

REPUBLIC OF TURKEY
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I- Introduction

1. On July 20, 2016, the ruling Development and Justice Party (AKP) declared a state of emergency and started to govern the country through decree-laws on grounds that it had thwarted an abortive coup. Under this regime, the breaches of the Constitution became ordinary and there were massive human rights violations committed to the witness of the international community.
2. Relying on the decree-laws which are even against the Constitution, approximately 600,000 Turkish citizens directly and some 4 million citizens through kinship are exposed to civil death accusing them of having links or connection with a terrorist organization based on the profiling work conducted before and after the coup attempt.
3. It should be noted that many profiling documents had been drafted ahead of July 20, 2016 and the profiling lists had gone beyond merely violating rights by storing personal data and started to be used as a weapon of civil death through social exclusion.
4. For instance, a doctor of law who was dismissed from the academic profession with a decree-law was prevented from working in the public sector, taking office at private universities, working as a lawyer, obtaining a passport, traveling abroad, publishing academic articles, attending academic conferences, and even attending a university as a student.
5. As detailed below, the very practice of profiling people based on certain criteria and dismissing someone from the public office permanently with a State of Emergency Decree-Law runs counter to national and international laws in many respects and it violates the fundamental human rights. This practice violates the right to privacy (Article 20 of the Constitution), the right of defense (Article 129/2 of the Constitution), the right to access to court (Articles 36/1 and 129/3) and the presumption of innocence (Article 15/2 and 38/4). Thousands of people were dismissed from the public office in complete disregard for fundamental rights and never to be allowed to work in the public sector again, and this clearly amounts to "civil death." Thus, these people were dismissed from the public office with arbitrary decisions of the administration contrary to the written rules, and undermining rule of law.¹

¹ These criteria include: himmet (the donations collected for benevolent deeds and religious endeavor), high scores from the Foreign Language Proficiency Examination for State Employees (KPDS), the Foreign Language

6. Article 20 of the Constitution safeguards the inviolability of private life and family life, setting forth that everyone has the right to demand respect for his or her private and family life. In addition, Article 8 "Right to respect for private and family life" of the European Convention on Human Rights (ECHR), reads: "Everyone has the right to respect for his private and family life, his home and his correspondence." Thus, the right to privacy is enshrined both in the Constitution and the ECHR.
7. Additionally, there are also court rulings which sought to minimize the government intervention with private life. In its decisions, the Constitutional Court has underscored that protection of private life primarily entails protection of secrecy of private life and prevention of its disclosure, and that a person's right to demand that his/her private life should be known only to himself/herself or to people acceptable to him/her is one of the fundamental rights and therefore, private life is protected against the state, community and other people with clearly defined exceptions in the laws of all democratic countries, and that although it is hard to make a comprehensive definition of private life due to its broad scope, it is clear that this concept covers the material and immaterial integrity of individuals, their physical and social identity, name, sexual orientation, sexual life, other personal data, personal development, family life, etc. In an effort to delineate the scope of privacy, the European Court of Human Rights (ECtHR) stressed that interrogating individuals about their private life within the context of the professional life and the administrative consequences of such interrogation, and, additionally, dismissing people from office on grounds of their behaviors and attitudes amounted to intervention with the right to privacy (*Ozpinar v. Turkey*, §§ 47, 48).²³
8. Furthermore, violation of the privacy of other people is punishable with a sentence term of one year to three years under Article 134 of the Turkish Criminal Code numbered 5237. A person who unlawfully records personal data may be sentenced to one to three years in prison under Article 135 of the said law while a person who gives such data to another person or distributes or captures them through unlawful means may get a prison term of two to four years under Article 136 of the said law. If the crimes described in these articles are committed by a public servant in abuse of office, the sentence is increased by default (Article 137).
9. Based on the foregoing legislation, it is clear that the right to privacy is one of the most fundamental rights which the government is supposed to safeguard as part of its positive obligations, and those who violate this right through profiling are bound to be punished with custodial sentences.

Exam (YDS), the Interuniversity Council Foreign Language Exam (ÜDS) and the Academic Personnel and Postgraduate Education Entrance Exam (ALES), the information on those whose spouses work at, or whose kids attend, the educational institutions run by the Gülen movement, the information on Bank Asya accounts and account activities, statements by defendants and witnesses, employee records, lists of assignments, awards, leaves and training courses, links of thesis supervisors and jury members to the FETÖ, membership to admission, selection, health and interview boards when the FETÖ was dominant, understanding the "Peace Declaration," etc.

