**Views of the Human Rights Agenda Association**
**Regarding the First Package under the Judicial Reform Strategy**

Renovation, Not Reform!

The views of the Human Rights Agenda Association on the articles included in the first package of amendments to the judiciary reform strategy shared with the public are brought to the public's attention as follows:

1) One of the most notable articles in the package, which is intended to be added to the Passport Law no. 5682 for individuals who have been expelled from public office and whose passports have been revoked by decrees under the law (CSR) are available[1]. First of all, it should be noted that the term "due to its membership or affiliation with or contact with structures, formations or groups or terrorist organizations that are found to pose a threat to national security..." enters into the laws of the Republic of Turkey for the first time with this article.

As it is known, "structures, formations or groups that pose a threat to national security" constitute the main agenda of the National Security Council, and the subject of the National Security Policy Document prepared by this board, known to the public as the "Red Book", as well. This document is not a document of law, but a political document as its name suggests. Perhaps for the first time in the history of the Republic, it is observed that a political document constitutes the basis of the text of a law. Of course, law may also have a policy, but the fact that a political document becoming the source of a law document is not an approach that is compatible with the principles of the rule of law. Political documents may change over time and circumstances, and structures that were previously considered a threat may be removed from the threat by politics; on the other hand, according to the request of the political powers, which were not considered a threat in advance due to politics, the threat can now be considered. However, the laws have to be general, objective, non-personal, specific and predictable texts. In the event that this article, presented as a reform, becomes law, the content of the Red Book will be recognized by a legal document and a significant contribution will be made to the much-complained politicization of the law.

Another point that stands out in the article is that concepts such as "coherence" and "contact" are included in the text of the law, which has no corresponding in our legal system and especially in

1 Passport Law No. 5682
"Additional Article 7-Due to its membership or affiliation with or contact with structures, formations or groups or terrorist organizations identified as a threat to national security;
A) Those whose passports have been revoked due to their expulsion or rank in accordance with the laws adopted under state of emergency and those who have established administrative proceedings to prevent passports from being issued,
B) Article 5 of the Law on amending and adopting the Decree on Measures Taken under The State of Emergency no. 6749 dated 18/10/2016 and provisional article 35 of the Decree no. 375 dated 27/6/1989 those whose passports have been revoked and those who have established administrative proceedings against them for not isting passports,
C) Those whose passports have been revoked in accordance with Article 22 of this Law, except those prohibited from going abroad by the courts, and those who have established administrative proceedings against them,
for the same reasons; those who do not have any ongoing administrative or criminal investigation or prosecution, that there is no place for prosecution, that there is no room for acquittal, no punishment, and those who have decided to dismiss or dismiss the case, those who have been fully executed or postponed, if they refer to those who have decided to withdraw the release of the sentence, may be issued a passport by the Ministry of Interior according to the results of the investigation by law enforcement agencies."

criminal law. As it is known, neither the Turkish Penal Code, the Anti-Terrorism Law, nor any text of any law mention "coherence or contact with a terrorist organization" except the Statutory Decrees. The mention of these concepts in the text of the law, which were put forward during the State of Emergency is not only do not make sense in law, but also it is not legal as it does not conform to the technique of law-making.

Another point is that the constitutional presumption of innocence is almost reversed in the article text. As it is known, freedom of travel is a constitutional right and may be restricted by law under the conditions set out in article 23 of the Constitution. Freedom is the rule and restriction is the exception. However, if the article becomes law in this form, “those who do not have any ongoing administrative or judicial investigation or prosecution, those who have no room for prosecution, acquittal, dismissal or those who have been sentenced and sentences have been fully executed or deferred, those who have decision to withdraw the release of the sentence, according to the results of the investigation to be carried out by law enforcement agencies, passports can be issued by the Ministry of Interior”, "the requirement to have proven innocence" is required in order to obtain a passport. The burden of proof is reversed by article and the innocence of the people who want to obtain a passport is sought to be proven, thus a great violation of law and the Constitution is signed.

Another point is, "... passport *can be* issued by the Ministry of Interior" provision, that stipulates with *argumentum a contrario,* "passport may not be issued". Limiting a constitutional right by law enforcement research without identifying the elements anywhere is not seen in the states of law. In the rule of law, "from restriction to freedom" is not to go but "freedom to restriction" that can be done in accordance with the law.

This situation, which is perceived by the public as the return of a right that has been unlawfully usurped by the Statutory Decrees and now by law, means the adoption of the unlawful transaction by law. What needs to be done is to amend law no. 7145, which makes the decrees into law, and the restitution of the usurped rights.

