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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

TURKEY

MEMORANDUM

PREPARED BY
THE MINISTRY OF JUSTICE OF TURKEY

FOR THE VISIT OF THE DELEGATION
OF THE VENICE COMMISSION
TO ANKARA
ON 3 AND 4 NOVEMBER 2016

IN CONNECTION WITH
THE EMERGENCY DECREE LAWS



**INFORMATION NOTE ON THE ISSUES WHICH MAY
COME TO THE AGENDA DURING THE VISIT OF THE
VENICE COMMISSION AS TO THE DECREE LAWS
ISSUED WITHIN THE SCOPE OF THE STATE OF
EMERGENCY**

(3 - 4 NOVEMBER 2016)

DIRECTORATE GENERAL FOR EU AFFAIRS

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I. WHAT HAPPENED IN THE 15 JULY COUP ATTEMPT

1. At the night of 15 July the Republic of Turkey faced an armed coup attempt.

At the night of 15 July, upon the instruction of the founder and leader of the Fetullahist Terrorist Organization / the Parallel State Structure ("FETÖ/PDY"), Fetullah Gülen, and in line with the plan approved by him, "terrorists in uniforms" within the Turkish Armed Forces ("the TAF") attempted an armed coup against the democracy for the purpose of overthrowing the elected president, the Parliament and the Government by undermining the Constitutional order. The Presidential Compound, the hotel where Mr. President was staying at, the Turkish Grand National Assembly ("TGNA"), the Police Special Operations Centre and the security units, the premises of the National Intelligence Organization ("the MİT") and various military units were

attacked with bombs and arms. The Bosphorus bridges connecting Asia and Europe were closed to traffic due to the tanks used by the terrorists.

Mr. President survived the assassination attempt by leaving the hotel only 15 minutes before the raid on that hotel. The coup plotters opened fire on the convoy of Mr. Prime Minister.

The Turkish Parliament building, reflecting the public's will and the heart of the democracy, was bombed for the first time in the history of the Republic of Turkey. The bomb attack was made in the course of the extraordinary meeting of the Plenary Session against the coup attempt. During the attack, Parliament officials, some civilians and many police officers were injured, and extensive damage was caused to the Parliament building.

At the night of 15 July, tanks were driven towards people, and some of them died and were injured as a result of being trapped under the tanks, fighter aircrafts made low altitude flights over the cities by breaking through the sound barrier and in a manner which would lead to fear and panic in public, the TGNA and people were shot randomly by the coup plotters, sharpshooters directly targeted people from strategic points, the crowd was bombed and shot from aircrafts and the civilians, who defended the democratic regime at the cost of their lives, were murdered.

The terrorists seized the state-run television ("TRT") and forced a newsreader to read "a pirated declaration of coup". Raids were made to the private media organizations, and the media, which is the news source for the public, was tried to be made to act with a single-voice. The coup plotters also attacked the satellite control station and wanted to cut off the internet and all television broadcastings, except for the state-run TV channel.

In the course of the coup attempt, 241 persons among whom there were also Mr. President's very close workmates were killed and 2194 people were injured.

2. The attempt against the will of the public was suppressed by the public itself.

The Turkish public, upon the call of Mr. President, defended their democratic values and their own will against tanks, helicopters and aircrafts with only their flags and without any weapon. The coup attempt was suppressed by our President, Parliament, Government, political parties, written and visual media, non-governmental organizations, and above all by the esteemed 79 millions of Turkish Nation, who put all of the political and ideological differences aside and protected to death their elected President, Prime Ministry, Government, willpower, Constitution, the rule of law, freedom, dignity, independence and future.

At that night the Turkish public came together under the democratic values without making any discrimination as regards political parties or worldviews and resisted the coup attempt altogether. All segments of the public acted with the consciousness that it was not merely a coup attempt planned against the ruling party, but that the Turkish democracy was targeted. In all public squares in Turkey, the public was on democracy watch for approximately one month. With this stand, the Turkish nation has declared its loyalty to the democracy.

3. All the political parties acted in unison against the coup attempt.

The unity and solidarity among the nation at the night of 15 July continued among the political parties as well. The statement prepared at the Parliament against the coup was signed by all the political parties. The participation of the leaders of the ruling party and the opposition parties

in the Yenikapı Democracy and Martyrs rally of 7 August which was organized under the auspices of the Presidency of the Republic of Turkey is an indication of this unity and solidarity. Approximately 5 million people from every segment of the society and with different world perspectives convened and protected democracy and the national will.

4. The armed coup attempt was carried out by the FETÖ/PDY.

The coup attempt of 15 July was performed in accordance with Fetullah Gülen's orders and instructions, by the members of the FETÖ/PDY, who had infiltrated into the TAF, public officials and civilians who are the organization head¹, members of the FETÖ/PDY infiltrated into the security forces and the gendarmerie and police officers who had previously been dismissed from profession. The evidence obtained so far also explicitly reveals this truth. The fact that the coup attempt had been made in line with Fetullah Gülen's orders and instructions is also included in the statements of the organization members who had been questioned within the scope of the investigations conducted. Those who were heard as a witness, notably the Chief of General Staff, gave statements in that vein.

Within the scope of the investigations conducted into the coup attempt, many coup plotters, who had participated in the coup attempt, were taken into custody, and a great deal of evidence was obtained at the end of searches performed. The truth has become evident in all aspects as a result of the deciphering, analysis, classification and assessment of the evidence (camera footages, computer data, information, documents and data obtained as a result of the body searches performed on the suspects, searches carried out in the suspects' homes, vehicles and in other places, records of the city surveillance cameras, mobile phone conversations, SMS and mail contents, statements involving confession, witnesses' statements and etc.).

The FETÖ/PDY is an armed terrorist organisation established by Fetullah Gülen which aims to suppress, debilitate and direct all the Constitutional institutions and to overthrow the Government of the Republic of Turkey and establish an oppressive and totalitarian system through resorting to force, violence, threat, blackmailing and other unlawful means.

With a view to realizing such aims, a parallel structure was established by the FETÖ/PDY within all public institutions and organisations of the State, notably the judiciary, security directorates, civil administration and armed forces. To attain its goals, the FETÖ/PDY used the methods of unlawfully obtaining the exam questions of important exams such as the Public Personnel Selection Exam and the University Student Placement Exam, thus making its members gain success in these exams, placing them in public institutions and effective schools, causing the persons who are not its members to be dismissed from profession through ensuring that judicial and administrative investigations be initiated by false documents and evidence that are fabricated and placing its members in these cadres.

They formed structures in the public institutions as cells the number of members of which is not over five and which are affiliated to an organisation brother². No cell is aware of the other. The reason why this organisation model has been developed is to ensure that even if a cell is revealed, the other cells continuing their activities must not be deciphered. A strict military/hierarchical discipline prevails in the organisation. The FETÖ/PDY established the intra-

¹ Within the organizational structure of FETÖ/PDY, the heads are called as "imam". It has been revealed that the imam of the FETÖ/PDY members taking office in the Turkish Air Force is Adil Öksüz, who is an academician and still a fugitive.

² The brother ("Abi") is a medium level head of the FETÖ/PDY organization who is appointed by the top class of the organization. The members are obliged to abide by the instructions of the brother.

organizational communication among its members through confidential and encrypted means. It has been established at the current stage of the investigations that encrypted applications such as "Eagle and Bylock" was used for the intra-organizational communication.

The fact that the FETÖ/PDY is an armed terrorist organization had been established with the decision rendered by the Erzincan Assize Court prior to 15 July. Furthermore, numerous cases brought against the organization in question and its members are still pending. By the decision of the National Security Council ("the NSC")³, the FETÖ/PDY has been included in the list of terrorist organisations; and this decision was presented to the public and appeared in various media bodies. Moreover, all the public institutions along with the public have been informed of this issue as the Recommendations of the NSC have been submitted to the Council of Ministers.

II. DECLARATION OF STATE OF EMERGENCY AND DEROGATION TO EUROPEAN CONVENTION ON HUMAN RIGHTS

1. In General

State of emergency is an extraordinary regime which is declared upon certain reasons, temporarily enables restriction or suspension of fundamental rights and freedoms and allows financial, material, and labor obligations to be imposed on natural persons and legal entities.

In article 119 and 120 of the Constitution, the power to decide and declare a state of emergency belongs to the Council of Ministers meeting under the chairmanship of the President of the Republic. However, the power of the Council to declare state of emergency is subject to the approval of the Grand National Assembly of Turkey. The decision of the Council on declaring state of emergency shall be published in the Official Gazette and submitted immediately to the Grand National Assembly of Turkey for approval. If the Grand National Assembly of Turkey is in recess, it shall summon the deputies immediately. The Assembly may alter the duration of the state of emergency, shorten or extend the period or may lift the state of emergency.

The Council of Ministers, meeting under the chairmanship of the President of the Republic, may declare a state of emergency for a period not exceeding six months. However, Council of Ministers may demand from the Assembly to extend the period for a maximum of four months each time in the continuation of the reasons necessitating the state of emergency.

State of emergency can be declared "in one or more regions or throughout the country", in other words, it may be declared in the region or regions in which the reasons necessitating the declaration of state of emergency occur.

Declaration of state of emergency, as being subject to decision making procedure of the Council of Ministers, occurs by the declaration of the wills of the President, Prime Minister and all ministers without exception at the same time and in the same direction. Therefore, signatures of the President, Prime Minister and all ministers shall take place in the decision of

³ The National Security Council is established by the Prime Minister, the Chief of the General Staff, the Deputy Prime Ministers, The Minister of Justice, the Minister of National Defence, the Minister of Internal Affairs, the Minister of Foreign Affairs, the Commanders of the Land, Naval and Air Forces Command and the Commander of the Turkish Gendarmerie Forces under the chairmanship of the President of the Republic. The NSC conveys the recommendations rendered as to the determination, designation and implementation of the national security policy of the State and its opinions on establishment of the required coordination to the Council of Ministers.

declaration of state of emergency. Here, the will of the President is a will which is participating in the formation of the decision, not a will added to the decision afterwards.

On the other hand, in order to declare state of emergency in the event of emergence of serious indications of widespread acts of violence and deterioration in public order, it is obliged to consult with the National Security Council.

The state of emergency shall be published in the Official Gazette and immediately submitted for approval of the Turkish Grand National Assembly. The decision of state of emergency is in force even though it has not been discussed yet by the Grand National Assembly of Turkey. In other words, state of emergency bears all its consequences.

1982 Constitution regulated the reasons for declaring state of emergency under two groups:

- a) In the event of natural disaster, dangerous epidemic diseases or a serious economic crisis, (Art. 119)
- b) In the event of the emergence of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence (Art. 120).

2. Results of Declaration of State of Emergency

State of emergency regime enters into force by the declaration of state of emergency. There are mainly three results of declaration of state of emergency:

a. Financial, Material and Labour Obligations may be Imposed on Citizens

Pursuant to second paragraph of Article 121 of the Constitution, financial, material, and labor obligations may be imposed on citizens in the event of the declaration of state of emergency under Article 119, namely in the event of natural disaster, dangerous epidemic diseases or a serious economic crisis. Financial, material, and labor obligations that may be imposed on citizens in the event of natural disaster and dangerous epidemic diseases are regulated in Articles 5 to 9 of the Law on State of Emergency dated 25 September 1983 No. 2935.

b. Fundamental Rights and Freedoms Shall be Restricted or Suspended

Article 121 of the Constitution stipulates that fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15 of the Constitution in the states of emergency to be declared in the event of both natural disaster, dangerous epidemic diseases or a serious economic crisis and in the event of the emergence of serious indications of widespread acts of violence. Accordingly, on condition not to violate the obligations arising from international law, fundamental rights and freedoms shall be restricted or suspended as required or measures contradictory to the guarantees stated in the Constitution may be taken. Nevertheless, one's right to live, other than the deaths occurred as a result of acts in compliance with war law as well as death penalties, and whole of one's material and non-material assets are intangible; no one can be forced to declare his religious, conscience opinion and views; offences and crimes are not retrospective; no one can be deemed as guilty until his guilt is proven by the court decision.

The guarantees stated in Article 13 of the Constitution are not valid in states of emergency. For example, it is not necessary to make the limitations by law in state of emergency. Limitations could also be made by decree laws. Likewise, in states of emergency, it is not necessary for

limitations to be in compliance with the word and soul of the Constitution as well as the general reasons stated in the Constitution. Eventually, it is not necessary to obey democratic public order requirements for the limitation of fundamental rights and freedoms in states of emergency.

As a result of state of emergency declared due to the increase in violence actions, the following measures can be taken pursuant to the State of Emergency Law No. 2935:

- Prohibition of people from residing in certain localities in the concerned region; restriction of entry into and departure from certain areas; evacuation of certain areas and transfer of people to other areas.
- Suspension of training at all levels of official and private education and training institutions; closure, permanently or temporarily, of student dormitories.
- Limitation or suspension of annual vacation leave of personnel in charge of carrying out the services required under the state of emergency in a region.
- Requisitioning, and if necessary, seizure of all communication media and instruments within the region.
- Control of land, sea and air traffic, and the restriction or prohibition of the transportation of vehicles into or out of the region.
- Imposition of a limited or full curfew.
- Prohibition of any kind of assembly or procession or movement of vehicles in certain places or within certain hours.
- Authorization of officials to search persons, their vehicles or property and to seize goods deemed to have evidentiary value.
- Imposition of obligation to carry identity cards by those living in or entering regions which are declared to be under a state of emergency.
- Prohibition of, or imposition of obligation to require permission for, the publication (including issuance of reprints and editions) and distribution of newspapers, magazines, brochures, books, etc.; prohibition of importation and distribution of publications published or reprinted outside regions declared to be under a state of emergency; and confiscation of books, magazines, newspapers, brochures, posters and other publications of which publication or dissemination has been banned.
- Control and, if deemed necessary, restriction or prohibition of every kind of broadcasting and dissemination of words, writings, pictures, films, records, sound and image bands (tapes).
- Taking or increase of special security measures for internal security of banks and sensitive public and private establishments.
- Control and, if deemed necessary, suspension or prohibition of the exhibition of all kinds of plays and films.
- Prohibition of the carrying or conveying of all types of weapons and bullets, including those licensed by the state.
- Prohibition, or the imposition of a requirement to obtain prior permission, for the possession, preparation, manufacture or conveying of all types of ammunition, bombs,

destructive materials, explosives, radioactive materials and corrosive, caustic or ulcerating chemicals and all kinds of poisons, suffocating gases and other similar material; and confiscation of, or demand to submit [to the state], goods, instruments and tools used in the preparation or manufacture of the aforesaid items.

- Prohibition of persons or groups of persons considered to be disrupting public order or public security from entering the concerned region, expulsion of such persons or groups from the region, or imposition of a requirement on them to reside in or enter specified places in the region.
- Prohibition, restriction or regulation of the entry [of people] into and exit from establishments or institutions deemed essential for the security of the region.
- Prohibition of, postponement of, or imposition of a requirement to obtain permission for, assemblies and demonstrations in both enclosed and open spaces; regulation of the time and place of permitted assemblies and demonstrations; and supervision, and if deemed necessary dispersal, of all kinds of permitted assemblies.
- Suspension of the activities or associations for periods not exceeding three months, after considering each individual case.
- Planning and execution of operations, in so far as they may be necessary, beyond the borders of Turkey to capture or incapacitate persons who, having carried out [disruptive] actions in Turkey, have sought refuge in a neighboring country. Such operations shall be carried out by the competent military commander, using the Army, Navy and Air Force, after obtaining the requisite permission from the Council of Ministers through the Office of the Chief of General Staff, at the request of regional governors, and within the framework of agreements arrived at between the Government of Turkey and that of the neighboring country concerned. This power shall only extend to an emergency declared under Article 121 of the Constitution.

c) Decree Law on State of Emergency May be Issued

The Council of Ministers may issue decree laws on the subjects required by the state of emergency. The power of issuing decree laws is quite extensive. That is to say; fundamental rights and freedoms can also be regulated by decree laws on state of emergency without the necessity of authorization with an empowering law by the Assembly, and also without being subject to topic limitation as different from decree laws in ordinary periods. Furthermore, mentioned Decree Laws are not subject to judiciary audit pursuant to Article 148 of the Constitution.

Furthermore, it is stated in the last sentence of Article 125 of the Constitution that; the law may restrict the issuing of stay of execution orders in cases of state of emergency, martial law, mobilization and state of war, and for reasons of national security, public order and public health.

