

HUMAN RIGHTS ASSOCIATION

EMERGENCY DECREE LAWS

AND
THEIR IMPACT ON HUMAN RIGHTS
IN TURKEY



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1986

Introduction

The Republic of Turkey has often been governed under the state of emergency (SoE) regimes since its proclamation in 1923. SoE government procedures have been implemented for a total of 43 years in Turkey, including a total of 41 years covering 26 years of martial law regime at various times between 1923 and 1987 and a 15-year-long state of emergency between 1987 and 2002 in addition to a 2-year-long SoE between 2016 and 2018.¹

During these emergency periods, amendments were usually introduced to many laws, most notably to constitutions; either new constitutions were drafted as was the case in military coup periods in 1961, 1971 and 1980 or legislative amendments that restricted fundamental rights and freedoms were introduced in individual laws.

The latest SoE regime was declared in the aftermath of the coup d'état attempt of 15 July 2016. The government, exercising the power granted by Article 120 of the Constitution of the Republic of Turkey, declared a 3-month SoE all over the country starting on 21 July 2016 within the scope of Article 3(1)(b) of Law No. 2935 on State of Emergency. Following the first three months, SoE was extended 7 times and was finally lifted on 18 July 2018.²

The government started issuing decree laws [kanun hükmünde kararname] that restricted fundamental rights and freedoms in the aftermath of the declaration of SoE following the failed coup attempt staged against the government on 15 July 2016. These decree laws are necessarily exempt from judicial review. The Constitutional Court recanted its "previous" case-law in its judgment on emergency decree laws in 2016 holding that emergency decree laws were not subjected to constitutionality review.³ Although the SoE was lifted, these decree laws were enacted into laws to be implemented in states/conditions of non-emergency through Law No. 7145 and Law No. 7333.

SoE decree laws have two implications on the human rights field in Turkey with regards to their content and practice. Firstly, they resulted in the corrosion of the principle of rule of law and in the unlawful governance of the field of fundamental rights and freedoms in Turkey as per procedure.

¹ For documents and assessment of the period up to 1991, see. M. Semih Gemalmaz. *Olağanüstü Rejim Standartları*. 1994.

² For a detailed analysis of the SoE period and emergency decree laws, see Human Rights Joint Platform's (HRJP) "Updated Situation Report: State of Emergency in Turkey 21 July 2016-20 March 2018" <https://ihop.org.tr/en/2018/04/25/updated-situation-report-state-of-emergency-in-turkey-21-july-2016-20-march-2018/>

³ For a comprehensive analysis of emergency decree laws, see the information note entitled "Atipik KHK'LER ve Daimi Hukuksuzluk: OHAL KHK'si ile erkeği kadın, kadını erkek yapamazsınız!" co-authored by Kerem Altıparmak, Dinçer Demirkent and Murat Sevinç. http://www.ihop.org.tr/wp-content/uploads/2018/04/Atipik-OHAL-KHKleri_II-1.pdf

Secondly, they led to the shrinking of the activity field of current human rights struggle in many ways in their practice. Therefore, the first part of this report will address the standards in restricting rights and freedoms in major national and supranational human rights documents while discussing the legality of declaration of SoE and its successive extensions, and the second part will focus on interferences with human rights and freedoms in the unlawful environment brought about through and by decree laws themselves with regards to human rights and freedoms beginning with 15 July 2016 extending today as well as their impact on a diverse set of human rights and fundamental freedoms. Certain prominent cases will be offered as samples in order for us to comprehend these implications on the human rights struggle in everyday life. The final part will offer recommendations with an eye to the elimination of problems brought about by the SoE and emergency decree laws and the consequences of the violations they led to.

Declaration of SoE and Turkey's Obligations

A coup attempt was plotted in Turkey on 15 July 2016 against the government that took office by the popular vote. Military officers and non-commissioned officers of the Turkish Armed Forces that attempted to stage a coup used a variety of arms including heavy weaponry like fighter jets and tanks. 245 citizens, including 173 civilians, lost their lives while 2,194 citizens were wounded during these attacks. Coup plotters wounded numerous people (anti-coup public officials and civilian citizens who resisted them). Coup plotters also bombarded the Grand National Assembly of Turkey (GNAT), the legislative organ of the state. Following the quenching of the attempted coup on 16 July 2016, the council of ministers (government) convening under the chairpersonship of the president on 20 July 2016 declared SoE for three months throughout the country under Article 120 of the then current Constitution. The decision rendered by the council of ministers was ratified a day later on 21 July 2016 by the GNAT.

Constitution of the Republic of Turkey, Article 120 [Repealed]

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

SoE was extended for another three months each time by the council of ministers convening under the chairpersonship of the president and these extension decisions were ratified by the GNAT. This process resumed until 19 July 2018 with three-month extensions. The committee of ministers rendered a total of 32 emergency decree laws under the then in-effect Article 121 of the Constitution.⁴ 5 other decrees, other than these 32 emergency decree laws⁵, numbered 698, 699, 700, 702 and 703 also went into force as ordinary decree laws during the same timeframe.

⁴ For a full record of decree laws issued during the SoE, see appendix "State of Emergency Decree Laws, Their Publishing in the *Official Gazette* and Their Content in Brief."

⁵ The Constitutional Court stated the following in its judgment of 26 January 2022 (Merits No. 2020/17, Judgment No. 2020/17) published in the *Official Gazette* of 1 April 2022 on the Decree Law No. 682 (Law No. 7068): "Law No. 7068, which includes the rule appealed against, went into force as a result of the ratification by the Grand National Assembly of Turkey of the Decree Law No. 682 on General Law Enforcement Disciplinary Provisions of 2 January 2017 that was issued within the scope of the state of emergency" (para. 17). The Constitutional Court, thus, qualifies

One can summarize the prominent features and consequences of emergency decree laws as such:

- More than 130,000 public employees were dismissed from their posts through decree laws. These employees did not only consist of such officials as military officers, non-commissioned officers, police officers and intelligence officers who were actively involved in the coup attempt. They were public servants holding office almost at every level within the state organization.
- Along with the dismissal of public employees from their posts, in other words their lustration from the state apparatus, not only their passports but those of their spouses and children were also cancelled.
- Arms permits, ship's crew documents or piloting licenses held by these individuals were also cancelled.
- Those dismissed were evacuated from public-owned residences, lodgments within 15 days.
- Those dismissed were dismissed for good; they will not be able to hold offices in public services anymore.
- Thousands of those dismissed were subjected to arrests and detentions.
- Private institutions and organizations, educational institutions, press, newspapers, journals, TV channels, universities, foundations and associations, etc. were permanently shut down on the grounds of their alleged "affiliation, contact or junction" [mensubiyet, irtibat or iltisak] with the attempted coup or terrorism. Their movable and immovable property were seized, confiscated.

The fact, however, is that the law on SoE is the Law No. 2935 on the State of Emergency dated 1983. Under these circumstances, all emergency decree laws issued within the framework of Article 121/3 of the Constitution should have to be in accordance with Law No. 2935 on the State of Emergency. Moreover, a permanent measure exceeding the SoE timeframe and violating principles of proportionality, effectiveness, constitutionality, rule of law, fundamental rights and democracy is blatantly in violation of the standards of the Council of Europe, as has also been referred to in the case-law of the European Court of Human Rights (ECtHR) and reports by the Venice Commission.

SoE Extension Decisions and Soe Decree Laws

The SoE was extended for a total of 7 times by the committee of ministers under Article 3 of Law No. 2935 on State of Emergency beginning with 21 July 2016 and the latest covered the period between 19 April 2018 and 18 July 2018 while these extension decisions were ratified by the Plenary of the GNAT.

Decree Law No. 682 as a decree law that was issued "within the scope of state of emergency." Therefore, Decree Law No. 682 is referred to as an emergency decree law in our study.

Law No. 2935 on State of Emergency⁶ Article 3 - (b)

(...) The state of emergency decision shall be published in the *Official Gazette* and immediately be submitted for approval of the Grand National Assembly of Turkey. If the Grand National Assembly of Turkey is in recess, it shall be summoned to convene immediately. The Assembly may amend the duration of the state of emergency. Upon a request from the Council of Ministers, the Assembly may extend the duration each time for a period not exceeding four months, or it may terminate the state of emergency. The Council of Ministers after declaring a state of emergency in accordance with provision (b), shall also consult the National Security Council before rendering a decision on questions related to the extension of the duration, alternation of the scope, or the termination of the state of emergency. (...)

A total of 32 decree laws were issued during the SoE under Article 121 of the Constitution and they were published in the *Official Gazette*. It has, however, been observed that procedures were not followed during the ratification of many decree laws. Such state of affairs reveals that the legislative branch could not duly and pertinently review the executive branch's acts, while the executive branch used the power of the legislative branch through normative regulations (decree laws) until the time when legislative checks would be provided.

For instance, decree laws nos. 672 and 673 that were published in the *Official Gazette* on 1 September 2016 were submitted to the Plenary of the GNAT a year and six months after they went into force, while they were ratified on 6 February 2018 having been deliberated at the Plenary and published in the *Official Gazette* on 8 March 2018 as Law No. 7080 and Law No. 7081 respectively.

This issue is covered by Article 121 of the Constitution. Accordingly, "Decrees shall be published in the *Official Gazette*, and shall be submitted to the Grand National Assembly of Turkey on the same day for approval; the duration and procedure for their approval by the Assembly shall be indicated in its Rules of Procedure." Article 128 of the GNAT's Rules of Procedure sets forth that if deliberations on the decrees fail to be concluded in the committees, within twenty days the latest, the Office of the Speaker puts them on the agenda of the Plenary to be deliberated immediately within thirty days.

Out of a total of 32 SoE decree laws, a committee was convened merely for one, while 31 decree laws were sent directly to the Plenary because they were not deliberated. 5 (667, 668, 669, 671, 674) out of 12 decree laws issued in 2016 were deliberated at the Plenary of the GNAT 3 months after having been published in the *Official Gazette* in the same year, the remaining 7 decree laws (670, 672, 673, 675, 676, 677, 678) were deliberated at the Plenary 14 to 16 months after having been published in the *Official Gazette* in 2018, while 18 decree laws (679–696) issued in 2017 were deliberated at the Plenary 13 months after having been published in the *Official Gazette* in 2018 and all were passed into laws.

Decree law no. 697 issued in 2018 was deliberated at the Plenary of the GNAT within a month, while the last decree law of the state of emergency, decree law no. 701, was passed into law after having been deliberated at the Plenary 3 months after it was issued. The following table presents the timeline of decree laws passed into laws:

The Timeline of Decree Laws Passed into Laws

Decree Law No	Official Gazette	Law No	Official Gazette
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⁶ For the full text of Law No. 2935 on State of Emergency, see: <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.2935.pdf>

667	23.07.2016	6749	29.10.2016
668	27.07.2016 Doublet	6755	24.11.2016
669	31.07.2016	6756	24.11.2016
670	17.08.2016	7091	08.03.2018 Doublet
671	17.08.2016	6757	24.11.2016
672	01.09.2016 Doublet	7080	08.03.2018 Doublet
673	01.09.2016 Doublet	7081	08.03.2018 Doublet
674	01.09.2016 Doublet	6758	24.11.2016
675	29.10.2016	7082	08.03.2018 Doublet
676	29.10.2016	7070	08.03.2018 Doublet
677	22.11.2016	7083	08.03.2018 Doublet
678	22.11.2016	7071	08.03.2018 Doublet
679	06.01.2017 Doublet	7084	08.03.2018 Doublet
680	06.01.2017 Doublet	7072	08.03.2018 Doublet
681	06.01.2017 Doublet	7073	08.03.2018 Doublet
682	23.01.2017	7068	08.03.2018 Doublet
683	23.01.2017	7085	08.03.2018 Doublet
684	23.01.2017	7074	08.03.2018 Doublet
685	23.01.2017	7075	08.03.2018 Doublet
686	07.02.2017 Doublet	7086	08.03.2018 Doublet
687	09.02.2017	7076	08.03.2018 Doublet
688	29.03.2017 Doublet	7087	08.03.2018 Doublet
689	29.04.2017 Doublet	7088	08.03.2018 Doublet
690	29.04.2017 Doublet	7077	08.03.2018 Doublet
691	22.06.2017 Doublet	7069	08.03.2018 Doublet
692	14.07.2017 Doublet	7089	08.03.2018 Doublet
693	25.08.2017	7090	08.03.2018 Doublet
694	25.08.2017	7078	08.03.2018 Doublet
695	24.12.2017	7092	08.03.2018 Doublet
696	24.12.2017	7079	08.03.2018 Doublet
697	12.01.2018	7098	08.03.2018 Doublet
701	08.07.2018	7150	03.11.2018 Doublet

The objective of decree law no. 667, as set forth in its Article 1, is to “identify the necessary measures to be taken within the scope of the state of emergency declared throughout the country

within the framework of the coup attempt and counter-terrorism, and the related procedures and principles.”

The decree law states that public employees assessed to be a member of, belonging to or acting in junction or contact with terrorist organizations or structures, formations or groups decided to have been acting against the national security of the state by the National Security Council would be dismissed from their public posts. The decree law also regulates the ways in which judges would be removed from office. SoE Law no. 2935 does not set forth a legal regulation on the removal of judges from office. Moreover, there is no provision as to the liquidation of other public officials, not only judges. Permanent closure / liquidation of legal persons (the law refers to them as associations) is not covered by Law No. 2935 either. The final paragraph of Article 11 of the law merely mentions that an association’s activities can be suspended on the condition that it does not exceed three months. Further, it is resolved that this needs to be done individually for each association.

Articles 3 and 4 of decree law no. 667 prescribe that judges and other public officials may be dismissed upon decisions rendered by related judicial organs or administrative bodies. Article 2 of decree law no. 668 incorporates a list of public officials to be dismissed and of press institutions to be closed down by the decree law. All assets belonging to those in the list are passed down to the state treasury permanently and without charge. The above-mentioned regulations are literally repeated in all dismissal decrees as well as provisions on movable and immovable property. All these measures are permanent. Dismissals are permanent. Revoking licenses are permanent. Confiscation of movable and immovable property free of charge is permanent. Further, issue of stay orders cannot be rendered in court cases brought against decisions and measures taken within the scope of decree laws under Article 10/1 of decree law no. 667.

