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IHD Report and Recommendations for the Elimination of Injustice in Penal Legislation

Introduction:

IHD has repeatedly stated that there was no judicial structure compatible with the principle of rule of law in Turkey, there were grave barriers before the right to a fair trial, there was the threat of implementation of enemy criminal law by means of specially authorized and mandated courts; rights, notably freedom of expression, and the rights to freedom of assembly, association and demonstration were completely restricted through a very broad definition of terror under the Anti-Terror Code (ATC), no distinctions were made between those who resorted to violence and those who did not, the political power subjected public opposition to judicial pressure instrumentalizing the Anti-Terror Code via specially authorized and mandated public prosecutors' offices and courts. IHD has also issued special reports and various publications on these issues at various times.

However, the Group Deputy Chairperson and MPs of the Nationalist Movement Party (Milliyetçi Hareket Partisi –MHP), which has a group in the Grand National Assembly of Turkey (GNAT), filed a motion to pass a draft-law before the GNAT Speaker's Office titled "Bill on the Conditional Reduction in Sentence Terms and the Release of Inmates and Convicts Regarding Some Offenses" on 24 September 2018 dismissing such problems witnessed in the justice system in Turkey, thereby, putting the amnesty controversy on the agenda once again in Turkey. The draft-law only prescribes the regime of execution of sentences while it does not cover any special or general amnesty. Therefore, it is not right to discuss it in terms of "amnesty." Moreover, it does not offer any solutions for the problematic areas in penal legislation either. IHD holds it necessary to remind all concerned of the major problematic areas in penal legislation in Turkey before it goes on to put forward its opinions regarding this draft-law.

When penal legislation in Turkey is at stake, the Turkish Penal Code No. 5237 (TPC) (former TPC No. 765), ATC No. 3713, Code of Criminal Procedure No. 5271 (CCP) and the Code on the Execution of Sentences and Security Measures No. 5275 should be considered all together. Moreover, it also proves to be vital to discuss the steps to be taken to remedy the cases of injustice found in these codes and the various special codes to be mentioned below. This injustice in question gives way to innumerable cases of victimization.

Although not officially announced, there are more than 250 thousand inmates and convicts incarcerated in prisons in Turkey. This figure is way above the current capacities of penitentiary institutions. Furthermore, it is known that there are also tens of thousands of persons who were released on probation to serve their remaining last two years without being remanded in prison. There are also allegations that this figure goes as high as a few hundred thousand.

Human Rights Association (İnsan Hakları Derneği-İHD) is a non-governmental, independent, and voluntary body. The association, which was founded in 1986 by 98 human rights defenders, today has 28 branches, 6 representative offices, and 7,945 members. İHD is the oldest and largest human rights organization in Turkey and its "sole and specific goal is to promote 'human rights and freedoms.'"

This crisis of justice witnessed in Turkey can only be remedied through fundamental amendments and modifications to the penal legislation. It is also essential that these amendments be made in accordance with the international conventions Turkey is a party to, judgments and case-law of the European Court of Human Rights (ECtHR), and universal human rights values. As a human rights body, IHD considers it a task to underline these points that have been ascertained to be problematic in the penal legislation of Turkey and to propose solutions to this end.

A. The Problem of the Obscurity of Definition of Terrorism under the Anti-Terror Code No. 3713

Officials from the United Nations (UN), the Council of Europe (CoE) and the European Union (EU) have often stated that "Turkey's definition of terror is very broad, thus, it should narrow this definition down." They are not wrong.

The fact that the definition of terror is kept this broad merely serves to restrict and limit rights and freedoms. There are two trends about the ways in which terror can be defined: The first trend that keeps the complete establishment of democracy at arms length argues for an even further expansion of the definition having been unsatisfied with the current utterly broad definition. When this is not realized through normative regulations, the definition is further expanded and thusly implemented by creating de facto situations in practice. Today problems, which are created both by the broad definition of terror within the scope of investigations, prosecutions, and trials and de facto expansion of the definition in practice that even goes beyond the former, are faced in Turkey.

The second trend, as has been mentioned above, points out to the necessity that the definition should be narrowed down in order to protect democracy and human rights. The fact that those who have been advocating that the definition of terror was too broad and should be limited have been pointing to such a vital problem is better understood today.

According to reports issued by human rights and journalists' bodies, there are about 140 journalists and authors incarcerated in prisons in Turkey.[1] More than 100 thousand Internet sites have been shut down having been subjected to rulings denying access. Investigations have been launched against about 20 thousand social media accounts. Thousands of individuals are being detained and arrested on account of their social media posts.

Definition of Terror in Turkish Legislation

Finnish law professor Martin Scheinin, the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, undertook a fact-finding mission to Turkey in 2006 and delivered his first report to the UN Human Rights Commission which was deliberated in the 62nd session of the commission. The rapporteur noted his recommendations following his assessments on the definition of terrorism. These recommendations asked for a clear and precise definition of what constitutes terrorist acts and terrorist groups and entities alongside with bringing the definitions of terrorism and terrorist offenses into harmony with international norms and human rights standards, notably with the principle of legality enshrined in Article 15 of the International Covenant on Civil and Political Rights (ICCPR) that limits such offenses to deadly, or otherwise serious violence against members of the general population or segments of it, or the taking of hostages. Moreover, the rapporteur asked for the consideration of a separate definition of "terrorism" beyond acts comprising terrorist offenses and to take note of international covenants while preparing new anti-terror legislation.

[1] Please see http://www.cgd.org.tr/index.php?Did=222 and https://tgs.org.tr/cezaevindeki-gazeteciler/for data collected by Progressive Journalists Association and the the Journalists Union of Turkey, respectively.

The Special Rapporteur recommended more dialogue before and during deliberations in the Assembly of Turkey pertaining to possible legal reforms. He underlined the necessity that the draft legislation on fundamental rights and freedoms should be deliberated in an open and transparent manner in a democracy and civil society needed to be included in such deliberations at all levels with full capacity. The Special Rapporteur believed that there was a need for precision and clarity in the definition of what constitutes terrorist acts in order to prevent the abuse of charges of membership and, aiding and abetting for reasons other than counter-terrorism and "thought crimes" sometimes referred to by authorities.[2]

The UN Special Rapporteur criticized the definition of terrorism as prescribed by Article 1 of the Anti-Terror Code since the definition was not based on specific criminal acts but on intent or target. According to the Rapporteur, this definition was broad and vague. In such cases people and organizations could be criminalized as terrorists although they did not engage in any violent acts.