3. Current situation

In line with the recommendation of the National Security Council, with the aim of taking steps in the most effective and rapid manner for promptly defeating the terrorist organization attempting the coup with all its components and removing the threat against state of law as well as rights and freedoms of the citizens in our country, state of emergency is declared by the Council of Ministers to be valid as of 21.07.2016 and 01.00 AM throughout our country for 90 days

pursuant to Article 120 of the Constitution. In the 117. General Assembly dated 21.07.2016 of the Grand National Assembly of Turkey, the decision concerning the declaration of State of Emergency was approved. The purpose of declaration of state of emergency is not to intervene to the freedoms but to enable the Government to make prompt decisions. The measures taken during the state of emergency did not cause any changes in daily life. No limitations to affect daily life concerning fundamental rights and freedoms is made. Measures taken have been limited with the subjects necessitated by the state of emergency. State of emergency is not declared to limit the rights and freedoms of citizens but to enable the State act promptly within the scope of effective struggle with FETÖ/PDY (Fethullahist Terrorist Organization/Parallel State Structure) and other terrorist organizations. Within this scope, pursuant to Article 15 of the European Convention on Human Rights ("ECHR" or "the Convention"), the notice of the derogation concerning the obligations for protection of rights and freedoms arising from the Convention was submitted to the General Secretary on 21 July 2016. Article 15 of the Constitution of the Republic of Turkey, similar to Article 15 of the ECHR, clearly regulated how the management should act in such circumstances. Pursuant to those regulations, the principles of "absolute necessity" and "proportionality" are obeyed sensitively in the measures taken during the state of emergency after the coup attempt.

Due to the existing security threat as well as the structure, size, complexity of the problem, and for taking sound and correct decisions, for prompt, determined and effective enforcement of decisions made, for maintenance of democracy, state of law principle, effective enforcement of decisions and measures for protection of rights and freedoms of citizens, for not being able to make a coup attempt in our country again, continuation of the peace and trust environment overall the country, for completing the studies initiated, extension of the period of state of emergency is necessitated and the Council of Ministers decided it to be extended by three months as of 19.10.2016 Wednesday 01:00 AM. Related decision is approved by the Grand National Assembly of Turkey on 11.10.2016 and published in the Official Gazette dated 13.10.2016.

III. DECREE LAWS REGULATED UNDER STATE OF EMERGENCY

1. DECREE LAW NO. 667

Measures Related to Private Institutions and Enterprises

The private institutions and enterprises belonging to FETÖ, which poses a threat to national security, that have a special importance in financing the organization and gaining members for the organization and where terrorist activities of the organization are carried out have been closed. In this context, 35 health institutions, 934 schools, 109 student dormitories, 104 foundations, 1125 associations, 15 universities and 29 trade unions have been closed. It has been provided that assets of the closed private institutions and enterprises shall be transferred to either the Treasury or the General Directorate for Foundations. This provision has been introduced in order to confiscate the assets used in activities of the terrorist organization and obtained within the framework of these activities and to prevent the financing of terrorist organization. For the same reason, the lease agreements made by public institutions with persons in this context could be terminated and the rights of usufruct and easement could be abolished.

The students registered to the higher education institutions closed down by the Decree Law shall continue their education at State universities or private universities under same conditions so that the educational rights of students (ECHR Add Pro. 1-2) will be maintained. The students registered to primary and secondary schools closed down will be able to continue their education in public schools or other private schools.

Measures Related to Public Officials

Since FETÖ is carrying out activities as cell-type structures for the purpose of taking control of bureaucracy and administration of the State, certain measures have been needed to be taken in order to swiftly remove the members of this terrorist organization from the public.

In this regard, it is set out in the Decree Law that the public officials who are considered to be a member of or have relation to the terrorist organizations shall be dismissed from public service. According to this provision, the public officials who are considered to have connection with terrorist organizations shall be dismissed through the existing boards or the boards to be created in the upper bodies of all public institutions and organizations.

In addition, the passports of those against whom judicial or administrative investigations are conducted and who are prosecuted shall be cancelled for safety of investigation and prevention of absconding.

In the same way, the members of the judiciary who are considered to be a member of or have relation to terrorist organizations shall be dismissed from the profession by the General Assembly of the Constitutional Court, the Board of First Presidency of the Court of Cassation, the Board of Presidency of the Supreme Administrative Court or the Plenary Session of the High Council of Judges and Prosecutors. The gun licenses and green passports of those whose dismissal from the profession is decided shall be cancelled and they shall, within fifteen days, be evicted from publicly-owned houses or houses owned by a foundation in which they reside.

Under this Decree Law, decision of stay of execution regarding the works and operations conducted in the context of state of emergency cannot be ordered during the state of emergency in order not to disrupt fight against terrorism. However, cases can be brought against all kinds of acts and actions before the competent and authorized courts and if the conditions exist, stay of execution will be able to be ordered at the end of state of emergency. Thereby, all kinds of acts and actions to be taken in accordance with this Decree Law shall be subject to judicial review. In this sense, an effective remedy (ECHR art.13) is available.

Measures Related to Investigation and Prosecution Procedures

Regard being had to the large number of members of the terrorist organization who joined in the coup attempt, the period of custody was increased to a maximum period of thirty (30) days by the Decree Law. However, in this period of time, an appeal procedure can be applied against the custody decisions under the Criminal Procedure Code and those, who are kept in custody, can request for release during the period of custody.

Furthermore, where there is a possibility that the security of the public and the penal institution is endangered, that the terrorist organization or other criminal organizations are directed, that orders and instructions are given to them or secret, clear or crypto messages are transmitted to them through the remarks during the interviews between the detainees and their lawyers; the interviews could be recorded orally or visually via technical devices, the officers may be made present during the interviews between the detainee and his/her

lawyer with a view to monitoring the interview, documents or document templates and files given by the detainee to his/her lawyer or vice versa and the records kept by them concerning the interview between them may be seized or days and hours of the interviews may be limited upon the public prosecutor's order. An appeal can be made against this decisions and actions.

However, no restriction was brought in terms of holding hearings during examinations of detention on remand by the courts or of taking the statements of accused persons, suspects or defence-counsels. The relevant judge or court has the discretion on this matter.

Additionally, no restriction was brought in terms of individual applications to be lodged before the Constitutional Court against the actions conducted under this Decree Law. Within this framework, it is considered possible that the Constitutional Court may order an interim measure in respect of the individual applications.

2. DECREE-LAW NO. 668

Measures taken with respect to investigation and prosecution procedures

Within the scope of the state of emergency, on account of the high number of suspects placed in custody or detention for offences against the safety of the State, the Constitutional order, national defence and State secrets as well as for terrorist and collective offences and due to the fact that the investigation is conducted country-wide in a multi-directional manner, the following measures, which shall be limited to the state of emergency period, were taken with a view to minimizing the threats against national security:

- Public prosecutors can directly issue arrest warrants. The maximum custody period prescribed in respect of persons who are arrested on the basis of the arrest warrants shall be 30 days. The arrestees shall be brought before the competent judge or court as soon as the relevant procedures are completed. Therefore, the period of 30 days was prescribed in order to prevent setbacks in the investigations that may occur due to the *de facto* situation.
- Persons who hide within the country and abroad for the purpose of rendering the investigations inconclusive were indiscriminately regarded as fugitives under the statutory law. Thus, it was aimed to conduct the investigation procedures in an effective manner and to prevent setbacks.
- The requirement to examine the objections against detention orders within maximum ten days and the requests for release within maximum 30 days was introduced and thus, it was aimed to prevent unjust suffering. Accordingly, it was ensured that the requests shall be properly examined in line with the standards of the European Court of Human Rights. As a matter of fact, detentions already had to be reviewed within 30 days during non-emergency periods.
- As it is the case in non-emergency periods, public prosecutors can issue written search warrants only in cases where any delay can be detrimental. It was made mandatory to submit a seizure procedure to a judge for his/her approval within 5 days at the latest where such seizure procedure has been performed upon the decision of a public prosecutor.
- Civil law enforcement authorities other than soldiers were enabled to perform search and seizure procedures without seeking the presence of the public prosecutor upon the order of a judge in military locations or upon the order of a public prosecutor in cases where any delay can be detrimental.

- The authority to examine seized documents was extended and it was stated that examination can be made by law enforcement authorities as well.
- For the purpose of preventing communications which can pose danger against national security which lead terrorist activities and limited to this purpose, documents of the suspects or accused persons relating to their communications with their relatives can be seized.
- In cases where there is a strong suspicion that properties are used for the financing of terrorist organizations or that they have been acquired within the scope of a terrorist offence, without waiting for the reports of institutions such as the Banking Regulation and Supervision Agency (BDDK), Capital Markets Board (SPK), Financial Crimes Investigation Board (MASAK) etc., the seizure procedure can be conducted by public prosecutors in cases where any delay could be detrimental and by judges or courts in other cases. The reason for this is the fact that waiting for the decision of the assize court panel composed of three judges or a technical report as set out in the Code of Criminal Procedure with respect to seizure procedures can result in such immovable properties or other related rights becoming unreachable.
- To be limited with the period of state of emergency the presence of a public prosecutor during the searches which are to be carried out in lawyers' offices was not regarded as necessary. In addition to searches to be conducted upon a judge's decision, public prosecutors were enabled to carry out searches in lawyers' offices in cases where any delay can be detrimental.
- Computer and log search, interception of communication, surveillance through technical means, appointment of undercover investigators can be performed upon the decision of public prosecutors in cases where any delay can be detrimental; however, such decision shall be submitted to the judge in charge for his/her approval within 5 days at the latest. In the event that the decision is not submitted for approval or that the judge does not approve the decision, the measure shall be automatically lifted and the evidence obtained shall not constitute basis for any judgment.
- For the purposes of national security and soundness of the investigations, public prosecutors can restrict lawyers' authority to examine the investigation files or to meet the suspects. However, the defence rights have been secured by prohibiting the taking of statements during such period of restriction.
- Lastly, where it is considered compulsory for the confirmation of evidence, detainees and convicts can be temporarily taken from penitentiary institutions only upon a decision of a judge.

Other measures

The soldiers of the armed forces who are identified to be in relationship, involvement or communication with the Gulenist Terrorist Organization (FETÖ), which is established to pose a danger against national security, were dismissed from the Turkish Armed Forces by the Decree-Law.

Similarly, certain radio and television institutions, newspapers, magazines, publishing houses, which are the propaganda organs of the FETÖ under the disguise of a media institution and which were established to perform insidious terrorist activities, were closed along with their distribution channels and their assets were transferred to the Treasury.

The authority to establish and abolish military courts was vested in the Ministry of National Defence.

The Gendarmerie General Command and the Coast Guard Command were subordinated to the Ministry of Interior and thus, they were entirely put under the control of civil authority.

In order to fill the positions which became vacated due to the dismissal of high-ranking soldiers, the promotion of low-ranking soldiers was facilitated.

3. DECREE-LAW NO. 669

Measures concerning the investigatory procedures against public officials

Within the scope of the state of emergency and limited to the state of emergency period, on account of the high number of public officials placed in custody or detention for offences against the safety of the State, the Constitutional order, national defence and State secrets as well as for terrorist and collective offences and due to the fact that the investigation is conducted country-wide in a multi-directional manner, it has been stipulated that the time-limits prescribed for administrative investigations which must be initiated with respect to suspension of public officials shall not be applied during the state of emergency period with a view to ensuring that the administrative investigations be concluded more soundly and to preventing unjust suffering.

Measures concerning postponement of bankruptcy

With a view to protecting the financial order and to identifying more precisely the stock corporations and cooperative communities which are in relation with the Gulenist Terrorist Organization ("the FETÖ"), it has been prescribed that during the period of state of emergency and limited to this period, no request for postponement of bankruptcy can be filed.

Other Measures

The soldiers of the armed forces who are in membership, connection or relation with the FETÖ, which is established to pose danger against national security, have been dismissed from the Turkish Armed Forces by the Decree-Law.

It is envisaged in the Decree-Law that the University of National Defence shall be established for the reason of closing down military schools which were used by FETÖ in accordance with its terrorist activities and re-regulating the training conducted here under the control of the civil authority. For the same reason The Gülhane Military Medical Academy and military hospitals have been transferred to the Ministry of Health.

The Ministry of National Defence has been vested with full authority with respect to the procedures regarding military judges' appointment and personal rights; and the disciplinary proceedings and penalties provided for in the Law no. 2802, which are applied to civil judges and prosecutors, have been made applicable to military judges as well.

With the Decree-Law in question, candidacy of military judge candidates has been terminated, and it has been expressed that provisions concerning the termination of candidacy provided for in the Law, which is still in force, shall be applicable.

Due to consideration that mass majority of the members of or related persons with FETO have infiltrated into War Colleges and the Gülhane Military Medical Academy, these institutions have been closed down, and with a view to protecting their right to education, it has been prescribed that students registered in those institutions shall be placed at other state universities by the Council of Higher Education. Furthermore, due to same reasons, military high schools have been closed down as well, and the cadets shall be registered into regular high schools within the framework of the rules in force at the time they had entered into the military schools and they have provided with ability to make a choice where they want to educate.

Moreover, within the scope of the subordination of the Turkish Armed Forces to civil authority, the Army, Navy and Air Force Commands have been subordinated to the Minister of National Defence.

4. DECREE-LAW NO. 670

Regulation on Re-taking of the Statements

In the course of the state of emergency and with restricted to the offences against state security, constitutional order and its functioning, national defence and state secrets, and espionage under the Turkish Criminal Code no. 5237 and the offences falling within the scope of the Anti-Terror Law no. 3713; it has been provided that the statements of the suspect on the same incident may be re-taken by the public prosecutor or law enforcement officers upon the public prosecutor's written order, with a view to determining properly the structures and establishment of terrorist organizations and to ensuring that the investigations and prosecutions be conducted more rapidly.

Measures concerning public officials

The public officials belonging to, related to or in connection with the Fetullahist Terrorist Organization (FETÖ/PDY), which has been established to pose a threat to national security, and whose names are presented in the annex of this Decree-Law have been dismissed from the profession.

It has been provided that those who were dismissed the profession under the Decree-Law no. 667 may not use their titles, professional titles and capacities, and may not enjoy the rights granted in relation to these titles, professional titles and capacities.

Measures concerning sharing of personal data

With restricted to the duration of the state of emergency; all kinds of information and documents including interception of communication through telecommunication (call records) which are needed by the investigation committees established under the Decree-Law no. 667 in respect of the persons against whom investigations and examinations are performed and their spouses and children, except for those regarded as client secrets under the Banking Law, shall be submitted by all public and private institutions and organizations without any delay.

Asya Participation Bank Incorporated Company was founded by the FETÖ and the FETÖ leader Fetullah Gülen called the members of the organization to deposit money to the concerning bank in order to find a solution to the liquidity problem of the bank since those who are not connected to the FETÖ suddenly withdrawn the money in their accounts upon the investigations initiated as regards the FETÖ. The FETÖ members and other related people who acted in organizational solidarity upon this call were mobilized to save the bank from going bankrupt and deposited money to this bank. It was provided that any information which belonged to the personnel of public institutions and organizations and the spouse and children of these persons and which was present in Asya Participation Bank Incorporated Company and in the relevant public institutions as regards this bank would be obtained without undue delay, upon the request of the institutions and organizations where the relevant personnel served, in order to uncover the financial sources of the FETÖ and to determine those inside the organizational network.

Other Measures

The procedures and principles concerning the assets, receivables and debts of the institutions and organizations closed pursuant to the Decree-Laws entering into force within the scope of the state of emergency and transferred to the Treasury and the General Directorate for Foundations are established in order to prevent any victimization in the legal relations and protect the financial order. In particular, it was established that for redemption of the debts of the transferred institutions and organizations, the General Directorate for Foundations shall be authorized in terms of foundations and the Ministry of Finance shall be authorized in terms of others.

To be limited with the duration of state of emergency; it was established that the duration of suspension of suspicious financial transactions which was prescribed as seven working days in the Law no. 5549 on Prevention of Laundering Proceeds of Crime has been extended to thirty working days regarding the persons, institutions and organizations considered to have membership, affiliation, relation or connection with terrorist organizations, or structures, formation or group that the National Security Council found to be involved in activities against the national security.

5. DECREE-LAW NO. 671

Measures concerning [Telecommunications Communication Presidency](#)

The Presidency of Telecommunications and Communication which has been understood to have been involved in illegal wiretapping in order to use the data in the illegal activities of the FETÖ and to have nested most of the members of the FETÖ has been closed and its authorities have been transferred to the Information and Communication Technologies Authority (ICTA).

It has been provided that the communication works through telecommunication and interception will be executed from one center within the ICTA. The authority to fight cyber crimes have also been granted to the ICTA.

Imposing injunction for compensating damages

With a view to compensating damages suffered by natural and legal persons and public institutions and organizations and preventing concealment of any property on account of terror crimes (*offences against state security, offences against the constitutional order and its functioning, national defence, offences against state secrets and espionage* set forth in the Turkish Criminal Code *and the offences falling into the scope of the Anti-Terror Law no. 3713*), it has been enabled that restrictions as to the transfer and assignment or establishing property rights or the power of disposition concerning the properties of the suspects or accused, or land, sea or air transportation vehicles may be imposed. Decision of restriction can be rendered by the magistrate judge at the investigation stage and by the court during the proceedings. In the event that the civil court does not give a decision for the continuance of the restriction within one year, the restriction shall be ipso facto lifted.

