

Rule of Law and The Way We Are in the Aftermath of 15th of July: A Report on the Constitutional Situation

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Introduction

On July 15, 2016, an armed uprising attempted at overthrowing the democratically elected government in Turkey, the attempt has been defeated following which a state of emergency has been declared for three-month period beginning from June, 20.¹ President of the Republic stated that it could be extended beyond three-months.

First and foremost: Any actual and violent attempt by a military junta in order to overthrow a democratically elected government must strongly be fought by any means available respecting the international standards of humanitarian law and condemned and abhorred unequivocally.

However, following the defeat of such an attempt, it is the duty of any legitimate government to normalize the situation in the aftermath as soon as possible and keep faith to the Constitution and constitutional guarantees for human rights and fundamental freedoms -even under a state of emergency- as “everyone” has human rights and fundamental freedoms.

The aim of the present report is to present and discuss the constitutional grounds for the state of emergency and check whether and if so to what extent “decrees enacted and practices made under the state of emergency” run afoul of the rule of law principle and which direction the aftermath is heading as we know from earlier experiences and practices in Turkey that, under a state of emergency, the whole system of constitution as regards human rights and fundamental freedoms could be endangered as responses to the actual situation might be extremely disproportional.

Further inquiry will be left to the reader by simply translating the entire text of the first decree-law, and a portion of the second decree-law enacted following its declaration into English (Please see the Annex²). Three other decrees have been enacted following the first decree law. All

¹ The declaration has been made on 20 July 2016 tarihli and by the Decision of the Committee of Ministers on 2016/9064, to be valid nation-wide in accordance with Art. 120 of the Constitution as well as in accordance with Section (b) of the Art. 3 of the Act on Emergency State dated 25 October 1983, numbered 2935 beginning with 01.00 Hours of the 21st of July with a duration of 90 days.

² Translation by Prof. Dr. iur. Öykü Didem Aydın. Please refer to the present report when taking quotes from the translations. You may publish the translations in your publications and web sites provided that you include the name and organizations of the translations and adding a link to our Site of our Association for Lawyers and Human Rights Defenders Without Borders (i.e. translated by Assoc. Prof. Dr. iur. Öykü Didem Aydın, President of the Association for Lawyers and Human Rights Defenders Without Borders in Turkey). Please deal diligently and ethically with it. It is not an official translation and the author waives any responsibility for its correctness, although utmost care has been given to the study of the text.

The remainder will be translated and analyzed following the publication of the present report.³ Please note that some provisions of the translated texts might not be valid anymore as later decrees modified the first decree-law to some extent although most of them seem to be fairly minor.

States of emergency is not news to Turkey. In the past, and particularly before and after military putsches, they were declared by numerous administrations. States of emergency, on the other hand, lasted between 1980 and 2004 in the Southeast of Turkey with numerous individual and collective constitutional challenges, partly successful, before courts, constitutional courts, and the European Court of Human Rights. What is “news” is that, at present, a democratically elected government declared it nation-wide following an unsuccessful coup attempt. It seems that the government is yet to overcome a continuing clear and present danger against democracy for the logical consequence is that by means of a declaration of emergency the government assumes that there is still a “state” of “emergency”, i.e. a clear and present danger to its very foundation as well as to the democratic regime. On the other hand, it also seems that the government not only aims at continuing to combat the members and the affiliated of the organization which planned and attempted the military intervention on the 15th of July, but also, quite evidently, at widening the scope of emergency regime to include all kinds of perceived terroristic activities or activities against the security of the state. We understand this from the very wording of the first decree-law enacted following the declaration of emergency which we will discuss later.

We shall begin with the constitutional and statutory ground for declaring a state of emergency and for enacting decrees having force of law (decree-law) under a state of emergency in order to understand what the government is combatting and its procedural and principle limitations. Then we will continue with the practices emanating from the declaration and see whether they are in line with their constitutional and statutory foundation as well as with international standards for basic rights and fundamental freedoms. Now first, the ground for declaring a state of emergency and its constitutional limitations:

State of Emergency

Constitution⁴ of the Republic of Turkey provides for the legal foundation of a declaration of a state of emergency as follows:

“2. Declaration of state of emergency because of widespread acts of violence and serious deterioration of public order ARTICLE 120- In the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months.

3. Rules regarding the states of emergency ARTICLE 121- In the event of a declaration of a state of emergency under the provisions of Articles 119 and 120 of the Constitution, this decision shall be published in the Official Gazette and shall be immediately submitted to the Grand National Assembly of Turkey for approval. If the

³ Footnotes omitted for the text online, please send a request to oykudidemaydin@gmail.com for footnotes and further documentation.

⁴ All of the quotes from the Constitution has been taken from the official translation of the Turkish text at the Website of the Turkish Grand National Assembly, in: https://global.tbmm.gov.tr/docs/constitution_en.pdf

Grand National Assembly of Turkey is in recess, it shall be immediately assembled. The Assembly may alter the duration of the state of emergency, may extend the period for a maximum of four months each time at the request of the Council of Ministers, or may lift the state of emergency.

The financial, material and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119 and the manner how fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15, how and by what means the measures necessitated by the situation shall be taken, what sorts of powers shall be conferred on public servants, what kinds of changes shall be made in the status of officials as long as they are applicable to each kinds of states of emergency separately, and the extraordinary administration procedures, shall be regulated by the Act on State of Emergency.

During the state of emergency, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, may issue decrees having the force of law on matters necessitated by the state of emergency. These decrees shall be published in the Official Gazette, and shall be submitted to the Grand National Assembly of Turkey on the same day for approval; the time limit and procedure for their approval by the Assembly shall be indicated in the Rules of Procedure.

These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality.”

More specific ground for suspension of the exercise of fundamental rights and freedoms is as follows:

“IV. Suspension of the exercise of fundamental rights and freedoms

ARTICLE 15- In times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.

(As amended on May 7, 2004; Act No. 5170) Even under the circumstances indicated in the first paragraph, the individual’s right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable except where death occurs through acts in conformity with law of war; no one shall be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties shall not be made retroactive; nor shall anyone be held guilty until so proven by a court ruling.

As to the rights and duties of the individual, the Constitution reads as follows:

CHAPTER TWO

Rights and Duties of the Individual

Personal inviolability, corporeal and spiritual existence of the individual

ARTICLE 17- Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence.

The corporeal integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his/her consent. No one shall be subjected to torture or mal-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.

(As amended on May 7, 2004; Act No. 5170) The act of killing in case of self-defence and, when permitted by law as a compelling measure to use a weapon, during the execution of warrants of capture and arrest, the prevention of the escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, or carrying out the orders of authorized bodies during martial law or state of emergency, do not fall within the scope of the provision of the first paragraph.

II. Prohibition of forced labour

ARTICLE 18- No one shall be forced to work. Forced labour is prohibited.

Work required of an individual while serving a sentence or under detention provided that the form and conditions of such labour are prescribed by law; services required from citizens during a state of emergency; and physical or intellectual work necessitated by the needs of the country as a civic obligation shall not be considered as forced labour.

All of the cited provisions should be interpreted as a whole where it is self-evident that a state of emergency is no arbitrary regime. Its limits set by the Constitution and the European Convention on Human Rights must be respected.

Emergency state practices may not infringe upon the core of our fundamental rights, must be necessary in a democratic society and may not be contrary to the principle of proportionality. The state of emergency, in accordance with the Constitution of Turkey, is a temporary period envisaged for protection of the principles of democracy and the rule of law as well as fundamental rights, it is not an unlawful and arbitrary regime facilitating violations of our freedoms. All regulatory and administrative actions made by the competent authorities shall be under judicial control also during the state of emergency as in a free democratic order and principles of rule of law cannot tolerate otherwise.

Above quoted provision of the Constitution provides for that fundamental rights may be limited much wider in emergency states. However, there are constitutional and international legal limitations imposed upon the practices limiting rights and freedoms in state of emergency as well. Each and every action must be in accordance with the Constitution and in accordance with the Act on Emergency State and related regulations, must be taken by the competent authorities, must be in line and within the scope of their purpose.

