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STATE OF EMERGENCY PRACTICES AND HUMAN RIGHTS: THE CASE OF MASS DISMISSALS OF PUBLIC EMPLOYEES IN TURKEY

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Abstract

The declaration of state of emergency is a common legal practice used by states to overcome extraordinary situations. Within the framework of the state of emergency, on the one hand, the competences of the governments are increased and, on the other hand, the rights and freedoms of individuals are limited or suspended temporarily. The main goal of the state of emergency is to provide the necessary legal means that will enable the political government and the bureaucratic administration to end the extraordinary situation as early as possible. The governments shall use these extraordinary competences fairly and justly. These competences shall not be abused for political purposes and for intimidation of opponents. Even though the rights and freedoms can be limited or suspended during the state of emergency, basic human rights cannot be violated. Practices of the state of emergency shall strictly fall within the scope of the situation which rendered it necessary. This article examines the balance between state of emergency practices and respect for human rights in the particular case of Turkey, which declared the state of emergency in the aftermath of the failed coup of July 2016. In this respect, a special focus is devoted to the case of the mass dismissal of public servants by extraordinary decrees during the state of emergency and to the conformity of these mass dismissals with the European Convention on Human Rights.

Keywords

Human Rights, State of emergency, Turkey, European Court of Human Rights, Dismissal of public employees

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STATE OF EMERGENCY PRACTICES AND HUMAN RIGHTS: THE CASE OF MASS DISMISSALS OF PUBLIC EMPLOYEES IN TURKEY[1]

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Introduction

The state of emergency was declared in Turkey after the coup attempt of 15 July 2016 and lasted for two years without interruption, until 19 July 2018. The purpose of the state of emergency, therefore the limitation of the use of some rights for a certain period, is to facilitate and accelerate the process of getting back to normal. But if not used in a fair way, the state of emergency risks being used as a means to suspend freedoms and rights, thus preventing a return to "normal" situation.

This article aims to study the balance between the state of emergency practices and the respect for human rights in the specific case of mass dismissals of public servants in Turkey. In the first part of this article, the coup attempt and the process of declaring the state of emergency are explained. In the second part, the decision of the Turkish Constitutional Court regarding the extraordinary decree-laws (EDL) issued during the state of emergency and the consequences of this decision are examined. In the third part, the mass dismissal of public officials by the EDLs under the state of emergency regime and the compatibility of these practices with the European Convention on Human Rights (ECHR) are discussed. In the fourth part, the positions of internal and external actors with regard to the state of emergency practices and the mass dismissal of public employees are examined.. Finally both the consequences of the practices of the state of emergency on human rights and democracy, and the effects of this state of emergency at individual, social and systemic levels are analysed.

1. The attempted coup and the declaration of state of emergency

In extraordinary times and circumstances, "ordinary" legal frameworks may remain insufficient to address pressing problems. In these exceptional situations, legislations that are less restrictive for the executive power, the government and the bureaucracy as a whole are seen as a need, even a must (Robert, 1990: 751-752). In this sense, the declaration of the state of emergency is one of the most used legal practice by the governments to overcome difficult times in which a country finds itself.

[1] Article translated by Carolina Peralta.

The state of emergency allows governments to limit and sometimes suspend, for a defined period, the use of certain rights in the name of the well-being of the nation. The general interest prevails over the interest of individuals and extraordinary cases legitimize the limitation of the enjoyment of certain rights[2].

The followers of FETÖ (Fethullahist Terrorist Organization)[3] that infiltrated for decades the Turkish army tried to carry out a coup on 15 July 2016. Following the failed coup, the AKP (Justice and Development Party) government declared a "state of emergency" (Council of Ministers, Decision no. 9064, 20 July 2016) in accordance with article 120 of the Turkish Constitution[4], with a view to combating this terrorist organization. As a result, the state of emergency entered into force across the country as of 21 July 2016.

As there was a direct threat to democracy and 251 people were killed in the attempted coup, Turkish public opinion was in favour of the implementation of swift and effective measures against this terrorist organization. So, in this political atmosphere and with a security approach, the declaration of the state of emergency was seen as a necessity in order to be able to overcome this extraordinary situation.

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[2] For an in-depth analysis of the state of emergency see Halpérin, Jean-Louis; Hennette-Vauchez, Stéphanie; Millard, Eric (2017). *L'état d'urgence: De l'exception à la Banalisation*. Paris: Presse Paris Nanterre; Morand-Deviller, Jacqueline (2016). "Réflexions sur l'état d'urgence". *Revista de Investigações Constitucionais*. Curitiba. Vol. 3, n. 2: 51-64. Accessible through DOI: http://dx.doi.org/10.5380/rinc.v3i2.46476

[3] The origins of FETÖ go back to the 1970s. FETÖ emerged as a peaceful religious movement and was called the "service movement". The stated aim of this movement was to serve and transform society through education, civic action and the media. Within this framework, its supporters opened thousands of schools, education centres and student hostels which acted as a way of recruiting followers from very young ages. They founded TV channels and published newspapers to disseminate their ideas and do their propaganda. This religious movement also controlled significant financial resources. They also organized themselves abroad and opened hundreds of schools in various countries. This religious movement was inspired by Christian missionaries.
Under the guidance of the leaders of this movement, young followers are encouraged to become public servants and especially to organize themselves in the army and the police. The questions of the entrance exams to the army and police schools were systematically stolen thanks to the help of collaborators infiltrated in these institutions. Over time, the followers of this movement grew and became powerful in the bureaucratic system.
When the AKP party came to power in 2002, it preferred to make an alliance with this religious movement and took advantage of its cadres in the bureaucracy against the "Kemalist establishment", their common enemy. Under the protection of political authority, this religious movement has grown stronger than ever. The unofficial alliance between the AKP and this religious movement had worked well for ten years. But from 2012 this alliance started to be shaken and the fight to grab power on its own intensified. Attempts to reconcile the former partners were unsuccessful. In December 2013, FETÖ followers in the police and the judiciary carried out two anti-corruption operations against some ministers and their relatives. From that moment, the struggle between these two parties became public. The AKP has called these anti-corruption operations as "coup d'état" and the religious movement as "FETÖ/PDY", an acronym that stands for "Fethullahist Terrorist Organization/Parallel State Structure". For additional information see: Mert, Ali Osman (2016). *15 July Coup Attempt and the Parallel State Structure*. Ankara: Publications of the Presidency of the Republic of Turkey. Available at https://www.tccb.gov.tr/assets/dosya/15Temmuz/15temmuz_en2.pdf; Le Point (21 July 2016). "Qui sont les Gulenistes, accusés d'avoir installé un "État parallèle" ?". [Accessed on: 04.04.2020]. Available at https://www.lepoint.fr/monde/qui-sont-les-gulenistes-accuses-d-avoir-installe-un-etat-parallele-21-07-2016-2056000_24.php

[4] Article 120 of the Turkish Constitution: *"In the event of serious signs of the extension of violent actions aimed at overthrowing the free democratic order established by the Constitution or suppressing fundamental rights and freedoms or in the event of a serious disturbance of public order due to acts of violence, the Council of Ministers meeting under the chairmanship of the President of the Republic may, after consulting the National Security Council, proclaim a state of emergency in one or more regions of the country or throughout the territory, for a period not exceeding six months. "[Accessed: 10.03.2020]. The full text in French of the Turkish Constitution is available at* https://mjp.univ-perp.fr/constit/tr1982.htm et https://mjp.univ-perp.fr/constit/tr1982-2.htm

