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TURKEY: POLITICIANS, LAWYERS, ACTIVISTS TARGETED IN NEW WAVE OF MASS ARRESTS

Since mid-September, Turkish police carried out largescale dawn raids across Turkey in which dozens of politicians, political activists, lawyers, and other civil society actors were detained under “terrorism”-related charges. The raids are the latest wave in what has become a routine practice by law enforcement authorities with a significant adverse impact on the exercise of human rights, deepening the climate of fear and repression across the country.

Amnesty International is deeply concerned that continuing abusive investigations, arbitrary detentions and unfounded prosecutions under broadly defined anti-terrorism laws further erode the right to a fair trial and would result in the arbitrary deprivation of liberty of people who have been peacefully exercising their human rights in Turkey.

ARREST AND DETENTION OF POLITICIANS AND POLITICAL ACTIVISTS

On 25 September, police detained in dawn raids 20 politicians and political activists,¹ most of whom were representatives of the Peoples’ Democratic Party (HDP), for their alleged role in violent protests in October 2014 during which at least 37 people died and hundreds, including police officers, were injured. In early October 2014, widespread protests had erupted mostly across majority Kurdish south-east Turkey in response to the ISIS siege of Kobani, a predominantly Kurdish town on Syria’s border with Turkey, following calls by HDP for people to go out into streets to protest the siege of Kobani by ISIS and the government’s inaction in the city.²

Most of the 20 people arrested had been serving on the HDP’s Central Executive Board (MYK) at the time of the protests in 2014. According to the Ankara Chief Public Prosecutor’s public statement, MYK members and co-chairs of HDP at the time are accused of inciting violence in the events between 6 and 9 October 2014 by calling people on social media to go out into the streets to support the protests. The prosecuting authorities argue that these calls were issued along with similar public calls made on some internet sites and social media accounts affiliated with the armed Kurdistan Workers’ Party (PKK) and accuse HDP of having links with the armed organization.³

On 25 September 2020, the Ankara Chief Public Prosecutor’s Office also announced that investigation reports (*fezleke*) will be drawn up to lift the immunity of seven of the party’s current parliamentarians, who were members of its MYK during the protests.⁴ Lifting their immunity would pave the way for their prosecution under the same investigation.

The prosecutor referred the 20 politicians and political activists to the judgeship requesting that they be remanded in pre-trial detention on charges of ‘disrupting the unity and integrity of the state’ (Article 302 of the Turkish Penal Code), ‘intentional killing’ (Article 82 of the Turkish Penal Code) and ‘qualified robbery’ (Article 149 of the Turkish Penal Code).

On 2 October 2020, Ankara Criminal Judgeship of the Peace No.4 ruled to release HDP’s former members of parliament Sırrı Süreyya Önder and Altan Tan ‘given the nature of the evidence against them’, and former MYK member Gülfer Akkaya due to health problems and issued judicial control measures involving regularly reporting to the nearest police

¹Press Statement by Ankara Chief Public Prosecutor’s Office, 25 September 2020, <https://ankara.adalet.gov.tr/06-07-08-ekim-2014-tarihlerindeki-kobani-olaylari-ile-ilgili-basin-aciklamasi-2>

²Authorities at the time were heavily criticized for failing to prevent deaths and injuries during clashes between rival groups, the use of excessive force by police officers resulting in deaths and injuries and inability of the judiciary to provide justice and reparations for the victims/ see Amnesty International, Human Rights Failures in the Context of Kobani Protests in Turkey, EUR 44/2017/2015, <https://www.amnesty.org/download/Documents/EUR4420172015ENGLISH.pdf>

³ Press Statement by Ankara Chief Public Prosecutor’s Office, 25 September 2020, <https://ankara.adalet.gov.tr/06-07-08-ekim-2014-tarihlerindeki-kobani-olaylari-ile-ilgili-basin-aciklamasi-2>