Furthermore, all actions taken must be necessary in a democratic society and proportional.

Indeed, Article 12 and Art. 13 of the Constitution certainly remains valid and may not be suspended themselves during a state of emergency.

“Nature of fundamental rights and freedoms

ARTICLE 12- Everyone possesses inherent fundamental rights and freedoms, which are inviolable and inalienable. The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his/her family, and other individuals.

Restriction of fundamental rights and freedoms

ARTICLE 13- (As amended on October 3, 2001; Act No. 4709) Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence.

Thus, even under the circumstances of the state of emergency, the individual’s right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable; no one shall be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties shall not be made retroactive; nor shall anyone be held guilty until so proven by a court ruling.

There is judicial control for each and every action taken by the authorities during the period.

All actions and omissions of the administration are subject to judicial review in accordance with Article 125 of our Constitution. Recourse to judicial review shall be available against all actions and acts of administration.

All actions and operations are subject to constitutional limitations, and they may not be contrary to the Emergency Law. Indeed the Para 2 of Article 121 of the Turkish Constitution stipulates the following provision concerning this principle:

“The financial, material and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119 and the manner how fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15, how and by what means the measures necessitated by the situation shall be taken, what sorts of powers shall be conferred on public servants, what kinds of changes shall be made in the status of officials as long as they are applicable to each kinds of states of emergency separately, and the extraordinary administration procedures, shall be regulated by the Act on State of Emergency.”

This provision clearly requires the Council of Ministers enacting any decree-law under the state of emergency not to violate the statutory framework for any emergency regulation.

One wrong assumption is that under a state of emergency only Art. 15 must be respected and that is all as regards limitations of governmental infringement on rights and liberties. The assumption is wrong as it must be noted that, other guarantees may not be suspended all together and may only be restricted within the constitutional framework of the emergency state itself, and within the “exigencies of actual circumstance of each and every regulatory, administrative, judicial, law enforcement etc. action”. The principle of legality remains valid also under a state of emergency and there is indeed an Organic Law (Act on Emergency State) enacted in the year 1983 and modified numerous times setting the standards of any emergency state. If, for instance, an actual, single administrative action is both in violation of the Constitution and the Act of Emergency State, then it could certainly be brought before the competent court and challenged.

The constitutional ground for judicial review of all actions and acts of administration is as follows.

B. Judicial review

ARTICLE 125- Recourse to judicial review shall be available against all actions and acts of administration. (Sentences added on August 13, 1999; Act No. 4446) In concession, conditions and contracts concerning public services and national or international arbitration may be suggested to settle the disputes arising from them.

Only those disputes involving an element of foreignness may be submitted to international arbitration.

The acts of the President of the Republic in his/her own competence, and the decisions of the Supreme Military Council are outside the scope of judicial review. (Sentence added on September 12, 2010; Act No. 5982) Nonetheless, recourse to judicial review shall be available against all decisions taken by the Supreme Military Council regarding expulsion from the armed forces except acts regarding promotion and retiring due to lack of tenure.

Time limit to file a lawsuit against an administrative act begins from the date of written notification of the act. (As amended on September 12, 2010; Act No. 5982) Judicial power is limited to the review of the legality of administrative actions and acts, and in no case may it be used as a review of expediency.

No judicial ruling shall be passed which restricts the exercise of the executive function in accordance with the forms and principles prescribed by law, which has the quality of an administrative action and act, or which removes discretionary powers.

A justified decision regarding the suspension of execution of an administrative act may be issued, should its implementation result in damages which are difficult or impossible to compensate for and, at the same time, the act would be clearly unlawful.

The law may restrict the issuing of an order on suspension of execution of an administrative act in cases of state of emergency, martial law, mobilization and state of war, or on the grounds of national security, public order and public health.

The administration shall be liable to compensate for damages resulting from its actions and acts.

Thus the emergency laws may only restrict the issuing of injunctions. All actions and operations are subject to constitutional limitations, they may not be contrary to the Emergency Law.

An important question, however, may be posed as to who will try whom in a state where 3495 judges within the whole population of judges amounting only to 15000. Further it should be asked whether positions that became "vacant" would be fulfilled making sure that the incumbents are fair, impartial and independent. The wording of a provision of the second decree-law numbered 669 gives an idea on that:

(2) Persons serving as candidates for prosecutorial and judicial posts in administrative and judicial justice may be appointed and admitted by the Higher Council of Judges and Prosecutors to the profession regardless of the amount of time they spent in the course of their training by the date of entry into force of this Decree-Law upon the proposal of the Minister of Justice.

Similar provisions of rapid employment of unqualified personnel shall apply as stipulated by the same decree-law:

(6) Following article has been added to the Decree Law on the Organization and Duties of the Ministry of Education dated 25/8/2011 and No. 652.

"Additional Article 4 (1) Contracted teachers may be recruited within the scope of Article 4, section B of the Code on State Civil Servants primarily in the utmost priority regions for development for non formal or formal educational institutions where there is vacant permanent posts.

International legal obligations according to Article 15 of the Constitution (and first and foremost the European Convention on Human Rights) may not be violated. In case of suspension of the contract, Article 15 of the European Convention of Human Rights points out to responsibilities which may in no circumstances be waived.

According to the constitution, and under usual circumstances persons arrested or detained shall be brought before a judge within at latest forty-eight hours and in case of offenses committed collectively within at most four days, excluding the time required to send the individual to the court nearest to the place of arrest. No one can be deprived of his/her liberty without the decision of a judge after the expiry of the above specified periods.

The constitutional guarantees as regards personal liberty are as follows:

III. Personal liberty and security

ARTICLE 19- Everyone has the right to personal liberty and security.

No one shall be deprived of his/her liberty except in the following cases where procedure and conditions are prescribed by law:

Execution of sentences restricting liberty and the implementation of security measures decided by courts; arrest or detention of an individual in line with a court ruling or an obligation upon him designated by law; execution of an order for the purpose of the educational supervision of a minor, or for bringing him/her before the competent authority; execution of measures taken in conformity with the relevant provisions of law for the treatment, education or rehabilitation of a person of unsound mind, an alcoholic, drug addict, vagrant, or a person spreading contagious diseases to be carried out in institutions when such persons constitute a danger to the public; arrest or detention of a person who enters or attempts to enter illegally into the country or for whom a deportation or extradition order has been issued.

Individuals against whom there is strong evidence of having committed an offence may be arrested by decision of a judge solely for the purposes of preventing escape, or preventing the destruction or alteration of evidence, as well as in other circumstances prescribed by law and necessitating detention. Arrest of a person without a decision by a judge may be executed only when a person is caught in flagrante delicto or in cases where delay is likely to thwart the course of justice; the conditions for such acts shall be defined by law.

Individuals arrested or detained shall be promptly notified, in all cases in writing, or orally when the former is not possible, of the grounds for their arrest or detention and the charges against them; in cases of offences committed collectively this notification shall be made, at the latest, before the individual is brought before a judge.

(As amended on October 3, 2001; Act No. 4709) The person arrested or detained shall be brought before a judge within at latest forty-eight hours and in case of offences committed collectively within at most four days, excluding the time required to send the individual to the court nearest to the place of arrest. No one can be deprived of his/her liberty without the decision of a judge after the expiry of the above specified periods. These periods may be extended during a state of emergency, martial law or in time of war.

However, as stated in the last sentence of the related provisions, these periods may be extended during a state of emergency, martial law or in time of war. The wording "MAY BE" should not be understood to mean "MUST BE". All criminal-procedural guarantees and remedies against such measures will remain valid. Indeed, there are internationally set standards that determine the upper limit of the restriction of liberty by means of a simple arrest. The European Court of Human Rights set the standard as 14 days depending on the exigency of the situation.