Members of the government, in various television reports, have repeatedly stated that

> *"The state of emergency will only last three months and maybe less. Because the government is aware that the state of emergency is not something desirable. We must not forget that it was this government which put an end to the state of emergency in force for years in the south-eastern region of the country. Once the public institutions are definitively cleaned of the FETÖ terrorists, the state of emergency will be lifted as soon as possible"* (Milliyet, July 22, 2016)

But in practice, contrary to the statements indicated above, the government, by claiming the gravity of the threat and the complexity of the terrorist structure, chose to successively extend the state of emergency every three months[5]. Thus, the state of emergency lasted uninterrupted for two years, between 21 July 2016 and 19 July 2018. Despite the regular calls made from the very first days to the government by the opposition parties to put an immediate end to the state of emergency (Grand National Assembly of Turkey, Minutes of the 117th Session: 21 July, 2016), the political authority chose to remain indifferent to these calls.

2. EDLs under the state of emergency regime: unchecked powers

When the government adopted, on 25 July 2016, the "extraordinary decree-law no. 668 relating to the measures required in the context of the state of emergency and to the regulation of certain institutions", the main opposition party, the CHP (People's Republican Party) appealed on 23 September 2016 to the Constitutional Court claiming the anti-constitutionality of this EDL, and at the same time requested its stay of execution in order to prevent irreparable consequences if implemented[6].

The Turkish Constitutional Court unanimously decided on 12 October 2016 that according to article 148 of the constitution,[7] the anti-constitutionality of the EDLs in periods of state

[5] The state of emergency has been extended 7 times by parliament. The decisions of the Grand National Assembly of Turkey (TBMM) relating to the extension of the state of emergency were: Decision no. 1182 (18.04.2018); Decision no. 1178 (18.01.2018); Decision no. 1165 (17.10.2017); Decision no. 1154 (17.07.2017); Decision no. 1139 (18.04.2017); Decision no. 1134 (03.01.2017); Decision no. 1130 (11.10.2016). [Accessed: 11.03.2021]. Available at https://www.tbmm.gov.tr/develop/owa/tbmm_kararlari_gd.sorgu_yonlendirme

[6] In its appeal, the CHP underlined the following points: the state of emergency is a temporary period in which exceptional measures can be implemented. These measures must relate to the events and subjects which required the declaration of a state of emergency. These measures should only be valid during the state of emergency. However, with the end of the state of emergency, exceptional measures should also disappear. The declaration of the state of emergency does not in any way suspend the law and the constitution. The state of emergency is not an arbitrary regime and the executive branch must comply with the principles of rule of law. According to the CHP, "The extraordinary decree-law no. 668 relating to the measures required in the context of a state of emergency and to the regulation of certain institutions" contained measures unrelated to the cases which caused the declaration of state of emergency and made changes that go beyond the period of the state of emergency. For the reasons indicated above, the CHP claimed that the EDL in question was contrary to Articles 2, 6, 7, 8, 11 and 121 of the Constitution and should be annulled (Constitutional Court, 12.10.2016: para. 2).

[7] Article 148 of the Turkish Constitution*: "The Constitutional Court monitors conformity with the Constitution, as to form and substance, of the laws, decree-laws and the internal Rules of the Grand National Assembly of Turkey. Regarding constitutional amendments, their examination and control relate exclusively to form. However, decree-laws enacted in a period of state of emergency, state of siege or war cannot be the subject*

of emergency cannot be evoked and therefore considered itself incompetent to control it (Constitutional Court, 12.10.2016: paras. 25-27). In fact, with this decision, the Constitutional Court changed its previous jurisprudence where it considered itself competent to control and annul the EDLs on grounds of unconstitutionality, including during the periods of state of emergency (Constitutional Court, 10.01.1991: Section IV and V). In its previous decisions, the Constitutional Court affirmed that it should examine the real legal nature of the EDLs without being bound by their name and form (*Ibid.*, Section IV: para. A-3- (a) and (c)). It also added that in democratic regimes, the state of emergency does not correspond to an arbitrary regime and does not suspend the rule of law (*Ibid.*, Section IV: para. A-1); that the regulations implemented by the EDLs should not go beyond the limits and the objectives of the state of emergency (*Ibid.*, Section IV: para. A-2) and could not extend to regions and provinces which fall out of the state of emergency (*Ibid.*, Section IV: para. A-3- (b)). With the aforementioned considerations, the Constitutional Court had annulled, in the past, several EDLs by majority vote (Constitutional Court, 10.01.1991; 03.07.1991; 26.05.1992 and 22.05.2003).

With the change of the jurisprudence of the Constitutional Court, an "unlimited and uncontrolled competence" was recognized to the executive power by the judicial power. The political power had obtained a "blank cheque" from the Constitutional Court (Adadağ, 2019: 147). Theoretically, the political authority, if it so wished, with a simple EDL could suspend or even abrogate the entire Constitution and dissolve any institution, including the Constitutional Court. The executive power was exempt from all legal and judicial control during the period of state of emergency. The powers recognized by the state of emergency had already enabled the executive power to easily use the legislative power via EDLs. And in addition, thanks to the decision of the Constitutional Court, the political power was endowed with an exceptional irresponsibility for its acts. This new jurisprudence of the Constitutional Court helped at the same time the party in power to remain indifferent to the opposition's criticisms of abuse of competences.

On the other hand, the security bureaucracy quickly adapted to this state of emergency process and, thanks to the encouragement of the political power, increased its arbitrary actions. Decisions by legal bodies that privileged state security over individual rights and freedoms have further prompted the security bureaucracy to underestimate fundamental rights. The implicit and subsequently legal assurance[8] conferred on the security forces and the bureaucracy in general (Venice Commission, 12 December 2016: paras. 95-97; OHCHR, 2018: paras. 5 and 45; OHCHR, A/HRC/ WG.6/35/TUR/2, 20-31 January 2020: para. 23) facilitated and multiplied human rights violations during the state of emergency.

of appeal for unconstitutionality before the Constitutional Court, neither in form nor in substance." [Accessed on: 10.03.2020]. The full text of the Turkish Constitution in French is available on https://mjp.univ-perp.fr/constit/tr1982.htm and https://mjp.univ-perp.fr/constit/tr1982-2.htm

[8] "Law no. 6755 relating to the adoption with modifications of the EDL concerning the measures taken in the context of state of emergency and the regulations made to public institutions" was adopted on 8 November 2016. Article 37 of this law relates to the legal, administrative, criminal and financial impunity of the "bureaucrats" who implemented the orders in the framework of the state of emergency. See, Official Gazette of the Republic of Turkey no 29898 (24.11.2016). Ankara. On the other hand, article 121 of EDL no. 696 relates to the criminal and financial impunity of "civilians" who assisted in preventing the attempted coup of 15 July 2016. See, EDL no. 696 (24 December 2017). Official Gazette of the Republic of Turkey no. 30280 (24.12.2017). Ankara.