⁴ Press Statement by Ankara Chief Public Prosecutor’s Office, 25 September 2020, <https://ankara.adalet.gov.tr/06-07-08-ekim-2014-tarihlerindeki-kobani-olaylari-icin-basin-aciklamasi>

station as well as overseas travel bans. The Court remanded in pre-trial detention the remaining 17 people, including the Mayor of the eastern province of Kars Ayhan Bilgen, on charges stemming from the protests that include accusations of being responsible for the deaths and injuries of people and police officers and destruction of public and private property in 32 provinces across the country on grounds that ‘there are facts that tend to show the existence of a strong suspicion that the alleged crimes were committed, these crimes are among the list of “catalogue crimes.”⁵ ‘The Court justified their pre-trial detention as a proportionate measure considering ‘the risk of pressure on witnesses and of fleeing abroad, as well as considering the length of the sentence envisaged in the law.’ If convicted, they face a sentence of aggravated life imprisonment under Articles 302 and 82 and a penalty of imprisonment for a term of 10 to 15 years under Article 149 of the Turkish Penal Code.

One lawyer from the HDP Law Commission told Amnesty International that almost all detained politicians and political activists were already interrogated in 2015 under the same investigation file. The mayor of Kars, Ayhan Bilgen, who is among those remanded in pre-trial detention, was previously held in pre-trial detention for eight months in 2017 under the same criminal investigation with similar allegations for which the Turkish Constitutional Court found a violation of his right to personal liberty and security due to unlawfulness of his detention and ordered that TRY 20,000 be paid to him as non-pecuniary compensation.⁶ Ayhan Bilgen’s prosecution continues at Diyarbakır Heavy Penal Court Code No.5.

Amnesty International believes that the rearrest of Ayhan Bilgen under the same allegations relating to the same alleged acts that are subject to an ongoing criminal prosecution is a violation of his right to liberty and seriously undermines his right to a fair trial. On 2 October 2020, following the re-arrest of Ayhan Bilgen, the Ministry of Interior appointed a trustee to Kars Municipality, replacing him with the Kars Governor.⁷

Last year, the imprisoned former co-chairs of the HDP Figen Yüksekdağ and Selahattin Demirtaş were further remanded in prison as part of the same investigation for similar criminal charges.⁸ As of October 2020, an indictment for Yüksekdağ and Demirtaş has not been produced.

The investigation in these cases is subject to a secrecy order, restricting the lawyers’ access to the investigation files. The defence team has not been able to examine the alleged material evidence that forms the basis for the Court’s decision to remand their clients to pre-trial detention and assess and effectively challenge the lawfulness of their detentions.

Amnesty International reviewed the police interrogation file record of Cihan Erdal, a young academic and a political activist, who was one of the members of HDP MYK at the time of the protests and who is among those remanded in pre-trial detention. During the interrogation, he was questioned about his comments on social media from 2014 related to the siege of Kobani, in which he used the hashtag ‘#KobaneResists’ (*#KobaneDireniyor*). The officials considered the hashtag as evidence for ‘mobilizing large masses into streets to commit violent acts and giving support to an armed organization’.

⁵ Article 100/3 of Code on Criminal Procedure provides a list of crimes part of which are defined in the Penal Code and for which the judge may authorise detention, provided that there are strong grounds to believe that they have been committed by the suspect.

⁶ Application No: 2017/5974.

⁷ Replacement of mayors in the southeast and eastern regions of Turkey by trustees appointed by the Minister of Interior began in 2016 under the state of emergency. Relevant provisions of the Emergency Decree Law No. 674 allowing for such replacements were incorporated in Article 45 of the Municipality Law in November 2016 on the grounds when a mayor is suspended from office or remanded in pre-trial detention based on terrorism related criminal investigations and prosecutions. For the impact of the amendments to existing legislation through the Emergency Degree Law No 674, see the opinion of Venice Commission, the Replacement of Elected Candidates and Mayors in Turkey, 18 June 2020.