During the state of emergency an Emergency Coordination Committee will be created and its working principles will be shown in a regulation to be issued. They must act in accordance with the law. Such a coordination committee has already been established in Turkey and it is consisted of by the Ministers of Justice, Labor and Social Security, Interior, Foreign Affairs, Finance, National Education, National Defense and First Secretary of Prime Ministry, under the Chairmanship of the Prime Minister.

Duties and powers in implementing the state of emergency fall within the powers of governors and all their actions are subject to judicial review. It is necessary for all the civil society organizations to become extremely vigilant in monitoring the actions of the governors in each and every administrative unit.

Administration must announce any kind of comprehensive responsibilities imposed upon individuals through mass-media institutions.

It is a universal truth that in reacting to a violent attempt to overthrow an elected government, it must respect the rule of law. This is the only criteria to distinguish enemies of democracy from its protectors. If one side of a war is not a state respecting the principles of rule of law, we may not mention about a democratic state protecting itself from attacks.

The declared state of emergency should not create an actual or psychological barrier for individuals who exercise their basic rights and fundamental freedoms and become an unlawful tool for an oppressive government. Its is the duty of the government, the media and the civil society organizations to give confidence to single individuals in this regard.

Decrees-Law

While under usual circumstances no individual or collective fundamental right may be regulated by decrees having force of law, during states of emergency they may be regulated by them. The constitutional ground for enacting a decree-law during a state of emergency is as follows:

“E. Authorization to issue decrees having the force of law

ARTICLE 91- The Grand National Assembly of Turkey may empower the Council of Ministers to issue decrees having the force of law. However, with the exception of martial law and states of emergency, the fundamental rights, individual rights and duties included in the first and second chapters and the political rights and duties listed in the fourth chapter of the second part of the Constitution, shall not be regulated by decrees having the force of law.

The empowering law shall define the purpose, scope, and principles of the decree having the force of law, the operative period of the empowering law, and whether more than one decree will be issued within the same period.

Resignation or fall of the Council of Ministers, or expiration of the legislative term shall not cause the termination of the power conferred for the given period. When approving a decree having the force of law by the Grand National Assembly of Turkey before the end of the prescribed period, it shall also be stated whether the power has terminated or will continue until the expiry of the period.

Provisions related to issuing decree having the force of law issued by the Council of Ministers meeting under the chairpersonship of the President of the Republic in time of martial law or states of emergency, are reserved.

Decrees having the force of law shall come into force on the day of their publication in the Official Gazette. However, a later date may be indicated in the decree as the date of entry into force. Decrees shall be submitted to the Grand National Assembly of Turkey on the day of their publication in the Official Gazette. Empowering laws, and decrees having the force of law which are based on them, shall be debated in the committees and in the Plenary of the Grand National Assembly of Turkey with priority and urgency.

Decrees not submitted to the Grand National Assembly of Turkey on the day of their publication shall cease to have effect on that day and decrees rejected by the Grand National Assembly of Turkey shall cease to have effect on the day of publication of the resolution in the Official Gazette. The amended provisions of the decrees that are approved as amended shall go into force on the day of their publication in the Official Gazette.”

There is much reason to remain vigilant and extremely sensitive to the situation of our fundamental rights and freedoms during the time. Article 15 of our Constitution provides that in times or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated. It should be noted however that even under the circumstances indicated in the first paragraph, the individual's right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable except where death occurs through acts in conformity with law of war; no one shall be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties shall not be made retroactive; nor shall anyone be held guilty until so proven by a court ruling.

However, such decrees remain subject to parliamentary control, and they may only be issued on the matters where the state of emergency makes it necessary⁵. At present, the parliamentary control is still missing though. Although it is stipulated by the Internal-Code on Turkish Grand National Assembly⁶ that such decrees shall be submitted for approval to the General Assembly of the Parliament, the parliament declared its vacation before fulfilling its legal duty to debate it in the General Assembly within a month. The fact is that the related decree-laws are submitted to the Parliament but they were neither rejected nor accepted by the Parliament.

Whether the nature and extent of the regulation fall outside the exigencies of the situation was subject to judicial review of the Constitutional Court in the past although the Constitution stipulates that decrees having the force of law issued during the state of emergency shall not be brought before the Constitutional Court. In the past, the Constitutional Court reviewed such decrees-law all the same when the Court determined that they go beyond the exigencies of the situation, that their effects go beyond the emergency state, that they modify existing laws that would be valid beyond the state of emergency. The Court adjudicated that such emergency decrees may not be defined as "emergency state decrees", but as ordinary decrees-law for they violated the constitutional limitation imposed upon them.

"3. Functions and powers

ARTICLE 148- (As amended on September 12, 2010; Act No. 5982) The Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, decrees having the force of law and the Rules of Procedure of the Grand National Assembly of Turkey, and decide on individual applications. Constitutional amendments shall be examined and verified only with regard to their form.

However, decrees having the force of law issued during a state of emergency, martial law or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance.

It is yet to see, how the Constitutional Court would treat cases brought before the Court in the form of individual complaints⁷. The constitutionality of such a decree can also be challenged

⁵ Öykü Didem Aydın, PARLAMENTER DENETİM-HIZLI VE ETKİLİ İDARE-HUKUK DEVLETİ İSTERLERİ ARASINDA KANUN HÜKMÜNDE KARARNAMELER REJİMİ (Academic Article on Decrees Having the Force of Law, ask Author at oykudidemaydin for the text).

⁶ TBMM İçtüzüğü at

⁷ The Author of this report has already filed an individual application before the Constitutional Court on the ground that her Client's (a member of the Association of Union for Judges and Prosecutors: YARSAV) right to association have been violated by the decree-law which summarily -and without any legal procedure established by the law and

in part or as whole before the Court by the Main Opposition Party (i.e. CHP but CHP has not yet filed any suit) as well as 110 deputies coming together as signatories of the challenge. No such action has been initiated by any member of the Turkish Grand National Assembly up until present.

In case the Constitutional Court does not give way to individual complaints in that regard, the European Court of Human Rights will be receiving thousands of individual applications concerning violations during the time.

First Decree-Law enacted following the declaration of the state of emergency, violation of basic rights and fundamental freedoms

The decree was published and became law – no. 667, published in the Official Gazette – on July 23. It is the first decree by the Council of Ministers headed by the President under Turkey's three-month state of emergency, which entered into force on July 21.

The decree lists thousand institutions and associations and closes them down summarily.

The decree stipulates that organizations named in the annexed-lists are closed down on the grounds that they “belong to, are connected or are in communication with the Fethullah Terrorist Organization (FETÖ/Parallel State Structure), which has been identified as a threat to national security.” However it goes beyond to the specified organization FETÖ and adds an additional formulation: “membership, affiliation, participation in and connection to terrorist organizations, and to structures, formations and groups that were deemed by the National Security Council as being active against national security” attaching certain sanctions to the organizations and persons falling within this category. This is what makes the decree extremely vague as any organization or person could easily be deemed to fall into this category by the National Security Council which is despite being a constitutional but only an administrative body, depriving them of their natural judges and fundamental freedoms easily leaving them little if any legal remedy.

The decree also stipulates that the government can seize property owned by them. Indeed, the government has already started actions in this regards as well.

Nearly 100,000 civil servants – including university professors, judges, prosecutors, police, teachers, and bureaucrats – have already been suspended from their positions, and the decree terminates their professions in public service without any investigation of disciplinary or of whatsoever nature. The decree gives further way to the permanent discharge of judges, prosecutors, and civil servants without any investigation or possibility of legal remedy.

Mass and summary dismissals and arrests by the decree-law create the impression of excess of power. Like any citizen, arrested or prosecuted people have the right to a fair procedure - disciplinary and/or criminal - during which her or his responsibility in the attempt of this violent and insidious throw must be duly proved and his or her defense rights must be respected.

without indicating any evidence as to the membership of the organization to any structure being a threat to national security- closed down the associations in its Annex.