The Venice Commission’s “Opinion on Emergency Decree Laws Nos. 667-676 Adopted following the Failed Coup of 15 July 2016”⁷ underlined the fact that the same results could have been achieved through temporary measures instead of permanent ones in paragraph 85.

85. The risk of a repeated coup may be significantly reduced if the supposed Gülenists, as a precautionary measure, were *suspended* from their posts, and not dismissed. Similarly, instead of definitely confiscating all assets of organizations, it may suffice to *temporarily* freeze large amounts on their bank accounts or prevent important transactions, to appoint temporary administrators and to allow only such economic activity which may help the organization in question to survive until its case is examined by a court following normal procedures. Temporary measures of this type also ultimately make possible fairer examination of the correctness of the decisions being made according to ordinary judicial process.

The Venice Commission, which set forth that some provisions in the decree laws were permanent noting that such state of affairs did not comply with the temporariness of the SoE (para. 87) and offered examples to this end (para. 88):

87. (...) While certain measures introduced by the decree laws are clearly temporary, other measures make changes to the current legislation, and the decree laws do not indicate that these measures will cease to apply after the end of the emergency period. Thus, the authorities intend to keep these measures in the legislation permanently.

⁷ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)

88. Thus, for example, Article 23 of Decree Law No. 671 abolishes the Telecom Presidency and transfers its functions to the Information and Communication Technologies Authority. Article 25 of this Decree Law establishes a new procedure for authorizing wiretapping of telecommunications and obtaining access to electronic data archives. It thus amends current Article 60 of the Electronic Communications Law. Article 16 of Decree Law No. 674 amends Law No. 5275 on the execution of penalties and security measures, giving the Chief Public Prosecutor the power to restrict the detainees' "temporary leave" from penitentiary institutions and detention centers. (...)

Restrictions on Fundamental Rights and Freedoms through Emergency Decree Laws

Restrictions can be imposed on the implementation of the articles of international and regional human rights conventions or covenants that a country is a party to and these articles can be suspended during states of emergency. The important fact, however, is that these restrictions are subjected to notification and supervision. Moreover, such suspensions or derogations are not valid for convention or covenant articles that cannot be restricted or derogated from. The Republic of Turkey is a party to the United Nations International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). The below-cited articles of this covenant and convention list human rights and freedoms that the states are not allowed to derogate from and cannot take measures in violation of them.

UN International Covenant on Civil and Political Rights, Article 4

Derogation in time of emergency

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

The following rights are regulated in the articles listed in the second paragraph of Article 4: The right to life (Art. 6), prohibition of torture (Art. 7), prohibition of slavery and servitude (Art. 8), prohibition of imprisonment merely on the ground of inability to fulfil a contractual obligation (Art. 11), no punishment without law (Art. 15), right to recognition as a person before the law (Art. 16), right to freedom of thought, conscience and religion (Art. 18). No derogations are allowed about these rights and freedoms as is stated in Article 4/2. from these obligations

European Convention on Human Rights, Article 15

Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

In this case, rights and freedoms from which no derogation is allowed and no inconsistent measures can be taken under Article 15/2 of the ECHR are: rights to life (Art. 2), prohibition of torture (Art. 3), prohibition of slavery and servitude (Art. 4/1), and no punishment without law (Art. 7).

Turkey, a party to the human rights conventions and covenants by the Council of Europe and the United Nations, notified the Secretary General of the Council of Europe immediately after the declaration of the SoE on 21 July 2016 under Article 15 of the ECHR and the UN Secretary General on 2 August 2016 under Article 4 of the ICCPR. Turkey also clearly communicated to the UN from which articles of the covenants it would derogate but the authorities confined themselves to submitting a mere general statement to the Council of Europe.

The ECtHR noted in its judgment in the case of *Mehmet Hasan Altan v. Turkey* (application no. 13237/17, judgment date: 20.03.2018) on Turkey's notification to the Council of Europe within the context of Article 15:

The Court accepts that the notice of derogation by Turkey satisfied the formal requirement laid down in Article 15/3 of the Convention, namely to keep the Secretary General of the Council of Europe fully informed of the measures taken by way of derogation from the Convention and the reasons for them. The Court further notes that under Article 15 of the Convention, any High Contracting Party has the right, in time of war or public emergency threatening the life of the nation, to take measures derogating from its obligations under the Convention, other than those listed in paragraph 2 of that Article, provided that such measures are strictly proportionate to the exigencies of the situation and that they do not conflict with other obligations under international law.

The government notified the UN that it would impose restrictions on a total of 13 articles of the ICCPR. The articles derogated from included "right to an effective remedy in case of a violation" among the General Provisions under Article 2, right to liberty and security of person (Art. 9), rights of persons deprived of their liberty (Art. 10), liberty of movement (Art. 12), procedural guarantees against the deportation of foreign nationals (Art. 13), freedom of expression (Art. 19), freedom of assembly (Art. 21), freedom of association (Art. 22), political rights (Art. 25), equality before law (Art. 26), protection of minority rights (Art. 27).

As per domestic law, there are also provisions on rights from which no derogation is allowed in times of war and states of emergency in Article 15/2 of the Constitution of the Republic of Turkey. Article 15 stated the following as of the attempted coup of 15 July 2016 before it was amended (the term "martial law" was removed from the paragraph through Article 16 of Law No. 6771 dated 21/1/2017):

IV. Suspension of the exercise of fundamental rights and freedoms

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

(Miscellaneous: 7.5.2004-5170/2 Art.) Even under the circumstances indicated in the first paragraph, the individual's right to life, the integrity of their physical and psychological existence shall be inviolable except where death occurs through acts in conformity with law of war; no one shall be compelled to reveal their religion, conscience, thought or opinion, nor be accused on account of them; offenses and penalties shall not be made retroactive; nor shall anyone be held guilty until so proven by a court ruling.

As is seen, international covenants and conventions Turkey is a party to and the Constitution of the Republic of Turkey list rights and freedoms that are not allowed to be derogated from in times of war and states of emergency. Nonetheless, Turkey hastily opted for suspending all international and national obligations upon the declaration of the SoE without taking the time to assess whether such restrictions were necessary or not.

Council of Europe Human Rights Commissioner Nils Muiznieks also offered significant analyses of the SoE in Turkey. Commissioner Muiznieks published “Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey”⁸ on 7 October 2016 following his visit to Turkey between 27 and 29 September 2016.

The commissioner noted that the sweeping measures taken on the basis of decree laws without any court ruling were not limited to the public sector but also included the civil society, municipalities, private schools, universities, medical establishments, legal professionals, media, business and finance, as well as the family members of suspects. For the commissioner, it was therefore clear that these measures created sweeping interferences with the human rights of a very large number of persons. The commissioner underlined that far-reaching, discretionary powers exercised by the administration via decree laws engendered a certain degree of arbitrariness and eroded rule of law, yet protection of human rights was impossible without the rule of law. The commissioner criticized the government for sustaining state of emergency although two and a half months had passed since the coup attempt at the time of his memorandum and stated that the time had come to revert to ordinary legislation as regards criminal and administrative procedures and safeguards. The commissioner significantly emphasized that the Turkish authorities should immediately start repealing the emergency decrees (para. 12). Commissioner Muiznieks reminded the readers of the following principles as well (para. 13):

The Commissioner is convinced that it is in the interest of the Turkish authorities to conduct this fight while fully upholding human rights, as well as general principles of law such as, among others, presumption of innocence, individuality of criminal responsibility and punishment, no punishment without law, non-retroactivity of criminal law, legal certainty, right to defense and equality of arms. In the Commissioner's view, the restoration of social peace and confidence in democratic institutions that Turkish society direly needs in the aftermath of the coup attempt can only be attained if all proceedings are conducted in a fully transparent manner, adhering to these general principles of law and human rights which are at the core of the Council of Europe.

⁸ [https://rm.coe.int/ref/CommDH\(2016\)35](https://rm.coe.int/ref/CommDH(2016)35)

The commissioner also drew attention to the extension of the custody period to 30 days, drastic restrictions on access to lawyers, as well as limitations on the confidentiality of the client-lawyer relationship and indicated that Turkey had no functioning National Preventive Mechanism concerning the allegations of torture and ill-treatment (para. 15). Further, the commissioner took note of the information that the National Security Council had already designated FETÖ/PDY as a terrorist organization in 2015, while noting that the conclusions of this body were not addressed to the public, but to the council of ministers (para. 19). The commissioner pointed that there was no final judgment rendered by the Turkish judiciary about this organization as well (para. 20). The commissioner, therefore, urged the authorities to dispel these fears by communicating very clearly that mere membership or contacts with a legally established and operating organization, even if it was affiliated with the Fethullah Gülen movement, was not sufficient to establish criminal liability and to ensure that charges for terrorism were not applied retroactively to actions which would have been legal before 15 July.

The Venice Commission's "Opinion on Emergency Decree Laws Nos. 667-676 Adopted following the Failed Coup of July 2016" published in December 2016 was adopted by the commission at its 109th Plenary Session. The opinion presented comments based mainly on 10 emergency decree laws issued until December 2016. The Venice Commission also indicated in its opinion that state of emergency powers should be used in limitation and measures against current threats should be taken by means of ordinary legislation:⁹

(...) The Government requested and received emergency powers from Parliament in July 2016 in connection with a *specific public emergency*, and should use those powers accordingly. As underlined in the Rule of Law Checklist (with reference to further international human rights standards), in the context of an emergency situation "strict limits on the duration, circumstance and scope of such [emergency] powers [of the Government] is therefore essential." Other threats to the public order and safety should be dealt with by means of ordinary legislation.

The Venice Commission recommended the government to try, to the maximum extent possible, and whenever the danger might be averted otherwise, to take *provisional* individual measures during the emergency regime, i.e. those which were of limited duration or might later be revoked or amended.

Emergency Decree Laws and the Constitutional Court

Deputies from the Republican People's Party (Cumhuriyet Halk Partisi -CHP) lodged an application before the Constitutional Court in September 2016 to revoke and render issues of stay for emergency decree laws nos. 668, 669, 670 and 671 on the grounds that they were in violation of the Preamble to the Constitution as well as Articles 2, 6, 7, 8, 11, 91 and 121.

⁹ Para. 68: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)

Nevertheless, the Constitutional Court rejected these applications lodged under Article 121 of the Constitution on the grounds of lack of jurisdiction holding that it was not possible for the court to undertake judicial review on the merits of the case in the light of the provision in the third sentence of Article 148/1 of the Constitution which puts forth: “Presidential decrees issued during a state of emergency or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance” (Merits: 2016/166, Judgment: 2016/159, Judgement Date: 12 October 2016).

127 deputies also lodged an application before the Constitutional Court to revoke 25 laws which had been issued originally as decree laws but had then been passed into laws after ratification by the GNAT. The General Secretariat of the Constitutional Court held after its review of the case that the laws in question were not unconstitutional in form. Applications for review on merits were finalized a year later than the lifting of the SoE (July 2018) in 2019 and in 2020.

Altıparmak et. al. characterized these emergency decree laws, which transgressed the boundaries drawn by both the Constitution and international law, as “atypical” and classified them in two groups:¹⁰

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- a. Decree laws irrelevant to the SoE and regulated issues that required regulation by ordinary legislation, therefore, bearing the qualification of transfer of legislative power.
 - b. Decree laws without general, abstract and non-personal rules with personalized punitive qualification, therefore, bearing the qualification of transfer of judicial power.
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Both groups of decree laws, which were issued by bypassing the legislative power of the GNAT and later passed into laws, were made exempt from judicial review by means of the Constitutional Court judgment, while effective protection of and guaranteeing fundamental rights and freedoms were circumvented. Such state of affairs, in turn, created a situation that shrunk the field of both fundamental rights and freedoms as well as that of human rights advocacy in Turkey.

The Constitutional Court rendered partial repeal judgments on various issues within the scope of cases about laws that adopted emergency decree laws verbatim. Nonetheless, this issue will not be tackled in detail as it would quite extend the scope of this study at hand.

Emergency Decree Laws and the European Court of Human Rights

Many an individual lodged direct applications before the ECtHR in the aftermath of the dismissals through emergency decree laws as there were no available domestic remedies in Turkey because there had been no legal and judicial remedies that individuals could use against measures taken through emergency decree laws under Article 40 of the Constitution until decree law no. 685 was issued.

The fact that the ECtHR declared all applications lodged on the issue before it in 2016 inadmissible caused great disappointment. The first of these inadmissibility decisions was *Mercan v. Turkey* (Application no: 56511/2016)¹¹ and the other was *Zihni v. Turkey* (Application No: 59061/2016).¹²

¹⁰ Altıparmak, Kerem, Dinçer Demirkent and Murat Sevinç. “Atipik KHK’ler ve Daimi Hukuksuzluk: Artık Yasaları İdare Mi İptal Edecek?” HRJP: 8 March 2018: https://www.ihop.org.tr/wp-content/uploads/2018/03/Atipik_OHAL_-KHKleri-1.pdf

The ECtHR suggested various means within domestic law that people could apply to in Turkey by means of the Council of Europe. Indeed the Inquiry Commission on the State of Emergency Measures¹³ was established by authorities having taken the recommendations of the Council of Europe and the Venice Commission into account (but moving away from these recommendations) via decree law no. 685 on 23 January 2017.

The ECtHR found a violation in its judgment in the case of *Hamit Pişkin*, whose employment contract was cancelled through decree law no. 677, on 15 December 2020. Following the cancellation of his employment contract, Hamit Pişkin's appeals were rejected by the Ankara Labor Court and others. The Constitutional Court, too, declared his individual application inadmissible. No criminal proceedings had been initiated into Hamit Pişkin upon which he lodged an application before the ECtHR and the European court found a violation of Article 8 of the ECHR that regulates the right to respect for private life in its judgment in the case of *Pişkin v. Turkey* (Application No: 33399/18) on 15 December 2020.¹⁴

The Inquiry Commission on the State of Emergency Measures

Council of Europe General Secretariat's recommendation for Turkey to establish a special provisional board tasked with "inquiring public employees' removal from their posts and individual cases about other related measures" as a "temporary solution" in the face of the high number and volume of applications lodged before the ECtHR was also supported by the Council of Europe Venice Commission.