This, indeed, is the case.

Journalists, authors, academics, human rights defenders, trade unionists, artists, women, mayors, members of the parliament, politicians, students can be accused of being terrorists.

Those who express their opinions can be charged although they have not engaged in any violent act.

Notably Article 6 titled "Announcement and publication" and Article 7 titled "Terrorist organizations" of the ATC should also be mentioned as two of the most referred to articles by the Turkish judiciary and posing a threat to freedom of expression. The offense of terrorist propaganda is prescribed under Articles 6 and 7 and the following observations can be set forth as per the ECtHR case-law:

The ECtHR judgment on Gözel and Özer v. Turkey (App. No. 43453/04, 31098/05) dated 6 July 2010 held that Article 6 § 2 of the ATC No. 3713 should be repealed or this paragraph should be rewritten in line with the ECHR and the ECtHR case-law. Both articles maintain their positions as directly restricting and prohibiting freedom of expression since the changes put into effect through Code No. 6459 dated 11 April 2013 do not meet the below-described criteria referred to by the court's case-law.

The distinctive characteristic of the ECtHR's Gözel and Özer v. Turkey judgment is that it was a semi-pilot judgment in which Article 46 of the ECHR was applied. Therefore, Turkey was obliged to implement this judgment.

The Anti-Terror Code contradicts offenses and definitions related to terrorism adopted by the conventions which Turkey is a party to as per Article 90 of the Constitution. There is no definition of "terrorism" in international law. Solely offenses which constitute "terrorist offenses" are mentioned. Two conventions at the European level and various international conventions and protocols which specify terrorist offenses that these conventions refer to exist in the international field with regards to this issue. Within this scope, the European Convention on the Suppression of Terrorism (1977) listed those offenses that should not be regarded as political offenses or as offenses connected with a political offense or as offenses inspired by political motives while indirectly referring to offenses that comprise terrorist offenses. This Convention was amended in 2003. The protocol amending the European Convention on the Suppression of Terrorism sets forth which offenses constitute terrorist offenses and covers international conventions and protocols regarding these.

Another convention on the matter is the Council of Europe Convention on the Prevention of Terrorism (2005) which was adopted to enhance the effectiveness of existing international texts on the fight against terrorism. For the purposes of this Convention, "terrorist offense" signified any of the offenses within the scope of and as defined in one of the treaties and protocols listed in its Appendix.

[2] To read the full report see:
https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/119/83/PDF/G0611983.pdf

Moreover, in the concluding part of the report that the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism submitted to the Security Council, it was stated that the absence of a universal, comprehensive, and precise definition of "terrorism" posed a problem against active promotion of human rights while countering terrorism adding that a three-staged specification was needed to prevent –and to punish if failed— terrorism by the Security Council Resolution No. 1566 (2004). The resolution openly stated that "terrorist offenses" should be limited to cases where three cumulative characteristics of terrorist acts were present. These are, a) the means used, which can be described as deadly, or otherwise serious violence against members of the general population or segments of it, or the taking of hostages; b) the intent, which is to cause fear among the population or the destruction of public order or to compel the Government or an international organization to do or refraining from doing something regardless of their political, philosophical, ideological, racial, ethnic, religious, etc. motive; and c) the aim, which is to further an underlying political or ideological goal by acts covered within the scope of terrorism-related conventions and protocols and in definitions found in such texts. It is only when these three conditions are fulfilled that an act should be classified as terrorist; otherwise it loses its distinctive force in relation to ordinary crime. Similarly, it was also stated that when criminalizing conduct in support of terrorist offenses they should also be limited to the above-mentioned characteristics to provide definitions of offense. Furthermore, it was put forward that when states prohibited terrorist conduct the proscriptive provisions should comply with the requirements of accessibility, precision, applicability to counter-terrorism alone, non-discrimination, and non-retroactivity.

Article 90 of the Constitution states that "in the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail" and "no appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional." The Constitution, however, does not have any definition of "terrorism." Article 13 of the Constitution enshrines that the essence of fundamental rights and freedoms cannot be infringed. The ATC puts forth a rather broad definition of "terrorism" without any constitutional base and contrary to international conventions. It infringes upon the essence of the fundamental rights and freedoms of citizens through its definition and the pursuant articles prescribed therein.

IHD strongly believes that the definition of terrorism in the ATC, just as was stated by the UN Rapporteur, contradicts the principle of legality of offenses and sentences and the principle of compliance of laws with accessibility, clarity, precision, foreseeability, and the rule of law. In Turkey people who did not commit any deadly or otherwise serious violence against individuals can be considered to have committed a terrorist offense, can be criminalized as terrorists, and can be subjected to a special trial and execution regime specific to this merely because they expressed their opinions that were not adopted by the political power or the official view on account of this definition.

The declaration "We Will Not Be a Party to This Crime!" penned by "Academics for Peace Initiative" was publicized having been signed by 1,128 academics on 10 January 2016 to call for peace in an environment where curfews were declared and civilians had to face grave threats to their safety of life in Turkey and the signatories of the declaration went as high as 2,212 thereafter.

Lawsuits have been filed against academics as per Article 7 § 2 of the ATC that designates "organization propaganda." According to data provided by the news site *bianet*, the number of academics who have stood trial since 5 December 2017 was 185 as of 10 April 2018. 10 academics were sentenced to 1 year 3 months in prison. The execution of all the sentences of those who were sentenced were deferred other than those of Professor Zübeyde Füsun Üstel of Galatasaray University and Professor Büşra Ersanlı of Marmara University. The court held that Prof. Üstel "did not request for a deferral of the execution of

her sentence" and that "the court was not satisfied as to she would not commit an offense" when offering grounds for not ruling for a deferral. "When [Ersanlı's] character showing no remorse was taken into consideration, the court was not satisfied as to she would refrain from committing an offense" was also put forth as the grounds for not ruling for a deferral of the execution of the sentence for Prof. Ersanlı as well.

One of the worst implementations of the ATC, other than this, was the fact that investigations were launched against 50 editors who acted as editors-in-chief on duty in solidarity with the daily *Özgür Gündem* in 2016; nolle prosequi was rendered for 11 of these and consequently lawsuits were filed against 39 persons as per Articles 6 § 2 and 7 § 2 of the ATC. In all these cases courts imposed punitive fines and sentenced the concerned to imprisonment. The sentence on human rights defender Murat Çelikkan was not deferred and he was released in accordance with supervised release provisions after having been incarcerated for several months.

