



AKTION für Flüchtlingshilfe

Human Rights Committee

Submission for the second periodic report on Turkey

Submission to the 142nd Session of the Human Rights Committee

(14 Oct 2024 - 08 Nov 2024)

DISMISSALS OF PUBLIC OFFICIALS & PARTICIPATING IN PUBLIC AFFAIRS (UN LOIPR, PARAGRAF 17/19/25)

Aktion für Flüchtlingshilfe e.V. (BERLIN)

**PURGING DISSIDENT PUBLIC OFFICIALS IN TURKEY
RIGHT TO PARTICIPATE IN PUBLIC SERVICES
INADEQUATE REMEDIES AND CIVIL DEATH**

SEPTEMBER 2024

INTRODUCTION AND PURPOSE

- 1- This report has been prepared by Aktion für Flüchtlingshilfe e.V., a non-governmental organisation, to contribute to the 2nd periodic review by the United Nations Human Rights Committee under the International Covenant on Civil and Political Rights, to be held at its 142nd session in Geneva from 14 October 2024 to 8 November 2024.
- 2- The report mainly aims to contribute to the “List of Issues Prior to Reporting” in paragraphs 17 and 19 of the LOIPR Document entitled “Access to Justice, Right to a Fair Trial, Independence of Lawyers and the Judiciary” and “Participation in Public Affairs” as enshrined in Article 25 of the United Nations Covenant on Civil and Political Rights (ICCPR).

Under this heading, the Human Rights Committee requests the Government to provide information on the following issues:

17. Please provide information about:

(a) reports of the summary dismissal of thousands of judges, prosecutors and lawyers following the attempted coup in 2016, including the status of the complaint presented to the HSK on 21 September 2020,

(b) and the subsequent appointment and promotion of legal professionals based on political criteria, including the number of judges directly recruited through the new system and the training they have received,

(c) Prior dismissals of legal professionals in 2013 were due to their perceived involvement in corruption investigations that implicated government officials and their family members.

19. Please discuss the due process that was afforded to the State officials, including teachers, civil servants, judges, doctors, medical professionals, military personnel and police officers, who were dismissed based on perceived links to the Gülen movement following the attempted coup in 2016. Please provide information about the work of the “Inquiry Commission on State of Emergency Measures”, including the status of the 130,000 appeals against such dismissals and any remedies provided to those affected for the loss of employment and related human rights violations.

- 3- Aktion für Flüchtlingshilfe e.V., a public interest organisation based in Berlin and active throughout Europe, is pleased to bring this report to the attention of the Human Rights Committee so that it can provide the Committee with information on the above questions that the Human Rights Committee expects from the Turkish Government.
- 4- Aktion für Flüchtlingshilfe e.V., an autonomous, non-profit, non-governmental organisation, is ardently dedicated to advocating for human rights and aiding individuals encountering persecution globally, with a significant emphasis on Türkiye.

JULY 15, 2016, SO-CALLED COUP ATTEMPT AND STATE OF EMERGENCY - PURGES IN PUBLIC INSTITUTIONS

- 5- On July 15, 2016, a military uprising was carried out in Turkey by some soldiers in the Turkish Armed Forces. The political power announced this uprising to the world as a coup attempt to overthrow the government and democracy and blamed the followers of Fethullah Gülen for this uprising. Fethullah Gülen rejected these accusations and demanded the establishment of an international commission to investigate the so-called military coup attempt, but the political power rejected this demand.
- 6- Following the deregulation notification by the Turkish Government to the European Commission, a state of emergency was declared, and restrictions were imposed on individuals' constitutional fundamental rights and freedoms. In a manner that has nothing to do with deregulation and emergency rule, public officials have been dismissed, media outlets, civil society organisations, universities, schools and companies have been shut down, and a witch hunt and purge of the Gülen Movement has been launched.
- 7- Between 2016 and 2024, 2.2 million people were criminally prosecuted and detained for being members of a terrorist organisation on the grounds that they had links to the Hizmet Movement. According to the official statements of the Turkish state, 2.2 million people who had nothing to do with these events were prosecuted for membership in a terrorist organisation, compared to 4,891 people who were convicted for the armed uprising on the night of July 15, 2016, and 4,891 people who were sentenced for their actual involvement in the events.¹ Between 15 July 2016 and 20 June 2022, 332,884

¹ This is the number of 4,891 people convicted by Turkish courts under pressure from the political power and allegedly involved in the coup. These convicted individuals have not received a fair and impartial trial.

people were detained on the grounds of being a member of the Gülen Movement, 101,000 of whom were arrested and 104,000 of whom were subjected to judicial control orders. This number does not include those arrested between June 2022 and March 2024. The political power is pursuing a massive policy of purges, intimidation and intimidation against dissenters, with millions of people being subjected to terror investigations.

- 8- According to Europol statistics, the total number of terrorism trials/investigations across Europe due to terrorism investigations was 520 in 2019, 422 in 2020, 423 in 2021, and 427 in 2022.² Again, according to Europol statistics, the number of people arrested for terrorist acts in the whole European continent as of 2021 is calculated as 3884.³ The number of terrorist organisation members arrested across Europe in 2022 is 380. Considering that 2.2 million people were processed in terrorism investigations in Turkey in the period 2016-2023, terrorism investigations in Turkey have been trivialised, abused, and maliciously used as a weapon against the opposition. Compared to Europol data, the number of terrorism cases in Turkey in 2022 alone is 38,910, while the number of people charged as members of terrorist organisations in these cases is 43,386.⁴
- 9- Terrorism investigations have been opened against 2.2 million people based on the so-called coup attempt. In comparison, approximately 170,000 people have been dismissed from public service because they are members of a terrorist organisation. Speaking on behalf of the political power, Presidential Spokesperson Ibrahim Kalin stated that these purges were carried out within the framework of the state's purification/lustration principle, as practised in the former East Germany and communist bloc countries.

They include military students and ordinary privates without any rank. Indeed, the United Nations Working Group on Arbitrary Detention has ruled in favor of these individuals, who have been sentenced to life imprisonment, but the Government has not implemented these rulings. On July 15, 2016, it is estimated that the number of people who actually used weapons is less than 1,000 soldiers.

² <https://www.europol.europa.eu/publication-events/main-reports/european-union-terrorism-situation-and-trend-report-2023-te-sat#downloads>

³ <https://www.consilium.europa.eu/de/infographics/terrorism-eu-facts-figures/>

⁴ Republic of Turkey Ministry of Justice Official Statistics Programme General Directorate of Judicial Record and Statistics:
https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/29032023141410adalet_ist2022cal%C4%B1sma100kapak%C4%B1.pdf (Page 70).