As to judges and prosecutors, in particular, it seems that the constitutional guarantees of Security of Tenure and Independence are abrogated already without having to change or modify the constitution. The constitutional ground on Judicial Power is as follows:

“CHAPTER THREE Judicial Power I. General provisions A. Independence of the courts

ARTICLE 138- Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, laws, and their personal conviction conforming with the law. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions. No questions shall be asked, debates held, or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial. Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.

B. Security of tenure of judges and public prosecutors

ARTICLE 139- Judges and public prosecutors shall not be dismissed, or unless they request, shall not be retired before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of a court or a post.

Exceptions indicated in law relating to those convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties because of illhealth, or those determined as unsuitable to remain in the profession, are reserved.

C. Judges and public prosecutors ARTICLE 140- Judges and public prosecutors shall serve as judges and public prosecutors of civil and administrative judiciary. These duties shall be carried out by professional judges and public prosecutors.

Judges shall discharge their duties in accordance with the principles of the independence of the courts and the security of the tenure of judges.

The qualifications, appointment, rights and duties, salaries and allowances of judges and public prosecutors, their promotion, temporary or permanent change in their posts or place of duties, the initiation of disciplinary proceedings against them and the imposition of disciplinary penalties, the conduct of investigation concerning them and the subsequent decision to prosecute them on account of offences committed in connection with, or in the course of, their duties, the conviction for offences or instances of incompetence requiring their dismissal from the profession, their in-service training, and other matters relating to their personnel status shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges.

Judges and public prosecutors shall serve until they are over the age of sixty-five. The mandatory retirement age, promotion and retirement of military judges shall be prescribed by law.

Judges and public prosecutors shall not assume any official or private occupation other than those prescribed by law.

Judges and public prosecutors shall be attached to the Ministry of Justice with respect to their administrative functions.

Those judges and public prosecutors working in administrative posts of judicial services shall be subject to the same provisions as other judges and public prosecutors. Their categories and grades shall be determined according to the principles applying to judges and public prosecutors, and they shall enjoy all the rights accorded to judges and public prosecutors.”

Similar disciplinary rules were also valid for university professor in accordance with the

Code on Higher Education. Indeed, the disciplinary regime may have been deemed to have been completely abrogated following the enactment of the decree to the extent it has been applied to single academics⁸.

The decree goes beyond what is acceptable in terms of human rights and fundamental freedoms within the aim of promoting accountability for the violent coup attempt. Indeed, more than proponents of the violent overthrow of the democratically elected government, it should alarm independent and sincere individuals and associations who are concerned for free democratic order and the rule of law principles.

Mass and permanent removals or discharges of university professors, judges, prosecutors, civil servants and closing down of institutions and associations without evidence and without due process guarantees are unacceptable.

Even if institutions or groups are not named in the lists that are included in the decree, under article 2/3 of the same decree, they can still be closed down if the government identifies them as being a threat to national security or if the government establishes them as members of terrorist organizations or links them to or deems them in contact with such organizations.

The decree is extremely vague and it allows the firing of any public official alleged to be 'in contact' with members of 'terrorist organizations'. There is no need for a disciplinary action or for an investigation in order to find and point out to any evidence in support of such allegations.

The decree can be abused to target any opponent – perceived or real – beyond those in the movement related to the coup attempt.

Any judge, prosecutor or civil servant can also be removed from their offices on the grounds of being deemed a threat to national security, with no legal remedy, and without the reinstatement, or future assignment as public officials.

The decree also extends police powers to detain suspects for up to 30 days without being taken before a judge and seriously curtails detainees' right to private communications with lawyers. The decree increases the maximum period of police detention from four days for terrorism and organized crime to 30 days. The practice will patently violate the European Convention on Human Rights as The European Court of Human Rights had ruled in a 1996 case against Turkey that detention without being taken before a judge for 14 days, even in a state of emergency, violates its human rights obligations under the convention (Aksoy v. Turkey).

Given the situation, and the fact that the period is exceptionally long, and leaves detainees vulnerable to arbitrary detention and torture, all practices should be monitored closely by all sensitive international and national human rights organizations, lawyers, journalists and citizens.

The decree allows that in cases relating to terrorism and organized crime, communications between a detainee in pretrial detention and their lawyer can be recorded, monitored, limited, or

⁸ We may, for instance, mention of a purge against the so called members of the Platform "Academics for Peace", for the details of their situation, read at <https://barisicinakademisyenler.net/English>

stopped at the request of a prosecutor if the authorities deem that there is a risk to security, or if such communications may be a means of passing on messages or instructions to “terrorist or other criminal organizations.” Such vague and indiscrete powers paves the way to violations of defense rights.

The authorities may limit the number of lawyers and reserve the right to appoint another lawyer to represent the detainee. The decree also curtails detainees’ rights to family visits and phone calls. Such practices will violate the right to an effective defense as we have observed from the very beginning of many detentions, where suspects were not allowed to contact lawyers that they themselves were willing to appoint.

Persons who make decisions and perform their duty in the context of this decree bear no legal, administrative, financial or criminal responsibility for those duties performed. This provision sends a signal to police officers and other officials that violations of human rights will be tolerated.

Such practices cannot be justified even under a state of emergency and they increase the possibility of torture and ill-treatment of suspects if they won’t already violate other human rights of persecuted people.

Just a fast comparison between the limitations of a state of emergency regime in accordance with the constitution and the actual provisions of the decree-law, a call upon the government to respect human rights that are guaranteed in the Constitution of Turkey as well as in the European Convention of Human Rights is well justified. Because the decree-law, first and foremost violates the Law on Emergency States and than violates many internationally set standards.

Everyone has basic rights and fundamental freedoms and there is no exception as to the identities of the holders of basic rights and individual freedoms.

**Text of the Decree Law Concerning the Emergency Measures
taken under the State of Emergency - Decree Decision Number: KHK / 667,
Translated into English by Assoc. Prof. Dr. iur. Öykü Didem Aydın⁹**

**“DECREE HAVING FORCE OF LAW CONCERNING THE EMERGENCY MEASURES TAKEN
UNDER THE STATE OF EMERGENCY**

Decree Decision Number: KHK / 667

Certain measures under the state of emergency have been taken on 07.22.2016 in accordance with Article 121 of the Constitution and Art. 4 of the State of Emergency Law dated 10.25.1983, No. 2935 by the Council of Ministers in the meeting chaired by the President of the Council.

FIRST PART

Purpose and Scope

ARTICLE 1 - (1) Purpose of this Decree shall be to determine, within the scope of the state of emergency declared across the country on 07.20. 2016 with the decision number 2016/9064 by the Council of Ministers, the necessary measures to be taken within the framework of the coup attempt and fight against terrorism.

SECOND PART

**Measures on the Implementation of the State of Emergency Statute
Measures related to institutions that are closed down**

ARTICLE 2 - (1) Following organizations in affiliation, participation and connection to the terrorist organization Fethullahçı (FETÖ / PDY) which was determined as being a national security threat have been closed down

- a) private health institutions and organizations included in the Annex (I)
- b) private education institutions and organizations and private student dormitories and boarding houses included in the Annex (II)
- c) foundations and associations together with their economic enterprises included in the Annex (III)
- d) private higher education institutions,

⁹ Translation by Prof. Dr. iur. Öykü Didem Aydın. Please refer to the present report when taking quotes from the translation of the decree-law. You may publish the text of the translation in your publications and web sites separately provided that you send a written request to oykudidemaydin@gmail.com, and include the name and organizations of the translator adding a link to the website of Association for Lawyers and Human Rights Defenders Without Borders (i.e. translated by Assoc. Prof. Dr. İur. Öykü Didem Aydın, [President of the Association for Lawyers and Human Rights Defenders Without Borders in Turkey](#)). Please deal diligently and ethically with it. It is not an official translation and the author does not assume any responsibility for its correctness or accuracy, although utmost care has been taken in the course of study of the text.

d) unions, federations and confederations included in the Annex (V)

(2) Any and all kinds of movable and immovable assets, receivables and rights, documents and papers of the closed down foundations are deemed to have been transferred free of charge to the General Directorate of Foundations. Health practice and research centers of the closed down private higher education institutions and all kinds of assets of the remaining closed down institutions with and their receivables and rights, documents and papers shall be deemed to have been transferred free of charge to Treasury, real estates belonging to them shall be registered ex officio on behalf of Treasury in the Land Registry irrespective of any restrictions and immovable property limitations. No request and claim of right may be made in any manner before the Treasury for the debts of those listed in the first paragraph. All necessary actions and transactions related to the transfer shall be fulfilled by the Ministry of Finance or by the General Directorate of Foundations respectively by receiving necessary assistance from all relevant institutions.