As a result of consultations with the Council of Europe General Secretariat, Decree law no. 685, published in the *Official Gazette* of 23 January 2017, established an inquiry commission in order to "carry out an assessment of and render a decision on applications about measures taken directly through the provisions of decree laws, without any other administrative measure taken, on the grounds of membership, belonging, acting in junction or contact with terrorist organizations or structures, formations or groups decided to have been acting against the national security of the state by the National Security Council within the scope of state of emergency."

Procedures and principles about applications to be lodged before the Inquiry Commission on the State of Emergency Measures and the modus operandi of the commission were designated by the office of the prime minister and published in the *Official Gazette* of 12 July 2017 (No. 30122 -doublet). The office of the prime minister announced that the applications would be received by the commission starting on 17 July 2017. The commission stated that a total of 230 staff were assigned to serve on the commission including 80 rapporteurs (judges, experts, inspectors) to assess and render a decision on acts established directly through decree laws under the SoE including dismissals from public service, cancellation of scholarship, annulment of ranks of retired security personnel and closure of institutions and organizations.

Article 1/2 of decree law no. 685 set forth that the commission would be composed of 7 members, 3 of whom would be selected and assigned by the prime minister from among public officials, one

¹¹ <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-5549956-6992608%22%5D%7D>

¹² <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-5571723-7028417%22%5D%7D>

¹³ <https://soe.tccb.gov.tr>

¹⁴ <https://hudoc.echr.coe.int/eng-press?i=003-6886711-9239474>

member would be assigned by the minister of justice from among judges and prosecutors working for the ministry of justice, one member would be selected by the interior minister from among personnel holding the class of chief of civil administration and two members would be assigned by the Supreme Board of Judges and Prosecutors from among rapporteur judges holding office in the Court of Cassation and the Council of State.

When the chairperson of the commission was assigned as an undersecretary at the Ministry of Justice and left the commission, he was not replaced and the commission resumed work with 6 members.

The commission only started working 6 months after 23 January 2017, when the decision to establish such commission was rendered on 23 January 2017, and announced its initial decisions on 18 January 2018. According to information provided by the commission, a mere total of 16,060 acceptance decisions were rendered about 126,883 applications lodged before it as of 31 December 2021. The number of rejected applications was 104,643, while 6,080 decisions were pending before the commission.¹⁵

Provisional Article 1/3 of decree law no. 685 provided those who were dismissed from their posts by authorized organs to go to courts within 60 days after the publication of the decree law. There is, however, no publicly available data about the results and number of applications lodged within the scope of this legal remedy that was particularly made available for dismissed judges and prosecutors through decisions rendered by the Board of Judges and Prosecutors.

Appeals against Decisions Rendered by the Inquiry Commission on the State of Emergency Measures

Ankara Administrative Courts were authorized to hear annulment cases to be brought against decisions rendered by the Inquiry Commission on the State of Emergency Measures. According to an announcement by the Board of Judges and Prosecutors, these courts would hear cases brought by those dismissed from their posts and by closed-down organizations against rejection decisions rendered by the commission.

Public employees, who were directly dismissed by the institutions they had worked for, on the other hand, need to bring a case to an administrative court in due time while judges and prosecutors who had been dismissed through decisions rendered by the Supreme Board of Judges and Prosecutors need to apply to the Council of State. The deadline for appeals vary between 30 to 45 days depending on the institution. If the deadline is missed, reinstatement becomes legally out of the question. If administrative courts deliver “rejection” rulings for reinstatement, applicants can appeal to the Council of State. And if a similar ruling is delivered by the Council of State too, then the applicant has the right to “individual application” before the Constitutional Court. Applicants, whose individual applications are also rejected by the Constitutional Court, can subsequently bring their cases before the ECtHR.

¹⁵ <https://soe.tccb.gov.tr>

Implications of Decree Laws on the Civic Field

Decree law no. 667, which was issued on 23 July 2016 right after the declaration of the SoE, signaled the measures to be taken during the SoE. These measures were designated on 22 July 2016 by the council of ministers that convened under the chairpersonship of the president as per Article 121 of the Constitution and Article 4 of Law No. 2935 on the State of Emergency dated 25 October 1983.

The measures prescribed by decree law no. 667 primarily targeted the Gülen sect that was said to be the plotter of the failed coup attempt and incorporated the following measures in brief:

- Measures about closed-down institutions and organizations.
- Measures about members of the judiciary and those in the legal profession.
- Measures about public employees.
- Measures to be taken in pending investigations.
- Investigation and prosecution procedures.
- Cancellation of lease contracts about rights of easement and usufruct.

However, it was revealed in a couple of days that the government would turn the SoE into an apparatus of repression and surveillance so as to cover everyone who could be regarded as dissidents. Decree law no. 668, issued four days after decree law no. 667, expanded the scope of the SoE and paved the way to introducing permanent amendments to the current legislation by way of decree laws without being subjected to checks by the GNAT. Measures taken by the remaining 30 decree laws, issued after these two, fall outside the list of measures described by the Law on State of Emergency dated 1983 since Articles 9 and 11 of Law No. 2935 on State of Emergency list the measures to be taken within the scope of declaration of the SoE.

Although this law is referred to in decree laws, the prescribed measures transgress the borders drawn by the Law on State of Emergency. For instance, measures like “removal of public employees or judges from their posts” or “permanent liquidation of legal personalities” are not listed among the measures to be taken in the declaration of SoE in the Law on State of Emergency dated 1983.

Measures to be taken during the SoE, permanent legislative regulations that had no causal link to the reasons why SoE was declared were set forth by way of decree laws. These can be listed as such:

1. A new university, "National Defense University," was established through decree law no. 669.
2. An additional article was amended to Law No. 2547 on Higher Education through decree law no. 674. Accordingly, the statuses of research assistants employed within the scope of the Faculty Development Program were subjected to the provisions of Article 50(d) without any other measure required.
3. Rectorate elections at universities were abolished through decree law no. 676. According to the decree law, rectors are to be appointed to public universities by the president.
4. Law No. 6356 on Trade Unions and Collective Labor Agreements (Art. 63/1) was amended through decree law no. 678. Accordingly, strike actions in inner-city public transport services for metropolitan municipalities and banking services can now be postponed for 60 days.
5. The statement "military officers, contracted military officers, non-commissioned officers, contracted non-commissioned officers, specialist gendarmes, specialist sergeants, contracted sergeants and contracted privates serving at the Gendarmerie General Command and Coast Guard Command" was added to the list of those who are not allowed to become members and founders of public trade unions in Law No. 4688 on Public Employees' Trade Unions and Collective Labor Agreements through decree law no. 682.
6. A subparagraph was added to Article 4/1 of Law No. 6741 on the Establishment of Turkey Wealth Fund Administration Incorporation and Amendments to Some Other Laws and the scope of resources and financing for the Turkey Wealth Fund were expanded through decree law no. 684.
7. There is no causal link between numerous regulations and the reasons why SoE was declared. For instance, one cannot in good conscience find a correlation between using snow tires in winter and terrorism, national security and, naturally, an attempted coup but it was the subject of an emergency decree law (Article 2 of decree law no. 687, published in the *Official Gazette* of 9 February 2017).
8. Provisional articles were added to Law No. 4447 on Unemployment Insurance through decree law no 687. The regulation for insurance premium support for each additional worker employees would hire to be paid by the Unemployment Insurance Fund was introduced by this decree law.
9. The Law on the Establishment of Radios and Televisions and Their Broadcasting Services was amended through decree law 690. Marriage programs were banned.
10. Turkish Sugar Authority was closed down on 24 December 2017 through decree law no. 696.
11. A regulation on tenure for subcontracted public workers was done through decree law no. 696.
12. Decree laws nos. 674, 676, 680, 684, 694 and 696 introduced permanent amendments to the Code of Criminal Procedure.

Decree laws both regulated the governmental (administrative) structure of the country and issues of security and defense as well as introducing radical and permanent changes to the fields of education, judiciary, social security.¹⁶

Emergency decree laws should not introduce permanent structural changes to judicial bodies, procedures and mechanisms, particularly in cases where such changes are not expressed in unequivocal and clear terms in the Constitution.¹⁷ As is declared in Article 2 of the Constitution of the

¹⁶ For amendments and additions introduced by decree laws to the legislation by way of "omnibus bills," see: *When the State of Emergency Becomes the Norm: The Impact of Executive Decrees on Turkish Legislation* <https://tr.boell.org/en/2018/03/15/when-state-emergency-becomes-norm>

¹⁷ The above-mentioned "Opinion" by the Venice Commission also raised concerns about this issue.

Republic of Turkey, the idea of “a democratic state governed by rule of law” also contains within itself the principle of limited government. The Constitution of the Republic of Turkey allows governments to derogate from or restrict human rights provisions and obligations only during the state of emergency and on the condition that it is “categorically necessary” and it does not broaden this power to cover legal rules to be implemented after the termination of the state of emergency. As has also been indicated by the UN Human Rights Committee, “the predominant objective must be the restoration of a state of normalcy where full respect for human rights can again be secured”¹⁸ for a state party that derogated from the ICCPR.

When one takes into account international and regional human rights mechanisms, provisions in emergency decree laws should lose legal validity upon the termination of state of emergency when structural (general) measures are in question. Thus, it is expected that no permanent amendments are introduced to the legislation through decree laws during the state of emergency. In Turkey, however, 32 decree laws went into effect incorporating more than 1,200 articles within the current legislation during the two-year-long state of emergency and these decree laws introduced amendments to more than 150 laws. These amendments were not checked by the GNAT and they were introduced without creating an effective remedy in respect of their consequences.¹⁹

It is observed that the majority of measures taken through decree laws issued within two years are those that go beyond the duration of state of emergency with respect to their consequences. Most of these measures have had important implications on the shrinking of civic space in Turkey. Indeed, Article 2 of decree law no. 667 set forth that more than 2,000 private institutions would be closed permanently. Within the framework of this decree law 35 healthcare institutions, 934 schools, 109 student dormitories, 104 foundations, 1,125 associations, 15 universities, and 19 workers’ trade unions were closed down for good. Further, under Article 2/2 of this decree law, all assets of such legal personalities were transferred to the state permanently and without charge.

The number of closed-down associations amounted to 1,607 as of 31 December 2017 as per decree laws 667, 677, 679, 689 and 695, while closure decisions were lifted for 183 associations upon objection which makes the figure go down to 1,424. The Inquiry Commission the State of Emergency Measures, too, announced that it delivered acceptance decisions for 61 closed-down associations, foundations, dormitories, television channels and newspapers as of 31 December 2021.²⁰ Closure decisions for foundations were rendered through emergency decree laws and by a commission set up within the General Directorate of Foundations. 168 foundations were closed down by means of decree laws nos. 667, 689 and 695 along with the commission at the general directorate. Closure decisions were then revoked for 23 of the closed-down foundations. The number of closed-down foundations was 145 as of 31 December 2017.

Among the associations closed down through various decree laws were law organizations that carried out effective works in the field of human rights (Progressive Lawyers’ Association, Lawyers for

¹⁸ CCPR, General Comment No. 29. <<https://digitallibrary.un.org/record/451555>> para. 1.

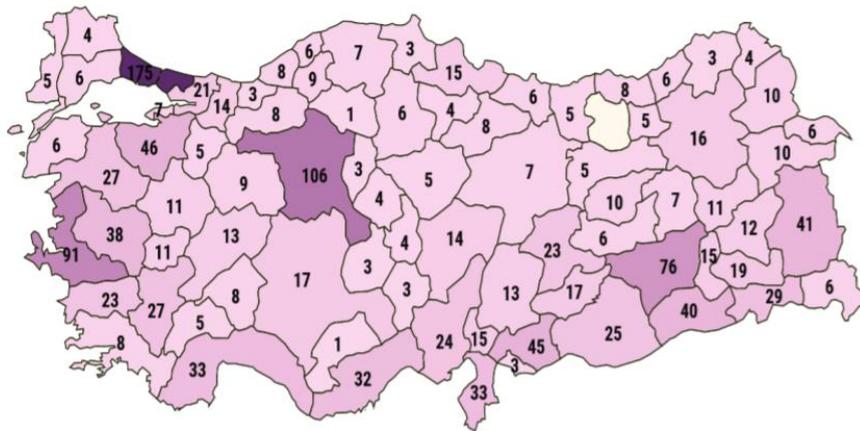
¹⁹ For a full list of legislative regulations introduced through emergency decree laws, see Human Rights Joint Platform’s “Updated Situation Report: State of Emergency in Turkey 21 July 2016-20 March 2018” <<https://ihop.org.tr/en/2018/04/25/updated-situation-report-state-of-emergency-in-turkey-21-july-2016-20-march-2018/>> pp.49-53. And, the Confederation of Progressive Trade Unions of Turkey (DİSK) offered a list of laws amended through decree laws in the appendix of its report of 21 July 2018 entitled “OHAL’in İki Yılına ve Başkanlık Rejiminin Çalışma Hayatına Etkileri: OHAL ve Başkanlık Emeğe Zararlıdır.” <<http://arastirma.disk.org.tr/wp-content/uploads/2020/08/OHAL-2-Yil-ve-Basbakanlik-Rejimi-Yeni-Rapor-TASLAK-SON.pdf>>

²⁰ The Inquiry Commission on the State of Emergency Measures, “Activity Report: 2021”, <https://soe.tccb.gov.tr/Docs/SOE_Report_2021.pdf> p. 24.

Freedom Association, Association for Human Rights Research) as well as those working in the fields of rights of women and children. For example, closed-down women's associations included Adıyaman Women's Life Association, Anka Women's Research Association, Bursa Panayır Women's Solidarity Association, Ceren Women's Association, Rainbow Women's Association, KJA, Muş Women's Roof Association, Selis Women's Association, and Van Women's Association.

Agenda: Child! Association that carried out effective works for the rights of the child was among the closed-down associations. Diyarbakır-based Sarmaşık Association that undertook activities based on the fact that poverty was an obstacle to the protection and exercise of human rights, Van Women's Association (VAKAD), and Muş Women's Roof Association had also carried out activities for the rights of the child.