- 10- According to statements made by the political power and the Turkish Armed Forces, 8,651 personnel participated in the events on July 15, 2016. The proportion of personnel who participated in the so-called coup attempt is 1.5% of the total personnel of the Turkish Armed Forces. One thousand six hundred seventy-six of these personnel are ordinary soldiers without command authority. One thousand two hundred fourteen of these personnel were cadets studying at military schools.⁵ When the number of ranking armed forces personnel alleged to have participated in the alleged coup attempt is subtracted from the lowest ranking soldiers without command authority and cadets, this leaves 5,761 military personnel in rank who allegedly participated in the alleged coup attempt.
- 11- Again, according to the official statements of the Turkish Government, a total of 289 cases have been opened against military personnel in Turkey in relation to the so-called coup attempt. A total of 3838 military personnel were sentenced to imprisonment, 1224 of them to aggravated life imprisonment and 1103 to life imprisonment. In the completed cases, 2,870 people were acquitted. As a result, the number of personnel sentenced to imprisonment in the Turkish Armed Forces for the so-called coup attempt of July 15, 2016, is 3838 people, and it is claimed that a coup attempt was attempted against the political power with this number of military personnel.
- 12- Immediately following the alleged coup attempt, the Government declared a state of emergency on July 20, 2016, and notified the Council of Europe of the deregulation of certain fundamental rights and freedoms. The state of emergency was initially declared for three months but was extended seven times over the following two years and finally ended on 18 July 2018.
- 13- Mass detentions and arrests began With the State of Emergency declaration. In the first year of the so-called coup attempt, the number of public officials purged from public institutions reached 130 thousand people as of 2017. The number of public officials dismissed in the first year of the state of emergency.
- Thirty-three thousand five hundred teachers, 31,500 police, 13,000 armed forces members, 7,000 health and personnel, 6,000 academics, and 39,000 other public employees.⁶

⁵ <https://www.aa.com.tr/tr/15-temmuz-darbe-girisimi/tskdan-fetocu-asker-aciklamasi/616536>

⁶ <https://www.amnesty.org/ar/documents/eur44/9210/2018/en/>

- 14- By the year 2024, these figures will reach 170,000 people. None of these dismissed public officials have any connection to the terrorist events of July 15, 2016. There is no evidence that they actually or otherwise supported these events, and the political power purged them according to the “purge lists” whose personal information was “publicly published”. In compiling these purge lists, the political power determined a purge list based on the newspapers, magazines and media organs to which public officials subscribed, the banks where they deposited money, the trade unions and associations of which they were members, the foundations to which they gave social aid, and the schools to which they sent their children.
- 15- Indeed, a research report by Amnesty International lists the grounds for the dismissal of public officials as follows:⁷
- A conviction or criminal investigation or prosecution, which is not detailed in any way but only stated to be ongoing,
 - Allegedly downloading ByLock, an encrypted messaging application (using Whatsup or a signal-like communication application),
 - Depositing money in Bank Asya (a bank linked to the Gülen Movement),
 - Administrative investigations, which are not detailed in any way, are only stated to be ongoing,
 - Subscription to Cihan News Agency (newspaper and magazine subscriptions)
 - Donations to associations deemed by the government to have links to the Gülen movement,
 - Membership of trade unions and associations deemed by the government to have links to the Gülen movement,
 - Children attending schools deemed by the government to have links to the Gülen movement,
 - Work history (having a work history in schools, universities, hospitals, hospitals, kindergartens, associations, etc. that are alleged to be in contact with the Gülen movement)
- 16- An analysis of the percentage of dismissals of public officials dismissed on coup grounds (Grounds for Dismissal Proposed to the State of Emergency Commission) reveals the following results: (These grounds for dismissal from public office have also turned into grounds for accusation and prosecution in criminal courts)

⁷ <https://www.amnesty.org/ar/documents/eur44/9210/2018/en/> (page 18-19).

- Having an account at Bankasya⁸: 43.38% ,
- Membership in shutdown trade unions; % 33, 27
- Opinion about the Institution they work for: 31.82
- Having a Name on Surveillance Lists⁹: 20.43
- Installing/using Bylock: 20.17
- Confessions and Whistleblower/Witness Statements: 19.99
- Sending their children to a school that was closed: 19.43%
- Newspaper/Magazine Subscription: 17.55
- Donating to the Organization: 13.76
- Participating in Talks/Trips: 10.33
- Membership in closed associations: 9.80
- Being affiliated with the Gülen Movement: 9.42
- Testimony of Secret Witnesses: % 8,79
- Does not know what the crime charge is: 5.37
- Employment in closed institutions: 5.11
- Social environment: 4.19
- Helping the organisation: 3.92
- Making oppositional posts on social media: 2.01
- Being part of the Labor and Democracy Struggle: 1.78
- Being a signatory of the Peace Declaration: 1.71
- Press Statement, Participation in Protests: 1.64
- Receiving an anonymous phone call: 1.01
- Attempting a coup: %, 0.40
- Other: 1.44

17- The State of Emergency Inquiry Commission (OHAL Commission) was established on January 23, 2017, by Decree-Law No. 685 to examine the applications of dismissed public employees. On May 22, 2017, the Commission began its work and served for nearly six years. As of December 31, 2022, 127,292 public employees have applied to the State of Emergency Inquiry Commission. Of the 127 thousand 292 applications made to the Commission, 17 thousand 960 were accepted, while 109 thousand 332

⁸ “Bankasya” is an interest-free banking system where members of the Gülen Movement deposit their money, and it is a criminal offense for individuals to invest their financial savings in this bank, even if they take out loans or carry out banking transactions.

⁹ Similar to the Stasi system in East Germany; reports of people who have been informing on people to the state.

resulted in rejection. While the rejection rate was 85.9 per cent, the acceptance rate was 14.1 per cent.¹⁰ The State of Emergency Inquiry Commission has not been an effective application system, and employees dismissed from their jobs could not access their rights through this commission either.

18- According to a survey of 25,000 dismissed employees, only 0.40% of those dismissed from the public sector had an allegation of attempting a coup d'état in their files, and the rest of the reasons for their dismissal and dismissal had nothing to do with any crime stated in the Turkish Criminal Code.

19- A survey of 25,000 dismissed public employees found that 99.1% of those rejected by emergency decrees had graduated from a college, faculty or university. 22.1% of the victims had a master's degree, and 8.5% had a doctorate degree.¹¹

20- Purges and dismissals in public institutions were not limited to the state of emergency period. As of 2024, people who have nothing to do with the coup attempt are still being dismissed despite the eight years that have passed. For example, the most recent announcement regarding the Turkish Armed Forces (as of November 16, 2023) shows that 23,971 people have been dismissed from the Turkish Armed Forces on the grounds of links to the Gülen Movement.¹² In other words, the number of personnel dismissed from the Turkish Armed Forces alone is 23,971, compared to 3838 people who were allegedly involved in the events of 2016 as a result of all the trials.