(3) Private and charitable health institutions, private educational institutions and organizations and private student dormitories and boarding houses; foundations, associations, foundations, higher education institutions of foundations; [and] trade unions, federations and confederations whose membership, participation in and affiliation and connection to the organizations, structures and groups or to terrorist organizations determined as being a national security threat and which are not included in the annexed lists shall be closed down upon the approval of the relevant minister of the proposal of the commission formed by the same minister in the ministries concerned. Provisions of the Art. 2 shall apply to the establishments closed down in accordance with this paragraph.

(4) Students enrolled in higher education institutions closed down shall be transferred and enrolled in state universities or in private universities by the Board of Higher Education. Students transferred and enrolled in this manner shall continue to pay the sums they were required to pay to the relevant higher education institutions concerned until their graduation. Board of Higher Education is appointed and shall be authorized to determine the procedures and principles with regard to the implementation, to direct application and practice, to take all necessary measures and to eliminate uncertainties that may arise in the course of the implementation of this clause.

Measures relating to members of the judiciary and to those deemed as members of these professions

ARTICLE 3 - (1) Members of the Constitutional Court whose membership, affiliation, participation in and connection to terrorist organizations, and to structures, formations and groups that were deemed by the National Security Council as being active against national security shall be determined as ineligible for and removed from the profession by the absolute majority vote in the General Assembly of the Constitutional Court, the same provision shall apply for the members of the Supreme Court to be removed by the Council of the First Presidency of the Supreme Court; to the members of the Council of State to be removed by the First Presidency of the Council of State, to the judges and prosecutors to be removed by the General Assembly of the Higher Council of Judges and Prosecutors, to judges and prosecutors to be removed by the Supreme Court of Audition through a Commission formed under the chairmanship of the Auditor-General including its Vice-Presidents and one President of a Chamber and one member of a Chamber appointed by the same Auditor-General. Gun licenses and specially stamped passports of the persons removed from offices shall be cancelled and they will be discharged within fifteen days from their public

housing or foundation housing facilities.

(2) Persons serving as candidates for prosecutorial and judicial posts in administrative and judicial justice may be appointed and admitted by the Higher Council of Judges and Prosecutors to the profession regardless of the amount of time they spent in the course of their training by the date of entry into force of this Decree-Law upon the proposal of the Minister of Justice.

Measures concerning public servants

ARTICLE 4 - (1) Personnel whose membership, affiliation, participation in and connection to terrorist organizations, and to structures, formations and groups that were deemed by the National Security Council as being active against national security shall be removed from public office as follows:

a) Personnel under the Law of the Turkish Armed Forces dated 7/27/1967, numbered 926, upon the proposal of the concerned Commandant and the confirmation of the Chief of Staff by the Minister of National Defense.

b) Personnel subject to the Law on Duties and Responsibilities of the Gendarmerie dated 03.10.1983 and numbered 2803, upon the proposal of the Gendarmerie General Commander and the approval of the Minister of Interior;

c) Personnel subject to Law dated 07.09.1982 and numbered 2692 on the Coast Guard Personnel upon the proposal of the Commander of the Coast Guard and the approval of the Minister of Interior;

ç) Personnel attached to the National Defense Minister by the approval of the Minister of National Defense,

d) Personnel subject to the Law on Higher Education Personnel No. 2914, dated 10.11.1983, on the proposal of the President of the Board of Higher Education by the decision of the Board of Higher Education

e) The staff of local administrations, upon the proposal of the board designated and chaired by the governor with the approval of the Minister of Interior,

f) Personnel subject to the Civil Servants Act dated 14/7/1965 and No. 657 and all other kinds of staff subject to other legislation except those specified in Article 3 of the present Decree and regardless of the position and status (including workers), by a council headed by the respective institution or organization's top managers with the approval of the related, relevant or concerned ministers.

g) All kinds of Personnel employed in any post, position and status (including workers) in other institutions not subject, related or connected to a ministry, upon the proposal of unit heads with the approval of the competent assignment authority.

(2) Personnel discharged in accordance with section one may not be employed in public service and assigned, directly or indirectly, for any other public work; all kinds of vested duties such as trustee, board, commission, board, audit committee membership, or membership in liquidation committees shall also be considered to have ended. Same provisions will apply to those who, without carrying the title of public servant, carries out the duties set forth in this section.

(3) Gun licenses and pilot licenses of the personnel discharged pursuant to the present article shall be cancelled and they will be expelled within fifteen days from their public housing or foundation housing facilities. They may neither be founders of private security companies nor their partners and employees.

(4) To the posts and positions previously belonging to the discharged personnel within the present section appointments may be made for the number of staff and positions to be determined by the Council of Ministers regardless of the restrictions stipulated by the Central Administration Budget Law and other legislation.

Measures to be taken in the course of investigation to be carried out

ARTICLE 5 - (1) Persons subject to administrative actions and those subject to criminal proceedings on grounds of membership, affiliation, participation in and connection to terrorist organizations, and to structures, formations and groups that were deemed by the National Security Council as being active against national security shall be notified without any delay by institutions and organizations concerned to the passport unit. Passports shall be cancelled by the passport units concerned upon the notifications.

Investigation and prosecution procedures

Article 6 - (1) For the crimes defined in the Fourth, Fifth, Sixth and Seventh Parts of Section Fourth of the Second Book of the Turkish Penal Code dated 26/9/2004 and numbered 5237, crimes within the scope of Prevention of Terrorism Act dated 12/4/1991 and numbered 3713, during the state of emergency;

- a) the period of detention of suspects may not exceed thirty days, except for compulsory period for submission to the nearest court.
- b) arrested military personnel will be handed over to the judicial police officer.
- c) within the scope of the investigations carried out, all statement by suspects, victims and witnesses may be taken by the judicial officers regardless of the office and title, including all public officials.
- d) Warrants for detention of the military personnel shall be carried out in penitentiary institutions mentioned in Article 111 of the Law on Execution of Sentences and Security Measures dated 13/12/2004 and numbered 5275
- d) In the meetings of the detainees with their lawyers, and in case the endangerment of the security of society and penal institutions, directing of terrorist groups or other criminal organizations, delivery of their orders and of dictates or of secret, open or encrypted messages are likely, meetings may be recorded by means of audial or visual devices on the basis of a decision by the prosecutor, an official may be present in order to monitor the meetings between the detainee and his/her lawyer; documents, copies of document, files, and their own personal records maintaining the communication between the detainee and his/her lawyer may be seized and conversation days and times may be restricted. If it is observed that the interview or the meeting with the detainee is being made for the purposes specified above, such meeting may immediately be interrupted and ended where minutes concerning this shall together with the reasons of disruption shall be attached. Before the beginning of such meeting, the parties shall be warned in this regard. In case there are minutes for the detainee, future meetings between the detainee and his/her lawyer may be prohibited with the request of the public prosecutor by the peace court judge. The detainee and the presidency of the bar association shall immediately be notified of the prohibition so as to enable the latter to appoint a new lawyer for the former. The lawyer communicated by the bar association may be changed upon the request by the public prosecutor. Appointed lawyer will be paid fees according to Article 13 of the Law on Enforcement and Form of Entry into Force of the Code of Criminal Procedure dated 03/23/2005 and numbered 5320.

