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**Submission by the Italian Federation for Human Rights for the Second
Periodic Report on Türkiye (The 142nd Session of the Human Rights
Committee scheduled for 14 Oct 2024 - 08 Nov 2024)**

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I. Introduction

IV. States of Emergency (Art. 4)

In this part, the following study was extensively used: “Turkey’s Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights”⁸

a) Please provide information about whether all the derogations that were made from provisions under the Covenant during the extended period of emergency, between July 2016 and July 2018, including any which extend beyond the material scope of the derogations outlined in the notifications sent to other States parties, through the Secretary-General of the United Nations, were strictly required by and were proportional to the exigencies of the situation.

b) Please address reports that emergency provisions have been transposed into ordinary law, including through the promulgation of Law No. 7145.

1. General Overview of Emergency Decrees Adopted between 21st July 2016 and 19th July 2018: The Turkish Government enacted thirty-two Emergency Decrees within the said period. Seventeen Emergency Decrees⁹ targeted certain real and legal persons and adopted permanent measures concerning them. With these Emergency Decrees, 125,678 individuals were dismissed from public service, more than 4,000 of these legal persons consist of foundations, associations, foundation-owned universities, trade unions, private health institutions, private education companies and 174 media outlets, which were closed down.¹⁰ The assets of all those legal persons were transferred to the Treasury, or to other relevant public entities, without cost, compensation or any obligation or restriction.¹¹ Besides, the measures targeted tens of thousands of real and legal persons, and the Emergency Decrees comprised some 1200 Articles, which led to over 1,000 permanent amendments in national laws.

2. Indeed, thirty-two Emergency Decrees which were enacted within the two-year period were approved by the TGNA without meaningful debate. These Emergency Decrees were “*debated with the presence of up to 52% of the Members of the Parliament*”¹² and were approved by the majority of those present. While approving Emergency Decrees, the TGNA did not observe Article 128§1 of its Rules of Procedure which requires that the Emergency Decrees shall be debated immediately and within thirty days at the latest and was considered by the PACE to be a serious democratic deficiency.¹³

⁸ Ali Yıldız, Turkey’s Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights (April 29, 2019). Institute for European Studies, 2019. Available at SSRN: <https://dx.doi.org/10.2139/ssrn.3567095>

⁹ Emergency Decrees Nos. 667, 668, 669, 670, 672, 673, 675, 677, 679, 683, 686, 689, 692, 693, 695, 697, 701.

¹⁰ Ismet Akça and others, ‘When State Of Emergency Becomes The Norm: The Impact Of Executive Decrees On Turkish Legislation’, https://tr.boell.org/sites/default/files/ohal_rapor_ing.final_version.pdf

¹¹ See, Article 2 of Emergency Decrees Nos. 667-668; Articles 5 and 10 of Emergency Decree No. 670; Article 3 of Emergency Decrees Nos. 677 and 683.

¹² Human Rights Joint Platform Report.

¹³ Council of Europe Parliamentary Assembly, Resolution 2156 (2017) on the functioning of democratic institutions in Turkey, para. 7.

3. As stated above, Emergency Decrees comprise some 1,200 Articles that led to over 1,000 permanent amendments in national laws, and the amended laws are as follows¹⁴:

Law on the Foundation and Rules of Procedure of the Constitutional Court (6216)
Law on High Council of Judges and Prosecutors (6087)
Law on Legal Procedures (6100)
Law on Supreme Court of Appeal (2797)
Law on Judges and Prosecutors (2802)
Law on Military High Administrative Court (1602)
Military Penal Code (1632)
Law on Military Judges (357)
Law on the Structure and Duties of First Instance Judiciary Courts and District Courts (5235)
Law on Counterterrorism (3713)
Law on the Turkish Penal Code (5237)
Law on the Criminal Procedure Code (5271)
Law on the Execution of Punishment and Security Measures (5275)
Law on the Settlement Through Arbitration of Legal Disputes (6325)
Law on Public Notaries (1512)
Law on Expert Witnesses
Law on Meetings and Demonstrations (2911)
Law on the Supervision of Narcotic Drugs (2313)
Law on the Manufacturing, Purchase, Sale and Possession of Rifles, Handguns and Knives for Hunting and Sports (2521)
Law on Police Powers and Duties (2559)
Law on State Intelligence Services and the National Intelligence Organisation (2937)
Law on Anti-Smuggling (5607)
Law on Regulating Online Publications and Preventing Crimes Committed (5651)
Law on Firearms, Knives and other Instruments (6136)
Law on the Prevention of Certain Actions Concerning Security

¹⁴ Ismet Akça, 113-127. List was generated from the Table 'Category Executive Decree Legislation Concerned'.