⁸ In November 2018, European Court of Human Rights ruled that repeated extensions to the pre-trial detention of Selahattin Demirtaş were motivated by an ulterior purpose and violated Articles 5(3) and 18 of the European Convention, calling for his release from prison. The judgment is still pending at the European Court’s Grand Chamber. Demirtaş was not released upon the judgment of the European Court on the grounds that the verdict of the Court was not final. In December 2018, his sentence to 4 years and 8 months in prison for another case was upheld by the Second Criminal Chamber of Istanbul Regional Appeal Court. On 11 September 2019, lawyers of Demirtaş applied to the Istanbul Heavy Penal Court No. 26 to deduct the approximately two years he spent in prison from the 4 years 8-month prison sentence and to request his release on probation. On 20 September 2019, Figen Yüksekdağ and Selahattin Demirtaş were remanded in pre-trial detention after Ankara Chief Public Prosecutor referred them to the criminal peace judgeship as part of the investigation on 6-8 October protests accusing them of being responsible for the violent acts committed during the street protests. Calls from HDP’s official twitter account for support to the street protests against Kobani siege were already among the reasons for the criminal charges against Demirtaş. Concerning the main case including these charges, the European Court had ordered his release from detention. This case still continues at Ankara Heavy Penal Court No 19, who ruled for his release pending trial on 2 September 2019 before the hearing of the Grand Chamber of the European Court in 18 September 2019 to discussion his application.

Based on the same hashtag, officers allege that Erdal posted on social media ‘under instructions from an armed terrorist organization’. He was questioned as if he acted on behalf of PKK, without being presented with any concrete evidence demonstrating his link with the organization. According to his interrogation record, alongside public calls made on some internet sites possibly linked to the PKK, calls for street demonstrations posted on the HDP’s official twitter account⁹ on behalf of the party’s MYK were presented as ‘evidence for the party having links with the PKK headquarters.’

In another interrogation record reviewed by Amnesty International, the investigating authorities confronted the detained former parliamentarian with similar tweets shared from the official HDP twitter account. Tweets posted on the HDP’s official twitter account are considered by the authorities as ‘incitement to commit an offence’, establishing a causal link between their calls to join protests and the acts of violence.

While it is not possible to obtain details of the accusations and evidence against all politicians and political activists due to the secrecy order issued on the investigation file, Amnesty International believes that the social media posts from six years ago are protected forms of expression calling on people to exercise their human rights and cannot be considered as evidence to support the criminal charges against the detained politicians nor constitute sufficient grounds to justify their pre-trial detention.

The lawyers of all the individuals who have been remanded in pre-trial detention appealed the decision of the Ankara Criminal Judgeship of Peace No.4. The appeal was rejected by Ankara Criminal Judgeship of Peace No. 5 on 16 October 2020 on grounds that the order given by the former judgeship was proportionate and lawful.¹⁰

All these facts raise the concern that former members of the HDP MYK and officials at the time might be investigated solely on the basis of their roles and duties within the party organization or for merely being members of the party at the time of the violent protests. What has been presented as evidence so far does not prove that they have incited violence nor committed any other offence.¹¹

Amnesty International is concerned that the decision to remand former and current members of the HDP in pre-trial detention without providing reliable evidence other than comments they and the Party posted on social media may violate their rights to freedom of expression, peaceful assembly and association, and undermines their right to a fair trial. Such a decision further signals another politically motivated crackdown on legitimate political dissent.

Amnesty International calls Turkish authorities to put an end to the use of pre-trial detentions as a form of punishment against political opposition and to bring the country’s laws and their implementation in line with international human rights law and standards. All those arbitrarily detained solely for exercising their rights to freedom of expression, peaceful assembly and association must be immediately and unconditionally released.

⁹ Referred tweets during the investigation that were published from the official HDP twitter account on 6-7 October 2014: “Urgent call to our people! Urgent call to our people from the HDP central executive board, currently in session! The situation in Kobani is extremely dangerous. We urge our people to take to the streets and to support those protesting in the streets against ISIS attacks and the AKP [Justice and Development Party] government’s embargo over Kobani (*Halklarımıza acil çağrı! Şuanda toplantı halinde olan HDP MYK’dan halklarımıza acil çağrı! Kobanê’de duruş son derece kritiktir. IŞİD saldırılarını ve AKP iktidarının Kobanê’ye embargo tutumunu protesto etmek üzere halklarımızı sokağa çıkmaya ve sokağa çıkmış olanlara destek vermeye çağırıyoruz*)”; “We call upon all our people, from 7 to 70, to go out into the streets, to occupy the streets and to take action against the attempted massacre in Kobani (*Kobanê’de yaşanan katliam girişimine karşı 7 den 70 e bütün halklarımızı sokağa, alan tutmaya ve harekete geçmeye çağırıyoruz*)”; “From now on, everywhere is Kobani. We call for permanent resistance until the end of the siege and brutal aggression in Kobani (*Bundan böyle her yer Kobane’dir. Kobane’deki kuşatma ve vahşi saldırganlık son bulana kadar süresiz direnişe çağırıyoruz*).”