- e) Detainees may only be visited, and in any case provided that the situation is certified, by their spouses, relatives up to second degree blood-relation and first-degree kinship by marriage, his/her guardian or tutor. The powers of the Ministry of Justice and public prosecutors are reserved. The detainees have the right to communicate through phone lines every fifteen days, not exceeding ten minutes and only with the restricted kind persons listed in the present sub-section.
- f) Under the minutes prepared by public servants who work in penal institutions only public service registration number, instead of open identity, shall be written. In cases where statements of public officials should be consulted, invitations or summons shall be notified only to the office address. In the statements and minutes of hearings concerning these persons solely their office address shall be indicated.
- g) In the investigations carried out, defense counsels, selected in accordance with Art. 149 of the Criminal Procedural Law, dated 4.12.2004 and numbered 5271 or defense counsels appointed according to Article 150 of the same Law, may be prohibited from taking his/her defense counsel duties. Peace court judge shall decide, without any delay, on the request for prohibition by the public prosecutor. Decision of prohibition shall be notified to the suspect and to the presidency of the bar association in order that the latter can appoint a new defense counsel for the suspect.
- i) In the investigations and prosecutions carried out, only up to three lawyers may be readily available during the questioning, interrogations and trials.
- h) In criminal courts before the beginning of the hearings, indictment or documents replacing indictment are read or told in a summarized manner.
- i) arrest warrants, appeals against detention and appeals for discharge may be examined and decided on file.
- i) if the judge or the court deems appropriate, through the use of techniques for video and voice communications at the same, suspect or accused may be interrogated or commanded to participate in the hearings.

Duty disability pensions and other rights

ARTICLE 7 - (1) In the calculation of pensions to be awarded under the sub-section j of the first paragraph of article 21 of the Anti-Terror Law, numbered 3713 to the civilians who lost their lives or became disable due to the actions or in the sequel of actions of the coup attempts realized on 07.15. 2016 and terrorist acts, sub-section h of the same paragraph shall apply and they and rights holders shall benefit from other rights in accordance with other relevant legislation in the same manner that is applied to the persons within the scope of the sub-section h. Nonetheless, the total amount of the widow and the orphan's monthly pension may not be lower than the sum to be designated for the disabled or deceased person. Furthermore, for them and for those injured by these actions, provisions of the Act on Compensation in Cash and Monthly Allowances dated 11/03/1980 and numbered 2330 shall apply. In the monthly allowances to be paid in this manner, the requirement of payment of earlier premiums and premium related debts, including general health insurance premiums is waived.

(2) To those within the scope of the first paragraph and at the same time eligible for retirement in accordance with the Act on the Retirement Fund of the Turkish Republic dated 08.06.1949 and numbered 5434, their compensation for retirement shall be paid on the basis of the sub-section a of the first paragraph of Art. 21 of the Law numbered 3713, so as not to be lower than 115 times of the salary of the most senior civil servant (including its additional indicator). To the civilians themselves, who, despite falling within the scope of the first paragraph, are not yet eligible for compensation for retirement, and who are in such a disability as not to be in grade of conducting themselves in a manner necessary to live and are in need of others' help and support in order to

live, and to the first-grade heirs of the deceased, an additional compensation shall be paid so as not to be lower than 170 times, as well as to other disable people so as not to be lower than 115 times- of the salary of the most senior civil servant (including its additional indicator), by the relevant institutions within the framework of monetary compensation rules and procedures.

Cancellation of the lease agreement with the easement and usufruct rights

Article 8 - (1) If it is deemed that the lessees or tenants of all kinds of property belonging to the public administration within the scope of the dated Public Financial Administration Act dated 10/12/2003 and numbered 5018, and to administrative units subject to special budgetary regime, to regulatory and supervisory authorities, to social security institutions, to local administrations and unions and enterprises incorporated by them, other public institutions, councils, high councils and corporations, state-owned or public economic enterprises and their subsidiaries or affiliated partnerships, institutes and businesses and other partnerships, institutions and enterprises with more than 50% of the capital belonging to public, and foundations, are in membership, participation in and affiliation and connection to the organizations, structures and groups or to terrorist organizations determined as being a national security threat, their easement and usufruct rights and lease agreements shall be cancelled ex officio by the related corporation or institution.

Responsibility

ARTICLE 9 - (1) No legal, administrative, financial and criminal liability shall arise for the persons taking decisions and performing duties under the present decree within the ambit of their tasks.

Injunctions (Stopping the Enforcement)

ARTICLE 10 - (1) Decisions taken under and actions within the ambit of this Decree Law can not be given a stay of execution in the lawsuits.

Force

ARTICLE 11 - (1) this Decree-Law shall enter into force on the date of publication.

Execution

ARTICLE 12 - (1) The provisions of this Decree-Law shall be executed by the Council of Ministers.”

Second Decree-Law published on the 28th of July, number 668

“DECREE HAVING FORCE OF LAW CONCERNING THE EMERGENCY MEASURES TAKEN UNDER THE STATE OF EMERGENCY

Decree Decision Number: KHK / 668

Certain measures under the state of emergency have been taken and regulation on certain institutions and incorporations has been made on 07.25.2016 in accordance with Article 121 of the Constitution and Art. 4 of the State of Emergency Law dated 10.25.1983, No. 2935 by the Council of Ministers in the meeting chaired by the President of the Council.

FIRST PART

Purpose and Scope

ARTICLE 1 - (1) Purpose of this Decree shall be to determine, within the scope of the state of emergency declared across the country on 07.20. 2016 with the decision number 2016/9064 by the Council of Ministers, the necessary measures to be taken within the framework of the coup attempt and fight against terrorism and to regulate certain institutions and incorporations.

SECOND PART

Measures taken within the scope of the state of emergency

Measures

ARTICLE 2 - (1) a) Military personnel indicated in the annexed list Number (1) in affiliation, participation and connection to the terrorist organization Fethullahçı (FETÖ / PDY) which was determined as being a national security threat have been discharged from the Turkish Armed Forces. In addition, action shall be taken against them in accordance with their special legislation.

b) Private radio-television corporations indicated in the annexed list Number (2) in affiliation, participation and connection to the terrorist organization Fethullahçı (FETÖ / PDY) which was determined as being a national security threat have been closed down.

c) Newspapers and magazines and publishing houses and distribution channels included in the annexed list no (3) in affiliation, participation and connection to the terrorist organization Fethullahçı (FETÖ / PDY) which was determined as being a national security threat have been closed down.

(2) Military personnel discharged in accordance with the sub-section (a) of the article shall be, without any requirement of conviction, deprived of their military titles and public service and shall never be admitted to the Turkish Armed Forces; never be employed, never be assigned, directly or indirectly, in public services; any membership they possess in boards of trustee, councils, commissions, boards of executive, supervisory boards, boards of liquidation and their duties shall be deemed ended. Their gun and pilot licenses shall be cancelled and these people shall be expelled from the public or foundation housing facilities within fifteen days. They may not be founders, partners and employers of any private security company. The Ministry of National Defense shall notify passport units concerning their situation. Upon the notification, their passports shall be cancelled.

(3) Any and all kinds of movable and immovable assets, receivables and rights, documents and papers of the closed down newspapers and magazines, publishing houses and distribution channels and radio and television corporations are deemed to have been transferred free of charge to Treasury, immovables belonging to them shall be registered ex officio to land registries independent of any restriction and immovable property restrictions. No claim or right or demand may be brought before Treasury concerning any kind of their debts. Transactions concerning transfer shall be fulfilled by the Ministry of Finances by receiving the necessary assistance from all institutions concerned.

(4) radio and television corporations, newspapers and magazines, publishing houses and distribution channels whose membership, affiliation, participation in and connection to terrorist organizations, and to structures, formations and groups that were deemed as being active against national security and which are not included in annexed lists number (2) and (3) shall be closed down by the Minister upon the proposal of the commission established by the Minister concerned. Paragraph three shall apply to those closed down within the scope of the present paragraph.

