



PLATFORM
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One Year on From Turkey's State of Emergency

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On 15 July 2016, Turkey experienced a momentous coup attempt that was intended to overthrow the ruling Justice and Development Party (AKP). As the bloodiest coup in Turkey's history, 265 people were killed that night with many more injured. On 20 July, the Turkish government declared a State of Emergency to restore public order and prevent further threats to the regime. Intended to be in place for three months, the State of Emergency was subsequently renewed seven times. This resulted in a two-year State of Emergency in which 36 decree laws were assumed and hundreds of thousands of people persecuted. Come July 19 2018, the State of Emergency was not renewed, lapsing the following day. Many viewed this as a positive development considering the immense abuse of decree laws. However, as detailed with this Platform for Peace and Justice report, the State of Emergency ended in name only. The negative impacts of 2016 to 2018 have not been addressed. Moreover, new laws have retained executive control and created an authoritarian regime.

The 2016 coup attempt was blamed on the cleric Fethullah Gulen and his followers, known as the 'Hizmet' (service) or the Gulen Movement. Despite no concrete evidence supporting this claim, the Turkish government designated this religious group as a terrorist organisation called FETO. The State of Emergency decrees were used to eliminate alleged Gulen Movement members. In addition, given the collapse of a fragile peace process between the government and the Kurdistan Workers' Party (PKK/PDY) in late 2015, the State of Emergency also saw alleged PKK members targeted. Moreover, the designation of 'terrorist' labels – being FETO or PKK/PDY – and the designation of activities as threatening public order under the state of emergency were completely arbitrary. Instead, the pretext of combating terrorism was used crush any opposition to the regime.

Accordingly, the 2016 coup attempt and two-year State of Emergency saw what has been termed a 'purge' of Turkish society, and the oppression of many rights and freedoms which should have been protected under the Turkish Constitution and International Law. For instance: the right to freedom of expression; the right to freedom of assembly; the right to a fair trial; the right to presumption of innocence; freedom from arbitrary detention; freedom from torture; freedom from discrimination; and the right to freedom of movement. As noted, with recognition of this abolition of human rights, there was optimism when the Turkish government decided not to renew the State of Emergency for an eighth time.

Yet as the past year has revealed, the Turkey purge and the rampant human rights abuses has not subsided with the lapse of the State of Emergency. The State of Emergency in itself has had disastrous consequences for all sectors of Turkish society, consequences which lasted well past July 19 2018 and that will likely last far into the future. Moreover, constitutional amendments which entered into force in June 2018, alongside a new anti-terrorism Law No.7145 which was enacted in July 2018, effectively made the State of Emergency redundant. Turkey was transformed into a one-man-regime under President

Erdoğan of the AKP, and emergency decrees were cemented into law. Thus, the end of the State of Emergency was only symbolic, with very little effect on the everyday lives of Turks.

This Platform for Peace and Justice report gives a comprehensive analysis of the measures undertaken during the State of Emergency and the lasting impacts of said measures. It shows how very little has changed over the past year since the State of Emergency ended in July 2018. The first four sections review the areas of which have arguably been the most disastrous for human rights, democracy, and rule of law in Turkey. First is the bans on events and assemblies, which not only absolved the right to freedom of assembly but also indirectly affected civil society. For instance, the ability for LGBTI+ organisations to operate. Secondly, the massive amount of dismissals and shut downs assumed under the State of Emergency. This saw a purge of the public sector and people arbitrarily blacklisted and punished for so-called terrorist links.

Third, the State of Emergency saw the removal of freedom to expression which has continued over the past year. Journalists and any critics of the ruling regime have been persecuted, leaving no independent media left in Turkey. Fourthly, the ad-hoc application of terrorist charges has seen hundreds of thousands of people arbitrarily arrested and detained. Alongside the immediate rights that this has curtailed, there have been lasting effects on the justice system as a whole. In the fifth section of this report, the constitutional amendments and introduction of Law No.7145 are examined in detail. This highlights how the State of Emergency measures, and the circumstances outlined through Sections One to Four, have remained in place despite the decision not to renew the State of Emergency one year ago.

Finally, this Platform for Peace and Justice report concludes with Section Six on Impacts and Recommendations. This provides for the larger impacts on different arenas of Turkish society – such as everyday life, education, security, and the economy – alongside the impacts on Turkish international relations. It then gives specific recommendations to international actors and the Turkish government in order to restore human rights, democracy, and the rule of law, and to address the negative consequences which although stemmed from the State of Emergency have not subsided since. We strongly urge the relevant actors to implement these recommendations post haste, before the damage becomes irreversible.

1. Bans on Events & Assemblies

The right to peaceful assembly is a right recognized in many international treaties and as well as in the Turkish Constitution. Article 34 of the Constitution states that: “Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission”. This right can only be restricted by law on the grounds prescribed by the Constitution such as national security, public order or public morals. However, the laws that regulate this right have been criticized heavily since they depart from international standards and from the framework established by the Turkish Constitution.

Accordingly, the right to peaceful assembly has been restricted and voices have been silenced in different times and places for various groups and minorities. One of the problematic areas that have been detected during the last few years is the broad and overarching discretionary powers of public authorities, especially provincial governors.¹ These powers had been expanded during the state of emergency period in Turkey. However, no improvement has been observed in the past year since the termination of the state of emergency.

1.1 Legal Regulations before the State of Emergency

Although the Turkish Constitution provides the right to peaceful assembly, the formalities, conditions and procedures to be applied in the exercise of this right is prescribed by several laws. The main regulation is the Law on Assemblies and Demonstrations (Law No.2911). This gives the provincial governors the power to determine places and itineraries for assemblies and demonstrations in provinces. The law also stipulates that the enjoyment of the right to peaceful assembly and demonstration is subject to notification given 48 hours in advance. Chapter 4 of the Law on Assemblies and Demonstrations regulates the conditions under which any assembly can be adjourned or prohibited. It has been asserted that adjournment or prohibition grounds are phrased quite vaguely in the law and these grounds are often restated by the provincial governors verbatim.² According to Article 17, provincial governors may adjourn a meeting for up to a period of one month to: maintain national security, preserve public order, prevent commission of crimes, protect public health, and uphold morals and freedom of others.

Another basis for the restriction of the right to peaceful assembly is Provincial Administration Law (Law No. 5442). According to Article 11(c) of this law, the provincial governors have the authority to take the decisions and measures necessary to ensure peace

¹ Association for Monitoring Equal Rights (AMER), *Freedom of Peaceful Assembly Monitoring Report: October 2015-November 2016*, <http://www.esithaklar.org/wp-content/uploads/2017/03/AMER-Freedom-of-Assembly-Annual-Report.pdf>

² *Ibid.*, p.6

and security, protection of personal immunities, public well-being and the authority of preventive law enforcement.

1.2 Additional Restrictions during State of Emergency

After the declaration of the state of emergency in Turkey on 20 July 2016, Article 11(m) of the Law on State of Emergency (Law No. 2935) was used to restrict events and assemblies. This article provides “prohibition of, postponement of, or imposition of a requirement to obtain permission for assemblies and demonstrations in both enclosed and open spaces; regulation of the time and place of permitted assemblies and demonstrations; and supervision, and if deemed necessary dispersal, of all kinds of permitted assemblies” as a measure that might be necessary to be taken during the emergency period. The same law further regulates the control and, if deemed necessary, the restriction or prohibition of every kind of broadcasting and dissemination of words, writings, pictures, films, records, sound and image bands (tapes). That provision had also been extensively used by the provincial governors during the state of emergency period.

1.3 The Right to Peaceful Assembly after the Termination of the State of Emergency

After its seventh extension, the Government announced that the state of emergency will not be renewed, and it lapsed on 19 July 2018. However, the devastating effects of the state of emergency on the exercise of human rights have continued to occur. In that regard, a new law (Law No.7145) that regulates the period after the state of emergency and amends certain laws and decree laws came into effect on 31 July 2018. This law has been criticized heavily due to its effects on making state of emergency permanent.³ Article 1 of the Law No.7145 attached a new sentence into Article 11(c) of the Provincial Administration Law (Law No.5442) that gives extensive powers to provincial governors. With this amendment, provincial governors have the authority to reorganize or limit the gatherings of people for certain times or places if public order or public security is disturbed, or when there are serious indications that it will be disturbed.

The provincial governors have used their powers provided in the aforementioned legislation extensively after the termination of the state of emergency. In that regard, preventions and limitations of the events, assemblies and demonstrations have been encountered across the country. According to the Association for Monitoring Equal Rights (AMER), provincial governments banned some meetings and demonstrations in 13 cities during the three-

³ Human Rights Association and Human Rights Foundation of Turkey (2018), *Joint Statement: We Will Not Let Human Rights Values Discarded In Any Way* <http://ihd.org.tr/en/wp-content/uploads/2018/12/IHD-HRFT-Special-Report-on-10-December-2018-Human-Rights-Day.pdf>

month period between October and December 2018.⁴ The bans declared in Batman, Kocaeli and Van were general bans that covered all events, demonstrations, meetings, press statements and so on. Below, three specific examples will be given regarding the bans implemented after the termination of the state of emergency period.

“For the lifting of Turkey’s two-year state of emergency to have been anything more than a cosmetic exercise, it needed to be accompanied by urgent measures. These have not been taken. Instead Turkey’s brutal crackdown against journalists, activists, lawyers, academics and other civil society actors has continued unabated. NGOs and newspapers have been shut down and even simple celebrations such as Pride Parades have been banned or restricted. As the students of the Middle East Technical University in Ankara discovered in May, those trying to defy these bans are met with police batons and tear gas.”

Stefan Simanowitz - Media Manager, Amnesty International⁵

The Ban on LGBTI+ Events in Ankara

The ban on public events that focuses on LGBTI+ issues in Ankara was originally imposed in November 2017 for an indefinite period during state of emergency.⁶ The Ankara Governor’s Office named the risks of LGBTI+ events as inciting hatred and enmity and being a clear and imminent threat to public security and social sensitivities as the reasons that necessitated the ban to prevent crimes being committed and to protect public health, public moralities and other’s rights and freedoms. Therefore, under Article 11(C) of the Provincial Administration Law, Article 17 of the Law on Assemblies and Demonstrations, and Article 11(f) of the Law on State of Emergency, activities of various civil society organizations under the name of LGBTI+ such as movies, theatre plays, panels, talks and exhibitions were banned indefinitely. During the state of emergency period, a great number of events of LGBTI+ organizations and student clubs were banned by the authorities or cancelled.⁷

Several cases had been filed before local administrative courts in order to annul the ban. However, these cases were rejected by the courts. The ban in the capital city of Turkey had a negative effect on LGBTI+ organizations across the country resulting in adjournment or prohibition of some activities in other cities.⁸ It can also be said that the ban in Ankara did “...reinforce stigma and prejudice and encourage homophobia, which is incompatible with

⁴ Association for Monitoring Equal Rights (2019), Barışçıl Toplantı ve Gösteri Hakkı Bülteni: Ekim-Kasım-Aralık <http://www.esithaklar.org/wp-content/uploads/2019/01/Toplant%C4%B1-ve-G%C3%B6steri-Hakk%C4%B1-%C4%B0zleme-Ekim-Kas%C4%B1m-Aral%C4%B1k-2018-B%C3%BClteni.pdf>

⁵ As told to Platform for Peace and Justice (2019).