IHD report on the lawsuits filed against human rights activists, particularly IHD executives, offers significant information on the consequences of the broad definition of terrorism and the abuse of this definition both in the ATC and the TPC.[3]

Similarly, lawsuits launched against lawyers who practice human rights law, notably acting as lawyers in cases of social significance, in order to actively carry out the right to defense in Turkey also demonstrate the fact that how bad the ATC and the TPC are exploited.[4]

All these lawsuits against academics, human rights defenders, and lawyers reveal the immense exploitation of the definitions of terrorism and terrorist propaganda in spite of the ECtHR judgments and case-law.

The legal statistics provided by the Ministry of Justice show the magnitude of the problem in Turkey. According to the data collected by the Ministry of Justice with regards to Articles 6 and 7 § 2 of the ATC:

- In 2013 lawsuits were launched against 178 persons as per Article 6 and against 10,547 persons as per Article 7 § 2,
- In 2014 lawsuits were launched against 125 persons as per Article 6 and against 15,815 persons as per Article 7 § 2,
- In 2015 lawsuits were launched against 100 persons as per Article 6 and against 13,608 persons as per Article 7 § 2,
- In 2016 lawsuits were launched against 192 persons as per Article 6 and against 15,913 persons as per Article 7 § 2,
- In 2017 lawsuits were launched against 24,585 persons with no distinction between the said articles.

During the 5 years between 2013 and 2017 lawsuits were launched against a total of 81,063 persons within the scope of freedom of expression.

In the light of these data the following observations can be put forward without excluding the option to repeal the ATC in its entirety:

a. Article 1 of the ATC, which defines terrorism in a vague and broad way without framing it with the component of violence, should be amended.

[3] To read the full report see: http://ihd.org.tr/en/index.php/2018/06/20/report-on-increased-pressures-on-human-rights-defenders-human-rights-association-and-its-executives/

[4] To read the full report see: http://ihd.org.tr/en/index.php/2018/07/25/lawyers-under-judiciary-pressure/

b. Article 2 of the ATC, which designates criminalization of persons as guilty of terrorism who are members of an illegal organization although they did not commit a crime and those who commit a crime in the name of the organization although they were not members of the organization, shall be amended as it contains obscure and vague statements and provides an indirect definition of membership in an illegal organization.

c. Article 5 of the ATC, which prescribes extension in sentence terms by half that are imposed based on the same code, should be repealed.

d. Article 6 of the ATC, which is characterized by its violation of the freedom of the press and the right to freedom of information, should be repealed. It is also crucial to repeal particularly Article 6 § 4 with the provision to impose fines on publication executives although they were not involved in committing the offense.

e. Article 7 § 2 of the ATC proscribing disseminating propaganda for an illegal organization should be repealed.

f. The provision covered by Article 14 of the ATC, which puts forward that the identities of informants shall not be revealed, should be repealed as it protects informants even in the case of reports whose authenticity has not been verified and encourages informing on statements that do not constitute an offense. The identity of the complainant should be known by the suspect just as is the case with other offenses.

g. The provision covered by Article 15 of the ATC that states "assignment of a lawyer to staff who stand trial for offenses while combating terrorism or is a complainant thereof" shall be repealed as it provides safety of protection to public employees who forget about the fact that combating terrorism has a law as well and can commit such offenses as torture and ill-treatment.

B. Provisions Restricting and Criminalizing the Right to Freedom of Expression, Association, and to Engage in Political Activities in the Turkish Penal Code (TPC)

Code No. 5237, referred to as the new TPC, has been prepared in such a way that one does not need the ATC during its drafting and implementation. Thus, it constitutes provisions that meet Articles 2, 6, and 7 of the ATC that is still in effect. Article 220 § 6, 7, 8 of the TPC and Article 314 § 3 of the TPC are of particular significance. These are the most problematic articles commonly faced in practice.

It would be useful to look at Venice Commission's "Opinion on the Measures Provided in the Recent Emergency Decree Laws with Respect to Freedom of the Media" (Op. No. 872/2016 dated 13 March 2017)[5]. The part of the report entitled "Use of the Criminal Justice System Against Journalists" is very important as it scrutinizes the ways in which the TPC and the ATC have been exploited in Turkey. Paragraphs 63 to 72 of the report point out to the errors in the implementation of material rules in the TPC and criticize them to that end. Paragraph 68 of the Venice Commission's report reiterates that "the expression of an opinion in its different forms should not be the only evidence before the domestic courts to decide on the membership of the defendant in an armed organization." Article Article 220 § 6, 7, 8 of the TPC and Article 314 § 3 of the TPC should either be repealed or modified to be rendered in line with the ECtHR case-law, as will be understood from the report and the below-mentioned ECtHR judgments.

In practice, however, lawsuits can be launched as per Article 314 § 3 of the TPC directly instead of as per Article 220 § 6-7 of the TPC which we can define as indirect membership in an illegal organization. Statistics of the Ministry of Justice also reveal a dramatic increase in this matter. Lawsuits were filed against 8,110 persons in 2013; 19,796 persons in 2014; 14,854 persons in 2015; 29,434 persons in 2016,

[5] For the full report see: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)007-e

and 136,795 persons in 2017 as per Article 314 § 2 of the TPC, i.e. membership in an armed organization. In this case it is mandatory to reform Article 314 § 2-3 of the TPC considering its way of implementation.

Former Co-Chairpersons of Peoples' Democratic Party (Halkların Demokratik Partisi -HDP), Selahattin Demirtaş and Figen Yüksekdağ, were arrested alongside with 13 other MPs and 9 MPs' memberships in the parliament were terminated and most were arrested as the imprisonment sentences imposed upon them -utilizing the articles of the ATC and the TPC that criminalize freedom of expression- were finalized. HDP's Hakkari MP Leyla Güven is still imprisoned. While 94 city and province municipalities that belonged to the Democratic Regions Party (Demokratik Bölgeler Partisi -DBP) in the Eastern and Southeastern Anatolia Regions are run by trustees appointed by the state under the State of Emergency (SoE) conditions, various lawsuits were launched against the co-mayors elected by the people within the scope of the ATC. 68 co-mayors are still in prison.

