

Submission to the UN Human Rights Council's Universal Periodic Review – TURKEY
35th Session (Jan.-Feb. 2020)

Right of Association in Turkey- in the aftermath of July 2016

1. Republic of Turkey is the member of the United Nations and party to the ICCPR and the ICECSR. On 21 July, 2016, the Turkish Government declared a state of emergency. The state of emergency was effective until 18 July, 2018. In Turkey's notification lodged with the Secretary-General of the United Nations '*Art. 2§3 (right to an effective remedy), Art. 9 (right to liberty and security), Art. 10 (right to humane treatment in detention), Art. 12 (freedom of movement), Art. 13 (procedural guarantees in expulsion proceedings), Art. 14 (right to a fair trial), Art. 17 (right to privacy), Art. 19 (right to freedom of expression), article 21 (right of peaceful assembly), Art. 22 (freedom of association), Art. 25 (political rights), Art. 26 (equality before the law) and Art. 27 (protection of minorities) of the ICCPR*' were mentioned as the rights which would have been effected from the derogations. Considering Art.4 ICCPR and United Nations' Human Rights Committee's General Comments numbered 29, 32, 35, it can prima facie be said the derogations of the right to an effective remedy (Art. 2§3), the right to humane treatment in detention (Art. 10) and the protection of minorities (Art. 27) are invalid, as they refer to non-derogable rights.¹
2. During the emergency rule, the Turkish Government enacted thirty-two Emergency Decrees. With these decrees, 125.678² individuals were dismissed from public service, more than 4,000 legal persons, consisting of foundations, associations, foundation-owned universities, trade unions, private health institutions, private education companies, and 174 media outlets, were closed down.^{3 4} Assets of all those legal persons were transferred to the Treasury without cost, compensation.⁵ Besides the measures targeted real and legal persons, Emergency Decrees, which were comprised of some 1200 Articles, led to over 1,000 permanent amendments to national laws.⁶
3. Under Art 2§1(d) of Emergency Decree 667, 19 trade unions were closed and all of their assets were confiscated without compensation on grounds of their (alleged) attachment, affiliation or connection with the pro-Fetullah [Gülenist] Terrorist Organization (FTÖ/PDY), which has been identified to be posing a threat against national security, although these unions
 - a) were duly incorporated under Turkish law,
 - b) duly operated until the very last moment prior to closure,

¹ International Commission of Jurists, 'Justice Suspended: Access to Justice and the State of Emergency in Turkey' (2018), 9 <<https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf>> accessed 4 March 2019.

² **The Inquiry Commission on the State of Emergency Measures, 'Information Note-15 March 2019'** <<https://soe.tccb.gov.tr/>> accessed 21 March 2019.

³ Ismet Akça and others, 'When a State of Emergency Becomes The Norm: The Impact Of Executive Decrees On Turkish Legislation' (*Heinrich Böll Stiftung*, 15 March 2018) 8

<https://tr.boell.org/sites/default/files/ohal_rapor_ing.final_version.pdf> accessed 21 March 2019.

⁴ Human Rights Joint Platform, 'Updated Situation Report - State of Emergency in Turkey (21 July 2016-20 March 2018)' (*Human Rights Joint Platform*, 17 April 2018) 49.

⁵ See, Article 2 of Emergency Decrees Nos. 667-668; Articles 5 and 10 of Emergency Decree No. 670; Article 3 of Emergency Decrees Nos. 677 and 683.

