justice campaign slogan "We are all Armenians, we are all Hrant Dink". He is reported as saying regarding the 2005 introduction of Article 216 "Orada çok açık yazıyor, ayrımcılık yapanların hangi cezaya maruz kalacağı. Fakat savcılar bu maddeleri henüz tatbik etmedikleri için bu ayrımcı, ırkçı söylemler devam ediyor". Quoted from Agos Newspaper, *Taksim'deki pankartlara Meclis'ten tepki*, 28 February 2012. Available at http://www.agos.com.tr/taksimdeki-pankartlara-meclisten-tepki-810.html

[49] Indictment no. 2012/17154, 25 May 2012

[50] Quoted in Bianet, *Ben Bir Ayrık Otuyum,* 2 January 2012. Available at http://bianet.org/bianet/bianet/135146-ben-bir-ayrik-otuyum

[51] See for example para. 24-26 of Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe *Report on Freedom of expression and media freedom in Turkey.* Available at https://wcd.coe.int/ViewDoc.jsp?id=1814085

See also para. 26-33 *Mission to Turkey: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism* Available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/149/42/PDF/G0614942.pdf?OpenElement; Also see OSCE *Main Findings of the Table of Imprisoned Journalists in Turkey, APRIL 2012*. Available at http://www.osce.org/fom/89371

In addition, in 2010 Amnesty International published a report *All Children have rights: End prosecutions of children under anti-terrorism legislation in Turkey* that looked into the abuse of anti-terrorism legislation to prosecute demonstrators, many of them children. The report is available at http://www.amnesty.org/en/library/info/EUR44/011/2010/en

[52] Amnesty International issued the following statement regarding the 2010 amendments: *Turkey ends prosecution of child demonstrators under anti-terror laws*. Available at http://www.amnesty.org/en/news-and-updates/turkey-ends-prosecution-child-demonstrators-under-anti-terror-laws-2010-07-23

[53] July 2012 amendments to the Anti-Terrorism Law within the "Third Judicial Package" provided judges with the option to reduce sentences by a half (220/6) and a third (220/7).

[54] Article 6/5 of the Anti-Terrorism Law allowed judges to suspend periodicals from between fifteen days to one month for "public incitement of crimes within the framework of activities of a terrorist organisation, praise of committed crimes or of criminals or the propaganda of a terrorist organisation". It was found by the ECtHR to violate the right to freedom of expression, most recently in the case of *Ürper*

and others v. Turkey (Applications no's 55036/07, 55564/07, 1228/08, 1478/08, 4086/08, 6302/08 and 7200/08), judgement of 26 July 2010. Available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96949

[55] See Bianet, *En Çok "Terör Hükümlüsü" Türkiye'de,* 5 September 2011. Available at http://www.bianet.org/bianet/insan-haklari/132516-en-cok-teror-hukumlusu-turkiyede

[56] On the number of investigations brought see Radikal, *ÖGM'lere İlişkin Adli Sicil ve İstatistik Genel Müdürlüğü resmi istatistiklerine bakmak, bu mahkemelerin niteliği hakkında yeterli fikri veriyor,* 29 February 2012. Available at http://www.radikal.com.tr/Radikal.aspx?aType=HaberYazdir&ArticleID=1080212

[57] Anti-Terrorism Law, Law No. 3713, entered into force 12 April, 1991

[58] See paragraphs 11-18 and 76 *Mission to Turkey: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*. Available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/149/42/PDF/G0614942.pdf?OpenElement

[59] Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, on Ten areas of best practices in countering terrorism, UN Doc A/HRC/16/51 (22 Dec 2010), paras 26-28. Available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-51.pdf

[60] *Article 314 - Armed organization* (1) Any person who, in order to commit crimes defined in the fourth (crimes against the security of the state) and fifth (crimes against the constitutional order and the functioning of this order) sections, establishes or leads an armed organization shall be punished with imprisonment for a term of 10 to 15 years. (2) Any person who becomes a member of the armed organization as defined in clause (1) shall be sentenced to imprisonment for a term of five to ten years. (3) All the related sentences to the crime of establishing an organization to commit a crime will be applied to this crime.

[61] Indictment no. 2012/123, 19 March 2012, page 2076

[62] Indictment no. 2012/123, 19 March 2012

[63] Indictment no. 2012/123, 19 March 2012, page 2076-2101

[64] Indictment no. 2012/123, 19 March 2012, page 2076-2088

[65] Indictment no. 2012/123, 19 March 2012, page 2088-2101

[66] Indictment no. 2012/123, 19 March 2012, page 2101

[67] Dicle Haber Ajansı news item of 13 June 2010, cited in Indictment no. 2012/123, 19 March 2012, page 2101 and a second Dicle Haber Ajansı news item dated 23 February 2011, cited in the indictment, page 2102.