¹⁰ The system of horizontal appeals among small number of peace judges of the same level within each region or courthouse against each other’s detention orders was considered by the Venice Commission as problematic, not providing sufficient guarantees that the appeal would be impartially examined. See Venice Commission, Opinion on the Duties, Competences and Functioning of the Criminal Peace Judgeships, 13 March 2017.

¹¹ As of 16 October, Ankara Public Chief Prosecutor included into the investigation file four more members of HDP who were members of the parliament at the time of the protests and referred them to the court for their detention. The court ordered the detention of three politicians and released the fourth on bail. All four politicians are already in prison for other cases. One lawyer from HDP Law Commission told Amnesty International that politicians were mainly questioned in relation to calls published from HDP’s official twitter account, implying a causal link between the calls and the violent acts during the demonstrations. Together with 17 former and present members of HDP put in pre-trial detention on 2 October, number of those for whom arrest warrant was issued under the file increased to 22. Selahattin Demirtaş and Figen Yüksekdağ were arrested in 2019.

ARREST AND DETENTION OF LAWYERS

As part of a criminal investigation on “FETÖ lawyers’ structure”, around 47 lawyers in Ankara and seven other provinces were detained in dawn raids on 11 September 2020 as a result of an arrest warrant of Ankara Chief Public Prosecutor. After 12 days in detention, around 15 lawyers were remanded in pre-trial detention on “terrorism”-related charges, while the others were released on bail.

The lawyers are accused of having links with the Gülen movement that the Turkish government calls Fethullahist Terrorist Organization (FETÖ), accused of having carried out the attempted coup on 15 July 2016. Lawyers were taken into police custody, on suspicion of ‘membership of a terrorist organization’.¹² They are accused of allegedly acting upon instructions of the organization and of influencing the criminal investigations in favour of the organization.¹³

According to two police interrogation records seen by Amnesty International, lawyers were mainly questioned in relation to their professional activities such as the types of cases they litigate and the number of cases related to suspects alleged to have links with the Gülen movement; contractual and monetary relations with their clients; how they find their clients and the average fee charged to the clients. During their interrogation at Ankara Security Directorate, the lawyers were shown a list of names including other lawyers being investigated as part of the same criminal investigation and asked which ones they knew. They were also interrogated in relation to their historic mobile traffic search (HTS) records and wiretapped telephone conversations with their clients and colleagues which should have remained confidential to protect lawyer-client confidentiality, as outlined in the UN Basic Principles on the Role of Lawyers which state that: “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their relationship are confidential.”¹⁴

The lawyers whose interrogation records Amnesty International examined show they were questioned about their professional relations with other lawyers arising from basic lawyering practices, such as attending each other’s hearings or allocating case files to each other implying an organizational relationship.

As the investigation is subject to a secrecy order, the lawyers and their legal representatives were not allowed to examine the investigation files or obtain information concerning the substance of the allegations until their clients were interrogated at Ankara Security Directorate, denying them the right to adequate time and facilities to prepare a defence.

The lawyer of one suspect who was remanded in pre-trial detention after 12 days in police detention at the Ankara Security Directorate Anti-Terrorism branch, told Amnesty International that he was not allowed to access and examine HTS and interception records to legally inform and assist his client before the interrogation. He further stated his client was questioned about the cases which mostly concerned the legal representation of relatives and family friends who were alleged to have links with the Gülen Movement.