21- According to the data of the Ministry of Interior, 37,934 public employees were dismissed through Decree Laws and 11,79 public employees were dismissed through administrative procedures after the state of emergency (after 2018), totalling 49,13 employees.¹³

22- Under the pretext of fighting terrorist organisations, the political power has closed 15 universities that it considers to be in opposition to it and dismissed a total of 7236 academic staff (2017 figures). All these 15 universities, whose assets have been confiscated and nationalised, were founded by individuals, business people and

¹⁰ <https://tr.euronews.com/2023/01/20/ohal-inceleme-komisyonu-tum-basvurulari-karara-bagladi-istatistiklerle-kabul-ve-ret-orani>

¹¹ Report on the Social Costs of the State of Emergency, p. XI.

¹² <https://www.aydinlik.com.tr/haber/iste-teskdan-ihrac-edilen-fetocu-sayisi-bakan-guler-acikladi-433911>

¹³ <https://www.finans7.com/haber/son-dakika-10-bin-435-polis-ve-memur-ihrac-edildi-egm-isim-listesi-yayinlandi-mi-2022-11190>

foundations opposed to the political power.¹⁴ The number of academics dismissed from the 15 universities established as Foundation Universities and closed is 2808 people, and the number of academics dismissed while working in State Universities is 4481.¹⁵ The number of academic staff dismissed at Universities It is a complete irony¹⁶ that the justification for these dismissals is hidden in the claim that the state has the right to "purification and cleansing of criminals", which refers to the processes of purging military intelligence personnel from the state in the eastern bloc countries after the collapse of Communism.¹⁷

23- For example, 79 academic staff were dismissed from paediatrics, 45 from ophthalmology, 60 from public law, 55 from chemistry and 73 from history. How can an ophthalmologist, a paediatrician, an anaesthetist, a historian or a public lawyer be criminalised in this way and dismissed from their jobs on the basis of the state's right to purity? What relationship can these professionals have with terrorist organisations and support for terrorism? The state intelligence services previously collected suspected political opponents' personal and family information and monitored their private lives. Such a determination was made, and these academics were dismissed.

24- The right of the state to purge/lustration is a concept used in the former Eastern Bloc countries as a process of purging communism to remove from state institutions former military and intelligence officers who had committed crimes and violated human rights and freedoms. There is no legal basis for criminalising academic staff, dismissing them from their jobs, depriving them of their right to material and moral development, their freedom of expression, their right to work and their freedom to work because they are political opponents.

25- In addition, the right of these academics to work in other countries outside Turkey is hindered, and they are prevented from accepting job offers from abroad. In other words, Turkey has become an open-air prison for academic staff who have been dismissed from their posts.

¹⁴ <https://academicsolidarity.com/tr/category/tum-kategoriler/raporlar-yeni/>

¹⁵ <https://dergipark.org.tr/tr/download/article-file/318289>

(A Study on the Academics Dismissed from Turkish Universities, s. 13 Table 4)

¹⁶ <https://pdf.trdizin.gov.tr/pdf/QS9iL21MeFpUQTRmWmN5N0NYdHU5RmJwZEFsVWtTUUNsRVVCTjdCZ1R5Qkl0UjBobnptcWc3NFJlS2FGZ1VEL1B2SUI3YVdpR2VmTmRKWTZ2ZkNaQ2xKUGUzdjY0RmsyNE9NZ08zeDl3R05lQTJiWmFyZkVLanZhZkVjVXhtWTZkZ1Q0dUIOakV3Z2xKTHNwTjFqWVWVWVGlPZFZDNWYrejZQTKZta0J5NXFFUGtDSG1va1ZJcExzcEhOMHo3WHQ0QVAwTmlOWGNnYUZlOFNqSWJpamw0dHB5UzdJL3lYS1lcWc5elp4aGdPTWpYeGo1RlVMQktpanl4UTJ2VWFhUUdXUnFDelZuQ1YwT1RnPT0>

¹⁷ <https://kristinagovic.com/en/lustration-is-still-going-on-in-eastern-germany/>

EVALUATION OF TURKISH STATE PRACTICES WITHIN THE FRAMEWORK OF UNIVERSAL PURIFICATION-LUSTRATION PRINCIPLES

- 26- In total, nearly two hundred thousand public employees have been discredited as members of a terrorist organisation and purged from public institutions by disclosing their personal identity information in official newspapers. In an interview with international media, İbrahim Kalın, the head of the National Intelligence Organization, claimed that these procedures were 'a method of getting rid of the guilty people within the framework of the State's Right of Purification/Lustration'. To prove this unjustified claim, he cited as evidence the dismissal of hundreds of thousands of public officials during the unification of the two Germanies.¹⁸
- 27- However, contrary to the statements made by the Turkish Government to international judicial bodies, notably the European Court of Human Rights, and to the world community, almost all of the public officials subjected to Lustration and dismissed from their posts by government decrees by the Turkish State have not been found to have committed any criminal act that would threaten or endanger the security of the state. The political power has purged hundreds of thousands of people from public office by compiling a list consisting only of public officials it deems to oppose it.
- 28- At the international level, the first moral regulation on this issue is the 'Principles of Purification' issued by the Parliamentary Assembly of the Council of Europe in 1996. These principles, which were published after the collapse of the Communist Bloc to guide the democratisation process of the former totalitarian states in the democratisation process of the former totalitarian systems, to purge the state of the persons who held senior positions in these systems, to cleanse the system and to liquidate the persons who committed crimes against humanity, are still accepted today as the essential criteria and principles in the judicial audits carried out by the European Court of Human Rights.
- 29- The Council of Europe has indicated that it is necessary to take administrative measures against individuals who held senior positions in former totalitarian communist regimes and those who supported them to ensure that a new democratic system can be established. The purpose of these measures was to prevent the exercise of governmental power by persons who, in the past, had shown no commitment or belief in democratic

¹⁸ <https://politurco.com/the-misuse-of-decrees-a-critical-look-at-turkeys-controversial-purification-process.html>

pluralist principles and who now had no interest or motivation to transition to them and could not be trusted to exercise their powers by democratic principles. The Council of Europe generally emphasised that these measures could be compatible with a democratic state under the rule of law if several criteria were met.