[68] Indictment no. 2012/123, 19 March 2012, Testimony of Delil Botan Kahraman, page 2104

[69] Indictment no. 2012/123, 19 March 2012, page 2106

[70] Indictment no. 2012/123, 19 March 2012, page 2104-2106

[71] Indictment no. 2008/202, 2 June 2008, page 4

[72] See European Court of Human Rights, *Korkmaz v. Turkey (Application no. 42590/98)*, judgement of 20 December 2005. Available in French at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-71721

[73] Indictment of 2 June 2008, no. 2008/202, page 3

[74] Reasoned judgment 9 June 2010, no.2010/160

[75] Reasoned judgment 9 June 2010, no.2010/160

[76] Reasoned judgment 9 June 2010, no.2010/160

[77] Reasoned judgment 13 May 2010, no.2010/357

[78] Indictment no. 2008/252, 07 March 2008; Indictment no. 2008/503, 21 April 2008; Indictment no. 2007/765, 21 June 2007; Indictment no. 2008/351, 27 March 2008; Indictment no. 2007/879, 5 September 2007; Indictment no. 2007/968, 9 October 2007; Indictment no. 2007/1155, 14 December 2007; Indictment no. 2007/1132, 5 December 2007; Indictment no. 2008/608, 12 May 2008; Indictment no. 2007/426, 4 April 2007; Indictment no. 2007/461, 9 April 2007; Indictment no. 2007/418, 3 April 2007; Indictment no. 2007/419, 3 April 2007; Indictment no. 2007/421, 3 April 2007; Indictment no. 2007/415, 3 April 2007; Indictment no. 2007/655, 18 May 2007; Indictment no. 2007/654, 18 May 2007; Indictment no. 2008/685, 22 May 2008; Indictment no. 2007/807, 11 July 2007; Indictment no. 2008/57, 15 January 2008; Indictment no. 2007/688, 29 May 2007; Indictment no. 2008/1114, 6 October 2008; Indictment no. 2007/936, 2 October 2007; Indictment no. 2007/947, 2 October 2007; Indictment no. 2007/464, 9 April 2007; Indictment no. 2007/808, 11 July 2007; Indictment no. 2007/929, 25 September 2007; Indictment no. 2007/416, 3 April 2007; Indictment no. 2008/906, 8 July 2008; Indictment no. 2008/961, 23 July 2008; Indictment no. 2008/871, 27 June 2008; Indictment no. 2007/928, 25 September 2007; Indictment no. 2008/656, 16 May 2008

[79] Decision no.2010/357, 13 May 2010

[80] Decision no.2010/357, 13 May 2010

[81] Decision no.2010/357, 13 May 2010

[82] Decision no.2010/357, 13 May 2010

[83] Decision no.2010/357, 13 May 2010

[84] Decision no.2010/357, 13 May 2010

[85] Decision no. 2011/1151, 22 February 2011

[86] Decision no. 2011/247, 9 June 2011

[87] Additional decision no.2011/247, 24 July 2012

[88] Indictment no. 2011/425, 26 August 2011, pages 29 to 36

[89] Indictment no. 2011/425, 26 August 2011, page 4

[90] Indictment no. 2011/425, 26 August 2011, page 64

[91] For information on Fetullah Gülen see New York Times, *Turkey Feels Sway of Reclusive Cleric in the U.S*, 24 April 2012. Available at http://www.nytimes.com/2012/04/25/world/middleeast/turkey-feels-

sway-of-fethullah-gulen-a-reclusive-cleric.html?pagewanted=all

[92] Indictment no. 2011/425, 26 August 2011, page 80

[93] Indictment no. 2011/425, 26 August 2011, page 80

[94] Indictment no. 2011/425, 26 August 2011, page 81

[95]For the full quote see Bianet, *Şık'ın Cezaevi Çıkışındaki Sözleri Davalık,* 30 July 2012. Available at http://bianet.org/bianet/ifade-ozgurlugu/140018-sikin-cezaevi-cikisindaki-sozleri-davalik

[96] Indictment no. 2011/425, 26 August 2011, pages 98-99

[97] Indictment no. 2011/425, 26 August 2011, page 97

[98] Indictment no. 2011/425, 26 August 2011, pages 98-104

[99] See for example European Court of Human Rights, *Savgın v. Turkey* (Application no. 13304/3), judgement of 2 February 2010. Available in French at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97102; and *Kılıç and Eren v. Turkey* (Application no 43807/07), judgment of 29 November 2011. Available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107591

[100] See for instance the case of Aydın Budak, page 30

[101] European Court of Human Rights, *Zana v. Turkey* (Application no's 69/1996/688/880), judgement of 25 November 1997. Available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58115 ; and *Sürek v. Turkey* (Application no. 26682/95), judgement of 8 July 1999. Available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58279. Both cases are cited by the courts.