The psychology of impunity in public administration quickly spread. Laws that were carefully enforced before were now ignored. For example, at the start of the state of emergency, people affected by the EDL wanted to benefit from the right to information. Those expelled from public office could not obtain any information on the reasons for their dismissals. However, according to law no. 4982 relating to the right to information[9], every person, whether a Turkish citizen or foreigner, has the right to request information on administrative acts concerning himself, and the relevant administration must, within 15 working days, provide the information and documents requested (Law on the Right to Information, 2003: Articles 4 and 11). Despite this very clear law, requests for information remained unanswered.

The Council for the Assessment of the Right to Information, the public authority responsible for implementing the law in question, unanimously decided that information requests concerning acts emanating from the EDLs and especially those relating to the dismissal of officials fall out of the right to information and therefore would not be answered (Council for the Assessment of the Right to Information, 4 August 2016).

The political authority and the bureaucracy had become accustomed to the comfort and the irresponsibility of this exceptional and relatively long period. When the state of emergency was finally lifted on 19 July 2018, the ruling party had already decided to pass a law[10] that allowed it to use the state of emergency practices in "normal" periods (OHCHR, A/HRC/WG.6/35/TUR/3, 20-31 January 2020: paras. 8 and 29). In fact, on the one hand, the "temporary state of emergency" was over, but on the other hand, "the permanent state of emergency", without calling it a state of emergency, had entered into force. The security approach continued to rule over the legal and libertarian approach even after the end of the state of emergency, thanks to the help of the parliamentary majority of the AKP and its ally, the MHP (Party of Nationalist Action), and despite the strong objections of the opposition.

3. The massive dismissals of public servants by the EDLs and the compatibility of these EDLs with the ECHR

As of 21 July 2016, in the context of the state of emergency, the AKP government successively enacted several EDLs.[11] But some of these EDLs were unrelated[12] to the cases that led to the state of emergency (OHCHR, 2018: paras. 6 and 46). Article 121 of

[9] The law relating to the Right to Information was adopted on 9 October 2003 with a view to harmonizing Turkish legislation with the community acquis, in the process of Turkey's candidacy to the European Union.

[10] "Law no. 7145 on the Modification of Certain Laws and Decree-Laws" was adopted just after the end of the state of emergency, on July 25 2018. With this law, several limitations on the rights and freedoms of individuals during the state of emergency period were extended for the next 3 years. For example, Ministers were empowered to expel officials without disciplinary investigation for the next 3 years. Passport issuance to those suspected of terrorist acts could be refused for the next 3 years. Demonstrations and protests during the evenings were banned. See, *Official Gazette of the Republic of Turkey* no. 30495 (31.07.2018). Ankara.

[11] A total of 32 EDLs were implemented between 2016 and 2018, during the state of emergency. For the texts of the EDLs, see the website of the Official Gazette of the Republic of Turkey, accessible at https://www.resmigazete.gov.tr

[12] Some of these EDLs were unrelated to the events that led to the declaration of the state of emergency, such as the expulsion of officials; closing schools; the closure of tv channels, radio stations and newspapers; changes in the penal code; rules for using winter tires; change in the procedure for appointing university rectors, etc. (Adadağ, 2019: 148).

the Turkish Constitution[13] on the declaration of state of emergency stipulated[14] that the EDLs can only treat urgent questions concerning the situation which engendered the conditions of the state of emergency and that these extraordinary regulations can only be valid during the period of the state of emergency. There were therefore two types of essential limitations, content and duration, for the EDLs.

However, the change in the jurisprudence of the Constitutional Court has enabled the political authority to adopt EDLs that had effects even after the end of the state of emergency. The dismissal of public officials through the EDLs is a typical example of this practice. Instead of adopting an interim measure, such as removing public officials from their positions during the state of emergency, the political power has chosen to permanently remove them from the civil service.

3.1. Mass dismissal of public officials: disproportionate measures of the state of emergency

107,944 (One hundred and seven thousand nine hundred and forty-four) public officials[15] were expelled by the EDLs between July 2016 and December 2017 (OHCHR, 2018: para. 61). These EDLs[16] included the lists of the expelled officials in their annexes. The lists were classified on the basis of public institutions. The names-surnames, individual identity numbers of the officials, their last status or position, and their work places (city-district) were on these lists. And all this private information was posted publicly in the EDLs on the official journal's website.

Article 2, paragraph 1 of these EDLs stipulated that

> *"…The people mentioned in the attached lists… those who are considered members, those who are considered to have a membership, a relationship, a connection or an affiliation with terrorist organizations, with structures,*

[13] Article 121 of the Turkish Constitution:"…regulates… the procedures for limiting or suspending fundamental rights and freedoms, in accordance with the principles set out in article 15 of the Constitution, determines how and in what manner the measures required by the situation will be stopped, what kind of powers will be conferred on public service employees and what kind of changes will be made to their status, and sets the exceptional administrative procedures.
Throughout the duration of the state of emergency, the Council of Ministers meeting under the chairmanship of the President of the Republic may issue decree-laws in matters that make the state of emergency necessary. These decree-laws are published in the Official Gazette and submitted the same day for the approval of the Grand National Assembly of Turkey…". [Accessed on: 10.03.2020]. The full text of the Turkish Constitution in French is available on https://mjp.univ-perp.fr/constit/tr1982.htm

[14] With the referendum held on 16 April 2017 on the modification of certain articles of the constitution, article 121 of the Turkish constitution is repealed.

[15] According to the Turkish authorities, the total number of officials expelled by the EDLs between 2016 and 2018 is 125,678 (one hundred and twenty-five thousand six hundred and seventy-eight). See the Commission responsible for examining emergency files. [Accessed on: 14.03.2020]. Available at https://ohalkomisyonu.tccb.gov.tr
According to data collected by OHCHR, the total number of expelled officials exceeds 150,000 (One hundred and fifty thousand) (OHCHR, 2018: para. 61; OHCHR, A/HRC/WG.6/35/TUR/2, 20-31 January 2020: para. 37).
This difference in figures can be explained by the fact that certain categories of civil servants, such as judges and prosecutors, were not expelled by the EDLs but by decisions of their respective institutions.

[16] For the full list of EDLs relating to the dismissal of civil servants, see the website of the Commission responsible for examining state of emergency files. [Accessed on: 14.03.2020]. Available at https://ohalkomisyonu.tcbb.gov.tr/khklar

> *formations or groups that have activities against the national security of the State… are expelled from their public functions…"*

Article 2, paragraph 2 of the EDLs stipulated that

> *"…persons expelled from the civil service can no longer become civil servants again… cannot be hired directly or indirectly for public functions… and their passports are cancelled…"*

Vague and unclear terms (membership, relationship, connection, affiliation and structure, formation, group) were used in the text of the EDLs (Venice Commission, 12 December 2016: para. 129). In fact, all the people in the lists annexed to the EDLs were considered "terrorists", without any legal decision.

The political power had decided to expel these employees without prior notification, without explanation and without recognizing the right to defend themselves (Günday, 2017: 35). The administration, with the advantage provided by the state of emergency, did not feel the need to provide concrete evidence for the dismissals and considered mere suspicion sufficient for this administrative act implemented through a legislative act.