⁶ Ismet Akça, 7.

c) union dues of public servants were compensated by the Treasury under the relevant law.⁷

V SAYILI LİSTE	
ÇİHAN-SEN KONFEDERASYONUNA BAĞLI SENDİKALAR	
1)	UFUK BÜRO-SEN
2)	AKTİF EĞİTİM-SEN
3)	UFUK SAĞLIK-SEN
4)	UFUK YEREL-SEN
5)	UFUK HABER-SEN
6)	UFUK KÜLTÜR-SEN
7)	UFUK BAYINDIR-SEN
8)	UFUK ULAŞTIRMA-SEN
9)	UFUK TARIM ORMAN-SEN
10)	UFUK ENERJİ-SEN
AKSİYON İŞ KONFEDERASYONUNA BAĞLI SENDİKALAR	
11)	PAK GIDA İŞ
12)	PAK MADEN İŞ
13)	PAK FİNANS İŞ
14)	PAK EĞİTİM İŞ
15)	PAK TOPRAK İŞ
16)	PAK METAL İŞ
17)	PAK ENERJİ İŞ
18)	PAK TAŞIMA İŞ
19)	PAK DENİZ İŞ

Closed Trade Unions: Annex V of Emergency Decree No. 667

4. Subsequently, trade unions PAK PETROL İŞ,PAK TEKSİL İŞ,PAK AGAC İŞ,PAK MEDYA İŞ, PAK İNŞAAT İŞ,PAK SAĞLIK İŞ, PAK TURİZM İŞ,PAK SAVUNMA İŞ, PAK HİZMET İŞ were dissolved by the respective provincial Governors' administrative decisions.
5. The Turkish Government did not observe the compulsory procedure laid down in Art. 31 of the Law No. 6356 (Law on Trade Unions and Collective Bargaining) and Art. 37 of the Law No. 4688 while closing the unions.
6. As of the date of closure, the closed unions had a total of 29.589 members.⁸ All of these members have lost their jobs, what is worse is they have been subjected to the prosecution under Article 314 of the Turkish Penal Code which stipulates the membership to a terrorist organization. Turkish Ministry of National Education refuses to issue a working license which is necessary in order to work in private educational institutes for 24,002 members of the closed unions. Moreover, private companies which were transferred to the public trustee authority (the Savings Deposit Insurance Fund: SDİF / TMSF) under Emergency Decrees terminated contracts of the employees who were members of the closed unions without any notification and compensation.

⁷ Aktif-Eğitim Sen was one of the dissolved 19 unions was a union of public servants and union dues of public servants is compensated by the Treasury.

⁸ Number of members according to the branch of industry: Education: 24,002, Nourishment: 532, Media: 789, Finance: 97, Health: 356, Tourism: 983, Service: 534.

7. Art. 35 of Emergency Decree No. 678 having amended the Law no. 6356 expanded the Council of Ministers' right to postpone strikes. Consequently, seven strikes were postponed by the Government since 2017.
8. Art. 22 ICCPR, Art, 8 ICECSR and Art. 51§1⁹ of the Constitution of Turkey envisage the right to freedom of association, right to form trade unions and join the trade union of his/her choice.
9. As far as the Venice Commission was informed by the Turkish Government, 'being the manager or the member of the closed trade unions' were used a reason to be dismissed under Emergency Decrees.¹⁰ Consequently, all members of the dissolved unions were dismissed from public service under decree laws. Those who have been dismissed from public service, without any need for convictions may not be re-employed and assigned, either directly or indirectly, to any public service, in other word a dismissal under emergency decree entails a life-time prohibition on direct or indirect employment in the public services.
10. Turkish Constitutional Court concluded (Decision No: 2016/68962) in an appeal filed by a former executive of a union named Aktif-Sen that assuming executive duty in one of the associations closed under Emergency Decrees constitutes sufficient and legal ground to be detained under terrorism-related charges.¹¹ The Court of Cassation rendered a judgment which regards 'having been subjected to a criminal scrutiny on grounds of having relation with the Gulen Movement' as a legitimate and legal ground to be sacked from employment.¹² Due to such excessive use of the Anti-Terrorism Laws, 500.650 individuals have been scrutinized, investigated or prosecuted under Turkey's Anti-Terror legislation since 2016 July¹³. Official judicial statistic highlight that statistics highlight that Turkey has indicted 221,366 people with the charges of being member or leader of an armed terrorist organisation within last five years.¹⁴
11. Although the derogating from the ICCPR gives the Turkish Government an authority to adopt extraordinary measures, the Turkish Government went beyond what is strictly required by the exigencies of the situation. The overall impact of emergency measures on natural and legal persons has been excessive in its scope, by both failing to distinguish between different degrees of alleged culpability and by being permanent in effect.¹⁵