Law on Foreigners and International Protection (6458)
Law on Civil Servants (657)
Law on the Turkish Flag (2893)
Law on the Application of Medicine and Medical Sciences (1219)
Law on the Legal Medicine Institution (2659)
Law on the Basic Health Services (3359)
Law on Social Security and General Health Insurance (5510)
Law on Veterinary Services, Plant Health, Food and Animal Feed (5996)
Law on Highway Traffic (2918)
Law on Highway Transportation (4925)
Law on Turkish Civilian Aviation (2920)
Law on Execution and Bankruptcy (2004)
Law on Mukhtars' Salaries and Social Security (2108)
Law on Villages (442)
Law on Provincial Administration (5442)
Law on Municipalities (5393)
Law on the Turkish Republic Retirement Fund (5434)
Law on Allowances (6245)
Law on Population Services (5490)
Law on the Basic Provisions for Elections and Voter Records (298)
Law on Passports (5682)
Law on Turkish Citizenship (5901)
Law on Unemployment Insurance (4447)
Law on Value Added Tax
Law on Capital Markets
Turkish Commercial Code
Law on the Protection of Consumers (6502)
Law on the Foundation of the Turkish Wealth Fund Inc. (6741)
Law on the Turkish Republic Retirement Fund

Law on the Special Consumption Tax (4760)
Law on Public Finance Management and Control (5018)
Law on Public Tenders (4734)
Law on Trade Unions and Collective Bargaining (6356)
Law on Turkish Radio and Television (2954)
Law on the Foundation and Broadcasting Services of Radios and TVs (6112)
Law on the Foundation of the Turkish Development Bank Inc.
Provision on the powers of special administrators and the powers of SDIF
Law on the Turkey Maarif Foundation (6721)
Law on Horse Races (6132)
Law on the Foundation of the National Lottery Organisation
Law on the Duties and Powers of the Chief of General Staff (1324)
Law on Reserve Officers and Reserve Military Clerks (1076)
Law on Military Service (1111)
Law on the Structure and Organisation of the Ministry of National Defense (1325)
Law on the Salaries of Military Officers and Functionaries (1453)
Law on the Turkish Armed Forces' Internal Service (211)
Law on Military Forbidden Zones and Security Zones (2565)
Law on Flight, Parachute, Submarine, Diving and Frogman Services' Compensation
Law on the Coast Guard Command (2692)
Law on Specialist Gendarmes (3466)
Law on Nutrition in the Turkish Armed Forces (5668)
Law on Patient Nutrition in the Turkish Armed Forces (5715)
Law on the General Command of Cartography
Law on Turkish Armed Forces Personnel (926)
Law on the Establishment of the National Landmine Operations Center and the Revision of Certain Laws (6586)
Law on the Structure and Powers of the Gendarmerie (2803)
Law on Military Schools (4566)
Law on Contracted Privates and Sergeants (6191)

Law on Turkish Armed Forces Disciplinary Procedures (6413)

Law Defense Industry Security (5202)

4. As is evident from the list above, Emergency Decrees have introduced permanent changes to the structure of the public institutions, legal procedures and mechanisms, having been amended from the Law on the Foundation of the National Lottery Organisation and the Law on Horse Races to the Law on the Foundation and Rules of Procedure of the Constitutional Court. It would not be wrong to suggest that the TCC, by relinquishing its authority on the constitutional judicial review of Emergency Decrees¹⁵, provided *carte blanche* to the Government to regulate any area it wishes through passing an Emergency Decree, even in relation to the Law on the Foundation and Rules of Procedure of the Constitutional Court. Subjects which can in no way be regarded as measures ‘*necessitated by the state of emergency* (Art.15 of the Constitution)’ or ‘*strictly required by the exigencies of the situation* (Art.4 ICCPR & Art.15 ECHR)’, such as pension, retirement, taxation, commerce, consumer rights, labour rights, unions and trade chambers, education, health and nutrition services, transport and traffic safety, citizenship, election and voting regulations, were permanently regulated by Emergency Decrees, although they are supposed to adopt temporary measures to restore the rule of law and to eliminate the conditions that are threatening the life of the nation.¹⁶

5. In conclusion, using Emergency Decrees to introduce permanent amendments that are neither necessitated by the State of Emergency (the Constitution, Art. 15) nor strictly required by the exigencies of the situation (Art.4 ICCPR, Art.15 ECHR) is not compatible with the principles of necessity, proportionality, and suitability (being suitable to the aim pursued). Likewise, adopting permanent measures by using Emergency Decrees infringes the principle of temporariness (provisionality: not transcending the period of the State of Emergency). Further to that, using the emergency powers to make permanent changes to the structures of the public institutions and legal procedures ‘*where the power (to do so) is not provided by the Constitution in explicit and precise terms*’ infringe upon an irrevocable provision of the Constitution (Article 2) which enshrines the principle of a limited government and constitute the ‘*implicit limitation*’¹⁷ on emergency power.¹⁸

c) Please provide information about whether all emergency measures were strictly limited in duration, geographical coverage and material scope.

