

CONSTRUCTION OF A NEW REGIME BY DECREE LAWS



2018

This report is written by a group of academics and lawyers to raise awareness about a brutal persecution going on in Turkey. More than 150.000 public officials and their families have been deemed to civil death within the scope of the post-failed coup persecutions conducted by the government. Also, many journalists, businessmen, academics, women and children face arbitrary punishments in the antidemocratic authoritarian environment of the country. The State of Emergency and decree laws enable the government to institutionalize the unlawful practices.

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Executive Summary

In the early years of his political career, Turkish President Erdogan said that “democracy is like a train; you get off once you have reached your destination.” His policies in the last few years indicated that Mr. Erdogan and his party had reached the “destination” and got off democracy train, and then began to establish what they had in mind, namely a political Islamic version of authoritarianism.

However, the authoritarianism of Justice and Development Party (AKP) has entered into a new phase of ideology construction and regime building following the mysterious coup attempt of July 15, 2016. Mr. Erdogan described this controversial coup attempt, which is called “a controlled coup” by the opposition leader Kemal Kilicdaroglu, as a “blessing”. Immediately after this “blessing”, state of emergency has been declared in the country, and AKP began consolidating authoritarianism and building a new regime through abolishing democracy, the rule of law and the fundamental human rights. In this dictatorial regime, the legislative, executive and judicial organs are completely controlled by a single man.

The new regime is being established making use of the state of emergency decree-laws. Under this regime, the dissents have been facing repression and persecution. Turkish media has been silenced. Number of the journalists held in jail has exceeded 170. Through the decree laws, the government has dismissed around 150 thousand civil servants, shut down thousands of associations, foundations, labor unions, schools and medical institutions and media outlets based on a vague definition of terrorism and without any impartial investigation or fair trial.

Public officials who committed crimes such as violation of the right to life, torture, inhuman and degrading treatment, illegal profiling have been taken under protection by the decree laws and thus these crimes have been institutionalized. Through a very recent controversial regulation, even the ordinary people “who act within the context of suppressing the coup attempt and the terrorist actions occurred on 15 July 2016 as well as the actions which carry the characteristics of the continuation of such actions” have been provided with impunity.

The state of emergency decree laws dismissing tens of thousands of civil servants and bringing about comprehensive changes in the judicial and bureaucratic system were promulgated in a very short time following the declaration of the state of emergency. This calls into serious doubt that they were prepared in advance and waited for a suitable time and backdrop. This strengthens the possibility that a dictatorial power who had been preparing

for a long time to change the regime and the state apparatus was planning to create the reasons for the state of emergency.

What is being experienced in Turkey is actually a “coup” staged against the democratic and constitutional regime in Turkey. Turkey, with its current state, is no more part of the democratic Western world.

This report discusses how democracy, the rule of law and the fundamental human rights are being destroyed by the decree laws in order to establish a new authoritarian regime.

Introduction

1. The Political Islamic looking “authoritarianism” in Turkey, which came to light by Gezi protests in the mid-2013 and tested its own power by its response to 17-25 December 2013 corruption investigations and by its deep alliance with ultranationalist power circles and which has been gauging since then, has entered into a new phase of ideology construction and regime building following the controversial coup attempt of July 15, 2016.
2. Turkey has started to experience the real size of the “Erdoganism” in actual fact, footsteps of which have been long time coming, through the practice of state of emergency (hereinafter SoE) declared following an illogical and mysterious coup attempt which is called “controlled coup” by the opposition leader Kemal Kilicdaroglu, the legal basis and technical reasons of which are highly controversial¹. This regime is an undemocratic and dictatorial order in which the legislative, executive and judicial organs are completely controlled by a single man and his cronies. The new regime that envisages the control of all aspects of life by a single man has commenced with the state of emergency and has been since conducted through its practices, a comprehensive and reckless intimidation and destruction campaign against all dissents who refuse to be under its suzerainty.
3. The cornerstones of the new regime are being laid down by the SoE decree-laws under the pretext of reestablishment of peace and order and disguised under the mask of precautions. Even if some have been submitted to the Parliament, the SoE decree-laws approved by the AKP majority controlled by a single man, have not been subject to judicial

¹ https://www.washingtonpost.com/news/democracy-post/wp/2017/07/14/one-year-later-the-turkish-coup-attempt-remains-shrouded-in-mystery/?utm_term=.02ad2f930c2b

review. Moreover, the judiciary has gradually lost its independence² and put under the control of the executive since the corruption probes of 17-25 December 2013.