⁶ Ankara Governor’s Office (2017), Press Release <http://www.ankara.gov.tr/yasaklama-kararina-iliskin-basin-duyurusu-19112017>

⁷ Human Rights Watch (2019), Turkey: End Ankara Ban on LGBTI Events <https://www.hrw.org/news/2019/02/14/turkey-end-ankara-ban-lgbti-events>

⁸ Ibid.

the notions of equality, pluralism and tolerance inherent in a democratic society” as ECtHR has found in *Bayev and Others v. Russia*.⁹

Even after the termination of the state of emergency, the ban had not been lifted by the authorities and the governor’s office informed the related authorities that the ban remained in force without any explanation regarding its expiration.¹⁰ Human Rights Watch wrote to the governor of Ankara and requested comments about the continuing ban after the state of emergency on 21 January 2019, but they did not receive any response.¹¹ According to Human Rights Watch, although the authorities imposed numerous bans on public assemblies during the state of emergency period, the ban on LGBTI events is unique because of its totality and indefinite time. Recently, some of the cases brought before administrative courts have been accepted and the courts have cancelled some of the bans on specific LGBTI events.¹²

Saturday Mothers: Seeking Justice for Decades

Another example of the increasing oppression on the right to peaceful assembly is the attitude towards Saturday Mothers. Saturday Mothers are group of individuals who have gathered every Saturday at 12:00 pm in the Galatasaray district of Istanbul since 27 May 1995.¹³ Their aim is to raise awareness and to seek accountability and justice for the enforced disappearances that took place since 1980s. Every week, the mothers and relatives of the victims of enforced disappearances come together and hold the pictures of their children in a peaceful manner.

However, on 25 August 2018, the district governor of Beyoğlu announced that the 700th gathering of Saturday Mothers was banned because of the absence of prior notification and the unlawfulness of the gathering places.¹⁴ Following this development, the law enforcement dispersed those who were walking to the square by using teargas and painted bullets. Some of the elderly mothers were also arrested.¹⁵ Subsequent weeks have

⁹ *Bayev and Others v. Russia*, no. 67667/09, §83, ECHR 2017

¹⁰ T24 (2018), Ankara Valiliği, LGBTİ etkinliklerini yine yasakladı!
<https://t24.com.tr/haber/ankara-valiligi-lgbti-etkinliklerini-yine-yasakladi,719723>

¹¹ Human Rights Watch (2019), Turkey: End Ankara Ban on LGBTI Events

¹² Human Rights Watch (2019), In Turkey, Ankara Wakes Up to Court Lifting LGBTI Events Ban
<https://www.hrw.org/news/2019/04/25/turkey-ankara-wakes-court-lifting-lgbti-events-ban>

¹³ Human Rights Joint Platform (2019), *Rule 9.2 Communication from IHOP (in the Oya Ataman group of cases v. Turkey (Application No. 74552/01) DH-DD(2019)125*
https://static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/5c751dcf53450a537fd0b9bb/1551179277370/20190204_CommunicationIHOP_Ataman.pdf

¹⁴ BBC (2018), Cumartesi Anneleri'nin 700. hafta oturumuna yasak
<https://www.bbc.com/turkce/haberler-turkiye-45307188>

¹⁵ Ibid.

witnessed serious police interventions against the gathering of Saturday Mothers, which has continued even post the lapse of the state of emergency.

Yüksel Resistance: "I want my job back"

Increased pressure on the right to peaceful assembly can also be seen in Yüksel Resistance which was initiated by former academician, Nuriye Gülmen, who was dismissed by emergency decree. After her dismissal, on 9 December 2016, she started her sit-in protest by carrying a sign that says "I want my job back" in the pedestrian area of Yüksel Street in Ankara right before the Human Rights Monument.¹⁶ She was taken into custody, but she declared that her protest will continue every day in a peaceful manner. In the following days, a dismissed teacher, Semih Özakça, attended the protests and the group has been growing ever since with Yüksel Street becoming the symbol of the protests.

The protestors were taken into police custody again and again. In one of these police custodies, on 9 March 2017, both Nuriye Gülmen and Semih Özakça went on a hunger strike. They were released five days later, however continued to strike in protest of their dismissal. Then on the 76th day of their hunger strike, they were taken into custody once again and detained on 23 May. Even their lawyers were detained, two days before their trial. Özakça was released on 20 October 2017 and Gülmen was released on 1 December 2017. After the rejection of their reinstatement claim by the Commission of Inquiry for State of Emergency Practices, they put an end to their hunger strike on 26 January 2018.¹⁷

The Yüksel Resistance resumes despite all the police intervention. During the state of emergency, the Ankara governor's office had banned singing anthems and songs loudly as well as chanting slogans and making demonstration and press statements on Yüksel Street.¹⁸ After the termination of the state of emergency, the Ankara Bar Association asked the Ankara governor's office if there is any restraining order against meetings and demonstrations, or press statements.¹⁹ Although the governor's office claimed that there is no general ban, considering the prevention of most press statements and also of meetings and demonstrations in the city, it is hard to take this answer seriously. Moreover, the oppression on the Yüksel Resistance and its members still continue.

¹⁶ Bianet (2017), Ankara Bans Press Statements, Slogans, Demonstrations for Gülmen, Özakça on Hunger Strike <https://bianet.org/english/human-rights/188020-ankara-banns-press-statements-slogans-demonstrations-for-gulmen-ozakca-on-hunger-strike>

¹⁷ T24 (2018), Nuriye Gülmen ve Semih Özakça, 324 gün önce başlattıkları açlık grevini sonlandırdı <https://t24.com.tr/haber/nuriye-gulmen-ve-semih-ozakca-324-gun-once-baslattiklari-aclik-grevini-sonlandirdi,545236>

¹⁸ Bianet (2017), Ankara Bans Press Statements, Slogans, Demonstrations for Gülmen, Özakça on Hunger Strike

¹⁹ Gazete Duvar (2019), Valiliğe göre Ankara eylem yasağı yokmuş!

<https://www.gazeteduvar.com.tr/gundem/2019/03/01/valilige-gore-ankara-eylem-yasagi-yokmus/>

To sum up, although the right to peaceful assembly is recognized in international conventions that Turkey is a party to, and is enshrined in Turkish Constitution, certain laws that regulate this right has been problematic since they depart from existing standards. However, problematic areas have been expanded with the increasing power of the provincial governors during the state of emergency period and after the termination of it. State authorities have used their powers to silence different voices. The bans on LGBTI+ events, the oppression of the Saturday Mothers and also of the Yüksel Resistance can be given as some apparent examples of the controversial practices which continue.

2. Dismissals & Shutdowns

Following the declaration of the state of emergency in Turkey, Decree Law No.667²⁰ was enacted in which the procedures of dismissal of public servants, judges and prosecutors were provided. With this and other emergency decree laws, public servants were dismissed through insertion of their names in annexes to decree laws and their names were made publicly available with the lists.²¹ Emergency Decree Law No.667 also authorized ministries and independent agencies to dismiss their own personnel. It goes without saying that these dismissals have affected numerous rights of a massive number of people. The effects have continued long past the lapse of the state of emergency. In this section, figures regarding dismissals will be presented and accompanying procedures explained. Then, the personal and wider implications of these dismissals will be revealed with several case studies.

2.1 Total Number of Dismissed Public Servants and Their Professions

18,632 public servants were dismissed with one of the last decrees, Decree Law No.701, that was issued on 8 July 2018. After this development, the total number of public servants who had been dismissed in the entire period of the state of emergency became 131,311.²² There were individuals at every post and rank among 116,512 public servants who were dismissed by the earlier decrees and also the decisions of the authorized bodies before 8 July 2018. For example²³,

- Among 4,836 persons dismissed from the judiciary, 4,279 of them were judges and prosecutors including members of the Supreme Court and the Council of State.
- As for the military, 8,481 officials were dismissed from the Turkish Armed Forces.
- 23,095 police officers were dismissed from the General Directorate of Security.

²⁰ Istanbul Bigli University (2016), Decree with Force of Law

https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2016/08/09/KHK_667_ENG.pdf

²¹ International Commission of Jurists (2018), Justice Suspended: Access to Justice and the State of Emergency in Turkey <https://www.icj.org/turkey-lifting-of-state-of-emergency-a-welcome-start-now-restore-rule-of-law/>

²² *Ibid.*, p.3

²³ Human Rights Joint Platform (2018), Updated Situation Report- State of Emergency in Turkey 21 July 2016 – 20 March 2018 <http://www.ihop.org.tr/2018/04/25/updated-situation-report-state-of-emergency-in-turkey-21-july-2016-20-march-2018/>

- 7,178 personnel were dismissed from the academic and administrative personnel of Turkish universities. Among 5,882 dismissed academics, there are, *inter alia*, 840 professors, 1,026 associate professors and 1,510 assistant professors.
- 6,153 military personnel, 8,998 police officers and 199 academicians were also added on the aforementioned figures with the emergency Decree Law No. 701.

The procedure that accompanies the dismissal of such a massive number of people is viewed as problematic in many aspects. Most of the dismissals were executed through lists that are published as annexes to decree laws, but none of the emergency decree laws established an evidentiary standard. Instead, broad and ambiguous grounds like a link or connection with a terrorist organization were used.²⁴ Besides that, prior notifications were not given to dismissed people and they had no opportunity to respond to the allegations after the decisions as access to files or to the evidence on which the decision was based were not provided to them.²⁵

2.2 Attitude of the Courts towards the Applications for Dismissals

After the dismissals had been executed by the lists in the annexes to decree laws or by the decisions given by the administrative bodies, dismissed public servants sought legal options to challenge their dismissals. They first went to the administrative courts. However, on 4 November 2016, the highest administrative court, the Council of State, declared its lack of competence to assess the merits of an annulment action brought by one of the judges dismissed by the decision of the Council of Judges and Prosecutors and sent his case to the first instance administrative courts.²⁶ In the following days, some first instance administrative courts declared themselves incompetent to examine cases which challenge dismissals by the lists inserted to the decree laws.²⁷

In the meantime, although the Constitutional Court had deviated from its established jurisprudence and held that it did not have the competence to assess the constitutionality of the decree laws, the Court left the door open for individual applications of dismissed people who allege that one or more of their rights enshrined in the European Convention on Human Rights (ECHR) had been violated. With this development, a total of 70,771

²⁴ Office of the United Nations High Commissioner for Human Rights (2018), Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf

²⁵ Parliamentary Assembly of the Council of Europe (2018), State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights Doc. 14506, <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileId=24505>

²⁶ *Köksal v. Turkey*, no. 70478/16, § 14, ECHR 2017

²⁷ International Commission of Jurists (2018), Justice Suspended: Access to Justice and the State of Emergency in Turkey

applications had been lodged to the Constitutional Court by 4 August 2017.²⁸ Later, these applications were sent to the Commission of Inquiry for State of Emergency Practices which will be examined below.

Applications were also submitted to the European Court of Human Rights (ECtHR). According to the 2017 Annual Report of the Court, more than 27,000 applications were declared inadmissible for failure to exhaust domestic remedies despite such domestic remedies not being available in Turkey.²⁹ Thus, until the establishment of the Commission of Inquiry for State of Emergency Practices, dismissed individuals could not find any authority to submit their complaints. Under these circumstances, Secretary General of the Council of Europe suggested Turkish authorities to establish an *ad hoc* commission for the state of emergency complaints due to the fact that massive number of applications has been submitted to an overwhelmed ECtHR regarding the dismissals of public servants³⁰. This suggestion was later endorsed by the Venice Commission³¹.

2.3 The Commission of Inquiry for State of Emergency Practices

In this context, the Commission of Inquiry for State of Emergency Practices (hereinafter the Commission) was established by Emergency Decree Law No.685 published in the Official Gazette on 23 January 2017. Article 3(1) of the Decree Law No.685 states that the Commission will be in place for two years with a possible extension of this period for additional terms of one year. The mandate of the Commission includes, *inter alia*, reviewing dismissals made by the lists annexed to the emergency decrees. The Commission is composed of seven members. Five members were appointed directly by the Government and two members were appointed by the Council of Judges and Prosecutors, whose composition is also dominantly determined by the appointments of the Government.³² Thus, it cannot be said that the Commission is independent or impartial.

