

THE ASSESSMENT OF THE 4th JUDICIAL REFORM PACKAGE AGAINST THE CHECKS AND BALANCES BENCHMARKS

Last week, the Grand National Assembly of Turkey ratified the Law on the Amendment of the Criminal Procedure Code and Some Laws which aims to realise the targets that are put forward in the Judicial Reform Strategy Document and Human Rights Action Plan.

Publicly known as the “4th Judicial Reform Package”, the ratified law consists of 28 articles and includes amendments and insertions to important laws such as the Law of Criminal Procedure and Turkish Penal Law. Apart from the amendments and insertions that regulates important aspects of the judicial system such as the right to due process, vertical checks and balances inside the judiciary, and the efficiency of the judicial processes, the new judicial reform package also introduces new regulations for crimes such as violence against women, femicide and child abuse.

The aim of this Policy Paper is to analyse the recent changes introduced with the 4th Judicial Reform Package against the benchmarks of the Checks and Balances Network and to propose our concrete recommendations for effective application of the new amendments and to prevent a backsliding regarding the acquired basic rights and freedoms.

The New Amendments in 4th Judiciary Reform Package

The new reform package introduces amendments to the Law of Administrative Jurisdictional Procedures. The amendments decreased the deadline for answering the applications for administra-

tive judicial processes from 60 days to 30 days. The final decisions that are made by the administrative judicial bodies are required to be written within 30 days with their preambles.

The new reform package also introduces important amendments to the Turkish Penal Law. The crimes of homicide, premeditated assault, torture, and deprivation of liberty, which are seen as aggravating circumstances, are extended to partners who are divorced.

Important amendments and insertions are also introduced to the Law of Criminal Procedure:

In crimes committed by using banks or credit institutions or bank/credit cards as a tool, the courthouse located in the victim’s residence will be authorised to investigate and hear the case, in addition to the Office of the Chief Public Prosecutor and the court in the place where the crime was committed.

The amendment that allows the Public Prosecutor to order the release of the person who was caught out of working hours and who undertakes to be present before the judicial authority on the specified date upon the arrest warrant issued for the purpose of taking his statement. This provision will be valid once for each arrest warrant, and an administrative fine of 1000 Turkish Liras will be imposed by the Public Prosecutor’s Office, where the arrest warrant is issued, for the person who does not fulfil his/her commitment.

Every 2 days spent under the obligation not to leave the residence, known as “house arrest” in pra-

ctice, will be taken into account as 1 day in the deduction of the penalty.

The amendment that requires judges and courts to show concrete evidence for their decisions on detention, the extension of the detention period, and the rejection of the request for discharge.

Whether the continuation of the judicial control measure is required will be decided at intervals of 4 months at the latest by the Criminal Courts of Peace during the investigation phase on the request of the Public Prosecutor, and by the court automatically during the prosecution phase.

The new amendment introduces upper time limits for the application of judicial control procedures for different forms of crimes.

Arrests for crimes including genocide, violating the Constitution, and child sexual abuse will depend on strong suspicion based on concrete evidence.

In addition to the decisions not to prosecute, in case of acquittal, the records regarding the detection and hearing will be destroyed with the same procedures and principles under the supervision of a judge, and the situation will be notified in writing to the person concerned within 15 days at the latest.

In indictments prepared by the Prosecutor's Office, information that is not related to the events that constitute the crime attributed to the accused or the evidence of the crime will not be included.

Information regarding the indictment and the date of the hearing will also be notified to the accused by means of telephone, fax, and e-mail. This notification also will be made to the victim of the crime and the complainant in the same way.

Objections for Criminal Courts of Peace decisions for arrest and judicial control will be inspected by Criminal Courts of First Instances'.

General Assessment of the 4th Judicial Package

The 4th reform package introduces important, yet very limited improvements on some of the general problem areas regarding judiciary in Turkey, such as long detention periods and detention deci-

sions without concrete evidence and justification, vertical checks inside the judiciary, and efficiency of judicial procedures.

We as Checks and Balances Network find the amendments that decrease the administrative authorities' time for answering the applications as a positive amendment that can enhance the efficiency of the judicial processes. Moreover, the introduction of deadlines for decisions and replies will alleviate the problem of extensive duration of the administrative judicial processes.