Amnesty International notes with concern that the procedural law was not respected by the Prosecutor’s office during the searches of lawyers’ home in Ankara. According to Article 58 of Attorney’s Act (No. 1136), lawyers’ offices and residences may be searched only in presence of both the public prosecutor and a lawyer from the bar association. It was reported by the Ankara Bar Association in a public statement that home searches of lawyers in Ankara were carried out without a lawyer from the Bar being present.¹⁵

It appears that the investigation carried out by the Ankara Chief Public Prosecutor lacks evidence that clearly demonstrates the involvement of the detained lawyers in any criminal act. According to the UN Basic Principles on the Role of Lawyers, governments must ensure that lawyers are not threatened with prosecution or any other sanctions for the

¹² Article 314/2 of the Turkish Penal Code.

¹³ Press Statement by Ankara Chief Public Prosecutor’s Office, 11 September 2020, <https://ankara.adalet.gov.tr/fetopdy-nin-avukatlik-yapilanmasina-yonelik-yurutulen-sorusturmada-60-supheli-hakkinda-arama-el-k>

¹⁴ UN Basic Principles on the Role of Lawyers, Principle 18.

¹⁵ Press Statement of Ankara Bar Association, 14 September 2020, <http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?DUYURU&=7348>

exercise of their legitimate duties and should not be identified with their clients or their clients' causes simply for discharging their duties.¹⁶

Investigating lawyers for exercising their professional duties and representing clients accused of "terrorism"-related offenses threatens the very core principles of the right to a fair trial. Criminal proceedings against lawyers in connection with their professional activities and associating them with the alleged crimes of their clients undermine the right to legal representation and defence.

Amnesty International is deeply concerned that identifying lawyers with the profile and alleged crimes of their clients may have a chilling effect on the rights of the accused to a fair trial as it might dissuade lawyers from taking on the legal defence of those accused of terrorism-related charges and may hamper their right to the presumption of innocence.

Amnesty International urges the Turkish authorities to respect the independence of the legal profession, to allow lawyers to conduct their work freely, individually or in association with others, and to protect the lawyers' right to privacy by enforcing client/lawyer confidentiality in line with international human rights standards. All those lawyers who are detained solely for exercising the legal profession should be immediately and unconditionally released.

OPERATIONS AGAINST ACTIVISTS AND SOCIAL MEDIA USERS

Activists and social media users across the country including journalists, lawyers and authors were detained in dawn raids on 25 September in operations conducted by the Istanbul Security Directorate Cyber Crimes Bureau. The state-run Anadolu Agency reported that 24 individuals were detained over provocative social media posts 'inciting the public into enmity and hatred, degraded state officials and attempted to erode the elected government' in the name of the 'Movement of the Nameless',¹⁷ although not all those taken into custody were related to each other.

Six detainees were released after deposing at the security directorate and the remaining 18 people were referred to the court.¹⁸ On 29 September, after four days in detention, 11 people including author Temel Demirer were released following their deposition at the Prosecutor's Office.¹⁹ The remaining seven individuals were referred to the criminal peace judge; four people were released on bail and three others were remanded in pre-trial detention on the charge of 'insulting the President'.²⁰

As there is a secrecy order over the investigation, lawyers of the detainees did not have knowledge about the substance of the allegations before the interrogation by investigating authorities.

Amnesty International has seen the content of the interrogation record of author Temel Demirer, in which he was accused of 'membership of a terrorist organization',²¹ 'making propaganda for a terrorist organization',²² 'inciting the public into enmity and hatred',²³ and 'defamation against the President of the Republic'²⁴ based on digital materials obtained from the examination of image files of his computer's hard disk. Investigating authorities questioned Demirer in relation to his photos taken during peaceful demonstrations, panels and seminars where he was invited as a speaker, none of which come remotely close to constituting evidence to the alleged criminal charges.

Authorities asked Demirer questions about his social media sharings, which did not contain language inciting violence or hatred. Demirer was also questioned in relation to viewing social media posts of the twitter account "Movement of the

¹⁶ Principles 16 and 18.

¹⁷ Anadolu News Agency, 25 September 2020, <https://www.aa.com.tr/tr/turkiye/sosyal-medyanin-terror-orgutune-operasyon-24-gozalti/1985107>

¹⁸ Medyanews, 29 September 2020, <https://medyanews.net/twenty-three-detained-in-movement-of-nameless-operation-in-turkey/>

¹⁹ Bianet, 29 September 2020, <http://bianet.org/english/print/231720-investigation-against-movement-of-the-nameless-3-people-arrested>.

