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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by World Organisation Against Torture, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[6 February 2023]

* Issued as received, in the language of submission only.



How Anti-Terrorism Legislation And Related Measures Restrict Human Rights in Türkiye

1. Introduction

Despite that counterterrorism and national security legislation's primary role is to protect individuals from terrorist attacks some states under pretext of fight against terrorism restrict human rights and activities of human rights defenders (HRDs). In the last years Türkiye became a prime example of this situation. Since the end of the peace process for the 'Kurdish Issue' in 2015 various repressive policies and laws have been introduced in Türkiye. One of the key elements to this process was the creation of specialised courts in 2015, which are designed to review offences under the Anti-Terrorism Law of Türkiye and the Domestic Security Package Law. Other measures followed, with the declaration of a two-year state of emergency (SoE) following the failed coup attempt in 2017, the introduction of a new regime known as 'the Turkish-style Presidential Regime' in 2017, and the adoption of Law No. 7154 making the SoE measures permanent and amending the Criminal Code and the Anti-Terrorism Law of Türkiye, among others.

2. A sweeping and Vague Definition of Terrorism

Although there is no universally accepted definition of terrorism, the term is significantly developed in the Suppression Conventions and the Declarations approved by the UN General Assembly. The Anti-Terrorism Law No. 3713 provides broad definitions of terrorism and of terrorist offenders, which violates the principle of legal certainty and create situations where representatives of civil society can become a subject to the criminal persecution for voicing human rights violations. Under this legislation, the explicit requirement for a terrorist act to involve serious bodily harm or death is removed, meaning that any expression or peaceful demonstration can be interpreted as a terrorist act and human rights defenders and civil society can be arbitrarily labelled 'terrorist offenders.'

3. Counter-Terrorism Legislation and Human Rights Defenders

Human rights defenders play a significant role in enabling population to channel discontent and allow for constructive engagement with States to contribute to the peaceful dialogue between state and community. However, Türkiye, which is bound by various human rights treaties to respect activities of human rights defenders, is failing to facilitate their work. Specific recommendations were made in this regard in several Venice Commission reports and in reports by other international bodies.

Counter-terrorism legislation in Türkiye goes beyond Anti-Terrorism Law No. 3713 to include the terrorism-related provisions in the Criminal Code No. 5271, Criminal Procedure Law No. 9105, and other laws on the execution of sentences and security measures. The Anti-Terrorism Law and the Criminal Code treat non-members of a terrorist organisation as terrorists, considering they committed offences in the name of a terrorist organisation and imposing sentences accordingly. The laws fail to clarify the definition of the offence and how it is linked with the aims of the terrorist organization. Consequently, 'even non-violent statements can be subject to proceedings when they are seen to overlap with any one of the aims of a terrorist organisation. This ambiguity has been used to target and prosecute human rights defenders.

According to official data, under Articles 6 and 7/2 of the Anti-Terrorism Law, 10,745 people were prosecuted in 2013 and 24,585 in 2017. In 2018, 46,220 people were investigated and 10,077 prosecuted. In 2020, there were 26,225 investigations and 6,551 prosecutions. Similarly, under Article 314 (membership to an armed organisation), 36,425 people were investigated in 2015, 155,014 in 2016, 547,423 in 2017, 444,342 in 2018 and 208,833 in 2020. The steep rise in numbers indicates just how widely counter-terrorism legislation has been used in recent years.

Human rights defenders and organisations are subject to judicial harassment. For instance, the Human Rights Association (HRA) and the Human Rights Foundation of Turkey (HRFT) have been targeted and at least 30 investigations and prosecutions against their executive board members and other members are currently pending. For many years now, co-chairs of HRA, Eren Keskin and Öztürk Türkdogan, have been subjected to judicial harassment for their peaceful and legitimate human rights activities. Another example is conviction of Şebnem Korur Fincancı, the president of the Turkish Medical Association and a human rights activist, of disseminating “terrorist propaganda”. In 2021 alone, 1,220 HRDs suffered one or more types of judicial harassment or reprisals. Despite the recommendations of the Financial Action Task Force (FATF) and threats to place Türkiye on its grey list, Law No. 7262 on Preventing Financing of Proliferation of Weapons of Mass Destruction was adopted on 27 December 2020. The adoption of this law, which contravenes the FATF’s recommendations on curbing the financing of terrorism and fails to satisfy FATF requirements, resulted in Türkiye being placed under increased monitoring by the FATF. Under the guise of combatting terrorist financing and money laundering, this law targets civil society, particularly CSOs operating in the areas of human rights. It gives the Ministry of Interior the power to replace the board members of associations with trustees, to suspend their operations if their members are prosecuted on terrorism charges, to impose high monetary fines on CSOs –potentially resulting in the closure of many– and to suspend their activities without the possibility of appeal, among others.