6. The Permanent Measures Targeting Real Persons: The Turkish Government, with seventeen Emergency Decrees¹⁹, in the form of *ad hominem* legislation, dismissed 125,678²⁰ individuals from public service. Individuals whose names were included on the lists that were annexed to Emergency Decrees were indefinitely and permanently dismissed from public service on the date the Emergency Decree was published in the *Official Gazette* without the need for any other act and/or further notification. Additionally, 4,662 judges and prosecutors²¹

¹⁵ Decision No: 2016/159, Decision No: 2016/160, Decision No: 2016/164, Decision No: 2016/165. Decision can be reached through website of the TCC: <http://www.anayasa.gov.tr/icsayfalar/kararlar/kbb.html>

¹⁶ Ali Yıldız, Turkey’s Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights (April 29, 2019). Institute for European Studies, 2019. Available at SSRN: <https://dx.doi.org/10.2139/ssrn.3567095>

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Emergency Decrees Nos. 667, 668, 669, 670, 672, 673, 675, 677, 679, 683, 686, 689, 692, 693, 695, 697, 701.

²⁰ The Inquiry Commission on the State of Emergency Measures (n 144).

²¹ Human Rights Joint Platform (n 139) 37.

were dismissed by the respective judicial bodies in pursuance of the procedure set out in the Emergency Decree Laws nos. 667-668.²²

7. Each Emergency Decree expresses one of the following as a reason for dismissal:

- (i) having ‘membership, affiliation or connection to’, or ‘membership, relation or connection with’ the ‘Fetullahist Terrorist Organisation (FETO/PDY)’,²³
- (ii) having ‘membership of, affiliation, link or connection with terrorist organisations or structures, formations or groups which have been determined by the NSC to perform activities against the national security of the State’.²⁴
- (iii) having been considered “to be a member of, or have relation, connection or contact with terrorist organisations or structures/entities, organisations or groups, established by the NSC as engaging in activities against the national security of the State.”²⁵

8. The ‘dismissals lists’ were produced on the basis of a combination of various criteria, namely: (i) making monetary contributions to the Bank Asya and other companies of the “parallel state”, (ii) being a manager or member of a trade union or of an association linked to the Gülen Movement, (iii) using the messenger application ByLock, (iv) police or secret service reports, (v) analysis of social media contacts, (vi) donations, (vii) web-sites visited, (viii) being resident in student dormitories belonging to these “parallel state” structures, (ix) sending children to those schools associated with the Gülen Movement, (x) subscription to Gülenist periodicals, (xi) information received from colleagues from work or neighbours. Additionally, membership of a teachers’ union named Egitim-SEN also constituted a reason for dismissals.²⁶

²⁷

Direct Consequences of Dismissal Measures

9. Under the Emergency Decrees, having been dismissed entails further measures. Precisely, those who have been dismissed from public service, without any need of convictions:

- (i) shall be deprived of their ranks and their positions as public officials,
- (ii) may not use their titles, if any, such as Ambassador, Governor. and professional names and titles, such as Under Secretary, District Governor. etc.,
- (iii) shall not be re-admitted to the organisation in which they previously held office,
- (iv) shall be stripped of rank (in the case of public servants who were already retired), and of combat medals,
- (v) may not be re-employed and assigned, either directly or indirectly, in any public service,
- (vi) may not become the founders, partners and employees of private security companies,
- (vii) shall be evicted from public residences or foundation houses.

²² Ali Yıldız, Turkey’s Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

²³ Article 2 of Emergency Decree Nos. 669, 670, Article 4 of Emergency Decree No. 673

²⁴ Article 1 of Emergency Decree Nos. 679, 686, 689, 692, 695, 697, 701.

²⁵ Article 4 of Emergency Decree No. 667

²⁶ Commissioner for Human Rights of the Council of Europe, Memorandum dated 7 October 2016, CommDH(2016)35, para. 31.

²⁷ Ali Yıldız, Turkey’s Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

10. Moreover, the dismissed public servants' membership of any board of trustees, boards, commissions, executive boards, supervisory boards, liquidation boards, and other duties, shall be automatically terminated, and their passports, gun licenses, the documents concerning their seamanship and their pilot licenses shall be cancelled.

Indirect Consequences of Dismissal Measures

11. According to a report entitled “No Country for Purge Victims”, besides the direct consequences, mentioned above, those dismissed by use of Emergency Decrees have sustained more than thirty types of deprivation and discrimination.²⁸ These deprivations and forms of discrimination continue to date and are as follows:

- (i) Purged civil servants are blacklisted in the databases of the Employment and the Social Security Agencies with the code 36/OHAL/KHK.
- (ii) Purged civil servants cannot become foster families.
- (iii) Purged civil servants cannot be mayors, aldermen or mukhtars (a locally elected administrator for villages).
- (iv) Purged civil servants cannot be lawyers and accountants.
- (v) Purged civil servants cannot work as architects, engineers, laboratory workers, or as technicians in building inspection companies, or as school bus drivers.
- (vi) Purged civil servants cannot attend vocational courses.
- (vii) Purged civil servants cannot work in private educational institutions.
- (viii) Purged civil servants cannot work as sailors and on-site (workplace) doctors, or as occupational safety specialists.
- (ix) Purged civil servants are denied the licenses needed to run businesses.
- (x) Purged civil servants who work as veterinarians cannot have an artificial insemination certificate and cannot perform their professional duties in agricultural support programmes.
- (xi) The database of the General Directorate of the Land Registry (TAKBIS) includes a list of suspicious people which consists of those dismissed under Emergency Decrees. Those included on this list cannot participate in real estate transactions, either as a party (vendee or vendor) or as a witness.
- (xii) Upon an instruction from the Ministry of Justice, the Union of Turkish Public Notaries produced a list of suspicious people, and this consists of those dismissed under Emergency Decrees. People included on this list cannot carry out any procedures as notaries, other than giving power of attorney. This means that they cannot carry out hundreds of legal procedures, including selling their cars or signing construction contracts.
- (xiii) The database for the Social Relief Program (SOYBIS) includes a list of those who have been dismissed under Emergency Decrees. Disabled people whose first caregivers (e.g., parents, sons, daughters, sons-in-law and daughters-in-law) who are dismissed under Emergency Decrees, cannot benefit from social care funds.
- (xiv) Those dismissed under Emergency Decrees, and their spouses and children, cannot benefit from the General Health Insurance for people with a low income and from the social rights that are offered to disabled people.
- (xv) Purged public servants cannot have passports and travel documents.
- (xvi) Purged public servants cannot open bank accounts and are discriminated against in financial transactions and procedures, and insurance services, and in relation to business development and incentive credits.

²⁸ No Country for Purge Victims, <https://arrestedlawyers.org/wp-content/uploads/2022/01/36-ohal-khk-no-country-for-purge-victims.pdf>

- (xvii) Purged public servants are discriminated against in relation to mandatory military services and taxation.
- (xviii) Purged academics are discriminated against in academic publishing.
- (xix) Purged public servants cannot enter the exams for associate professorships.
- (xx) Purged public servants cannot receive science scholarships.
- (xxi) Purged public servants and their families are discriminated against in relation to university admissions and tuition fees.
- (xxii) Purged physicians (M.D.) are not admitted to programmes leading to specialisations in medicine.
- (xxiii) Purged public servants are discriminated against in relation to COVID-19 economic reliefs and in terms of natural disaster aid.

Legal Analysis of Dismissal Measures

12. As stated by the UN Human Rights Committee, the limitation that what is strictly required by the exigencies of the situation relates to the duration, the geographical coverage and the material scope of the State of Emergency and any measures of derogation resorted to because of the emergency shall not transgress the period of state of emergency.²⁹ In the Venice Commission's view, the most important characteristic of any emergency regime is its temporary character. The ECtHR considers that a permanent review of the need for emergency measures is required by Article 15§3 ECHR and the notion of proportionality³⁰. The ultimate goal of any emergency should therefore be for the State to return to a situation of normalcy.³¹

13. According to the Paris Minimum Standards of Human Rights Norms in a State of Emergency, which was adopted by the International Law Association, upon the termination of an emergency there shall be automatic restoration of all rights and freedoms which were suspended or restricted during the emergency and no emergency measures shall be maintained thereafter.³² According to the UN Human Rights Committee, measures derogating from the provisions of the ICCPR must be of an exceptional and temporary nature. A derogation may only last for as long as it is "strictly required by the exigencies of the situation".³⁴

14. It should also be noted that having duly declared a State of Emergency, does not *ipso facto* legitimise any measures which may have been adopted during it. In other words, having been legitimately derogated from the ICCPR and the ECHR does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation.³⁵ Accordingly, State parties shall provide careful justification not only for their decision to proclaim a State of Emergency but also for any specific measures based on such a proclamation.

²⁹ HRC, General comment no. 29 para. 4.

³⁰ ECtHR, Brannigan and McBride, nos. 14553-14554/89, para. 54.

³¹ Council of Europe, European Commission for Democracy through Law (Venice Commission), Opinion on the Protection of Human Rights in Emergency Situations.

Council of Europe, European Commission for Democracy through Law (Venice Commission), Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016, Venice, 9-10 December 2016. CDL-AD(2016)037 Para. 55-56.

³² Ali Yıldız, Turkey's Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

³³ International Law Association, Paris Minimum Standards of Human Rights Norms in a State of Emergency (Paris, 1984), para 6(b) of Section A.

³⁴ Ali Yıldız, Turkey's Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

³⁵ HRC, General comment no. 29m para. 4.