According to Article 9 of the Decree No.685, the Commission assesses the applications before it on the basis of the documents in the file only; hearings before the Commission are not possible, meaning that it does not reach the standards of a court of law. After its examination, the Commission may reject or accept the application and in case that the decision is positive, it must be executed by the administration within 15 days. If the

²⁸ Human Rights Joint Platform (2018), Updated Situation Report- State of Emergency in Turkey 21 July 2016 – 20 March 2018

²⁹ European Court of Human Rights (2018), *Annual Report 2017*
https://www.echr.coe.int/Documents/Annual_report_2017_ENG.pdf

³⁰ International Commission of Jurists (2018), *Justice Suspended: Access to Justice and the State of Emergency in Turkey*, p.27

³¹ Council of Europe Venice Commission, *Opinion on Emergency Decree Laws Nos. 667-676 Adopted following the Failed Coup of 15 July 2016* (12 December 2016) CDL-AD(2016)037, para 221

³² Office of the United Nations High Commissioner for Human Rights (2018), *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East*, para 102

Commission rejects the application, the decision can be challenged before the Ankara Administrative Courts Numbers 19, 20, 21 and 22.

After the appointment of its members on 16 May 2017, the Commission started functioning on 22 May 2017 and began receiving applications on 17 July 2017.³³ There were 126,600 applications submitted to the Commission as of May 2019 and of these, the Commission has reviewed just 70,406 applications; there are 55,714 pending applications.³⁴ Furthermore, only 5,250 applicants have been reinstated to their posts, while 65,156 applications have been rejected. Considering these numbers, the rejection rate before the Commission is 92.5%. Meanwhile, the Commission's term of office has been extended by one more year with a presidential decree issued on 26 December 2018 in the Official Gazette.

Although the Commission was initially welcomed by the international organizations, there were subsequent concerns which have intensified over the course of the Commission's work. The most prominent concerns can be summarized as follows:

- The Commission has a narrow scope³⁵
- The Commission has a lack of independence and impartiality since the majority of its members are appointed by the Government³⁶
- The Commission does not hold hearings with decisions being based on the written submitted files. Considering the absence of any individualized decision for dismissals in the first place, challenging dismissals before the Commission with written documents is almost impossible³⁷
- There is no requirement for the decisions of the Commission to be reasoned, supported with evidence or published³⁸
- The role of the appeal courts is unclear considering the lack of reasoned and individualized decisions; and the predesignation of administrative courts for appeals raises suspicions with regard to lack of independence³⁹

³³ Parliamentary Assembly of the Council of Europe (2018), *State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights* Doc. 14506, para 80

³⁴ European Commission (2019), *Countries insights: Key findings of the 2019 Report on Turkey* http://europa.eu/rapid/press-release_COUNTRY-19-2781_en.htm

³⁵ UN Human Rights Council (2017), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey* UN Doc. A/HRC/37/50/Add.1, para 30

³⁶ Parliamentary Assembly of the Council of Europe (2018), *State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights* Doc. 14506, para 92

³⁷ International Commission of Jurists (2018), *Justice Suspended: Access to Justice and the State of Emergency in Turkey*, p.33

³⁸ Office of the United Nations High Commissioner for Human Rights (2018), *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East*, para 106

³⁹ *Ibid.*, p.33

- It will be difficult to assess all the applications in the next few years considering the current structure and statistics of the Commission. Hence, decisions will most likely be subject to significant delays⁴⁰
- Workload, available time-frame and high rejection rates cast doubts on whether individualized treatment to all cases has effectively been given.⁴¹

These concerns became substantiated as time passed. The Commission has based almost all of its rejection decisions on personnel information files in which there are only considerations of an applicant's institution regarding his or her alleged connection with FETÖ/PDY.⁴² By justifying its decisions with these personnel information files, the Commission violates one of the most fundamental principles of criminal law; the presumption of innocence, as a large number of rejected applicants have not been convicted before a criminal court. The Commission also uses other criteria such as: being a ByLock user, having a bank account in the Bank Asya, certain donations made, police or secret service reports, and being a member of certain trade unions or associations.

Besides, since there are no hearings, applicants are deprived of procedural guarantees before the Commission and decisions are taken solely on the basis of written files and abovementioned criteria.⁴³ As for the challenges of the Commission's decisions before the Administrative Courts, although there have been a couple of reversal decisions, Administrative Courts are generally reluctant to accept the applications. Moreover, considering the vast amount of pending applications, it can be assumed that completing all the applications will take a long time which may result in another extension of the Commission's term of office.

"More than two-and-a-half years after almost 130,000 Turkish dismissed public sector workers are still awaiting justice. They and many in the country, face an uncertain future."

Stefan Simanowitz - Media Manager, Amnesty International⁴⁴

2.4 Affected Rights of Individuals

The dismissals have affected the numerous rights and freedoms of people. Indeed, mass dismissals have short and long-term impacts on society as a whole as well as on the exercise

⁴⁰ *Ibid.*, p.33

⁴¹ Parliamentary Assembly of the Council of Europe (2018), *State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights* Doc. 14506, para 92

⁴² Levent Mazılıgüney (2019), OHAL Komisyonu Masumiyet Karinesini İhlal Ediyor <https://www.meridyenhaber.com/ohal-komisyonu-masumiyet-karinesini-ihlal-ediyor-makale,44743.html>

⁴³ European Commission (2019), *Countries insights: Key findings of the 2019 Report on Turkey*

⁴⁴ As told to Platform for Peace and Justice (2019).

of the fundamental rights of the people. This has not been limited to the period of state of emergency.

At first glance, rights that may be affected by the dismissals and additional sanctions accompanying them are mostly economic and social rights. Since the dismissals include a lifelong prohibition from working in the public sector, they can be expected to have dramatic effects on right to work. Moreover, dismissed people have been stigmatized as terrorists and hence, their chance to find a job in the private sector has also been jeopardized.⁴⁵ In addition to being unemployed, dismissed people lost their income and social benefits such as access to medical insurance and retirement benefits.⁴⁶ Along with economic and social rights, dismissals have also borne their impacts on some civil and political rights. For example, the authorities cancelled the passports of the dismissed people and even restricted the passports of their relatives.

“Without knowing what they were accused of 134,207 people’s passports were confiscated and these people were discharged from their public service by decree-laws. Even though they have no court decision, they are still not employed in private sector or government offices. These peoples’ relatives are not allowed to work in any public sector on the excuse for security clearance regardless of the principle of individual criminal responsibility. These people whose passports were confiscated are still subjected to civil death. At least 60 of these people could not withstand these practices and committed suicide.”

- Ömer Faruk Gergerlioğlu, Turkish HDP Politician⁴⁷

Even after the termination of the state of emergency in Turkey, the aforementioned rights have continued to be affected negatively. One of the most striking examples belongs to Dr. Haluk Savaş, a psychiatrist and psychotherapist who was discharged from his duty at the Medical School of Gaziantep by an emergency decree.⁴⁸ Then, his passport was cancelled along with hundreds of thousands of other dismissed public servants. After his dismissal, Dr. Savaş was arrested and jailed for alleged terror charges. In the meantime, he learnt that he had pancreatic cancer. After all this, he was acquitted of the terror offense. He tried to go abroad for his cancer treatment. However, his passport had not been renewed by the authorities even though his international travel ban was lifted after his acquittal.

⁴⁵ Office of the United Nations High Commissioner for Human Rights (2018), *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East*, para 71

⁴⁶ *Ibid.*, para 70

⁴⁷ As told to Platform for Peace and Justice (2019).

⁴⁸ Bianet (2019), Petition Launched for Cancer Patient Discharged Physician <https://bianet.org/english/human-rights/208500-petition-launched-for-cancer-patient-discharged-physician-let-haluk-savas-live>

Furthermore, he had been given only 39 months to live when diagnosed with pancreatic cancer and had already spent 30 months of it. Under these circumstances, Dr. Savaş launched an online petition on change.org with the title “Let Haluk Savaş Live”. His situation also received a lot of attention on social media, especially under the hashtag #HalukSavaşPasaport in Twitter. Due to this pressure, the Governorship of Adana released a statement and declared that a passport will be issued for Dr. Haluk Savaş within the scope of exceptional circumstances under Article 22 of the Law no.5682.⁴⁹ In the end, he was able to obtain his passport but there are still a great number of individuals who are waiting to exercise one of their most fundamental rights, namely the freedom of movement.

This interference on freedom of movement by cancelling and not renewing passports has affected many. For instance, academicians have seen their academic freedoms demolished. They have not been able to attend seminars, conferences, lectures et cetera that are organized abroad. They have also had to decline job offers from foreign universities. At the same time, they have been deprived of any academic job opportunities not only at Turkish state universities, but also at private universities since working at these private universities is considered as public service.⁵⁰

An Amnesty International report⁵¹ asserts that lawyers have faced similar problems. Thousands of dismissed prosecutors, judges and law faculty academicians wanted to practice law. However, the Union of Turkish Bar Associations has introduced further restrictions in addition to those that can be found in existing law and dismissed lawyers have not been able to obtain their lawyer license since profession of lawyer is deemed as a public service. Police officers and military personnel were also banned from working in private security companies. This ban was implemented by several emergency decrees. Similarly, dismissed teachers from the Ministry of Education were banned from working in private schools according to Amnesty International’s report.

Of course, the impacts of the dismissals have not been limited only to dismissed public servants, but their family members have also been affected negatively. Considering such massive effects of the dismissals on the hundreds of thousands of citizens, it can be said that dismissed individuals and their family members have been left to civil death by the Turkish authorities even after the termination of the state of emergency.

⁴⁹Bianet (2019), Governorship of Adana: Prof. Dr. Haluk Savaş Will Be Given Passport <https://bianet.org/english/human-rights/208568-governorship-of-adana-prof-dr-haluk-savas-will-be-given-passport>

⁵⁰ Amnesty International (2017), No End in Sight: Purged Public Sector Workers Denied a Future in Turkey <https://www.amnesty.org/en/documents/eur44/6272/2017/en/>

⁵¹ Ibid.

3. Press Freedom

Since joining the Council of Europe (CoE) on the 13th April 1950,⁵² Turkey has been heavily criticised for its long record of human rights abuses, including repeated violations of the right to freedom of expression as set out in Article 10 of the European Convention on Human Rights (ECHR). This is evidenced by case-law from the European Court of Human Rights (ECtHR) which found 700 violations of Article 10 across all 47 CoE member states between 1959 and 2017, 281 of which occurred in Turkey.⁵³ Furthermore, Turkey has the highest number of imprisoned journalists worldwide, with at least 319 journalists having experienced imprisonment after the coup attempt in July 2016.⁵⁴ The combination of these factors illustrate the scale of the problem, making the European Commission's description of Turkey as being "at an early stage in the area of freedom of expression"⁵⁵ appear extremely optimistic.

This section of the report will analyse Turkey's problematic relationship with freedom of expression. It will begin by analysing the application of the right to freedom of expression as set out in Article 10 of the ECHR. It will consider the repeated violations of freedom of expression in Turkey after the attempted coup and will look at how the situation has developed as a result of the declaration of a state of emergency, which was accompanied by a crackdown on the press and has not improved over the past year. In order to illustrate the situation, this section will cover the legal proceedings of two journalists before the ECtHR, Sahin Alpay and Mehmet Altan, who were detained while exercising their rights to freedom of expression. This will be followed by the analysis of the politically-shaped structure of media organisations and how independent media has been considerably decreased following the declaration of the state of emergency.

