

ABUSE OF PROPERTY RIGHTS
BY
**APPOINTMENT
OF TRUSTEES**

TURKEY

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INTRODUCTION

For the last five years, one of the most important rights violations that threaten Turkish democracy has been experienced in the field of property rights. The violations of property rights, which started before the coup attempt and increased rapidly after the coup attempt, are rights generally take the form of seizure of companies by unjustly assigning "trustees". Turkey is acceded to the Convention on Supplementary Protocol No. 1 also secured the right to property violations, but the state of emergency, criminal and anti-terror laws are being abused and exploited in a very widespread and systematic way against this. In Turkey, in this context, according to data by the SDIF (Savings Deposit Insurance Fund of Turkey), almost 1,000 companies in which total assets of 50 billion Turkish Liras, are assigned by a trustee.

The property right means the right of a person to enjoy his or her property peacefully (peaceful enjoyment of possessions), without the unlawful interference of the state, to make his property the subject of a commercial activity, to convert it into investment, to make production and trade, to make profit, to sell the goods or services produced, it covers all individual and commercial activities that require it to be disposed of, to be the subject of a sales contract or to be able to trade. Therefore, a company and its partners are able to engage in all kinds of commercial activities, make investments, offer different kinds of services, sell the services they produce, make profit in accordance with the requirements of the market conditions and sell the goods they produce, without interruption of the activities of the company in question and without the illegal intervention of the public. activities such as renting their existing goods, using the profits as they wish, making donations and carrying out all these commercial and social activities are under the scope and protection of property right.

However, developments in Turkey in recent years, especially the property rights, the right to respect in connection with the private life of the company with the freedom of entrepreneurship and reputation also has suffered damage too severe so hard to repair.

LEGAL INFRASTRUCTURE

Article 35 of the Constitution which titled as Property Rights; “Everyone has the right to property and inheritance, and these rights can only be restricted by law, public interest. The right to property cannot be contrary to the public interest. “says and states that the use of the right is not absolute.

Article 133 of the Code of Criminal Procedure titled Appointment of Trustees for Company Management “If there is strong reason for suspicion that the crime is committed within the scope of a company's activity and if it is necessary to reveal the material truth; In the course of the investigation and prosecution, the judge or court may appoint a trustee in relation to the conduct of the company's business. The appointment decision clearly states that the validity of the decisions and transactions of the governing body is subject to the approval of the trustee, or that the powers of the governing body or the powers of the governing body, as well as the shareholding or securities management powers are given to the trustee. The decision on the appointment of a trustee shall be announced in the trade registry gazette and other appropriate means.” says and in the paragraph 4 of the same article, it was counted which crimes a trustee could be appointed for.

Article 17 of the **Law on the Prevention of Laundering Proceeds of Crime** says; “In cases where there is strong suspicion that the crime of laundering and financing of terrorism has been committed, the assets may be confiscated in accordance with the procedure in Article 128 of the Code of Criminal Procedure No. 5271. In cases of delay, the public prosecutor may also issue a confiscation decision. The seizure made without a judge's decision is submitted to the approval of the judge in charge within twenty-four hours. The judge shall decide whether to approve or not within twenty-four hours at the latest. In case of non-approval, the decision of the public prosecutor's office shall be null and void.”

Article 4 of the **Law on the Prevention of Financing of Terrorism** says; “The person who collects or collects funds from a terrorist or terrorist organizations without even knowing and willingly associating it with a specific act for the purpose of being used in whole or in part in the realization of the acts regulated as a crime within the scope of Article 3, if the act does not constitute another offense requiring a heavier punishment, from five years to ten years.” and the crime of financing of terrorism is defined and it is stated in the paragraph 7 / a of the same article that the provisions regarding the appointment of trustees for the management of the company in Article 133 of CMK can be applied.

As can be seen, Turkish legislation has made the appointment of a trustee in certain companies subject to certain terms and conditions. However, after the coup

attempt, companies were assigned and confiscated through legal amendments made with some Decree Laws and completely unlawful practices without complying with the conditions specified in the legislation.

The most important point of lawlessness of the trustee practices is that the procedures are based on the fact that the Gülen Movement is regarded as a terrorist organization. Gülen Movement is not regarded as a terrorist organization outside of Turkey and Turkey's illegal acts of IPR infringements itself to have failed to convince the world about this to put in front of the world public. On the other hand, the fact that the trusteeship institution is being applied massively without subjective criteria for individuals brings about many violations of rights.

COUP ATTEMPT AND STATE OF EMERGENCY (OHAL)

In Turkey, after the coup attempt occurred on July 15, 2016 has been declared the State of Emergency Decree and in Law (Decree) with arrangements have been made on various issues. Some of the institutions and organizations (eg private schools, private health institutions, dormitories, foundations, private radio and television establishments, etc.) that belong to the Hizmet / Gülen Movement during the state of emergency have been closed and the mentioned companies and organizations that were closed were abandoned from the trade registry and the assets of these companies were transferred to the Treasury.

Within the scope of Articles 19 and 20 of Decree Law no. 674 Pursuant to Article 133 of the CMK, it has been decided to transfer the duties and powers of trustee to the Savings Deposit Insurance Fund (TMSF), in the companies to which the trustee has been appointed / to be appointed and the provisions of the same Decree regarding the sale and liquidation of the said companies and assets are also regulated.