Social Workers' Association's Diyarbakır branch carrying out activities with children who migrated from Diyarbakır's Sur district and Happy Children Association in Ankara were also among the closed-down associations.



The distribution of closed-down associations as per cities as of 31 December 2017 [Source: HRJP]

A total of 200 media outlets were also closed down during the 18-month SoE. Closure decisions were revoked only for 25 of them, which makes the figure 175 as of 31 December 2017. Closure decisions were rendered for 67 newspapers through decree laws nos. 668, 675, 677, 693 and 695 during the SoE, while these decisions were revoked for 17 of them through decree laws nos. 675 and 679. 6 news agencies, 18 periodicals and 29 publishing houses were also closed down in this period. Further, 37 television channels were closed down through decree laws nos. 668 and 677 and through decisions rendered by the Supreme Board of Radio and Television during the SoE. Closure decisions were revoked only 4 of these television channels through decree law no. 675 and decisions by the supreme board. Closure decisions were still pending for 33 television channels as of 31 December 2017.

Articles 3 and 4 of decree law no. 667 prescribe dismissal of judges and other public officials through decisions rendered by related judicial organs or administrative bodies. Thus, for example, Article 23 of Decree Law No. 671 abolished the Telecom Presidency and transferred its functions to the Information and Communication Technologies Authority. Article 25 of this Decree Law established a new procedure for authorizing wiretapping of telecommunications and obtaining access to electronic data archives. It thus amended the current Article 60 of the Electronic Communications Law.

Article 16 of decree law no. 674 amended Law No. 5275 on the Enforcement of Sentences and Security Measures granting the Chief Public Prosecutor's Office the power to restrict "temporary leave" for prisoners from penal institutions. The article reads:

Article 16 – The following sentence has been added to Article 92/1 on Law No. 5275 on the Enforcement of Sentences and Security Measures dated 13/12/2004:

In the event that it is evaluated that prisoners incarcerated under offenses listed in Article 9/2 may endanger the order of the penitentiary institution and public security, that members of terrorist organizations or other criminal organizations may provide opportunities for activities and communication in accordance with the purposes of their respective organizations and that there are security risks with regards to roads, penitentiary institutions in which they are held, exam centers or schools, the Chief Public Prosecutor's Office shall be entitled to restrict their leave from such institutions.

Article 38 of this decree law, amending Law No. 5393 on Municipalities, put forth the procedure to replace mayors who were removed from their offices for offenses of aiding and abetting terrorism. Elected mayors were thus removed from office, a significant number of them were detained and convicted. The administrative organs of municipalities of the Democratic Regions Party were transferred to the local representatives of the central government.

Article 1 of decree law no. 676 introduced the rule that a maximum of three lawyers could be present at court hearings held within the scope of prosecutions undertaken with regards to offenses committed within the framework of organizational activity. Article 3, amending the provisions of the Code of Criminal Procedure (CCP), prescribed that suspects taken into custody for such offenses might not be allowed to confer with their defense attorneys for 24 hours. Article 6 amended the provisions of Law No. 5275 and set forth the rules of restriction on conferences between detainees and their lawyers.

The Venice Commission also criticized the issue of "trade union rights." As is known, thousands of wage-earners employed at closed-down institutions were not public officials and were employed as workers entirely within the framework of private law. The termination of the receivables of these workers under private law through a decree law goes well beyond the objective of the declaration of the SoE and introduces a permanent amendment to labor law. Such changes cannot be done through emergency decree laws. Fees and other workers' receivables are incumbent on the employer both under the Law of Obligations and Labor Law.

The state, which confiscated these institutions, cannot victimize workers employed at these institutions. Upon the closure of these institutions, fees and severance pay receivables should be paid to the workers. Workers cannot be held responsible and punished for offenses that might have been committed by the owners of the closed-down institutions. Yet, the trial and punishment of workers employed at these institutions for offenses they might have committed, if any, is another issue. Fees and other receivables fall entirely under private law. Moreover, workers' fees and similar receivables cannot be terminated for offenses committed somewhere else than their workplaces. Workers employed at closed-down institutions cannot be deprived of severance pay unless their employment contracts are rightfully dissolved. Even in the event of rightful dissolution, workers' fee receivables, if

any, have to paid. The contrary would mean forced labor and under the ECHR forced labor is prohibited even under states of emergency.²¹

4,770 members of trade unions affiliated with the Confederation of Public Employees' Trade Unions (KESK) were dismissed from their posts having their right to work violated. 4,283 of these public employees were dismissed through emergency decree laws, while 487 were dismissed through decisions rendered by the higher disciplinary boards at their respective institutions. While 358 individuals were reinstated through decisions by the Inquiry Commission on the State of Emergency Measures as of December 2019, the commission rejected applications by 1,023 and inquiries were pending for about 2,900 of KESK members.

The permanent closure of trade unions is both against the Constitution and the ICCPR as well as the Revised European Social Charter and ILO conventions (No. 111 Discrimination -Employment and Occupation).

The most concrete example of this proves to be dismissals by means of provisional Article 35 of decree law no. 375 that provides for the continuation of dismissals. A total of 18 trade union members -including 10 from SES, 4 from Eğitim-Sen, 3 from Haber-Sen and 1 from BES- have been dismissed in this manner through decisions rendered by commissions set up at their respective ministries and upon the consent of the related ministry. The common point of these individuals was that they were either trade union executives or active members of their unions or took part in protests and activities organized by their unions.

SES (Health and Social Services Workers' Trade Union) was, too, subjected to repressive policies faced by trade unions affiliated with KESK during the SoE. Because a large number of members of trade unions affiliated with KESK were dismissed during the SoE, these dismissals led to resignations from trade unions. It should be noted that SES lost blood in terms of its number of members. While the number of SES members was 39,207 as of May 2016, this figure went down to 20,304 in May 2019. 796 SES members were also dismissed from their public posts during this period. While 162 of these individuals were reinstated as of February 2020, applications by 92 were rejected. Inquiries are pending for other dismissed members.²²

According to a report on union rights violations drafted by KESK and announced on 26 December 2019, 4,283 public employees were dismissed from their posts through emergency decree laws during the SoE, while 487 public employees were dismissed by decisions rendered by higher disciplinary boards at their respective institutions.²³ Although KESK and its affiliated trade unions have been active since 1989 and had to relation to FETÖ/PDY, charged with the coup attempt, authorities took advantage of the failed coup attempt and dismissed at least 4,770 members of trade unions affiliated with KESK with no legal guarantees granted. Even this state of affairs on its own actually reveals the fact that the current constitutional and legal guarantees in Turkey were suspended during the SoE and the practice was changed in its entirety.

²¹ Aziz Çelik. "OHAL ve Sendikal Haklar." *BirGün*. 29.07.2016. <<https://www.birgun.net/haber/ohal-ve-sendikal-haklar-122037>>

²² Two reports on trade union rights and violations faced by union members can be consulted: Confederation of Public Employees' Trade Unions [KESK]. "15 Temmuz Darbe Girişimi Sonrası Sivil Darbe Sürecinde Yaşanan Hak İhlalleri." 19 January 2018. <http://www.kesk.org.tr/wp-content/uploads/2018/01/19_01_2018-rapor.pdf>

Confederation of Progressive Workers' Unions [DİSK]. "OHAL'in İki Yılına ve Başkanlık Rejiminin Çalışma Hayatına Etkileri: OHAL ve Başkanlık Emeğe Zararlıdır." 21 July 2018.

<<http://arastirma.disk.org.tr/wp-content/uploads/2020/08/OHAL-2-Y%C4%B1-ve-Ba%C5%9Fkanl%C4%B1k-Rejimi-Yeni-Rapor-TASLAK-SON.pdf>>

²³ <https://kesk.org.tr/2019/12/26/sendikal-hak-ihlalleri-raporumuzu-acikladik/>

The Global Rights Index 2020 issued by the International Trade Unions' Confederation (ITUC) listed Turkey among the 10 worst countries in the world for working people among 144 countries.²⁴ This report, too, revealed the serious setback in freedom of association, a part of trade union rights, in Turkey.

The problem of substitution of criminal laws in Turkey has deteriorated particularly in the aftermath of the declaration of SoE. Council of Europe Venice Commission's "Opinion on the Measures Provided in the Recent Emergency Decree Laws with respect to Freedom of the Media" (No. 872/2016) dated 13 March 2017 is quite important in that the opinion indicated that the fact that public prosecutors charged journalists, rights defenders, trade unionists and activists under Article 314 or 220 of the TPC and Article 7 of the ATC on the grounds of the statements they made, demonstrations they took part in and the articles they wrote was unlawful with no legality of offense sought and ultimately led to very serious rights violations.²⁵ Such state of affairs is often observed in trade union protests and activities as well.

The July 2020 report "A Perpetual Emergency: Attacks on Freedom of Assembly in Turkey and Repercussions for Civil Society"²⁶ and the May 2021 report "Turkey's Civil Society on the Line: A Shrinking Space for Freedom of Association,"²⁷ both drafted by drafted by the Human Rights Association (İHD) and the Observatory for the Protection of Human Rights Defenders (OBS), revealed that legislative regulations introduced during and after the SoE led to the shrinking of civic space, perpetual attempts at intimidation repressed civil society actors while this state of affairs resulted in a climate of fear.

Saturday Mothers' 700th peaceful vigil, which has been held since 1995 in İstanbul's Galatasaray Square asking for the fates of their loved ones who had been subjected to enforced disappearances in the 1980s and 1990s, was also banned by the Beyoğlu District Governor's Office in line with the state's attempts to shrink the civic space. Since then, Saturday Mothers are not allowed to hold their weekly sit-ins in Galatasaray Square that they had been doing so for decades without any problems and they are only allowed to do so in a small street before İHD's İstanbul branch.

²⁴ <https://www.ituc-csi.org/ituc-global-rights-index-2020?lang=en>

²⁵ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)007-e)

²⁶ https://ihd.org.tr/en/wp-content/uploads/2020/07/20200728_FIDH-OMCTIHD_TurkeyReport.pdf

²⁷ <https://ihd.org.tr/en/wp-content/uploads/2021/05/OBS-IHD-TURKEY.pdf>

Emergency Decree Laws and Repression of the Human Rights Field

The principle of rule of law, right to a fair trial, right to property, ILO Termination of Employment Convention (C 158), ban on discrimination in employment and occupation (ILO C 111), right to work, right to education, freedom of association, freedom of movement, presumption of innocence, judicial guarantees, academic freedom, right to liberty and security of person, right to defense, right to legal counsel can be listed among the violated human rights within the scope of this study.

Emergency decree laws issued during the 2016-2018 SoE violated Articles 10, 11, 20, 23, 24, 25, 34, 35, 36, 40, 49, 50, 51, 53, 121, 125, 129, 130 of the Constitution; Articles 6, 7, 8, 9, 10, 11, 13, 14 of the ECHR; ILO Conventions Nos. 111 and 158; Article 7 of the UN International Covenant on Economic, Social and Cultural Rights as well as the Committee's General Comment No. 18.

According to data collected by İHD, the balance sheet of SoE conditions, which started on 21 July 2016 and ended on 18 July 2018, is as follows:

Period of custody was extended to 30 days through decree law no. 667 that went into effect on 23 July 2016; conferences with lawyers were banned for the first 5 days of custody through decree law no. 668 that went into effect on 27 July. This practice was maintained nonstop for 6 months.

Period of custody was cut back down to 14 days from the previous 30 through decree law no. 682 that went into effect on 23 January 2017 while the ban on conferences with lawyers was also cut back down to 1 day.

135,147 public employees were dismissed from public service through decree laws during the SoE.

Works permits of 22,474 people, who had been working at closed-down private institutions and most of who were teachers, were revoked.

A total of 4,395 judges and prosecutors were dismissed through mostly by decisions rendered by the Board of Judges and Prosecutors, Constitutional Court rulings, and through Supreme Military Council decisions for military judges and prosecutors.

48 healthcare institutions were closed down.

2,281 private educational institutions (schools, educational centers, boarding houses, dormitories, etc.)

15 private universities were closed down, while a total of 3,041 of their tenured personnel became unemployed.

Activities of 19 trade unions and confederations were terminated.

985 companies were confiscated and had trustees appointed during the SoE. 49,587 workers had been working at these companies.

201 media outlets were closed down during the SoE.

The report “A Perpetual Emergency: Attacks on Freedom of Assembly in Turkey and Repercussions for Civil Society,” drafted by the Human Rights Association (İHD) and the Observatory for the Protection of Human Rights Defenders (OBS), demonstrated the fact that all rights defenders, particularly human rights defenders working in the Southeast, LGBTI+ rights defenders and women’s rights defenders, faced gross repression; their activities were surveilled by the police everywhere; almost none of their outdoor activities was allowed during the SoE. It was also observed that human rights defenders were subjected to criminal investigations and prosecution due to virtually all their activities in the public space.

Numerous journalists were detained during the SoE. When the SoE was lifted there were 172 journalists in prison. 1,607 associations and 168 foundations were also closed down during the SoE.

According to the official figures released by the Ministry of Justice, court cases had been brought against 4,187 persons for insulting the president (TPC Art. 299) in 2016 while this figure went up to 6,033 persons in 2017. While 482 court cases were brought under TPC Article 301 that regulates insulting Turkishness in 2016, this figure went up to 753 in 2017. Further, 17,322 persons faced prosecution for allegedly making propaganda for an illegal organization in 2016 and this figure too went up to 24,585 in 2017.

Although the SoE was lifted as of 18 July 2018, it was rendered permanent with all its consequences when the 25-article Law No. 7145 on Amendments to Some Laws and Decree Laws, which prescribed that important practices implemented during the SoE would stay in effect for at least three more years, was ratified by the GNAT on 25 July 2018. Law No. 7145 that went into effect on 31 July 2018 upon the ratification of the president also attempted to fill in some gaps in which SoE decree laws that rendered extraordinary practices of the regime proved insufficient to fill. The grounds for the law indicated that these amendments were necessary as the 2-year-long SoE would not be extended anymore and the following additional regulations were introduced:

Custody periods could be extended to a total of 12 days through 4-day extensions by a judge’s ruling was regulated. The Constitution was clearly violated in this way since the period of custody can only be extended to a maximum of 4 days even for collective offenses upon the request of the public prosecutor and the ruling of the judge under Article 19 of the Constitution. Article 19 of the Constitution prescribes that custody periods may be extended during a state of emergency or in time of war. This amendment, thus, signifies that the SoE was de facto sustained.