² Constitutional Court, Case No. 2009/1, Decision No. 2011/82, dated 18.05.2011.

³ Constitutional Court, 2013/9704, application by Tevfik Türkmen.

10. Moreover, the profiling practices in question victimize not only certain individuals, but also their relatives as the principle that punishment should be personal and lawful is not respected.⁴
11. However, Article 38/7 of the Constitution clearly states that criminal responsibility is personal. The personal nature of criminal responsibility implies that responsibility for a crime lies only with the perpetrator of that crime, and this responsibility cannot be extended to other people. This principle can be traced in the current legislation as Article 20 of the Turkish Criminal Code stipulates that the perpetrator of an act which is defined as a crime under laws should be punished personally provided that there is a causal link between the act and the crime. In other words, the individual criminal responsibility has replaced collective criminal responsibility. In order to safeguard the principle of individual criminal responsibility, which is a universal norm of criminal law, the legislature is responsible for not passing laws that envisage punishment for persons other than the perpetrator and abolishing such legislation.
12. Despite these legal provisions, victimize many people and their relatives have been victimized through the profiling activities⁵.

II- Examples of profiling documents that paved the way for massive civil death practices in Turkey

a- Alper Eser's profiling list⁶

13. The profiling list undersigned by Infantry Staff Colonel Alper Eser and dated on July 26, 2016 is clear that it had been prepared before July 15.
14. All the people mentioned in the list were the officers who had been serving at the Turkish Armed Forces (TSK) at that time. Virtually all the officers named in this list were declared as "terrorists" and dismissed from the TSK doomed to civil death, although they had been abroad on July 15, 2016.
15. There was no legal basis for drawing up this profiling list. No court or public body had ever given Mr. Eser the authority to compile such a list. Therefore, this list is an evidence of crime.
16. The list contains the Historical Traffic Search (HTS), Social Security Institution (SGK), school, and bank account records of the spouses, children, siblings, parents and other relatives of 179 military officers.
17. The fact that the above-mention records of the second- and third-degree relatives of 179 military officers who had been scrutinized, prove that the kinds and the relatives of hundreds of thousands of military officers at the TSK were examined as well. Thus, it becomes clear that millions of people have been profiled. Another evidence of criminality is that procedural and administrative acts have been conducted with complete reliance on the profiling practices and the unlawfully obtained personal data. This crime has victimized millions of people.

⁴ <http://www.turksail.com/genel-haberler/16093-deniz-kuvvetleri-nde-feto-metre-radari>.

⁵ <https://www.memurlar.net/haber/793561/sozlesmeli-ogretmenlik-mulakatlarinda-aile-magduriyeti-yasanmasin.html>.

⁶ <https://twitter.com/hh8170/status/1042292757514084353>

b- The profiling list which became public during the Akıncı case

18. Thousands of judges and prosecutors as well as thousands of military officers were summarily dismissed from public office with the charges of being "terrorists" early in the morning of July 16, 2016.
19. These dismissals relied solely on the profiling lists drawn up ahead of July 15, 2016.
20. One of these lists came from the summary of proceedings at the Akıncı case.
21. It turned out that in these lists, not only the military officers, but also their relatives, including their parents-in-law had been profiled with such labels as "Alevi, Mason, Parallel State Structure (PDY), and neo-nationalist."
22. The first and huge wave of dismissal of thousands of military officers in the regime of decree-laws that started on July 20, 2016 relied on these profiling lists.

c- FETÖMETER (Land and Naval Forces commands)⁷

23. FETOMETER is an Excel based algorithm developed by Rear Admiral Cihat Yaycı to ferret and root out the military officers among their ranks.
24. This Excel worksheet was prepared by parsing the personal data collected unlawfully from millions of people and assigning a "terrorism" score to each person.
25. Yaycı, the mastermind behind the FETOMETER, currently serves as chief of staff at the Turkish Naval Forces.
26. The Judicial Proceeding, Administrative Act and Examination Branch (ATIII), founded by Yaycı on July 11, 2016 at the Naval Forces Command has been using this civil death instrument to dismiss military officers in an arbitrary manner.
27. The following arbitrary criteria are used to make calculations on the Excel worksheet:
 - "Unworthy of further examination" for the "arbitrary terrorism scores" between 0 and 1;
 - "Worthy of further examination" for the "arbitrary terrorism scores" between 1 and 2;
 - "Should be dismissed from office temporarily and investigated" for the "arbitrary terrorism scores" between 2 and 3; and
 - "Should be considered for deprivation from civil rights and a criminal complaint should be filed" for the "arbitrary terrorism scores" between 3 and 4.
28. ATIII staff members who use this worksheet have been selected primarily of the military officers who had been sentenced/convicted at the military espionage, Ergenekon, Balyoz (sledgehammer), assassination of admirals and prostitution cases.