With various published Decree Laws; additional arrangements have been made with regard to the companies and assets transferred to the SDIF or to which the SDIF was appointed as trustee. One of these changes was made with Decree Law no.675. Pursuant to the provisions of Article 9, in companies with less than fifty percent shareholding of real and legal persons who are in contact with or affiliated with the organization, the authorized judge or the court may be appointed as SDIF Share / Share Settlement (Partial Registrar) for the management and representation of these shares. In the ongoing Decree Laws, arrangements have been made for the SDIF to be appointed as a trustee for the personal assets of natural persons.

The assets of the media and press organizations which were closed within the scope of the state of emergency have been transferred to the SDIF in order to ensure the sale and liquidation of the assets to the Ministry of Finance.

In addition, Article 11 of the Decree Law no. 691 states that those who are assigned or appointed to manage and represent the companies and shareholdings of which the Trustee has been delegated to the Fund or who have been appointed as trustees during the investigation and prosecution; and Article 37 and 38 of the Law No. 6755 dated 8/11/2016 on the Measures to be Taken in the Scope of the State of Emergency and the Regulation on the Amendment of the Decree on Certain Institutions and Organizations shall be applied to the works and transactions carried out within this scope. " it is stated. The related article of the Law no. 6755 includes the "provision of the legal, administrative, financial and penal liability of the persons who take decisions within the scope of the decree laws and perform the duties due to these decisions, duties and acts. " it's said. Therefore, with this amendment, judicial armor was brought to the trustees and it was noted that they could not be held responsible for their work and transactions in any way.

DATA ON TRUSTEES

According to March 2018 figures released by the Savings Deposit Insurance Fund (TMSF), trustee regimes were implemented on a total of 1.251 people and entities, 982 of which being "full trustees," 142 "partial trustees" and 127 trustees on personal wealth. In the companies worth 8.78 billion dollars, a total of 50,162 people are employed. A total of 320 people were appointed to executive organs of these companies, 82 of which were members of the TMSF¹.

TRUSTEES AND THE MEDIA

A total of 174 newspapers, magazines, publishing houses, distribution chains, radio stations and TV broadcasters were transferred with the aim of sale to the Savings Deposit Insurance Fund (TMSF) in the scope of the emergency decree laws 668, 670 and 674. The number went down to 149 after 25 of them were reinstated later.

Press freedom and freedom of speech in Turkey were dealt an irreparable blow with the closure of media outlets linked to the faith-based Gülen movement such as TV broadcasters, newspapers, magazines and local outlets operating under companies Kaynak Holding, Feza Gazetecilik, Samanyolu Yayın Grubu and İpek Medya Grubu.

¹<https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.veri>

UNLAWFUL ACTS PERPETRATED BY TRUSTEES

Companies are confiscated through appointment of trustees despite lack of criminal investigation: After the coup attempt, the requirements for sufficient evidence were not respected for some 1,000 companies that were investigated and seized by appointing trustees. Leading Turkish companies were extorted using the state powers in a completely arbitrary manner.

Trustees who need to be impartial act as secret investigators: From a legal point of view, the trustees have to be impartial. That is why they should have no relations to the prosecuting officials or to the defense. The trustees are not “secret investigators.” That is why the trustees do not have a duty to gather evidence. In practice however, the trustees act as a secret investigator working on behalf of the prosecuting authorities. The government predetermines the companies to which trustees will be appointed and looks for evidence to use as a legal pretext. When it is unable to find any, the practice of trustees is continued arbitrarily.

Companies’ operations are terminated, leading to liquidation: While the trustees are responsible for maintaining the seized companies’ operations, in reality the trustees strive to discontinue activities and to liquidate the companies.

Companies’ assets are transferred to pro-government companies and individuals: The companies’ assets are transferred to pro-government companies and individuals by the trustees through a number of transactions such as contracts, service procurement and sale of goods.

Companies are led to losses and their assets are sold: Companies that used to make profits until the appointment of trustees start losing money after the arrival of trustees and the losses are subsequently used as a pretext to allow for the sale of the companies’ assets to pro-government individuals.

The trustees openly commit crimes: Although in theory it is a priority as well as a responsibility for Turkey’s Savings Deposit Insurance Fund (TMSF) to manage the seized companies’ operations prudently and in line with precedents, to maintain their contribution to the national economy and to protect the rights of the employees², the trustees consider these companies as “spoils” and they have no qualms about

² <https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.genel>

committing all kinds of offences by availing themselves of the shelter provided by the judiciary.

People are unjustly treated through layoffs: According to a January 2019 report by the Community of Justice for the Victims (Mağdurlar İçin Adalet Topluluğu), the closure of establishments via State of Emergency measures has unjustly pushed many people such as janitors, cafeteria attendants, drivers, receptionists, accountants, security guards, teachers, doctors, workers, engineers to unemployment. In the report that also contains the accounts of the victims, seizure and confiscation of companies through appointment of trustees seem to be the most significant rights violations.³

CONCLUSION

The Turkish government has unlawfully appointed trustees to over a thousand companies and people, including sizeable conglomerates such as Koza-İpek, Kaynak, Boydak, Naksan, Akbulut, and thus seized and took over assets worth nearly 10 billion dollars. These are without a doubt the most severe conditions Turkey has ever witnessed in his history in terms of violations of right to property.

RECOMMENDATIONS

1. Implementation of procedures to ensure the return to previous owners of all companies, assets and other economic values which were seized, liquidated or transferred to third parties prior to, during or after the State of Emergency period.
2. Implementation of fair trial mechanisms in order to compensate for the losses incurred by those whose property rights were violated through appointment of trustees.

³ MIAP, *OHAL'in Toplumsal Maliyetleri 2 - 2019*, sayfa 154, (*Özel Sektörde Çalışan Mağdur Katılımcıların Mağdur Edildikleri KHK'lar & OHAL Uygulamaları*)