15. As for the Türkiye's Emergency Decrees, only five of the thirty-two Emergency Decrees include a provision on "aim and scope", and the included ones proclaim "aim and scope" as being:

(i) to establish measures that must necessarily be taken within the scope of an attempted coup and the fight against terrorism under the State of Emergency, (Emergency Decree Law no. 667, Article 1)

(ii) to take the necessary measures within the scope of an attempted coup and fight against terrorism, within the scope of the State of Emergency (Article 1 of Emergency Decree Law nos. 669-670)

(iii) to determine the procedures and principles relating to measures that shall necessarily be taken within the scope of the attempted coup and the fight against terrorism under the State of Emergency, (Emergency Decree Law no. 668, Article 1)

(iv) to take measures concerning public servants within the scope of the State of Emergency, (Emergency Decree Law no. 672, Article 1).³⁶

16. The remaining Emergency Decrees either do not include provision on the aim and scope, or what is provided is irrelevant to the State of Emergency. It would not be wrong to suggest that Türkiye has not fully complied with the principle that requires the justification of emergency measures by proclaiming the reasons that necessitated their introduction.^{37 38}

17. The Turkish Government argues that the dismissals are measures that are necessitated by the exigencies of the State of Emergency. However, the severity and duration of dismissals, and the associated consequences, may mean that dismissal qualifies as a penalty within the meaning of Art 7 § 1 of the ECHR.³⁹ The concept of a "penalty", as set out in Art 7 § 1 of the ECHR, has an autonomous meaning (*G.I.E.M. S.R.L. & Others v. Italy* [GC], § 210). The ECtHR is free to go beyond appearances and denomination by national laws and can autonomously assess whether a specific measure is substantively a "penalty" within the meaning of Art 7 § 1. The starting point for any assessment of the existence of a "penalty" is to ascertain whether the measure in question was ordered following a conviction for a "criminal offence". However, that is only one of the relevant criteria; the lack of such a conviction by the criminal courts is insufficient to rule out the existence of a "penalty" within the meaning of Art 7 § 1. (*G.I.E.M. S.R.L. & Others v. Italy* [GC], § 215-219). Other factors may be deemed relevant in this regard, including: the nature and aim of the measure in question (particularly any punitive aim), its classification under domestic law, the procedures linked to its adoption and execution, and its severity (*G.I.E.M. S.R.L. & Others v. Italy* § 211; *Welch v. the United Kingdom*, § 28; *Del Río Prada v. Spain*, § 82).⁴⁰

18. Although the Turkish Government tends to justify the purging of public servants by the use of the principles of lustration that were endorsed by the Parliamentary Assembly of the Council of Europe in Resolution 1096 (1996), the Government's *ad hominem* purge does not comply with the Guidelines on Lustration that are annexed to Resolution 1096. PACE's 1996 Guidelines on Lustration stipulates that disqualification for office based on lustration should not be for longer than five years and lustration shall not be applied to elective offices. The ECtHR

³⁶ Ali Yıldız, Turkey's Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

³⁷ Council of Europe, European Commission for Democracy through Law (Venice Commission), 'Opinion on The Protection of Human Rights in Emergency Situations' CDL-AD(2006)015 (4 April 2006), para. 11.

³⁸ Ali Yıldız, Turkey's Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

³⁹ Turkey's Ad Hominem Emergency Decrees – Measure or Penalty? (Post 1 of 2) IACL-IADC Blog, <https://blog-iacl-aidc.org/2019-posts/2019/12/17/turkeys-ad-hominem-emergency-decrees-measure-or-penalty-post-1-of-2>
Turkey's Ad Hominem Emergency Decrees – Measure or Penalty? (Post 2 of 2) <https://blog-iacl-aidc.org/2019-posts/2019/12/19/turkeys-ad-hominem-emergency-decrees-measure-or-penalty-post-2-of-2>

⁴⁰ Ibid.

observed, in the case of *Matyjek v Poland*, that the prohibition on practicing certain professions for a long period of time may have a very serious impact on a person, and therefore should be regarded as having an at least partly punitive and deterrent character.⁴¹ In *Sidabras and Dziautas v. Lithuania*, the Court observed that prohibition for a period of ten years (from the entry into force of the law) from working in the public sector, and in certain private sector jobs, constitutes a disproportionate measure.⁴²

19. The Guidelines stipulate the following: a) Disqualification from office based on lustration should be for no longer than five years; b) Lustration shall not apply to elective offices; c) Lustration shall not apply to positions in private or semi-private organisations; d) Persons who ordered, perpetrated, or significantly aided in perpetrating serious human rights violations may be barred from office; e) No person shall be subject to lustration only for association with, or activities for, any organisation that was legal at the time of such association or activities; and f) In no case may a person be lustrated without his being furnished with full due process protection. In summary, Türkiye's *ad hominem* dismissal decrees may be characterised as a penalty, rather than as a temporary measure in light of: (i) the scope and severity of the consequences of dismissals and of their perpetual status, (ii) that dismissals entail deprivations heavier than those for a convicted felon; (iii) that dismissals do not comply with PACE Resolution 1096 and the Guideline on Lustration; and (iv) ECtHR's case law on the definition of punishment within the meaning of Art 7 § 1 of the ECHR.⁴³

d) Please provide information about what steps were taken to protect the non-derogable nature of certain rights under the Covenant during the State of Emergency

The Obligation to Provide an Effective Remedy and the Inquiry Commission on the State of Emergency Measures

20. Under Article 125 of the Constitution, 'recourse to judicial review shall be available against all actions and acts of administration.' Likewise, Article 13 ECHR and Article 2§3 ICCPR require that any person whose rights or freedoms are violated shall have an effective remedy.⁴⁴ In the United Nations Human Right Committee's consideration the right to an effective remedy is an absolute right.⁴⁵

21. On 23 January 2017, the Turkish Government decided to establish the Inquiry Commission on the State of Emergency Measures (hereafter: The Commission) tasked with

⁴¹ *Matyjek v Poland* no 38184/03 (ECtHR, 30 May 2006), para. 55.