Arrangements concerning enforcement regime

It has been determined that almost ten thousand military personnel took part in the coup attempt on 15 July and committed crimes within this scope. Taking into account that the FETÖ members infiltrated into many institutions and organizations of the state, the investigations conducted in this matter involve lots of persons. This reveals that there is a capacity problem in prisons. With respect to the offences committed before 1 July 2016 (except for: offences of homicide; offences of battery committed against lineal consanguine, siblings and spouses or against a person who cannot defend himself physically or mentally, as well as, aggravated battery on account of its consequences committed against again these persons; offences against sexual integrity; offences against privacy and confidentiality of life; offence of production and trade of drugs; offences against state security; offences against the constitutional order and its functioning; offences against state secret and espionage set forth in the Turkish Criminal Code; and the offences falling into the scope of the Anti-Terror law no. 3713),

- Those who served half of their sentence in penitentiary institutions might be released on probation.
- Concerning the convicts of good conduct who will be released on probation within two years or in a shorter period; the remaining part of their sentence until the date of probation might be release on parole.

6. DECREE-LAW NO. 672

Measures concerning the public officials

Upon the issuance of the Decree of Law, the state officials in the Ministries and other public institutions and organizations and the personnel of the Directorate General of Security, the Gendarmerie General Command and the Coast Guard Command who had membership, communication or commitment of the terrorist organizations or the structures, entities or groups which were decided by the National Security Council to conduct activities against national security of the State were dismissed from public office.

7. DECREE-LAW NO. 673

Reappointment

By virtue of the Decree-Law, regulations with regard to the reappointment of the judges and prosecutors, who were previously deprived of their right as a result of all kinds of oppressions of the Fetullahist Terrorist Organization (FETÖ), have been made in order to ensure re-establishment of the right to employment of them.

The Monitoring Boards of Penitentiary Institutions and Detention Houses

Upon the entry into force of the Decree-Law, it has been envisaged that the membership of the presidents and members of the Monitoring Boards of Penitentiary Institutions and Detention Houses shall be ceased and a re-election shall be held within ten days. Accordingly, it has been aimed that the members to take office at such kinds of Boards shall be completely independent and impartial members who have no connection with FETÖ or any other organization.

8. DECREE LAW NO. 674

Measures concerning the judiciary

The Computer Forensics Specialization Department has been established within the Forensic Medicine Institute to provide a prompt, impartial and transparent system for experts on the matters requiring specialization in information technologies during judicial investigations. The expertise reports to be issued by this department may also provide an insight for other experts and ensure the development of case-law in the area of forensic medicine.

The interruptions of judicial services have been prevented by assigning members from other chambers in cases where it is not possible for the Regional Courts of Justice to convene on account of legal or factual reasons.

The Decree Law has removed the obligation of the public prosecutors to submit preliminary opinions in order to prevent backlog of cases before the Regional Courts of Justice and enable them to be promptly brought before the bench of judges.

The Law on Execution of Sentences and Security Measures has been amended. Accordingly, the Chief Public Prosecutor's Offices shall be entitled to impose restrictions on the temporary leave from penitentiary institutions of those who have been detained for or convicted of terror offences, **where it would be detrimental to public security and provide opportunities for terrorist organizational communication. Moreover, measures have been taken to carry out activities for the construction of new penitentiary institutions in order to improve the current conditions.**

Following the entry into force of the Decree Law, the duties of trustees serving in companies to which a trustee has been appointed on account of their membership, affiliation or connection to terrorist organizations shall be terminated and their powers shall be transferred to the Savings Deposit Insurance Fund by the decision of a judge or a court. Moreover, where a trustee is appointed to a company with regard to a court decision after the date of entry into force of the Decree Law and during the period of the state of emergency, the trustee to be appointed shall be the Savings Deposit Insurance Fund. Furthermore, where it establishes that the current financial situation of the relevant companies is not sustainable, the Savings Deposit Insurance Fund shall be entitled to decide that those companies be sold liquidated or their assets be sold. The amounts to be obtained from the sales of the companies to which the Savings Deposit Insurance Fund has been appointed as trustee or of the assets of those companies shall be deposited into an interest bearing account until the conclusion of the proceedings with a final judgment.

Therefore, Saving Deposit Insurance Fund which has administrative and financial autonomy has been authorized in a way that enables it to be independent in its office and not to be subject to supervision of conformability for its decisions, in order to conduct a financial fight against the FETÖ and other terrorist organizations and to ensure consistency in the acts of the trustees, and that allows it not to receive orders and instructions so that its decisions will not be affected by any organ, authority, or person.

9. DECREE LAW NO. 675

The public officials connected to FETÖ/PDY and other terrorist organizations were dismissed. They were subjected to the sanctions applied to those who had been previously dismissed.

From the public officials who had been previously dismissed with the lists attached to the

Decree Having the Force of Law with the ground that they are connected to FETÖ/PDY and other terrorist organizations, those who are understood to have not a connection which will require dismissal as a result of re-examination are returned to their duties and the sanctions about them are ended. It is expressly regulated that the public officials returned to duty cannot claim any compensation due to their dismissal, but on the contrary, their financial and social rights corresponding to the period from the date on which they were dismissed from the public service to the date on which they started to work will be paid to them.

The news agencies, newspapers and journals connected to FETÖ/PDY and other terrorist organizations were closed. Their movables and all kinds of assets are deemed to have been transferred to the Treasury as free of charge and their immovables are registered in the land registry ex officio in the name of the Treasury as free from all kinds of restrictions and immovable burdens.

After the private radio and televisions and newspapers closed in accordance with the Decree Law no 668, the closure transaction regarding those who were understood to have not any connection with FETÖ/PDY is deemed to have been removed with all of its sentences and results.

With regard to the KPSS(Public Personnel Selection Examination) which became the matter in dispute due to the stealing of the exam questions, the provisions stipulated for the 2010 KPSS examination which had been previously cancelled shall be applied. Accordingly, the civil service rights of those who are not involved in the stealing of the exam questions shall be protected even if the exam is cancelled.

The compensation against the relevant administration cannot be adjudged on the grounds of the cancelled examinations.

10. DECREE LAW NO. 676

Regulations related to Jurisdiction

The number of defence counsels is limited so as to be 3 at most within the proceeding process regarding the organized crimes. In this way, the limitation that is applied with respect to the number of defense counsels at the prosecution stage shall be valid also at the proceeding stage in terms of the organized crimes.

Expansionary regulations are being made in relation to the prohibition from advocacy. Accordingly, the measure of prohibition from advocacy will be sufficient not only in terms of the advocacy of those who are arrested due to organization crime, but also the initiation of investigation due to these crimes will be sufficient in terms of the prohibition of the defense counsel.

For the lawyers to be able to be prohibited from advocacy, the initiation of prosecution due to the organization crimes against them will be sufficient.

The right of those who are detained due to the terrorism crimes and organization crimes to communicate with the defense counsel can be restricted for twenty four hours with the decision of the judge upon the request of the public prosecutor. The statement of the suspect cannot be taken within this period of time.

In the case that the petition regarding the call of the witness or expert shown by the defendant or the person participated in is rejected by the court, the defendant or the person participated in

used to be able to bring these persons to the court and it used to become mandatory to hear these persons. According to the amendment, when it is requested to hear these persons for the purpose of extending the lawsuit, the chairman of the court or the judge shall reject these requests.

In the lawsuits where the mandatory advocacy is accepted, the trials cannot be held and the proceedings cannot be concluded due to the reason that the defense counsels leave the trial without an excuse.

With the amendment, the trial can be continued in the case that the defense counsel who must be present in the trial leaves the trial without notifying any excuse.

If information and instruction is given to the terrorist organisation, orientation is made and the security of the society and the penal institution is endangered in the meetings of those who are sentenced due to terrorism and organization crimes, the opportunity to apply certain measures is provided.

The meetings can be recorded as sound and video, the officials can be made present in these meetings, the documents exchanged by them can be seized and the days and hours of the meetings can be limited.

These measures can be taken and applied for three months with the decision of the judge of execution upon the request of the chief public prosecutor. This period can be extended according to the evaluation made.

If these rules are infringed in the meetings, the meetings of the sentenced with his lawyers can be prohibited by the judge of execution for six months upon the request of the office of chief public prosecutor and, in this case, the relevant bar shall assign a new lawyer.

The authorization with regard to the application of these measures against the arrested shall belong to the criminal peace judge at the prosecution stage and to the court at the proceeding stage.

After 15 July, the need for the guardians in the penal institutions throughout the country increased. The fastest way to meet this need is to increase the number of the personnel experienced on security. For this purpose, the specialized sergeants who are trained on security and who left by own will from office are allowed to work as contracted guardian.

Security-related and other relevant Regulations

The title of the temporary village guards was changed as "security guard" and the title of the voluntary village guards as "voluntary security guard".

The expressions regarding the documents to be required were removed with the provision "the applications shall be made to the security directorate of the district" set forth in the Passport Law with regard to the places to be applied to for the regular passports and the documents to be requested in the application. Where these applications will be made and which documents will be requested are determined by the Ministry of Internal Affairs.

With the Decree Having the Force of Law, the regulations regarding the functioning of the Gendarmerie and Coast Guard Command were made.

The passport and driving licence transactions are within the area of the duty of the Directorate General of Population and Citizenship Affairs.

"Those who are considered to be related with the terrorist organizations defined by the international institutions and organizations" were added to among those for whom deportation decision will be taken.

Those who are related with the terrorist organizations, those who are considered to be related with the terrorist organizations defined by the international institutions and organizations and those who pose a threat in terms of the public order can be deported at any stage.

The passenger information access authorization of the Directorate General of Migration Authority was expanded.

Accordingly, the Directorate General which can request the information of their passengers from those who bring passengers to the border gates, those who take passengers from the border gates and those who carry passengers within the boundaries of Turkey can also request the information of the crew as wells as the passengers.

The provisions with regard to that those who were assigned supervisor duty from the military officials within the body of the Turkish Armed Forces cannot give punishment to those who are under their order and, when punishment is required to be given, the closest military supervisor will be applied to were removed and the civil supervisors became capable of giving punishment as well.

Within the framework of the restructuring of the Ministry of National Defense, the officer registry superiors were re-arranged for military judges.

The Deputy Undersecretary became the first registry superior and the registry superiors of the legal advisors and disciplinary officers were made to become civil.

The second and third registry superiors were made to become civil.

The inspection authority and duty of the Minister of National Defense ceased to be limited to "financial and goods account inspection".

In the application of the Law no 5018, the top executive in the Ministry of National Defense is not the Minister anymore, but the Undersecretary as in the other ministries.

Non-commissioned officers and soldiers contracts of whom were terminated due to their connection with FETÖ/PDY are also subject to the sanctions "not to be accepted to public service anymore", "cancellation of gun licence", "not to be able to work in a private security company" as set forth in the article 4 of the Decree Law no 667.

In the application of the Decree Law no 659 with regard to the legal services departments of the Ministries, the top executive in the Ministry of National Defense is not the Minister anymore, but the Undersecretary as in the other ministries.

11. ASSESSMENT and CONCLUSION

It is evident from the above-mentioned points that with the first Decree Law issued after declaration of state of emergency, the measures have been taken for the purpose of effective fight against FETÖ terrorist organization, which completely infiltrated into the State's institutions. The declaration of state of emergency and the Decree Law adopted within this period aims at protecting the rule of law, democracy and human rights by way of removing the members of FETÖ terrorist organization from the State's institutions. No permanent restriction was brought on the individual rights and freedoms with the Decree Law.

As envisaged within Decree Laws, investigations into the structure and functioning of the State institutions and the regulations concerning public officials are regulations which are in line with the aim and conditions of the state of emergency and which are necessary for the State to preserve its existence.

Moreover, according to the Decree Law no.668, no restriction was brought on the opportunity to file an objection against the above-mentioned public prosecutor decisions with the offices of magistrate judges in criminal matters. Certain extensions of time and authority stem from the multi-directional nature of the investigations and from the high number of parties in respect of which procedures are performed and they are reasonable in the circumstances of the state of emergency.

Furthermore, with the Decree-Law no.669, the military higher education institutions have been subordinated to civil authority and military high schools have been closed down. Thus, it was ensured that individuals who have received civil education and who have developed a sense of civil democracy, be admitted to military higher education. Through the subordination of military institutions and organizations to civil authority, it was ensured that institutional democracy has a say in military mechanisms just as it does in other fields. Moreover, the necessary measures have been taken for the purpose of preventing unjust suffering on the part of the students registered in the military schools which have been closed down.

In addition to this, in the Decree Law no.671, there have been arrangements as regards the measures to be taken and the sanctions to be imposed by the Communication Technologies Authority and the powers granted to the relevant Authority. Moreover, the Communication Technologies Authority can take any necessary measure or get them taken in order to ensure that the public institutions and natural and legal persons be protected against cyber-attacks and to promote deterrence from these attacks. By the arrangement made in accordance with the Decree-Law, temporary terms and conditions of parole and probation have been lightened. Thus, overpopulation of detainees/convicts in penitentiary institutions will be hindered. In this respect, it has been planned that the human rights violations in places where freedom is restricted will be prevented.

There have also been arrangements as regards the imposition of injunction, with the decision of judge, on the assets of the persons suspected or accused of the terror crimes listed in the Turkish Criminal Code and the Anti-Terror Law. The aim of which is to compensate the damage given by the plotters to public and private assets. Thus, within the frame of protecting the rights of those suffered damage and in the context of the State's fulfilling its positive obligations, the right to property may be restricted within the limits of the provisions of international conventions.

According to the Decree-Law no. 673, the measures have been taken for reinstating the judges and prosecutors, protecting financial order and identifying the companies having connection with FETÖ.

With the Decree Law no. 674, the measures have been taken for the purpose of expediting the investigations and proceedings, effectively fighting against FETÖ and other terrorist organizations, and promptly restoring public security.

The rule of law, democracy and human rights are basic principles of the State of the Republic of Turkey. In line with this, the Republic of Turkey aiming at fighting against terrorist components purposes to establish an effective and impartial judiciary and security mechanism and fights against the terrorist coup attempt by depending on the rule of law.

12. SUSPENSION/DISMISSAL OF PUBLIC OFFICIALS WHO HAD CONNECTION WITH THE FETÖ/PDY ("PURIFICATION PROCESS") AND BACKGROUND OF THIS PROCESS

The structuring of the FETÖ/PDY especially in armed forces, security directorates, civil administration and judicial institutions has continued for decades. This organization launched a purge operation against the persons in the army, who were not members of the organization, by way of fabricating false evidence and initiating investigations such as Ergenekon, Sledgehammer and Military Espionage. **It was also proven by the judgments of the Court of Cassation that false evidence was fabricated in these investigations.** The influence gained by the FETÖ/PDY in judiciary as a result of the said operations reached a peak with the newly formed structure of the High Council of Judges and Prosecutors ("the HCJP") in 2010, and the members of the organization were entrusted with all critical tasks.

On 7 February 2012, the judges and prosecutors, who were members of the FETÖ/PDY, issued an illegal arrest warrant against the Undersecretary of the MİT by taking advantage of the planned surgical operation of the esteemed President. The judges and prosecutors, who launched investigations against the Government on 17-25 December 2013 and ensured illegal stopping of MİT trucks in Adana and Hatay provinces, were also members of this organization.

In a number of meetings held by National Security Council during the period between 26 February 2014 and 26 May 2016, it was stated that the FETÖ/PDY threatened national security and that this structure was a terrorist organization, and the Government was recommended to take several measures against this parallel state structure. There are currently criminal proceedings filed against the members of the FETÖ/PDY in Istanbul, Bursa and Ankara. Within the scope of the investigation launched against the irregularities following the operation conducted against the group called Tahşiye, an indictment was drawn up by the Istanbul Chief Public Prosecutor's Office on 17 September 2015. In the indictment of 6 June 2016 drawn up by the Ankara Chief Public Prosecutor's Office shortly before the coup attempt, it was stated that the FETÖ/PDY made military coup and civil war threats, relying on its effectiveness in the Turkish Armed Forces. After then, the coup attempt took place. **In the indictments drawn up, the FETÖ/PDY was qualified as an armed terrorist organization before 15 July.**

In the decision dated 16 June 2016 of the Erzincan Assize Court, it was pointed out that this organization was generally organized in all departments of the State, and especially in the judicial and security agencies as well as in the Armed Forces, and it was emphasized that this organization created a separate structure outside the State's hierarchical structure. It was also stated in the decision that in some speeches of the leader of the FETÖ/PDY, Fetullah Gülen, it was indicated that the organization infiltrated into the cadres directing the social, economic, military and administrative mechanisms or acquired those taking office in these bodies and thereby aimed to acquire these units and make them ineffective. In the same decision, the FETÖ/PDY was accepted as a terrorist organization and the accused persons were punished with different penalties.