4. On the other hand, the emergency decree laws, which consist of hundreds of pages, have shut down thousands of associations, foundations, labor unions, schools and medical institutions as well as media outlets and dismissed tens of thousands of civil servants by listing their names in the annexes³. They have also entirely restructured the most important and long-established public institutions of the country, getting the state apparatus aligned with the new regime in the making.
5. The promulgation of these SoE decree laws, which brought about such comprehensive changes in violation of the Constitution and the law by the Council of Ministers in a very short time following the declaration of the SoE casts serious doubt that they were prepared in advance for a suitable time and backdrop. This strengthens the possibility that a dictatorial power, who has long been preparing to change the regime and the state apparatus, was planning to create the reasons for the emergency.
6. It is obvious that the mysterious coup attempt and the SoE were a real “blessing” for some who wanted to seize power and to create a closed authoritarian regime by abolishing the democracy and the rule of law⁴. In this respect, it is crucially important for the future of democracy in this country to have a thorough understanding of the real aspects of the SoE decree laws which are anticipated to be prepared behind the closed doors.
7. The following discussion considers the damages inflicted on the democratic system and the rule of law by the SoE decree laws which lay down the foundation of an isolationist, authoritarian and anti-democratic regime.

² <http://www.platformpj.org/report-non-independence-non-impartiality-turkish-judiciary/>

³ See the updated list of purge on <https://turkeypurge.com/>

⁴ <http://www.businessinsider.com/erdogan-statement-after-coup-attempt-2016-7?international=true&r=US&IR=T>

The Constitution Has Been Suspended

8. With the prevention of the constitutionality check, the Constitution has been *de facto* suspended. A new constitutional order has been established by by-passing the will of the people through the SoE decree laws by using Article 148 of the Constitution as an excuse.
9. Article 148 of the Constitution stipulates that “the Constitutional Court shall examine the constitutionality in respect of both form and substance of laws, decrees having the force of law, and the Rules of Procedure of the Grand National Assembly of Turkey and decide on individual applications. Constitutional Amendments shall be examined and verified only with regard to their form. However, decrees having the force of law issued during a state of emergency, martial law or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance”. The Constitutional Court decided that it has no competence to examine the SoE decree laws by relying on this provision⁵. As a result of this, all the provisions, except Article148, of the Constitution were made inoperative.
10. By refusing to examine the constitutionality of the new order established by the SoE decree laws, the Constitutional Court has intentionally or unintentionally paved the way for a closed circuit political system under the control and command of the executive. As a result of this, all the state institutions both *de jure* and *de facto* have become nonfunctional.
11. Through the emergency regulations, the legislative and the judiciary started to act entirely under the control and command of the executive. Assuming that if an SoE decree law includes a provision requiring the

⁵ <http://www.haberturk.com/gundem/haber/1319449-khklar-in-iptali-istemine-iliskin-ret-kararinin-gerekcesi-yayimlandi>

shutdown of the Constitutional Court and if it were approved by the Turkish Grand National Assembly (TGNA), there will be no constitutional mechanism in place to judicially review such a regulation. In fact, in the aftermath of the controversial coup attempt, this practice has been employed by all state institutions.

12. Through an SoE decree law⁶ the Supreme Courts and the High Council of Judges and Prosecutors (HCJP) were instructed to dismiss their own members. With this regulation, it was made possible that two members of the Constitutional Court were dismissed and the structure and the functioning of the Supreme Courts including the Constitutional Court and that of the HCJP were fundamentally shaken.
13. As a result, the Constitutional Court, convening by its new members, decided that it has no competence to review constitutionality of the SoE decree laws in contradiction with its earlier precedence by relying on the wording of the Article 148 of the Constitution. This means that the constitutional order is reduced to a single provision (Article 148) which gave way to the SoE regime. Incontestability and arbitrariness of the executive controlled by the non-accountable President actually abrogated the system itself.
14. The constitutional order that was established by the constitutional amendments of 2001 aiming harmonization with the EU has been disregarded and it has been seen a retreat into the repressive and restrictive provisions of the 1980 coup constitution.
15. Article 14 of the Constitution reads as follows: “No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms recognized by the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution. The sanctions to be

⁶ Article 3 of Decree-Law No 667 which became Law No 6749 by the approval of the TGNA

applied against those who perpetrate activities contrary to these provisions shall be determined by law.”