The lawsuits filed against the Co-Chairperson of IHD, Emine Eren Keskin, prove to be exemplary as they provide perfect examples of how the TPC and the ATC can be exploited so badly just in the way described. Lawyer Eren Keskin assumed the role of "editor-in-chief" of the daily *Özgür Gündem*, which was one of the few independent newspapers with a critical eye on the government's acts and known for its reports on the Turkish-Kurdish conflict between 2013 and 2016, in order to support the right to freedom of expression and to extend symbolic support to jailed journalists. More than 140 lawsuits were filed against Ms. Keskin because of her role as editor-in-chief. She was also targeted by penal sanctions on account of the news reports and columns by other writers exercising their right to freedom of expression. The Press Code allows for holding editors-in-chief liable for related publications in cases where the authors cannot be held liable.

While sentences imposed within the scope of 6 of these lawsuits were finalized, 69 are at the stage of appeal or before the Supreme Court of Appeals. If the concerned first instance courts' rulings are not overturned, sentences totaling 12.5 years in prison and about 460,000 TL in fines will be imposed on Ms. Keskin. The charges brought by these lawsuits are: "disseminating propaganda for a terrorist organization" (ATC 7 § 2), "denigrating the Turkish nation, the state of the Republic of Turkey, institutions and organs of the state" (TPC 301), "insulting the president" (TPC 299), "failure to publish corrections and responses in a newspaper" (Press Code Art. 18), "revealing the identity of the culprit or victim of an offense" (Press Code Art. 21 § c), and "insult" (TPC 125). Some of the other pending cases are about charges brought within the framework of TPC 314 § 2 and the ATC.

The relationship between the fact that human rights defender Osman Kavala has been in prison for about a year and the charges brought as per Articles 302 and 314 of the TPC and the easy arrest provided by Article 100 § 3 of the CCP reveals that laws can be implemented rather arbitrarily.

Article 220 § 7 of the TPC prescribing "**a person who knowingly and willingly aids an organization without being in the hierarchical structure of the organization shall be penalized as a member of the organization"**, which was criticized as being unforeseeable and broadly interpreted by the ECtHR in its Abdulcelil İmret v. Turkey judgment, should be modified. Similarly, Article 220 § 6 and 8 alongside with Article 314 of the TPC should also be modified because the provision under this article that gives way for the punishment of a person as a member of a terrorist organization although he/she is not a member of a terrorist organization or definitions like disseminating propaganda of a terrorist organization's intent are vague and are susceptible to broad and arbitrary interpretations. Therefore, the provisions of these articles contradict the requirement to impose legal sanctions to freedom of expression, that laws should be foreseeable and accessible, and the principle of the rule of law.

Article 301 of the TPC, which was held as a threat to freedom of expression in ECtHR's Altuğ Taner Akçam v. Turkey judgment, shall absolutely be repealed. Article 305 of the TPC which has a similar content shall also be repealed.

Conscientious objection is a human right. Article 318 of the TPC, which has become fairly inapplicable upon the binding judgment of ECtHR's Grand Chamber in the Bayatyan v. Armenia case, shall be repealed taking into consideration Erçep v. Turkey and Feti Demirtaş v. Turkey judgments as well. Moreover, Article 45 of the Military Penal Code related to the right to conscientious objection and which restricts the right to freedom of religion and conscience shall also be repealed.

Article 216 of the TPC, notably clause 3, prescribing the offense of inciting the public to hate and enmity shall be modified as it involves vague statements and is open to subjective interpretations which allows for public prosecutors and judges to rule according to their own personal convictions.

Article 299 of the TPC, which prescribes the offense of insulting the president, has been ascertained to be applied not only to statements with swear words, as opposed to the government's claim, but also to matters of public interest such as corruption probes, refugee crises, and anti-terrorism methods as was stated in the report of 15 March 2016 penned by a delegation from the Venice Commission following a visit to Turkey upon the request of the Parliamentary Assembly of the Council of Europe. Therefore, the Commission stated that the related article should be abolished in its entirety. Statistics provided by the Ministry of Justice also demonstrate the fact that the number of lawsuits launched under this article has dramatically increased in time. According to the related data, lawsuits were launched against 139, 132, 1,952, 4,187 and skyrocketed to 6,033 individuals under this article in 2013, 2014, 2015, 2016, and 2017 respectively.

ECtHR also held in its judgment on Artun and Güvener v. Turkey that it was not pertinent to subject the president to a privileged protection as per his/her position and adopted that states' presidents should not have a special and privileged status with regards to freedom of expression that persons had. Thus, the article in question shall be repealed.

The offense of insult under Article 125 of the TPC and all the other similar insult offenses should be removed from penal codes since issues arising from expression of opinions should be handled within the field of private law, not criminal law. The fact that expression of opinions becomes an issue for criminal law and especially statements directed at public employees or state institutions are subjected to punitive threats not only increase the risk of self-censorship but also threatens the free discussion of public matters. The limit of criticism directed at public employees should be higher.

Articles 132, 133, and 134 of the TPC proscribing violations of communication and correspondence, and the right to privacy of life deserve specific attention with regards to the freedom of the press. These articles contain features that pose a threat to the function of the press to inform the public, people's right to access information, and the right of media outlets and members to communicate news or information regarding the discussion of issues of public interest.

Articles 327, 329, 334, and 336 of the TPC concerning the procurement and disclosure of information about the security of the state also prove to be problematic with regards to freedom of expression and are not defined by law while being at odds with the principles of accessibility and foreseeability alongside with the principle of rule of law. These articles are especially restrictive of the freedom of the press in nature. The presence of these articles threatens the right of the people to access information.

C. Various Special Codes Other than the TPC

The Law on Meetings and Demonstrations No. 2911 comprises prohibitions and punishments regarding assembly and demonstrations that contradict the ECtHR case-law and prescribe heavy penalties. As is known, the right to demonstration is the active form of the right to freedom of expression. Thus, criticism and protest are punished by preventing the right of the public opposition to stage demonstrations within the context of freedom of expression. When one studies the statistical data provided by the Ministry of Justice, one faces a rather interesting situation. While the number of lawsuits

launched under opposing Law No. 2911 during the years when the ATC and the TPC were utilized less happens to be high, the number of such lawsuits went down during the years when these two codes were utilized more. According to the data of the Ministry of Justice, 20,440 lawsuits were launched as per opposing Law No. 2911 in 2013, the number of such cases went down to 20,390; 20,082; 15,292 and 10,686 in 2014, 2015, 2016, and 2017 respectively. It goes without saying that prohibitions under the SoE and post-SoE conditions also affected this decrease in the number of lawsuits.