Not only governors were granted the power to prohibit the entry and exit of specific persons into and from specific places in a city for 15 days, they were also given the authority to declare curfews and ban vehicles to go out in traffic at certain places and times without a time limit. It is without doubt that personal liberty and security enshrined in Article 19 of the Constitution as well as the rights to freedom of residence and movement enshrined in Article 23 of the Constitution are violated through the use these powers. Alongside with these rights, many related rights would also be violated upon the use of these powers.

Further, measures and practices that would lead to the violation of Article 34 of the Constitution that designates the right to freedom of assembly was paved for by granting governors such new powers as imposing restrictions and early dispersal of meetings and demonstrations.

The law designated that dismissal of persons from public office would continue by way of commissions to be established at every public institution and body upon the consent of the related minister. This was an attempt to maintain the SoE order in just the same way as emergency decree laws by introducing such a concept as persons in “junction” with terrorist organizations and structures and formations posing a threat to national security. It also set forth that passport cancellations of those who had been and would be dismissed would continue. As for dismissed academics, it was regulated that they would not be reinstated to their former universities even if a reinstatement decision was rendered for them.

Numerous regulations that terminated procedural guarantees and the right to a fair trial were also put in place, for instance, it was regulated that when the need to retake a person’s statement about the same incident arose this procedure could be undertaken by the law enforcement upon a written order by a public prosecutor and decisions on objections to detention and requests for release could be rendered over the file.

Permanent SoE Law No. 7145 violated numerous rights. These include: 1. The right to liberty and security of person, 2. Freedom of residence and movement, 3. Presumption of innocence, 4. Right to a fair trial, 5. Principle of equality and prohibition of discrimination, 6. Freedom of thought and opinion, 7. Freedom of expression, 8. Freedom of association, 9. Respect for the privacy of private and family life, 10. Academic freedom, 11. Right to work. The SoE was rendered permanent by means of the above-mentioned and similar other articles that restricted rights and freedoms while expanding the authority of the political power with no limits.

The number of unlawful arrests and detentions as well as imprisonment convictions rendered for human rights defenders in finalized cases that utterly violated the right to a fair trial, which were all at play even before the SoE, has also been on the rise.

So much so that UN Human Right Experts (Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Ms. Fionnuala D. Ní Aoláin, Special Rapporteur on the promotion and protection of human rights while countering terrorism; Ms. Urmila Bhoola, Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Ms. Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders; Mr. Diego García-Sayán, Special Rapporteur on the independence of judges and lawyers; Mr. José Antonio Guevara Bermúdez, Chair-Rapporteur of the Working Group on Arbitrary Detention; Mr. Léo Heller, Special Rapporteur on the human rights to safe drinking water and sanitation; Mr. Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Mr. Ahmed Shaheed, Special Rapporteur on freedom of religion or belief; and Mr. Alfred de Zayas, Independent Expert on the promotion of a democratic and equitable international order) urged Turkey not to extend state of emergency on 17 January 2018 and stated:²⁸

We remain concerned, as we have since the attempted coup, that the Government is taking steps at odds with its obligations under human rights law. We are deeply worried about severe crackdowns on civil society, including journalists, the media, human rights defenders, jurists, academics, and civil servants, as well as the use of various powers in ways that are inconsistent with its obligations under the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

²⁸ <<https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=22592&LangID=E>

As was also indicated in the Amnesty International report “Weathering the Storm: Defending Human Rights in Turkey’s Climate of Fear” of 26 April 2018, “The human rights landscape during the 21 months of the state of emergency in Turkey is a desolate one characterized by mass detentions, prosecutions, intimidation and the silencing of independent civil society. Those who continue to speak out and stand up for human rights are paying a heavy price. By shutting down dissent and targeting civil society in the ways described here, Turkey is flouting its obligations under international human rights law.”²⁹

When one studies the “Updated Situation Report on the State of Emergency in Turkey: 21 July 2016-20 March 2018” drafted by the Human Rights Joint Platform (HRJP), of which İHD is a member, it would be easy to understand that the SoE regime in Turkey has become a permanent regime and this regime has been punitive by restricting fundamental rights and freedoms.³⁰ Particularly SoE regime’s repression of human rights defenders can readily be seen with the closed-down rights and law organizations.

Further, İHD’s 2017 Human Rights Violations in Turkey report revealed that the year 2017 had passed under total SoE, Turkey’s human rights axis had shifted, and Turkey opted for a regime change based on single-person government.³¹ It was understood that, under such circumstances, groups engaged in a struggle for rights and justice, most notably human rights defenders, faced severe repression. When one also studies İHD’s various special reports, it can be seen that repression of certain societal groups has been maintained.

Arrests and detentions of HDP co-chairpersons and members of the parliament in November 2016, detention of 16 lawyers from the Progressive Lawyers’ Association (Çağdaş Hukukçular Derneği - ÇHD) including its chair, arrest and detention of businessperson Osman Kavala, arrests of academics İftar Gözaydın and Turgut Tarhanlı, arrest of İHD’s co-chairperson Öztürk Türkdoğan, about 25 allegations of enforced disappearance in custody and the fact that the fates of two of them are not known yet were striking developments. Further, sit-ins staged before the Galatasaray High School in İstanbul and at the Human Rights Park in Diyarbakır demanding the authorities to find those subjected to enforced disappearances were banned in the aftermath of the failed coup attempt of 15 July 2016.

Criminal investigations under Article 301 of the TPC and Article 7 of the ATC were initiated into İHD’s Co-Chair Öztürk Türkdoğan and the association’s executive board members upon audit reports and complaints of the General Staff based on motions and decisions rendered by the executive board for the recognition of genocides at İHD’s 2014 and 2016 general assemblies as well as the Cizre Report of March 2016 .³²

İHD İstanbul Branch’s Commission against Racism and Discrimination held a banner on 24 April 2018 in İstanbul’s Sultanahmet Square which read: “Armenian Genocide: Recognize, Apologize, Compensate” and when the law enforcement stated that press conferences were banned through a decision rendered by the governor’s office, the 30-strong group dispersed without being able to hold a press conference while three people gave their statements to the security department. İstanbul Public Prosecutor’s Office started an investigation into three members of the commission, namely Gamze Özdemir, Jiyan Tosun and Leman Yurtsever; then delivered a “non-prosecution decision” on 4 May

²⁹ <<https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR4482002018ENGLISH.pdf>> p. 19.

³⁰ <<http://www.ihop.org.tr/2018/04/25/updated-situation-report-state-of-emergency-in-turkey-21-july-2016-20-march-2018/>>

³¹ https://ihd.org.tr/en/wp-content/uploads/2018/05/IHD_2017_report-2.pdf

³² For further information see: https://ihd.org.tr/en/wp-content/uploads/2020/09/sr20200707_IHD-HRD-Repression-Report-2020.pdf

2018. The decision stated: “A non-prosecution decision was delivered since the ECtHR held that freedom of expression not only applies to information or ideas deemed favorable or inoffensive but also to offensive, shocking or disturbing information and ideas deemed as such by the state or a part of the population; although the statements on the banner qualified as one that cannot be accepted and are disturbing, different interpretations of issues that essentially fall under the expertise of historians do not generally and entirely constitute the offense prescribed under Article 301 of the TPC.”

A total of 93 İHD executives and members were dismissed from public office through decree laws during the SoE. These persons include the then secretary-general of İHD, Osman İşçi and central executive committee member Adnan Vural. Hundreds of court cases have been brought against the executives of both İHD’s central office and branches.³³ Along with these developments, it was witnessed that numerous individuals and organizations working in the field of human rights, those contributing to the struggle for human rights and democracy in Turkey faced judicial harassment. We would like to refer to some outstanding cases in order to demonstrate how common harassment and repression are.

Cases against Emire Eren Keskin

Human rights lawyer and Co-Chairperson of İHD, Eren Keskin, has been facing judicial harassment for years. Eren Keskin, an honorary member of the Paris Bar Association, has received many international awards for her efforts for peace and human rights including the 2018 Helsinki Civil Society Award and she was a finalist for the 2018 Martin Ennals Award for human rights defenders.

On 14 February 2020, Necmiye Alpay and Bilge Aykut were acquitted of all charges against them; author Aslı Erdoğan was acquitted of charges of “disrupting the unity and integrity of the state and membership in an (illegal) organization” while a discontinuance of action decision was delivered as the four-month statute of limitations was surpassed as per the Press Law for charges of making propaganda for a terrorist organization in the final hearing of the main case against the *Özgür Gündem* daily, which was closed down through an emergency decree law. The court ruled for the separation of the files of Filiz Koçali and Ragıp Zarakolu, for whom there were pending arrest warrants and who had not given their statements yet; while a separation of files decision was also rendered for Zana Kaya, İnan Kızılkaya, Kemal Sancılı and Eren Keskin as they were granted an extension for their defense.

On 15 February 2021, however, Eren Keskin, İnan Kızılkaya and Kemal Sancılı were sentenced to 6 years and 3 months imprisonment for “membership in an illegal armed terrorist organization” while Zana Bilir Kaya was sentenced to 2 years and 1 month imprisonment for “making propaganda for the terrorist organization PKK/KCK.”

Eren Keskin carried the title of editor-in-chief of the daily *Özgür Gündem* between 2013 and 2016 and also took part in the “editor-in-chief on call” campaign between May and August 2016 that was launched to support the jailed staff of the daily. Daily *Özgür Gündem* was closed down on 29 October 2016 through decree law no. 675 for allegedly “making propaganda for a terrorist organization.”

³³ For detailed information on repressive policies against the İHD during this term, see: <https://ihd.org.tr/en/report-on-increased-pressures-on-human-rights-defenders-human-rights-association-and-its-executives/>

About a total of 150 court cases, some of which were later merged, were brought against Eren Keskin because of her symbolic title as editor-in-chief. As of 2021, Atty. Keskin was sentenced to a total of 24 years imprisonment and 400,000 TRY in fines (about 60,000 euros). Atty. Keskin started paying the fines through national and international solidarity because the appellate remedies were exhausted for about 300,000 TRY (about 45,000 euros) of the sum in question. The files about imprisonment sentences against her and the remaining fines are pending under review before the Appeals Court and the Court of Cassation.

Cases against Murat Çelikkan and Editors-in-chief on Call

Human rights defender and journalist Murat Çelikkan had been sentenced to 18 months imprisonment on 16 May 2017 having been charged with “making propaganda for a terrorist organization” under the Anti-Terrorism Code (ATC) on the grounds that he took part in the “Özgür Gündem Editor-in-chief On Call” campaign and served as the editor-in-chief for merely a day along with some news reports published by the daily on that day. Imprisonment sentence for Murat Çelikkan was appealed on 6 June 2017 before the İstanbul Regional Court of Justice while the court rejected the appeals application on 20 June 2017. Upon this decision Murat Çelikkan turned himself in to Kırklareli E-type Closed Prison on 14 August 2017 and was conditionally released on 21 October 2017 under Article 105/A of Law on the Enforcement of Sentences for supervised release.

Özgür Gündem, one of the most important publications of the Kurdish press, faced numerous investigations, lawsuits and censorship during the conflict that broke out again on 24 July 2015 in the aftermath of the resolution process that began in 2013 and ended in 2015.

The campaign “editor-in-chief on call” was launched on 3 May 2016 on World Press Freedom Day against such policy of repression. The daily’s coordinator-in-chief, Ahmet Birsin, stated at a press conference held at the kickstart of the campaign that 80 court cases had been brought against Özgür Gündem since July 2015. According to information provided by Mr. Birsin, 51 out of 99 criminal investigations launched into the daily under the ATC and 29 out of 47 criminal investigations under Article 301 initiated by the public prosecutor’s office for the press were turned into court cases.

Three editors-in-chief on call of the daily Erol Önderoğlu, Ahmet Nesin and Şebnem Korur Fincancı were detained on 20 June 2016 and were imprisoned for 10 days.

49 out of 100 persons who took part in the campaign for solidarity that ended on 7 August 2016 faced investigations. 11 of these investigations ended in non-prosecution decisions, while 38 went to court. The trials of 38 editors-in-chief were held under Article 7/2 of the ATC (making propaganda for a terrorist organization) and Article 6 of the ATC (publishing declarations or statements of terrorist organizations).

The cases of Hüseyin Aykol, former editor-in-chief of the daily who also served during the campaign, and daily’s columnists Mehmet Ali Çelebi and Hüseyin Bektaş were merged with those of Ayşe Düzkan and Ragıp Duran.

Further, court cases were brought during this process against Ömer Ağın on the grounds of an article that was published when Celal Başlangıç was the editor; against İmam Canpolat on the

grounds of an article that was published when Cengiz Baysoy was the editor, and against İlham Bakır on the grounds of an article that was published when Jülide Kural was the editor.

To date, 18 persons were fined 62,000 TRY and sentenced to 220 months and 15 days imprisonment within the scope of court cases brought against on call editors-in-chief. The 18-month imprisonment sentence handed down to Murat Çelikkan for acting as on call editor-in-chief and 15-month imprisonment sentence delivered for İmam Canpolat for his published article were not deferred. Courts delivered suspension of the pronouncement of the judgment for all other sentences.

The Büyükada Trial

10 human rights defenders, who took part in a workshop on the security of human rights defenders in İstanbul, Büyükada on 5 July 2017, were taken into custody on allegations of “committing an offense on behalf of an organization as a non-member” (TPC Art. 220/6) and “membership in an armed terrorist organization” (TPC Art. 314/2 and 314/3):

Human Rights Defenders Taken into Custody and Prosecuted

Amnesty International Turkey Director İdil Eser, Özlem Dalkıran and Nalan Erkem of Helsinki Citizens' Assembly, Günal Kurşun and Veli Acu of Human Rights Agenda Association, İlknur Üstün of Women's Coalition, Nejat Taştan of Association for Monitoring for Equal Rights, Şeyhmus Özbekli of Rights Initiative, and information security experts Ali Garawi (Swiss national) and Peter Steudtner (German national).