Moreover, within the scope of the criminal actions brought within the scope of the investigations initiated throughout the country prior to the attempted coup of 15 July, proceedings are still pending against both Gülen, the leader of the FETÖ/PDY, and the organization members for various offences, notably establishing and leading an armed terrorist organization.

As is inferred from the foregoing explanations, **both judicial and administrative investigations against the public officials who are members of the FETÖ/PDY are being conducted for a long time.**

It is known to all that the FETÖ/PDY members have insidiously infiltrated into all public institutions and formed a parallel structure. The FETÖ/PDY members undertook significant duties within the public bureaucracy and acted together through the cell-type groups they established among themselves and conducted public acts and actions in line with the aims of the terrorist organization. These officials conveyed confidential information to the FETÖ/PDY and breached their duty of loyalty to the State. For these reasons, **taking office of the FETÖ/PDY members within the public institutions poses a great threat for rule of law, democracy, human rights and the State's security.**

In a democratic society, public officials employed in the public institutions are liable to display loyalty to the constitutional principles that are foundation of a State. In this respect, in public, the States seek for the criterion of displaying high loyalty to the constitutional principles during both the process of being accepted for the office and the process of performance of the office. In case where it is in any way established that the public officials do not fulfil this criterion, the State has discretionary power to terminate the public service rendered by such persons.

As a matter of fact, both in the Eastern Europe countries after the disintegration of the Soviet Union and in Germany during the integration process, purification policies were applied with a view to successfully completing the democratisation process, becoming a country respecting for the fundamental human rights and being able to eliminate the possible risks. It is specified in both the decisions of the European Court of Human Rights and the recommendations of the Venice Commission that the State has discretionary power on the matter of the purification. The primary goal of the purification policies is to discharge the public officials acting contrary to the duty of loyalty and to eliminate possible threat against the democratic constitutional state.

Differently from the purification processes taking place in the European countries, in our country, the FETÖ/PDY members infiltrating the State not only pose a threat for the democratic legal order but also have demonstrated that they are actually a great threat for the democratic legal order for having attempting a coup. Therefore, following the coup attempt, the Decree-Law no. 667 was issued in order for rapid purification of the public officials taking office in the public institutions and considered to have connection or relation or be a member of the FETÖ/PDY.

Those considered to have connection, relation and be a member of the FETÖ/PDY and the other terrorist organizations were suspended from office, and investigations were initiated in respect of such persons. At the end of the investigations, public officials who were proven to have connection with the terrorist organizations were dismissed from their offices by virtue of the Decree Laws.

In the process of dismissals within the scope of Decree Laws, the decisions are rendered for each officer against whom an action was conducted, by taking into account the statements in the judicial investigation files, digital evidences, witness statements, statements including confession as well as other evidences. If the Committee constituted under Decree Law concludes that there is no sufficient information, documentation or evidence for dismissal of the said officers, the related person is given back to duty. In this regard, the decisions on dismissals are individually rendered for each officer as a result of comprehensive researches and evaluations. In addition, the relevant authorities accept the requests for re-examination in order to avoid the potential errors with regards to the public officials, who were relieved of their duties or dismissed from the profession, and give new decisions as a result of the necessary examination, research and evaluations.

On the other hand, it is envisaged in the Decree-Law no. 667 that the High Council of Judges and Prosecutors shall determine as to whether the judges and prosecutors considered to be a

member of, have connection or relation with the terrorist organizations would continue performing their profession or not and decide on their dismissals. Within the scope of investigation initiated *ex officio* by Ankara Chief Public Prosecutor's Office under Article 161/6 of the Code of Criminal Procedure and also the decisions of custody, the judges and prosecutors who were determined (upon the investigation being conducted for a long time) to be members of the FETÖ/PDY, and the relevant judges and prosecutors were suspended (pursuant to Article 77 of the Law no. 2802 on Judges and Public Prosecutors) in order not to harm the reputation, reliability and persuasiveness of the judiciary. Following the entry into force of the Decree Law no. 667, the judges and prosecutors whose connection or relation or membership of the FETÖ/PDY had been determined, were dismissed from the profession by the Plenary Assembly of the HCJP.

As is known, the HCJP is a constitutional institution which holds duty depending on the independence of courts and tenure of judges. What constitutes the background of the process concerning the judicial members against whom actions were taken is an investigation initiated in 2014. In this investigation, the cases such as the Ergenekon, the Sledgehammer, illegal wiretapping, the Zirve Publishing House, Military Espionage, the 17-25 December, Oda TV, Fenerbahçe Match Fixing, Unlawful Release, Cosmic Room and the MIT Trucks were examined, and as a result of the investigations performed, it has been revealed that there was a gang-type structure within the judiciary. In the course of the investigations, all statements given by the judges and prosecutors against whom actions had been taken were reviewed by the HCJP, and concrete evidence as to the manner how the organization had infiltrated into the judiciary; the communication means of the organization; hierarchical statuses within the organizational structure; and the fact that the instructions received from the organization have been certainly implemented were thereby obtained.

One of the most stunning examples indicating that the FETÖ/PDY structure has used the judiciary in line with its organizational aim has been revealed in the case of illegal wiretappings where decisions on illegal wiretappings were rendered in respect of politicians, eminent persons, high level bureaucrats and artists. Moreover, it has been found out in the investigation of military spying that evidence was fabricated against those who were likely to be appointed to high positions within the military and serious penalties were imposed on them with a view to enabling the military officers involved in the attempted coup d'état of 15 July to be entrusted with these positions. In the investigations conducted by the HCJP, those who had been in connection with this structure were identified and the procedures of dismissal were evaluated and decisions on dismissals were rendered by the Plenary Assembly of the HCJP as a result of all evidence obtained pursuant to the preliminary reports drawn up as well as information and documents obtained from the Ankara Chief Public Prosecutor's Office .

However, **198 judges and prosecutors were reinstated as a result of the examinations made after the procedures of suspension.** On the other hand, the members of judiciary, who were dismissed from the profession, will be able to request re-examination before the General Assembly of the High Council of Judges and Prosecutors.

It is a must to dismiss the judges and prosecutors from the profession, whose connection and relation and membership of the FETÖ/PDY have been determined in order to ensure the independence and impartiality of the judiciary. The HCJP which is a guarantee for continuation of the judiciary basing upon the principle of "the rule of law", acted within the meaning of this must.

13. TORTURE CLAIMS AND PUBLICATION OF THE REPORT OF THE COMMITTEE FOR THE PREVENTION OF TORTURE (CPT)

It must be primarily emphasized that a large part of the persons, who were taken into custody on the first day of the incident, had been arrested at the end of the conflicts while some of them had been arrested by the citizens. It is natural that persons arrested at the end of the conflicts have certain wounds, which falls within the scope of the use of legitimate power. As a matter of fact, such wounds are indicated in the custody reports.

In our country, there is a requirement of issuing a medical report for all custody procedures with a view to preventing the allegations of torture. Likewise, the report is also received when the duration of custody ends. Although it is not compulsory within the Decree law to receive medical report during the period of custody, the reports of status during custody and reports of admission and release from the custody of the suspects taken into custody for a period of 1 to 3 days are drawn up without any reserve. Besides, the custody centres are regularly controlled by the Public prosecutors.

Turkey is one of the countries, which has abolished the practice of statutory limitation for the offences of torture as a result of the policy of zero tolerance for torture. If there is a torture as alleged, it is without doubt that these allegations will be effectively investigated.

Furthermore, when maintaining these kinds of allegations it should be taken into consideration that three applications with requests for interim measures lodged by those detained after 15th July before the European Court of Human Rights alleging that they were subjected to ill treatment and their rights to life are under threat were rejected. When rejecting these requests for interim measure, the Court found the applicants' allegations abstract and unsubstantiated, relying on the information and documents submitted by the Government.

The Republic of Turkey is a party to the European Committee for the Prevention of Torture ("CPT" or "Committee"), and it is in cooperation with the CPT. It is always possible for the mentioned committee to pay visits to penitentiary institutions in our country as it was before. According to the CPT Convention, in case of a serious threat to the national security, the procedure concerning the postponement of the visit is not implemented, and it has been enabled for the CPT to perform visits. Indeed, the visit which was made on 6 September 2016 is a manifestation of this will and an application was introduced in which the report regarding the visit was sent to the party state in order it to state its opinions and in the form of publication-non-publication of the report or public declaration after obtaining the opinion of the relevant state. The mentioned report has not been sent yet for opinion. When the report is notified, the necessary action shall be taken in line with the obligations arising from the Contract.

The members of the monitoring boards which are an effective inspection mechanism of the penal institutions are elected for 4 years. Totally 725 monitoring board members are still required to perform duty at 134 heavy criminal centers. Certain inconveniencies occurred due to the reason that some of the monitoring board members were arrested.

The members of the Monitoring Board are elected by the Justice Committee consisting 3 people including the Office of Chief Public Prosecutor.

In the investigations made as a result of the coup attempt that occurred on 15 July 2016, many judges and public prosecutors who are the members of FETÖ and who take charge in these committees were dismissed. Within this scope, a regulation was made in the Decree Law no 673 in order to prevent the occurrence of any blemish and doubt on the members of this mechanism for the inspection of the penal institutions and the provision "The membership of the chairmans and members of the penal institutions and detention houses monitoring boards

ends on the date on which this article comes into effect and re-election is made in accordance with the procedure specified in the Law on Penal Institutions and Detention Houses Monitoring Boards dated 14/06/2001 and no 4681 within 10 days." was introduced into the article 3, entitled "penal institutions and detention houses monitoring boards" of the Decree Having the Force of Law dated 1 September 2016 and no 673.

Accordingly, it is understood that the existing members were dismissed with the mentioned, the monitoring boards which found their juridical status with the Law no 4681 on Penal Institutions and Detention Houses Monitoring Boards continue their presence and function, it is regulated in the mentioned Decree Having the Force of Law that the new members will be elected within ten days, 725 members were dismissed in the current situation, approximately all monitoring board members were assigned and started to their activities. It should not be doubted that our country acts with the principle of zero tolerance to torture and maltreatment and the arrested and the sentenced will be kept under the humanistic conditions.

Furthermore, it should be known that the works and operations of all of our institutions are within the scope of the judicial inspection; within this scope, the sentenced and the arrested kept in the penal institutions can make complaint principally to the offices of judge of execution against the applications of the institution and make objection to the high criminal courts against the decisions of the office of judge of execution and our administration has no opportunity to interfere in by inspiration or advice under any circumstances against the decisions of the judge having judicial independence.

It is possible to make judicial investigation about the personnel of the penal institution. It is not necessary to obtain investigation permit as for the other officers. All actions constituting a crime are not tolerated. The officers whose crime is determined are punished by the independent courts in judicial terms and by the administration in disciplinary terms.

The penal institutions are inspected periodically and at all times when required administratively by the parliament and the national/international inspection mechanisms.

Within the scope of administrative inspection, the penal institutions are inspected by the inspectors of the Ministry of Justice, controllers of the General Directorate of Prisons and Detention Houses, other officers of the General Directorate of Prisons and Detention Houses, the public prosecutors and the public prosecutors who are responsible for the penal institutions. The elimination of the inconveniencies found in these inspections is continuously followed up by the General Directorate of Prisons and Detention Houses.

Within the scope of judicial inspection, the decisions of the administration of the institution are inspected by the judges of execution established with the Law on Enforcement Judges dated 16/05/2001 and no 4675. The sentenced and the arrested can make complaint application to the judge of execution due to their complaints regarding the execution of the punishment or the living conditions in the institution and can object to the heavy criminal court against the decision of the judge of execution. In this way, all transactions and activities of the institutions can go through judicial inspection.

Furthermore, the provincial and district human rights boards established from the civil society representatives in the provinces and districts can visit and inspect the penal institutions as well.

The Public Inspection Institution and the Human Rights and Equality Institution of Turkey (which is accepted as a national prevention mechanism under OPCAT) can carry out site surveys in order to evaluate the compliants from the penal institutions.

Within the scope of parliament inspection, the chairmans and members of the Human Rights Examination Committee or research committees of the Grand National Assembly of Turkey can visit the penal institutions and carry out research and inspection activities.

The Human Rights Examination Committee, the monitoring board members, the judges of execution, the probation officers and the committees and persons authorized by laws can make private negotiation with the sentenced and arrested.

Apart from these, our penal institutions can be inspected by the international inspection mechanisms the inspection authority of which is accepted such as European Committee for the Prevention of Torture and also by the Commissioner's Office for Human Rights of the European Council, the United Nations Arbitrary Detentions Working Group and (OPCAT) pursuant to the Optional Protocol attached to the United Nations Convention Against Torture.

14. ASSESSMENT OF AMENDMENTS MADE TO CRIMINAL PROCEDURE

The provisions introduced with the Decree laws do not change all procedural acts in the Code of Criminal Procedure. For example, although a maximum period of 30 days is provided for custody under the Decree-law no. 667, there has been no limitation as regards the regulation envisaging that those taken into custody may request for release in line with the procedure under the Code of Criminal Procedure. Regard being had to the large number of members of the terrorist organization who took part in the terrorist coup attempt, the period of custody has been increased to a maximum period of thirty (30) days by the Decree law, which is limited to the period of state of emergency. The purpose of this is to duly take the statements of the large number of persons taken into custody, to collect the evidences in favour of and against the suspects and thus to carry out the obligation of effective investigation of the State. Furthermore, this period applies only to offences committed against the security of the State, constitutional order, State secrets, national defence and terrorist offences as well as offences committed collectively. The period of custody of 30 days which is specified in the memorandum was not applied and most of those taken into custody were held for 4 and 5 days. In addition, during this period:

- filing an objection to the custody order is possible.
- a request for release may always be lodged during custody. In case of a request, Magistrate's Judge shall render a decision.
- legal assistance is available during custody.
- a medical report is always drawn up during placement into custody and release.

Furthermore, during the state of emergency, right to communication of the suspect with his counsel during the custody may be restricted, but the statements of the suspect cannot be taken during this period. The reason for introduction of the mentioned provision is to prevent terrorist organizations from applying pressures via their counsels and from transmitting information through their counsels to other members of the organization who were identified on the basis of the evidence obtained but who have not yet been arrested. Moreover, the communication of detained suspects with their counsels may be restricted by the order of a judge, in the event of a possibility of a threat against society and penitentiary institution, directing the terrorist organization or other criminal organizations, giving orders and instructions

to them or transmitting secret, open or crypto messages to them. However, in this case, detained suspects may benefit from the assistance of a counsel to be appointed by the Bar.

IV. QUESTIONS AND ANSWERS THAT MIGHT BECOME A CURRENT ISSUE

1. Inspection of the State of Emergency by the Assembly and Constitutional Court

- **Procedure for acceptance of OHAL by the Assembly - Acceptance procedure and its implementation in accordance with the Constitution, Rules of Procedure and OHAL Law.**

According to the article 121 of the Constitution⁴, in the event of a declaration of a state of emergency under the provisions of the Articles 119⁵ and 120⁶ of the Constitution, this decision is published on the Official Gazette and is immediately submitted to the Grand National Assembly of Turkey for approval. If the Grand National Assembly of Turkey is in recess, it is immediately assembled and the Assembly may change the period of the state of emergency and extend the period for a maximum of four months each time at the request of the Council of Ministers, or may lift the state of emergency.

According to the article 126⁷ entitled "*Decisions concerning a state of emergency*" of the By-law of the Grand National Assembly of Turkey, decisions concerning a state of emergency

⁴ Article 121 of the Constitution - In the event of a declaration of a state of emergency under the provisions of Articles 119 and 120 of the Constitution, this decision shall be published on the Official Gazette and shall be submitted immediately to the Turkish Grand National Assembly for approval. If the Turkish Grand National Assembly is in recess, it shall be assembled immediately. The Assembly may alter the duration of the state of emergency, extend the period, for a maximum of four months only, each time at the request of the Council of Ministers, or may lift the state of emergency.

The financial, material and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119 and, applicable according to the nature of each kind of state of emergency, the procedure as to how fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15, how and by what means the measures necessitated by the situation shall be taken, what sort of powers shall be conferred on public servants, what kind of changes shall be made in the status of officials, and the procedure governing emergency rule, shall be regulated by the Law on State of Emergency.

During the state of emergency, the Council of Ministers meeting under the chairmanship of the President of the Republic, may issue Decree Laws on matters necessitated by the state of emergency. These decrees shall be published on the Official Gazette, and shall be submitted to the Turkish Grand National Assembly on the same day for approval; the time limit and procedure for their approval by the Assembly shall be indicated in the Rules of Procedure.