3.1 Crackdown Against Dissenting Voices After Coup Attempt

Restrictions on the freedom of expression are not a new phenomenon in Turkey as seen by the numbers of the cases before the ECHR from 1959 to 2017. However, the situation of freedom of expression and the press has further deteriorated under the state of emergency and have not been recovered afterward. The effect was so severe that Freedom House continuously report the press freedom status as 'not free'.⁵⁶ The crackdown did not only

⁵² Council of Europe (2018), Turkey: 47 States, One Europe <https://www.coe.int/en/web/portal/turkey>

⁵³ Council of Europe (2017), Annual Report of the European Court of Human Rights https://www.echr.coe.int/Documents/Annual_report_2017_ENG.pdf p174-175

⁵⁴ Turkey Purge (2016), Journalists Arrested in Turkey After July 15 <https://turkeypurge.com/journalism-in-jail>

⁵⁵ European Commission (2016), Turkey Report, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_turkey.pdf

⁵⁶ Freedom House (2014), 'Turkey: Freedom of the Press 2014' <https://freedomhouse.org/report/freedom-press/2014/turkey>

affect the security and freedom of journalists; any dissenting voices - judges, academics, activists, teachers - were silenced, and freedom of expression in Turkey began to regress rapidly. This development is reflected in the annual press freedom indexes by *Réporters Sans Frontières*. While Turkey was already ranked poorly prior to the attempted coup (149 out of 180 in 2015)⁵⁷ it is now on position 157, two places behind Belarus and only three places ahead of Iraq.⁵⁸

Moreover, in the aftermath of the coup attempt, the Turkish government detained and prosecuted a large number of journalists, claiming that they were members of various terrorist groups. According to *Turkey Purge*, a total of 319 journalists have been arrested in Turkey after July 2016, with some 180 of them still in custody, even after the removal of the state of emergency.⁵⁹ A large portion faced charges such as committing an offence on behalf of a criminal organisation or aiding such an organisation and disseminating terrorist propaganda.⁶⁰ This is due to the overly wide application of these anti-terrorism and state security provisions of the Turkish Criminal Code.⁶¹

In this context, the Venice Commission noted that some of the terror provisions were unworkably ambiguous, saying that they “provide for excessive sanctions and have been applied too widely, penalising conduct protected under the ECHR, in particular its Article 10”.⁶² This view was echoed by the Commissioner, who also observed that the provisions have been used to suppress conduct clearly falling within the scope of Article 10 of the Convention.⁶³ This is in blatant contradiction to the enshrined principle in Strasbourg case-law that state authorities in their dominant position are required to show restraint in resorting to criminal proceedings in matters of freedom of expression.⁶⁴ In particular, the terrorist “membership” concept must not apply to journalists on the basis of their publications alone, but should be construed narrowly.⁶⁵ Many of the charges against journalists turned out to be completely unsubstantiated.

Since journalistic activities are often the only evidence available to establish such crimes, the defence often brought forward by Turkey – that criminal proceedings instituted against

⁵⁷ Reporters Sans Frontières (2015), World Press Freedom Index https://rsf.org/fr/ranking_table

⁵⁸ Reporters Sans Frontières (2018), World Press Freedom Index https://rfs.org/fr/ranking_table

⁵⁹ Information compiled by Turkey Purge as of 20 November, <https://turkeypurge.com/journalism-in-jail>

⁶⁰ Nils Muiznieks (2017), Third party intervention by the Council of Europe Commissioner for Human Rights, CommDH 29, 10 October 2017, para 11.

⁶¹ Ibid, para 10.

⁶² Venice Commission, Opinion No. 831/2015 on Articles 216, 299, 301 and 314 of the Penal Code of Turkey, CDL-AD (2016) 002, 15 March 2016, para 123.

⁶³ CommDH (2017) 29, para 10.

⁶⁴ *Morice v France*, 23 Apr. 2015 (29369/10) para 176.

⁶⁵ CommDH(2017)29, para 12.

journalists do not relate to their journalistic activities but to other crimes – is not credible.⁶⁶ This argument is underlined by the fact that journalists have been frequently arrested collectively under the state of emergency by the issuing of collective detention orders, “an indicator that no meaningful assessment of risks individually posed by each arrested person has been conducted.”⁶⁷ It would be a reasonable assertion that these unjustified detentions are politically motivated and that their aim is the silencing of critical voices of the media.

3.2. Cases of Şahin Alpay and Mehmet Altan

Journalists Şahin Alpay and Mehmet Altan were arrested by the Turkish authorities after the attempted coup of 2016 and put into pre-trial detention as suspected members of the Gülen movement. Both had published articles which were critical of the government prior to the attempted coup. They were indicted of attempting to overthrow the constitutional order and of committing offences on behalf of a terrorist organisation. Eventually, both lodged applications with the Turkish Constitutional Court (TCC) complaining that their detention on remand was based solely on the offending articles and that this constitutes an infringement of their right to freedom of expression and of the press. The TCC agreed and ordered their release.⁶⁸ However, the lower Istanbul assize courts refused to follow the decision of the TCC in what can only be described as an “utter defiance of constitutional authority”⁶⁹ running counter to the rule of law.

The ECtHR, in its judgment, found that the pre-trial detention of Alpay and Altan constituted an interference with their right to freedom of expression.⁷⁰ It accepted that the detention on remand had been prescribed by the Turkish Criminal Code and had pursued the legitimate aim of preventing disorder and crime.⁷¹ However, it saw no reason to depart from the conclusion of the TCC,⁷² which found the applicants’ pre-trial detention could not be deemed as necessary in a democratic society.⁷³ The ECtHR emphasised that Government criticism should not be followed by serious criminal charges; such restrictions on freedom of expression and the press could only be justified as a measure of last resort and only if the views expressed contained incitement to violence.⁷⁴ Especially because “the pre-trial detention of anyone expressing critical views produces a range of adverse effects, both for the detainees themselves and for society as a whole, since the imposition of a measure

⁶⁶ CommDH(2017)5, para 96

⁶⁷ The Venice Commission, Opinion on the measures provided in the recent emergency decree laws with respect to freedom of the media, CDL-AD(2017)007, 13 March 2017, para 80.

⁶⁸ *Sahin Alpay*, TCC, no. 2016/16092, 11/01/2018; *Mehmet Hasan Altan*, TCC, no. 2016/23672, 11/01/2018

⁶⁹ Dilek Kurban (2018), “A Love Letter from Strasbourg to the Turkish Constitutional Court” [Verfassungsblog.de](https://verfassungsblog.de/a-love-letter-from-strasbourg-to-the-turkish-constitutional-court) <https://verfassungsblog.de/a-love-letter-from-strasbourg-to-the-turkish-constitutional-court>

⁷⁰ *Sahin Alpay*, paras 167-170

⁷¹ *Ibid*, paras 172-176.

⁷² *Ibid*, para 178.

⁷³ *Sahin Alpay*, TCC, no. 2016/16092, 11/01/2018; *Mehmet Hasan Altan*, TCC, no. 2016/23672, 11/01/2018.

⁷⁴ *Sahin Alpay*, paras 179 and 181

entailing deprivation of liberty, as in the present case, will inevitably have a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices”.⁷⁵

While prepared to take into account that the attempted coup posed a major threat to democracy, the ECtHR stressed that governments in emergency situations must nevertheless strive to safeguard democracy: “The existence of a public emergency threatening the life of the nation must not serve as a pretext for limiting freedom of political debate.”⁷⁶ Thus, convention contracting states are expected to show restraint in initiating criminal proceedings against journalists irrespective of declaring the state of emergency.⁷⁷

3.3 Closure of Media Companies

One of the most obvious examples of how the state of emergency allowed the government to take radical and arbitrary measures against dissenting voices is the closure of media companies. On 27 July 2016 alone, over 130 media companies were closed using emergency decree 668.⁷⁸ In total, 199 media outlets, which include media agencies, publishing and distribution companies had simply been shut down between the coup attempt and March 2018 via decrees promulgated under the state of emergency.⁷⁹ However, decisions on closure of 25 media outlets have been repealed later on. With the enactment of the last emergency decree, Decree Law No. 701, four more media outlets were also closed. While some of the affected outlets allegedly had connections to the Gülen movement, e.g. the daily *Zaman*, many others had no such connections.⁸⁰

The decisions on the closures were made either by the annexes inserted to the decree laws or by the proposals of the Radio and Television Supreme Council Commission which are approved by the related Ministries. Under Article 2(3) of Decree Law No.668, movable property as well as all kinds of assets, receivables, rights and all documents and papers that belong to the closed media outlets were transferred to the Treasury. Assets transferred to the Treasury were handed over by the Ministry of Finance to the Savings Deposit Insurance Fund for their sales and liquidation. As of 5 March 2018, Savings Deposit Insurance Fund’s sales reached 28,44 million Turkish Liras.⁸¹ Such an unprecedented crackdown on media

⁷⁵ *Sahin Alpay*, para 182.

⁷⁶ *Ibid*, para 180.

⁷⁷ *Castells v Spain*, 23 Apr. 1992 (11798/85) para 6

⁷⁸ David Kaye, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, A/HRC/35/22/Add.3, 7 June 2017, paras 31 and 38. Please also see Turkey Purge, Turkey’s Post-Coup Crackdown <https://turkeypurge.com/>

⁷⁹ Human Rights Joint Platform, ‘Updated Situation Report- State of Emergency in Turkey 21 July 2016 – 20 March 2018’ (IHOP, 17 April 2018) <<http://www.ihop.org.tr/2018/04/25/updated-situation-report-state-of-emergency-in-turkey-21-july-2016-20-march-2018/>>

⁸⁰ Statement by the Special Rapporteur of 8 March 2016

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17172&LangID=E>

⁸¹ <https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.medya>

outlets during the state of emergency has made Turkey one of the worst performers in the world in terms of media freedom and freedom of expression. This view has been repeated by many international organisations.

Reporters without Borders carried out the Media Ownership Monitor Turkey 2018 with the IPS Communication Foundation and reached some striking findings. That is, Turkish media has been increasingly concentrated in terms of opinion. On top of the closure of media outlets, politic-economic ties of media owners with government (nine of the ten most important owners are affiliated with the government), non-transparent distribution of public funds, and audience and market power geared towards media empires are other reasons for the government's complete control of the mass media.⁸² Many media owners were paid off by the government, and journalists who tried to criticize the *de facto* actions of the government were assaulted, harassed or fired. This continued after the state of emergency era, and it became commonplace for media owners to be paid off by the government in exchange for skewed reporting of politically sensitive issues.⁸³

Accordingly, Turkey's largest media group, namely Dogan Media Company, was sold to the pro-government Demirören Holding. This sale included its leading media outlets such as the daily Hürriyet, the 24-hour news channel CNN Türk and news agency DHA.⁸⁴ Reporters without Borders labelled this sale as 'the death of media pluralism'.⁸⁵ Media shutdowns and other closures assumed via emergency decree are, alike the dismissals examined in Section Two of this report, subject to appeal by the State of Emergency Commission. Consequently, the same issues with gaining justice such as non-independent judgment, a lack of fair trial proceedings, and long waiting periods apply.

All in all, it can be concluded that the media shutdowns, political affiliations and business interests under the state of emergency have resulted in consolidation of media in Turkey. Very little decrees in this regard have been reversed since. Dissenting voices still cannot find any place in the mainstream media and there is only a handful media platforms that offer alternative journalism. Thus, the human rights violations against individuals of the press and the resulting lack of freedom of expression in Turkish society as a whole have been sustained since the state of emergency ended in July 2018.

⁸² Reporters Sans Frontiers (2019), Turkey <https://www.mom-rsf.org/en/countries/turkey/>

⁸³ CommDH(2017)29, para 27.

⁸⁴ DW (2019), An ongoing crisis: Freedom of speech in Turkey <https://www.dw.com/en/an-ongoing-crisis-freedom-of-speech-in-turkey/a-47405671>

⁸⁵ Reporters Sans Frontiers (2018), Doğan media group sale completes government control of Turkish media <https://rsf.org/en/news/dogan-media-group-sale-completes-government-control-turkish-media>

3.4 Other Restrictions on Freedom of Expression

Among other victims of the crackdown on freedom of expression are members of parliament, with a group of oppositional MPs even losing their seat after their immunity was “lifted by an ad hoc [...] measure.”⁸⁶ Academic freedom, which is recognized as “another important pillar of freedom of expression”,⁸⁷ also suffered the consequences of the state of emergency, with thousands of academics were dismissed by virtue of emergency decrees.⁸⁸ Besides, groups such as social media users and human rights defenders have been targeted. In 2017 alone, 6,033 prosecutions were undertaken for insults against the President, many having occurred via social media.⁸⁹ These measures have reinforced the impression that this is indeed a systematic and large-scale crackdown on dissenting voices.

The unsatisfactory situation against the freedom of expression has been dramatically aggravated in retaliation to the failed coup attempt in 2016 and Turkish authorities have abused the state of emergency measures as a means of restricting the diversity of media. The post-coup attempt era has been used by the government to restrict the voice of media without confronting with any dissenting opinion. This led to a situation where Turkey has been, for the first time, classified as ‘not free’ by the Freedom House in its 2018 report.⁹⁰ Turkey’s status has not changed as of 2019; it is still classified as ‘not free’. This result is not unexpected as many journalists are still kept in prison which implicitly restrict others to be able to express their opinions and criticisms without being afraid similar persecution.