16. It is obvious that Article 14 of the Constitution which protects fundamental rights and freedoms against arbitrary restrictions during the SoE has been overlooked by the judicial organs notably by the Constitutional Court. This Article aiming to protect all fundamental rights against abusive interpretation of the constitutional provisions should have been taken into the consideration in the constitutionality review of the SoE and emergency decree laws. It has a similar content and function with that of Article 17 of the European Convention on Human Rights (ECHR).
17. Article 14 of the Constitution guarantees that no provision of the Constitution including those related to the SoE can be interpreted to restrict fundamental rights more extensively than is provided by the Constitution. In other words, Article 14 of the Constitution stipulates that SoE regulations and practices cannot be enforced as they are applied in today's Turkey and that the constitutional review of SoE decree laws is possible. Until now this point has not been remarked by experts and not been discussed in the media.

The Judiciary Has Been Subordinated to The Executive's Order

18. The independence of the judiciary and the separation of powers, which are essential elements of democracy, have been destroyed by the SoE decree laws. The courts and the judges are directly instructed as to how they decide cases before them. For example, the Decree-Law No. 669 (Article 4) and the Decree-Law No. 673 (Article 10) prohibited the application for suspension of bankruptcy and instructed the courts to reject such applications previously filed. It was also ordered that the injunctions

formerly issued in this regard should be lifted on the basis of vague accusations or mere investigations against the firms and businesses determined or implied by the executive.

19. The courts were prohibited from ordering delay of execution which is an integral part of the judicial review and an injunction. Moreover, it is instructed that the courts reject the actions filed against the administration in relation to the closed institutions, organizations and media outlets on the ground that they lack cause of action⁷. Also, it is ordered that the directorates of bailiff and execution to strike out the related execution proceedings. Article 16/4 of the same Decree-Law prohibits the review of the related administrative decisions by civil courts. A large number of instructions given by SoE decree laws to the judiciary will be examined below under the related headings.

A New Regime is Being Constructed by The Emergency Decree Laws

20. The SoE decree laws include too many permanent and substantive regulations which should be the subject of an act of parliament and which have no relevance for the reestablishment of peace and order, extending far beyond what is necessitated by the SoE.
21. Although the scope and subject of the aforesaid regulations could have been subject of a legislative act, the powers of the legislative have already been illegally usurped by the executive and a *de facto* situation was created. For example, through the Decree-Law No. 669 (Law No. 6756);
22. War academies, military high schools, NCOs high schools, Gülhane Military Medical Academy and military medical institutions were shut down or

⁷ Decree-Law No 675, Article 16

transferred to other institutions. While these military schools were shut down, a new Gendarmerie and Coast Guard Academy attached to the Ministry of Interior was established.⁸

23. Regulations relating to the military judiciary, military judges and cadet colleges were completely renewed and military judiciary was taken under the control of the executive by means of the Ministry of Defense.
24. Composition of the Supreme Military Council was totally made subject to political influence. The appointment procedure of the Chief of General Staff was changed and his powers were curtailed. The force commanders were directly attached to the Minister.
25. Educational and recruitment systems of military officers and sergeants were changed completely, paving the way for the principle of loyalty replacing the principle of merit.
26. In addition to the comprehensive changes made in the fields of the judiciary, security and internal affairs and significant regulations were introduced in education, higher education and health care systems which are completely irrelevant to the SoE and which require long-term preparations and planning.
27. Election system was abolished in the appointment of university rectors and a new system was adopted, according to which rectors will be appointed by the President among three candidates nominated by the Board of Higher Education among professors which have minimum three years of experience. If an appointment is not made within a month, and the Board of Higher Education fails to make new nominations in the following two weeks, the President may directly appoint a rector⁹. Also, appointment of rectors to the private universities was made subject to the approval of the President.

⁸ Decree Law No 668 (later Law No. 6755 by the approval of the TGNA)

⁹ Decree Law No. 676, Article 85

28. Supervisory Council of the Board of Higher Education was re-regulated.¹⁰
29. Though not relevant within the context of the SoE, some regulations were made in respect of opening private courses. The Maarif Foundation was empowered to assign civil servants temporarily within its own structure with special conditions in the country and abroad¹¹.
30. In order to fill the teacher gap arising from the dismissal of tens of thousands of teachers, contracted teachers are being recruited without taking public personnel selection examination under the cover of Priority Region for Development so as to make tenure in the future¹².
31. In order to fill the personnel gap in the health sector arising from dismissal of thousands by lists annexed to the SoE decree laws, the Ministry of Health introduces contracted recruitment which will have serious impact on the personnel system and destroy all the experience accumulated so far.¹³
32. Some of the SoE decree laws include such comprehensive articles that every one of which could have been evaluated as a basic law.
33. In addition to being refused to be appointed as officers, the graduates of cadet schools of shut down military schools lost their vested rights which were the result of years of work, and they were forced to choose either to accept the new fields of education or occupation determined for them or to cease their educational life.
34. It is made possible for the graduates of high schools and their equivalents to be appointed as special operations police by means of interview, which is open to political influence, even without sitting Public Personnel Selection Exam¹⁴.