⁵ Article 119 of the Constitution- In the event of natural disaster, dangerous epidemic diseases or a serious economic crisis, the Council of Ministers, meeting under the chairmanship of the President of the Republic may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months.

⁶ Article 120 of the Constitution- In the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairmanship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months.

⁷ Article 126 of the Rules of Procedure of the Grand National Assembly of Turkey– Decisions concerning a state of emergency declared by the Council of Ministers pursuant to Article 121 of the Constitution and published on the Official Gazette are submitted for the approval of the Grand National Assembly of Turkey along with a memorandum of the Prime Ministry.

A motion may be tabled during the debates by political party groups or the signature of at least twenty members on shortening or extending the time prescribed in the decision mentioned in the paragraph above. The owner of the motion may take the floor before the vote for a period not exceeding five minutes.

The requests of the Council of Ministers on extending and altering the duration and lifting of the state of emergency adopted by the Grand National Assembly of Turkey shall be debated and decided in accordance with the procedure and principles in this Article.

declared by the Council of Ministers pursuant to Article 121 of the Constitution and published on the Official Gazette are submitted for approval of the Grand National Assembly of Turkey along with a resolution of the Prime Ministry. A proposal may be tabled during the debates by political party groups or the signature of at least twenty members on shortening or extending the time prescribed in the decision mentioned in the paragraph above. The owner of the proposal may take the floor before the vote for a period not exceeding five minutes. The requests of the Council of Ministers on extending and altering the duration and lifting of the state of emergency adopted by the Grand National Assembly of Turkey shall be debated and decided in accordance with the procedure and principles in this Article.

- **Control of OHAL decrees by the Assembly - procedure and its implementation. Why didn't the Assembly cancel the holiday between August - September in order to examine the Decree Laws?**

It is resolved in the third paragraph of the article 121 of the Constitution that during the state of emergency, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, may issue Decree Laws on matters necessitated by the state of emergency, these decrees will be published on the Official Gazette and will be submitted to the Grand National Assembly of Turkey on the same day for approval, the time limit and procedure for their approval by the Assembly are indicated in the By-law. Moreover, it is resolved in the first paragraph of the article 148⁸, that Decree Laws issued during a state of emergency, martial law or in time of war shall not be brought to the Constitutional Court alleging their unconstitutionality as to form or substance, as indicated in the By-law.

Pursuant to the article 128⁹ entitled "*Debate on Decree Laws adopted during state of emergency and martial law*" of the Rules of Procedure of the Grand National Assembly of Turkey, Decree Laws issued as per articles 121 and 122 of the Constitution and submitted to the Grand National Assembly of Turkey are debated and decided upon according to the rules stipulated in the Constitution and the Rules of Procedure regarding the deliberation of the draft laws proposed by government or deputies but immediately within thirty days at the late and before other Decree Laws and bills in the committees and the Plenary. If the debate on the Decree Laws fails to be concluded in the committees, within at least twenty days, the Office of the Speaker puts them on the agenda of the Plenary.

Hence, the Decree Laws issued within the scope of the State of Emergency were started to be discussed in the Grand National Assembly of Turkey and the Decree Law no667 regarding the Measures To Be Taken Under State of Emergency determined by the Council

General provisions apply to the debates held in accordance with this article.

⁸ Article 148 of the Constitution- (Amended: 12/9/2010-5982/article 18) The Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, Decree Laws and the Rules of Procedure of the Grand National Assembly of Turkey, and decide on individual applications. Constitutional amendments shall be examined and verified only with regard to their form. However, Decree Laws issued during a state of emergency, martial law or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance.

⁹ Article 128 of the Rules of Procedure of the Grand National Assembly of Turkey– Decree Laws issued as per articles 121 and 122 of the Constitution and submitted to the Grand National Assembly of Turkey are debated and decided upon according to the rules stipulated in the Constitution and the Rules of Procedure regarding the debate of the government bills and private members' bills, but immediately within thirty days at the latest, and before other Decree Laws and bills in the committees and the Plenary. If the debate on the Decree Laws fails to be concluded in the committees, within at least twenty days, the Office of the Speaker puts them on the agenda of the Plenary.

of Ministers on 22/7/2016 was accepted and became law in the General Assembly of the Grand National Assembly of Turkey on 18/10/2016.

- **Retrospective control of OHAL decrees by the Constitutional Court - Whether it is possible to object in abstracto or with individual petitions.**

In the article 148, entitled "*Functions and competences*" of the Constitutional Court, of the Constitution, it is regulated that the Constitutional Court will examine the constitutionality, in respect of both form and substance, of laws, Decree Laws and the By-law of the Grand National Assembly of Turkey and decide on individual applications, ...however, **Decree Laws issued during a state of emergency, martial law or in time of war will not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance.**

Moreover, in the third paragraph of the article 45¹⁰, entitled "*Individual application right*", of the Law no 6216 on Establishment and Judgment Procedures of the Constitutional Court, it is stipulated that **individual applications cannot be made directly against legislative transactions and regulatory administrative transactions and similarly, the rulings of the Constitutional Court and transactions that have been excluded from judicial review by the Constitution cannot be the subject of individual application.**

However, it is considered that as the judicial remedy is available against the administrative transactions performed by the administrative boards based on the authorization granted by the Decree Laws under OHAL, individual application can be made against these transactions. On the contrary, as the expulsion transactions performed as attached to the Decree Laws have the characteristic of legislative activity in technical terms, both the lawsuit and the individual application remedy are not available against these transactions. Hence, as expressed also in the Eskelinen/Finland decision taken by the Grand Chamber of the European Court of Human Rights, the State has discretion with regard to closing the judicial remedy against the transactions regarding the public officials. In consequence, it is considered that the closure of the judicial remedy against the dismissal transactions of the public officials who infringe their loyalty obligations to the State due to their connection with any terrorist organization remains under the discretion of the State pursuant to the the European Convention of Human Rights and case law of the European Court of Human Rights.

- **Results of the objection applications made by CHP to OHAL Decree Laws**

¹⁰ ARTICLE 45- (1) Everyone can apply to the Constitutional Court based on the claim that any one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights and the additional protocols thereto, to which Turkey is a party, which are guaranteed by the Constitution has been violated by public force.

(2) All of the administrative and judicial application remedies that have been prescribed in the core regarding the transaction, the act or the negligence that is alleged to have caused the violation must have been exhausted before making an individual application.

(3) Individual applications cannot be made directly against legislative transactions and regulatory administrative transactions and similarly, the rulings of the Constitutional Court and transactions that have been excluded from judicial review by the Constitution cannot be the subject of individual application.

The Constitutional Court rejected the application made by CHP with the claim for the annulment of the Decree Laws no 668 issued under the declaration of state of emergency (OHAL) due to **non-competence**. However, the justified decision has not been published yet by the Constitutional Court.

2. Legal remedies at the ordinary courts

- **Whether it is possible for the judges and prosecutors who are dismissed to interrogate the decisions of dismissal at the administrative and other courts (concrete examples)**

A multi-dimensional and strict research is made before the dismissal decision is taken by the High Council of Judges and Prosecutors due to the membership of a terrorist organization against the judges and Public prosecutors and the justice inspectors and inspectors of the High Council of Judges and Prosecutors. In regard to the possibility of making an incorrect dismissal decision inspite of all of these researches and examinations, the remedy of objection is kept available. The objection made by certain judicial members against whom the dismissal decision had been previously made was accepted and it was ensured that they returned to their professions.

Within the scope of the investigations initiated by the High Council of Judges and Prosecutors, it was resolved by the High Council of Judges and Prosecutors that (as of 14 October 2016), 3693 Judges- Public Prosecutors were suspended, 198 of these persons were returned to profession as a result of the examinations made and 3456 Judges-Public prosecutors, however, were dismissed from profession. Furthermore, certain judges and prosecutors who are dismissed have also filed cases in the administrative courts and certain persons made individual application to the Constitutional Court on this matter.

Pursuant to the provision “Continuation in the profession of those who are considered to be a member of, or have relation or connection with terrorist organizations or structures/entities, organizations or groups established by the National Security Council as engaging in activities against the national security of the State, shall be found to be unsuitable and their dismissal from the profession shall be decided by the absolute majority of the Plenary Session of the Constitutional Court in so far as the members of the Constitutional Court are concerned; by the Board of the First Presidency of the Court of Cassation in so far as Presidents of Chambers of the Court of Cassation and its members are concerned; by the Board of Presidency of the Supreme Administrative Court in so far as the Presidents of Chambers of the Supreme Administrative Court and its members are concerned; by the Plenary Session of the High Council of Judges and Prosecutoers in so far as judges and prosecutors are concerned; and by a commission, consisting of President of a Chamber and a member to be determined by the President and Vice Presidents of Court of Accounts under the chairmanship of the President of Court of Accounts in so far as members of profession of the Court of Accounts are concerned. (Additional sentence: 15/8/2016-KHK-670/article 10) These decisions are published on the Official Gazette and is deemed to have been served to those concerned on the date of publication. (Additional sentence: 15/8/2016-KHK-673/article 10) The decisions taken upon the objection or the request for re-examination against the decisions of dismissal from profession pursuant to the provisions set forth in the relevant laws are published on the Official Gazette and are deemed to have been served to those concerned on the date of publication as well.” set forth in the first paragraph of the article 3 of the Decree having the force of law dated 22/7/2016 and no 667, it is

expressly stated that those who perform duty in the titles specified in the article can object to the decisions of dismissal from profession pursuant to the provisions set forth in the relevant laws.

- **Whether there is a remedy for the organizations closed with the Decree Laws (examples).**

With the Decree Law no 668 issued under the State of Emergency declared after the coup attempt dated 15 July 2016, it was decided that certain organizations which belong to, connect to or related to the Fetullahist Terrorist Organization (FETÖ/PDY), which were determined to have posed a threat to the national security were closed.¹¹

In the determination of whether there is a judicial remedy that can be applied to in connection with the institutions and organizations which are decided to be closed by ending their activities within the scope of the Decree Laws issued within the state of emergency period, the legal nature of the transaction performed should be taken into account. Within this framework, it is mandatory to make an evaluation according to whether the closure transaction is based directly on the provision of decree having the force of law.

It is considered that as Decree Having the Force of Law has the characteristic of a specific legislative transaction and does not remain within the scope of administrative transaction, it is not possible to request the annulment of the transaction by applying to the courts of first instance in relation to the institutions and organizations which are closed directly with the provision of decree having the force of law. It is the requirement of the mandatory provision of the article 148 of the Constitution that lawsuit cannot be filed to the Constitutional Court alleging that the Decree Laws issued within the state of emergency periods are in contradiction to the Constitution in terms of form and basis as well as the individuals do not right of action against the legislative transactions.

In addition to this, in connection with the institutions and organizations closed, there is no legal obstacle for those concerned to request the review and withdrawal of the transaction performed by administrative application. Hence, certain private educational institutions and organizations which had been previously closed with the article 1 of the Decree Law No 673 were removed from the relevant lists of Decree Having the Force Law and the transactions performed were withdrawn.

On the other hand, in the event that the closure transaction is not based directly on the provision of decree having the force of law, but based on the transactions performed by the administrative boards or committees authorized with the Decree Laws, it is possible to apply to the administrative judicial remedy against these administrative transactions. For instance, in the fourth paragraph of the article 2 of the Decree Law dated 25/7/2016 and no 668, the provision that the private radio and television institutions and newspapers and journals, publishing houses and distribution channels which have relation or cohesion to or connection with the structures, formations or groups which are determined to pose a threat to the national security and which are not included in the attached lists no (2) and (3) will be closed with the approval of

11 ARTICLE 2 of the Decree Law no668 - (1) Those which belong to, connect to, or related to the Fetullahist Terrorist Organization (FETÖ/PDY), established posing a threat to the national security;
a) Military personnel listed in Annex (1) have been discharged from the Turkish Armed Forces. Additional procedures shall be carried out in respect of them pursuant to the provisions of special laws.
b) Private radio and television organizations listed in Annex (2) have been closed down.
c) Newspapers and periodicals listed in Annex (3) and their publication and distribution channels have been closed down.

the relevant minister upon the proposal of the committee to be established by the relevant minister is set forth. It is considered that the judicial remedy is available against the such closure transactions with an administrative decision based on the authorization granted by the Decree Having the Force of Law.

- **Whether it is possible to request back the property seized with the Decree Laws (examples).**

The rule of law, democracy and human rights are the fundamental principles of the State of the Republic of Turkey. The Turkish Government fights with the coup-purpose terrorist attempt by taking the rule of law as basis.

The private institutions and enterprises such as health institution, school, student dormitory, foundation, association, university and union which were determined to belong to FETÖ, posing a threat to the National Security, which have a special significance in providing members to the organization and in the finance of the organization and where the activities of the organization are carried out were closed. It was resolved that the assets of the private institutions and enterprises closed will be transferred to the Treasury or the General Directorate of Foundations according to their relevance. This provision was inserted for the purpose of seizing the asset which is used in the activity of the terrorist organization and which is obtained within the framework of these activities and preventing the finance of the terrorists organization.

With the Decree Law no 671, the regulations were made for imposing a cautionary judgment with the judicial decision on the assets of the suspects and defense counsels of the terrorist crimes set forth in the Turkish Criminal Law and Anti-Terror Law (TeMK). In this way, the property right can be limited in harmonization with the provisions for restriction set forth in the international conventions within the framework of the protection of the rights of sufferers and in the sense of the fulfillment of the positive obligations of the State.

Accordingly, the addition of the article 20/A after the article 20 of the Anti-Terror Law (TeMK) was regulated with the article 31 of the Decree Law no 671 named "Some Articles of the Decree Law on Measures to be taken under the State of Emergency and Arrangements made on Certain Institutions and Organizations" which came into force by being published on the Official Gazette dated 17.08.2016 and no 29804.

Although this article is regulated with the Decree having the force of law regarding a state of emergency, it is not one of the regulations regarding the measures that will be removed when the state of emergency ends because it has the characteristic of an amendment made in TeMK. Therefore, the mentioned regulation shall be taken as subject not to the article 31 of the Decree Law no 671, but to the article 20/A of TeMK in the rest of the study.

The main purpose of the regulation made in the article 20/A with the sidehead "Taking a cautionary judgment for the purpose of compensating the damages" of TeMK is to restrict the power of disposition which the suspects or defense counsels have on the immovables, land, sea or air transportation means belonging to the suspects or defense counsels in order to ensure the compensation of the damages which the real and legal persons and the public institutions and organizations suffered due to certain crimes set forth in the Turkish Criminal Law (TCK) and the crimes within the scope of TeMK.

It is mentioned in the article that the powers of disposition not on all factors belonging to the asset of the suspects or defense counsels, but on two groups of goods can be restricted. The first group with respect to these goods is the immovables; the second group, however, is the

land, sea or air transportation means which will be considered among the movables. Undoubtedly, it is considered that the thought that the powers of disposition of the suspects or defense counsels which are restricted with the judicial decision should be made explicit is dominant in the selection of the immovables and land, sea or air transportation means instead of all factors belonging to the asset. As it will be noted, there are registries which are kept about all of the good groups selected in the article.

It was also regulated that the restriction on the power of disposition resolved by the judge should be annotated to the registry which the good on which the power of disposition is restricted is associated to for the purpose of making the restriction for the power of disposition explicit. The decision regarding the immovables shall be annotated to the land registry and the decision in connection with the land, sea or air transportation means to the registries in which these means are registered.

- **What happens if a person dismissed with the decree restarts to work? (Is compensation request possible? What happens to the person assigned in place of that person in the meanwhile?)**

In accordance with the third paragraph of Article 3 of the Decree Law No. 675; "the provisions of Article 2 of the Decree Law No. 668 and those of Articles 2 and 3 of the Decree Law No. 672 shall be deemed to be annulled, with respect to the persons mentioned in this article and together with all its provisions and consequences, following the publication date of the relevant decree law. Among the mentioned personnel, those who did not take office within ten days after the entry into force of this article are deemed to have withdrawn from office. The financial and social claims of those who took office within this scope will be paid for the term between their dismissal from public office and their reinstatement. These persons may not claim any compensation for their dismissal from public office. Except for those who served at a managerial position when they were dismissed from public office, this personnel may be reinstated through appointment to appropriate cadres and positions in consideration of their state of education and degree of salary as a vested right. The proceedings related to this article shall be carried out by the relevant ministries and institutions." Under these provisions, it has been clearly prescribed that the state officials who were reinstated may not claim any compensation for their dismissal from office and, instead, their financial and social claims which correspond to the dates between their dismissal from public office and their reinstatement will be paid.