Human rights defenders who were taken into custody were not allowed to confer with their lawyers for more than 28 hours in violation of the legal regulation that limited such period with 24 hours. The authorities did not disclose where they were being held until 6 July 2017 around 15:00. It was then revealed that İdil Eser and İlknur Üstün were being held in a police station in Maltepe, while two foreign nationals in Büyükada and the others in three different places in İstanbul's nearby neighborhoods. In the meantime human rights defenders' residences were also raided by the police.

It turned out that the arrest warrants for the rights defenders were issued exactly five hours after they were taken into custody. The seven-day custody decision rendered for them was then extended to 14 days.

The rights defenders appeared before a court on 12 July 2017. The court ruled for the detention of İdil Eser, Özlem Dalkıran, Günal Kurşun, Veli Acu, Ali Garawi ve Peter Steudtner while releasing İlknur Üstün, Nalan Erkem, Nejat Taştan and Şeyhmus Özbekli under judicial control. Upon the objection of the public prosecutor's office arrest warrants were issued for the released four human rights defenders on 21 July 2017. İlknur Üstün and Nalan Erkem were taken into custody again and detained on 23 July 2017; Nejat Taştan and Şeyhmus Özbekli were released under judicial control.

The indictment about the 10 rights defenders was submitted in October 2017. Amnesty International Turkey Director lawyer Taner Kılıç, who was detained in June 2017, was added to the indictment as a “suspect.” The rights defenders were charged with “committing an offense on behalf of an organization as a non-member” and “membership in an armed terrorist organization” while Mr. Kılıç was charged with “membership in a terrorist organization.” It was stated that the case against Mr.

Kılıç under the charge of “financing terrorism and espionage” was pending before İzmir 16th Heavy Penal Court. The organizations that the rights defenders were allegedly members of were listed as “FETÖ/PDY, PKK/KCK and DHKP/C” in the indictment.

The trial commenced on 25 October 2017 before İstanbul 35th Heavy Penal Court. At the hearing “defendants” other than Taner Kılıç were released. Taner Kılıç was released on 15 August 2018 following the monthly review of the file.

On 3 July 2020, in the final hearing of the trial, Taner Kılıç was sentenced to 6 years and 3 months imprisonment for “membership in an armed terrorist organization,” Günel Kurşun, İdil Eser and Özlem Dalkıran were sentenced to 1 year 13 months imprisonment for “aiding an organization.” Other defendants, Nalan Erkem, İlknur Üstün, Ali Gharavi, Peter Steudtner, Veli Acu, Nejat Taştan and Şeyhmus Özbekli were acquitted.

The Büyükkada Trial is pending before the Court of Cassation’s 3rd Criminal Circuit.

Charges against Academics for Peace

Academics for Peace released their declaration “We will not be a party to this crime!” on 11 January 2016 criticizing the curfews in Sur, Silvan, Nusaybin, Cizre and Silopi and the subsequent destruction of residential areas with heavy weaponry. Following President Erdoğan’s statements targeting the academics, firstly academics from Kocaeli University were taken into custody.

In the meantime, Diyarbakır Bar Association, İHD, Human Rights Foundation of Turkey (HRFT), Association of Lawyers for Freedom (ÖHD) and other human rights organizations had started reporting human rights violations committed in operations in Cizre. Rights and freedoms were further restricted in the aftermath of the SoE declared after the coup attempt of 15 July 2016. At least 6,081 academics were dismissed from their posts at 117 universities, including 406 signatories of the Academics for Peace declaration, between the declaration of SoE and July 2018. Moreover, about 150 signatories of the declaration were forced either to resign or early retirement, or laid off.³⁴

Court cases brought against the Academics for Peace because of the declaration under “making propaganda for a terrorist organization” were pending in 2018 and 2019. A total of 822 academics, including 763 first signatories and 59 second signatories, stood trial. Among 204 academics who were sentenced 164 were handed down suspension of the pronouncement of the judgment rulings, 4 received deferral while 36 were convicted.³⁵

Nevertheless the Constitutional Court ruled on the application lodged by 10 convicted academics on 26 July 2019. The Constitutional Court held that there was a “violation of freedom of expression” and ruled for payment of 9,000 TRY in damages to each applicant and for retrial. Following the

³⁴ For a comprehensive study of the situation of academics working in the field of human rights during the SoE, see the 2019 report “Being a Human Rights Academic during the State of Emergency.” <<https://insanhaklariokulu.org/being-a-human-rights-academic-during-the-state-of-emergency/>>

“A Report on Academic Freedoms in Turkey in the Period of the State of Emergency” by İnan Özdemir Taştan and Aydın Ördek also offers important data to understand the challenges faced by academics: <<https://insanhaklariokulu.org/a-report-on-academic-freedoms-in-turkey-in-the-period-of-the-state-of-emergency/>>

³⁵ <https://barisicinakademisyenler.net/English>

landmark ruling by the Constitutional Court, local courts started delivering acquittal rulings but the Inquiry Commission on the SoE Measures did not deliver any decisions.

The commission announced its first decision about the signatory academics in October 2021. In spite of the judgment of the Constitutional Court and acquittal rulings by other courts, the commission rejected applications by academics. The commission rejected 365³⁶ applications by academics at the time of the writing of this report.

Şebnem Korur Fincancı

The trial of Prof. Dr. Şebnem Korur Fincancı, İHD member and the then president of the HRFT, due to her signing of the declaration “We will not be a party to this crime!” witnessed different developments than others. Professor Fincancı authored a report on the civilian deaths during the curfews in Cizre and the report was addressed in both the trial and the subsequent judgment.

Democratic mass organizations had published a joint report on the incidents during the curfews in Cizre. The reports had provided information on civilian losses of life.

As the President of the HRFT and a forensic medicine expert, Professor Fincancı authored the “Cizre Visit: A Preliminary Report” dated 5 March 2016. The report indicated that “Unidentified deaths, including in the first basement where a mandibular bone of a child was found, should be unearthed through a comprehensive study as the initial inquiry was carried out with limited means since the objective was a first visit and an overall assessment with no material to conduct the necessary and sufficient inquiry and documentation.”

Professor Fincancı’s interviews with the dailies *Özgür Gündem* and *Evrensel* as well as the Cizre report were added to her file as evidence within the scope of which she was standing trial before İstanbul 37th Heavy Penal Court because of the declaration “We will not be a party to this crime!” The court sentenced her to 2 years and 6 months imprisonment holding the report as evidence of “crime of expressing an opinion” instead of evaluating the report as a criminal complaint for violations of the right to life. The ruling read:

When the form and characteristics of the crime committed by the defendant in line with the act of impugned “offense of making propaganda for a terrorist organization,” statements used by her in interviews immediately before and after the date of the crime, her characterization of the activities of the Turkish Armed Forces conducted absolutely with an objective for defense and security in the region as atrocity, attempt at genocide, war crime and total assault on the Kurdish people, her praise of digging ditches by the PKK/KCK armed terrorist organization in the region, and her support for self-governance that coincided with the content of the declaration in question are all evaluated as a whole; the court rules that the defendant be sentenced to 1 year 8 months imprisonment by applying an increase separating the sentence’s legal minimum limit using its judicial discretion and to further increase the sentence by half to 1 year 18 months because the declaration in question was announced to the public by means of the press and media considering the defendant’s purpose and aim, the intensity of the defendant’s intention, her will to support

³⁶ <https://barisicinakademisyonerler.net/node/314>

and accept the declaration following its release, the significance and value of the subject of the crime and the dimension of the threat posed.

Turkish Medical Association Central Council

Turkish Medical Association's (TMA) Central Council released a statement entitled "War is a public health problem" in January 2018 following the launch of the "Afrin Operation." Upon the release of the statement TMA Central Council Chairperson Raşit Tükel, Secretary-General Sezai Berber, council members Hande Arpat, Selma Güngör, Funda Obuz, Taner Gören, Yaşar Ulutaş, Bülent Nazım Yılmaz, Sinan Adıyaman, Ayfer Horasan and Şeyhmus Gökalg were taken into custody on 30 January 2018.

Sinan Adıyaman, Ayfer Horasan and Şeyhmus Gökalg were released under judicial control on 2 February 2018 while Raşit Tükel, Sezai Berber, Hande Arpat, Selma Güngör, Funda Obuz, Taner Gören, Yaşar Ulutaş and Bülent Nazım Yılmaz were released under judicial control on 5 February 2018.

The indictment drafted by Ankara Public Prosecutor's Office charged TMA executives for "making propaganda for a terrorist organization" on the grounds of the statement as well as another released on 1 September 2016 on the occasion of World Peace Day.

The trial against the TMA executives was finalized on 3 May 2019. Ankara 32nd Heavy Penal Court sentenced the physicians to 1 year 8 months imprisonment for committing the crime of "inciting the public to hatred and enmity" twice. The court further sentenced Hande Arpat to 1 year 6 months and 22 days imprisonment for allegedly "making propaganda for a terrorist organization in her social media posts." Şeyhmus Gökalg, on the other hand, was acquitted of the charges filed because of his social media posts. His trial is pending before the appeals court.

Ömer Faruk Gergerlioğlu

Mazlum-Der's former chairperson, Dr. Ömer Faruk Gergerlioğlu, who was suspended from his post at İzmit SEKA State Hospital on the grounds of a photograph he had shared on social media, was dismissed from his post through decree law no. 679 on 6 January 2017.

A lawsuit was then brought against Dr. Gergerlioğlu on the grounds of a social media post under Article 7/2 of the ATC for "making propaganda for the terrorist organization PKK/KCK." The trial was finalized on 21 February 2018 and Kocaeli 2nd Heavy Penal Court sentenced him to 2 years and 6 months imprisonment. When the Court of Cassation's 16th Penal Department upheld the imprisonment sentence handed down to Dr. Gergerlioğlu, who had been elected as a member of the parliament from HDP, his file was sent to the GNAT and his membership in the parliament was terminated. Dr. Gergerlioğlu was detained on 2 April 2021.

The Constitutional Court ruled on Dr. Gergerlioğlu's individual application on 1 July 2021. The Constitutional Court held that Dr. Gergerlioğlu's "right to political participation" and "right to liberty and

security of person” were violated. Following the judgment, Dr. Gergerlioğlu was released on 6 July 2021 and he was reinstated as a member of the parliament as well.

ÇHD Lawyers

Lawyers from the Progressive Lawyers’ Association (Çağdaş Hukukçular Derneği -ÇHD), which was closed down through decree law no. 667, and from People’s Law Office (Halkın Hukuk Bürosu) were taken into custody on 12 September 2017 and subsequently detained on 20 September 2017.

The indictment drafted by İstanbul Public Prosecutor’s Office charged 20 lawyers, including 17 imprisoned lawyers (Ahmet Mandacı, Aycan Çiçek, Ayşegül Çağatay, Aytaç Ünsal, Barkın Timtik, Behiç Aşçı, Didem Baydar Ünsal, Ebru Timtik, Engin Gökoğlu, Naciye Demir, Özgür Yılmaz, Selçuk Kozağaçlı, Süleyman Gökten, Şükriye Erden, Yağmur Erenken, Yaprak Türkmen, Zehra Özdemir) as well as lawyer Ezgi Çakır and two others (Oya Aslan, Günay Dağ), for whom there were arrest warrants, with “leading an illegal organization and “membership in an illegal organization.”

İstanbul 37th Heavy Penal Court ruled for the release of 17 lawyers under judicial control on 14 September 2018. Upon the objection of the public prosecutor’s office, however, the court issued arrest warrants for Aytaç Ünsal, Aycan Çiçek, Engin Gökoğlu, Behiç Aşçı, Ahmet Mandacı, Barkın Timtik, Ebru Timtik, Naciye Demir, Özgür Yılmaz, Selçuk Kozağaçlı, Süleyman Gökten and Şükriye Erden on 15 September, while rejecting the objection for Ayşegül Çağatay, Yağmur Erenen Evin, Didem Baydar Ünsal, Yaprak Türkmen and Zehra Özdemir.

Article 1 of emergency decree law no. 676 introduced an amendment to Article 149/2 of the CCP prescribing that “A maximum of three lawyers shall be present in prosecutions and hearings held regarding offences committed within the framework of organizational activity.” Thus, the rule that provided for the presence of three lawyers only at the time of statement taking during the investigation stage was expanded and defendants’ right to effective defense and right to a fair trial at court were restricted.

The final hearing of the trial was held on 20 March 2019. The court sentenced Barkın Timtik to 18 years and 9 months imprisonment for “establishing and leading an (illegal) organization,” Özgür Yılmaz and Ebru Timtik to 13 years and 6 months imprisonment for “membership in an illegal organization,” Behiç Aşçı and Şükriye Erden to 12 years imprisonment, Selçuk Kozağaçlı to 11 years and 3 months imprisonment, Engin Gökoğlu, Aytaç Ünsal and Süleyman Gökten to 10 years and 6 months imprisonment, Aycan Çiçek and Naciye Demir to 9 years imprisonment, Ezgi Çakır to 8 years imprisonment. The court ruled to enforce the sentence for Ezgi Çakır in the form of house arrest as she had a young child.

The court also sentenced Ayşegül Çağatay, Yağmur Erenen, Didem Baydar Ünsal and Yaprak Türkmen to 3 years and 9 months imprisonment for “aiding an illegal organization,” while Ahmet Mandacı and Zehra Özdemir were handed down 3 years and 1 month and 15 days imprisonment under the same offense. The files of defendants at large, Oya Aslan and Günay Dağ, were separated. Objection to the ruling was rejected by İstanbul Regional Court of Appeals’ 2nd Penal Department on 8 October 2019.

According to the statement by the International Bar Association’s Human Rights Institute (IBAHRI) released on 24 January 2018 on the occasion of the Day of the Endangered Lawyer, 1,488 lawyers

were subjected to ill-treatment amounting to persecution in Turkey during the SoE while 572 lawyers were detained and 79 lawyers were sentenced to imprisonment.

ÇHD member, lawyer Ebru Timtik went on a hunger strike to protect fundamental rights including the right to a fair trial and the prevention of arbitrary and illegal repression and bans on 3 February 2020. She died on the 238th day of her hunger strike on 27 August 2020.