2) Another item that stands out in the package is the presentation of the Entrance Examination for Legal Professions. In an environment where there are around 103 known Law Faculties (73 of them are active) and 190 different law programs in the 2019 University Entrance (ÖSYM) program including Turkey and the TRNC, and around 50,000 law school students currently studying and 125,000 lawyers are employed, it is clear that an exam will only provide a palliative solution. Although the necessity of abandoning opening a law school as an easy way to increase quotas with almost zero investment is expressed by many people and institutions, politics has not been able to understand. Instead of conducting science exams for graduates of the Faculty of Law, the active supervision of existing Law Faculties, faculty members and physical conditions by setting measurable standards, close the ones fall below these standards and strengthen existing faculties are needed. The solution to the problem is not to re-test people who are legally licensed and have scientific qualifications, but to convince the public that the obtained diploma actually proves competence. As a known methodical reality, those who are the creator or part of the problem cannot be part of the solution.

3) Another article in the package is the addition to paragraph 2 of Article 7 of the Anti-Terrorism Law (ATL) No. 3713[2]. It is observed that the addition of almost identical words to articles 216 and 301 of the Turkish Penal Code (TPC) has now been made to the Anti-Terrorism Law. In the past, when the penalties given to writers, illustrators, thinkers and intellectuals were met with a public backlash, convictions from TPC art.216 and 301 decreased, in contrast ATL art.7/2 came to the fore

2 Anti-Terrorism Law No. 3713
Addition to Article 7/2: "Statements of opinion that do not exceed the limits of reporting or are made for the purpose of criticism do not constitute a crime."

as a tool for limiting freedom. In 2013, especially as part of the European Union reform process, the violence element in propaganda crime was recognized as a condition, and then during the state of emergency period, as if the 2013 amendment had never happened, the text of the article is ignored by the implementation. Actually, the problem is deeper. Starting from the former TPC no. 765 period, articles 141,142,163 and 168 were used as tools to prevent freedom of expression, and after the removal or modification of these articles, the "tool" duty was deposited to ATL art.8 and former TPC art.312. It is observed that articles 216 and 301 took over this task during the enaction of the new TPC no. 5237, and that after the texts softened by the additions made to these articles following the Hrant Dink and Orhan Pamuk cases, this task was replaced by ATL art.7. Indeed, it is known by all judges that statements of opinion made that do not exceed the limit of reporting or for the purpose of criticism do not constitute a crime. What needs to be done is to abolish the Anti-Terrorism Law, which is now an obstacle to democracy, instead of repeating the known reality in the article, if this cannot be done, consider all statements other than the propaganda of violence legal and in particular to influence the implementation in a way that acts in accordance with the law.

Another point to be addressed in the article is the opening of the scissors between the upper and lower limits of the sanction. Granting a margin in the form of "from one to five years" allows for bad practices. In practice, the fact that the vast majority of convictions are committed through press and publication stipulates the upper limit of the crime as 7 years and 6 months. A verbal crime alone is punishable by 7.5 years, of course, takes reaction from the civilized world.

4) The package adds to Article 75 of the Turkish Penal Code regarding the prepayment institution. This change, which extends the scope of prepaid offences to a limited extention and introduces the procedure of installment in the prepayment, is considered positive.

5) With the amendment stipulated in the Penal Procedure Code No. 5271 (PPC), maximum detention periods are determined. First of all, it should be noted that the procedure known to the public as "catalogue crimes" and for some crimes listed in PPC art.100 should be abandoned as an automatic detention institution. The conditions of detention should be limited to the concrete suspicion of escape and the possibility of blackout evidence to be determined by the judge on each case, the detention institution should be removed from a punishment mechanism and take the form of a protection measure to the form of which it belongs.

PPC art.102 text[3] shows that a rule is determined immediately afterwards. Although the determination of 6 months in non-aggravated felony duty and 1 year in the cases involving the aggravated felony is the rule, the two-year exception was effectively included in the criminal group known to the public as "crimes against the state". The problem with the long-term detention is that they are actually for these crimes, which the draft text considers an "exception" and constitutes the overwhelming majority of the problem. While there is no distinction between crimes in the law, such a distinction in terms of maximum detention periods in the pre-trials era is contrary to law and law-making techniques. In terms of all offences, there is no possibility of resolving the problems in this regard until a single maximum period of time is established without exception.

Another problematic issue is the maximum duration in investigations. While the results of

3 PPC art.102-Time spent in detention
"....
(4) The period of imprisonment during the investigative phase shall not exceed six months in terms of the work that does not fall under the duties of the aggravated felony court, and not more than one year in terms of the works that fall into the duty of the agrravated felony court. However, in terms of crimes defined in The Fourth, Fifth, Sixth and Seventh Chapters of the Second Book of the Turkish Penal Code, crimes under the Anti-Terrorism Law and crimes committed collectively, this period is no more than one year and six months, can be extended for another six months.
(5) The detention period stipulated in this article shall be applied at half the rate for children under the age of fifteen at the time of actual action, and three-quarters for children under the age of eighteen."

implementation such as predetermined "target time" are not yet known to the public, it is not clear how to make progress from this point. Furthermore, there is no obstacle in our legislation for the Public Prosecutor to reopen an investigation that he had already completed. International standards in this regard should be followed and a determination should be made.