Any person dismissed with the decree can be assigned to another place of duty in line with his request as well as he can be assigned to his old position. The necessary measures are taken for the persons who are in this condition not to suffer a loss of right. For instance, the deductions made from the salaries of those returned to duty in terms of Judges and Prosecutors within the period during which they are suspended shall be paid back in accordance with the article 78 of the Judges and Prosecutors Law no 2802.¹²

¹²**Article 78** of the Judges and Prosecutors Law – The two-third of their salaries and allowances shall be given to those who are dismissed and the half of their salaries and allowances shall be given to those who are arrested or detained due to any crime whether related to or not related to their duty within these periods. They shall continue to take advantage of the other social rights and benefits set forth in this Law.

From those who are arrested, detained or dismissed, those about which action is taken pursuant to the first paragraph of the article 79 and the article 80 shall be returned to their duties or assigned to another duty and receive their salaries and allowances deducted and the periods during which they are suspended shall be evaluated in the grade progress and degree increases. However, the salaries and allowances deducted shall not be paid to those whose

In addition to this, it is set forth *in the article 141*, entitled "*Right and obligation of the civil servants who are dismissed or who are suspended:*", of the Civil Servants Law no 657 that "Two-third of their salaries shall be paid to the civil servants who are dismissed and who are arrested or detained due to any crime whether related to or not related to their duty. Such civil servants shall continue to take advantage of the social rights and benefits prescribed by this Law. If the conditions mentioned in the article 143 happen, one-third of their salaries, which is deducted, shall be paid to them and the period which they spend as dismissed shall be evaluated in the grade progress in their degrees and the part of this period, which exceeds the minimum waiting period necessary for the degree increase shall be evaluated by making grade progress in this degree if they rise to the upper degree."

- **Are there *individual decisions* which include the reasons for the dismissed persons to be put on the list? (bu kişiyle ilgili gerçeklere ilişkin) Is it possible for the persons to learn their reasons for dismissal/actual accusations and to object? If so, which adjudicatory procedures are applied?**

The provision "One of the disciplinary penalties listed in the article 125 shall be given to those who do not fulfill the duties which the laws, statutes and regulations prescribe in order to ensure that the public services are duly executed as the Civil servants in the country or in abroad, those who do not fulfill the issues which such laws, statutes and regulations necessitate to be complied with and those who perform the works which such laws, statutes and regulations prohibit according to the nature and severity of the condition." was regulated in the 2nd paragraph of the article 124 of the Civil Servants Law no 657 regarding the disciplinary transactions of the civil servants.

Dismissal was regulated as "Dismissal is an interim injunction which is taken against the Civil servants for whom it will be considered inconvenient to stay on duty in the cases required by the State public services. The dismissal measure can be taken at any stage of the investigation" in the article 137 of the same Law and it was regulated in the article 140 that the dismissal measure can be applied also within the scope of the criminal proceedings by stating "The Civil servants against whom criminal proceedings are initiated by the courts can also be dismissed by the authorities set forth in the article 138".

Also, in the article 145 of the same Law, the provision regarding how long the dismissal measure can be applied was regulated by stating "Dismissal can continue for 3 months at most if it is for the sake of a disciplinary proceeding. At the end of this period, the civil servant is started to his duty if any decision is not taken against him. If it is for the sake of a criminal proceeding, the supervisor authorized to dismiss (supervisor authorized to assign against the civil servants who the inspectors dismissed) shall examine the condition of the relevant person once in every two months and take a decision about whether he will be returned to his duty and notify the decision to the relevant person with a letter".

With regard to in which cases the Civil Service will end, the provision "The civil service of the civil servants shall end in the cases where;

- a) the civil servants are dismissed from civil service in accordance with the provisions of this Law;

sentence is not postponed as set forth in the item (e) of the article 80 and the conviction periods executed shall not be evaluated in the grade progress and degree increases.

b) it is subsequently understood that the civil servants do not meet any of the terms for the employment as a civil servant or lose any of these terms during their civil service;

c) the civil servants retire from the civil service;

ç) the civil servants are retired due to one of the reasons such as request, age limit, disability (...) (1); (1) and

d) in the case of death of the civil servants"

was regulated in the article 98 of the Civil Servants Law no 657.

Within this scope, the disciplinary provisions regulated in the Law no 657 are applied within the ordinary period. However, as the process of state of emergency declared due to the coup attempt is currently continuing, a binary system is stipulated in OHAL Decree-Laws issued. Accordingly, it is considered that as the decisions which are taken by the administrative boards/committees established based on the authority granted with OHAL Decree-Laws are considered as having the characteristic of an executive transaction, the judicial remedies are available against the same; on the contrary, as the transactions performed directly with the lists attached to the Decree-Laws have the characteristic of a legislative transaction, the judicial remedies are not available.

For instance, within the scope of the investigations executed in judicial and administrative terms by the Offices of the Chief Public Prosecutors against the Penal Institution personnel and probation personnel, the dismissal measures are applied in accordance with the articles 137, 140 and 145/2 of the Civil Servants Law no 657 and the judicial remedy is available against these decisions. In this context, the action was taken against totally 2099 Penal Institution personnel and probation personnel, and the dismissal transaction was performed as a measure against 1594 of these persons under the Civil Servants Law no 657 and 511 people are arrested.

In addition to this, in terms of the Judges and Prosecutors, the judges and prosecutors who were detained after the coup attempt dated 15 July 2016 were dismissed as a temporary measure and it was decided that a criminal and disciplinary investigation would be initiated against them by the 3rd Chamber of the High Council of Judges and Prosecutors. Afterwards, it was decided that it is not considered appropriate for the mentioned judges and prosecutors to remain in profession in order to protect the authority granted by the article 3 of the Decree-Law no 667 and the constitutional order. Each judge or prosecutor has a separate disciplinary file and criminal proceeding and the investigations and proceedings are ongoing. The justified decision of our Board, which includes the dismissal reasons of the mentioned judges and prosecutors, was notified to them and published on our website. These persons have the right to object to the High Council of Judges and Prosecutors against the dismissal decision and to the independent judicial authorities with respect to the criminal proceeding process. Furthermore, it is possible for them to access to the information and documents related to them by making an application under the right to information.

- **Is it necessary for the relevant ministries/judicial bodies to have a proper evidence with regard to the connections of the public officials with the Fetullahist organization?**

The Republic of Turkey is a state of law. The fight against the terrorist organizations is conducted within the law and by adhering to the rule of law principle. Hence, it was expressly emphasized that from the petitions given to the administrations with respect to the persons who

are alleged to have membership, affiliation or cohesion or connection with the mentioned organizations, structures, formations or groups, those which do not include the name, surname, signature and workplace or residence address of their owner will not be examined in accordance with the Circular, dated 21 October 2016 and no 2016/21, of the Prime Ministry.

For instance, the judicial bodies performed these transactions as having many official evidences about the mentioned judges and prosecutors in their decisions for either suspension or dismissal. (Turkish National Police, MIT, Office of Chief Public Prosecutor, current criminal proceedings and disciplinary investigations ongoing before 15 July. For example, sledgehammer, Izmir spying, Ergenekon etc.)

In order to form the basis of the evaluation to be made under the article 3 of the Decree Law no 667 for the judges and prosecutors: the activities of those concerned in the training center and Justice Academy of Turkey starting with their acceptance to profession; the information regarding their participation into the in-service training and foreign language trainings, sending them to abroad and their assignment to private authorized office of prosecutors or courts or administrative positions; and the criteria taken into account in these assignments and in the assignments made as judge or with a similar title to the private authorized courts, as president, vice president or inspector to the Presidency of Inspection Board, as investigation judge, head of department or deputy head of department, general director or deputy general director etc. to the administrative institutions, which are also used as a weapon; the information and documents in the personal files; their sharings in the social media accounts; the complaints, warnings, examination and investigation files submitted to the High Council of Judges and Prosecutors against those concerned and the decisions taken about these files; the researches made on the premises; the transactions performed and decisions taken by the judges and public prosecutors taking charge in the files related to FETÖ/PDY terrorist organization in these files; the records in the encoded programmes that the organization members use for communication; the disciplinary penalties and dissenting opinions which the High Council of Judges and Prosecutors determined against the organization members for whom it is evident with the reports issued by the anti-terror units of the Turkish National Police that they are the members of FETÖ/PDY; the social environment information; the information and documents supplied from Ankara Office of Chief Public Prosecutor; the nature of the investigation initiated and the accusations attributed and detention and arrestment decisions taken by Ankara Office of Chief Public Prosecutor against those concerned; the statements and interrogation reports of the judges and public prosecutors whose statements are called upon within the scope of the investigation; the statements of the confessors; and other information and documents were taken into consideration in the examination of the members of the High Council of Judges and Prosecutors.

- **Are there also other lists related to the dismissal decisions taken by the relevant ministries and institutions? According to which criteria were these lists prepared?**

As known, the State of the Republic of Turkey still executes an effective fight against many terrorist organizations, mainly FETÖ, PKK and DAESH. The terrorist organizations are continuing to threaten to the State of the Republic of Turkey. It is an inevitable necessity to identify the public officials connected with FETÖ and other terrorist organizations which infiltrated into the state and to execute the necessary transactions against them urgently in consideration of the magnitude of the threat and that it is still ongoing. In this regard, the execution of new dismissal transactions is possible within the course of the investigations and examinations in a very

meticulous manner by adhering to the rule of law principle. Moreover, the administrative contention of unconstitutionality against these transactions can be used as well.

- **Are the dismissal decisions of the judges as a result of the disciplinary investigations technically or are these decisions based on OHAL decrees?**

Based on the disciplinary investigations which had been previously initiated against certain judges and prosecutors after the coup attempt dated 15 July 2016 and for the other part, however, upon the disciplinary investigation permission given by the 3rd Chamber of the High Council of Judges and Prosecutors on 16 July 2016, the suspension decisions were taken by the 2nd Chamber of the High Council of Judges and Prosecutors; and while the disciplinary investigation process was ongoing, the dismissal decisions were taken by the General Assembly of the High Council of Judges and Prosecutors pursuant to the relevant article of this Decree having the force of law upon the enforcement of the Decree Law no 667. On the other hand, the disciplinary process is ongoing.

- **Why is it impossible to use the existing mechanism in order to get rid of the public officials who are not "faithful"?**

Although fight against FETÖ has been conducted by ordinary procedures for a long period of time, the calamitous attempt occurred on 15 July. The magnitude of the attack carried out against the State and Nation of the Republic of Turkey on 15 July showed that the ordinary measures are not sufficiently effective in fighting against FETÖ. In order to understand why the existing mechanisms are not sufficient in fighting against FETÖ, it should be well understood that how an insidious and cruel organization FETÖ is, to what extent it has reached a power in Turkey and all around the World and what kind of a structuring it has.

As FETÖ operates for the purpose of seizing the bureaucracy and the management of the State by structuring in cells in the public institutions, certain measures had to be taken in order to be able to clear the public from the members of this terrorist organization swiftly.

Measures for the purpose of conducting an effective fight against FETÖ terrorist organization which completely infiltrated into the institutions of the State were taken with the first Decree having the force of law issues as of the declaration of the state of emergency. The purpose of the declaration of OHAL and of the Decree having the force of law accepted within this process is to protect the rule of law, democracy and human rights by clearing the institutions of the State from the members of FETÖ terrorist organization and no limitation was imposed on the rights and freedoms of the people with the decrees. The rule of law, democracy and human rights are the fundamental principles of the State of the Republic of Turkey.

3. Basis of the extraordinary measures

- **General questions**
- **Does the list of the extraordinary measures coincide with the list of the measures that can be accepted during the state of emergency pursuant to the Law 1983?**

The Act on State of Emergency dated 25/10/1983 and no 2935 was prepared for the purpose of determining the declaration of state of emergency due to the reasons specified in the articles 119 and 120 of the Constitution, the relevant procedures and the provisions to be applied in the states of emergency.

In the second paragraph of the article 121 of the Constitution, the provision "The financial, material and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119 and the manner how fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15, how and by what means the measures necessitated by the situation shall be taken, what sorts of powers shall be conferred on public servants, what kinds of changes shall be made in the status of officials as long as they are applicable to each kinds of states of emergency separately, and the extraordinary administration procedures, shall be regulated by the Act on State of Emergency." is set forth. The same issues are mentioned in the article 2 with the sidehead "Scope" of the Law no 2935 and it is understood that the Law is a generic regulation prepared in accordance with the mandatory provision of the Constitution.

The inclusion of certain restrictions that might be applied, the certain measures that might be taken and the certain powers that might be granted to the public officials within the state of emergency periods in the Law no 2935 does not eliminate the opportunity to make a legal regulation related to the other necessary and mandatory measures. In other words, it is not possible to mentioned about a monopoly established by the provisions of the Law no 2935 with regard to the measures that might be taken within the state of emergency periods.

The normative ground in connection with the state of emergency periods is not limited to the Law no 2935. Hence, the certain provisions that might be applied within the state of emergency periods are included also in the other certain laws such as Civil Servants Law no 657 (articles 62/1, 72/3, 96, 178); the Law for Provincial Administration no 5442 (article 31/B) or the Banking Law no 5411 (article 131/3) according to their relevance.

The normative ground in connection with the state of emergency periods is determined in the Constitution at the top level. After the issues to be regulated with the Act on State of Emergency are specified in the second paragraphs of the article 121 of the Constitution, it is expressly resolved in the third paragraph that the Council of Ministers which is assembled under the chairmanship of the President can issue Decree Laws on the issues required by the state of emergency during the state of emergency.

If it was possible to mentioned about a normative monopoly granted to the Act on State of Emergency with regard to the determination of the measures that might be put into effect within the state of emergency period, the provision of the third paragraph of the article 121 of the Constitution, in other words, the authorization to issue decree having the force of law would not be needed.

Moreover, the inclusion of all kinds of measure required by the concrete events that might cause to the declaration of state of emergency in a generic regulation (concretely in the Law no 2935 which came into force in 1983) does not reflect a realistic expectation. The law-maker stipulating that additional measures might be necessary within the specific reasons and conditions of the events that might cause to the declaration of state of emergency allowed to make a regulation on the issues required by the state of emergency by issuing Decree Laws at the top norm level for this reason.

On the other hand, there is no inferior norm - superior norm relationship between the laws including provisions that might be applied within the state of emergency period or between these laws and Decree Laws with regard to the state of emergency. The mentioned regulations cause the provisions and results within the area and limit which the constitutional norms are defined.

In addition to these, the measures introduced in the decrees issued with regard to the state of emergency generally coincide with the measures introduced in the article 11¹³, entitled "Measures to be taken in the acts of force", of the Act on State of Emergency no 2935.

¹³ **Article 11 – Measures to be Taken in the Case of Violence Measures:** Article 11. Whenever a state of emergency is declared in accordance with Article 3 (1)(b) to protect general security, safety and public order and to prevent the spread of acts of violence, in addition to the measures taken in accordance with Article 9, the following measures may be taken:

- a) imposition of a limited or full curfew,
- b) prohibition of any kind of assembly or procession or movement of vehicles in certain places or within certain hours,
- c) authorisation of officials to search persons, their vehicles or property and to seize goods deemed to have evidentiary value,
- d) imposition of obligation to carry identity cards by those living in or entering regions which are declared to be under a state of emergency,
- e) Prohibition of, or imposition of obligation to require permission for, the publication and distribution of newspapers, magazines, brochures, books, etc.; prohibition of importation and distribution of publications published or reprinted outside regions declared to be under a state of emergency; and confiscation of books, magazines, newspapers, brochures, posters and other publications of which publication or dissemination has been banned,

(Sub-item added: 9/4/1990 - KHK - 413/article 1; Abolished: 9/5/1990 - KHK - 424/article 12)

- f) control and, if deemed necessary, restriction or prohibition of every kind of broadcasting and dissemination of words, writings, pictures, films, records, sound and image bands (tapes),
- g) taking or increase of special security measures for internal security of banks and sensitive public and private establishments,
- h) control and, if deemed necessary, suspension or prohibition of the exhibition of all kinds of plays and films,
- i) prohibition of the carrying or conveying of all types of weapons and projectiles, including those licensed by the state,
- j) prohibition, or the imposition of a requirement to obtain prior permission, for the possession, preparation, manufacture or conveying of all types of ammunition, bombs, destructive materials, explosives, radioactive materials and corrosive, caustic or ulcerating chemicals and all kinds of poisons, suffocating gases and other similar material; and confiscation of, or demand to submit [to the state], goods, instruments and tools used in the preparation or manufacture of the aforesaid items,
- k) prohibition of persons or groups of persons believed to be disrupting public order or public security from entering the concerned region, expulsion of such persons or groups from the region, or imposition of a requirement on them to reside in or enter specified places in the region,

(Sub-item added: 9/4/1990 - KHK - 413/article 2; Abolished: 9/5/1990 - KHK - 424/article 12)

l) prohibition, restriction or regulation of the entry [of people] into and exit from establishments or institutions deemed essential for the security of the region,

m) prohibition of, postponement of, or imposition of a requirement to obtain permission for, assemblies and demonstrations in both enclosed and open spaces; regulation of the time and place of permitted assemblies and demonstrations; and supervision, and if deemed necessary dispersal, of all kinds of permitted assemblies,

n) **(Added: 14/11/1984 - 3076/article 1)** Postponement of, or imposition of a requirement to obtain permission for, the retrenchment of labour for periods exceeding three months, except in cases of termination or cancellation of labour contracts at the request of workers, dismissal on grounds of immoral behaviour or breach of good faith, retrenchment on health grounds, or normal retirement,

o) **(Added: 14/11/1984 - 3076/article 1)** Suspension of the activities or associations for periods not exceeding three months, after considering each individual case,

ö) **(Added: 14/11/1984 - 3076/article 1; Amended: 9/4/1990 - KHK -413/article 3; Abolished: 9/5/1990 - 424/article 12; Reissued: 9/5/1990 - KHK - 425/article 1; Cancelled: with the decision, dated 10/1/1991 and no E.1990/25,K.1991/1, of the Constitutional Court.)**

p) **(Added: 25/7/1986 - KHK - 259/article 2; Accepted by amendment: 3/9/1986 - 3310/article 2)** Planning and execution of operations, in so far as they may be necessary, beyond the borders of Turkey to capture or incapacitate persons who, having carried out [disruptive] actions in Turkey, have sought refuge in a neighbouring country. Such operations shall be carried out by the competent military commander, using the Army, Navy and Air Force, after obtaining the requisite permission from the Council of Ministers through the Office of the Chief of General Staff, at the request of regional governors, and within the framework of agreements arrived at between

- **Are there provisions "which cannot be restricted" in the Turkish Constitution? Which provisions cannot be restricted with regard to the obligations of Turkey in international law?**

It is stated in the article 121 of the Constitution that the financial, material and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119 and **the manner how fundamental rights and freedoms will be restricted or suspended in line with the principles of Article 15**, how and by what means the measures necessitated by the situation will be taken, what sorts of powers will be conferred on public servants, what kinds of changes will be made in the status of officials as long as they are applicable to each kinds of states of emergency separately, and the extraordinary administration procedures, will be regulated by the Act on State of Emergency.

