

**BRIEFING NOTE
ON THE
LEGACY
OF THE
EMERGENCY
DECREES
IN TURKEY¹**





1. INTRODUCTION

Turkey is still grappling with the restrictions on democracy and on fundamental rights and freedoms imposed by the emergency decrees issued in the aftermath of the failed coup attempt of 15 July, 2016. This is despite the fact that the state of emergency (SoE) was formally lifted in 2018. The Turkish government declared a three-month SoE on 20 July 2016, giving notice of its derogations from the ECHR and the ICCPR². The Turkish Parliament's approval of the SoE declaration, ushered in a regime of emergency decrees, also known as the 'Regime of 20 July'. During this period, the AKP government and President Erdoğan were granted unlimited powers, which they used in respect of various issues, including in areas not strictly required by the exigencies of the situation. The SoE was extended seven times after the initial one, before being revoked on 18 July 2018.

This briefing note sets out concerns on the legality of the emergency decrees, the process for appealing them and their effects, with a focus on human rights violations.

2. *International Covenant on Civil and Political Rights Turkey: notification under Article 4 (3)*, 21 July 2016. The Government notified the UN of the derogations of a total of 13 Articles: 'right to an effective remedy in case of a violation' (Art. 2), 'right to liberty and security' (Art. 9), 'rights of persons deprived of their liberty' (Art. 10), 'freedom 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 the law' (Art. 26), 'protection of minority rights' (Art. 27).

2. THE EMERGENCY DECREES: GRADUAL ERADICATION OF EXISTING CONSTITUTIONAL NORMS



A total of 32 emergency decrees were issued during the SoE and Turkey's constitutional procedures were frequently bypassed during their enactment. Some members of the Turkish parliament challenged the legality of the emergency decrees in the Turkish Constitutional Court. However, their complaints were dismissed on the grounds of lack of jurisdiction; the Court ruled that emergency decrees were not subject to judicial review given the exigencies of the state of emergency. The Venice Commission and the Council of Europe (CoE) Commissioner for Human Rights criticised the decree-laws for engendering a certain degree of arbitrariness and eradicating the rule of law.

Several of the emergency decrees included measures that were not strictly confined to the SoE. These included:


1. Measures on individuals (lifetime dismissal from public office, cancellation of professional licences, reduction in rank, stripping of combat medals, confiscation of assets, ban on travel abroad, and cancellation of passports);
2. Measures on organisations (permanent closure, confiscation of assets and appointment of trustees);
3. Regulatory measures (new legislation or amendments to the existing ones).

Major amendments were made to a number of laws, including the Anti-Terror Law, the Judges and Public Prosecutors Law, the Civil Procedure Law, the Military Law, the Turkish Armed Forces Personnel Law, the State Intelligence Services and National Intelligence Organisation Law, the Security Organisation Law, the Foreigners and International Protection Law; the Turkish Commercial Code, and the Higher Education Law. The decrees, which served as omnibus legislation, included doing away with the election of rectors in universities, and the closure of civil society organisations, schools, universities, and media outlets.

On 16 April 2017, less than a year after the SoE was declared, a constitutional referendum was held. The ongoing SoE did not permit a democratic debate in the run up to this referendum. The proposed constitutional amendments were approved by a slim margin and the transition to a sui generis system of presidential government took place. Both the Parliamentary Assembly of the Council of Europe (PACE) and the Organization for Security and Cooperation in Europe (OSCE) criticised the unfairness of the campaign period and the Turkish Supreme Electoral Council's Decision No. 560 of 16 April 2017 validating 1.5 million unstamped ballots and counting them towards the total number of votes. PACE reopened the political monitoring process on Turkey, due to serious concerns about respect for human rights, democracy and the rule of law in the country.

The emergency decrees and the constitutional amendments radically changed the relations between State powers by undermining checks and balances and the rule of law. Although the SoE was lifted on 18 July 2018, the emergency measures –such as the extension of custody to up to 12 days by order of a judge, and local governors' newly granted powers to restrict and ban meetings and demonstrations without a time limit– were enacted on a more permanent basis by Law No. 7145 of 25 July 2018, for an initial period of three years.

Measures intended to bring the perpetrators of the failed coup attempt before justice were ultimately instrumentalised to silence dissenting views and target civil society, despite restrictions on derogations from fundamental rights and freedoms in times of emergency, enshrined in both the Turkish Constitution and international law. The Turkish government has failed to prove that the emergency measures were necessary and proportional, which has inevitably led to the erosion of the rule of law. The decrees have created an environment in which the role of the Turkish judiciary and parliament has been undermined. New case law has emerged, which is at odds with the State's obligation to protect fundamental individual rights and freedoms, including the right to a fair trial and freedom of expression among others.



