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Human rights situations that require the Council's attention

Joint written statement* submitted by the International Federation for Human Rights Leagues and the World Organisation Against Torture, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 August 2018]

* Issued as received, in the language(s) of submission only.

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Turkey towards a permanent state of emergency**

EuroMed Rights, the International Federation for Human Rights (FIDH), İnsan Hakları Derneği (İHD), and the World Organisation Against Torture (OMCT) denounce the recent legislative amendments in Turkey which see the state of emergency (SoE) restrictive provisions integrated into ordinary law and express concerns about potential severe violations of fundamental human rights resulting from the amendments.

I. Crackdown on civil society

On 15 July 2018, following the attempted coup d'état, a SoE was declared and subsequently renewed seven times. It was lifted after two years on 18 July 2018. Throughout the entire period the SoE was in place, fundamental freedoms were heavily curtailed, and dissenting voices systematically silenced. More than 150,000 civil servants and university teachers were dismissed from their functions.

On December 2016, the Council of Europe's Venice Commission stated that "the Government interpreted its extraordinary powers too extensively and took measures that went beyond what is permitted by the Constitution [of the Republic of Turkey] and by international law."¹

Although the SoE was recently lifted, laws integrating SoE measures into ordinary law and giving additional exceptional powers to the Executive in the name of "counterterrorism," were adopted, resulting in the continuation of such abuses and the lack of space for public freedoms. On 16 July 2018, the Minister of Justice Abdülhamit Gül declared that "the most persistent and determined fight against all kinds of terrorism will continue till the end."²

In the current political environment, those who advocate for democratic freedoms and respect for human rights continue to be targeted, including protestors, unionists, journalists, lawyers, academics, and NGOs. Attacks against HRDs remain widespread: hundreds have been sentenced to prison or are still behind bars awaiting trial.³ Others have been subjected to judicial harassment,⁴ and some have seen their passports cancelled, banning them from travelling abroad.⁵ The label of "terrorist" has been widely used by authorities to crack down on dissenting peaceful voices, relying on a vague and widely criticized⁶ definition of terrorism⁷ in its anti-terror legislation.

Our organisations are deeply concerned that this situation will last well beyond the end of the SoE. Indeed, the constitutional reform, the amendments to the ordinary law introduced by decree under the SoE, and the new Law n°7145, entered into force on 31 July 2018, prove that fundamental freedoms could be curtailed permanently.⁸

¹ Venice Commission, Opinion CDL-AD(2016)037-e para. 226.

² <<https://www.reuters.com/article/us-turkey-security/turkeys-emergency-rule-expires-as-erdogans-powers-expand-idUSKBN1K824E>>.

³ <<https://www.fidh.org/en/issues/human-rights-defenders/turkey-provisional-release-and-ongoing-judicial-harassment-of-ten>>.

⁴ <<https://www.fidh.org/en/issues/human-rights-defenders/turkey-ms-eren-keskin-s-kafkaesque-judicial-harassment>>.

⁵ <<https://euromedrights.org/publication/osman-isci-emblematic-case-among-hundreds-human-rights-defenders-turkey/>>.

⁶ U.N. Doc. A/HRC/37/50/Add.1 para. 68; U.N. Doc. A/HRC/35/22/Add.3 para. 17; U.N. Doc. A/HRC/33/51/Add.1 para. 39; U.N. Doc. A/HRC/29/15 recommendations 150.22, 150.42; U.N. Doc. A/HRC/29/37/Add.4 Recommendation A.3; U.N. Doc. CCPR/C/TUR/CO/1 para. 16.

⁷ See: <http://www.omct.org/files/2012/06/21816/obs_mission_report_turkey_hd.pdf>.

⁸ <<http://ihd.org.tr/en/index.php/2018/08/01/regarding-law-no-7145-regulating-permanent-state-of-emergency/>>; <<https://euromedrights.org/publication/turkey-from-state-of-emergency-to-ordinary-emergency/>>; Venice Commission, Opinion CDL-AD(2017)005-e.

II. Constitutional referendum

A constitutional referendum was held on 16 April 2017 in a climate of intimidation and fear. Civil society and independent media were censored and prevented from participating to the debates before the referendum, hundreds were closed down and thousands of people holding dissenting views were detained or subjected to judicial harassment.

In its conclusions, the OSCE-ODIHR International Observation Mission thus declared: “Under the state of emergency (...), fundamental freedoms essential to a genuinely democratic process were curtailed (...). One side’s dominance in the coverage and restrictions on the media reduced voters’ access to a plurality of views.”⁹ OSCE observers concluded that the consultations took place on “an unlevel playing field”¹⁰ and urged Turkish authorities to shed light on allegations of fraud.

Turkey’s constitutional reform was nevertheless adopted by a narrow margin. As stated by the Venice Commission, the referendum puts an end to the independence of the judiciary and the counter-power of Parliament, by concentrating all powers in the hands of the President.¹¹ According to Article 119 of the 2017 Constitution, any future declaration of SoE, as well as the issuing of decrees having force of law, can be made by the President alone.