A differentiation in the sanction to be imposed was also not preferred for the distinct categories (member, membership, relationship, connection or affiliation) listed in the text of the EDLs. While the Geneva Convention prohibits collective punishment (Geneva Convention, 1949: art. 33), all these categories were accepted as "equal terrorists" and, in the "holy war" against terrorism, were collectively penalized.

During the two years of the state of emergency, more than 6,000 academics, 4,240 judges and prosecutors (which makes a third of judges and prosecutors) and tens of thousands of people from various professions such as doctors, teachers, soldiers, police, workers etc., a total of more than 150,000 people, were expelled from their public functions (OHCHR, 2018: paras. 49 et 61).

3.2. The criteria used for the dismissal of public officials

During the first weeks of the state of emergency, in the name of absolute confidentiality, no information was shared with the public on the criteria for dismissals. Following the first mass dismissal of officials, public opinion and the media sought to know the criteria taken into account for these draconian sanctions. The politicians have made explicit the criteria and the dates mentioned below.

According to the political authorities, the dates of 17 and 25 December 2013 were decisive for the dismissal decisions. These dates were considered the beginning of the terrorist nature of the religious community, which became an armed terrorist organization after the attempted coup.

According to the political authority, the main criteria for expulsion, thus the indicators of relationship, connection, affiliation with the terrorist organization, were:

- having an account with "Bank Asya"[17]
- using the messaging app "Bylock"[18]
- sending their children to schools[19] associated with this religious group
- being a member of the trade union d"Aktif-Sen"[20]
- being a member of NGOs linked to this religious group and making donations to them
- detailed analysis of employees' social media accounts.

For the political authority, the civil servants who met one of the above criteria after 17-25 December 2013 had a relationship, strong or weak, with the terrorist organization and therefore should be permanently removed from public service. But the date chosen for the expulsions contained a simple paradox (Venice Commission, 12 December 2016: paras. 119, 121 and 125): those who met one of these criteria, before the dates chosen, were considered innocent and eligible to continue to work in the public service. On the other hand, those who met one of these criteria, after the dates chosen, were considered "terrorists" and thus removed from their public functions.

In fact, the dates chosen by the political power had a political meaning. The AKP regarded these dates as the "official" start of a "war" between itself and this religious community. On 17 and 25 December 2013, the FETÖ followers infiltrated in the Turkish police led two major anti-corruption operations. Ministers, children of ministers and many other politicians were involved in this corruption affair. The AKP qualified these police operations as a lie and as an attempted civil and legal coup against it. (Anatolian Agency, 14 July 2017).

Therefore, the criteria and the dates announced by the political power as the basis for dismissals were not "legal" but rather "subjective" and "political". From a legal point of view, having an account in a bank which operates in accordance with Turkish law, using

[17] "Bank Asya" was inaugurated on 24 October 1996 with the participation of several politicians who subsequently held the positions of minister, prime minister, even president (Hürriyet, 4 February 2015). As the alliance between this religious community and the AKP worked well, several public institutions instructed their employees to open salary accounts with branches of Bank Asya (Kamu Haber Merkezi, 27 November 2016).

[18] This is a messaging application used mostly by supporters of this organization. Bylock's programme was downloaded by over 500,000 (five hundred thousand) users and was publicly available on Playstore and Applestore (The Guardian, 11 September 2017).

[19] Because of their educational qualities, hundreds of thousands of parents have sent their children to the schools of this religious group. These schools functioned legally under Turkish law and were, like all other schools, inspected by the Ministry of National Education. In addition, the government, within the framework of the financing of private schools, had continued to finance the schools of this group until 15 July 2016, that is, until the day of the coup.
With the state of emergency, 934 schools associated with this group were closed (Venice Commission, 12 December 2016: para. 81). Ministers, members of Parliament and many high-level officials have graduated from these schools. Given the very high number of people affected by the school criterion, the AKP was forced to relax this expulsion criterion and announced that it alone would no longer be considered sufficient for expulsions, but would be taken into account if there are other indices and criteria. See, Commission responsible for examining the files of the state of emergency. *OHAL Komisyonu Çalışmaları Hakkında Bilgi Notu* (26.12.2019). [Accessed on: 13.03.2021]. Available at https://ohalkomisyonu.tcbb.gov.tr/

[20] The d'Aktif-Sen trade union operated in the field of education. When the alliance between this religious group and the AKP party worked well, the latter encouraged teachers to join this union. Union dues were paid regularly by public institutions instead of employees until 15 July 2016 (Kamu Haber Merkezi, 27 November 2016).

a publicly available messaging programme on the internet, sending one's children to schools which operate under Turkish law and are inspected by the Ministry of National Education, being a member of a trade union founded under Turkish law, becoming a member of an NGO established under Turkish law does not constitute an offense in itself (Venice Commission, 12 December 2016: paras. 103 and 112). But under the conditions of the state of emergency, institutions and acts that were previously legal were qualified as illegal with the change of political circumstances[21].

In addition, among the expelled employees, there were also thousands of people who did not meet any of these stated criteria.[22] The common point of these people was their dissident character and their opposition to the political power. The EDLs have also become, in the hands of the political authority, instruments to remove dissidents and opponents from the public service (OHCHR, 2018: para. 42). Apart from the dismissal sanctions, a large part of these officials had to face criminal trials, with the accusation of "being a member of an armed terrorist organization" (OHCHR, 2018: paras. 10 and 82).

3.3. Conformity of the EDLs with the ECHR

Several articles of the ECHR have been violated by the EDLs referred to above:[23]

Article 6 of the ECHR "Right to a fair trial"

Legal acts like sending one's children to schools operating in accordance with Turkish law, having an account with a bank operating in accordance with Turkish law etc., are declared illegal acts, contrary to the universal principles of the rule of law and predictability of law.

The expelled officials were publicly accused of being "terrorist" and therefore suffered unequivocal libel. They were declared guilty without any legal decision. These people were condemned by a political decision and through a legislative act adopted by the Council of Ministers (Venice Commission, 12 December 2016: para. 132).

[21] As part of an extradition request, on 8 November 2018 the Ministry of Justice presented, via its legal counsellor in the Turkish Embassy in London, a document to the Westminster court in Great Britain. In this document, it is stated that having an account with Bank-Asya was not a crime in itself and that using the Bylock programme was not a crime if there was no criminal content. So the Turkish authorities had refuted the two criteria for expulsions with this document. When this document was published in the newspapers, the Ministry of Justice stated that the document did not reflect the official position of the Ministry and that it was drafted by the Legal Counsellor himself without consulting the Ministry. (Odatv.com, 1 December 2018).

[22] 1,128 academics from 89 Turkish universities signed a joint petition in January 2016 against violence in the south-east of the country. After the declaration of the state of emergency, the signatories were expelled from their academic positions by the EDLs and criminal trials with the accusation of terrorism were initiated against them (OHCHR, 2018: para. 74).

[23] In fact, the political power was well aware that the EDLs did not comply with the law and human rights and that if the files relating to the EDLs and the practices of the state of emergency were to be examined by the ECHR, the latter would most likely condemn the acts in question. In this context, just after the end of the state of emergency, on 25 July 2018, Law no. 7145 allowing "unilateral declaration" was adopted. The "unilateral declaration", which did not exist until that date in Turkish law, was thus included in the penal code and the administrative code. The judicial system was now equipped with a second weapon, apart from amicable settlement, in the event of a finding of human rights violations by the ECHR. See, "Law no. 7145 relating to the Modification of Certain Laws and Decree-Laws" (25 July 2018). *Official Gazette of the Republic of Turkey* no. 30495 (31.07.2018). Ankara.