Turkey needs to come up with a new law on meetings and demonstrations in line with the ECtHR case-law when the points put forward by the ECtHR judgments on Oya Ataman v. Turkey and others are taken into consideration.[6]

There are provisions that restrict and criminalize freedoms of expression and the press within the Press Code No. 5187. Therefore, these should be reformed within the scope of freedom of expression. The special report penned by the Human Rights Joint Platform can be consulted about this matter.[7]

Several provisions that criminalize press conferences, peaceful assemblies and protests staged against various administrative decisions of the SoE governors are prescribed within the State of Emergency Act No. 2935. These infringe upon the rights to freedom of expression and the right to peaceful assembly. According to the data provided by the Ministry of Justice, while lawsuits were launched against 86 individuals for opposing Act No. 2935 in 2016, the number goes up to 374 in 2017. It should, however, be stated that administrative fines imposed for failure to obey orders are not included in these figures.

Provisions regarding failure to comply with city governors' various decisions which generally restrict and prohibit the right to peaceful assembly and protest prescribed in Code No. 5442 on Provincial Administration should also be modified.

The Misdemeanor Code No. 5326 also covers an ample number of provisions that prohibit the right to freedom of expression and impose administrative fines, notably the prohibition of posting bills and the prohibition of holding press conferences at specific places. These also need to be repealed or reformed in a way that will not restrict the right to freedom of expression. The ECtHR judgment on Yılmaz Yıldız and others v. Turkey is unfortunately not being implemented in Turkey.

Article 1 of Code No. 5816 on Offenses Committed Against Atatürk designates overtly insulting the memory of Atatürk as an offense. This issue can be evaluated within the scope of Article 8 of the ECHR. The current regulation, however, can also give way to practices rendering Atatürk uncritizable. Thus, it will be useful to add freedom of criticism to the article. The article in its current form has the potential to restrict freedom of expression. It cannot, therefore, be considered to have adequate accessibility and foreseeability as per its consequences.

Code No. 5651 on the Regulation of Publications on the Internet and Suppression of Offenses Committed by means of such Publications should be repealed.[8] Although the objective of the code was stated to prevent children from accessing illegal and harmful Internet sites, the issue has reached the level of censorship for everyone. A new policy is thus needed in the field. As has been suggested by Akdeniz and Altıparmak, a new Internet regulation "should be developed based on respect for freedom of expression and the rights of Turkish adults to access and consume all kinds of online content. This new initiative should function through a transparent, open, and pluralistic method in order to put these principles into practice. These four fundamental principles should specifically be taken into consideration to this end:

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[6] http://aihmiz.org.tr/?q=tr/content/aihm-kararlarinin-uygulanmasinin-izlenmesi-izleme-raporu-20142

[7] For the full report see: http://www.ihop.org.tr/2014/10/01/turkiyede-ifade-ozgurlugu-mevzuat-ve-yargi-gozlem-raporufreedom-of-expression-in-turkey-observations-on-legislation-and-judiciary/

[8] The same recommendation has also been rendered in *Internet: Girilmesi Tehlikeli ve Yasaktır* by Yaman Akdeniz and Kerem Altıparmak, p. 168.

a- The regulation of the Internet should respect the principles of international human rights law, notably freedom of expression and privacy of communication and correspondence.

b- Restrictions should be prescribed by law, should be proportionate and in line with the requirements of democracy.

c- Preservation, perusal, or viewing of content that is not regarded to be an offense should not be included in the regulation of online content.

d- As was stated by the Commission of European Communities, 'Categories of [illegal and harmful content] pose radically different issues of principle, and call for very different legal and technological responses. It would be dangerous to amalgamate separate issues such as children accessing pornographic content for adults, and adults accessing pornography about children."[9] The new initiative should definitely take this significant differentiation into account."

The provisions of "interlocutory injunction" in laws reported by the Information and Communication Technologies Authority (BTK) enabling blocking access to the Internet should be modified (without prejudice to the request that they should be entirely repealed, including the provisions in the related code).

"Procedures and Principles Regarding the Safe Use of the Internet" that went into effect on 22 November 2011 should also be repealed since Internet filtering is being implemented by the state itself. Moreover, the idea of a uniform child/family has been rendered absolute and imposed. The fact that the state is authorized to impose filtering and is in a position to decide which sites users can get access to is unacceptable with regards to freedom of expression. The only OSCE country that implements central filtering is Turkey.[10]

Articles 78-90 and Article 96 of Code 2820 on Political Parties should be modified because these articles contain vague statements that are at odds with the principles of accessibility and foreseeability regarding freedom of expression. Furthermore, there are prohibitions and restrictions that contradict Article 10 § 2 of the ECHR which cover a broad area (on various rights and freedoms ranging from minorities to religious and belief-related issues, from the character of the regime to the inability to discuss official ideology and opinions, to the prohibition of using another language other than Turkish).

Code 1117 on the Protection of Minors from Sexually Explicit Material should be repealed. A regulation should be put forward respecting international human rights law and the right to freedom of expression as a whole. The code on children should be based on the principles set forth in the UN Convention on the Rights of the Child and the principle of the best interests of the child.

Vague articles of the Radio and Television Higher Council Code 6112, which are not adequately accessible and restrict freedom of expression by prescribing larger restrictions than the restrictive criteria under Article 10 § 2 of the ECHR, should be modified. These articles can be listed as 5, 7, 8, 18, 32, 33, and 46. Publication/broadcast ban provisions brought about by the emergency decree no 680 to Article 7 should especially be repealed.

D. Inequality and Discriminatory Provisions in Code No. 5275 on the Execution of Sentences and Security Measures

[9] Commission of the European Communities, "Illegal and Harmful Content on the Internet" p.10 http://aei.pitt.edu/5895/1/5895.pdf

[10] Academic awareness and call to all university rectors against online filtering by the Information and Communication Technologies Authority, 9 January 2012, Bianet/ ANF.