In the article 15 of the Constitution, it is stated that in times of war, mobilization martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated; even under these circumstances, **the individual's right to live, the integrity of his/her corporeal and spiritual existence shall be inviolable except where death occurs through acts in conformity with law of war; no one will be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties will not be made retroactive; nor will anyone be held guilty until so proven by a court ruling** and it was stipulated that the rights mentioned cannot be restricted even in the cases of war, mobilization, martial law or state of emergency. Furthermore, it should be noted that the rights which cannot be restricted by the Constitution offer a wider content than the limitations specified in the paragraph 15/2 of the European Convention on Human Rights. In this sense, the regulations set forth in the Constitution prescribe more comprehensive protection.

In addition to this, the international treaties have the force of law in accordance with the article 90¹⁴ of the Constitution and it is not possible to apply to the Constitutional Court by alleging the contradiction to the Constitution. In the event that the international treaties regarding the

the Government of Turkey and that of the neighbouring country concerned. This power shall only extend to an emergency declared under Article 121 of the Constitution.

¹⁴ *D. Ratification of international treaties*

Article 90 – The ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey shall be subject to adoption by the Grand National Assembly of Turkey by a law approving the ratification.

Agreements regulating economic, commercial or technical relations, and covering a period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the State, and provided they do not interfere with the status of individuals or with the property rights of Turks abroad. In such cases, these agreements shall be brought to the knowledge of the Grand National Assembly of Turkey within two months of their promulgation.

Implementation agreements based on an international treaty, and economic, commercial, technical, or administrative agreements, which are concluded depending on the authorization as stated in the law, shall not require approval of the Grand National Assembly of Turkey. However, economic, commercial agreements or agreements relating to the rights of individuals concluded under the provision of this paragraph shall not be put into effect unless promulgated.

Agreements resulting in amendments to Turkish laws shall be subject to the provisions of the first paragraph. International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. **(Sentence added on May 7, 2004; Act No. 5170article7)** In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

fundamental rights and freedoms and the laws include different provisions on the same subject, the provisions of the treaties shall be valid.

Pursuant to the article 15 of the European Convention of Human Rights (the Convention), if the specific conditions are met, derogation notification can be made by the Party States for the purpose of restricting certain rights which are protected in the Convention. Based on this article, the mentioned notification was forwarded to the authorities of the European Council on 21 July 2016. In this case, the Contract cannot be suspended with respect to the right to life except for legitimate war acts (article 2), the Prohibition of torture and inhuman or humiliating treatment or punishment (article 3), the Prohibition of slavery and forced labour (article 4), the “No punishment without law” rule (article) and the right not to be tried or punished twice (article 4 of the Protocol No 7 to the Contract).

In addition to this, when the status of the applications regarding other rights in the cases of the suspension of the Contract are examined, in the event that an application is made to the European Court of Human Right (the Court) alleging that the rights which are taken under protection with the article 5 (Right to liberty and security), the article 6 (Right to a fair trial), the article 8 (Right to respect for private and family life), the article 10 (Freedom of expression), the article 11 (Freedom of assembly and association) and the article 1 of the Protocol No 1 to the Contract (property right) were infringed, this issue shall be taken into account by the Court.

Also, correspondences were made with the Ministry of Foreign Affairs for making the derogation notification in terms of the 3rd paragraph of the article 2 (right to an effective remedy), the article 9 (right to freedom and security), the article 10 (treatments to those who are deprived of their freedom), the article 12 (right to travel), the article 13 (deporting the foreigners), the article 14 (right to a fair trial), the article 17 (unlawful interference to private, family, housing and communication), the article 19 (right to freedom of speech) the articles 21 and 22 (freedom of assembly and association), the article 25 (regulations regarding election and public service) and the articles 26 and 27 (equality under the law, minority rights) of the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR) and the necessary notification was made to the relevant UN General Secretariat by the Ministry of Foreign Affairs.

- **Can the extraordinary measures limit not only the human rights provisions but also the corporate regulations in connection with the balance of forces?**

The main purpose of the amendments made with the Decree Laws issued within the state of emergency period is **to protect the rule of law, democracy and human rights by clearing the institutions of the State from the members of FETÖ/PDY terrorist organization**. Within this scope, the Constitution permits all kinds of regulations required by OHAL with the Decree Having the force of Law. The regulations and investigations related to the structure and functioning of the government agencies and the transactions against the civil servants are in compliance with the purpose and terms of the state of emergency and are the regulations necessary for the state to continue its existence.

The Turkish democracy has been interrupted by military coups for many times within its historical process and the military institutions gained an enormous power which does not exist in the modern democracies within the state. They have become the biggest obstacle in front of the democratic developments most of the time in order not to lose this power. When considering from this point of view, the Turkish Democracy was strengthened with the Decree Laws issued under OHAL and the Turkish Armed Forces was positioned as required in the

democratic state of law. With the regulations made, the military higher education institutions were bound to civil will and the military high schools were closed. In this way, it was ensured that the individuals involved in civil education and having settled civil democracy conscious were taken to the military higher education. With the binding of the military institutions and organizations to the civil authority, the opportunity for the corporate democracy to have a voice on the military mechanisms as well as in other fields was provided. With these significant amendments for demilitarization, important steps having the characteristic of a revolution in democratization were taken. The Gendarmerie General Command and Coast Guard Command have been bound to the Ministry of Internal Affairs; and the Land, Naval and Air Forces Commands have been bound to the Ministry of National Defense. Furthermore, within this scope, the structure of the Supreme Military Council has been modified and Deputy Prime Ministers, the Minister of Justice, Foreign Affairs and Internal Affairs have been made a member of this council as well. Thus, the weight of civilians has been increased in the Supreme Military Council.

Moreover, there are no measures that would affect judicial impartiality in a structural manner among regulations made so far.

- **The permanent measures introduced with the decree - dismissal, seizure, termination of the organization. Why did not the decrees introduce temporary measures instead of permanent measures (dismissal, seizure, suspension of the transactions)?**

FETÖ is the international terrorist organization which built up not only in the country but also in many countries in abroad. FETÖ, mainly its leaders, continue to challenge to the Republic of Turkey by using the international media institutions. When considering from this point of view, the Turkish Nation is still under an enourmos threat and risk. The dimension of the infiltration of this terrorist organization into the government agencies has not been exactly determined yet. Turkey is undergoing an extraordinary period. The extraordinary periods necessitate to take extraordinary measures. It has become mandatory to take permanent measures in order to break the strenght of the terrorist organization. In this regard, the measures for conducting an effective fight against FETÖ terrorist organization which infiltrated into the institutions of the State, protecting the financial order, identifying the private institutions and organizations connected with FETÖ and clearing the terrorist elements in the areas where there is public participation were taken with the Decree Laws issued as of the declaration of the state of emergency.

The purpose of the declaration of state of emergency and of the Decree Laws accepted in this process is to protect the rule of law, democracy and human rights by clearing the institutions of the State from the members of FETÖ terrorist organization and no permanent limitation has been introduced on the rights and freedoms of the people with the decrees. The investigations regarding the structure and functioning of the government agencies and the regulations about the civil servants, however, are in compliance with the purpose and terms of the state of emergency and are the regulations necessary for the state to continue its existence.

The rule of law, democracy and human rights are the fundamental principles of the State of the Republic of Turkey. Accordingly, the State of the Republic of Turkey, aiming at fighting against the terrorist elements within the law, aims at creating an effective and objective jurisdiction and security mechanism for the purpose of continuing the proceedings in an effective and objective manner. In this regard, the main purpose within this period in which an extraordinary period is

being undergone is to fulfill the requirements of the state of emergency and to proceed to the ordinary period.

- **Which are the measures that will continue after OHAL management ends?**

All regulations made have the characteristic of mandatory and urgent measures which were made within the framework of the positive obligations of the state and for fighting against the terrorist organizations and preventing a new coup attempt. The measures which are included in the Decree Laws and which are stipulated to be applied only during the state of emergency shall not be applied after the state of emergency. For instance, the maximum 30-day detention period shall be applied only during the state of emergency and it shall be continued to take actions in accordance with the general provisions in the Code of Criminal Procedure as of the end of OHAL.

However, as those from the measures taken, which have a structural characteristic, include permanent amendments, they will continue to show their effects also after the end of the state of emergency. For instance, With the regulations made, the military higher education institutions were bound to civil will and the military high schools were closed. In this way, it was ensured that the individuals involved in civil education and having settled civil democracy conscious were taken to the military higher education. With the binding of the military institutions and organizations to the civil authority, the opportunity for the corporate democracy to have a voice on the military mechanisms as well as in other fields was provided. With these significant amendments for demilitarization, important steps having the characteristic of a revolution in democratization were taken. General Command of The Gendarmerie and Command of Coast Guard were bound to the Ministry of Internal Affairs and given to the control of the civil authority.

- **Why are the reasons for the inclusion of the other terrorist organizations and the persons connected with them into the scope of the extraordinary decrees?**

With the coup attempt of 15 July of FETÖ, the State of the Republic of Turkey escaped an enormous chaos and civil war danger as in Iraq and Syria. FETÖ is an international terrorist organization and in close relationship with the terrorist organizations such as PKK and DAESH against which Turkey has been fighting for many years. Upon the coup attempt of 15 July, the other terrorist organizations, mainly PKK, which considers that there is vulnerability in the state increased their attacks to Turkey. Hardly a day goes without many Turkish citizens such as soldiers, police, civilian population losing their lives as a result of these terrorist attacks. Within the period in which these extraordinary conditions were experienced, the Government of the Republic of Turkey had to take the measures which it took against FETÖ also against the other terrorist organizations such as PKK and DAESH. It is under the responsibility of the State to take measures within OHAL process against the other terrorist organizations in consideration of the nature and magnitude of the danger encountered.

4. Dismissal

- **Criteria referred to in order to include the public officials into the lists in the Decree Having the Force of Law. Is there any document which clarifies how this transaction is performed? Was this document published?**

Each organization has a specific course functioning. Various criteria are determined according to each organization. In the determination of the organization membership of persons, there is a separate criterion for each person. For instance, the use of the systems which are available only for in-organization communication such as Bylock, organization members' carrying out activities with the instructions which they receive from their superiors and which will never coincide with the public hierarchy or judicial independence such as "imam-abi" which the organization members define from the outside of the institutions in which they work, the financial resource network regarding that the terrorist actions are funded, having financial resource much more than the asset which is expected from a public official and which can be considered reasonable, the participation in the meetings specific to the organization, the investigations which had been previously initiated and which are ongoing, the judicial members who are the organization members making regular payments to the organization from their own salaries as "amicable-kind help" (himmet), the infractions in the examinations made such as giving the questions prior to the examination in the employment, the declarations submitted and the evidences shown by the confessor persons in the judicial and administrative investigations, witness statements... In other words, the evidences which result in the determination of the offender differ according to the position, duty and power of each FETÖ member within the organization by individualizing the status of each FETÖ member.

At this point, in the justified decision of the High Council of Judges and Prosecutors regarding the dismissals specific to the judges, prosecutors, it is stated that "In order to form the basis of the evaluation to be made under the article 3 of the Decree Law no 667 for the judges and prosecutors: the activities of those concerned in the training center and Justice Academy of Turkey starting with their acceptance to profession; the information regarding their participation into the in-service training and foreign language trainings, sending them to abroad and their assignment to private authorized office of prosecutors or courts or administrative positions; and the criteria taken into account in these assignments and in the assignments made as judge or with a similar title to the private authorized courts, as president, vice president or inspector to the Presidency of Inspection Board, as investigation judge, head of department or deputy head of department, general director or deputy general director etc. to the administrative institutions, which are also used as a weapon; the information and documents in the personal files; their sharings in the social media accounts; the complaints, warnings, examination and investigation files submitted to the High Council of Judges and Prosecutors against those concerned and the decisions taken about these files; the researches made on the premises; the transactions performed and decisions taken by the judges and public prosecutors taking charge in the files related to FETÖ/PDY terrorist organization in these files; the records in the encoded programmes that the organization members use for communication; the disciplinary penalties and dissenting opinions which the High Council of Judges and Prosecutors determined against the organization members for whom it is evident with the reports issued by the anti-terror units of the General Directorate of Security that they are the members of FETÖ/PDY; the social environment information; the information and documents supplied from Ankara Office of Chief Public Prosecutor; the nature of the investigation initiated and the accusations attributed and detention and arrestment decisions taken by Ankara Office of Chief Public Prosecutor against those concerned; the statements and interrogation reports of the judges and public prosecutors whose statements are called upon within the scope of the investigation; the statements of the confessors; and other information and documents" were submitted to the members of the High Council of Judges and Prosecutors for examination.

- **To be "in contact" and "connected" with Gülen movement as the reason for dismissal: When should the public officials have noticed that their working in an organization belonging to Gülen movement is not suitable for their duties in the public? Is there any official decision on this matter?**

As these concepts mentioned in the Decree Laws were regulated in terms of the administrative actions, these concepts are not required in terms of crimes. In this sense, as the factors required for crime and the factors required for dismissal decision are different, the terrorist organization factors written in the article 314 of the Turkish Criminal Code should be realized and the relevant settled Supreme Court ruling cases should be taken into account for punishment.

The persons' membership to the unions connected to FETÖ or having made confidential correspondences via a system such as by-lock especially after the decision of the National Security Council (MGK) regarding that this structure is a terrorist organization will be able to be given as example for "cohesion".

To emphasize, as all transactions of the persons will be individualized while defining the timeline, it is not possible to give a definite date in terms of both administrative measures and criminal law. Since the concrete case will be evaluated separately for each individual, different crime dates might become a current issue both in terms of administrative measures and within the scope of judicial investigations. For instance, the date on which the offender is caught will be the crime date due to the reason that the membership crime is a continuing offense; for a person who participated in the coup, however, the crime date will be 15 July. In this sense, the individualization in terms of crime and punishment confronts us as a significant issue.

- **Is our understanding correct that dismissals are applied to people who were not involved in the coup but nevertheless had ties ("contacts" and "connections") with the gulenist movement?**

The provision " Those who are considered to be a member of, or have relation, or connection with terrorist organizations or structure/entities, organizations or groups, established by the National Security Council as engaging in activities against the national security of the State shall be dismissed from public service;.... f) upon the proposal of the commission that is established by the relevant or related Minister and meets under the chairmanship of the highest administrator of the institution or organization concerned, and by the approval of the relevant Minister, in so far as the personnel, employed in all kinds of positions and status (including workers) who are subject to the Law no. 657 on Civil Servants (dated 14 July 1965) and other legislation except for those set out in Article 3 of this Decree Law, are concerned" is set forth in the 1st Paragraph of the Article 4 of the Decree Law No 667.