The accused persons did not have the opportunity to know the reasons and evidence for the charges against them. No document, information or file was shown to these persons and all their requests for information were left unanswered.

Vague and unclear terms (contact, relationship, membership, member, structure, formation, group) were used in the EDLs. In fact, all the people in the lists annexed to the EDLs were suspected, without distinction, of being "terrorist" and penalized collectively. The presumption of innocence was intentionally ignored by the EDLs.

The personal information of the former civil servants was published on the website of the official journal. Not only the former public officials but also their families, were stigmatized and deliberately targeted by this publication. In addition, the passports of the family members of former officials, including those of minors, were cancelled. In this sense, this was a collective penalty implemented against the family members of the former civil servants.

Article 8 of the ECHR "Right to respect for private and family life"

The expelled officials were charged with a serious crime, "terrorism". The personal information (surname-first name, title, institution, employee's number, place of work) of these people was published on the website of the official journal. By publishing this personal information, the intention was to psychologically penalize not only the former civil servants themselves but also the members of their families collectively. Publicly displaying the private information of these people also resulted in their exclusion from social and working life. This is not only an attack on respect for private and family life but it also constitutes discrimination.

Article 13 of the ECHR "Right to an effective appeal"

The dismissals were carried out by means of EDLs and, according to the Turkish Constitutional Court, the EDLs during periods of state of emergency fell out of legal control[24]. Following this decision of the Constitutional Court, the administrative courts and the Council of State also declared themselves incompetent to examine the EDLs. Therefore, all domestic legal channels became ineffective to overturn the dismissal decisions.

Since all domestic legal remedies were rendered ineffective, there was only one option to resort to: the European Court of Human Rights (ECHR). In a short time, tens of thousands of appeals were sent by the former Turkish officials to the ECHR[25].

Article 14 of the ECHR "Prohibition of discrimination" and Protocol 12, Article 1 "General prohibition of discrimination"

Following the expulsions by the EDLs, an "explanatory note"[26] for those expelled was entered in their personal files at the Turkish Social Security Institution. When a person looks for a job, employers can check the personal file of that person on the Social Security website to confirm the information provided by the job seeker (former place of work, work length etc.) and directly see the explanatory notes. Due to these explanatory notes,

[24] See pp. 4-5
[25] See pp. 15
[26] The explanatory note reads as follows: "(*Last name-First name) is dismissed from the public service as a result of the extraordinary decree-law no...".*

most employers refuse to hire the dismissed civil servants for fear of having problems with the public authorities (T24, September 25 2017).

This practice of "explanatory note" shows that the political authority wanted to make it almost impossible for these people to find employment, even in the private sector.[27] This practice means the exclusion of former civil servants from work and social life, and it constitutes a discrimination. The political authority wanted to penalize former civil servants and their relatives not only politically but also economically and socially (civil death) permanently.

Another act of discrimination relates to the children of the expelled officials. The children of these people were followed-up and profiled because of the schools where they studied. However, these schools functioned in accordance with Turkish law and received financial aid from the Ministry of Education until 15 July 2016. This profiling of minors carries the risk of paving the way for new discriminatory practices against them in the future.

Calls by politicians for the re-enactment of the death penalty constitute another act of discrimination. Some political parties campaigned for it and promised to use it on "terrorists" (Hürriyet, 19 July 2016). Given the simplicity of the terrorism charge, the former public employees became the target of a witch hunt.[28] In this sense, it is a crime of hate and discrimination.

Additional Protocol 1, Article 1 "Protection of property"

No indemnity was paid to the public servants dismissed by the EDLs. However, according to Turkish law, the relevant authorities should pay the due compensation to civil servants in accordance with the length of their service. In this sense, the right to property was violated.

Additional Protocol 4, Article 2 "Freedom of Movement"

In accordance with the provisions of the EDLs, the passports of the expelled officials and the passports of their family members, including those of minors, were cancelled. During the state of emergency, former civil servants and their family members were prohibited to travel abroad (OHCHR, 2018: para. 14). The principle of individual legal responsibility is a universal value recognized by all modern legal systems. This universal principle of rule of law was deeply neglected. Family members of former civil servants were just penalized because of their relatives (OHCHR, A/HRC/WG.6/35/TUR/2, 20-31 January 2020: para. 12).

After the end of the state of emergency, the travel ban was partially lifted, especially for minors. But this ban still continues for former officials even though the state of emergency is officially terminated. The Ministry of the Interior, after the necessary examinations from the point of national security, may exceptionally decide to issue passports to the expelled civil servants. In practice, passport requests are refused by the

[27] The work licenses of certain categories of expelled officials, such as lawyers, airplane pilots and teachers etc., were cancelled by the EDLs. This, in practice, meant the invalidation of their university diplomas and therefore made it impossible to practice their professions in the private sector.

[28] The political power has publicly called on citizens to denounce to the police or to prosecutors those who had connections with the terrorist organization (cnnturk.com, 10 August 2016). Later, the political authorities had to admit that innocent people had also become victims of these denunciations (T24, 7 September 2016).

Ministry of the Interior, except for people who need urgent medical treatment abroad. And these people must prove the urgency of their illness with medical documents.

4. The position of internal and external actors vis-à-vis the state of emergency practices

Against the practices of the state of emergency and the massive dismissals of public officials, the main internal and external actors have expressed their concerns and called on the government to respect human rights and ensure judicial independence.

4.1. The Position of the Main Internal Actors

The simplicity and massiveness of the dismissals, the absence of legal appeal against the EDLs, the widespread detentions and imprisonments,[29] the prohibition of demonstrations and protests[30] led to a climate of fear and mistrust. Denunciations, unsigned petitions, defamations, even rumours frightened not only public officials but also ordinary citizens.[31]

4.1.1. Jurists:

Judges and prosecutors witnessed the dismissal and arrest of thousands of their colleagues. This situation had a significant psychological effect on the independence and impartiality of the judiciary. The judges who dared to make decisions that did not please the political authority were either sacked or exiled (T24, 27 May 2017). Therefore, political pressure and potential sanctions from the "Council of Judges and Prosecutors",[32] restructured after the attempted coup and highly politicized following this restructuring, had adverse effects on judicial independence (Human Rights Watch, 4 April 2017).

There were also "pro-state" judges and prosecutors who believed that the measures taken by the political power were just and in extraordinary circumstances the rule of law could be suspended (Gazete Duvar, 13 March 2020). This type of jurists further discouraged judges and prosecutors who did not want to yield to political authority.

On the other hand, at the very beginning of the declaration of the state of emergency, a large part of the lawyers, for fear of being targeted by the political authority, refused to defend those arrested with a terrorism charge (OHCHR, 2018: para. 57; OHCHR, A/HRC/WG.6/35/TUR/2, 20-31 January, 2020: para. 25). This atypical situation was in

[29] Judicial investigations regarding terrorism charges were initiated for more than 500,000 (five hundred thousand) people during the period of the state of emergency (Cumhuriyet, 3 March 2019). Over 55,000 (fifty five thousand) people were imprisoned on charges of being members of the terrorist organization FETÖ (OHCHR, 2018: para. 82). In 2002, the number of prisoners was 59,429 and by 2019 the number of prisoners had exceeded 282,000. The number of prisoners had increased 470% in 17 years (Gazete Duvar, 6 April 2020).