⁴² *Sidabras and Dziautas v Lithuania* no 55480-59330/00 (ECtHR, 27 June 2004)

⁴³ Ali Yıldız, *Turkey's Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights?*,

Turkey's Ad Hominem Emergency Decrees – Measure or Penalty? (Post 1 of 2) (Post 2 of 2) IACL-IADC Blog,

⁴⁴ Article 2§3 ICCPR: Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 13 ECtHR: Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

⁴⁵ HRC, General Comment no.29, para. 14. 'Even if a state party, during a State of Emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State party must comply with the fundamental obligation, under article 2, para. 3, of the Covenant to provide a remedy that is effective.'

carrying out an assessment of, and rendering a decision on, the Acts established directly through the Decree-Laws under the State of Emergency.⁴⁶

22. According to the Venice Commission's consideration, any official body which may be tasked with the review of Emergency Measures should be independent, impartial and be given sufficient powers to restore the status quo ante, and/or, where appropriate, to provide adequate compensation, and be subject to subsequent judicial review. In addition, the body would have to respect the basic principles of due process, examine specific evidence and issue reasoned decisions. According to the UN Human Rights Committee, the ICCPR does not prevent State parties from vetting or removing civil servants who may pose a significant danger to human rights or democracy. However, the procedure for vetting or removals shall observe the non-discrimination principle, due process guarantees and other rights that are protected by the Covenant and shall be carried out under reasonable and objective criteria.⁴⁷

23. The Commission incurred many deficiencies, both in terms of its independence and impartiality. The Commission consists of seven members. Of those, three are assigned by the Prime Minister, two are assigned by the Minister of Justice and the Minister of the Interior, two are assigned by the Council of Judges and Prosecutors⁴⁸. Consequently, the Government which enacted the emergency measures has a powerful influence within the Commission which is tasked with the review of emergency measures. The procedures and principles concerning the applications and the functioning of the Commission lacked the due process guarantees. Article 13 of the Emergency Decree stipulates that 'the procedures and principles concerning the applications and the functioning of the Commission shall be set forth and announced by the Prime Ministry upon the proposal of the Commission'. This article shows that the Commission shall observe the procedures and principles set forth by an administrative decision of the Government, not by the Law.

24. The Commission, which started considering applications in July 2017, ceased its activities on 31 December 2022. A total of 131,922 measures, 125,678 of which were dismissals from public office, were taken under the Decree Laws issued under the State of Emergency. As of 31/12/2022, the number of applications made to the Commission is 127,292. As of 31/12/2022, the Commission, which started the decision-making process as of 22 December 2017, has made a total of 127,292 decisions on all applications (17,960 acceptances and 109,332 rejections) within a period of 5 (five) years.⁴⁹

The Right to Life and the Prohibition of Torture

25. The right to life and the prohibition of torture are non-derogable under Article 15§2 of the Turkish Constitution, Article 4§2 ICCPR and Article 15§2 ECHR. However, various

⁴⁶ See, Article 2 of The Emergency Decree no.685:

The Commission shall carry out an assessment of and render a decision on the following acts established directly through the decree-laws under the State of Emergency: a) Dismissal or discharge from the public service, profession or organisation being held office.

b) Dismissal from studentship

c) Closure of associations, foundations, trade unions, federations, confederations, private medical institutions, private schools, foundation higher education institutions, private radio and television institutions, newspapers and periodicals, news agencies, publishing houses and distribution channels.

ç) Annulment of the ranks of retired personnel.

⁴⁷ M.K. and Others v Slovakia Views, CCPR/C/116/D/2062/2011 paras. 9.2–9.4.

⁴⁸ See, Article 1-2 of the Emergency Decree no. 685

⁴⁹ https://milletkutuphanesi.gov.tr/GalleryFiles/1812/OHAL_Komisyonu_Faaliyet_Raporu_2017-2022-693c8377-0a9b-49af-bed9-b58e39b2e379.pdf

impunity clauses introduced by the Turkish Government within the scope of emergency measures resulted de-facto in derogation from the right to life and the prohibition of torture.