- 30- According to these criteria, guilt must be individual rather than collective and must be proven in each case. The right to a defence, the presumption of innocence until proven guilty, and the right to recourse to the courts must be guaranteed. Revenge can never be an objective of such measures, and the resulting laundering process must not be allowed to be politically or socially abused. The purpose of lustration is not to punish presumed guilty people - that is the task of prosecutors using criminal law - but to protect the nascent democracy.
- 31- According to the Guidelines of the Parliamentary Assembly of the Council of Europe, lustration should focus on threats to fundamental human rights and the democratisation process. Political or social abuse of the lustration process cannot be allowed.
- 32- Furthermore, the Council of Europe recognises that employees dismissed based on decontamination laws should retain their previously vested financial rights.
- 33- According to the ECHR and the Venice Commission, before the application of the purification principles, emphasis is placed on the states' corruption indicators, their state of development, their rank and position in the rule of law and other international comparative statistics, as well as the high-level bureaucracy that governs this state to be subjected to purification. In this context, Turkey's development, justice, transparency, and corruption data before July 15, 2016, as well as the corruption data after that date, are essential. The current situation as a result of the subsequent purges is necessary. A state administration in line with European standards of fairness and transparency requires the construction of an appropriate bureaucracy. Given the socio-economic and political situation of countries, the lustration process justifies removing from office those whose activities may delay or make it impossible to establish a democratic regime. In this context, concrete evidence of the integrity and professional performance of the persons subjected to purification must be provided. In conclusion, purges must pursue a legitimate purpose and be lawful/legislative and indispensable/necessary for a democratic society.
- 34- According to the ECHR, the objective sought to be achieved by purges is to remove persons subjected to purges from positions sensitive to state security and, where

possible, to transfer them to less sensitive positions. Direct purges and purges raise the possibility that the application of these measures may be motivated by a sense of revenge against individuals. Lustration/purification measures that do not comply with these principles will undermine democratic governance by politicising the public service rather than aiming to protect it.

- 35- According to the ECHR, national courts must individually assess individuals' past conduct when applying measures under the purge. Those subjected to purge must be proven to have acted to the detriment of democratic governance, the rule of law, national security, defence, or human rights. Without any individual assessment of their conduct, purge measures cannot be applied based on hypothetical allegations of a lack of loyalty to democratic principles of state organisation or corruption without such concrete proof. Concrete links must be established between the persons subjected to purification and the events threatening the nation's life.
- 36- According to the ECHR, persons subjected to purges during a period when the state was characterised by crime and corruption may be subjected to purges if concrete evidence proves that there were irregularities in their appointment or retention in office or that their careers have developed unusually positively.
- 37- The ECHR requires concrete proof that the persons to be subjected to purge have engaged in politically motivated persecution of political opponents or protesters in democratic protests or acts and procedures that constitute interference with human rights and fundamental freedoms. Persons suspended in these matters must be subjected to an independent review, and their role in the events must be demonstrated in detail and with specificity.
- 38- Even if some personnel changes are assumed to be a matter of urgency in the government's notification of suspension of fundamental rights and freedoms by extraordinary means in the face of an emergency threatening the existence of the nation (deregulation notification), there should be a detailed review of each official's role during this period, and, based on this review, the initial emergency measures should be phased out at a later stage.
- 39- The ECHR also examines the “necessity in a democratic society” and the proportionality of applying a restrictive severe measure in the face of the nation's threat.

- 40- When these principles are considered, it is clear that the dismissals from public institutions, as imposed by the Decree Laws issued by the Turkish State after July 15, are devoid of legal grounds.
- 41- A review of the Turkish Constitutional Court's precedent decisions on lustration/ purge practices shows that even a cleaning worker, a teacher, a doctor, a veterinarian, an English instructor, for example, working in a municipality, who has no relation to the security of the state and the nation, can be subjected to purge because of the work they do and the tasks they undertake.
- 42- A review of the Turkish Constitutional Court's precedent decisions on lustration/ purge practices shows that even a cleaning worker, a teacher, a doctor, a veterinarian, an English instructor, for example, working in a municipality, who has no relation to the security of the state and the nation, can be subjected to purge because of the work they do and the tasks they undertake.
- 43- The Turkish Constitutional Court has based its entire reasoning on the Lustration/Purification principles, which prevent former KGB agents and former high-ranking communist party members/bureaucrats from being employed in public positions for specific periods to avoid the threat to democracy, which had just started to flourish in the Iron Curtain countries after the collapse of the Communist Bloc. This decision, rendered by almost inverting/reversing the basic jurisprudence of the ECHR in the Lustration/Purification cases and ignoring the basic principles in these cases, clearly indicates how the ECHR judgments can be abused and misused.
- 44- The precedent of the Turkish Constitutional Court recognises that persons whose duties have nothing to do with the security of the state can be subject to purification. Ordinary civil servants have been elevated to such a level of threat to Turkish democracy and constitutional order that the unrestrained, unlimited and overbroad interpretation by members of the Turkish Constitutional Court of the basic principles laid down by the ECHR and the Council of Europe in purification cases constitutes the primary justification for the victimisations.
- 45- In the Lustration practice of the Turkish State, hundreds of thousands of public servants such as university research assistants, veterinarians, doctors, drivers, cleaning workers, nurses, etc., have been declared guilty of attempting to overthrow the constitutional democratic order and membership in a terrorist organisation and dismissed from their jobs indefinitely with the Decree Law social genocide.

- 46- No employer, including the government or other public bodies, may arbitrarily and unilaterally decide that the employee/employer service relationship has ended and may not directly dismiss individuals. Any dismissal or dismissal, including from the civil service, must be based on the capacity and conduct of the employee and must be carried out only through a disciplinary process with full procedural safeguards. However, Amnesty International's May 2017 report “The Future is Dark: The Relentless Repression of Dismissed Public Sector Workers in Turkey”, published in May 2017, shows that such dismissals are arbitrary, without due process, and result in a range of human rights violations.¹⁹
- 47- According to official Turkish government data, 22,104 public employees have been purged from public institutions based solely on their union membership. The Confederation of Cihan Sen had 22,104²⁰ members as of 2016, and all 22,104 members have been dismissed from their public positions. Criminal cases have been opened against them because they are members of a terrorist organisation.
- 48- Similarly, persons who are not public servants but have the status of workers have been accused of being members of a terrorist organisation, and criminal cases have been initiated against them solely on the grounds of their union membership. According to official data, Turkey’s total number of unionised workers is 1,514,053 as of 2016. The total number of members of the shutdown Aksiyon Work Union is 29,568²¹, and all these people were accused of being members of a terrorist organisation and were subjected to criminal cases.
- 49- As a result, the total number of unionised employees affiliated with both closed Confederations (civil servants and workers) is 51,672; all have been investigated, detained, arrested, convicted, sentenced and dismissed from public office on charges of terrorism organisation due to their union membership. The mere fact that these union members were members of the unions, as mentioned earlier, without any investigation into what kind of links they had with the military uprising and what type of threat they posed to the constitutional democratic order, was considered sufficient evidence to charge them with membership of a terrorist organisation and to dismiss them from

¹⁹ <https://www.amnesty.org/en/documents/eur44/9210/2018/tr/>

²⁰ https://www.csgb.gov.tr/istatistikler/calisma-hayati-istatistikleri/sendikal-istatistikler/kamu_gorevlileri-sendika-uye-sayilari-hakkinda-tebligler/

²¹ https://www.csgb.gov.tr/istatistikler/calisma-hayati-istatistikleri/sendikal-istatistikler/isci_sayilari-ve-sendikalarin-uye-sayilari-hakkinda-tebligler/

public office. This is a disproportionate and disproportionate measure that is entirely contrary to the Council of Europe's Declaration of Purification/Lustration Principles²² No. 1996/1096.