Article 107 of the Code on the Execution of Sentences and Security Measures prescribes provisions on conditional release.[11] Article 107 § 4 of the code disregards the principle of equality in the execution of sentences and the term of execution which was normally 2/3 was raised to 3/4 with the provision that states "in case of conviction because of an offense committed by founding or leading or acting within the framework of the activities of an illegal organization; if those who were sentenced to aggravated life sentence served 36 years, if those who were sentenced to life sentences served 30 years, if those who were sentenced to determinate imprisonment served three fourths of their terms in penitentiary institutions, they can benefit from conditional release." The practice that forces people, whose sentences have already been extended by half within the scope of terrorist offenses under Article 5 of the ATC, to serve their sentences under more aggravated circumstances should be put to an end. The provisional Article 6 amended to the code through the emergency decree no. 671 of 17 June 2016, the term of execution of sentences was reduced to 1/2 from 1/3 for ordinary inmates. TPC's premeditated murder offenses, intentional injury and aggravated injury offenses as per their consequences against kins, spouses, or siblings or a person who could not physically or mentally defend himself/herself, offenses committed against sexual inviolability, offenses committed against private life and the private field of life, manufacturing and trafficking narcotics, the offenses defined under the 4th, 5th, 6th, and 7th Parts of Chapter 4 of the 2nd Book, and the offenses covered by the ATC No. 3713 of 12 April 1991 have been excluded from this new regulation.

The provision prescribing "terrorist offenders whose death penalty sentences were reduced to aggravated life or terrorist offenders who were sentenced to aggravated life imprisonment cannot benefit from conditional release provisions. Aggravated life sentences imposed upon these continue for the rest of their lives" regulated simultaneously both under the provisional Article 2 of the Code of Execution of Sentences and the Article 17 § 4 of the ATC should be repealed, the opportunity to benefit from conditional release should also be rendered possible for those whose death penalty sentences were reduced to imprisonment.

The ECtHR found life sentences to be in violation of Article 3 of the ECHR in its Vinter and Others v. the United Kingdom and Öcalan v. Turkey judgments and held that legal reforms that might provide any hope of release in the future should be made for the rehabilitation of inmates.

Article 6 § 1 of the Directive on the Transfer to Open Penitentiary Institutions designates the conditions under which convicts can be allocated to open penitentiary institutions. This regulation stipulates that convicts should serve a specific term in good conduct in the institution. Article 6 § 2, however, lists some offenses and stipulates serving in prison for a longer period of time. The most important of these was prescribed in the subparagraph (ç) of Article 6 § 2 as "to have less than a year until the date of conditional release for those convicted of terrorism and organized crime offenses whose termination of their

[11] Conditional release and supervised release are different legal terms in Turkish law. Conditional release (koşullu salıverilme/şartlı tahliye) is an instrument of execution of sentences law that provides a convict, who served a part of his/her imprisonment sentence with "good conduct," to conditionally serve the remainder of his/her sentence under supervision outside the prison (Art. 107 of the Code on the Execution of Sentences No. 5275). A convict who is conditionally released is legally obliged not to commit a new offense and to comply with legal obligations until his/her ipso jure release date. If these conditions are not met by the released convict, he/she has to serve the remainder of his/her term in prison through a revoking of the conditional release ruling. Supervised release (denetimli serbestlik), on the other hand, is an instrument of criminal law that provides the execution of a person's sentence in social life within a probation period prescribed by law (Art. 105 § A of the Code on the Execution of Sentences No. 5275). A person who committed an offense is observed within social life through supervised release. The code on supervised release is one that went into force on the grounds that enables a person to maintain his/her ties with his/her family and adopt to the outside world. A convict is released when there is a specific amount of time until his/her conditional release while serving in prison and is thusly supervised within the outside social life.

membership to such organizations have been ascertained by the administration's observation board." Since transfer to an open penitentiary institution would also indirectly enable benefitting from conditional release provisions, it is related to persons' freedoms and the principle of legality has been destroyed by prescribing in the directive the "on condition of a decision to be rendered by the administration's observation board" which was not prescribed by law. Article 6 § 2 of the directive and specifically the subparagraph (ç) alongside with Article 8 § 1-ç, which has also been designated to the same end, should be repealed.

Supervised release conditions prescribed under Article 105 § A of the code have not been put forth in concordance with the principle of equality either. It has been regulated that convicts with good conduct who served the last six months of their sentences in an open prison and who have a year or less until conditional release could benefit from supervised release and the provisional Article 4 prescribes that the condition to serve the last 6 months of their sentences in an open prison would not be stipulated until 21.12.2020. The term of benefitting from supervised release was extended to 2 years from the initial 1 year under the provisional Article 6 that was amended to the code through the emergency decree no. 671 of 17.08.2016. TPC's premeditated murder offenses, intentional injury and aggravated injury offenses as per their consequences against kins, spouses, or siblings or a person who could not physically or mentally defend himself/herself, offenses committed against sexual inviolability, offenses committed against private life and the private field of life, manufacturing and trafficking narcotics, the offenses defined under the 4th, 5th, 6th, and 7th Parts of Chapter 4 of the 2nd Book, and the offenses covered by the ATC No. 3713 of 12 April 1991 have been excluded from this new regulation.

E. Provisions Violating the Right to a Fair Trial and the Right to Freedom of the Person under the Code of Criminal Procedure No. 5271

The Code of Criminal Procedure (CCP) contains provisions that violate the right to liberty and security of person. Article 100 of the code incorporates provisions that enable easy arrest of persons pending trial. Human rights defenders can be jailed easily because of these provisions. The Office of the Commissioner for Human Rights of the Council of Europe stated in a report that Article 100 of the CCP should be modified through concrete examples. The form of trial on remand is a typical instance of imposing repressive policies through the judiciary with regards to human rights defenders. Turkey never complies with such recommendations. It was observed that people were arrested for charges that did not necessitate resorting to the measure of arrest under Article 100 of the CCP especially after the declaration of the SoE. For instance, people were often arrested under Article 7 § 2 of the ATC and Article 216 of the TPC in spite of the fact that these articles did not necessitate arrest.

Recommendations to Repeal Modifications in the Legislation Brought about by SoE Decrees

Emergency decrees numbered 676, 680, 694, and 696 that went into force during the SoE period modified the CCP. A total number of 36 modifications was put into effect by these 4 emergency decrees. The ones that need to be changed primarily are listed as follows:

- **Articles 149, 151, 154, 178, and 188 of the CCP were amended by the Emergency Decree No. 676.**

  Article 149 § 2 entitled "A Suspect's or a Convict's Selection of a Defense Lawyer" prescribed a modification stating that "A maximum of three lawyers can be present at a hearing as per prosecutions conducted with regards to offenses committed within the framework of organizational activity" and this restricted the right to defense in many types of offenses that were under the jurisdiction of Heavy Penal Courts.