[30] The governors of 81 towns were ordered, as part of the state of emergency, to ban meetings and gatherings, if they deemed it necessary (Tombuloglu & Kolay, 2017: 1).

[31] Several people afraid that their names or bank accounts were being used by the terrorist group, were defrauded by criminals posing as the police or the prosecutor (cnnturk.com, 18 March 2020).

[32] The higher authority empowered to conduct disciplinary investigations on judges and prosecutors with a view to suspending or expelling them.

fact an indicator of generalized fear, even among lawyers whose essential jobs are to defend their clients.

In addition, for the first time in the history of the Turkish judicial system, there were cases where the courts of first instance did not respect the decisions of the Constitutional Court and the ECHR (Amnesty International, 2020; T24, 14 January 2018). This incomprehensible and chaotic resistance from certain courts has shaken the essential hierarchy between legal bodies and diminished confidence in the judicial system. These acts of some courts were also proof of the politicization of justice.

In these state of emergency conditions, the judiciary was, on the one hand, powerless against the executive power to prevent human rights violations and, on the other hand, given the decision of the highest judicial body on the constitutionality of the EDLs, lacked the necessary will to confront the political authority to defend human rights.

4.1.2. Political Parties in Opposition

The AKP government has been in power since 2002. It has won all general and presidential elections since that date and enjoys high electoral support. Opposition political parties remain weak vis-à-vis the AKP, and the latter, through political manoeuvres, succeeds in foiling an alliance of opposition parties likely to overthrow it.

The coup attempt provided the AKP with increased democratic legitimacy and reinforced, in the eyes of the people, its image as a victim and at the same time hero vis-à-vis non-democratic forces. As a champion of democracy, it enjoys a psychological and moral advantage on the political scene over its opponents. In addition, the coup attempt gave the opportunity to implement radical measures ignoring fundamental rights and to achieve systemic changes that were not possible in normal times[33]. The AKP used until the end the strongest argument of modern times, the fight against terrorism, against its opponents[34].

Even if the opposition political parties have objected to the undemocratic practices of political power and have severely criticized human rights violations, they have remained insufficient, in terms of the number of parliamentarians, to thwart the AKP in its legislative acts[35]. Furthermore, they were not able to mobilize the masses and be a source of hope for voters, which in turn facilitated the AKP's position to continue its state of emergency policies.

[33] In April 2017, under state of emergency conditions, the AKP proposed constitutional changes with the support of the MHP. The OHCHR and the Venice Commission found that the proposed changes were undemocratic and authoritarian in nature (OHCHR, 2018: paras. 31, 35, 36 and 93; Venice Commission, 13 March 2017).

[34] During the electoral campaign for the constitutional referendum of April 2017, the alliance of the AKP and the MHP publicly accused people who said no to the referendum of allying with the coup plotters and terrorists (Tombuloglu & Kolay, 2017: 3).

[35] In the general elections held on 24 June 2018, under the conditions of the state of emergency, the AKP obtained 42.56% of the votes and 295 MPs out of 600 (haberler.com, 24 June 2018).

4.1.3. Media

In Turkey, currently 90% of the media is pro-government[36] (Reporters Without Borders, Turkey: Press Freedom Figures). Dissenters face enormous difficulties in making their voices heard on mainstream media. Due to the tense political atmosphere during the state of emergency, even the media of an opposing nature felt compelled to practice self-censorship (OHCHR, 2018: para. 92).

Dissenters cannot effectively use social media and internet platforms[37], as critical social accounts are often followed by internet police and message sharing often becomes a lawsuit against the senders. The risk of imprisonment constitutes a significant source of dissuasion for the independence of the media (OHCHR, A/HRC/ WG.6/35/TUR/2, 20-31 January 2020: para. 30; Reporters Without Borders, 2018)[38].

When a person or any institution (newspaper, website etc.) becomes a political target, first of all the "trolls"[39] start to insult and intimidate the person or the institution concerned. Then, reporters from "pool media" continue to do whistle-blowing or mildly threatening news. In the last phase, justice opens investigations and decides on imprisonment. This cycle repeats itself for dissidents and opponents who do not please the dominant forces.

As much of the media was pro-government, and journalists with an opposition tendency faced prison terms and physical attacks (Human Rights Watch, 2016: 33), the media could not sufficiently fulfil its intended functions in a democracy and consequently human rights violations did not find enough space in the news and newspapers.

4.2. The position of the main external actors

On 21 July 2016, the Secretary General of the Council of Europe was informed by the Turkish authorities, in accordance with Article 15 of the ECHR, that the measures adopted after the attempted coup may include a derogation from the obligations set out in the Convention[40]. In the following weeks, several other notifications followed after the promulgation of the subsequent emergency decree-laws (Venice Commission, 12 December 2016: paras. 31 and 55). On 21 July 2016, the Turkish government also

[36] The pro-AKP media is dubbed as "swimming pool media", a term referring to a "swimming pool" filled (financed) by public funds and used according to the needs of its masters (Yeniçağ, 5 March 2019).

[37] Access to over 114,000 websites, including Wikipedia, was prohibited (European Parliament, Resolution 2018/2150 (INI): para. 8; OHCHR, 2018: para. 13). Access to Wikipedia was banned on 29 April 2017 and this ban lasted for more than 2 years. The Turkish Constitutional Court ruled on 26 December 2019 that the ban on access to Wikipedia violated freedom of expression and therefore did not comply with article 26 of the Turkish Constitution (Constitutional Court, 12/26/2019: paras. 103-104).

[38] The report of "Reporters Without Borders" on the world ranking of press freedom in 2018 ranked Turkey 157th out of 180 countries; in 2019 again it ranked 157th out of 180 countries and in 2020 it ranked 154th out of 180 countries (Reporters Without Borders, World Press Freedom Index). "Human Rights Watch" estimates 119 journalists are in jail on terrorism charges (Human Rights Watch, 2020).

[39] "Troll" is a derogatory word used to describe people who insult, misinform, attack anonymously from their social accounts. These people hide their real identities, use pseudonyms and fake photos on their social accounts. It is claimed that "there is a politically oriented "troll army" and trolls are paid on a regular basis (Yeniçağ, 5 March 2019; Doran, ABC News, 11 June 2020).

[40] Council of Europe. *Declaration of State of Emergency in Turkey* (English translation). [Acceded on: 19.06.2020]. Available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069538b

notified the General Secretariat of the United Nations on the derogations of its obligations emanating from the International Covenant on Civil and Political Rights[41].

4.2.1. The Council of Europe

Turkey has been a member of the Council of Europe since 1949 and a candidate country for membership of the European Union (EU) since 1999. It recognized the right of individual appeal to the ECHR in 1987 and its compulsory jurisdiction in 1990[42]. As a member of the Council of Europe which ratified the ECHR and a country which started accession negotiations with the EU in 2005, Turkey should respect human rights and meet the Copenhagen criteria.