d- Profiling and Dismissal of Judges and Prosecutors

29. In the wake of the coup attempt of July 15, 2016, approximately 4,500 judges and prosecutors were removed from office temporary before they were debarred from

⁷ <https://www.politurco.com/feto-meter-how-the-witch-hunt-system-works-in-turkey.html>
<https://www.al-monitor.com/pulse/originals/2019/03/turkey-navys-incredible-algorithm-in-fight-against-gulen.html>

office permanently by the Council of Judges and Prosecutors (HSK) without due process of law (they were not given the right of defense and no fair judicial or administrative or disciplinary procedure was implemented) in breach of Articles 129/2 and 139 of the Constitution.

30. The fact that 2,745 judges and prosecutors who were removed from office temporary on July 16, 2016, i.e., just a couple of hours after the coup attempt, included the people who had retired, resigned, or died of heart attack months ago. This itself proves that the list had been drawn based on the previous profiling efforts. It is impossible to investigate some 3,000 people diligently and separately in such a short time.
31. The decisions to debar these judges and prosecutors were justified with reference to "social media posts," "investigations conducted on the spot," or "social circle data." However, the cited reasons relate to private life and the decisions failed to describe "how these private relations affect the performance of the official duty." Yet, the European Court of Human Rights ruled that the decision to debar a judge due to her private relations failed to demonstrate how these relations had an adverse impact on her conduct as a judge and therefore, violate the right to privacy (Ozpinar v. Turkey, pp. 67-79).
32. Virtually all judges and prosecutors who were debarred from office permanently were prevented from working as lawyers as per Article 5 of the Law on Attorneyship. The article in question states that those who have lost entitlement to serve as a judge due to a finalized disciplinary decision" are not allowed to work as lawyers. Yet, the judged and prosecutors in question had been debarred from office permanent without any disciplinary proceeding. All of the cases against this decision at the Council of State are still pending. So far, the Council of State has not upheld or annulled any case. Thus, thousands of people who have studied and practiced law for years have been doomed to "civil death" in this way. Many of them are trying to make a living for themselves and their families by working as waitstaff, porters, farmers, etc.

e- Academics who undersigned the "Peace Declaration"

33. On January 11, 2016, 1,128 academics issued a "Peace Declaration," calling for the end of the curfew bans and violence that accompanied the clashes and operations as part of the conflict between Turkey and the Kurdistan Workers' Party (PKK) in 2015 and 2016 in Turkey. The signatories to the declaration rose to 2,212 during the next week.⁸
34. More than 2000 academics who undersigned this declaration were summarily dismissed from office, deprived of their passports, prevented from finding other jobs, targeted with threats and attacks, and summoned to police stations for numerous times; four academics who read aloud a press release to draw public attention to these violations were arrested; hundreds of academics were deprived of their right to

⁸ <http://www.diken.com.tr/1100un-uzerinde-akademisyenden-baris-cagrisi-bu-suca-ortak-olmayacagiz/erisim-tarihi-17.06.2019>.

assume public office; and eventually, individual lawsuits were launched against each of them.⁹

35. These arbitrary dismissals had destructive effect on people who were removed from office and their families. Indeed, dismissed individuals not only lost their jobs, but also, in some cases, they were prevented from finding new jobs and deprived of housing and health benefits, effectively stripping them off any possibility for making their subsistence.
36. These individuals were seriously impeded from earning their living after being summarily dismissed from office under the state of emergency measures and they were banned from working at the public sector for life; thus, they were stigmatized by public authorities as people who were linked to terrorist organizations. As their passports were canceled under the law-decrees, these people were effectively prohibited from searching for jobs abroad as well. Some of them were deprived of their housing and health benefits provided to them in connection with their employment.¹⁰

f- The students and the parents who sent their kids to the private schools allegedly associated with the Gülen Movement,