26. The very first Emergency Decree (no. 667, Art. 9§1, dated 23 July 2016) stipulated that “legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and [who] fulfill their duties within the scope of this Decree Law”. Emergency Decree no. 668 (Art. 37) has further expanded this principle of impunity, specifying that there will be no criminal legal, administrative or financial responsibility for those making decisions, implementing actions or measures, or assuming duties as per judiciary or administrative measures for suppressing coup attempts or terror incidents, as well as individuals taking decisions or fulfilling duties as per State of Emergency Executive Decrees. By the Emergency Decree no. 696 (Art. 121), the impunity provided to public servants under the Emergency Decrees nos. 667-668 was also extended to civilians. More precisely, it was stipulated that the civilians acting to suppress the coup attempt of 15/7/2016 and ensuing events will have no legal, administrative, financial or criminal responsibility.

27. Under these provisions, public prosecutors have given non-prosecution decisions for the criminal complaints filed for the alleged murder and torture incidents. Trabzon Prosecutorial Office thus gave a non-prosecution decision under Article 9 of Emergency Decree no. 667 on the complaint filed by an individual who alleged having been tortured during police custody.⁵⁰ Likewise, Istanbul Prosecutorial Office gave a non-prosecution decision on the complaint filed by the family members of the military cadet murdered by civilians during the coup attempt after he himself returned to the police.⁵¹ Further to that, since the failed coup attempt, widespread torture and ill-treatment incidents have been reported from Türkiye by the United Nations High Commissioner for Human Rights⁵², the UN Special Rapporteur on Torture⁵³, Human Rights Watch⁵⁴, as well as many other credible institutions.

28. The right to life and the prohibition of torture imposes a positive obligation on the State parties to the ECHR and ICCPR, as well as a negative one. The positive obligation concerning the right to life requires the State parties to take appropriate steps to safeguard the lives of those within its jurisdiction to apply in the context of any activity, whether public or not, in which the right to life may be at stake.⁵⁵ Likewise, the State parties are obligated to prevent torture and ill treatment. These obligations also require them to carry out an effective investigation when the right to life or the prohibition of torture is breached.⁵⁶ The ECtHR has affirmed, in the case of *Marguš v. Croatia*, that *‘the obligation of States to prosecute acts such as torture and intentional killings is thus well established in the Court’s case-law. The Court’s case-law affirms that granting amnesty in respect of the killing and ill-treatment of civilians would run contrary to the State’s obligations under Articles 2 and 3 of the Convention since it would hamper the investigation of such acts and necessarily lead to impunity for those responsible. Such a result would diminish the purpose of the protection guaranteed under Articles 2 and 3 of the Convention and render illusory the guarantees in respect of an individual’s right to life and the right not to be ill-treated. The object and purpose of the Convention as an instrument*

⁵⁰ The Arrested Lawyers’ Initiative, *Extradition to Turkey: One-way Ticket to Torture and Unfair Trial* (February 2018) 26.

⁵¹ The non-prosecution decision, dated 07.11.2018, was upheld by the Istanbul Peace Criminal Judgeship.

⁵² Office of the United Nations High Commissioner for Human Rights, ‘Report on the impact of the State of Emergency on human rights in Turkey, including an update on the South-East’ (March 2018) paras. 77-84.

⁵³ Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey (18 December 2017) paras. 26-28

⁵⁴ Human Rights Watch, *A Blank Check Turkey’s Post-Coup Suspension of Safeguards Against Torture*, (2016) 28.

⁵⁵ Council of Europe, *Guide on Article 2 of the European Convention on Human Rights: Right to life* (updated on 31 December 2018) para. 9.

⁵⁶ *Armani da Silva v The United Kingdom* no. 5878/08 (ECtHR, 30 March 2016) para. 229.

*for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective.*⁵⁷⁵⁸

29. In conclusion, the impunity clauses introduced within the Emergency Measures, and their interpretation and implementation by law enforcement officers, judges and prosecutors, have resulted in a *de facto* derogation to the right to life and to the prohibition of torture, and this is baldly illegal under the Constitution, the ICCPR and the ECHR.

The Prohibition of Retroactive Punishment and the Principle of No Punishment Without Law

30. The prohibition of retroactive punishment and the principle of no punishment without law have been envisaged in a non-derogable way by the Constitution (Arts. 38 and 15§2), the ECHR (Arts.7 and 15§2) and the ICCPR (Arts. 15 and 4§2).

31. The Emergency Decrees justified the measures sanctioned upon both real and legal persons with: (i) having ‘membership, affiliation, relation or connection to’ the ‘Fetullahist Terrorist Organisation (FETO/PDY)’⁵⁹ or (ii) having ‘membership of, affiliation, link or connection with terrorist organisations or structures, formations or groups which have been established by the NSC to perform activities against the national security of the State’.⁶⁰