Various lawsuits against ÇHD lawyers were merged and are pending before İstanbul 37th Heavy Penal Court. ÇHD chairperson Selçuk Kozağaçlı and other lawyers who had been convicted before are still in prison.

Osman Kavala and the Gezi Park Trial

Anadolu Kültür Inc. Executive Board Chairperson Osman Kavala was taken into custody on 19 October 2017. It was reported that Mr. Kavala was charged with “attempting to overthrow the government” within the context of the Gezi Resistance and with “attempting to overthrow the constitutional order” within the context of the 15 July attempted coup.

Osman Kavala, who was either a founder or executive at the Open Society Foundation, Turkish Economic and Social Studies Foundation (TESEV), Turkish Foundation for Combating Soil Erosion, Reforestation and the Protection of Natural Habitat (TEMA), History Foundation, Diyarbakır Political and Social Research Institute, Turkish Cinema Foundation and Anadolu Kültür Foundation, was referred to the court by İstanbul Public Prosecutor’s Office for detention without his statement taken after being held in custody for 14 days. He was detained by İstanbul 1st Criminal Peace Judgeship on 1 November 2017 under the charges of “attempting to overthrow the constitutional order” regulated under Article 309 of the TPC and “attempting to overthrow the government” under Article 312.

Mr. Kavala’s lawyers asked for his release following the detention ruling but it was rejected. His lawyers lodged an individual application before the Constitutional Court in December 2017 on the grounds that the “detention ruling was unconstitutional.” The Constitutional Court’s General Secretariat held on 22 May 2019 in its judgement in the case of *Mehmet Osman Kavala* (Application No. 2018/1073) that there was no violation of the right to liberty and security of person guaranteed by Article 19 of the Constitution.

The detention ruling was also brought before the ECtHR on 8 June 2018. The application stated that the detention ruling, extension of the detention ruling and the lengthy process before the Constitutional Court were against Article 5 of the ECHR guaranteeing the rights to “liberty and security.” The application also emphasized the fact that the detention ruling was handed down for political purposes which was against Article 18 of the ECHR.

The ECtHR that prioritized the application and asked the Turkish government to provide information on the concept of “strong suspicion based on concrete evidence signifying commission of a crime” and “whether the evidence in the file was sufficient enough at the time of the detention ruling.”

The ECtHR’s judgment was announced in December 2019. The court held that Articles 5/1, 5/4 and 18 of the ECHR were violated on the grounds that “Osman Kavala was detained without reasonable suspicion” and the “Constitutional Court did not review the application within a reasonable

time” adding that Mr. Kavala should “immediately be released.” (This was the second Article 18 violation judgment against Turkey following the case of HDP Co-chairperson Selahattin Demirtaş).

13 executives and employees of the Anadolu Kültür Inc. were taken into custody on 16 November 2018, a year after the detention of Mr. Kavala. Those taken into custody were:

Prof. Dr. Betül Tanbay from Boğaziçi University, Prof. Dr. Turgut Tarhanlı -the dean of Law School at Bilgi University, Yiğit Ekmekçi -Acting Chair of the Executive Board of Anadolu Kültür, executive board member Ali Hakan Altınay, general coordinator Asena Günel, Co-Director of Memory Center Meltem Aslan, Bernard Van Leer Foundation’s Turkey representative and staff of İstanbul Bilgi University’s NGO Training and Research Unit Yiğit Aksakoğlu, Anadolu Kültür members/staff Bora Sarı, Ayşegül Güzel, Hande Özhabaş, Yusuf Cıvır, Filiz Telek, and producer Çiğdem Mater.

In a statement by the İstanbul Police Department, it was claimed that those taken into custody maintained “a hierarchical order with Osman Kavala, held meetings at a place called the DEPO owned by Anadolu Kültür Inc. in order to deepen and popularize Gezi Park incidents, brought in activism trainers, facilitators and professional protesters from abroad in order to provide for the continuance of Gezi Park incidents under the titles of ‘civil disobedience and non-violent protest,’ involved in activities to establish new media, worked to stop the import of pepper gas used in Gezi Park incidents to Turkey and ban the use of such gas.”

Yiğit Aksakoğlu was detained on 18 November 2018, while 12 others were released pending trial. Aksakoğlu was held in solitary confinement for about 3 months in Silivri Prison.

In the meantime, it turned out that the public prosecutor who had first initiated the investigation was Muammer Akkaş, who was dismissed from the public prosecutor’s office on the grounds of “membership in the Fethullah Gülen organization” and was at large. It was also reported that the investigation at the police department was conducted by the Organized Crime Branch Director Nazmi Ardiç who was detained on the same grounds.

Further, arrest warrants were issued for artist Mehmet Ali Alabora, journalist Can Dündar, Ayşe Pınar Alabora, Gökçe Yılmaz, Handan Meltem Arıkan, Hanzade Hikmet Germiyanoğlu and İnanç Ekmekçi who resided abroad.

The 657-page indictment drafted by İstanbul Public Prosecutor’s Office for 16 persons was submitted to İstanbul 30th Heavy Penal Court on 20 February 2019. The indictment charged Osman Kavala, Yiğit Aksakoğlu, Ali Hakan Altınay, Mücella Yapıcı, Ayşe Pınar Alabora, Can Dündar, Çiğdem Mater, Gökçe Yılmaz, Handan Meltem Arıkan, Hanzade Hikmet Germiyanoğlu, İnanç Ekmekçi, Mehmet Ali Alabora, Mine Özerden, Can Atalay, Tayfun Kahraman and Yiğit Ali Ekmekçi with “attempting to overthrow the government or to prevent it from fulfilling its duties” that prescribed aggravated life sentence if found guilty (TPC Art. 312/2).

The trial commenced on 24-25 June 2019 at the Silivri Prison campus. Yiğit Aksakoğlu was released at the hearing.

In the meantime, German federal government’s Commissioner for Human Rights Policies and Humanitarian Assistance Bärbel Kofler and French Ambassador for Human Rights François Croquette issued a joint statement before the third hearing of the Gezi Park trial in October 2019 urging Turkey to comply with the standards of rule of law. The statement also indicated that they were following the situation of the civil society and human rights activities in Turkey with great concern.

The sixth and final hearing of the trial was held on 18 February 2020. The court ruled for the acquittal of nine defendants and for the release of Mr. Kavala. The files of seven defendants residing abroad were separated and the arrest warrants issued for them were also lifted.

President Recep Tayyip Erdoğan stated the following when he expressed his opinion on the acquittal rulings in the Gezi Trial:

The fact that the man is very rich, is a wealthy socialist should not be enough to save him. Because Gezi is an incident of treachery to this country. An incident of treason to this homeland. I, myself, experienced this at the most critical moment. Because they tried to break into our office in Dolmabahçe and wrote very ugly, nefarious slogans across the office. They invaded the Bezmialem Valide Sultan Mosque for three days. Beer cans were found inside. No one cares. Do you necessarily need arms? These will waltz into somehow and then will keep on doing so freely? Now who are those backing them? Many more and whatnot are backing them.

While it was expected that Mr. Kavala would be released, it turned out that another arrest warrant had been issued within the scope of another investigation concerning the attempted coup following the president's statement. Osman Kavala, who had been taken into custody on his way out of Silivri Prison, was detained on 19 February 2020 by the on-call Criminal Peace Judgeship. Before the judgeship's detention ruling, though, it turned out that İstanbul 5th Criminal Judgeship had issued an international travel ban for him. The ruling that was rendered after the acquittal and release judgment of the heavy penal court was served to Mr. Kavala on 26 February 2020 after he was jailed.

Osman Kavala who was being incarcerated in Silivri Prison was detained once again on 9 March 2020 within the scope of a "political or military espionage" investigation launched against him. These charges against Mr. Kavala were not about a new investigation. Mr. Kavala was detained again on the grounds that new evidence was unearthed within the scope of the file he was detained on 1 November 2017 following a 13-day custody having been charged with "staging a coup" under Article 309 of the TPC and ex officio released on 11 October 2019.

In the meantime, İstanbul Regional Court of Appeals 3rd Penal Department quashed the acquittal rulings rendered for 9 individuals in the Gezi Park trial. When the Court of Cassation also quashed the acquittal rulings rendered in the Çarşı Group trial after 6 years, the two cases were merged. Osman Kavala now remains as the only detained individual within the scope of 52-defendant trial upon the merging of Gezi Park and Çarşı Group's cases.

Council of Europe Committee of Ministers adopted an interim resolution on 2 December 2021 concerning the execution of the judgment of the ECtHR in the case of *Osman Kavala v. Turkey* stating that it would initiate the infringement procedure against Turkey if Mr. Kavala was not released until 19 January 2022.³⁷ Yet, Osman Kavala was not released at the hearing held on 17 January 2022 within the scope of the case pending before İstanbul 13th Heavy Penal Court.

M. Raci Bilici – Democratic Society Congress Trials

An investigation on charges of "membership in an illegal organization" was launched into İHD central executive board member and the then chairperson of the association's Diyarbakır branch, Raci Bilici, on 17 April 2017. Subsequently an indictment was drafted (Investigation No. 2017/1616, Merits

³⁷ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a4b3d4

No. 2017/5267) and a lawsuit was brought against Mr. Bilici under the same charges before Diyarbakır 5th Heavy Penal Court. The indictment put forth the following charges against Mr. Bilici:

“Conducting activities in meetings held by the Democratic Society Congress (DSC), participating in a couple of meetings by the DSC; a draft charter document entitled ‘Democratic Society Congress Draft Charter’ and determined the modus operandi of DSC structure by the organization’s leadership was seized in the data content retrieved on 6 September 2011 to the email address ‘dtknavend@hotmail.com’ evaluated to have been used by a person named Cemal Coşkun within the scope of the investigation (No. 2010/2499) conducted by Diyarbakır Chief Public Prosecutor’s Office; a part that read ‘Modus Operandi and Organs of the Congress IV -Definition and Formation of the General Assembly Article 5: General Assembly is the decision-making organ of the Democratic Society Congress. It is formed by a minimum of 800 delegates. 60% of this is formed by civilian democratic assemblies of our constituents and comprised of elected delegates who are designated in accordance with the population rates of cities, districts, towns and villages. The remaining 40% is comprised of elected deputies, mayors, provincial general assembly members, municipal assembly members and mukhtars as well as representatives from political parties, political groups, civil society organizations and ethnic and religious groups in the region along with academics, intellectuals and opinion leaders’ was in the content; the fact that suspect Mr. Raci Bilici was İHD’s Diyarbakır branch chairperson at the time of the incident is another piece of evidence that he has a position as a member in the Democratic Society Congress regarded as the legislative assembly of the terrorist organization and served as a moderator at a migration conference organized by DSC; he took part in protests for the improvement of prison conditions of Abdullah Öcalan and for his being recognized; his being an active member of the DSC and undertook acts and activities accordingly...”

Raci Bilici has served as an executive at İHD’s Diyarbakır branch since 2004 and was the branch chairperson between 2014 and 2018. All the charges impugned in the indictment were activities he undertook in the field of human rights. He was neither a member nor a delegate of the DSC which was indeed addressed by both civilian and administrative authorities. The correspondence referred to in the indictment merely consists of his statements because he is a member of the civil society. The meetings he attended and his field observations are also a part of his undertaking responsibilities in the field of human rights.

There are also previous rulings in similar cases brought against Raci Bilici. Various court rulings had held that participation in meetings and events held by civil society organizations was not a criminal offense within the framework of legislation. Further, it has become an established case-law of the Court of Cassation.

For instance, Tümbel-Sen’s (Union of All Municipality and Local Administration Services Employees’ Union) Diyarbakır branch chairperson was acquitted in the trial brought on similar grounds under charges of “membership in an armed terrorist organization,” “violating the Law on Meetings and Demonstrations” and “praising an offense and offender” heard before Diyarbakır 10th Heavy Penal Court. Moreover, the public prosecutor requested the acquittal of the defendant indicating that “there was no other piece of evidence other than tape recordings within the scope of the file” and that “there was no clear-cut and material evidence beyond all kinds of doubt that (the defendant) committed the impugned criminal offense within the scope of the file” in their comments on the merits of the case heard before Diyarbakır 8th Heavy Penal Court that was initiated on similar grounds against Diyarbakır chairperson of the Trade Union of Employees in Healthcare and Social Services (SES). One can list many more sample cases brought against journalists, civil society members or professional organization members and acquittal rulings were rendered for defendants in these cases.

The Court of Cassation, too, has similar judgments. The Court of Cassation particularly quashed rulings with no evidence whatsoever but solely based on communication records of telephone conversations that did not back the content of the impugned offense by material findings and held that telephone conversations could not be used as evidence for the offenses of establishing and membership in an organization if there was no other evidence other than telephone conversations.

The Constitutional Court in its judgment in the case of *Ahmet Urhan* also stated accordingly: “The fact that involvement in an association was considered to be evidence for conviction of membership in a terrorist organization is an issue that will be assessed within the scope of freedom of association. Further, the fact that acts in the form of attending meetings held by organizations were considered to be evidence for conviction of membership in a terrorist organization should be evaluated in the light of the right to assembly and demonstration within the framework of Article 33 of the Constitution and freedom of association as well. Therefore, the analysis of the current application will assess whether the use of acts argued to consist of the exercise of the freedom in question as evidence for conviction of the applicant of the offense of membership in a terrorist organization was demonstrated with a relevant and adequate ground... It was held that the applicant’s right in question was interfered with when the applicant’s acts that fell under freedom of association were considered to be evidence for membership in a terrorist organization.”

Within the context of all these statements, Raci Bilici did not have a personal relationship with the DSC but took part in these meetings in question and had telephone conversations because he was an executive at the İHD. All these activities were among the necessities of being a human rights defenders and a representative of a civil society organization. This fact has also been emphasized in judgments by the Constitutional Court, the Court of Cassation and local courts within the scope of cases that were similar to the one launched against Raci Bilici.