¹⁰ Decree-Law No.676, Article 86

¹¹ Decree-Law No. 676, Article 83

¹² Decree-Law No. 674, Article 2

¹³ Decree Law No. 676, Article 76

¹⁴ Decree Law No. 671, Article 26

35. Recruitment without sitting Public Personnel Selection Exam is not limited only to the special operations police, the health and education sector. The regular personnel working for the Ministry of Defense and Turkish Military Forces were given an opportunity to become career specialist even though there were too many career specialists who took the Public Personnel Selection Exam and waiting to be appointed.¹⁵
36. Even the use of military social facilities has been regulated by the SoE decree laws¹⁶.
37. The Telecommunications and Communications Authority (TİB) which was targeted following 17-25 December investigations and whose surveillance recordings in its archives were wanted to be destroyed was shut down and its powers and duties were transferred to Information Technologies Authority¹⁷
38. In place of tens of thousands of dismissed qualified and experienced civil servants, it was made possible to recruit unqualified persons through interview without any standard exam or competition, which is prone to favoritism, as new personnel who would become yes-man of the politicians.
39. The system of public recruitment of unqualified and partisan people which disabled the regulations providing transparent, fair, competitive and meritocratic recruitment, which was introduced for the police organization by using the 17-25 December 2013 investigations as a pretext was extended to all public sector notably military officers, noncommissioned officers, teachers, health sector by using this time July 15 coup attempt as a justification.
40. The followings are some other examples of partisan staffing introduced by the SoE decree laws: in place of blacklisted, dismissed and mostly arrested

¹⁵ Decree Law No. 676, Article 61

¹⁶ Decree-Law No. 674, Article 47

¹⁷ Decree-Law No. 671, Articles 21-23

experienced and qualified judges and prosecutors, candidate judges and prosecutors without considering the duration spent during candidacy were appointed by the government controlled HCJP¹⁸; speedy announcement of new exams for the recruitment of thousands of judge and prosecutor candidates significantly reducing the required qualifications; allowing applications from the normal college students even in the recruitment of fighter pilots which would normally require top caliber¹⁹; directing the appointment system of military officers and noncommissioned officers to non-military educational sources.

An Intelligence State Has Been Created

41. Judicial judgments are issued by the executive, by disabling ordinary legal procedures and usurping judicial functions, and dismissals, ending studentship status and permanent purges are being undertaken on the basis of intelligence information which is prone to executive influence and manipulation (blacklisting) and of slanders.
42. In contradiction with the clear provisions of the Constitution, the system of dismissing civil servants from office by subjective evaluations of a commission controlled by the executive, without a proper investigation and without trial was made permanent²⁰. What is more is that bringing the decisions of the said commission was prohibited.
43. Provisions of the Law No. 657 on Civil Servants concerning disciplinary investigations are disabled and civil service tenure is terminated. While the requirement of sitting the Public Personnel Selection Exam (KPSS) was abrogated for mass recruitments, some public officials were dismissed on

¹⁸ Decree-Law no 667

¹⁹ Decree-Law No. 671, Article 3

²⁰ Decree-Law No. 667 which became Law No. 6749 by the approval of TGNA (Article 4).

the basis of allegations relating to the 2010 KPSS exam, although the investigation and trial has not concluded yet. Dismissal of public officials who were appointed as a result of other KPSS exams were instructed despite having no concrete evidence²¹. In the cases filed by the civil servants who were dismissed on the allegation that they were appointed on the basis of KPSS results, the courts were prohibited to rule compensation²².