- 50- Moreover, the dismissals and termination of employment contracts in these public institutions were not enough; all work permits of union members were cancelled, their diplomas were annotated, and they were prevented from working elsewhere. Employees dismissed or terminated on the grounds of their trade union membership were also deprived of all pensions, salary, social security, seniority and notice pay. Since they are accused of being members of a terrorist organisation, all their financial compensation has been confiscated, and they are left without compensation and social insurance.
- 51- For both civil servants and workers, being a member of one of the 28 unions that were closed down during the state of emergency, even if no other illegal acts or activities have been detected, can result in being charged with membership in a terrorist organisation in the Heavy Criminal Courts and sentenced to at least six years and three months in prison, If a public institution employs them, it means being subjected to purification/Lustration and dismissal from public office; if they are used in the private sector, it means termination of their employment contract and never being employed again for the rest of their lives, cancellation of their passports, ban on leaving the country and cancellation of their diplomas and licenses related to their professions. In this way, approximately 51,672 people have been subjected to terrorism investigations, unjust detentions, arrests and prison sentences solely on the grounds of being union members.
- 52- An examination of the fields of activity of the unions listed above and the public servants who are members of these unions reveals that these individuals have titles such as veterinarian, municipal worker, cleaning worker, forest engineer, agriculturalist, shipyard worker, textile worker, etc., which have nothing to do with the sovereignty and exercise of power of the state, i.e. military personnel, police, judges, prosecutors, etc. It is a matter of debate as to how the Lustration of these persons and the closure of trade unions established by these professionals relate to the constitutional protection of public safety and democracy and whether it is necessary or proportionate in a democratic society.²³ The European Commission's Vetting Principles and Vetting

²² <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16507>

²³ Indeed, the European Court of Human Rights has held that the dismissal from public office and lustration of an agricultural worker, who was not authorized to exercise the sovereign power of the State,

Guidelines (Rule of Law Tools for Post-Conflict States: Vetting: An Operational Framework)²⁴ and the jurisprudence of the ECHR, it is not clear what kind of threat these persons pose to the security of the state and the constitutional order. The extraordinary measures are being abused for malicious revenge and to purge political opponents. Being a member of one of the 28 trade unions closed by the State of Emergency Commission, administrative and labour courts, the Supreme Court, the Danistay and the Turkish Constitutional Court is considered justified under the state's purification principles/illustration and individuals are not allowed to be reinstated.

VENICE COMMISSION'S RECOMMENDATIONS ON TURKEY

53- The Venice Commission's Opinion on “Monitoring the Implementation of the State of Emergency Measures in Turkey”²⁵ in its Review Report of December 12, 2016, also assessed public servants who were dismissed from their posts.

54- According to the Venice Commission, The criteria used to assess individuals' links to the Gülen community have not been made public, at least not officially. The Venice Commission rapporteurs were informed that the dismissals were decided based on an assessment of a combination of criteria, such as, for example, financial contributions to Bank Asya and other companies of the “parallel state”, being a director or member of a trade union or association linked to Fethullah Gülen, using the ByLock messaging app and other such encrypted messaging programs. The dismissals are also based on police or secret service reports on the individuals concerned, analysis of their social media connections, donations, websites visited, and even the fact that they have stayed in student dormitories belonging to “paralegal! state” structures or sent their children to schools affiliated with Fethullah Gülen. Information from friends or neighbours at work and even regular subscriptions to Gulenist publications are among the many criteria used to place a name on “dismissal lists”.²⁶

without establishing what threat he posed to the democratic constitutional order, was an unnecessary and disproportionate measure in a democratic society. (paragraph 322) CASE OF POLYAKH AND OTHERS v. UKRAINE
<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-196607%22%5D%7D>

²⁴ <https://www.refworld.org/policy/opguidance/ohchr/2006/en/42521>

²⁵ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-ad\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-ad(2016)037-e)

²⁶ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 103).

55- In 1999, the European Court of Human Rights made the following declaration regarding European human rights obligations and labour disputes involving public officials.

“[...] certain posts in the public service sector of each State are related to responsibilities of general interest or participation in the exercise of powers deriving from public law. Persons holding such posts thus exercise a part of the State's sovereign power. The State, therefore, has a legitimate interest in demanding a special level of trust and loyalty from these officials. On the other hand, no such interest exists concerning other offices that do not have this 'public administration aspect'”²⁷

56- The policy regulating the public service is based on loyalty, which gives the State a wider margin of discretion in deciding who to recruit/retain, at least in the case of authorities “exercising part of the sovereign power of the State”. Judges, prosecutors, police officers, and military personnel fall perfectly (par excellence) into the category of public officials “exercising part of the State's sovereign power”. This logic is primarily applicable in times of major crisis when the State has to deal with a secret organisation that has penetrated deep into its administrative machinery.²⁸

57- As a starting point, the Venice Commission acknowledges that a simplified system of temporary dismissal of public officials had to be introduced based on the relative dismantling of the loyalty criterion in the aftermath of the attempted coup and through a summary procedure. This does not mean, however, that the mass dismissal of public officials is not a human rights issue requiring compliance with the principles of proportionality and necessity. The first question to ask is, therefore, whether the human rights of public officials are at stake in this situation.²⁹

58- The Constitution of the Republic of Turkey guarantees the right to enter public service. Article 70 of the Constitution states that “every Turk has the right to enter the public service” and that “no distinction shall be made in recruitment to public service other than the qualifications required by the post”. This right implicitly includes the right to remain in public service. However, this provision has many implicit limitations, and in

²⁷ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 106).

²⁸ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 107).

²⁹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 108).

times of emergency, this right becomes particularly weak, although it does not disappear completely.