We also consider the amendment that extends the application of aggravated circumstances to partners who are divorced as a positive, yet limited step to prevent femicide and violence against women. However, one serious shortcoming of this amendment is that it excludes unmarried women. Considering the scale of the problems of femicide and violence against women in Turkey, limiting the application of the new amendment to married or divorced couples shows that these problems are perceived from a family perspective instead of a gender mainstreaming perspective. Such an approach that rules out gender inequality as a root cause of femicide and violence against women will reproduce the instances of femicide and violence against women instead of decreasing them.

We see the amendments to the Law on Criminal Procedures as positive but limited steps for solving judicial problems such as long detention periods, detention decisions without concrete evidence and justification, deterioration in rights against self-incrimination. We recommend that there should be some mechanisms for checking and enforcing the application of these new amendments.

Similarly, we consider it important for the protection of fundamental rights and freedoms that decisions will be made at 4-month intervals during the investigation and prosecution phases regarding the continuation of judicial control. However, despite the fact that a similar provision is in the legislation regarding detention, what has happened in practice raises questions about how the new provision regarding judicial control will work in practice.

Expanding the practice of destroying records related to detection and listening in cases of decisions

not to prosecute, to include acquittal decisions, and regulations such as the inclusion of only the evidence regarding the accusation about the accused in the indictment are positive steps in the context of the right not to be labelled.

Another limited but positive step that improves the vertical accountability and supervision inside the judiciary is the amendments that establish vertical accountability between Criminal Courts of First Instances and Criminal Courts of Peace by giving the supervisory powers to the former. Although it is a positive step for establishing vertical accountability inside the judiciary, as we emphasized in our previous reports, the system of criminal courts of peace is problematic by itself and needs substantive reform.

We see the amendment that introduces the requirement for strong suspicion based on concrete evidence for catalogue crimes as a positive step in terms of preventing arbitrary detention decisions without enough justification. Nevertheless, considering the scale of child sexual abuse crime in Turkey and the difficulty of collecting substantial evidence based on concrete evidence for these crimes, there is a high risk for decreasing deterrence and increasing the prevalence of these crimes with this amendment.

CONCLUSION

The 4th judicial package introduces some important amendments to alleviate the problems of long and unjustified detentions and judicial control decisions. Nevertheless, we as the Checks and Balances Network see the substantial deterioration of independence and impartiality of the judiciary at the root of all problems that we see in the daily functioning of the judicial institutions. The 4th Judicial Package tries to bring important amendments within the context of a judiciary branch that is significantly under the control of the executive branch. Hence, we believe that without a substantial reform process that establishes the independence and impartiality of the judiciary, these partial amendments regarding the judiciary will not be a solution to the root causes of the problem. With such an emphasis we list our concrete recommendations regarding the 4th reform package:

- While we find the amendments to the Law of Administrative Jurisdictional Procedures positive, we believe that to reduce the grievances caused by the actions of the administrators who use authority on behalf of the administration, the accountability of the administration can be increased by imposing certain sanctions on the relevant administrators in cases where the administration is found to be unfair.
- Although we see the extension of the application of aggravated circumstances to divorced partners as a positive step to deter the incidences of femicide and violence against women, we recommend that the application of this law should be extended to all women regardless of their marriage or divorce.
- We see the amendment that requires justification of court decisions for detention, prolongation of detention, or decline of eviction decisions as a positive step for alleviating the problem of long detention periods without justifications based on concrete evidence. Nevertheless, to see the proper and effective application of this amendment, there need to be some mechanisms for inspection of these court decisions.
- Although the amendment that establishes a vertical checking mechanism between Peace Courts and Court of First Instances is a positive step to establish vertical checks and balances system inside the judiciary, we believe that the Peace Courts system needs a more substantial reform which also includes structural reforms that establish the independence and impartiality of judges.
- Considering the long and unjustified detention decisions which are generally not implemented as a cautionary procedure but as a penalising procedure, the amendment that introduces the requirement for strong suspicion based on concrete evidence is a positive step. Nevertheless, considering the scale of child abuse in Turkey, we recommend that such crimes should be regulated separately from catalogue crimes and the victim's statement can be used as concrete evidence for crimes such as child abuse.



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