32. The Turkish Laws criminalise only the membership of a terrorist organisation (Article 314 of the Turkish Criminal Law, no. 5327). That is to say, neither ‘affiliation, relation, link or connection’ to a terrorist organisation, nor ‘structures, formations or groups which perform activities against the national security of the State’ are crimes under Turkish Law. Moreover, the Law on the National Security Council (NSC) (Law no. 2945, Art.3) does not empower the NSC to designate a group as a terrorist organisation or as a group performing activities against the national security of the State. The authority to designate an organisation, a structure, a body, etc., as a terrorist organisation is exclusively vested in the judiciary by Article 138 of the Constitution. Even if it is assumed that the NSC has the authority to make such a designation, it did not explicitly designate the Gülen Movement as a terrorist organisation or as a structure, formation or group which performs activities against the national security of the State until the coup attempt of July 15, 2016.⁶¹ The final judgment that characterises the Gülen Movement as a terrorist organisation, under the name of the Fetullahist Terrorist Organisation (FETO/PDY), was rendered on 26 September 2017 by the General Chamber of the Court of Cassation (Yargıtay).^{62 63}

33. Although one can argue that, under the Engel criteria⁶⁴, Article 7 ECHR does not comprise these dismissals under the Emergency Decrees, having regard to the *Matyjek v. Poland* judgment, which established that the prohibition on the practising of certain professions

⁵⁷ *Marguš v. Croatia* no. 4455/10 (ECtHR [GC], 27 May 2014) para. 127.

⁵⁸ Ali Yıldız, Turkey’s Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights?,

Turkey’s Ad Hominem Emergency Decrees – Measure or Penalty? (Post 1 of 2) (Post 2 of 2) IACL-IADC Blog,

⁵⁹ Art. 2 of Emergency Decree Nos. 669, 670; Art. 4 of Emergency Decree No. 673

⁶⁰ Art. 1 of Emergency Decree Nos. 679, 686, 689, 692, 695, 697, 701; Art. 4 of Emergency Decree No. 667

⁶¹ On 26th May 2016, the NSC characterised the Gülen Movement / Network as a terrorist organisation without explicitly mentioning its name. See, Press Statement on the NSC meeting dated 26th May 2016 <<https://www.mgk.gov.tr/index.php/26-mayis-2016-tarihli-toplanti>>, accessed 14th April 2019.

⁶² General Chamber of the Court of Cassation (Yargıtay), Decision No: 2017/370.

⁶³ Ali Yıldız, Turkey’s Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights?,

Turkey’s Ad Hominem Emergency Decrees – Measure or Penalty? (Post 1 of 2) (Post 2 of 2) IACL-IADC Blog,

⁶⁴ *Engel and Others v. the Netherlands*, no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72 (ECtHR, 8 June 1976) paras. 81-

82. (i) the legal classification of the offence in question in national law, (ii) the very nature of the offence (iii) the nature and degree of severity of the penalty)

for a long period of time should be regarded as having an at least partially punitive character,⁶⁵ Türkiye's Dismissal Decrees can be regarded as being within the limits of Article 7 ECHR. Furthermore, the High Election Board's decision⁶⁶ which prevents dismissed public servants from assuming elective offices overlaps with the consequences of being convicted under the Turkish Penal Code (5237), and therefore might be regarded as a punishment entailed upon a conviction.⁶⁷

34. In conclusion, having regard to the facts that:

- (i) Turkish laws do not criminalise the 'affiliation, connection, relation and link' but they do criminalise only the membership of a terrorist organisation,
- (ii) the life-time ban for working in the public service that is sanctioned by the Emergency Decrees, and which can also compromise private sector employment (as is explained in Chapter 3.5.3.1.), can be regarded as being within the limits of Article 7 ECHR,
- (iii) for many years public institutions and politicians, including incumbent and former presidents and prime ministers, collaborated or had been in contact with those entities that are affiliated with the Gülen Movement and with Mr. Gülen himself,
- (iv) until the 15 July 2016 coup attempt, the Turkish Government did not explicitly mention the Gülen Movement as a terrorist organisation or as a group performing activities against the national security of the State through official means,
- (v) the final judgment that designates the Gülen Movement as a terrorist organisation, by the name of the Fetullahist Terrorist Organisation (FETO/PDY), was rendered on 26 September 2017,
- (vi) the criteria used to determine the 'membership [of], affiliation, connection, relation and link' to the Gülen Movement, or a group established by the NSC, as performing activities against the national security of the State, consists of either legitimate relations with legal persons that are incorporated or founded under the Turkish law or of intelligence reports,
- (vii) Disciplinary liability, or any other similar measure, should be foreseeable; a public servant should understand that he/she is doing something incompatible with his/her status, in order that he/she can be disciplined for it,⁶⁸

35. The Emergency Decrees enacted during the State of Emergency constitute a violation of the prohibition of retroactive of punishment and the principle of no punishment without law, which are non-derogable under the ECHR and ICCPR.⁶⁹

⁶⁵ *Matyjek v. Poland* no 38184/03 (ECtHR, 30 May 2006), para. 55.

⁶⁶ High Election Board, Decision No: 2019/2363, 10 April 2019.

⁶⁷ Ali Yıldız, Turkey's Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights?,

Turkey's Ad Hominem Emergency Decrees – Measure or Penalty? (Post 1 of 2) (Post 2 of 2) IACL-IADC Blog,

⁶⁸ Ali Yıldız, Turkey's Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights?

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⁶⁹ *Ibid.*