Prosecution and Trial Actions

ARTICLE 3- (1) For the crimes defined in the Fourth, Fifth, Sixth and Seventh Parts of Section Fourth of the Second Book of the Turkish Penal Code dated 26/9/2004 and numbered 5237, crimes within the scope of Prevention of Terrorism Act dated 12/4/1991 and numbered 3713, during the state of emergency;

- (a) An arrest warrant may be issued also by the prosecutor in cases where delay is prejudicial. The period of detention order given by the judge or by the prosecutor may not exceed thirty days.
- (b) A suspect, who in order to render the prosecution against himself/herself useless, hides at home or abroad and for this reason cannot be reached by the Public Prosecutor is also named "fugitive". Concerning these persons, Articles 247 and 248 of the Turkish Criminal Procedural Code dated 12/04/2004 and numbered 5271 shall not apply.
- (c) Peace court judgeship or court whose detention order is challenged shall correct it if it deems the challenge appropriate; if it does not deem it appropriate, it shall send it over to the authority competent to examine the challenge.
- (d) Requests for discharge from detention shall be decided on every thirty days at the latest together with the examination of detention itself and on file.
- (e) In cases where delay is prejudicial, domiciles and other closed places not open to public may be searched upon a written order issued by the public prosecutor.
- (f) In order to execute searches in domiciles or other closed places without the presence of the public prosecutor, one member of the elders council of the place or a neighbor shall be summoned present.
- (g) In the military zones searches and seizures may be conducted by judicial police officers without the participation of the public prosecutor upon an order issued by the judge or in cases delay is prejudicial upon a written order issued by the public prosecutor.
- (h) Documents and papers of the persons on whose behalf there is a search warrant may be examined by the judicial police officers.
- (i) Letters and documents between suspect or accused and persons who may be exempt from witness stand in accordance with Articles 45 and 46 of the Code numbered 5271 may be seized even if they may be found in the hands of the latter.
- (j) Seizure without the decision of the judge shall be submitted to the approval of the competent judge within five days. The judge will announce his/her decision within ten days; otherwise seizure shall cease to exist by itself.
- (k) Action for seizure accordance to Article 128 of the Code numbered 5271 may be decided on by the peace court judgeship without the requirement of a report indicated in the first paragraph of the Article. In case delay is prejudicial, public prosecutor may decide on seizure. Action for seizure without the decision given by the judge shall be submitted to the approval of the judge within five days. The judge shall announce his/her decision within ten days, otherwise it will cease to exist by itself.

- (l) In lawyers' offices search may be conducted upon judge's order or in case delay is prejudicial upon a written order issued by the public prosecutor, without the participation of the prosecutor, by judicial police officers. In the course of search and seizure proceedings the president of the bar association or his/her representative is summoned present, whereby however, paragraphs three and four of article of the Code numbered 5271 shall not apply.
- (m) In cases delay is prejudicial also public prosecutor may decide for searches, copying and seizure of computers, computer programs and files in accordance with article 134 of the Code numbered 5271. The decision shall be submitted to the competent judge within five days. The judge shall announce his/her decision within ten days; otherwise seizure shall cease to exist by itself. In case proceedings for copying and backup takes too long these devices and tools may be seized. Following the completion of these proceedings seized devices shall immediately be returned.
- (n) Measures of detection of communication, wiretapping, and recording, assignment of secret agent, and monitoring with technical devices in accordance with Article 135, Article 139 and 140 shall be ordered by the judge, and in case delay is prejudicial by the prosecutor. The prosecutor shall submit his/her decision to the approval of the judge. The judge shall announce his/her judgment within ten days; otherwise the measure cease to exist by themselves.
- (o) The authority of the defense council to take copies from the file may be restricted by the prosecutor's order in case it would endanger the aim of the prosecution.
- (p) The right to meet with defense council of the suspect under arrest may be restricted up to five days. No interrogation shall be conducted within the period.
- (q) In the proceedings conducted, the chief public prosecutors may request for an order before the peace court judge of the place the prosecution has been taking place if required by the circumstances of the prosecution.
- (r) Chief prosecutors may request for buildings, devices, tools and personnel from the chief administrative divisions in case prosecution requires so.
- (s) Concerning the crimes listed in the present article detainees or convicted persons may, upon the request of the public prosecutor, and the decision by the criminal peace court judge be taken to penitentiary institutions in cases so necessary as to examine for the truth of the information taken.

ARTICLE 4- (1) Modified and abolished provisions

Paragraph one of Article 1 of the Code on Establishment and Rules of Procedures of the Military Court is modified as follows and the paragraph two of the same article has been abrogated.

"Military courts which shall exercise judiciary powers in the name of the Turkish Nation shall be constituted by the Minister of Justice with regard to organizational structure of the military units and geographical location of the places they are in and the intensity of the work load of the courts and abolished in the same manner."

(2) The following paragraph has been added to follow the second paragraph of article 40 of the Code on Military Judges dated 10/26/1963 and numbered 357.

"Authority within the scope of the first paragraph may be given to the military judges in judicial consultancy, disciplinary officership, legal advisorship, branch directorate of legal affairs, reporter-clerkship in higher courts and posts of military prosecutor and other posts related to military justice."

(3) The following sentence is added to follow the paragraph three of Article 53 of the Code on Personnel of the Turkish Armed Forces, Article 39 of the same code has been abolished and the following provisory article to the same code has been added.

"However the ones who is needed in the post one rank higher may be admitted to the evaluation in the Supreme Military Council regardless of the standby time for their ranking and of the requirement of good records.

"PROVISORY ARTICLE 41- The decisions to be taken in the Supreme Military Councils and the proceedings for promotion, assignment, ranking, use of posts, retirement, and discharge shall be applied by 29 July 2016."

"(4) Article 4 of the Code of Establishment and Duties of the Supreme Military Council is modified as follows and the following additional provisory article has been added to the same code."

"ARTICLE 4- Supreme Military Council shall meet every year upon the call of the President."
PROVISORY ARTICLE 2- The meeting of the Supreme Military Council to take place in the month of August shall take place in July of the same year."

(5) a) Paragraph 6 of the Additional Article 1 of the Anti-Terrorism Act dated 4/12/1991 and 3713 is modified as follows.

"Among the rights holder, primary school, middle school, elementary school graduates shall be proposed to be assigned to servant cadres and positions; secondary and higher education graduates to the positions they attained provided that the titles they attained is included in the annexed schedules of the decree law number 190 by the time the assignment proposal has been made with regard to their status of education, remaining secondary and higher education graduates to the post and positions with the title of civil servant by the Presidency of State Personnel . The assignment proposals of the posts of worker are made to the post of permanent worker."

a) seventh paragraph of the additional article 1 has been repealed.

b) in the first sentence of the eighth paragraph of Additional Article 1 "of each year in March and the last day of September" and in the second sentence "within forty-five days" shall be repealed, the following sentence is added to follow the the second sentence of the same paragraph.

"Public institutions and organizations shall transmit until the last day of the months of January and July of each year the demands within the scope of this Article over DPB e-application. Proposals of assignment shall be realized by the Presidency of State Personnel on the basis of these proposals. In case such requests are not in adequate numbers appointments shall be made ex-officio by the Presidency."

d) The following provisional article has been added to follow the provisional Article 14.

"PROVISIONAL ARTICLE 15- before the effective date of entry into force of the present article, the staff who assumed work under the additional Article 1, the ones whose titles are by the time the proposal of assignment are included in the annexed schedules of the decree law number 190 shall be appointed by the State Personnel Department to the posts and positions corresponding to these titles without being subject to examination by the public institutions and corporations. In case posts they attained are absent in public institutions they were assigned they may be transfer-appointed only for once to public institutions and organizations following their appointment as principal civil servants regardless of any quota restriction.

(6) Following article has been added to the Decree Law on the Organization and Duties of the

Ministry of Education dated 25/8/2011 and No. 652.

"Additional Article 4 (1) Contracted teachers may be recruited within the scope of Article 4, section B of the Code on State Civil Servants primarily in the utmost priority regions for development for non formal or formal educational institutions where there is vacant permanent posts.