“For the fourth year in a row, Turkey is the world's biggest jailer of journalists.”

- Stefan Simanowitz, Media Manager Amnesty International⁹¹

Therefore, even after the termination of the state of emergency in July 2018, nothing has changed in terms of media freedom in Turkey. Furthermore, the lack of plurality within the media and the atmosphere of fear instead of freedom over the press have gone hand-in-hand with the erosion of other branches of the government, for instance, the independence and impartiality of the Turkish Judiciary. This, coupled with the decrease in commitment of the Turkish authorities to comply with the ECHR, has led to an extremely hostile press environment and almost complete suppression of freedom of expression. Against this background, Turkey’s attempt to profile itself as an advocate of human rights and freedom of the press in light of the murder of Jamal Khashoggi is not without irony.

⁸⁶ CommDH(2017)29, para 34.

⁸⁷ Ibid, para 35.

⁸⁸ Ibid, para 35.

⁸⁹ Human Rights Watch (2018), Turkey: End Prosecutions for Insulting the President

<https://www.hrw.org/news/2018/10/17/turkey-end-prosecutions-insulting-president>

⁹⁰ Freedom House (2018,) Turkey <https://freedomhouse.org/report/freedom-net/2018/turkey>

⁹¹ As told to Platform for Peace and Justice (2019).

4. Arbitrary Detention

By the manipulation of existing laws and the declaration of new decrees, the state of emergency saw hundreds of thousands of people arbitrarily detained under the pretext of combating terrorism. This necessitated the manipulation of the judicial system which is now no longer impartial nor independent. Given the sudden increase in cases being brought forward, and in subsequent detainees, enormous pressure was placed on the Turkish courts and detention facilities which has had further negative impacts. Despite the cessation of the state of emergency on 18 July 2018, this pressure remains today.

Furthermore, people have continued to be arrested and convicted on trumped-up terrorism charges over the past year. State of emergency decrees have been prolonged, and new legal instruments implemented, to achieve the results desired by the regime. All this has reverberated internationally, with people turning to the European Court of Human Rights (ECtHR) as the Turkish judicial system has failed. However, this too has created pressure, with the majority of ECtHR applications rejected. This section examines the arbitrary detention and effects on the justice system during and post state of emergency.

4.1 Detention Under the State of Emergency

The state of emergency saw well over 100,000 people arrested on 'terrorist' charges, including public servants, lawyers and judges, media personnel, academics and human rights defenders. This depended upon the Anti-Terrorism Law (3713) and Turkish Penal Code (5237), of which the definition of terrorism is unclear and open to abuse. It does not limit terrorism to taking hostages or the involvement of lethal or serious physical violence, as per international guidelines.⁹² On arbitrary detention, the United Nations Working Group's criteria includes the nature of the law applied. When a law is too vague or excessively broad, resulting detention is considered arbitrary. As such, pre and post-trial detention under Turkey's anti-terror law is certainly arbitrary, as exemplified by the following.

In September 2016, Aydın Sefa Akay, a United Nations judge for the International Criminal Tribunals, was arrested and detained for alleged Gulen Movement membership. He was later convicted to seven and a half years imprisonment on the basis of using the ByLock messaging application. In the same month, journalist Ahmet Altan and academic Mehmet Altan were arrested on terror charges with the accusation that they televised subliminal messages the night prior to the coup attempt. After over two years of pre-trial detention,

⁹² United Nations (2010), A/HRC/16/51 <https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/a-hrc-16-51.pdf>

they were convicted to life imprisonment. Mehmet has since been released on appeal but has not been reinstated to his academic position. As noted in Section Three, similar charges have been brought against other media personnel. And in June 2017, Chair of Amnesty International Turkey Taner Kılıç, alongside ten other human rights defenders, were also arrested for Gulen Movement membership on baseless evidence. Kılıç spent 14 months in pre-trial detention; all eleven still face conviction.

Trumped-up terrorism charges have not been exclusively applied to alleged Gulen Movement (so-called FETO) members; they have also been applied to considered to be supporting the PKK/YPG. For instance, after Turkey commenced the Afrin military offensive in January 2018, those critical of the operation were targeted. Within a month, 845 people had been detained based solely on dissenting social media posts.⁹³ When the Turkish Medical Association (TTB) issued a statement calling for peace in Afrin, members of the Central Council were charged with 'making propaganda for a terrorist organisation'. In May 2019, eleven members were given prison terms ranging from 20 months to three years and three months. Dr Ömer Faruk Gergerlioğlu, HDP politician and member of the Human Rights Inquiry Committee, was also convicted on this charge just for sharing a news article on Twitter which made the case for peace with the PKK.

Alongside the abuse of existing anti-terrorism laws, the *Decree Law on Measures to be taken under the State of Emergency* (2016) allowed extraordinary arrest procedures. The maximum period of police custody before charge or judicial review was increased from 48 hours to 30 days, and the right to a private conversation with a lawyer was revoked. Decree No.668 then denied access to a lawyer for up to five days. The removal of procedural safeguards increased the potential for torture and ill-treatment, as stressed by those such as the Council of Europe⁹⁴ and Human Rights Watch.⁹⁵ Although these arrest procedures lessened with Decree No.684 in 2017, concerns regarding torture are still prevalent. Indeed, concerns were validated by Law No. 6722, introduced one week after the coup to give retrospective immunity to those carrying out counter-terrorism operations, rendering investigation into torture and ill-treatment extremely difficult.

Once suspects are charged, there is also little chance of release pending trial. Over 50,000 were still held in pre-trial detention over 'terror' charges as of April 2018.⁹⁶ The extent of

⁹³ Amnesty International (2018), Weathering the Storm <https://www.amnesty.org.au/wp-content/uploads/2018/04/Turkey-Weathering-The-Storm-Report.pdf>

⁹⁴ Council of Europe (2016), Measures taken under the state of emergency in Turkey <https://www.coe.int/en/web/commissioner/-/measures-taken-under-the-state-of-emergency-in-turkey?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner%2Fcountry-report%2Fturkey>

⁹⁵ Human Rights Watch (2016), Police Torture and Abductions in Turkey <https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey>

⁹⁶ Amnesty International (2018), Weathering the Storm <https://www.amnesty.org.au/wp-content/uploads/2018/04/Turkey-Weathering-The-Storm-Report.pdf>

pre-trial detention relates to the non-impartial, non-independent nature of Turkey's Criminal Peace Judgeships. These Judgeships decide on pre-trial detention or release and are under the auspices of the ruling AKP.⁹⁷ Additionally, in 2017 Decrees No. 693 and 694 increased the maximum pre-trial detention for terror charges from five years to seven.

Facing trial is not any better. Evidence used is unsubstantiated, to say the least. As noted, social media posts, including sharing articles written by others, are considered enough to be persecuted for terrorist propaganda. As for Gulen Movement affiliation, so-called evidence includes: subscription to newspapers such as Zaman; holding an account at Bank Aysa; working for an institution, like a school, that was Gulen-affiliated; being in possession of 'propaganda' like books; and downloading the ByLock messaging application. Decree No.668 restricted access to investigation files by the defense counsel, making it difficult to prepare for court proceedings. Heavy sentences are then handed down due to the 'terrorist' nature. Judges and prosecutors whom go against the will of the regime have been punished.⁹⁸

Although Legislation 3713 and 5237 existed prior to the state of emergency, their application clearly escalated during the period. For example, whilst 8,324 people were indicted under Article 314 of the Turkish Penal Code in 2013, 146,718 people were indicted under the same Article in 2017.⁹⁹ The decrees surrounding arrest procedures, detention, investigation and trial have compounded the situation, placing enormous pressure on the justice system.

4.2 Impacts on the Justice System

The state of emergency decrees as listed above have quite obviously impacted due process, removing the internationally recognised procedural safeguards. It has become quite easy for people to be arbitrarily arrested, detained, and convicted, generally being politically motivated. In addition, the justice system itself has been dismantled due to the dismissals via decree as described in Section Two. Around 4,500 judges and prosecutors have been dismissed. These experienced professionals have been replaced by those loyal to the AKP regime. The head of the Turkish Bar Association noted that by 2019, the average level of practicing judge's experience is just two-and-a-half years.¹⁰⁰ He also describes how this has led to many judges pushing cases up to the appeal courts when they are unsure of how to handle them. There is hardly consistency across the court system.

⁹⁷ Platform for Peace & Justice (2018), Turkish Criminal Peace Judgeships <http://www.platformpj.org/3552-2/>

⁹⁸ Ibid.

⁹⁹ The Arrested Lawyers Initiative (2019), Abuse of the Anti-Terrorism Laws by Turkey is Steadily Increasing <https://arrestedlawyers.org/2019/05/30/abuse-of-the-anti-terrorism-laws-by-turkey-is-steadily-increasing/>

¹⁰⁰ The New York Times (2019), Erdoğan's Purges Leave Turkey's Justice System Reeling <https://www.nytimes.com/2019/06/21/world/asia/erdogan-turkey-courts-judiciary-justice.html>

Compounding this is the upsurge of cases going through the judicial system, as reflected by the increase of indictments under Article 314 alone, creating lengthy delays. It can take years to see a case finalised, and even longer if a case is to then be appealed. This pressure has reverberated internationally, with an influx of cases being sent to the ECtHR. As explained in Section Two, the Council of Europe suggested that Turkey establish the State of Emergency Commission due to the influx relating to dismissals and shutdowns via decree. Yet despite this Commission streamlining applications by restricting proceedings, this has simply removed the right to fair trial whilst still taking several years to make a decision. Furthermore, these decisions are still open to appeal within the normal court system, meaning that cases can actually take 10 years to finalise.

This has contributed to the amount of people in pre-trial detention, and to the prison population overall. Statistics show that by 2017, those in pre-trial detention had more than doubled since 2012.¹⁰¹ Detention facilities are overflowing; in late 2016, the United Nations Special Rapporteur on Torture Nils Melzer stated that one of his most pressing concerns was that facilities were at capacity ranging from 125% to 200%¹⁰². This contributes to poor conditions, such as a lack of proper access to bedding, food and drinking water, toilets and cleaning amenities, and medical attention. This is not to mention the general physical and mental angst from being kept in a small, congested space. Immediately following the coup attempt, suspected perpetrators were also held in make-shift cells, such as in stables, gyms, and auditoriums¹⁰³. Overcrowding can additionally facilitate torture, another concern addressed by Nils Melzer alongside others.

“Despite the principle of accessing the offender from evidence, it has become a principle to create evidence from the accused offender. Prisons have reached a fullness capacity, over 100s of children had to live in prison settings, and tens of babies were born in prison settings. In an arbitrary manner, all conceivable practices such as transfer, health referrals, free and non-contact visitations are given in a system that will further aggravate the victim. Allegations of torture and ill-treatment in prison have increased and many people have died in single-person prison cells. While pregnant and newly given birth mothers and seriously ill prisoners should not be held in prison, they are condemned to torture and death.”

- Ömer Faruk Gergerlioğlu, Turkish HDP Politician¹⁰⁴

¹⁰¹ World Prison Brief (2017), Pre-Trial/Remand Prison Population: Turkey
<http://www.prisonstudies.org/country/turkey>

¹⁰² United Nations Office of the High Commissioner (2016), Preliminary observations and recommendations of the United Nations Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Nils Melzer on the Official visit to Turkey
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20976&LangID=E>

¹⁰³ Euobserver (2018), Inside Erdogan’s Torture Chambers <https://euobserver.com/foreign/143575>

¹⁰⁴ As told to Platform for Peace and Justice (2019).

Despite Turkey releasing tens of thousands of prisoners convicted of ordinary crimes committed before July 1 2016 to ease the pressure, the new inmates – a consequence of the state of emergency and post-July 2018 measures – continue to face these problems related to overcrowding. In 2018 Nils Melzer reiterated his concerns of torture and ill-treatment since no serious measures had been taken his 2016 visit.¹⁰⁵ Turkey has announced plans to build at least 50 new prisons to address post-coup overcrowding¹⁰⁶, alongside President Erdoğan calling for the reinstatement of the death penalty, hardly viable solutions.