The European institutions which perceived the declaration of the state of emergency with some understanding following the attempted coup have expressed their concerns with and criticism of the human rights violations. The Secretary General of the Council of Europe, Mr Thorbjorn Jagland, called on the Turkish authorities to make a clear distinction between those who tried to carry out the coup and others who were not involved in it. He stressed that if the Turkish authorities did not ensure this distinction, petitions could be filed against Turkey before the ECHR for human rights violations (Council of Europe, 31 October 2016).

The Parliamentary Assembly of the Council of Europe also expressed its concerns about the social consequences of the measures implemented within the framework of the state of emergency. It stressed that the measures led to the "civil death" of the expelled officials. It added that these measures will have dramatic long-term effects on Turkish society (PACE, 2017: Res. 2156).

The Venice Commission, the Council of Europe's advisory body on constitutional matters, in turn also called on the Turkish government to respect human rights (Venice Commission, 12 December 2016: para. 155) and to refrain from making constitutional changes under the conditions of the state of emergency (Venice Commission, 13 March 2017: para. 133). Despite these calls, the constitutional referendum was organized in April 2017 and deeply undermined the principle of the separation of powers and democracy (OHCHR, 2018: paras. 35, 36 and 93).

As for the judicial organ of the Council of Europe, in a short time, the ECHR received thousands of appeals from officials expelled during the state of emergency. As all domestic legal channels were inaccessible to the expelled officials, appeal to the ECHR was the only way to seek justice. The arrival of a large number of appeals, the practical and especially political difficulties of examining these cases led the authorities of the Council of Europe and the ECHR to negotiate the subject with the Turkish authorities.

The officials of the Council of Europe and the ECHR advised the Turkish government to set up an *ad hoc* Commission in charge of examining the dismissal files and finding out

[41] The derogations concerned articles 2, 3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27. See United Nations. *Turkey: Notification Under Article 4(3), Transmittal of the Secretary General* (21 July 2016). [Accessed on: 19.06.2020]. Available at https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf

[42] Turkish Ministry of Foreign Affairs. *İnsan Hakları ve Avrupa Konseyi*. [Accessed on: 26.04.2020]. Available at https://www.mfa.gov.tr/insan-haklari-ve-avrupa-konseyi-tr.mfa

about domestic legal appeal channels against the decisions of the said Commission (Venice Commission, 12 December 2016: paras. 221-222). Following the negotiations, the Turkish government agreed to establish a "Commission responsible for examining decisions taken under the state of emergency" and to recognize "internal legal channels" against the decisions of the "Commission"[43]. Finally, this "Commission" solution only served to delay[44] appeals to the ECHR and implicitly helped the prolongation of the state of emergency practices and their consequences[45].

4.2.2. The European Union

The bodies of the EU and especially the European Parliament (EP) were critical of the practices of the state of emergency and on several occasions called for the lifting of the state of emergency (European Parliament, 8 February 2018). In view of the disproportionate measures foreseen by the state of emergency, in November 2016 the EP asked the Commission and the Member States to temporarily freeze the ongoing accession negotiations with Turkey (European Parliament, Resolution 2018/2150 (INI): Recital D). In July 2017, the EP once again called on the Commission and the Member States to formally and without delay suspend the accession negotiations with Turkey if the package of constitutional reforms were implemented without modification and if there was no improvement in the field of human rights (*Ibid.*: Recital E).

When the state of emergency was lifted on 19 July 2018, the EP welcomed this decision but regretted, however, that the new legislation introduced on 25 July 2018, more precisely Law no. 7145, preserved many powers conferred on the executive power by virtue of the state of emergency and, in essence, allowed the latter to continue, with all the limitations that this implies for fundamental human rights and freedoms (*Ibid.*: para. 1).

Faced with the continuing deterioration of human rights, the EP voted, on 2 October 2018, for the cancellation of aid of 70 million euros within the framework of IPA II (instrument of pre-accession aid) allocated to Turkey. The EP's decision was taken by 544 votes in favour, 28 against and 74 abstentions (European Parliament, 2 October 2018).

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[43] "The Commission in charge of examining state of emergency files" was established on 23 January 2017 and began to function on 22 May 2017. It is a single Commission in charge of examining 125,678 (one hundred and twenty-five thousand six hundred and seventy-eight) expulsion files. Up to now, 98,300 files have been examined by the Commission. 88,700 files out of 98,300 (that is 90% of the files examined) have been rejected. See, Commission responsible for examining state of emergency files. [Accessed on: 14.03.2020]. Available at https://ohalkomisyonu.tccb.gov.tr
Only two administrative courts located in Ankara are empowered to review the decisions of the Commission. It is practically impossible for the Commission and the two administrative tribunals to examine more than one hundred thousand cases in a reasonable time (Günday, 2017: 38).

[44] The Commission makes its decisions on average over a period of 2 years. As for the two administrative tribunals, they also make their decisions approximately within a period of 2 years. In the event of a negative decision of the administrative tribunal, it is necessary to appeal first to the Administrative Appeal Tribunal, then to the Council of State and then to the Constitutional Court. After this last instance, the appeal to the ECHR starts. The time required for an expelled civil servant to access the ECHR is, therefore, on average, 10 years (Arslan, BBC Türkçe, 13 June 2017).

[45] In fact, as the legal nature and the content of the complaints were largely similar, the ECHR could examine the files from a "pilot case" and thus help to accelerate the making of justice and to mitigate the damage suffered. It seems that, for political reasons, this option was not preferred.

On the other hand, compared with the EP, the reactions of the Commission were relatively weak and reluctant[46]. In this context, the European Court of Auditors in a special report stressed that the conditionality provided under the IPA could help stimulate the reform process in Turkey and criticized the Commission for not having made sufficient use of the conditionality attached to the IPA. The Court also noted that the possibility of suspending funding in the event of non-compliance with the principles of democracy and rule of law, which existed for IPA I, was not explicitly provided for in the regulations governing the "IAP II" and criticized the Commission for this shortcoming (European Court of Auditors, 2018: paras. 18, 29 and 62).

4.2.3. The United Nations

The United Nations human rights mechanisms have regularly expressed their concerns about human rights violations, through confidential communications, reports and press releases (OHCHR, 2018: para. 20). The Human Rights Council and the Office of the United Nations High Commissioner for Human Rights expressed their concerns about the holding of the constitutional referendum of April 2017 under the conditions of the state of emergency and criticized the concentration of powers in the hands of the executive body with the referendum in question (OHCHR, 2018: paras. 31, 35 and 36). UN experts, in turn, have drawn attention to state of emergency practices and human rights violations. They also stressed that the changes proposed by the constitutional referendum could have serious consequences on economic, social and cultural rights (United Nations, 13 April 2017).

5. The consequences of the state of emergency on human rights and democracy

The state of emergency which lasted two years resulted in the deterioration of fundamental freedoms and the rule of law in Turkey. Massive dismissals of public officials; travel ban for expelled officials; use of arbitrary detention; excessively long pre-trial detention and court proceedings; absence of an indictment in several cases and the severity of the conditions of detention; allegations of ill-treatment and torture of detainees; widespread application of long-term solitary confinement, which amounts to a second sentence for inmates; abuse of counterterrorism measures to legitimize the repression of human rights as reported by several human rights organizations and by the office of the United Nations High Commissioner for Human Rights, were among the main consequences of state of emergency practices at individual level (OHCHR, 2018; Venice Commission, 13 March 2017; European Parliament, Resolution (2018/2150 (INI)).