III. Presidential and parliamentary elections of June 2018

During the latest snap elections, authorities used emergency powers to all but silence independent media in the country. As remarked by U.N. High Commissioner for Human Rights, Zeid Ra’ad Al Hussein: “Elections held in an environment where democratic freedoms and the rule of law are compromised would raise questions about their legitimacy and result in more uncertainty and instability.”¹² Ten days before the elections in the town of Suruç (Şanlıurfa province), clashes between supporters of opposing parties resulted in the killing of 4 people. In the same region, the relocation of ballot boxes “for security reasons” affected 144,000 voters, violating their basic electoral rights, as documented by national NGOs.

IV. Law n°7145 on the amendments of some laws and emergency decrees

The new Law n°7145 not only enshrines SoE measures into ordinary law, but also undermines those constitutional guarantees that had remained unchanged in the new constitution. Article 19 of the Constitution provides that pre-charge detention can only be extended to a maximum of 4 days – even for collective offenses and upon the request of the public prosecutor and a judge’s ruling – and only during a SoE, martial law, or in time of war. Law n°7145 expands this period to up to 12 days, implicitly revoking the SoE requirement, in outright violation of the Constitution and contrary to ECtHR judgments¹³ which recommend a maximum of 96 hours. This almost restores the situation under SoE where pre-charge detention could last 7 days, extendable to 14 and is one of the examples proving Law n°7145 is a de facto continuation of the SoE.

Detention periods can be extended by judges of the Criminal Peace Judgeships.

Also of concern is the amendment of Article 134 of the Code of Criminal Procedure, which gives authority to law enforcement to seize computer files without a judge’s warrant, which only has to be requested ex post to the judges of the Criminal Peace Judgeships. In March 2017, the Venice Commission expressed numerous concerns over the jurisdiction and the practice of these Criminal Peace Judgeships.¹⁴

The new Law also increases the time period which reviews of pre-trial detention take place from 30 to 90 days, in blatant violation of the rights to liberty and security and to a fair trial. Moreover, it gives the gendarmerie and police

⁹ OSCE-ODIHR, “Needs Assessment Mission Report,” 8-10 May 2018, p.4.

¹⁰ Ibid.

¹¹ Venice Commission, Opinion CDL-AD(2017)005-e paras. 113-119.

¹² U.N. OHCHR, “Turkey must lift state of emergency restrictions for credible elections to take place,” 9 May 2018.

¹³ ECtHR, *Oral and Atabay v. Turkey* (Application No. 39686/02), 2009.

¹⁴ Venice Commission, Opinion CDL-AD(2017)004-e.

officers in military locations the authority to perform preventive search without a judge's ruling, in violation of Article 20 of the Constitution.

In addition, the offence under Article 216 of the Turkish Penal Code "Provoking the Public to Hatred, Hostility," already commonly invoked to stifle peaceful dissent, will be adjudicated under the draconian anti-terror Law n°3713. Wide powers are granted to the government to ban protests or public assemblies and to restrict movement inside Turkey, in contradiction with Articles 19, 23, and 34 of the Constitution. Local authorities will be able to ban people from certain areas for 15 days. Local governors, appointed by the President, will be granted power to impose curfews or make some areas off-limits to the public.

Finally, the new Law legalizes, for three more years, the procedure for passport cancellation and mass dismissals of civil servants allegedly "having connection with terrorist organizations," posing a "threat to national security."

In this context, EuroMed Rights, FIDH, İHD, and OMCT urge Turkish authorities to:

- Revoke the new Law n°7145.
- Amend the Constitution, in particular provisions regarding the appointment of members of the Constitutional Court and of the Council of Judges and Prosecutors; Article 104 concentrating excessive powers in the hands of the Executive, weakening the role of the legislature; Article 119§1 allowing the President alone to declare SoE.
- Review the broad definitions of "terrorism" and "propaganda" in all anti-terrorism laws and in the Penal Code and refrain from prosecuting HRDs, journalists, and other dissenting voices under terrorism charges.
- Unconditionally drop politically-motivated charges and proceedings; release without delay the thousands of citizens arbitrarily arrested and detained or facing judicial harassment for the legitimate exercise of their fundamental freedoms.
- Ensure effective access to remedy for those dismissed from their jobs following the decree laws adopted under the previous SoE and reinstate them without delay.
- Amend legal provisions incompatible with the right to freedom of assembly and association.
- Implement the provisions of the U.N. Declaration on HRDs (1998).

The above-mentioned organisations also call upon the U.N. Human Rights Council to:

- Urge Turkey to implement the above recommendations.
- Urge Turkey to promptly implement the recommendations accepted during its latest UPR (2015), in particular to:
 - "Continue to modify and implement its legislation on freedom of expression and freedom of assembly and association in order to fully meet its international human rights obligations by, inter alia, simplifying notification requirements for planned demonstrations in the spirit of peaceful freedom of assembly;"
 - "Ensure that the penal code and anti-terror laws are consistent with international obligations."
- Ensure that the U.N. Special Rapporteurs monitor and provide advice on the implementation of the above recommendations.

**EuroMed Rights, İnsan Hakları Derneği (İHD), NGOs without consultative status, also share the views expressed in this statement.