4.3 Continuations Post July 2018

The pressures on the Turkish justice system have remained since the cessation of the state of emergency on July 18 2018. There are about 7.5 million active criminal cases as of June 2019, with these cases taking 16 times as long to process as those in the United States.¹⁰⁷ The overall prison population, which was at approximately 230,000 at the end of 2017, now sits at 272,000. Moreover, people have still been persecuted without procedural safeguards, with little deviation from the abuse of anti-terrorism laws and decrees used during the state of emergency. In fact, new legislation was introduced which essentially made the state of emergency permanent.

Just six days after the state of emergency ended, a new anti-terrorism bill was rushed through Turkey's Parliament, despite concerns by the opposition and international actors. This allowed the government to continue with dismissals of the public service, just as they did previously via decree. This includes dismissals of judges and prosecutors. Those dismissed will likely be subject to criminal investigation, alike those formerly dismissed. The bill formalised extended periods of police custody before charge, now being four days if there are multiple offences, subject to renewal twice if deemed necessary, a total of 12 days. Suspects can be repeatedly detained under the same investigation. Other measures taken under the state of emergency have been cemented as law under this legislation, as discussed in other sections of this report. These measures are to last at least three years and do not provide for adequate oversight.

With these conditions, arbitrary arrests and charges have been sustained over the past year. For instance, in February 2019, 124 police officers were detained due to alleged collaboration with the Gulen Movement to cheat on promotion exams. The purge of the police force, alike that of the judiciary, clearly has implications for the justice system. During

¹⁰⁵ United Nations Office of the High Commissioner (2018), Turkey: UN expert deeply concerned by rise in torture allegations

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22718&LangID=E>

¹⁰⁶ Australian Department of Foreign Affairs and Trade (2018), Country Information Report Turkey <https://dfat.gov.au/about-us/publications/Documents/country-information-report-turkey.pdf>

¹⁰⁷ The New York Times (2019), Erdoğan's Purges Leave Turkey's Justice System Reeling <https://www.nytimes.com/2019/06/21/world/asia/erdogan-turkey-courts-judiciary-justice.html>

May 2019, arrest warrants were issued for 249 diplomats from the Turkish Ministry for Foreign Affairs on similar allegations of cheating on their entrance exams. At least 100 were detained, with many having faced torture.¹⁰⁸ It is clear that torture and ill-treatment has continued unabated. In June 2019, a new wave of warrants for ‘FETO membership’ saw dozens of civil servants arrested. This includes 10 on the basis of ByLock use, evidence that has been shown to be unreliable,¹⁰⁹ let alone enough to uphold terror charges.

“Tens of thousands of people have been locked up by a judiciary that lacks the most basic independence and incarcerates real or perceived critics of the government without evidence of any actions that can reasonably constitute offences.”

- Stefan Simanowitz, Media Manager Amnesty International¹¹⁰

People who were held in pre-trial detention during the state of emergency continue to be convicted. In April 2019, four lawyers were sentenced to imprisonment, bringing the total of lawyers sentenced for membership or propaganda of a terrorist organisation to 294, with a combined 1861 years in prison.¹¹¹ The continued targeting of judges and prosecutors means that the already devastated judicial system is unlikely to recover anytime soon. In addition, the oversight mechanism for the judicial system – the High Council of Judges and Prosecutors (HSK) – was adjusted with the 2017 referendum. Members were reduced from 22 to 13, of which six are directly appointed by President Erdoğan and the remaining by Parliament, of which is led by Erdoğan.¹¹² This cemented AKP control of the judiciary. This referendum essentially gave President Erdoğan expansive news powers without subjection to review, as discussed in the following section.

Evidently, the abuse of the Turkish Penal Code and Anti-Terrorism Laws continues despite the cessation of the state of emergency. As a result, arbitrary detention and its many impacts remain prevalent. This is in violation of the Turkish constitution and of several international conventions that Turkey is party to, such as the International Convention on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). As articulated by Human Rights Watch, “The state of emergency may have ended but so has the rule of law”.¹¹³

¹⁰⁸ Vocal Europe (2019), Why Would Turkey Torture its Diplomats? <https://www.vocaleurope.eu/opinion-why-would-turkey-torture-its-diplomats/>

¹⁰⁹ Ahval (2018), Turkish court orders compensation payment in ‘ByLock’ app case <https://ahvalnews.com/bylock/turkish-court-orders-compensation-payment-bylock-app-case>

¹¹⁰ As told to Platform for Peace and Justice (2019).

¹¹¹ The Arrested Lawyers Initiative (2019), Turkish Court Sentences Four Lawyers in Trabzon <https://arrestedlawyers.org/2019/04/28/turkish-court-sentences-four-lawyers-in-trabzon/>

¹¹² Platform for Peace & Justice (2018), Turkish Criminal Peace Judgeships <http://www.platfompij.org/3552-2/>

¹¹³ Human Rights Watch (2018), Turkey: Normalizing the State of Emergency <https://www.hrw.org/news/2018/07/20/turkey-normalizing-state-emergency>

5. Expansive Presidential Powers

Thus far, this report has shown how many of the state of emergency measures continue to impact Turkish society even after its termination. Furthermore, the restrictions that were lifted on July 2018 have been replaced by expansive Presidential powers. The allowance of such powers was signified when Devlet Bahçeli, leader of the Nationalist Movement Party (MHP), reignited the wick of a debate on 12 October 2016 by stating that the presidency was the de facto situation in the country and parties should legalize the case of affairs by drafting a new constitution.¹¹⁴ This proposition was highly welcomed by the ruling Justice and Development Party (AKP) that had already made the executive presidency central to its campaign during the 2015 general elections.¹¹⁵

In that direction, the AKP and MHP submitted the draft of 18 constitutional amendments to Parliament on 10 December 2016 which was adopted by the Parliamentary Constitution Committee on 30 December 2016. The Parliament then initiated an article-by-article discussion on 9 January 2017 and adopted all the amendments with 339 votes in favour and 142 votes against on 21 January 2017. With this, the constitutional changes were submitted to a country-wide referendum that took place on 16 April 2017. The turnout was approximately 85%. The Turkish Constitution was finally amended by a slim majority – 51.41% votes for yes and 48.59% votes for no – showing a divided country.

Yet with the slim majority, a new era in the Turkish political and constitutional history begun. The new system radically changed the 100-year-old parliamentary tradition in Turkey and transformed it into a “Turkish-style presidential system”.¹¹⁶ The amendments have entered into force on the date when the President took the office following the elections for the Parliament and Presidency on 24 June 2018. However, they have brought quite a controversy in its wake since the amendments lead to an excessive concentration of the executive power which is accumulated in the hands of the President while weakening the Parliament and independence of the judiciary at the same time.¹¹⁷ At the same time, what

¹¹⁴ Hurriyet Daily (2016), Turkish government welcomes MHP's suggestions over system change <http://www.hurriyetcailynews.com/turkish-government-welcomes-mhps-suggestions-over-system-change--104949>

¹¹⁵ Council of Europe Venice Commission (2017), Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017 (Opinion no. 875/2017) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)005-e)

¹¹⁶ Tolga Şirin (2017), *New Constitutional Amendment Proposal in Turkey: A Threat to Pluralistic Democracy!* Verfassungsblog <https://verfassungsblog.de/new-constitutional-amendment-proposal-in-turkey-a-threat-to-pluralistic-democracy/>

¹¹⁷ Council of Europe Venice Commission (2017), Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017

could not be found in the amendments is a link to fundamental rights and freedoms of Turkish people.¹¹⁸

5.1 Constitutional Amendment and One-Man Regime

As a matter of fact, the powers of the president of the Turkish Republic had already expanded after the presidential election in 2007 with some institutional practices.¹¹⁹ However, after 2017 referendum, the President would not only become the head of the State, but executive power also belongs to the President under Article 104 of the amended Constitution. With this development, the Prime Ministry's Office was abolished, and the President became the head of state and head of government at the same time. According to the Venice Commission, this provision of the amendments explicitly provides that the intention was a presidential form of government.¹²⁰ Besides, the President attained the power to appoint and dismiss, without any approval of the Parliament, vice-presidents and ministers who are politically accountable only to the President. The President is also able to appoint and dismiss high state officials.

The previous Constitution required that the President's relationship with his party should cease if s/he is a member of that party. However, this requirement was removed by the amended Constitution. In that way, the President would also be able to become the head of a political party along with being head of state and head of government,¹²¹ which is exactly the case right now. Although Article 104 provides that the President is expected to represent the State and the unity of the Turkish nation, close affiliation with a political party makes this quite dubious. Under the amended Constitution, powers of the Council of Ministers and of the Office of Prime Minister were transferred to the President. On top of all this, the President is able to determine the national security policies and take the necessary measures. This power entails the option to declare a state of emergency.

In the amended Constitution, the legislative power of the President was inspired by South American countries.¹²² In that regard, the President may issue presidential decrees on matters relating to the executive power. However, this vague formulation creates confusion

¹¹⁸ Tolga Şirin (2017), New Constitutional Amendment Proposal in Turkey: A Threat to Pluralistic Democracy! Verfassungsblog <https://verfassungsblog.de/new-constitutional-amendment-proposal-in-turkey-a-threat-to-pluralistic-democracy/>

¹¹⁹ İbrahim Kaboğlu, Parlamenter Rejimin Olağanüstü Halde Kaldırılması (2017), 2017/4 Ankara Bar Review <http://www.ankarabarosus.org.tr/siteiler/ankarabarosus/tekmakale/2017-4/2.pdf> p.39

¹²⁰ Council of Europe Venice Commission (2017), Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017

¹²¹ İbrahim Kaboğlu (2017), Parlamenter Rejimin Olağanüstü Halde Kaldırılması, 2017/4 Ankara Bar Review

¹²² Tolga Şirin (2017) 'New Constitutional Amendment Proposal in Turkey: A Threat to Pluralistic Democracy!' Verfassungsblog <https://verfassungsblog.de/new-constitutional-amendment-proposal-in-turkey-a-threat-to-pluralistic-democracy/>

regarding the which matters the executive power relates to.¹²³ The amended Constitution does stress that presidential decrees cannot be issued on matters to be regulated specifically by law or already regulated by law. Besides that, certain human rights enshrined in the Constitution cannot be regulated by presidential decrees. However, during a state of emergency that is declared by the President, presidential decrees on the matters necessitated by the emergency have the force of law and they are not subject to any limitations mentioned above. Moreover, the President has the power to dissolve the Parliament on any grounds whilst the Parliament is not able to provide checks and balances on the executive. As it stands now, although the total number of members of the Parliament was increased to 600, the legislative power of the Parliament has become solely symbolic.

Despite the lack of impartiality of the President who is allowed to become a political party member or even leader, he retains his power to appoint some members of the Turkish Constitutional Court and the Council of Judges and Prosecutors.¹²⁴ Although impartiality was attached to independence as a basic characteristic of the judicial power in Article 9, it can be easily said that impartial judiciary will be administrated under the supervision of the President.¹²⁵ This dissolves the notion of separation of powers and creates problems in the arena of justice; the issues outlined in Section Four are likely to continue unabated.

5.2 Amending Constitution in times of Emergency

All these amendments took place during the state of emergency period in Turkey. From the standpoint of international or domestic law, this is not problematic since there is no rule specifically prevents States from holding referendums in times of emergency.¹²⁶ Nevertheless, taking into account the limitations on the freedom of press and other civil and political freedoms, such as freedom of expression or right to peaceful assembly as already described in this report, this extraordinary change was performed under an extraordinary period.¹²⁷ Accordingly, it is not possible to say that the democratic process of constitutional amendment was guaranteed in its entirety during the referendum process. With the referendum only passing by a slim majority, it is safe to say that were it held under democratic circumstances the results would have been much different.