The final hearing of the case against Raci Bilici brought on the grounds of his activities as İHD’s vice-chairperson and Diyarbakır branch chairperson was held on 12 March 2020 before Diyarbakır 5th Heavy Penal Court. As has been summarized above, the public prosecutor’s office asked for the conviction of Raci Bilici in their comments on merits in spite of acquittal ruling for those standing trial within the scope of similar files with similar charges. And the court sentenced Mr. Bilici to 6 years and 3 months imprisonment for “membership in an organization.” This ruling was then quashed by Diyarbakır Regional Court of Appeals’ 2nd Penal Department and Diyarbakır 5th Heavy Penal Court retried the case subsequently sentencing him to the same penalty on 16 September 2021. When this ruling was appealed, Diyarbakır Regional Court of Appeals’ 2nd Penal Department ruled for his acquittal on 12 January 2022 (Merits No. 2021/1282). However the public prosecutor appealed against this ruling.

Diyarbakır-based DSC investigations have become tens of trials against hundreds of persons having been extended to the entire Eastern and Southeastern Anatolia cities. Following the investigations and prosecutions entitled “KCK” initiated in 2009 against Kurdish activists and human rights defenders and politicians, now investigations and prosecutions are conducted with the same mentality using DSC as an excuse.

The above-mentioned trial against M. Raci Bilici is solely given as an example. We would especially like to note that there are hundreds of people in the same situation. It has further been reported that the number of investigations into and trials against Kurdish politicians, who were executives and members of HDP and DBP, was in the thousands.

We would also like to particularly note that numerous criminal cases were brought against the executives and members of Roza Women’s Association, which had been closed down during the SoE, and they have been detained pending trial in most of these cases.

Trials against Journalists and the *Cumhuriyet* Trial

Administrative and judicial harassment against journalists, who are among the human rights defenders group, have been maintained non-stop in Turkey.

On 31 October 2016, an investigation was initiated into the executives and columnists of the daily *Cumhuriyet* on the charges of “committing criminal offenses on behalf of FETÖ and PKK terrorist organizations as non-members” and they were taken into custody. The indictment was based on the investigation initiated into *Cumhuriyet* executives and columnists on the charges of “supporting PKK/KCK, FETÖ/PDY and DHKP/C” was admitted by the İstanbul 27th Heavy Penal Court on 18 April 2017.

On 25 April 2018, the final judgment in the case of daily *Cumhuriyet* was announced. The court sentenced Akın Atalay to 7 years 3 months and 15 days imprisonment, Murat Sabuncu and Ahmet Şık to 7 years and 6 months imprisonment. The court also released Akın Atalay and ruled for judicial control for all other convicted defendants who were not detained (Bülent Utku, Mustafa Kemal Güngör, Hacı Musa Kart, Güray Tekin Öz, Turhan Günay, Önder Çelik ve Hakan Karasinir). Can Dünder and İlhan Tanır’s files were separated. Upon the quashing judgment of the Court of Cassation, the case was retried before the İstanbul 27th Heavy Penal Court and the court maintained its original ruling. The file was resent to the Court of Cassation. In the meantime, convictions of journalists who had been sentenced to less than 5 years of imprisonment were upheld by the İstanbul Court of Appeals and they had been imprisoned. The 1st Judicial Reform Package of 26 October 2019 made appeals before the Court of Cassation available for offenses within the scope of freedom of expression that were handed down less than 5 years of imprisonment sentences and the trial is pending before the Court of Cassation regarding these individuals.

Repressive policies against LGBTI+ rights defenders

LGBTI+ rights defenders are among the groups that are affected by social pressure and the SoE regime. Repression against the LGBTI+ rights defenders escalated during and after the 2014 Gezi Park protests as the overall visibility of the LGBTI+ movement in Turkey increased and it went bad to worse when the SoE was declared. The joint İHD-OBS report “A Perpetual Emergency: Attacks on Freedom of Assembly in Turkey and Repercussions for Civil Society”³⁸ clearly reveals the negative impacts of the SoE on LGBTI+ organizations.

İstanbul Pride Parade, which was last held in 2014 without being outlawed, has been banned since. The first excuse that the authorities made about the ban was that the Pride Parade coincided with Ramadan. Although it did not coincide with Ramadan in 2017, this time it was banned on grounds of security. These ban decisions point out to the fact that Ramadan was used merely as an excuse to impose bans on the LGBTI+ community. The same year the chair of the İstanbul branch of the far-right group “Alperen Ocakları” openly threatened the Pride Parade on television arguing the issue of LGBTI+ rights was an agenda item of “a capitalist, communist and imperialist project” that targeted the “institution of family” and stated that even if the authorities granted permission, they would not let the event happen.³⁹ The authorities opted for banning the Pride Parade against such security threats instead of fulfilling their positive obligations and taking the necessary measures in order to enable individuals to freely exercise their freedom of assembly. In 2018 and 2019, too, Pride Parades was banned in İstanbul although they did not coincide with Ramadan and there were no material threats targeting the parade.

While the authorities have not been permitting the annual Pride Parades in İstanbul since 2015, repression and restrictions on the LGBTI+ movement have escalated dramatically in the aftermath of the SoE. Not only outdoor events organized by LGBTI+ groups, but also indoor events like film screenings and talks were banned by the authorities during and after the SoE. Such state of affairs clearly demonstrates the fact that the right to freedom of assembly has been expropriated using the SoE conditions as an excuse.

³⁸ https://ihd.org.tr/en/wp-content/uploads/2020/07/20200728_FIDH-OMCTIHD_TurkeyReport.pdf

³⁹ <https://www.cumhuriyet.com.tr/haber/alperen-ocaklari-onur-yuruyusunu-yine-tehdit-etti-yurutmeyecegiz-764178>

Recommendations for the Elimination of the Consequences of Emergency Decree Laws

Emergency decree laws have had consequences that went beyond the period of state of emergency. They, further, led to consequences that have violated fundamental rights and freedoms in many respects. Moreover, they paved the way for many practices that narrowed down the space for actors fighting for democracy and human rights in Turkey.

IHD believes that the repressive regime in Turkey -which has been drifting away from democracy and the principle of rule of law, where fundamental rights and freedoms are arbitrarily restricted- can only be put to an end by rebuilding social peace. It is, therefore, imperative that a novel peace process be initiated with the involvement of all social parties.

The principle of separation of powers enshrined in the Constitution should be carried into effect and a new judicial structure in compliance with the principle of rule of law should be provided. In addition, a constitutional amendment that would make decree laws issued within emergency governance procedures be subjected to constitutional jurisdiction should be introduced and the necessary legal regulations should be launched in order to eliminate laws that hinder judicial remedies in emergency government procedures.

Regulations that rendered the state of emergency permanent should be annulled; human rights-based regulations that are dependent on Turkey's international obligations should be introduced. Legislation amended and altered by emergency decree laws should be reviewed with an eye to repeal all regulations against fundamental rights. In this vein, legal regulations should be made to stop using emergency decree laws after the termination of the state of emergency. Regulations put into effect through Law No. 7145 that provided the continuance of state of emergency should be repealed.

Within this scope, all emergency decree laws should be annulled with all their consequences. The dysfunctional and utterly political Inquiry Commission on the State of Emergency Measures should be dissolved, the commission's rejection decisions should be made null and void, all public employees other than those who used powers on behalf of the state (judges, prosecutors, high-ranking police, intelligence and military officers) should be reinstated to their public posts while public employees who used powers on behalf of the state should be granted the right to a fair trial using the case law of the ECtHR and, if need be, retrials should be granted within the scope of these rights.

The repressive climate brought about by the SoE conditions against persons and organizations contributing to the democratization of Turkey should be ended, all kinds of politically motivated measures taken against these persons and organizations should be put to an end, decisions delivered along these lines should be cancelled.

The authorities should reopen the organizations that had been closed down resorting to obscure concepts like junction (iltisak) and connection (irtibat) and return their assets, while decisions should be handed down after trials in cases where there might be criminal charges, if any.

Remedies for pecuniary and non-pecuniary damages sustained by those victimized by emergency decree laws during and after the state of emergency should be made available. Pecuniary and non-pecuniary damages should be granted to the families of those who were victimized by emergency decree laws and subsequently lost their lives due to sickness or suicide; these persons' reputations should be restored.

Academics dismissed for signing the Academics for Peace declaration should immediately be reinstated to their former posts, investigations and cases against them should promptly be ended in line with the judgment of the Constitutional Court.

All measures taken against human rights defenders and organizations using the failed coup attempt and the state of emergency as excuses should be revoked. These persons' and organizations' fundamental rights and freedoms, notably freedoms of expression and association, should be revised in compliance with international conventions and covenants Turkey is a party to and the obstacles before the exercise of these rights should immediately be lifted.

References

- Academics for Peace. "Rights Violations against Academics for Peace."
[<https://barisicinakademisyenler.net/node/314>]
- Akça, İsmet, Süreyya Algül, Hülya Dinçer, Erhan Keleşoğlu, Barış Alp Özden.
When the State of Emergency Becomes the Norm: The Impact of Executive Decrees on Turkish Legislation. Heinrich Böll Stiftung, January 2017. [<https://tr.boell.org/en/2018/03/15/when-state-emergency-becomes-norm>]
- Altıparmak, Kerem, Dinçer Demirkent and Murat Sevinç. "Atipik KHK'ler ve Daimi Hukuksuzluk: Artık Yasaları İdare Mi İptal Edecek?" HRJP: 8 March 2018. [https://www.ihop.org.tr/wp-content/uploads/2018/03/Atipik_OHAL_-KHKleri-1.pdf]
- Altıparmak, Kerem, Dinçer Demirkent ve Murat Sevinç "Atipik KHK'ler ve Daimi Hukuksuzluk: OHAL KHK'si ile erkeği kadın, kadını erkek yapamazsınız!" HRJP: 27 April 2018. [http://www.ihop.org.tr/wp-content/uploads/2018/04/Atipik-OHAL-KHKleri_II-1.pdf]
- Amnesty International. "Weathering the Storm: Defending Human Rights in Turkey's Climate of Fear." 26 April 2018.
[<https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR4482002018ENGLISH.pdf>] p. 19.
- Confederation of Progressive Trade Unions of Turkey [Devrimci İşçi Sendikaları Konfederasyonu -DİSK]. *OHAL'in İki Yılıının ve Başkanlık Rejiminin Çalışma Hayatına Etkileri: OHAL ve Başkanlık Emeye Zararlıdır*. 21 July 2018. [<http://arastirma.disk.org.tr/wp-content/uploads/2020/08/OHAL-2-Y%C4%B1l-ve-Ba%C5%9Fkanl%C4%B1k-Rejimi-Yeni-Rapor-TASLAK-SON.pdf>]
- Confederation of Public Employees' Trade Unions [Kamu Emekçileri Sendikaları Konfederasyonu -KESK]. *15 Temmuz Darbe Girişimi Sonrası Sivil Darbe Sürecinde Yaşanan Hak İhlalleri*. 19 January 2018. [http://www.kesk.org.tr/wp-content/uploads/2018/01/19_01_2018-rapor.pdf]
- Çelik, Aziz. "OHAL ve Sendikal Haklar." *BirGün*. 29.07.2016.
<<https://www.birgun.net/haber/ohal-ve-sendikal-haklar-122037>>
- Doğanay, Ülkü and Ozan Değer. "Being a Human Rights Academic during the State of Emergency." *HRJP / Human Rights School: 2020*.
[<https://insanhaklariokulu.org/being-a-human-rights-academic-during-the-state-of-emergency/>]
- Gemalmaz, M. Semih. *Olağanüstü Rejim Standartları*, İstanbul: BDS Yayınları, 1991.

- Human Rights Association [İnsan Hakları Derneği -İHD]. “On Law No. 7145 Regulating Permanent State of Emergency” 1 August 2018. [https://ihd.org.tr/en/regarding-law-no-7145-regulating-permanent-state-of-emergency/]
- Human Rights Association [İnsan Hakları Derneği -İHD]. “Human Rights Advocacy and Pressures on İHD.” 13 April 2020. [https://ihd.org.tr/en/wp-content/uploads/2020/09/ sr20200707_IHD-HRD-Repression-Report-2020.pdf]
- Human Rights Association & Observatory for the Protection of Human Rights Defenders (OBS). “A Perpetual Emergency: Attacks on Freedom of Assembly in Turkey and Repercussions for Civil Society.” July 2020. [https://ihd.org.tr/en/wp-content/uploads/2020/07/20200728_FIDH-OMCTIHD_TurkeyReport.pdf]
- Human Rights Association & Observatory for the Protection of Human Rights Defenders (OBS). May 2021. “Turkey’s Civil Society on the Line: A Shrinking Space for Freedom of Association.” [https://ihd.org.tr/en/wp-content/uploads/2021/05/OBS-İHD-TURKEY.pdf]
- Human Rights Joint Platform [İnsan Hakları Ortak Platformu -İHOP]. *Updated Situation Report: State of Emergency in Turkey 21 July 2016-20 March 2018*. 17 April 2018. [https://ihop.org.tr/en/2018/04/25/updated-situation-report-state-of-emergency-in-turkey-21-july-2016-20-march-2018/]
- Inquiry Commission on the State of Emergency Measures. “Activity Report 2021.” 30 December 2021. [https://soe.tccb.gov.tr/Docs/SOE_Report_2021.pdf]
- Law on State of Emergency. [https://www.mevzuat.gov.tr/MevzuatMetin/1.5.2935.pdf]
- Muiznieks, Nils. [Council of Europe Commissioner for Human Rights] “Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey” 7 October 2016. [https://rm.coe.int/ref/CommDH(2016)35]
- Özdemir Taştan, İnan and Aydın Ördek. “A Report on Academic Freedoms in Turkey in the Period of the State of Emergency.” *HRJP / Human Rights School*: 2020. [https://insanhaklariokulu.org/a-report-on-academic-freedoms-in-turkey-in-the-period-of-the-state-of-emergency/]
- Venice Commission. [European Commission for Democracy through Law]. “Opinion on Emergency Decree Laws Nos. 667-676 Adopted following the Failed Coup of 15 July 2016” 12 December 2016. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e]



This report was produced with the financial support of the European Union within the scope of the ProtectDefenders program of which the OMCT is a member. Its contents are the sole responsibility of the Human Rights Association and do not necessarily reflect the views of the European Union and OMCT.

Human Rights Association | December 2021