**MEASURES
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Emergency measures - facts and figures (Based on Human Rights Joint Platform (IHOP) 'State of Emergency in Turkey: Updated Situation Report' and OHCHR 'Report on the Impact of State of Emergency on Human Rights in Turkey, including an update on the Southeast of Turkey'.)



AT LEAST
130,000
PUBLIC
SERVANTS
WERE DISMISSED



107,944

INDIVIDUALS
NAMED ON LISTS
ATTACHED to the decrees
were arrested. By the end of
December 2017,

159,506
INDIVIDUALS HAD BEEN
ARRESTED.



THE PASSPORTS
of all **INVESTIGATED**
or prosecuted **INDIVIDUALS**
and **THEIR SPOUSES**
WERE CONFISCATED.

The authorities were given the
power **TO REVOKE THE**
CITIZENSHIP of individuals
under investigation remaining
abroad.



22,474
LICENCES
WERE
CANCELLED

The education sector was heavily
affected by massive dismissals of
teachers and academics.

THE TEACHING LICENCES
of 22,474 people were cancelled,
WHICH ALSO PREVENTS
THEM FROM WORKING IN
PRIVATE SCHOOLS.



MORE THAN

4,200
JUDGES

AND PROSECUTORS WERE
DISMISSED THROUGH ON
EXECUTIVE ORDERS OF
THE HIGH COUNCIL OF
JUDGES AND PROSECU-
TORS. The Constitutional Court
dismissed two of its members and
37 OTHER STAFF.

Collective dismissals and suspen-
sions were largely arbitrary and
lacked scrutiny, despite the guar-
antees given to the members of the
judiciary. This led to the weakening
and ineffectiveness of the judiciary
as a whole.



SOME **570**
LAWYERS WERE
ARRESTED, 1,480
were prosecuted and **79**
were sentenced to long-
term imprisonment.



IN 2017, OVER
100,000
WEBSITES,
INCLUDING A HIGH
NUMBER OF
PRO-KURDISH websites
and satellite TV channels were
BLOCKED.

166 MEDIA outlets were liq-
uidated and their assets con-
fiscated without compensation.
OVER 300 JOURNALISTS
WERE ARRESTED AND
DETAINED.



1,431
ASSOCIATIONS AND
145 FOUNDATIONS
WERE PERMANENTLY
CLOSED.

3. THE INQUIRY COMMISSION ON SoE MEASURES: JUSTICE DELAYED IS JUSTICE DENIED.

In line with the recommendations of the Council of Europe and the Venice Commission to create a temporary 'ad hoc body tasked with examination of individual cases on dismissals of public servants and other associated measures'³, an Inquiry Commission on the State of Emergency Measures was set up by Turkish Emergency Decree-Law No. 685 of 23 January, 2017. The recommendations stated that this body should be independent, impartial, with the power to reinstate applicants and to provide compensation, and that its decisions should be subject to judicial review. The Inquiry Commission was given a term of two years to review the cases of individuals (dismissals from public service, expelled university students, annulled ranks of retired personnel) and liquidation cases (closure of legal entities, media outlets, civil society organisations (CSOs), trade unions, etc.). Decisions on dismissals are subject to appeal before the designated administrative courts in Ankara. Dismissed judges and prosecutors can appeal to the Council of State.

The Inquiry Commission did not start working until six months after its creation. It handed down its initial decisions in January 2018. In its Köksal Decision of 2017, the ECtHR held that the Inquiry Commission was a valid domestic remedy that must be exhausted by nationals before going to the Court. This served to prevent many applications from being filed with

120,703
DECISIONS

16,060
WERE ADMITTED

104,643
WERE DISMISSED).



the ECtHR for many years to come. According to the Commission's 2021 Report, 126,783 applications were submitted to the Commission, which in turn handed down 120,703 decisions (16,060 of which were admitted and 104,643 dismissed). The Commission dismissed a large number of applications based on subjective and unlawful grounds, such as secret witness statements and intelligence information. The Commission's workload, effectiveness and the appointment/dismissal procedures for its members have raised concerns.

Due to the slow progress of the review process, the Commission's mandate and term were extended three times, the last on 22 January, 2022. Yet, after five years of operating, it has become clear that the Commission is incapable of providing effective redress and is instead creating major delays in justice, due to a backlog at all stages of appeal, which could take well over a decade to clear.

3. 'Venice Commission's Opinion CDL- AD(2016)037 on the Emergency Decree Laws Nos. 667 – 676', December 2016.

4. CRACKDOWN ON CIVIL SOCIETY, HUMAN RIGHTS, AND DEMOCRACY

The sheer number of arbitrary decisions and measures introduced by the emergency decrees are profoundly affecting the lives of many, and this situation is likely to have long-lasting implications for civil society, human rights and democracy in Turkey.

