

CENTER FOR DEMOCRACY RESEARCH

REPORT

BAZAAR AND NEIGHBORHOOD WATCHERS CODE

Yusuf Şerali
Büşra Altuntaş
Arda Sirkeci
Selin Ongan



What Has “Bazaar And Neighborhood Watchers Code” Brought Into Our Lives By Being Published in Legal Gazette Dated June 18, 2020?

- Entry for the profession of Watchers became dependent on their success in the exam, in which its procedures and principles are to be determined by the regulation published by the Ministry of Interior.

The Opposition of Turkey used the following expressions against the regulation in the annotation written in the commission report: “The conditions to be wanted for the Watcher candidates who will be members of a group that could use guns and the conditions for entry to the profession should have been determined very strictly and meticulously. Specification of the procedures and principles of the exam with a regulation to be issued by the Ministry of Interior is frankly unconstitutional due to articles 7 and 128 of the Constitution of the Republic of Turkey.”

- The missions of helping the people such as warning the residents of the neighborhood in case of catastrophes, guiding those who ask for directions, and helping the victims of accidents were given to the Watchers.

Among the duties of the Watchers to help the public is to deliver women and children who are victims of violence or at risk of violence or abuse to the nearest enforcement team. According to the meaning of regulation, it is evident that a man who is a victim of violence cannot benefit from this mission of help.

This regulation could be expounded to the outrage caused by the violence against women and children in our country and it is possible to infer that the legislator is aiming to offer sensitivity on the issue. If we interpret it in accordance with the purpose of the provision, we must conclude that the Watchers are responsible to each person for this help mission. We think that this regulation should be written as “individuals who are at risk of violence or abuse” in order to avoid any doubt.

The Opposition of Turkey suggested the expressions “who is in need of assistance or who is unable to express a request for assistance due to the circumstances one is in even though he/she is clearly in need of assistance” to be used in this regulation instead of the expression “considered needing assistance”

- The law has commissioned the Watchers to take action until the arrival of the general law enforcement in order to prevent demonstrations, marches and disturbances that may disrupt public order.

The opposition annotated this duty on account of the fact that the expression “of a nature to disrupt public order” would cause arbitrariness in practice. Other than that, The Opposition asserted, “according to the law, demonstrations and marches cannot be held at night, this authority given to the Watchers seems meaningless.”

- In addition, they are mandated and authorized to carry out patrol services in the region where they are assigned during duty hours, to have the measures taken by the owners to protect the property such as residences, workplaces and vehicles within their duty areas, to report the places where drugs are produced, sold or used, gambling or prostitution is made to the general law enforcement units they are affiliated with, to prevent attacks and threats against people’s life, property and chastity, and to take the necessary measures until the general law enforcement officers arrive, to report malfunctions such as water, natural gas, sewerage, to the general law enforcement units and related institutions and organizations and to take the necessary preventive measures until the duty teams arrive, to protect those who disturb the peace and rest of the people and others. to prevent those who disturb, to remove the vehicles and other obstacles that prevent traffic by blocking the streets, passages and squares, to inform the general law enforcement units to which they are affiliated when necessary, to inform the general law enforcement in case of disasters and dangers such as fire, earthquake, flood, and to take the necessary preventive measures until the duty teams arrive.

- Watchers can stop people and ask for their ID card, in order to prevent the commission of a crime or misdemeanor, ensure that the escaped perpetrators are caught, identify those who have an arrest warrant or to bring them by using force, prevent an existing or potential danger for individuals or society.

The Opposition included the statements below in their annotation against this regulation: “The expression “preventing the fall from a grace or commission of a misdemeanor” is unclear and carries the risk of causing arbitrariness.

Although the same expression is used in the Police Duties and Powers Code, an expression like this, which is worrisome even in terms of the application of the police, which has a legal and institutional framework for the profession entrance exam, candidacy, training and appointment, is not a legal criterion for the use of power, by the Watchers is even more alarming. The expression “an actual or potential danger to society” carries the risk of causing arbitrariness to happen.”

- Among the missions of the Watchers, there is to take the necessary precautions, including manual external control, to prevent harm from themselves or others, in case there is sufficient suspicion that there is a weapon or other dangerous things on the person stopped or in their vehicle.

The Opposition argued that this regulation is unconstitutional to Article 20/2 of the Constitution. In a related paragraph, “Unless there exists a decision duly given by a judge on one or several of the grounds of national security, public order, prevention of crime, protection of public health and public morals, or protection of the rights and freedoms of others, or unless there exists a written order of an agency authorized by law, in cases where delay is prejudicial, again on the above-mentioned grounds, neither the person, nor the private papers, nor belongings of an individual shall be searched nor shall they be seized. The decision of the competent authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his decision within forty-eight hours from the time of seizure; otherwise, seizure shall automatically be lifted” expression is revealed contrary to constitution status.