  Article 151 § 3 entitled "Procedures to be Followed and Banning Defense Lawyers from Undertaking their Tasks When a He/She Fails to Fulfil His/Her Duty" puts forth the provision

that "a lawyer who was selected under Article 149 or was assigned under Article 150 and who undertook the task of defending or representing 'suspects, defendants', or convicts who stood trial as per offenses listed in Articles 220 and 314 of the TPC and as per terrorism charges can be banned from undertaking his/her defense or representative task if an investigation or prosecution has been lodged against himself/herself based on the offenses listed in this paragraph" and this modification has thus abolished the right to defense and the right of the suspect, defendant, or the convict to select his/her own lawyer.

Article 154 entitled "Conferring with a Defense Lawyer" was amended with a new subparagraph that put forth the possibility that a person held under custody could be barred from conferring with his/her lawyer for 24 hours, thereby, rendering it impossible to determine torture and ill-treatment that the suspect could be exposed to by the law enforcement.

Article 178 entitled "Direct summoning of witnesses and specialists who were previously denied" was amended to prescribe that the court was obliged to hear witnesses or experts in the case that these persons were made available to the court by the suspect or the intervening party although such a request was rendered previously but denied by the court however this request could also be denied by the court if it "sought to prolong the proceedings." Thus parties' right to freely present their evidence and defense has been revoked.

Article 188 entitled "Those who shall be present at hearings" was amended by the statement "a hearing can proceed if the defense lawyer leaves the hearing unexcused" but then this statement was not found to be sufficient enough either and the statement "not attending the hearing or" was added through emergency decree no. 696 prescribing that the proceedings could continue without a defense lawyer in such a case as well. This also restricts the defendants' right to defense.

- **Articles 102, 139, 140, 158, 161, 196, and 216 of the CCP were amended and provisional Article 3 was added through the Emergency Decree no. 694.**

Article 102 § 2 entitled "Term to be served under arrest" was amended by the statement "the term of imprisonment cannot exceed 5 years for offenses defined under the 4th, 5th, 6th, and 7th Parts of Chapter 4 of the 2nd Book of the TPC No. 5237 and the offenses covered by the ATC No. 3713 of 12 April 1991" and this extended the term of imprisonment which could be 3 years in total to 5 years.

Article 139 § 3 entitled "Assignment of a Confidential Investigator" was amended by the statement "without the presence of those who are obliged to be present at the hearing or by modifying sound or image" which prescribed that the confidential investigator could thusly be heard if the confidential investigator's testimony as a witness was obligatory. This modification is one that prevents the defendant or the defense lawyer or the intervening party to exercise their right to ask questions to the confidential investigator.

Article 140 entitled "Surveillance by Technical Equipment" was also amended to extend the procedure of surveillance and recording, which could be conducted for a maximum of 2 months previously, up to 4 months within the scope of files in which confidential investigators were assigned alongside with surveillance by technical equipment.

Article 158 entitled "Reports and complaints" prescribes that a "decision regarding there was no room for investigation" can be rendered although the article suggests that there is no need for launching investigations and prosecutions without necessitating any exploration of reports and complaints. Thus, the liability of the state to conduct effective investigations has been disregarded.

Article 216 § 3 entitled the "Discussion of Evidence" was also amended by a statement that said the absence of the defense lawyer at the hearing when the sentence imposed on the defendant was announced did not constitute an impediment and the right to a fair trial and the right to defense were thusly repealed.

- **Articles 280 and 299 of the CCP were modified by the Emergency Decree No. 696.**

  The provisions "lack of justification for the judgment" and "restriction of the right to defense for matters necessary for the judgment" were removed from Article 280 § 1 (d) entitled "Investigation and prosecution at the regional courts of justice" with reference to Article 289 and the regional courts of justice were thusly barred from overturning the rulings of local courts on these grounds.

  Article 299 entitled "Review with Hearing" at the Supreme Court of Appeals, which is an appellate court, was modified to restrict the right of defense before the Supreme Court of Appeals by adding the statement "can be conducted through a hearing if seen fit."

The Execution of Aggravated Life Sentences and the Condition of Sick Inmates

According to the data of 17 February 2014 provided by the Ministry of Justice, there are 1,453 inmates who were sentenced to serve aggravated life sentences in Turkey. Aggravated life sentences in prison replaced the death penalty in Turkey following 2002.

Inmates, who were sentenced as per offenses listed under the 4th Part entitled "Offenses against the Security of the State," under the 5th Part entitled "Offenses against the Constitutional Order and the Functioning of This Order" and under the 6th Part entitled "Offenses against National Defense" of the 2nd Book of the TPC having committed such an offense within the framework of organizational activity, cannot benefit from conditional release because of Article 107 § 16 of the Code on the Execution of Sentences and the provisions set forth in the provisional Article 2 and the execution of the sentence continues "until death." Moreover, according to Article 25 § 1-ı of the Code on the Execution of Sentences, the execution of the sentence of the convict cannot be suspended by any means.

Yet Article 16 § 2 of the same code entitled "Suspension of the execution of the sentence due to sickness" prescribes "if [the sickness] poses a vital threat to the inmate's life, the execution of his/her sentence is suspended until the inmate recuperates" and paragraph 6 also designates stay of execution of the sentence of inmates who cannot live on their own under incarceration conditions and who do not pose a grave and concrete threat to public safety until they recuperate.

The ECtHR ruled for violation in its judgments on Öcalan, Gurban, and Kaytan on the grounds that "the absence of the possibility of release" was regarded to be torture and ill-treatment with regards to this regime of execution of sentences, which qualifies as a separate punitive practice within the scope of a life sentence that would go on until the inmate died. Specifically, the execution of the sentences of sick inmates according to this regime gives way to their death and each sick inmate is not treated in appropriate periods and conditions is gradually driven to death each day.

While the execution of the sentences of sick convicts should be undertaken in official healthcare services' departments allocated to inmates although the ailment does not pose a risk to the inmate's life, the non-suspension of the execution of the sentences of inmates with life-threatening conditions is a violation of the right to life.

Therefore, the provision "the execution of the sentence cannot be suspended by any means" in Article 25 § 1-ı of the Code on the Execution of Sentences should be removed alongside with the above-mentioned modifications in conditional release pertaining to aggravated life sentences; sick inmates should be treated at official healthcare institutions, the execution of the sentence of the inmate should be deferred in cases where the sickness poses a definitive threat to the life of the inmate.