²⁰ Medyanews, 29 September 2020, <https://medyanews.net/twenty-three-detained-in-movement-of-nameless-operation-in-turkey/>

²¹ Article 314/2 of the Turkish Penal Code.

²² Article 7/2 of the Anti-Terror Law No. 3713.

²³ Article 216 of the Turkish Penal Code.

²⁴ Article 299 of the Turkish Penal Code.

Nameless” and of Taylan Kulaçoğlu, who was previously remanded in pre-trial detention in May 2020 for being the founder of the movement. Based on the image files of the hard disk, the authorities also claimed that Demirer was a member of a Telegram messaging group belonging to the “Movement of the Nameless” with more than 4.000 thousand members. On 14 October, the decision that a prosecution would not be pursued was communicated to Temel Demirer.

Amnesty International believes that the content of the social media posts forming the basis of the prosecuting authorities’ allegations are protected under the right to freedom of expression, guaranteed under international human rights law.

Amnesty International urges the authorities to put an end to the targeting of social media users, political opponents, public figures and others simply for expressing their dissenting opinions by invoking legal provisions in Turkey’s overly broad anti-terrorism laws to criminalize dissent and silence opposing views.

CONCLUSION

Since the attempted coup in July 2016, large-scale prosecution and detention of opposition politicians, journalists, human rights defenders, lawyers, academics and other civil society actors using broadly and vaguely defined anti-terrorism laws has led to the criminalization of legitimate acts, the creation of a climate of fear and the erosion of core human rights in Turkey. Abusive investigations and prosecutions targeting political opposition, legal profession and civil dissent continued in the recent months and they were strongly condemned by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) in a recently adopted report on Turkey.²⁵

Investigations related to “terrorism”-related offences are routinely subject to secrecy orders. These orders restrict access of lawyers to investigation files and the evidence held against their clients and hamper their ability to mount an effective defence. Suspects are prevented from knowing the substance of the allegations brought against them until they are interrogated by the investigating authorities. These measures have become a dominant feature in the investigation and prosecution of individuals who face allegations under anti-terrorism laws, often for their peaceful exercise of human rights.

International human rights law and standards require authorities to ensure that a detainee has the right to defence and access to information necessary to challenge the lawfulness of the detention and to challenge allegations put forward by the authorities.²⁶ Every person accused of a criminal offence has the right to a fair trial and the principle of equality of arms must be respected. Equality of arms is not ensured if a lawyer is denied access to documents in the investigation file or if they are not granted adequate time and facilities to effectively challenge the lawfulness of the detention.²⁷ Restrictions of access to investigation files may constitute a violation of Article 5(4) of the European Convention and article 14 of the International Covenant on Civil and Political Rights to which Turkey is a party.

As recently expressed by UN Special Rapporteurs, Turkey has adopted an unacceptably broad definition of ‘terrorist’ acts and individuals accused of “terrorism” implicate a range of activities protected by the rights to freedom of expression, association and political participation.²⁸ As stressed by the UN Human Rights Committee, “any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application”.²⁹

Amnesty International urges the Turkish authorities to bring its anti-terrorism legislation in line with international human rights law and standards and to refrain from criminalizing the peaceful exercise of human rights by unjustified investigations, punitive and arbitrary pre-trial detentions or abusive prosecutions. All those who have been detained solely for exercising their rights to freedom of expression, association and peaceful assembly must be immediately and unconditionally released.

²⁵ PACE Monitoring Committee, New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards, Doc. 15171, 19 October 2020.

²⁶ ICCPR Articles 9 and 14; ECHR Article 5; Human Rights Committee, General Comment No:35, Article 9 (Liberty and Security of Person), para 46; Working Group on Arbitrary Detention A/HRC/27/47.

²⁷ Mustafa Avci v Turkey, (39322/12), European Court (2017), § 90.

²⁸ [OL TUR 13/2020](#), 26 August 2020.

²⁹ Human Rights Committee, General Comment No:35 para 22.