⁹ Employees and employers have the right to form unions and higher organizations, without prior permission, and they also possess the right to become a member of a union and to freely withdraw from membership, in order to safeguard and develop their economic and social rights and the interests of their members in their labour relations. No one shall be forced to become a member of a union or to withdraw from membership.

¹⁰ Council of Europe, European Commission for Democracy through Law (Venice Commission), Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016, Venice, 9-10 December 2016. CDL-AD(2016)037

¹¹ <https://www.anayasa.gov.tr/icsayfalar/basin/kararlarailiskinbasinduyurulari/bireyselbasvuru/detay/213.html>

¹² <https://www.haberturk.com/yargitay-feto-sorusturmasi-gecirmek-isten-atilma-nedenidir-dedi-2282560>

¹³ <https://www.dailysabah.com/investigations/2019/03/11/fight-against-feto-at-home-abroad-continues-without-compromise>

¹⁴ <https://arrestedlawyers.org/2018/08/24/turkeys-draconian-anti-terror-laws/>

¹⁵ Council of Europe Parliamentary Assembly, Resolution 2209 (2018) on the state of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights (which was adopted by the Parliamentary Assembly on 24 April 2018) Para. 14.

12. Article 2§3 ICCPR require that any person whose rights or freedoms are violated shall have an effective remedy. The Inquiry Commission on the State of Emergency Measures established to fulfill this duty is far from providing an effective remedy. The Commission, which consists of seven members, delivered 63,100 decisions within a fifteen-month period, that is to say, the Commission delivered more or less 4,200 decisions a month, and 140 decisions in a day. The Commission accepted only 4,750 applications, which corresponds to 7.5% of the total number of applications. The Amnesty International described decisions of the Commission as a rubber stamp for the government's arbitrary dismissals finding innocuous activities (*i.e membership to union closed under emergency decree*) as evidence of 'links' with proscribed groups.¹⁶
13. In conclusion, since 2016 Turkish Government unlawfully intervened the rights and freedoms envisaged by the ICCPR and the ICECSR. Namely, the right to freedom of association, right to form trade unions and join the trade union, the right of an effective remedy, the right to work have been flagrantly infringed by the Turkish Government.
14. Turkey has fallen short of its obligation under the ICCPR and the ICECSR. There are serious substantial and procedural concerns with respect to the Emergency Decree No. 667 as well as the other emergency decrees affecting trade unions and NGOs. In addition, the impugned measures in Article 2 of the Emergency Decree No. 667 (dissolution and confiscation of the asset) fall short of the requirement of proportionality, given that the same effect could have been accomplished by temporary freeze of activities and asset of trade unions.¹⁷

Recommendations:

15. The government of Turkey should:
- a) Repeal legislation and decrees implemented under the state of emergency,
 - b) take immediate steps to ensure that all legislation is compliant with its obligations under international human rights law,
 - c) Reinstate dismissed public servants,
 - d) Amend its anti-terrorism legislation in order to have a legislation compliant with the ECHR case law,
 - e) Lift the closure of trade unions and other legal persons,
 - f) Ensure that labour law complies with the ILO conventions.

¹⁶ Amnesty International, Purged Beyond Return No Remedy For Turkey's Dismissed Public Sector Workers (2018), 26 <<https://www.amnesty.org/download/Documents/EUR4492102018ENGLISH.PDF>> accessed 23 April 2019.

¹⁷ Conference of INGOs of the Council of Europe, Opinion on the Impact of the State of Emergency on Freedom of Association in Turkey (30 November 2017) Para. 78.