44. Although the criminal sanctions ruled by the courts are subject to time limits and could be reevaluated in the future, the acts established directly through the decree laws are executed in an irremediable way. The license and certificates of people who were dismissed on the basis of unjust and baseless allegations were also cancelled and they were even prevented to work in the private sector. Even if there were no provisions in the decree laws, it was reported that the social security records of the dismissed people are annotated and they are thus prevented to find job in private sector²³.
45. Furthermore, the land register of the blacklisted and dismissed people is annotated illegally without judicial decision and their transactions on the property and business establishment are prevented. Additionally, judicial control of such illegal actions is blocked. The functions of the courts are interfered and they are prohibited from ordering stay of execution which aims to prevent irreparable damages.
46. The right to fair trial and the right to access to court, one of the most basic human right universal legal norm, is often eliminated²⁴. The institutions

²¹ Decree-Law No. 670, Article 6

²² Decree-Law No. 675, Article 17/3

²³ <https://www.amnesty.org/en/latest/news/2017/05/turkey-professional-annihilation-of-100000-public-sector-workers-in-post-coup-attempt-purge/>

²⁴ <http://www.platformpi.org/opinion-right-defence-abolished-state-emergency-turkey/>

closed down by the SoE decree laws are even deprived from claiming compensation²⁵.

47. There are serious doubts as to the sources of information and documents that were the basis of the dismissal and closure lists published as annexes of the decree laws. The decree laws are establishing final verdicts on the ground of membership of, or having relation, connection or contact with the so-called terrorist organizations on the basis of ambiguous information, documents and speculations. First of all, the criteria and method of the definition of terrorist organization are unknown. Even if the National Security Council has established that an organization is a terrorist organization, the evidence and reasons for that decision are unknown.
48. Both in the definition of terrorist organization and in the dismissal and closure decisions, it is unknown how and by whom the information and documents were gathered, how they were used and how they were evaluated.
49. As admitted by the authorities, even in the aforementioned findings and evaluations in respect of associations, foundations, schools and health facilities that were registered and permanently audited, there were acts which needed to be corrected later. Some of the SoE decree laws included some special provisions aiming to correct the wrongfully adopted acts. Even if those acts were revoked, the remedy of damage occurred as a result of publication of names as a member or supporter of terrorist organizations on the reputation of individuals and institutions will not be possible.

The Crimes Have Been Promoted and The Criminals Protected

²⁵ Decree-Law No. 677, Article 6

50. Those who adopt decisions and fulfill duties within the scope of SoE decree laws are provided absolute legal, criminal, administrative and financial impunity in contradiction with all universal legal principles and norms, notably the Constitution, to make them act freely without fear of accountability.
51. It was stipulated that “Legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and fulfill their duties within the scope of this decree law.”²⁶
52. Also “legal, administrative, financial and criminal liabilities of the persons who have adopted decisions and executed decisions or measures with a view to suppressing the coup attempt and terrorist actions performed on 15 July 2016 and the ensuing actions and the liability for those who have taken office within the scope of all kinds of judicial and administrative measures and who have adopted decisions and fulfilled relevant duties within the scope of the decree laws promulgated during the period of state of emergency shall not arise from such decisions taken, duties and acts performed.”²⁷
53. A very controversial regulation has been enacted recently: “Provisions of paragraph one shall also be applicable for those persons who act within the context of suppressing the coup attempt and the terrorist actions occurred on 15 July 2016 as well as the actions which carry the characteristics of the continuation of such actions **regardless of those persons carrying an official status or undertaking a formal duty.**”²⁸
54. Moreover, the fact that those who work in the penitentiary institutions write only their registration number but not their full names in the minutes or records pave the way for ill treatment and torture and make the determination of perpetrators difficult or impossible in the future.

²⁶ Article 9 of the Decree-Law No 667

²⁷ Article 37 of the Decree Law No. 668

²⁸ The paragraph was added to Article 37 of the Decree Law No. 668 by Article 121 of the Decree Law No. 696 on 27 December 2017

55. There is no democratic country governed under the rule of law that provides absolute impunity and non-accountability for public officials for their decisions, acts or actions. The legal order and applications brought by the SoE decree laws are completely incompatible with the universal legal norms and principles, and have constantly been condemned by the international community.
56. On the other hand, the ruling party and its members became virtually unquestionable, unaccountable and un-triable under the cover of protecting the national will. While too many people have been dismissed, arrested and detained and their property was seized and confiscated on the basis of baseless accusations, blacklisting and slander, nobody dares to investigate explanations of the members of the ruling party that constitute confession reflected in the press.