[102] See European Court of Human Rights, *Zana v. Turkey* (Application no's 69/1996/688/880), judgement of 25 November 1997, para 12. Available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58115

[103] See European Court of Human Rights, *Sürek v. Turkey* (Application no. 26682/95), judgement of 8 July 1999, para 62. Available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58279

[104] Judgment no. 2008/220, 20 May 2008

[105] Judgment no. 2008/220, 20 May 2008, page 10

[106] See *Council of Europe Convention on the Prevention of Terrorism*, available at http://conventions.coe.int/Treaty/en/Treaties/Html/196.htm. Article 5/1 states that: For the purposes of this Convention, "public provocation to commit a terrorist offence" means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.

[107] See Article 53 on the Turkish Criminal Code on advising the witness of the importance of his duty – *"(1) Before the witness gives his testimony, he shall be cautioned; a) About the importance of the telling of the truth, b) That he shall be punished of perjury if he doesn't tell the truth, c) That he has to take an oath that he is going to tell the truth, and d) That he is not allowed to leave the courtroom without an open permission of the presiding judge or the judge*."

[108] Both articles were published on 2 June 2009 edition of *Günlük* newspaper. Decision no. 2010/68, 7

April 2010.

[109] As of February 2013 a number of large scale trials targeted alleged membership and support for the Kurdistan Communities Union (KCK). Ziya Çiçekçi is one of 44 journalists accused of KCK membership in an Istanbul trial that began in September 2012.

[110] *Article 6 - Announcement and publication* (1) Those who announce or publish that a crime will be committed by terrorist organisations against persons, in a way that makes possible that these persons can be identified, whether or not by specifying their names and identities, or those who disclose or publish the identities of state officials that were assigned in fight against terrorism, or those who mark persons as targets in the same manner shall be punished with imprisonment from one to three years. (2) Those who print or publish declarations or announcements of terrorist organisations shall be punished with imprisonment from one to three years. (3) Those who, in violation of article 14 of this Law, disclose or publish the identities of informants shall be punished with imprisonment from one to three years.

(Amended by Law 5532 on 29 June 2006/ Art 5) If any of the offences indicated in the paragraphs above are committed by means of mass media, editors-in-chief (…) who have not participated in the perpetration of the crime shall be punished with a judicial fine from one thousand to fifteen thousand days' rates. However, the upper limit of this sentence for editors-in-chief is five thousand days' rates.

[111] Not requiring intent for the elements of the crime to be satisfied.

[112] See Özgür Gündem, *'İmralı'da Hukuklarını Çiğniyorlar',* 13 September 2011. Available at http://www.ozgur-gundem.com/index.php?haberID=20245&haberBaslik=%E2%80%98%C4%B0MRALI%E2%80%99DA%20HUKUKLARINI%20%C3%87%C4%B0%C4%9EN%C4%B0YORLAR%E2%80%99&action=haber_detay&module=nuce

[113] Judgement no. 2011/19, 28 December 2011

[114] Judgement no. 2011/19, 28 December 2011

TURKEY: DECRIMINALIZE DISSENT

TIME TO DELIVER ON THE RIGHT TO FREEDOM OF EXPRESSION

The right to freedom of expression is under attack in Turkey. Criminal prosecutions targeting dissenting opinions represent one of Turkey's most entrenched human rights problems. Despite a series of legislative reform packages, unfair laws remain on the statute and continue to be abused.

Previously taboo issues – such as the situation of Armenians in Turkey or criticism of the armed forces – are more widely discussed in the mainstream media. However, the laws used to criminalize speech on these issues remain in force and continue to be applied.

The most negative development in recent years has been the increasingly arbitrary use of anti-terrorism laws to prosecute legitimate activities including political speeches, critical writing, attendance of demonstrations and association with recognised political groups and organizations - in violation of the rights to freedom of expression, association and assembly.

In this report, Amnesty International analyses the problems in law and practice relating to ten of the most problematic offences and makes concrete recommendations on the legislative changes needed to bring these abuses to an end.

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