CIVIL SOCIETY ORGANISATIONS AND HUMAN RIGHTS DEFENDERS

Although it was claimed the decree-laws would target the plotters of the failed coup, their scope was widened to intimidate and silence the dissenting groups. Many civil society organisations were closed down, including those protecting human rights organisations, children's rights, women and hard-to-reach populations, among others. Human rights defenders were detained and prosecuted. Abusive use of the criminal justice system, including the anti-terror laws, has had a chilling effect on civil society: cases against Eren Keskin, Şebnem Korur Fincancı, Öztürk Türkdoğan, Murat Çelikkan, Turkish Medical Association Central Council, the lawyers from Progressive Lawyers Association, Ömer Faruk Gergerlioğlu and Raci Bilici; Osman Kavala and Gezi Park Trial; and Büyükada Trial are some of the most recent examples of judicial harassment.

Freedom of assembly and freedom of expression have been also denied since the imposition of the SoE, a major example being the blanket bans on LGBTI+ activities in Ankara and Istanbul. The Ankara ban was finally lifted by a court ruling following a long legal battle, but Pride Parades are still banned in Istanbul. Additionally, since their 700th vigil in August 2018, Saturday Mothers' peaceful weekly vigils, protesting against the enforced



disappearances and political murders of their loved ones, which had for years been held in Istanbul's Galatasaray Square, have been banned. Judicial harassment and persecution against this group continues to this day.

TRADE UNIONS

Trade union executives and members actively participating in union activities were targeted and dismissed, without receiving their salaries or any redundancy pay. These dismissals acted as a deterrent, leading to mass resignations from trade unions. A climate of fear and judicial harassment in civil society has set in.

MASS MEDIA CRACKDOWN

Freedom of political debate in the media is at the core of democracy. Many media outlets, including television and radio stations, publishing houses and newspapers, were closed and journalists arrested and detained on charges of 'criminal speech' or 'membership to a terrorist organisation'. Attacks on the media are further eroding civic space by preventing dissenting voices from being heard and forcing media outlets to self-censor.

ACADEMICS FOR PEACE

In protest of the curfews and rights violations occurring in south-eastern cities, Academics for Peace signed the *We will not be a party to this crime!* petition, calling for peace in January 2016. Around 400 signatories of the petition were dismissed and roughly 150 were forced to retire or resign⁴. Court cases were brought against over 800 Academics for Peace on charges of 'terrorist propaganda' and 'aiding terrorist organisations'. In 2019, ten academics who had received prison sentences (*Fusun Üstel and Others*) appealed to the Constitutional Court, which found their freedom of expression had been violated. This ruling was expected to serve as a precedent for the other Academics for Peace, as all their cases were filed based on identical indictments. However, there has been no favourable progress for these appellants; the Inquiry Commission and some lower courts continue to ignore the ruling and many cases are still pending. As a result, some had to leave the country within the first six months of the SoE and many remain in exile.

4. <https://expressioninterrupted.com/tr/baris-akademisyenlerinin-kisa-tarihi-hedef-gosterilme-ihrac-yargilama/>

TRUSTEE-APPOINTED MUNICIPALITIES

The practice of appointing trustees to replace elected local representatives began with the enactment of Emergency Decree-Law No. 674 of 1 September 2016, amending Law No. 5393 on Municipalities, which lays down an overly broad definition of terrorism. A significant number of these elected local representatives were detained and convicted. According to the Turkish Congress of Local and National Authorities of the CoE⁵, the impressive turnout in the 2019 local elections (84%) 'demonstrated a strong interest in local self-government', whereas the appointment of trustees 'impedes the proper functioning of local democracy in Turkey'. This practice, along with administrative tutelage over the activities and decisions of local governments, is still extensively used to target the municipalities run by opposition parties.

5. 'Report on Monitoring of the application of the European Charter of Local Self-Government in Turkey', 23 March 2022.



5. RECOMMENDATIONS:

The OMCT urges the authorities of the Government of the Republic of Turkey to:

- restore the rule of law and repeal any decrees or laws rendering the SoE measures permanent and preventing Turkey from fulfilling its international obligations on the protection of fundamental rights and freedoms;
- carry out necessary reforms to ensure the independence of the legislative and judicial branches of power;
- dissolve the Inquiry Commission on the SoE Measures and overturn its dismissals, ensuring the applicants' access to justice;
- guarantee the right to a fair trial for all individuals and institutions under investigation or on trial and ensure an independent, individualised review of their cases, allowing for compensation, restoration of the status quo ante, and the restitution of rights and assets;
- take all necessary steps to ensure an enabling environment for independent media and civil society organisations to operate safely and freely, and immediately release human rights defenders, journalists, lawyers, judges, and academics who are detained under counter-terrorism legislation and emergency decrees;
- investigate and prosecute the allegations of torture and ill-treatment during the SoE;
- put an end to any kind of harassment, including at the administrative and judicial level, against all human rights defenders and organisations, and ensure that they are not prosecuted in retaliation for their legitimate human rights activities.