The Fundamental Rights and Freedoms Have Been Eliminated

57. Too many regulations conflicting the right to fair trial were enacted. A number of amendments that contradict with the universal legal values and human rights were made in the Code of Criminal Procedure²⁹ and in other laws.
58. The law enforcement forces (i.e. police) were endowed with excessive powers without supervision of the investigative bodies.
59. Measures such as the confiscation of property are conducted directly on the demand of the public prosecutor without obtaining the assessment of expert institutions such as MASAK (Financial Crimes Investigation Board).

²⁹ Law No. 5271

60. The period of custody was extended from four days to 30 days for a long time, the right to communication with lawyer and relatives was limited, the suspects were not allowed to communicate anybody including his/her lawyers for the first five days of the custody.
61. The number of lawyers of a suspect was limited, the meetings of suspects with their lawyers were recorded and watched by officers, the meeting notes were seized, some of the detainees were prohibited from meeting with their lawyers, and the lawyers were prevented to represent suspects on the ground that they were under investigation.³⁰
62. The searching of lawyer offices and confiscation of documents were eased and became commonplace.
63. Decision on the objection to detention and the requests for release may be concluded now without hearing which is an obvious violation of *habeas corpus*.
64. It has been made possible that the information or documents of the persons who have the right to refrain from testifying (the first-degree relatives of the suspect) may be seized.
65. Advocacy for the defense in the case can be prevented on the ground that it was a dilatory demand, paving the way to interfere with the defense unlawfully in the court.
66. The lawyer's right of examination of the case file and taking of copies of the documents were limited.
67. As a result of conviction decisions on the basis of an ambiguous and flexible terror definition, the rights of the convicts were extremely limited, and such limitations can also be applied to detainees by the decision of Criminal Peace Judgeships.

³⁰ <http://www.platformpi.org/report-comprehensive-report-prison-conditions-turkey-prison-2017/>

68. Tens of thousands of people who were dismissed from public service on the basis of illegal profiling without judicial decision and some arrested were deprived of basic human rights and were subjected to inhuman treatment. The campaign of slander, smear, demonization and antagonizing conducted as a witch hunt against all dissent groups since the Gezi protests has elevated to a new phase on the pretext of the coup attempt and the SoE and reached to the point of suppression, persecution, extermination and civil death through the medium of governmental institutions³¹.
69. Many amendments in the area of criminal procedure and in numerous other laws made by SoE decree laws to the detriment of the suspects are part of this strategy.
70. In order to make room in the already crowded penitentiary institutions for tens of thousands of detainees who were arrested on the basis of baseless and ambiguous terror allegation, tens of thousands of the convicts of ordinary crimes were released³². In order to build scores of new prisons, public lands and pasture grounds have been brought into use and zoning plan requirement have been lifted by SoE decree laws³³
71. A wide range of fundamental rights and freedoms, notably the right to live a humane life, the right to be treated equally and fairly, the right to fair trial, the right to family union, the right to work and entrepreneurship, the right to enter into public service and the right to movement have been grossly violated disregarding international law, the Constitution and the laws. This raving mood considers anyone whose path have in the past accidentally crossed with the institutions or organizations labelled as terrorist organization as potential criminal.

³¹ <https://www.amnesty.org/en/latest/news/2017/05/turkey-professional-annihilation-of-100000-public-sector-workers-in-post-coup-attempt-purge/>

³² <http://www.platformpi.org/criminals-out-disable-and-sick-in/>

³³ Decree-Law No. 674, Article 17

72. It was announced by the representatives of the ruling party that a good number of the civil servants were dismissed because they were customers of educational and financial establishments that operated legally until 15 July 2016 and closed down in a night by a SoE decree law. Customer relationships with those institutions were regarded as support for terrorist organization.
73. A messaging application called Bylock that was downloaded from Google Play Store by hundreds of thousands of people has been considered as a communication network of an organization and without considering the content of the messages it was taken as ground for arrest.³⁴ It is legally correct that downloading and using ByLock app should be accepted in the context of exercising the freedom of communication as the Special Rapporteur of the UN on the Promotion and Protection of the Right to Freedom of Opinion and Expression, rightly argued in his report. Therefore, enjoying a freedom like using a mobile app cannot be considered as a crime³⁵.
74. It is well-known from their statements and from the news reflected to the media that the leading figures in the ruling party were long term customers of the same institutions and downloaded and used the same application. Nevertheless, none of these members of the party have been subjected to investigation or prosecution. This constitutes a clear double standard. This clearly shows that the ongoing witch hunt and campaign of civil death are based on fabricated grounds and clear unlawfulness.
75. In addition to clear unlawful practices explained above, the passports of the dismissed or accused people and their relatives have been cancelled unlawfully without any reason. The passport cancellation of some of the Turkish citizens living abroad are also instructed.