59- In Turkey, dismissals based on emergency decrees bring many negative consequences: lifetime bans from working in the public sector and private security companies, loss of titles and ranks, revocation of passports, almost immediate eviction from housing, etc. The names of persons suspected of links to Fethullah Gülen are made public, which, according to the rapporteurs, makes it less likely for former public servants to find new jobs, even in the private sector. The combined effect of these measures arguably brings the matter within the scope of Article 8 of the ECHR. In sum, the combination of the reasons for the dismissal of public officials and the practical effects of these dismissals on their lives in various aspects brings into play many of the safeguards of the ECHR and the ICCPR. However, in most cases, the dismissals affected public officials' human rights. Where a human right is at stake, the Government must ensure that derogation in times of emergency involves a right that can be limited, is necessary and proportionate and is “strictly justified by the exigencies of the situation”.³⁰

60- According to the Venice Commission, disciplinary liability or other similar measures must be foreseeable. To be punished, a public official must first understand that they have done something incompatible with their status. The Turkish authorities appear to be starting from the broad assumption that the “lawful embodiment” of the Gülen sect is merely a façade and that anyone who has collaborated with Fethullah Gülen or taken part in a Gülen-related project knows the real aims and methods of the organisation. The Venice Commission considers that this assumption goes too far. The Turkish authorities do not deny that the official structures of the State have been cooperating for many years with projects and associations linked to Fethullah Gülen. Given the scale of the network and its presence in all circles of public, social and economic life, there must also be thousands of people who, unaware of the “hidden face” of this organisation, have contacted it, supported its activities or even held certain positions on its behalf.³¹

61- However, until 2016, no final judgment was issued by a court of law providing a comprehensive analysis of the Gülenist sect and declaring it a criminal or terrorist organisation.

³⁰ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 114-118).

³¹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 119-122).

- 62- Considering all this, the Venice Commission recognises that the Turkish State expects public officials to disassociate themselves from the Gülen movement without even waiting for a final judicial ruling and knowing all of its alleged criminal activities.³² According to the Venice Commission, the absence of a final judicial ruling by 2016 that the Gülen Movement threatens national security could lead to unjust dismissals that could be seen as retroactive punishment.
- 63- According to the Commission, the extraordinary decrees lack the “intensity of the links” with the Gülen movement that a public official must maintain to be dismissed. The Decree Law refers to “relationship, connection or liaison”, “membership, affiliation or association”. These broad definitions imply that any connection to the Gülen community will lead to dismissal. The Turkish authorities explain that this intensity assessment is based on the factual elements present in each case. Therefore, only “links that amount to membership could lead to criminal prosecution. The authorities refer to Article 314 of the Criminal Code, which deals with membership in a criminal organisation. According to the Turkish authorities, the difference between being a member of a criminal organisation and having a “relationship”, “connection”, “liaison”, etc., is based on a set of criteria fulfilled by the individual and determined by the administrative bodies implementing the emergency decree. The authorities have provided several explanations on how the criteria are used to qualify someone as a member of an organisation or simply as “linked”, “associated”, or “in contact” with the organisation. However, these criteria are not officially published, and their use is not explained in regulations or case law. According to the Venice Commission, “membership” requires an “organic relationship” with the criminal organisation. For a public official to be dismissed (temporarily or permanently), they may need to have established a weaker link with the criminal organisation. Nevertheless, this link must be meaningful - i.e. it must raise objective doubts about the public official's loyalty and exclude innocent, accidental, etc. links. Although the Venice Commission has recommended correcting this broadly interpreted wording in the decrees, the Government has taken no steps.

According to the Venice Commission, “dismissal” can only occur based on a combination of factual elements that demonstrate that the public official has acted in a

³² [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 1123-124).

manner and intensity that objectively raises severe doubts about their loyalty to the democratic legal order.³³

64- The Venice Commission emphasises that dismissals of public officials are far from being “justified and individualised.” Dismissal decisions were implemented through a system of “lists” attached to emergency decrees publicly published in the official gazette. These decrees declared individuals guilty and exposed them. They were declared guilty of violating the presumption of innocence, and their names were publicised without any court decision or conviction.

65- According to the Venice Commission, the “prohibition of arbitrariness” is recognised as one of the most critical elements of the rule of law. While discretion is essential in modern, complex societies in the exercise of certain governmental functions, it must not be exercised arbitrarily. Such an exercise of discretion allows for fundamentally unfair, unreasonable, unwarranted or oppressive decisions contrary to the rule of law. The prohibition of arbitrariness is also a fundamental principle of privacy protection and fair trial under international human rights law. The emergency decrees do not set a standard of proof or require the final assessment to be reasoned and based on evidence. As highlighted in the Commissioner for Human Rights' communication, “In such circumstances, it may be plausible that different administrations may interpret the same vague criteria relating to membership of or affiliation with a terrorist organisation in different ways, reaching different conclusions in similar situations, or that they may consider lawful actions taken in good faith as the establishment of a crime. This situation naturally encourages speculation about the reasons behind some dismissals”. The Venice Commission also recognises that the “obligation to give reasons” should apply to administrative decisions.³⁴

66- Indeed, the Venice Commission considers the dismissal and arrest of 2 members of the Turkish Constitutional Court without any concrete justification as a violation of the “Prohibition of Arbitrariness” and the “Obligation to Give Reasons”. In arresting the two members of the Constitutional Court, the Turkish State did not apply the criteria of membership and affiliation to the Gülen Community or the intensity of their actions, did not feel the need to conduct any investigation into their concrete actions; it only ensured the arrest and imprisonment of 2 of its members on the abstract, general, very

³³ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 128-131).

³⁴ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 128-131).

broadly interpretable grounds of liaison, affiliation, which could be interpreted very broadly and which considered the assessments of other members of the Constitutional Court about these individuals sufficient.

67- In the dismissal and arrest of 2 judges, it was deemed sufficient for the General Assembly of the Constitutional Court to 'evaluate' such a connection with a terrorist organisation without any concrete proof. The evaluation refers to 'the opinion of the majority of the General Assembly'. The Statutory Decrees issued during the State of Emergency do not stipulate that the Turkish Constitutional Court must rely on a certain type of evidence to reach this opinion. It is left to the discretion of the majority of the General Assembly to form this opinion. Without mentioning any evidence against the two judges in question, the Turkish Constitutional Court considers it sufficient for the majority to be subjectively convinced of a link between a member of the Constitutional Court and the Gülen community to decide on their dismissal. According to the Venice Commission, the same approach and procedure were applied to the dismissal and arrest of these two constitutional court judges and to the names of thousands of public officials who were added to "dismissal lists" attached to decrees-laws and dismissed by administrative bodies.³⁵

68- According to the Venice Commission, the decision of the High Council of Judges and Prosecutors of August 31, 2016, is also based on similar arbitrariness. With this decision, the High Council of Judges and Prosecutors ordered the dismissal of thousands of judges and prosecutors and listed their names in the annexes to the decree. This decision was taken based on the extraordinary powers granted by Decree-Law No. 667. However, this decision does not mention any concrete and specific evidence to support the allegations against the thousands of judges and prosecutors whose names appear on the attached list. Therefore, the existence of a link between the dismissed judges and prosecutors and the Gülen movement cannot be objectively established. The Venice Commission concludes that the decision-making process resulting in the dismissal of public officials is flawed. The dismissals are not based on individualised grounds, making it virtually impossible to conduct meaningful ex post judicial retrospective review of these decisions.³⁶

³⁵ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 135-136).

³⁶ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 132-140).