(2) Contracted teachers shall be appointed from among the candidates fulfilling the general requirements provided for by Article 48 of the Code on Civil Servants numbered 657 as well as the special requirements for appointment, up to three times more for each of the post to be filled through an oral exam.

(3) The contracted teachers appointed under this article may not be assigned to another place for four years. At displacements for the excuse of family union the spouse of the teachers employed under this article shall be subject to these teachers. Contracted teachers shall be subject to the nomination process prescribed for candidate teachers. Contracted teachers may be appointed to teaching positions where they completed a four-year work period if requested. Those appointed as teachers, hold office in the same place for at least two years, provisions for candidacy shall not apply to them.

(4) Time they spend in the service position of those assigned as contracted teachers according to the provisions Article 4, section (B) of the Code on Civil Servants, No. shall be evaluated in determining earned monthly degrees and classes provided that they do not exceed the degrees they would earn with regard to their education levels. They will be eligible for the financial and social rights of the post they were appointed to from the beginning of the month following the commencement of duties, whereby no net-settlement shall be on financial and social benefits they received in the previous positions.

(5) To those appointed within the scope of the present article no severance shall be paid. Total length of service which the severance pay is based on shall be considered in the calculation of the total length of service which the retirement grant paid according to the Code on Retirement Fund dated 6/8/1949 and no. 5434 of the Turkish Republic is based on, and except for the periods for which severance pay has already been paid.

(6) Teachers posts to which the contracted teachers shall be appointed according to the present article shall be deemed to have been added to the relevant parts of the annexed tables of the Decree Law No. 190 of the Ministry of Education and the relevant staff positions shall be deemed canceled without the need for another operation through creation by the time of the appointment provided that they they correspond to classes, titles and ranks in the annexed tables of the Decree Law No. 190 of the Ministry of Education. The positions canceled as well as cadres allocated; together with their titles, grades, quantities, organizations and units, shall be noted and reported to the Ministry of Finance and Presidency of State Personnel within two months from the date of appointment.

(7) Application of the persons to be appointed as contracted teachers, determinations of the candidates for oral exams, subjects of the oral exams, oral examination rules and procedures, appointments and other matters related to the implementation of this Article shall be regulated by a regulation enacted the Ministry of Education. "

(7) last sentence of the second paragraph of Article 29 of the Disciplinary Code of Turkish Armed

Forces dated 01.31.2013 and numbered 6413 has been amended as follows.

"In case need arises, the period may be increased up to one time by the authorities written in the present paragraph and up to a year with the approval of the minister concerned."

(8) In the Decree dated 22.07.2016 and numbered 667 on the Measures Taken under the State of Emergency;

a) the phrase "or the Directorate General of Foundations" has been added to come after "the Treasury" to the third sentence of the second paragraph of Article 2.

b) the phrase "chamber presidents and members of the Supreme Military Administrative Court, by the Council of Presidents; chamber presidents and members of the Military Court of Appeals, by the Council of Presidents; military judges by a commission under the chairpersonship of the Minister of Defense, composed by two military judges to be elected by the Minister of Defense from among the first-class military judges" has been added to the first paragraph of Article 3.

c) The phrase "from their duties" has been modified as "from their duties of temporarily discharged from their duties" in the last sentence of the first paragraph of article 3, the phrase "specially stamped" has been repealed and the following paragraph has been added.

"(3) Also to those who shall be dismissed from their duties the second paragraph of Article 4 shall apply equally."

ç) sections (d) and (e) of the first paragraph of article 4 has been amended as follows, and the following sections has been added to follow the section (g) of the same paragraph.

"d) Personnel subject to the Code on Higher Education Personnel dated 11.10.1983 and numbered 2914 shall be dismissed from public office by the the decision of the Board of Higher Education on the proposal of the President of the Board of Higher Education, the personnel subject to the Code no. 657 in the higher education institutions and higher education parent organizations shall be dismissed from the public service by the Executive Board of the higher education institute in the higher education institutes, and by the Council of Higher Education in the higher education parent institutions, and on the proposal of the highest administrator of the higher and higher education parent institutions"

"f) Personnel subject to the Code on Civil Servants dated 14/7/1965 and No. 657 and to other legislation, employed in any post, position and status (including workers) shall be dismissed from public office by the approval of the minister concerned on the proposal of a council under the chairmanship of the head of the relevant institution or organization composed by the connected, relevant or associated minister. The procedures for those specified in Article 3 of the present Decree shall be made in accordance with the procedures stipulated by the same article."

"ğ) Personnel subject to the Code on Specialized Sergeants dated 18.03.1986 and numbered 3269 shall be dismissed from duties by the approval of the Minister of National Defense on the proposal of the Force Commander concerned.

h) Personnel subject to the Code on Contracted Officers and Petty Officers Employed in the Turkish Armed Forces dated 13.06.2001 and numbered 4678 shall be dismissed from public office with the approval of the Minister of National Defense on the proposal of the Force Commander concerned. "

PART THREE

Amendments in the Code on Organization, Duties and Powers of Gendarmerie

ARTICLE 5- Article 3 of the **Code on Organization, Duties and Powers of Gendarmerie** dated 10.3.1983 and No. 2803 has been amended as follows.

"ARTICLE 3 Gendarmerie of the Republic of Turkey, is the armed public security forces which provides safety, public security and protection of public order and fulfils other duties given by the

law"

ARTICLE 6- Article 4 of Law No. 2803 has been amended as follows.

"ARTICLE 4- General Command of Gendarmerie is under the Interior Ministry."

ARTICLE 7- Article 5 of the Code No. 2803 has been amended as follows.

"Establishment and Organization:

ARTICLE 5- Organization and staff posts and areas of placement of the General Command of the Gendarmerie are regulated by the Ministry of Interior. However, during martial law, mobilization and war in the the regulation of the establishment and posts and areas of placement of the units which shall enter under the command of service commands, the opinion of the General Staff shall be taken.

Administrative divisions prevail in the regulation of the establishment and regulation of the areas of placement of the General Command of Gendarmerie. However, regional organization may temporarily be set up including more than one province. Regional commander shall act responsible to the provincial governor in which the regional organization is stationed in."

ARTICLE 8- Article 6, together with of its title, of the Code No. 2803 has been amended as follows.

"General Commander of Gendarmerie:

ARTICLE 6- General Commander of the Gendarmerie is the commander of all of the organization of Gendarmerie. General Commander of Gendarmerie shall be appointed from among those having the rank of general.

General Commander of Gendarmerie is responsible for the organization and direction of the administration, for providing the implementation of the provisions of the law and orders, and for the ensuring the enforcement of the orders and decisions issued based on them."

ARTICLE 9- Article 7 of the Code No. 2803 has been amended as follows.

"ARTICLE 7- The tasks of the gendarmerie in the area of its responsibility are as follows. a) civilian tasks; to maintain, protect and watch over safety, public security and public order, to prevent, monitor and investigate smuggling, to take and implement necessary measures to prevent crime, protect outsides of prisons and detention centers, execution of the duties other than the ones set out in sections (b) and (c) and by other laws and regulations and of the tasks attributed to gendarmerie by the orders and decisions based on them.

b) legal tasks;

to perform the tasks specified in the laws regarding crimes committed and fulfill legal services related to them.

c) military tasks; performance of military duties given by the law.

... to be continued with Art 10 to Article 39...

...

Responsibility

ARTICLE 37 - (1) No legal, administrative, financial and criminal liability shall arise for the persons taking decisions and performing duties under the present decree within the ambit of their tasks.

Injunctions (Stopping the Enforcement)

ARTICLE 38 - (1) Decisions taken under and actions within the ambit of this Decree Law can not be given a stay of execution in the lawsuits concerned.

Force

ARTICLE 39 - (1) this Decree-Law shall enter into force on the date of publication.

Execution

ARTICLE 40 - (1) The provisions of this Decree-Law shall be executed by the Council of Ministers.”

Practices during the emergency state, Cases and Reports

Next Report will include an overview of certain indicative cases and summary of other NGO reports.