³⁴ <http://www.platformpi.org/opinion-arbitrary-use-bylock-instrument-false-accusation/>

³⁵ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/170/40/PDF/G1717040.pdf?OpenElement>

76. The students of the universities that were closed down in one night by a SoE decree law on the ground that they were hot bed of terrorism were stigmatized, transferred to state universities and forced to pay tuition fees for private universities even after they started attending state universities.
77. The right of education of the arrested people has been violated and they were not allowed to sit the exams³⁶.

The Right to Property Has Been Destroyed

78. The property of a significant number of educational and medical institutions, associations, foundations, trade unions and their businesses, and media outlets have been transferred unlawfully to the treasury by SoE decree laws without any judicial decision on the ground that they supported terrorism.
79. The property of thousands of private firms to which trustees were appointed unlawfully were transferred to the Savings Deposit Insurance Fund (TMSF), a public institution, in its capacity as trustee and paved way to their sale and liquidation without waiting the final judicial decision.
80. The SoE decree-laws stipulated that all the assets of the institutions closed down “shall be deemed to have been transferred” to the Treasury. By making such transfers directly effective through the SoE decree laws without any administrative action, the intention was to prevent the judicial control of such actions before administrative jurisdiction.
81. Relying on a vague definition of terrorism in the political discourse and without any objective investigation and prosecution, the properties that individuals and institutions have legally earned and saved for many years and for which they fulfilled all obligations to the state were seized illegally.

³⁶ Decree-Law No. 677, Article 4

82. While the assets and receivables of institutions closed down were transferred to the treasury, their debts and obligations were turned adrift. As a result, those who had claims against those institutions were unjustly treated and lost their rights³⁷
83. All the transfer transactions of the institutions closed down executed after the date of 1 January 2014 were deemed as sham transactions by the SoE decree law retrospectively; thus, the right of disposition to property of individuals and legal personalities were violated retrospectively³⁸.
84. It was made possible to close down media outlets upon the proposal of the commission to be established by the minister and with the approval of the Minister³⁹.
85. The institutions which were the leaseholder or beneficiaries of public properties were deprived of their contractual rights and their investments over the properties were seized without compensation.
86. Non-transparent practices, shady sales and liquidations made by the Savings Deposit Insurance Fund (TMSF) are obvious. A system established for the bankrupted and exploited banks have been used for the pillage, plunder and unlawful property transfers through TMSF endowed with vast powers.
87. It is stipulated that the powers of the trustees appointed to the private firms (including media outlets) to be transferred by a judge or court to the Savings Deposit Insurance Fund (TMSF)⁴⁰. The same SoE Decree Law (Articles 19-20) empowers the TMSF to sell or liquidate without waiting the end of the judicial proceeding.

³⁷ Decree-law No.667, Article 2; Decree-law No. 668, Article 2

³⁸ Decree-Law No. 675, Article 12

³⁹ Decree-Law No. 668, Article 2

⁴⁰ Decree Law No. 674, Article 19

88. In relation with the discharge of the debts of the firms, a seizure system has been established extending to the personal property of guarantor shareholders, directors and third parties related to them.
89. The TMSF officials were granted immunity for their acts and transactions. The trustees were held non-accountable for any kind of public debt, employee debt and private debt arising from mismanagement⁴¹.
90. All these constitute gross violation of property rights which can only be seen in dictatorial regimes. This means that the freedom and guarantee of investment, entrepreneurship and making business have been completely destroyed. We are witnessing a post-modern pillage and plunder system created by SoE decree laws resembling the events of 6-7 September 1955.

The National Will Has Been Disregarded

91. Using the SoE and the emergency decree laws as an excuse, the elected deputies have been arrested; the municipalities, one of the main elements of local democracy, have been interfered, their elected presidents and council members have been discharged, arrested and replaced by trustees appointed by the government.
92. Through the SoE decree laws, confiscation of municipalities' movable property have been eased, and municipality services have been conducted by persons (trustees, and appointed mayors) and the institutions (governors, provincial investment coordination units) under the command and directions of the government.
93. Judicial control over the discharge of mayors has been abolished and the power to decide for returning them to duty has been endorsed to the executive. The elected municipality councils' powers have been curtailed

⁴¹ Decree-Law No. 675, Article 11

and the system has been completely subordinated to the orders of the appointed mayors. The municipality council cannot even convene without the participation of the mayor⁴². These provisions show that pro-government circles' understanding of respect for the national will is just a discourse and nothing but a perception operation using their own words.