On Arrest Warrants by Criminal Courts of Peace and Heavy Penal Courts Authorized by the High Council of Judges and Prosecutors

Specially authorized and mandated heavy penal courts and prosecutor's offices were reinstated through a decision passed by the High Council of Judges and Prosecutors on 17 February 2015. These specially authorized and mandated heavy penal courts and prosecutor's offices that are still in office lack legal basis. This situation is a clear manifestation of the degree that the judiciary, which is the guarantee of fundamental rights and freedoms, is controlled by the political power.

As is known, Article 143 of the Constitution was repealed through an amendment in 2014 and State Security Courts were closed down. Similar provisions, however, were introduced to Articles 250, 251, and 252 of the new CCP providing for a continuation of such courts and specially authorized and mandated heavy penal courts and prosecutor's offices were maintained.

Articles 250, 251, and 252 of the CCP were repealed by Code No. 6352 that went into force on 5 July

2012 and these special courts that were the continuations of State Security Courts were closed down as well. The same code established authorized and mandated heavy penal courts and prosecutor's offices under Article 10 of the ATC which replaced the former. These courts were also closed down by means of Code No. 6526 that went into effect on 6 March 2014. The overall grounds for this code proves to be rather significant. Article 250 of the CCP and Article 10 of the ATC admitted that mandated heavy penal courts did not provide fair trials. The first three paragraphs of the overall grounds read as follows:

> Our country has signed and ratified fundamental conventions on human rights and freedoms, further, it has adopted the European Convention on Human Rights which prescribed the judicial monitoring of human rights violations while acknowledging the right to lodge individual applications before the European Court of Human rights. These conventions incorporate such principles as the right to a fair trial and the presumption of innocence that provided grounds for this, the right to remain silent, equality of arms, and the right to defense; these mentioned principles have become mandatory rules with which domestic law should directly comply under Article 90 of the Constitution. Article 36 of the Constitution prescribes that everyone has the right of litigation as plaintiff or defendant and the right to a fair trial through legitimate means and procedures. Our country is liable to meet the requirements of Article 6 "the right to a fair trial" of the European Convention on Human Rights which we are a party to. The controversy on fair trial in our country is led by investigations and proceedings undertaken first by state security courts then by heavy penal courts established under Article 250 of the Code of Criminal Procedure and Article 10 of the Anti-Terror Code and finally by specially authorized courts and public prosecutors. Furthermore, the practice of specially authorized heavy penal courts has given way to three different heavy penal courts and a de facto hierarchical perception regarding judges and public prosecutors has emerged among the public by merely qualifying them as special judges, special courts, and special prosecutors. This draft puts an end to the practice of specially authorized courts and public prosecutor's offices alongside with procedures of special investigation and prosecution, which have led to grand controversies about fair trial, and enables all heavy penal courts to be subjected to the same procedural rules.

As can be understood from these grounds, it is obvious that these heavy penal courts did not provide fair trials. The Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, announced a report entitled "Administration of Justice and Protection of Human Rights in Turkey"[12] on 10 January 2012 following a visit to Turkey on 10-14 October 2011 and openly stated that there was no need for assize courts with special powers and they should be closed down.[13] Turkey complied with this recommendation in 2014 but went back to the former system in 2015.

The opinion of the Venice Commission of the Council of Europe (Op. No. 852/2016) dated 13 March 2017 regarding the duties, competences, and functioning of the criminal peace judgeships in Turkey is also very important.[14] The opinion has overtly revealed the fact that criminal peace judgeships, which had an even more special place within the system of heavy penal courts and prosecutors with special powers, have been utilized as the most significant instruments of exerting pressure through the judiciary. Turkey should comply with these recommendations of the Venice Commission without delay.

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[12]To read the full report see:
http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-tr/dv/0131_04/0131_04en.pdf
[13]To read the full report see:
http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-tr/dv/0131_04/0131_04en.pdf
[14]To read the full report see:
https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29004-e

Conclusion:

MHP's proposal on the execution of sentences covering conditional reduction also proves to be problematic. It does not offer any solutions for the above-mentioned problematic areas in the penal legislation in Turkey. For instance, TPC Art. 220 is included within the scope of MHP's proposal, while TPC 314 is excluded. In practice, however, sentences are often imposed not only according to Art. 220 § 6-7 of the TPC but also as per Art. 314 of the TPC at the same time. How can injustice be remedied in such a case?

As far as one can understand MHP's proposal is one that seeks to render it possible for the leaders and members of various criminal organizations be released through reduction in the execution of their sentences. As is known, criminal organizations resort to violence and force. Their only difference from other organizations acknowledged to be terrorist organizations within the scope of ATC is the fact that they are not acknowledged to be terrorist organizations by the state. To differentiate between criminal organizations violates the principle of equality enshrined in the Constitution with respect to legal method. The proposal is rather problematic in this regard as well.

A statement frequently reiterated by President Erdoğan is significant, he says "only offenses committed against the state can be pardoned." In this case IHD expects the political power to carefully examine the problematic areas mentioned in this report and to put the following recommendations into effect:

1. The definition of terror under TPC shall be amended to conform to the international conventions that Turkey is a party to and it shall be reformed in a way to comprise the points set forth in UN Security Council Resolution No. 1566. Thus, the current ATC shall be repealed in its entirety.
2. Articles 220 and 314 of the TPC shall be reformed pursuant to the opinion of the Venice Commission and ECtHR judgments. The distinction between those who resort to violence and who do not shall be made crystal clear. Those who do not resort to violence shall not be punished.
3. The barriers before freedoms of expression and association, engaging in political activities, assembly and demonstration in the legislation shall be removed.
4. Specially authorized and mandated heavy penal courts and prosecutor's offices shall be closed down. Criminal Courts of Peace shall be reformed in accordance with the related report of the Venice Commission.
5. Catalogued offenses under Article 100 § 3 of the CCP and the provision that enables easy arrest if charged with an offense shall be repealed; obstructive procedural regulations before the right to a fair trial, notably before collection of evidence, shall also be repealed. Regulations put into effect through the state of emergency decrees shall be withdrawn.
6. The discrimination in the Law on the Execution of Sentences shall be ruled out, the execution terms of all inmates shall be equalized.
7. Discriminations against benefitting from supervised release shall be removed.
8. Legal and administrative barriers before the release of sick inmates in prisons shall be eliminated.
9. The execution of aggravated life sentences until the inmates are dead shall be renounced; conditional release observing the age of the inmate shall certainly be ascertained as per ECtHR judgments on the issue.

IHD Legal Affairs Commission