¹²³ Council of Europe Venice Commission (2017), Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017

¹²⁴ Tolga Şirin (2017) 'New Constitutional Amendment Proposal in Turkey: A Threat to Pluralistic Democracy!' Verfassungsblog <https://verfassungsblog.de/new-constitutional-amendment-proposal-in-turkey-a-threat-to-pluralistic-democracy/>

¹²⁵ İbrahim Kaboğlu (2017), Parlamenter Rejimin Olağanüstü Halde Kaldırılması, 2017/4 Ankara Bar Review

¹²⁶ Council of Europe Venice Commission (2017), Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017

¹²⁷ İbrahim Kaboğlu (2017), Parlamenter Rejimin Olağanüstü Halde Kaldırılması, 2017/4 Ankara Bar Review

Nonetheless, following the elections for the Parliament and Presidency on 24 June 2018, Recep Tayyip Erdoğan has become the first president under the new system and his party has won the majority in the Parliament. After Erdoğan took the office, the constitutional amendments have entered into force and a new era in the Turkish political and constitutional history has begun. After the elections, the state of emergency was not renewed and it has lapsed on 19 July 2018. However, the new Constitution has paved the way for a permanent and “unofficial” state of emergency.

5.3 Law No.7145

After the constitutional amendments were fully entered into force, a draft law was submitted to the Parliament by the ruling Justice and Development Party (AKP) on 16 July 2018, two days before the termination of the state of emergency. That draft law provided amendments to certain laws and decree laws. The AKP justified these amendments by asserting that such a law was necessary to fight against terrorism and to prevent other coup attempts after the expiry of the state of emergency.¹²⁸ The draft law was approved in the Parliament on 20 July 2018 and came into effect on 31 July 2018. However, Law No.7145 has been criticized due to its effects on making state of emergency in the country permanent and restricting fundamental rights and freedoms of its citizens.

“On July 18 2018 the State of Emergency looked like it had been lifted in practice. The SoE period practices have been added to the Law No. 7145 accepted on 25 July 2018 paving the way for governing Turkey for at least three years with an unofficial State of Emergency.”

- Ömer Faruk Gergerlioğlu, Turkish HDP Politician¹²⁹

In its first article, this law granted provincial governors “the power to limit people deemed to impede or disrupt public order or security from entering or leaving certain locations in their provinces for up to 15 days and to prevent all movement or assemblies at particular locations or times on the same grounds”.¹³⁰ Moreover, the scope to ban events and demonstrations was broadened.¹³¹ As discussed in Section One, the repression on the right to assembly has had disastrous consequences for civil society. Law No.7145 additionally authorized the government to dismiss public servants or cancel the passports of individuals if they are believed to be a member of or have a connection with a terrorist organization. As

¹²⁸ For the text of the legislative proposal see TBMM <https://www2.tbmm.gov.tr/d27/2/2-0001.pdf>

¹²⁹ As told to Platform for Peace and Justice (2019).

¹³⁰ Human Rights Watch (2018), Turkey: Normalizing the State of Emergency <https://www.hrw.org/news/2018/07/20/turkey-normalizing-state-emergency>

¹³¹ See Art.8 and 9 of Law No.7145 and also <https://www.reuters.com/article/us-turkey-security/turkeys-emergency-rule-expires-as-erdogans-powers-expand-idUSKBN1K824E>

such, the devastating dismissals that occurred under the state of emergency can continue to take place despite the July 2018 cessation. This is valid for three years.

Law No.7145 also allowed authorities to hold suspects of terrorism offenses and crimes against the state in custody for up to 12 days before being charged by inserting a provisional article into the Law against Terrorism (Law No.3713) that will be valid for a three-year period. The justification of this provision was the example of the United Kingdom. However, considering Turkey's ill-famed record on this matter, prolonged police custody causes considerable concerns¹³² and could be deemed contrary to Article 19 of the Turkish Constitution and ECtHR judgements¹³³. The same article of Law No.7145 provided that police may detain suspects repeatedly for the same offense. This practice was often used during the state of emergency time since it was allowed by one of the emergency decrees.¹³⁴ Besides, courts were enabled to review the lawfulness of pre-trial detention from the file every 30 days and presence of the detained individual or his or her lawyer is only required every 90 days. This was also frequently resorted practice of the state of emergency period and now, it was inserted into an ordinary law.

All in all, the state of emergency in Turkey ended in name only. Constitutional amendments gave the President extensive authority to govern the country without any significant oversight by the Parliament or by the judiciary. Accordingly, presidential decrees have been issued constantly and the Parliament's role in the law-making has weakened within the period of the past year. Certain laws and decree laws were amended in the name of combating terrorism, but these amendments have just served the purpose of putting Turkey into a permanent state of emergency. International organizations have continuously raised their concerns about these developments. The Venice Commission saw the amendments as a dangerous step backwards in the constitutional democratic tradition in Turkey and towards an authoritarian and personal regime.¹³⁵ Human Rights Watch stated that the constitutional amendments will further normalize the emergency powers.¹³⁶ Freedom House stressed the eradication of key checks on executive power.¹³⁷ As revealed in this report, these concerns over the constitutional amendment have proved to be right.

¹³² Human Rights Watch (2018), Turkey: Normalizing the State of Emergency

¹³³ EuroMed Rights, The International Federation for Human Rights (FIDH), Insan Haklari Dernegi (IHD) and the World Organisation Against Torture (OMCT), 'Recommendations on the recent legislative amendments in Turkey integrating state of emergency restrictive provisions into ordinary law' (12 September 2018) <<https://euromedrights.org/wp-content/uploads/2018/09/NGOs-joint-recommendations-after-the-lifting-of-state-of-emergency-in-Turkey.pdf>> accessed 16 June 2019, p.4

¹³⁴ Human Rights Watch (2018), Turkey: Normalizing the State of Emergency <https://www.hrw.org/news/2018/07/20/turkey-normalizing-state-emergency>

¹³⁵ Council of Europe Venice Commission, Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017 (13 March 2017) Opinion no. 875/2017, para 133

¹³⁶ Human Rights Watch (2018), Turkey: Normalizing the State of Emergency

¹³⁷ Freedom House (2018), Turkey <https://freedomhouse.org/report/freedom-world/2019/turkey>

6. Implications & Recommendations

This report has detailed the key measures implemented both during and in the aftermath of the State of Emergency that was declared in July 2016 in Turkey following the attempted coup. In an effort to prevent 'terrorism' or, arguably, further risk to the current government, demonstrations and assemblies were restricted, hundreds and thousands of Turkish citizens were dismissed from public office and even detained without concrete justification or due process, press freedom was more or less eradicated, and the powers of President Erdoğan were expanded. As outlined, these actions have been met by international criticism from other governments, international bodies and NGOs.

On 19 July 2018, the State of Emergency was officially lifted. This ought to have indicated a move away from the abovementioned measures however, as this report has shown, the termination of the State of Emergency was futile as many of the changes remained in place. Constitutional amendments were shunted through the legal system towards the end of the State of Emergency period to guarantee extensive power to the executive branch. This, in turn, made measures such as arbitrary dismissals and detentions and control of the press easier for the Turkish president to implement. In addition, the negative impacts of the State of Emergency itself will continue to affect all sectors of Turkish society for years to come.

It is widely accepted that the Turkish government's crackdown during the 2016-2018 State of Emergency and thereafter constitutes violations of human rights, social and judicial rights and democracy. This has sparked international outrage, especially given that Turkey is a signatory of conventions such as the ICCPR and ECHR and, at least at one point, aspired to join the European Union (EU). Below, we shall discuss some wider and more long-term implications of the State of Emergency measures both for Turkey and its citizens. We shall conclude by suggesting recommendations based on our report's findings to be taken heed of by both domestic and international actors.

6.1 Implications

Everyday life of Turkish Citizens

There is no doubt that the measures assumed under the State of Emergency and the continued persecution and oppression of core rights has affected the everyday life of all Turkish citizens. There is a ubiquitous feeling of insecurity and fear. Given the extent of dismissals and the ability for the President to continue such dismissals post July 2018, job security is a thing of the past. Arbitrary arrest and detention remain a concern for many. Concerns about being labelled a terrorist are substantiated regardless of whether there is any evidence. President Erdoğan has called on people to inform on one another; one's

neighbours, friends or even family may report them to the authorities.¹³⁸ Those who have already been blacklisted as a potential terrorist live in uncertainty and isolation.¹³⁹

And as told by Section One of this report, the removal of the right to assembly has affected the ability of civil society to function. This has trickle down affects; for instance, on women's rights, LGBTI+ rights, and children's rights. Further impacting Turkish citizens is the removal of the freedom of expression. In the information age where many people regularly use social media, Turks are weary of posting of anything even slightly controversial. Websites that others take for granted are not accessible in Turkey, such as Wikipedia.¹⁴⁰ Radio, television, and other mediums are censored. And as given in Section Three, there is virtually no independent media left in Turkey, removing the checks and balances on the government as needed in a democratic society, and removing the peoples access to balanced information. Everyday life has changed for the worse, with little improvement despite the lapse of the state of emergency.

“The State of Emergency in Turkey announced on July 20 2016 and lifted on July 18 2018 has affected hundreds of thousands people's lives directly and thousands of people's lives indirectly.”

- Ömer Faruk Gergerlioğlu, Turkish HDP Politician¹⁴¹

Specific Sectors Affected

The hundreds of thousands of dismissals via emergency decree following Turkey's coup attempt have had an enormous impact on all sectors of society. Specific sectors that have been largely purged are the: government ministries; judicial system; security forces, media organisations; and educational institutions. The impacts of these purges have lasted well past the lifting of the state of emergency in July 2018 and will continue far into the future.

For instance, over 6,000 academics have lost their jobs, with hundreds then prosecuted on trumped up terrorism charges. As stated by Human Rights Watch, this “together with interference with academics' work and student protests, is leading to self-censorship and

¹³⁸ New York Times (2016), Turks See Purge as Witch Hunt of 'Medieval' Darkness

<https://www.nytimes.com/2016/09/17/world/europe/turkey-erdogan-gulen-purge.html>

¹³⁹ The Guardian (2017), 'I feel like I have been buried alive': families live in fear and isolation as Erdoğan leads a witch-hunt <https://www.theguardian.com/world/2017/feb/12/blacklisted-erdogans-witch-hunt-forces-turkish-families-into-world-of-fear-and-isolation>

¹⁴⁰ Financial Times (2019), Wikipedia takes Turkey to European Human Rights Court

<https://www.ft.com/content/ff2bf0d0-7d5a-11e9-81d2-f785092ab560>

¹⁴¹ As told to Platform for Peace and Justice (2019).

hollowing out academic freedom in the country”¹⁴². With this, the impacts exceed past the individual repercussions of dismissal, effecting the quality of academic work within Turkey and the ability for universities to function without experienced staff. The fact that academics now need to be cautious about what they say means that “Turkish universities are no longer places where critical debates, creative thinking, and the discussion of controversial ideas were possible”. The regulation of information will surely cost generations to come.

Security

The dismissals of Turkey’s security forces have also had widespread repercussions. In Section Four of this report, it was reflected that the purge of the police force – alongside that of the judiciary – had left long terms effects on the justice system. In addition, by April 2019, 16,540 military members had been dismissed. Even the Turkish Defense Minister admitted that this had negatively impacted the ability to effectively provide security.¹⁴³ For example, one single Air Force pilot now had to undertake assignments that used to be undertaken by five pilots. These heavy workloads could lead to fatigue and stress.

Additionally, an analysis by AI-Monitor showed that in 2017, as compared to prior the coup-attempt, there had been a 40% reduction in the number of generals and a 20% reduction in commissioned officers, causing a worrying shortage of experienced, elite military officials.¹⁴⁴ This could negatively impact Turkish operations, such of that in the Southeast and in Syria, for a period extending much past the lapse of the state of emergency. And alike other sectors, the military has now become aligned with the ruling regime.