37. After the failed coup attempt the Government has confiscated all the institutions run by the Gülen movement and put many of its members to the prisons in Turkey. By doing so, all the activities of the movement have been terminated inside the country. Then, the institutions run by the movement and its members abroad have been targeted as also an electoral campaign and political agenda of the government. In this connection, the instructions were sent to the pro-government institutions and missions abroad. Thus, the Turkish embassies have not only been refusing to provide services to the members of the Gülen movement who have been blacklisted before but also have performed blacklisting against whom they have been reported, even the students and their parents.
38. These blacklisting activities of Turkish authorities have affected the institutions in Europe as well. For instance, foundation SERA (Stiftung für Erziehung, Ausbildung und Integration / Foundation for Education, Training and Integration) was running successfully a private secondary school in Zürich¹¹. After the failed coup, the name of SERA-School was also reflected in Turkish media as an institution of Gülen Movement. Based on this, the students and the parents sending their kids to the school were blacklisted too. Reflecting the idea of *"we record your name; you and your kids will encounter problems when you go to Turkey"* the parents have been intimidated and put under pressure.
39. Therefore, despite the parents and kids were very satisfied with the school, they were afraid and taken their kids out of SERA-School. After 8 years of successful operation, with a huge financial losses, the SERA-School had to be closed.

⁹ <https://barisicinakademisyenler.net/node/1>.

¹⁰ Amnesty International, "No end in sight: Purged public sector workers denied a future in Turkey," May 22, 2017, and <https://edition.cnn.com/2016/07/16/middleeast/fethullah-gulen-profile/index.html>.

¹¹ <https://www.tagblattzuerich.ch/aktuell/stadtratskolumne/stadtratskolumne-detail/article/der-lange-arm-des-sultans.html>

40. Similar closures for the same reason have also been taken place in many other countries.

Conclusion

41. In the process that started with the first decree-law issued on July 20, 2016 and exacerbated with the ensuing decree-laws, some 4 million people have been victimized with the profiling lists, like those mentioned above, and they were deprived of their most sacred right, i.e., the right to a dignified and humane life, by exposing them to suicides, murders, tortures, hunger, isolation, social massacre and forced migration; and these practices are still underway.
42. The practices that seek to result in civil death such as the profiling list by Eser and FETÖMETER are so intensive and grave that they can be designated as the genocide under the United Nations Convention on the Prevention and Punishment of the Crime of Genocide or at least the hate crime.
43. The decisions and practices for profiling virtually the entire Turkish nation based on their ethnic, ideological or religious leanings and killing socially the people selected from among them or restricting their living conditions can easily fall under this crime.
44. The practices in question are not specific to the above-mentioned profiling list by Eser, the profiling list made public during the Akıncı case, and the FETOMETER. In judicial proceedings, hundreds of thousands of people face judicial and administrative sanctions due to their kinship or consanguinity.
45. The most recent example of such profiling practices --exposed in connection with the elections for the Istanbul municipal elections-- has demonstrated the seriousness of these practices and sanctions based on these practices in Turkey¹².
46. It is vital for international organizations to assume greater initiative and take urgent measures in order to ensure that Turkey dispenses with this practice that sentences people to civil death in violation of international law.

Recommendations:

The Turkish government should take the following measures:

47. All public servants who were dismissed from office under the state of emergency decree-laws should be reinstated to their previous jobs.
48. All public servants who were dismissed from office under the state of emergency decree-laws should be compensated for any damages, including loss of earnings, mental harm, immaterial damages and costs associated with legal or expert assistance, medicine and medical services and psychological and social services.
49. Article 26 of the Law No. 7145, passed on July 15, 2018, which extends for three years the government's mandate to summarily dismiss public sector workers who are deemed to have links to so-called terrorist organizations or other groups that pose a threat to national security, to continue for another three years.

¹² <https://www.birgun.net/haber-detay/sarayin-arsiv-daire-baskanindan-imamogluna-destek-veren-unluler-icin-fisleme-listesi.html>.

50. In line with the United Nations Human Rights Committee's Ismet Ozcelik & Turgay Karaman vs Turkey decision (no. 2980-2017), all the victims in prisons who are in the same status should be released immediately.
- 37- The perpetrators of the human rights violations should be identified and punished.