6) In the context of PPC art.171, it is considered positive that the upper limit should be reduced from one year to two years when it comes to the discretion of the Public Prosecutor in opening a public case[4]. However, the last paragraph, which is intended to be added to the substance, is, so to speak, retrieve the one he gave with a spoon with a scoop. With this addition, which was not previously in the article text, the only use of the article in order to expand the rights and freedoms is almost blocked. The last paragraph must definitely be removed from the draft.

7) Arrangements to be introduced in the context of PPC art.236 for all sexual offences in general[5], especially in the context of taking statements that cause secondary trauma in the investigation and prosecution process of women and children who are victims of sexual assault and sexual abuse, although it is positive, the process of consulting with non-governmental organizations operating in the areas of women's rights and children's rights should never be skipped. In particular, it is considered as a necessity to avoid vague statements such as "... it is considered to be objectionable to face-to-face" or "necessary measures are taken for privacy" that are in the draft text, and if necessary, simultaneous adoption of the regulation on which these issues will be regulated in detail.

8) The issue of serial and simple trial procedures, which are intended to be introduced with the amendments to PPC art.250 and 251, is also noteworthy. Accordingly, it is foreseen for 13 crimes in serial court procedure, the public prosecutor and the suspect comes to an agreement like the “plea bargaining” system in US, such as causing noise, endangering general security, endangered traffic safety; for crimes with a simple judicial procedure, which stipulate a sentence of up to 2 years, allowing a verdict without trial, the judge's ability to make a decision without trial through the file after receiving the written statement of the accused and the victim, opening a trial upon the objection of one of the parties, crimes such as simple injury, involuntary injury, simple threats, insult are envisaged to be evaluated in this context.

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4 PPC art.171-Discretion in filing a public case
“....
(6) The provisions of this article does not apply to
a) Crimes committed within the framework of the organization's activity,
b) Crimes committed by a public official for his or her duty or for his duty to a public official;
c) Crimes against sexual immunity”

5 PPC art.236-Listening to the victim and the complainant
“....
(4) Statements taken by the public prosecutor or judge that the statements should be taken in a private environment or that it is considered to be objectionable for the child or victim to come face to face with the suspect or the accused.
(5) The statements of children who are victims of crimes committed in the second paragraph of Article 103 of the Turkish Penal Code are taken through experts under the supervision of the Public Prosecutor in the centers providing services for them. Statements and images of the victim child are recorded. In the course of prosecution, however, if the victim's statement is required to be obtained or otherwise taken in order to reveal the material truth, this shall be carried out by the court or by the delegated judge through experts. The procedures specified in this paragraph shall be carried out by taking the victim child to the nearest center regardless of the judicial environment and the property boundaries.
(6) The fifth paragraph shall also apply to the statements of the victims of crimes committed in the second paragraph of Article 102 of the Turkish Penal Code in respect of the statements in the investigative phase. However, the consent of the victim is sought in the recording of the declarations and images.
(7) Statements and images recorded under the fifth and sixth paragraphs are stored in the case file and necessary measures are taken for their privacy.”

One of the ancient problems of our criminal justice system is the restriction of the right to defend in the context of the right to a fair trial. In an atmosphere of law in which the defense is already narrowed in the face of the claim, these procedural changes, which are very convenient to impose other limitations on the right to defense, must be made with utmost care and without haste. Otherwise, in the long run, Turkey will only increase convictions from the European Court of Human Rights. If a real reform of the judiciary is to be made, the point of action should not be "reducing file density at all costs".

9) The balance of appeals and cassation is also one of the remarkable provisions of the draft. Based on the example of journalists of Cumhuriyet newspaper, in order to avoid any more strange situations, in the same case, such as the fact that some of the accused go to prison after the appeals, which finalizes the procedure of the lesser sentence that leads to the execution, where other group who had higher punishment but do not go to prison because their files have been sent to Court of Cassation and not finalized yet, the procedural changes should not be taken quickly, the legal public and related NGOs should be given enough time to prepare an opinion, and it is necessary to ensure accountability of the inadequate bureaucrats who have made incorrect changes and turned the law into a summer-and-grizzly board.

10) The addition to Article 8 of the Law on The Regulation of Publications made on the Internet no. 5652 and the Fight against Crimes Committed Through These Publications is evaluated positively even if it is late[6].

Based on all these points mentioned above, the draft presented to the public as a "reform" is not in fact a reform in the expansion of human rights and freedoms, but a "renovation" attempt limited to the purpose of creating a number of temporary solutions. The urgency of creation of a real reformist atmosphere and the necessity to take appropriate steps, the urgent placement of a human rights-based outlook in the bureaucracy of the Ministry of Justice, and any reform initiative that is not based on human rights is unlikely to succeed, are offered to the public's discretion.

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6 Law no. 5651 art.8-Decision and fulfillment of the denial of access:
"....
(17) Decisions to deny access under the second, fourth and fourteenth paragraphs of this article shall be made by denying access to content in connection with the publication, part, section (URL, etc.) where the violation took place. However, in cases where access to technically infringing content cannot be prevented or the violation cannot be prevented by blocking access to the relevant content, a decision may be made to block access to the entire website."