Economy

Turkey’s economy has been in downfall for some time now. Then in early 2019, Turkey slid into its first economic recession in a decade. The dismissals assumed under the State of Emergency had already had a devastating financial impact on individuals and families. The recession has made matters worse for those blacklisted – and has negatively affected all citizens, even those who previously supported the AKP. It has “brought a slump in industrial production, consumer confidence and in sales of items such as cars and home

¹⁴² Human Rights Watch (2018), Turkey: Government Targeting Academics

<https://www.hrw.org/news/2018/05/14/turkey-government-targeting-academics>

¹⁴³ Stockholm Center for Freedom (2019), 16,540 Turkish Military Members Dismissed as Part of Crackdown

<https://stockholmcf.org/16540-turkish-military-members-dismissed-as-part-of-crackdown/>

¹⁴⁴ AI-Monitor (2018), Turkish Military Purges Decimate Career Officer, Pilot Ranks <https://www.ai-monitor.com/pulse/originals/2018/05/turkey-military-purges-career-officer-pilot.html>

appliances”.¹⁴⁵ In July 2019, the credibility of the government’s monetary policies had another blow with Erdoğan sacking the central bank governor.¹⁴⁶

In the meantime, Turkey’s unemployment rate has reached an all-time-high at almost 15%. The most recent figures, from June 2019, show that there are 4,417,814 out of work.¹⁴⁷ This is almost double the amount of unemployed in June 2018. Surely, the massive amount of dismissals and shut downs has not helped with employment rates or investor confidence. Moreover, the treatment of academics, teachers and journalists has led to a veritable brain drain that is set to heavily impact the economy. As expanded on below, Turks are leaving their country in droves. Many of those leaving come from the university-educated, secular upper classes who fear being targeted in the post-coup crackdown¹⁴⁸. This exodus of talent and of wealth adds to instability of the already-sinking economy.

The situation has been exasperated by interventionist monetary policies implemented by President Erdoğan in an attempt to boost growth in the economy. Instead, these policies have starved the economy of private investment and fuelled demand for foreign goods¹⁴⁹. While Turkey’s economic crisis – which is ongoing at the time of writing – is indeed due to a multitude of external and internal factors, the State of Emergency measures, in particular the ongoing dismissals and the increasing powers of the president without checks and balances, have certainly been a catalyst for catastrophe.

An exodus

The Turkish diaspora across the globe – particularly in Europe – has been growing at an expedient rate since the July 2016 coup-attempt. In 2018, the number of people emigrating from Turkey was over 113,000, compared to 69,000 in 2017.¹⁵⁰ Moreover, when taking into account those who have fled Turkey via unofficial routes – such as via Evros River – the real figure would be much higher. Interviews by Public Radio International in Istanbul 2018 showed that the majority of people either knew someone who had left Turkey, or that they wanted to leave themselves. The reasons given for this were: safety from persecution;

¹⁴⁵ Ahval (2019), Turkey’s economy slides into recession before key election <https://ahvalnews.com/turkey-economy/turkeys-economy-slides-recession-key-election>

¹⁴⁶ Financial Times (2019), Erdogan deals a fresh blow to Turkey’s economy <https://www.ft.com/content/0de1ac30-a0a8-11e9-a282-2df48f366f7d>

¹⁴⁷ Turkish Minute (2019), Number of unemployed in Turkey reaches record high with 4.4 million <https://www.turkishminute.com/2019/07/11/number-of-unemployed-in-turkey-reaches-record-high-with-4-4-million/>

¹⁴⁸ Ibid.

¹⁴⁹ Roger Blitz, Jonathan Wheatley and Laura Pitel (2018), Investors lose their appetite for Turkey <https://www.ft.com/content/e41a56d6-5855-11e8-bdb7-f6677d2e1ce8>

¹⁵⁰ Carlotta Gall (2019), Spurning Erdogan’s Vision, Turks Leave in Droves, Draining Money and Talent <https://www.nytimes.com/2019/01/02/world/europe/turkey-emigration-erdogan.html>

the inability to 'have a voice'; societal divisions; poor economy; and the uncertain future under President Erdoğan and the AKP.¹⁵¹

Others have noted the particular exodus of Turkey's intellectual and professional class. In less than two years following the persecution of academics for signing a petition for peace with Kurdish militants, 698 academics applied to Scholars at Risk to be moved abroad.¹⁵² It is said that Turkey will "feel the effects of losing so many intellectuals in the coming years".¹⁵³ Certainly, the consequences of an increased migration from Turkey will reverberate despite the cessation of the state of emergency.

International Relations

As alluded to throughout the report, the actions of the Turkish government, led by President Erdoğan have caught global attention. National governments as well as the European Union have condemned the human rights abuses and deterioration of democracy witnessed since July 2016. Particularly given that conditions have barely improved since the lifting of the State of Emergency, Turkey continues to find itself at the centre of international animosity.

"We have welcomed the lifting of the state of emergency, since we in the EU had asked for it again and again. But a new decree has given more power to President Erdoğan. The erosion of rule of law in Turkey and the deterioration of human rights is continuing. Our request in the European Parliament's report on Turkey to suspend the accession negotiations is only consistent with our experience in Turkey in the recent years. The developments in Turkey are in violation of our own principles and the European Treaties, specifically laid down in article 5 of the Negotiating Framework for Turkey. I deeply regret that President Erdoğan is leading Turkey increasingly further away from the EU and our treaties and agreements. However, our request to suspend the accession negotiations does not mean we close the door for Turkey, Turkish civil society, the pro-European opposition and the democratic Turks."

- Rebecca Harms, German MEP¹⁵⁴

¹⁵¹ Public Radio International (2018), These Turks would rather leave their country than continue living under Erdogan <https://www.pri.org/stories/2018-06-22/these-turks-would-rather-leave-their-country-continue-living-under-erdogan>

¹⁵² BBC (2018), Turkey brain drain: Crackdown pushes intellectuals out <https://www.bbc.com/news/world-europe-42433668>

¹⁵³ NPR (2018), Turkish government crackdown forces intellectuals to flee <https://www.npr.org/2018/01/04/575682505/turkish-government-crackdown-forces-intellectuals-to-flee>

¹⁵⁴ As told to Platform for Peace and Justice (2019).

In March 2019, the European Parliament adopted a resolution¹⁵⁵ expressing serious concern for Turkey's recent "poor track record" when it comes to human rights, freedom of expression and rule of law. The report concluded with a recommendation to the European Commission and the Council to formally suspend accession talks with Turkey. Turkey has been a candidate country for EU membership since 1999 and accession negotiations began in 2005. However, the progress of the last decade seems in vain considering the current situation, as European leaders including the German Chancellor, Angela Merkel and French President, Emmanuel Macron have expressed their unwillingness to continue the accession process with Turkey¹⁵⁶.

In addition, tension is continuing to mount between President Erdoğan and United States President Trump. While this is primarily due to foreign policy disagreements, for example, regarding the Syrian conflict, the animosity was only enhanced in the aftermath of the 2016 coup attempt¹⁵⁷. Trump refused to extradite Fetullah Gulen, Erdoğan's prime suspect behind the coup attempt, who has been living in the US since 1999. Subsequently, during the State of Emergency detentions outlined in Section Four, the Turkish government arrested and detained American pastor, Andrew Brunson, who was living in Turkey, on charges of terrorism. When Erdoğan refused to release Brunson, Trump imposed trade sanctions on Turkey. The sanctions badly damaged the Turkish economy, causing the Lira to drop to a record low, further aggravating the economic situation described above¹⁵⁸.

The State of Emergency measures – and those thereafter – have deeply affected Turkey's place on the world stage. The question remains as to whether external actors ought to intervene to improve human rights and the situation of civil society, or to retain relations with the Turkish government in the hope that they will improve themselves. Either way, given Turkey's important geographical position, the continued animosity is going to lead to long-term instability. This highlights the extensive and lasting impacts of the State of Emergency in both domestic and international spheres. In all, it is vital that the negative consequences of the prior decree laws and of the new measures assumed to make the State of Emergency a permanent feature of Turkey be addressed post haste. To conclude our Platform for Peace and Justice report, we provide recommendations as to address this.

¹⁵⁵ European Parliament (2019), 2019 resolution on the 2018 Commission Report on Turkey <http://www.europarl.europa.eu/delegations/en/d-tr/product/20190315DPU21361>

¹⁵⁶ Chloé Lourenço (2019), Turkish EU Accession: Where are we? <https://www.thenewfederalist.eu/turkish-eu-accession-where-are-we>

¹⁵⁷ Alex Ward (2019), How America's relationship with Turkey fell apart <https://www.vox.com/world/2019/4/11/18292070/usa-turkey-trump-erdogan-s400>

¹⁵⁸ Ibid.

6.2 Recommendations

To the Council of Europe

- Given the nature of the State of Emergency Commission as detailed in Section Two, we strongly urge the Council of Europe to recognise this as an unviable domestic avenue as to allow the ECtHR to effectively process applications regarding dismissals and shutdowns. This includes the re-consideration of previously rejected applicants.
- We advise that the European Commission for Democracy through Law (also known as the Venice Commission) work directly with Turkey's Council of Judges and Prosecutors and the Ministry of Justice to improve judicial independence and democratic checks and balances, and to ensure the protection of fundamental rights.
- We call for increased collaboration between the Council's Office of the Commissioner for Human Rights and Turkey to create a safe space for affected non-governmental organisations and civil society.

To the European Union

- In light of the damaging implications on international relations, we urge EU officials to pursue a supportive partnership with Turkey based on the EU's founding values of justice, human rights, democracy and equality. In particular, we urge the European Parliament and European Commission to promote such values through pre-existing policy such as the Customs Union and the Refugee Deal in order to aid Turkish civil society.
- To counteract Turkey's brain-drain and its effects on civil society, we recommend that the EU uses its Instrument for Pre-accession Assistance funds (IPA) in Turkey for projects and policies that prioritise, protect and support academics, teachers and students, such as Erasmus university exchanges.
- We also recommend that IPA funds be used to strengthen the media freedom landscape in Turkey, as there is virtually no independent media left as revealed by Section Three of this report.

To the United Nations

- We request that United Nations Special Rapporteurs undertake a country visit to Turkey to provide expert consultation, contribute to the development of international human rights standards, and engage in advocacy in the fields of Freedom of Expression, Freedom of Assembly, Counterterrorism and Human Rights, the independence of judges and lawyers.
- In particular, we urge the United Nations to collaborate with Turkey to implement the United Nations' Working Group on arbitrary detention decision.

To the Turkish Government

- We urge the Turkish government, in cooperation with international organisations and NGOs, takes appropriate steps to ensure the independence of its judiciary at all levels. This includes bringing the Commission of Inquiry for State of Emergency Practices in line with the international standards of a court of law.
- Following the unjust detentions and arrests detailed in Section Four, we urge Turkey to consolidate its Anti-Terrorism law, more concretely, by narrowing and precisising the definition of terrorism in line with international standards and UN criteria.
- Subsequently, we urge the Turkish government to release and acquit all those accused, charged and/or detained under the excessively vague anti-terrorism law outlined in Section Four.
- In light of the unfair and arbitrary mass dismissals from public office detailed in Section Two, we compel the Turkish government to immediately stop the ongoing dismissals in this manner (through lists without prior warning and without the right to appeal).
- To ensure appropriate freedom of assembly and association, we implore the Turkish government to repeal the amendment to law which took effect in July 2018, giving provincial governors excessive power over events and assemblies.
- We strongly urge the appropriate authorities to allow LGBTI+ events in Ankara and to stop police intervention at the peaceful “Saturday Mothers” and “Yüksel Resistance” events.
- In light of the drastic deterioration of freedom of expression in Turkey detailed in Section Three, we urge the Turkish government to allow all closed media outlets and companies to re-open and operate. We also strongly advise that the Turkish government makes a concerted effort to promote a plurality of voices in its society.
- We urge Turkish authorities to release and acquit all journalists who have been wrongly charged and/or detained in an effort to ensure and promote a high level of freedom and expression throughout civil society.
- We recommend that Turkey accepts financial help, such as from the IPA or from the International Monetary Fund, in order to improve the dire economic situation which is affecting the lives of ordinary Turkish people.
- Finally, we strongly recommend that Turkey accepts and welcomes support from and cooperates with international organisations such as the Council of Europe, the European Union, and the United Nations.