At social level, the brutality of the sanctions inflicted, the weakness of individuals and groups before the systemic power and the poor functioning of legal mechanisms have

[46] The Commission's approach can be explained by the burning issue of Syrian refugees. Turkey hosts the world's highest number of refugees and migrants, over 4 million people, including 3.6 million Syrian refugees. Turkey continues to make commendable efforts in terms of welcoming, supporting and accommodating a significant number of refugees and migrants (European Commission, COM (2019) 174: 3).

helped to generalize collective fear. In this atmosphere of fear, often egoism reigned. Those who were not directly affected by the state of emergency measures did not attach great importance to human rights violations. Despite the worsening of fundamental rights and freedoms under the state of emergency, a good majority of voters did not send a warning to political authority through their votes[47]. This paradoxical situation can be explained on the one hand by the failure of the opposition and on the other hand by the indifference of some of the voters regarding human rights and fundamental freedoms.

At systemic level, the political authority considered it necessary, following the experience of the attempted coup, to concentrate power within it and to limit the room for manoeuvre for all kind of opposition. To this end, under the conditions of the state of emergency, constitutional changes were implemented by the 2017 referendum. These constitutional changes profoundly changed the Turkish political system (OHCHR, 2018: paras. 32-33). The parliamentary regime gave way to a "Turkish-type presidential regime"[48], in which power was concentrated massively in the hands of the president. Consequently, the upset of the balance between executive, legislative and judicial powers has had negative effects on the democratic and pluralistic nature of the political system. The terms of ruling political party, government and state merged in such a way that the slightest criticism of political authority was seen and shown as an attack on the holy existence of the state.

In addition, the internal struggle between the Islamists, on the one hand the AKP as a representative of political Islamism and on the other hand the putschist religious community which has become a terrorist organization, has damaged the balance of the political system in Turkey and has led to the weakening of democratic institutions and human rights. It is confirmed once again that the struggle to grab power is often stronger than religious affinity. In addition, the political Islamists who advocated, when they were in opposition, fundamental freedoms and human rights, including religious freedoms, contradicted themselves[49] with their practices when in power.

Another peculiarity of this state of emergency was the extensive use of information technology in the processes of human rights violations[50]. In this sense, the lists including the personal information of the expelled officials were published on the website of the official gazette. In addition, these digitized lists were communicated to the Ministry of the Interior for the cancellation of passports and to other institutions, such as the Social Security Institution, the Ministry of Education etc., for the implementation of other sanctions. These lists were also communicated via confidential circular letters to private

[47] During the state of emergency, the AKP won the constitutional referendum of April 2017 and the general elections of June 2018.

[48] Faced with criticism of the extreme concentration of power in the hands of one person, supporters of the constitutional changes advocated the new system to be a "Turkish presidential system". This qualification sought to ensure more legitimacy to this new system in the eyes of nationalist voters and undecided voters.

[49] The contradiction mentioned above between the discourses and practices of political Islamists has led to an erosion in religious beliefs, especially among young people (Diken, 16 March 2019).

[50] For more information on computer logging and surveillance technology, see Sainati, Gilles (2007). "De l'État de droit à l'État d'Urgence". *La Découverte «Mouvements».* 2007/4 no. 52: pp. 82-89. [Accessed on: 03.04.2020]. Available at https://www.cairn.info/revue-mouvements-2007-4-page-82.htm

companies such as banks and insurance companies[51] (Gazete Duvar, 27 December 2019 and 31 December 2019). The sanctions imposed on the expelled officials were therefore not limited to the public sector but also extended to the private sector. So technological means made it almost impossible to escape the sanctions of political authority even in the private sector.

Conclusion

The declaration of state of emergency does not suspend the law or the rule of law. It is a temporary period when certain rights and freedoms can be limited, in a reasoned manner, to allow an extraordinary situation to be easily overcome. It is by no means an arbitrary regime. So even though they may be limited during the state of emergency, human rights should not be violated.

In the case of the state of emergency implemented in Turkey, we see that the tense political atmosphere after the attempted coup, the increased legitimacy of political power and the strong argument for the fight against terrorism have "politically" facilitated the implementation of draconian measures that ignored human rights.

The change in the jurisprudence of the Constitutional Court concerning the EDLs, more precisely its decision, which made it impossible to examine the unconstitutionality of the EDLs during periods of state of emergency, gave immense power and comfort to the political authority. With this decision of the Constitutional Court, the executive power was exempt from any legal control in its acts implemented by these decrees, which "legally" allowed the possibility of neglecting human rights.

The paralysis of internal actors in the face of massive violations of human rights is observed: jurists, political parties, media, civil society, and ordinary citizens. In short, all the components of democratic life have largely remained insufficient to fulfil their democratic functions and to protect fundamental rights. Throughout this period, democratic values, human rights and defenders of human rights were publicly devalued by the ruling class and by certain groups sharing the same interests with this class.[52] As a result, human rights and democratic values declined considerably under the state of emergency, which became a means not only to fight terrorism but also to intimidate opponents. The political power was well aware that its actions were not in accordance with the law and human rights. But all the same, thanks to the weakness and the division of the opposition parties, it chose to pursue this questionable approach for political reasons and ends.

The various European and international authorities regularly called on the government to lift the state of emergency as quickly as possible and to respect human rights. However,

[51] Some private banks refused to open bank accounts and pay the money transferred to former public officials on the grounds that they were dismissed by the EDLs. Some insurance companies refused to pay compensation for car accidents to the expelled public officials.

[52] The words of the Minister of the Interior are important to understand the perception of human rights at political level: "we fight with cultural terrorism... the so-called rights of women, the so-called human rights, the so-called peace, the so-called environment, ecology… They are all veils, masks. Who uses this? Terrorist organizations… "Türmen, Rıza (Former Turkish judge at the ECHR) (9 March 2020). "Özgürlükler Ülkesi Türkiye". *T24*. [Accessed on: 09.03.2020]. Available at https://t24.com.tr/yazarlar/riza-turmen/ozgurlukler-ulkesi-turkiye,25795

the political authority chose to remain indifferent to these appeals and criticisms. In this sense, the influence of external actors was particularly limited.

The massive dismissals of public officials and several other acts implemented by the EDLs were in contradiction with the ECHR. Although all domestic legal channels were ineffective, the ECHR chose, for political reasons, not to examine the appeals of the expelled officials. The Council of Europe has advised alternative methods, such as establishing a national commission to examine dismissal cases. In fact, this approach of the Council of Europe and the ECHR further encouraged the ruling class to prolong the state of emergency and its practices.

Finally, it should be emphasized that any campaign to combat terrorism must be conducted with full respect for human rights and rule of law, two essential elements for its long-term success. Respect for rule of law does not diminish, on the contrary, adds to the effectiveness of efforts to fight terrorism. For the proper functioning of the democratic system, it is crucial to preserve a fair balance between security measures, which are by nature restrictive, and the protection of fundamental rights (Council of Europe, CODEXTER, 2013: 1).

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