4. Specialised Courts and Special Procedures

In the last years we can observe a serious decline in the level of independence of judiciary. Changes introduced to the formation of the Council of Judges and Prosecutors (CJP) following the 2017 Constitutional referendum are failing to offer ‘adequate safeguards for the independence of the judiciary.’ The CJP’s role is to oversee the professional conduct of judges and prosecutors, including appointments, promotions, transfers, disciplinary measures and dismissals of judges and public prosecutors.

Currently, criminal courts hear criminal proceedings, but criminal investigations are carried out by criminal judgeships of the peace, which replaced Türkiye’s criminal courts of peace in 2014. Under the Law on Criminal Procedure, their powers include issuing search, arrest and detention warrants and judicially reviewing prosecutor’s decisions not to prosecute. Since the introduction of this law, these powers have been further extended to include the removal of the right to legal counsel and internet bans. The Venice Commission has criticised the closed appeals system, which operates under a limited number of peace judges in each region or courthouse, as well as the lack of case-specific reasoning in decisions handed down on detention and website bans.

The rules for criminal proceedings relating to the Anti-Terrorism Law, which include the removal of the right to legal counsel and permit a maximum of three lawyers to attend hearings, the continuation of hearings in the absence of legal counsel, the admission of witness statements from anonymous investigators who are not required to attend the hearing, the prohibition of lawyer visits for the first 24 hours of detention and the extension of pre-trial detention to up to five years, are replicated in the Law on Criminal Procedure. Furthermore, the CJP decisions opened new courts of assize under the Anti-Terrorism Law for the prosecution of crimes committed prior to its adoption. The above demonstrates that specialised courts and procedures have been introduced in connection with the Anti-Terrorism Law, which raises real concerns regarding both the right to a fair trial and the rule of law.

5. The Problem of Execution of Sentences

The Law No. 5275 on the Execution of Penal and Security Measures imposes an alternative regime of execution for prison sentences under the Anti-Terrorism Law. On 14 April 2020, Türkiye passed Law No. 7242 amending Law No. 5275 to reduce the prison population in general and in response to Covid-19, through a provision for the temporary release of convicts already serving or sentenced to serve time in a minimum-security institution and

those on probation. The Government of Türkiye ignored the requests human rights organisations to have a say in the amendment process.

6. Recommendations

The OMCT has urged the authorities of the Government Türkiye to:

- restore the rule of law and repeal any decrees or laws rendering the SoE measures permanent;
- enshrine the principles relating to the protection of human rights defenders in its domestic law and implement the UN Declaration of Human Rights Defenders through a Presidential Circular, until such revisions are made;
- review and reconsider the Anti-Terrorism Law No. 3713 and articles relating to counter-terrorism in the Criminal Code No. 5271, Criminal Procedure Law no. 9105 and other laws on the execution of sentences and security measures, to ensure they comply with Türkiye's international human rights obligations;
- provide the necessary guarantees for the judiciary in Türkiye to adopt and implement the decisions and jurisprudence of the ECtHR and the Constitutional Court of Türkiye and ensure the retrial of the human rights defenders sentenced for carrying out legitimate human rights activities;
- guarantee the right to a fair trial for all individuals and institutions under investigation or on trial and ensure an independent case-by-case review;
- put an end to all kinds of harassment, including administrative and judicial, against human rights defenders and organisations, and prevent them from being prosecuted as retaliation for their legitimate human rights activities;
- share judicial decisions and statistics on the pretrial measures.