Freedom of The Press and Information Has Been Wiped Out

94. A number of media outlets from different political stances have been closed down and their property have been seized. Some other regulations have been adopted aiming to increase pressure on the media that already turn into a single voice under the pressure of the government and on internet, and to prevent media from acting freely and seeking to control the freedom to impart knowledge from impartial sources.
95. Almost all the media outlets that did not enter under the control of the government were closed down by different SoE decree laws on the ground that they supported terrorism without any judicial decision. Hundreds of newspapers, magazines, TV and radio channels were silenced by closing them down and confiscating their assets. The number of the detained journalists have exceeded 300. Currently, 180 of them are held in jail.⁴³
96. Information and Communication Technologies Authority (BTK) was empowered, upon the request of the prime ministry, to apply any measure over the internet including closing down the whole internet within two hours and restricting access to particular URLs.⁴⁴

⁴² Decree-Law No. 674 and the Law No. 6758

⁴³ <https://turkeypurge.com/>

⁴⁴ Decree Law No. 671, Article 25

97. The BTK has become the single authority over surveillance and telephone tapping⁴⁵, and it has been furnished with unlimited authority to gather information and documents from public entities and private individuals and institutions. Considering the vague and flexible wording of the decree law, there is no information or document that the BTK cannot reach. The privacy of private information is not possible anymore. The aftermath of the TİB archive is unknown.

Conclusion

98. As it can be understood from the foregoing, as a result of a sham coup attempt, prearranged plans were put into operation by declaring state of emergency and through instrument of SoE decree laws, and the country has virtually entered into a “coup” process. All the provisions of the Constitution, except Article 148, have been virtually abrogated.

99. The independence of the judiciary has been inactivated and the judges and the courts were issued instructions, all the judicial bodies have turned into administrative organs executing the orders of the executive.

100. The universal legal standards and fundamental human rights such as the national will, the respect for privacy, the right to property, freedom of the press have been suspended and an unquestionable and oppressive government model has been adopted.

101. Many crimes defined by universal law such as overthrowing constitutional order and constitutional institutions, hate speech, discrimination, inciting people to hatred and hostility, pillage and plunder, civil death have been committed through SoE decree laws.

102. Persons who committed the crimes clearly defined under the universal law such as the violation of the right to life, torture, inhuman and

⁴⁵ Ibid.

degrading treatment, blacklisting have been taken under protection by the SoE decree laws and thus these crimes have been institutionalized and the execution of unlawful orders was made compulsory.

103. People were declared as terrorists without relying on any legal basis and judicial process and by violating international legal norms. All the legal and administrative mechanisms were compelled to execute this verdict.

104. Since the pressure over the decision-making bodies is extremely intensified with the negative samples, the most paramount sense in the country has become "fear". Because of murdered prosecutors, detained and dismissed judges on the basis of blacklisting, the journalists, businessmen, lawyers and members of other similar professions, those who refused to become partisan are in fear of failing to cope with the government's excessive and illegal implementations.



PLATFORM FOR PECE AND JUSTICE

Platform for Peace and Justice (PPJ) is a platform that monitors and reports the developments in the fields of peace, justice, democracy, the rule of law and human rights, with a special focus on Turkey.

PPJ is currently an online intellectual medium undertaking its work by generating and disseminating news, articles, op-eds, and reports as well as by organizing activities and initiating campaigns.

PPJ is an initiative of a group of dedicated scholars, lawyers, journalists and civil society activists.

PPJ's work is primarily based on democratic and human rights principles enshrined in the international human rights instruments and understood through the prism of the European best practices.

PPJ strongly believes that a worldwide peace and justice can only be achieved through the advancement of these values and principles across the borders.

Mission

PPJ aims to promote peace, justice, democracy, the rule of law and human rights in the world, particularly in Turkey, through;

- raising awareness and sensibility for upholding these values and principles,
- monitoring and reporting human rights violations,
- generating and diffusing knowledge on conducive policies and practices,
- defending basic human rights and democratic principles against infringements,
- campaigning against human rights violations affecting individuals and groups,
- serving as a common and open platform for advocating human rights and democratic principles,
- strengthening respect for human dignity and civil right consciousness,
- encouraging good policies and practices for building peace among people and nations.

Vision

PPJ's vision is to become a prominent civil society organization for defending and fostering universal democratic and human rights principles in Europe striving for peace and justice for all.