69- The Council of Europe Commissioner for Human Rights, in his communication quoted above, noted that the emergency decrees did not require any adversarial proceedings before the decision to dismiss public officials was taken, emphasising that “at the very least, individuals should have had access to the evidence against them and the right to present their arguments before the decision was taken”. The lack of individualised reasoned decisions is one of the most significant violations in such dismissals. Regarding the procedures before dismissals, the Venice Commission fully shares the view of the Council of Europe Commissioner for Human Rights that these procedures should comply with specific minimum requirements of administrative due process. The Venice Commission considers that the public officials concerned should at least be made aware of the evidence against them, be allowed to comment on it and exercise their right of defence before the decision to dismiss them.³⁷

JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS ON TURKEY

70- When the European Court of Human Rights precedents are examined, the illegality of the procedures applied during the state of emergency regarding the dismissals of public officials is clearly emphasised. In its judgment of 15 December 2020 in the case of Pişkin v. Turkey (Application No. 33399/18), the European Court of Human Rights noted that the regulations enacted during the State of Emergency introduced a simplified dismissal procedure stating that “personnel (including workers) employed in all kinds of posts, positions and status in institutions affiliated or connected to a ministry shall be dismissed from the public service upon the proposal of the head of the unit and the approval of the human resources manager”. The ECtHR noted that the applicant had not been informed of the reasons for his dismissal. Moreover, Decree-Law No. 667 requires public institutions, such as the one employing the applicant, to dismiss employees without the need to provide any individualised justification under a simplified procedure where the employer considers the employee to be a member of or to have links or connections with, one of the illegal structures defined in the Decree.” The ECtHR concludes that the domestic courts did not thoroughly examine the applicant's appeal against the dismissal decision, did not base their reasoning on any evidence submitted by the applicant, nor provided any valid reasons for rejecting his appeal. The ECtHR found that the domestic courts failed to launch a genuine or severe

³⁷ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e) (paragraph 141-143).

investigation and to determine the real reasons for the applicant's termination of his employment contract. It, therefore, concluded that its judicial review of the dismissal was inadequate. Finding that the dismissal “cannot be said to have been strictly necessitated by the particular circumstances of the state of emergency”, the Court concluded that the declaration of a state of emergency could not be invoked to justify the failure to comply with due process and respect the applicant's right to a fair trial. Ultimately, in *Piskin*, the ECHR found a violation of the right to a fair trial in relation to staff dismissed during the state of emergency.³⁸

71- On 26 September 2023, the Grand Chamber of the ECtHR ruled in the *Yalçinkaya* judgment that membership of non-governmental organisations, unions and associations linked to the Gülen Movement and subject to closure sanctions cannot be a punishment and evidence of membership of a terrorist organisation. In the *Yalçinkaya* judgment, the ECtHR emphasised that some of the legal acts that are used as a basis for the offence of membership of a terrorist organisation under the Turkish Criminal Code are considered preparatory acts towards achieving the target crime, namely the crime of overthrowing the constitutional order, and are unpredictably expanded. The court ruled that accepting completely legal and innocent actions such as membership in associations and trade unions as evidence for membership of a terrorist organisation violates the expansion of criminal law, the principle that there is no crime and punishment without law, and freedom of association.

72- In this context, no acts of associations, foundations and trade unions that were closed in Turkey during the State of Emergency that can be associated with terrorism and violence, such as, for example, conducting armed training for their members, possessing weapons, institutionally spreading discourses praising violence and terrorism, and organising attack plans, can be cited as examples. The union and association of which the applicant Yüksel Yalçinkaya was a member was mentioned as “a legally operating union and association at the time,” and it was decided that these associations and unions were established and operated by the legal legislation and that these organisations could not be declared terrorist organisations by subsequent laws.

³⁸<https://hudoc.echr.coe.int/fre#%7B%22fulltext%22:%5B%22Pi%C5%9Fkin%20v.%20Turkey%22%5D,%22itemid%22:%5B%22001-206901%22%5D%7D>

73- According to the Supreme Court, the Turkish state, as a precedent, should emphasise that the ECtHR's judgments on the closure of non-governmental organisations are related to the closure of three right-wing extremist associations of paramilitary type and have nothing in common with the associations and trade unions in Turkey that were closed in the Yüksel Yalçınkaya case. In the ECHR's jurisprudence, decisions to close associations and trade unions “which contain elements of support for acts of violence, mediating the killing of a person, resorting to violent means, hatred against Muslim immigrants, Jews and homosexuals, and incitement to racial discrimination” cannot be considered as a precedent for associations and trade unions closed in Turkey and no comparison can be made. This is because the dissolved trade unions in Turkey operated in full compliance with the legal legislation at the time of their establishment and operation. Therefore, the accusation of membership of a terrorist organisation on the grounds of membership of closed trade unions and associations in Turkey violates the “Freedom of Assembly, Association and Trade Union Formation and Membership” guaranteed under Article 11 of the European Convention on Human Rights. (Paragraphs 398-401).³⁹

RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE UNITED NATIONS INTERNATIONAL LABOR ORGANIZATION ON TURKEY

74- The United Nations International Labor Organization (ILO) Committee Report also makes critical legal assessments on the legal status of trade unions closed down during the State of Emergency and the status of personnel dismissed from public office. The Resolutions adopted by the ILO Governing Body on March 24, 2021, on the closure of trade unions in Turkey and on punishments and dismissals for trade union membership were found to violate two fundamental international conventions. These conventions are:

- a) Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organize,
- b) “Termination of Service Relationship Convention” No. 158 of 1982.

³⁹ <https://www.echr.coe.int/w/yalc-nkaya-v-turkiye-no-15669/20->

- 75- At its 335th session, the Governing Body of the United Nations International Labour Organization, in its review of the situation of closed trade unions in Turkey within the framework of the 1948 Convention No. 87 “Freedom of Association and Protection of the Right to Organise”, made essential findings on the dismissals of public servants.⁴⁰ According to the Executive Board of the International Labor Organization, the Aksiyon Work Confederation and its affiliated unions, which were allegedly linked to the Gülen Movement, were dissolved by the political power through administrative action and their assets were confiscated by the Decree Law No. 667. Many dismissals have been carried out “without parliamentary or judicial oversight”, without any investigation, and without considering the principle of presumption of innocence and the rights provided by ILO Conventions due to their membership in unions dissolved under the decrees issued under the state of emergency.
- 76- According to the ILO Governing Body, although these closed unions continued to operate legally until the declaration of a state of emergency, membership in these unions is considered evidence of an individual's links with a terrorist organisation. The Committee concluded that these workers were punished for being members of a trade union without any evidence of specific action or participation or even any knowledge that they might have had possible links to a terrorist organisation. In other words, these workers were punished for exercising their right to join organisations of their choosing, as guaranteed by Article 2 of Convention No. 87, without the possibility of examining their circumstances.
- 77- The Committee noted with concern that in cases brought by individuals dismissed on the grounds of union membership, the State of Emergency Commission did not question the legitimacy of the closure of the relevant union or the individual's actions. Membership of a closed trade union, evidenced only by information showing that union dues were deducted from an applicant's salary, was considered sufficient grounds to reject an appeal against a decision to dismiss. The Committee believes that a judicial review of the closure of the relevant trade union organisations should occur before or during the review of the lawfulness of the dismissals and that each employee should have the opportunity to make submissions on their actions and whether they can be linked to illegal activity.