- Judicial duties and powers are also given to the Watchers. These are while the crime was committed or after it was committed, while the traces are still in the scene;
 - a) Catching suspects,
 - b) To take measures to prevent the suspects they have caught from harming themselves or others,
 - c) To take the necessary preservation measures so that the evidence of the crime is not lost or corrupted,
 - ç) To determine the identity and address information of the witnesses, if any, and to report them to the general law enforcement units,

d) To catch people for whom an arrest or warrant of arrest has been issued, regardless of whether they are at the location at the time of the crime or after the crime is committed, and hand them over to the general law enforcement officers. The opposition argues that the presence of traces of crime gives rise to a subjective assessment and that this is going to lead to arbitrariness.

- This code has equated the Watchers' authority to use weapons and force with the police.

The Opposition has found this regulation objectionable on the grounds due to the fact that it contained many risks in terms of fundamental rights and freedoms. This delegation of authority renders the difference meaningless between the police, which is the main law enforcement officer, and the Watchers, who is the auxiliary law enforcement; and this authority, which is exceptional in a state of law and should be subject to extremely strict conditions. It is extremely inconvenient to expand this authority to guards where there aren't sufficient regulations regarding vocational training, who will have the same powers as police officers trained in an institutional framework.

The regulation is kind of risky and will create a danger in terms of fundamental rights and freedoms, especially the right to life.

- The Watchers have been getting assigned the task of helping general law enforcement.
- According to this code, it has been forbidden for the Watchers to work for any other job other than being watcher.
- The working time is limited to 40 hours per week. Hours of attendance is including the time sunset from sunrise.

Evaluation of Bazaar and Neighborhood Watchers Code within the Scope of Criminal Procedure Law

- Within the scope of Bazaar and Neighborhood Watchers Code no. 7245, juridical power and duty of watchers has been arranged as a subsidiary to the police force. In comparison to abrogated code no. 772, juridical power and duties of watchers are expanded and approximated to the authority of the police force. In case of the power to stop and ask for ID cards; according to article 7(2) of the code no. 7245, there must be a reasonable cause to use power to stop. This power cannot be used in a way that causes continuity and arbitrariness. Operation of stopping can be made when there is a reasonable cause that depends on the police's experiences and his impression of the situation. Reasonable cause refers to a sensible and logical cause in the nature of the things. However, reasonable cause criteria has been arranged for police and gendarmerie forces. Neighborhood and bazaar watchers are subjected to a less intense and short training compared to police and gendarmerie forces. Besides, as the organization of watchers came into existence much later than the police force, an organizational memory is not constituted. Consequently, having both watchers and police and gendarmerie forces to depend on "reasonable cause" principle creates a disproportion. In case of power to arrest; according to the article 8(1)(a) and (b) of the code no. 7245, the power to arrest is also expanded in comparison to abrogated code. Differently from the abrogated code, watchers can arrest suspects of a crime while the crime is committed or after it has been committed and while traces are still in sight. Besides, watchers gain the power to arrest persons for whom an arrest or warrant of arrest has been issued. There is no regulation for arrests happening in the workplace and residence.

In case of power to use weapons; article 9 titled “Use of force and weapon” of code no. 7245, watchers are subjected to the article 16 of Duties and Powers of Police Law code no. 2559. Therefore, watchers and police forces are in the same position in case of using weapons. However, this power is not proportionate to watchers’ duties and their status. According to the Watchers Law Code, watchers are auxiliary forces to police and gendarmerie forces. So, giving the same authority to a subsidiary force causes a disproportionality. In this case, there is a regulation against duty-authority parallelism. However, only the power to use force is sufficient for watchers to fulfill their duties. Depending on the principle of proportionality, it can be said that there is a violation of the Constitution.

- In conclusion, if power to use weapon, to get ID cards and to stop are given to watchers, who are subjected to a less intense education and have a weaker organizational memory in comparison to police forces,
- (i) current problems derived from the wording and practice of PVSK article 4/A should be eliminated.
- (ii) These powers should be given to watchers in a narrower context in comparison to police and gendarmerie forces.
- (iii) Power to stop and get ID cards should be conditioned to more qualified terms.

References:

- Çarşı ve Mahalle Bekçileri Kanunu Teklifi (2/2555) ve İçişleri Komisyonu Raporu
<https://www.tbmm.gov.tr/sirasayi/donem27/yil01/ss174.pdf>
- Belci, Ozancan. (2020). Çarşı ve Mahalle Bekçileri Kanunun Ceza Muhakemesi Açısından Değerlendirilmesi. Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, Cilt: 22, Sayı: 2, s. 1089-1122. : <https://doi.org/10.33717/deuhfd.791402>



CENTER FOR DEMOCRACY RESEARCH

Center for Democracy Research (CDR) strives to bolster political expression in Turkey and enhance its effects on political power structure through forming inclusive and democratic public spheres.

info@demokra.si
cdr.org.tr

Kocatepe Mahallesi,
Topçu Caddesi No:8/9
Beyoğlu, Istanbul