⁴⁰ https://www.ilo.org/gb/GBSessions/GB341/ins/WCMS_776590/lang--en/index.htm

- 78- The ILO Governing Body calls for a full, independent and impartial investigation of all workers subjected to repression and penalties because of their membership in closed trade unions to determine whether they have engaged in any illegal activity that would justify their dismissal. If it is found that there is insufficient evidence to justify their dismissal, all such employees should be reinstated, or if it is found that this is not possible due to the time that has elapsed, they should be provided with appropriate compensation for the deprivations they have suffered and legal remedy, the withdrawal of the orders for their blocklisting and the return of confiscated passports.
- 79- At the 335th Session of the United Nations International Labor Organization ILO, in the framework of the complaints filed by the closed trade unions, the following violations of the “Termination of Service Relationship Convention” No. 158 of 1982 were identified.⁴¹
- 80- All dismissals on the grounds of trade union membership were carried out solely based on trade union confederation membership, without prior investigation, without following due process and contrary to Articles 4 and 5 of Convention No. 158.⁴² By classifying workers as terrorists, they were deprived of the opportunity to defend themselves before dismissal, contrary to Article 7⁴³ of the Convention.
- 81- Contrary to Article 12 of the Convention, none of the dismissed member workers have been deprived of severance pay, notice pay, or other redundancy compensation.⁴⁴ Trade union members have lost their pensions and health rights and benefits, and workers subjected to lustration have been blocked and prevented from finding alternative employment due to the government's actions in connection with mass dismissals.

⁴¹ https://www.ilo.org/gb/GBSessions/GB341/ins/WCMS_776590/lang--en/index.htm

⁴² Article 4 of the Convention provides that: The employment of a worker shall not be terminated unless there is a valid reason for the termination which relates to the worker's capacity or conduct or is based on the operational requirements of the undertaking, enterprise or service.

Article 5 of the Convention provides that: The following, inter alia, shall not constitute valid grounds for termination: (a) Trade union membership ...

⁴³ Article 7 of the Convention provides that: An employee's employment may not be terminated for reasons relating to the employee's conduct or performance without giving him or her an opportunity to defend himself or herself against the allegations made against him or her, unless the employer could not reasonably be expected to provide that opportunity.

⁴⁴ Article 12 of the Convention provides that: "A worker whose employment is terminated shall, following national law and practice, be entitled to (a) severance pay or other termination benefits... (b) benefits from unemployment insurance or assistance or other forms of social security... (c) a combination of such allowances and benefits".

- 82- The ILO Governing Body noted with concern that the Government considered workers affiliated with Aksiyon-İş to be terrorists based on alleged links to a terrorist organisation solely because of their association with the union. The workers were summarily dismissed from their institutions under Decree Law No. 667 without justification or being allowed to defend themselves. The Committee emphasises that, even in an emergency, alternative measures could reasonably have been taken to prevent their dismissal before completing the procedural safeguards set out in Convention No. 158. Instead, they were summarily dismissed and liquidated without prior investigation, without being informed of the charges against them and without being able to present a defence. The ILO Governing Body also notes that their association with the trade union motivated the dismissal of employees affiliated with Aksiyon-İş.
- 83- The Committee recalls Article 7 of Convention No. 158 of 1982 on “Termination of the Service Relationship”: “An employee shall not be dismissed on grounds relating to his conduct or performance without allowing him to defend himself against the allegations made against him unless the employer can reasonably be expected to afford him that opportunity.” Article 7 of the Convention requires that “before termination of employment, the employee must have the opportunity to defend himself or herself against the allegations made against him or her and that these allegations must be expressed and brought to his or her attention before termination of employment... The charges must be stated and communicated to them and given a real opportunity to defend themselves”. The Committee also considers that it is essential that every employee be able to defend himself when a person risks a sanction as severe as termination of employment and jeopardises their career and future.
- 84- About allegations that members of Aksiyon-İş were dismissed because of their affiliation with the organisation or its affiliates, the ILO Governing Body recalls that, under Article 5 of the Convention, union membership or participation in union activities does not constitute grounds for termination of the service relationship. The Committee notes that, in addition to dismissal, employees have been blacklisted as terrorists or for having links with terrorists, thereby preventing them from finding alternative employment, and have had their passports revoked, not received severance pay, and been denied severance pay, contrary to Article 12 of Convention No. 158. The Government calls on the Government to ensure that all workers are given a full and fair opportunity to present their defence and to provide information and evidence in their

defence to challenge their dismissal and to ensure that the principle of due process is fully respected in terms of depriving them of their rights under the health, unemployment and pension systems to which they are entitled and to which they have contributed, in contravention of Article 12 of Convention No. 158.

85- Given the length of time that has elapsed since the 2016 dismissals, the ILO Governing Body urges the Government to make every effort to ensure a prompt, thorough and impartial examination of the merits of each case, including through recourse to the courts and, if the dismissals are found to be unjustified, to restore accrued rights, including by awarding compensatory damages and restitution for other losses incurred as a result of the dismissals.

CONCLUSIONS AND RECOMMENDATIONS

86- The United Nations Human Rights Committee should recommend the implementation of the following measures to put an end to the unlawful practices of the Turkish State over the past eight years:

- a. Despite the eight years since the coup attempt, a practical appeal and trial system has yet to be established for 170,000 public employees, and approximately 50,000 workers have been dismissed. Therefore, fair trials that are impartial, independent, and based on universal principles should be ensured.
- b. Although the government justifies the purges on the grounds of state security, these purges have nothing to do with purges by the principles of Lustration of the Council of Europe and the precedents of the European Court of Human Rights. Purges/Lustration practices contrary to universal principles must end, and public employees must be reinstated.
- c. Employees who have been dismissed must be informed in detail and clearly about what concrete crime they are accused of in the criminal code and the grounds for dismissal. They must be allowed to defend themselves.
- d. The practice of dismissing employees for offences other than those specified in the Criminal Code or disciplinary regulations (such as the newspapers and magazines they subscribe to, their social media posts, the schools they send their children to, and the unions and associations they are members of) should be ended.
- e. The government should immediately reinstate all employees, except those with concrete links to the coup attempt, and pay them their back pay.

- f. The names of public officials who have been declared terrorists without any trial, in contravention of the presumption of innocence, whose positions have been terminated, and all identifying information publicly disclosed should be removed from the lists attached to the Government Decrees. The public publication of these lists must cease.