It is seen that Fetullah Gülen organization, which was appeared as a religious cult at the time of its establishment and then turned into a terrorist organization by penetrating into all areas of the political, economic and social life, was in contact with many sections of the society until the coup attempt of 15 July. This structure particularly converted "hypocrisy" (takiyye) which means concealing oneself and false pretence into an organizational behaviour. Therefore, the allegations regarding the persons who had been previously in social contact with this structure were dismissed are not accurate.

In addition to this, as expressly emphasized in both the international documents and our internal law, as it is evident that any person who is a member of any crime/terrorist organization and connected to this organization with a hierarchical bond cannot act as an objective and

independent judge, the judicial members who actually did not participate in the coup attempt at the coup night of 15 July, but determined to be a member of this FETÖ terrorist organization and for whom it is indisputable to provide support to the coup attempt within the ongoing process were dismissed as result of the disciplinary proceedings made.

- **What would happen to cases heard by judges dismissed (the problem of “lawful judge”)? How that would affect the fairness and the length of the proceedings?**

In the event that judges change place mandatorily and optionally while performing their duties or in the cases such as death and resignation, the case files which they hear are transferred to other judges and prosecutors as envisaged by law in our law system. Likewise, the case files of the judges and prosecutors who are dismissed are transferred to other judges and prosecutors as well. Within this process, 2667 people were accepted to profession and started to their duties. 1900 judge candidates in total are still at the internship stage and they will start to their duties as soon as possible. In this way, vigorous effort is made in order not to delay justice.

On the other hand, the application remedies granted against the finalized court decisions are called as "extraordinary legal remedies". The new trial is an extraordinary legal remedy that is applied to against the recent finalized decisions. The new trial which allows to correct the judicial error included in the final provision and to rehear about the defendant due to the same act forms one type of the extraordinary legal remedies.

For new trial, a significant judicial error should be made in rendering the verdict. As this error which requires new trial might have been made in favor of or against the sentenced, new trial is accepted as a legal remedy that can be applied to both in favor of and against the sentenced in our law. For new trial, the limited number of reasons mentioned in the law can be based on. The reasons for new trial mentioned one by one in the law cannot be increased with a comparison or expansionary comment. The reasons for new trial in favor of the sentenced are regulated separately in the article 311 of the Law no 5271 and the reasons for new trial against the sentenced in the article 314. In the Law no 5271, certain reasons for new trial are included among the reasons for new trial both in favor of and against the sentenced. According to the article 317 of the Law no 5271, as it is mandatory to show the legal reasons and evidences of this request in the application for new trial, the failure to show the legal reasons that will require new trial and the evidences on which these reasons are based causes the application for new trial to be rejected.

New trial should be performed necessarily upon request. In other words, the court cannot renew the trial ex officio.

The sentenced can request new trial. That the sentence has been executed or the death of the sentenced is not an obstacle for new trial. According to the second and third paragraphs of the article 313 of the Law no 5271, if the sentenced is dead, his spouse, ascending line, descending line and siblings or, in the absence of these persons, the Minister of Justice can request new trial as well. That the Minister of Justice requests for new trial is an exceptional state.

The general provisions with regard to the application to the legal remedies are applied also with regard to the request for new trial. Accordingly, the article 260 and the other articles of the Law no 5271 regulating the right to apply to the legal remedies shall be applied also for the persons who can apply to new trial if the defendant or sentenced is alive.

The public prosecutor can request new trial both in favor of and against the sentenced. The defense counsel can request new trial in favor of the sentenced as well. There is no difference between the assignment of the defence counsel by the court and the election of the defence counsel by the sentenced. However, the application of the defense counsel should not be in contradiction to the open will of the sentenced.

The legal representative or spouse of the sentenced can also apply to new trial in favor of the sentenced.

The application for new trial is not subjected to any time limitation as a rule. As it is not possible to know when it is revealed that the final judgement includes judicial error, the application for new trial is not limited to any period of time. Although new trial is subject to statute of repose in terms of time, the application for new trial in favor of the sentenced is not subject to time. The exception of the rule that the applications for new trial are not subject to time is formed by the applications which are based on the decisions of the European Court of Human Rights (AIHM). As set forth in the sub-paragraph (f) of the first paragraph of the article 311 of the Law no 5271, the time limit in the request for new trial due to the decisions of AIHM is one year as of the date on which the decisions of AIHM are finalized. This period is the final term.

In this regard, for which reasons, in which way and by whom the new trial in favor of the defendant can be applied to is explicitly regulated in the article 311 and other articles of the Law no 5271, it is considered that the initiation of an investigation against the judges and public prosecutors due to the membership to FETÖ/PDY terrorist organization will not be the reason for new trial alone and the legal remedy for new trial can be executed in the presence of the reasons specified in the Law.

On the other hand, in the article 311 of the Code of Criminal Procedure no 5271, the reasons for the renewal of the proceeding in favor of the Sentenced were regulated and the reasons for the renewal of the proceeding in favor of the sentenced were mentioned as limited. These reasons also include the provision "If one of the judges involved in the judicial sentence made a mistake in fulfilling his duties so as to require a criminal proceeding or conviction with a penalty against him except for a mistake caused by the sentenced."As seen, the dismissal of a judge due to the reason that he is a member to a terrorist organization alone and the initiation of a proceeding against him are not the reasons for retrial. If the judge made a mistake in fulfilling his duties so as to require a criminal proceeding or conviction with a penalty against the sentenced while he was hearing the case, retrial can be possible.

If it is necessary to rehear the case due to the actions which require the proceeding is reperformed, it is an inevitable result to encounter with the extension of the judgement process due to the reason that the proceedings will be repeated and it does not seem possible to estimate the number of this kind of cases right now.

- **In terms of the labour and social legislation, would the persons dismissed keep pension rights and similar entitlements?**

The retirement with the requirement determined with the T.R. Retirement Fund Law no 5434 and the other retirement conditions are valid also for the judges and prosecutors who are subject to the Law no 2802 as well as the officials and other employees. Accordingly, the judges and prosecutors and those who are deemed to have this profession are entitled to receive retirement salary and retirement benefits when they fulfill the age and term of office requirements necessary for being able to be entitled to retirement pay.

Pursuant to the legislation provisions which were in force before the Decree Laws issued within OHAL period, the pension rights of the public officials are lost only in the cases of expatriation/unauthorized alienage from the Turkish citizenship and in similar cases. In other words, it is considered that there is not any obstacle in the execution of the pension transactions of the officials who are sentenced due to certain crimes that they committed and the assignment of pension funds to them. Yet, the articles 92 and 93, which regulate the reasons requiring the forfeiture of the pension rights and the permanent stoppage of the funds assigned, of the Retirement Fund Law no 5434 were abolished with the article 106 of the Social Insurances and General Health Insurance Law dated 31.05.2006 and no 5510.

In this regard, it is considered that;

pursuant to the third paragraph of the article 3 and the second paragraph of the article 4 of the Decree Law no 667, the judicial members who are dismissed cannot be employed in the public service anymore, cannot be directly or indirectly assigned and also it is not possible for the judges and prosecutors who are dismissed to return to profession with administrative transaction, but they can work in the private service areas with service agreement,

They cannot use their judge and prosecutor profession names and capacities that they bear under their responsibility and their professional rights because they are dismissed from profession and also they cannot take advantage of the public social facilities, VIP, private protection services, the right to have carrying weapon licence, private passport such as green or black passport and similar rights granted depending on these titles and capacities,

It is necessary to allow them to take advantage of the pension right, if any, and the social security rights that they had gained in the past as a result of the evaluation to be made according to the provisions of the Retirement Fund Law no 5434, the Social Insurances and General Health Insurance Law no 5510 and the Civil Servants Law no 657 to which the public officials are subject in the premium and retirement affairs, except for the case in which the allegations regarding that the acceptance to profession is based on fraudulent manners or false documents is proved in terms of administrative law.

5. Criminal proceeding

- **Is it possible to bring to criminal liability a person who did not participate in the coup, but had “contacts” and “connections” with the gulenists? As from what moment such “contacts” and “connection” would amount to a participation in a criminal organisation?**

As these concepts mentioned in the Decree Laws were regulated in terms of the administrative dispositions, these concepts are not required in terms of crimes. In this sense, as the factors required for crime and the factors required for dismissal decision are different, the factors written in the article 314 of the Turkish Criminal Code should be realized for punishment. In other words, a circumstance different from the period before 15 July is not in question in terms of the evidences required for punishment.

To emphasize, as all transactions of the persons will be individualized while defining the date of crime, it is not possible to give a definite date in terms of both administrative measures and criminal law. Since the concrete case will be evaluated separately for each individual, different crime dates might be possible both in terms of administrative measures and within the scope of judicial investigations. For instance, the date on which the offender is caught will be the crime date due to the reason that the membership crime is a continuing offense; for a person who

participated in the coup, however, the crime date will be 15 July. In this sense, the individualization in terms of crime and punishment appears as a significant issue.

- **Which particular crimes have been imputed to gulenist network as a whole (before the coup itself)? Was there any final judgment declaring FETO as a criminal organisation? What is the definition of FETO (in absence of a formal membership)?**

There is no decision which was given by the judicial courts and which was finalized with respect to FETÖ Terrorist Organization. However, pursuant to the Decree Law No 667 issued by the Council of Ministers with regard to the Coup Attempt of 15 July, in the dismissal decision, dated 04/08/2016 and no 2016/16-12, of the Constitutional Court against the court members Alparslan ALTAN and Erdal TERCAN "It is seen that the crimes and actions attributed to the organization are clarified under the titles of Structure and Activities of FETÖ/PDY In General, Prosecution and Proceedings Regarding FETÖ/PDY, Evaluation of the National Security Council About FETÖ/PDY, Structuring and Activities of FETÖ/PDY in Judicial Bodies, Structuring and Activities of FETÖ/PDY in the Turkish Armed Forces and Coup Attempt dated 15 July 2016 and Afterwards.

In the mentioned sections of the said decision, with relevant assessments and determinations with regard to the FETÖ, the following detailed explanations have been made;

"... III. EVENTS AND FACTS

12. It is a known fact that an organization, which was established in 1960s by a person named Fetullah Gülen, which was described as a religious group until recently and which was referred by the names "Gülen Community", "Hizmet Movement", "the Community (Cemaat)" or "the Circle (Camia)", extended and spread its activities over time in many areas, particularly including education and religion, and in more than a hundred countries.

13. The allegations that the real purpose of this organization was to take over the State, that to this end, members of this organization infiltrated into all public institutions and organizations, particularly in the Turkish Armed Forces (TAF), civil administration units, judiciary, law enforcement offices and educational institutions, and that members of this organization engaged in activities in line with the purposes of the organization rather than those of the State, have been matters of discussion among the public for a long time.

14. In the course of time, these allegations have gone beyond being matters of discussion among the public and have constituted the subject matters of numerous investigations and prosecutions. In those investigations and prosecutions, this organization was named as "the Fetullahist Terrorist Organization (FETÖ)" and/or as "the Parallel State Organization (PDY)".

A. Structure and Activities of FETÖ/PDY in General

15. In the scope of the investigations and prosecutions initiated, the following allegations were raised, in general, about the structure and activities of the FETÖ/PDY:

- a. The organization has adopted an understanding that as a natural result of the divinity it attributed to itself, everything including country, State, nation, ethics, law and fundamental rights and freedoms, comes after the organization itself in terms of value.
- b. The organization has strived attaining legitimacy in the society by means of its activities in the fields of education and religion.
- c. The organization has created its cadres (*staff*) by way of upbringing youngsters it reached through the houses of heavenly light (*ışıkevleri*, i.e. student residents), schools, dormitories and private tutoring centres it owns.
- d. The organization has a vertical hierarchal system which was created on the basis of obedience and compliance, and which consists of continent, country, state, province, district, quarter, neighbourhood and household imams (*leaders*) on the top of which stood Fetullah Gülen as “the İmam of the Universe”.
- e. The fundamental structuring of the organization is in the form of chains connected to imams, each and every unit, except for the ruling class, has been organized as independent cells, thus it is ensured that each member of the organization only knows about immediate superior in charge and subordinate members of the organization.
- f. The organization categorized all of its members in terms of their loyalty and fidelity, and members at the top category have been assigned as executives.
- g. Within the organization, there is a separate structure, the members of which have been commissioned and known only by Fetullah Gülen himself, and those members supervise the inner functioning of the organization and report it to the leader.
- h. The executives and members of the organization carry out their activities in confidentiality and have adopted communication methods that would ensure their confidentiality; a considerable number of its members use “alias”; its members are in an effort to show as if they belonged to different social groups with a view to preventing the disclosure of their identity to the structure, and it is therefore quite difficult to establish the link between the organization and its members.
- i. A certain proportion of its members’ income is taken under the name of “benevolence (*himmət*)”.
- j. Pressure is applied and several sanctions are imposed on those wishing to leave the organization.
- k. In accordance with the instruction of Fetullah Gülen, stating that “*You must be everywhere. If you are not everywhere, you are nowhere*”, the organization has established an organizational structure within almost all public institutions and organizations, in particular the Turkish Armed Forces, the National Intelligence Organization, the National Police, judicial bodies, as well as civil organizations such as political parties, trade unions, foundations, associations and enterprises.
- l. The members of the organization, who serve as public officials, are more devoted to the organization than to the State. m. The organization has formed its own staff structure in public institutions in an unlawful manner by stealing the test questions for exams for employment and promotion in a position in public service and distributing them and enabled its members to be promoted to critical positions.

- n. Anonymous and unsigned tips have been submitted against the public officials who are not involved in the structure of the organization to undermine their reputation for the purpose of preventing their effectiveness (*promotion*) and broadcasts have been made through Internet or media for the same goal.
- o. Public officials in the public institutions who are involved in the organization have been encouraged to serve in strategic departments (personnel affairs, intelligence, informatics, private secretariat, accounting, etc.).
- p. A parallel structure to the existing administrative system has been established and this structure functions in a hierarchical order which provides for the designation of a responsible person (*abi*) for each institution and organization.
- r. Information pertaining to those who are not members of the organization has been recorded and the records have been archived.
- s. Personal data and confidential information and documents of the State have been seized and archived through the public officials who are members of the organization in the judiciary.
- t. The rate of the members of the organization serving in the public institutions and organizations is too high in comparison with its rate of the members in the society.
- u. The organization has turned into a parallel State structure and formed a tutelage upon the State and the nation.
- v. The organization aims to seize all the constitutional institutions of the State of the Republic of Turkey (legislative, executive and judicial powers) and then to govern the economic, social and political powers through a clan with oligarchic characteristics, by reshaping the State, society and individuals in accordance with its own ideology.
- y. Political and economic alliances have been established at national and international level.

B. Investigations and Prosecutions against FETÖ/PDY

16. A great number of investigations and proceedings have so far been initiated in respect of the unlawful activities of FETÖ/PDY alleged to have formed an organizational structure as mentioned above. They include the following:
- a. Criminal proceedings were initiated before the Martial Law Court against Fetullah Gülen for making propaganda in order to bring, albeit partly, the fundamental social, financial, political or legal systems of the State in line with the religious rules and beliefs in breach of the principle of secularism. As a result of the proceedings, Fetullah Gülen was convicted and his conviction was upheld by the Military Court of Cassation (decision no. 1973/146-272 of the Military Court of Cassation).
 - b. Criminal proceedings were initiated before the Ankara State Security Court No. 2 against Fetullah Gülen for establishing an organization in order to form a State-formation based on religious rules by changing the secular formation of the State. However, a decision on suspension of delivery of a judgment in this case was issued pursuant to the Law no. 4616 of 21 December 2000 on Conditional Release, Suspension of the Proceedings or the Execution of Sentences in respect of Offenses Committed before 23 April 1999 (decision of the Ankara State Security Court No. 2, with docket no.2000/124 and decision no. 2003/20). According to the reports and letters sent by the Turkish General Staff and the gendarmerie and police departments

within the scope of this case, Fetullah Gülen aims to establish an alternative system to the existing system of the State by forming an organizational structure compatible with the existing system and model of the State. In this connection, he has formed an alternative structure to the existing formation of the State in all areas by paying particular importance to establishing an organizational structure in all positions of the public sector, particularly in the fields of military, civil service, law and education. Moreover, he has established a system which functions under a chain of command in accordance with the military discipline rules.

- c. Criminal proceedings were initiated against certain police officers alleged to be members of FETÖ/PDY for not preventing – in line with the aims of the organization– the murder of Hrant Dink, who was the chief editor of the magazine *Agos*, as a result of an armed assault in Istanbul on 19 January 2007 although they had prior knowledge of the incident (file with docket no. 2015/337 before the 14th Chamber of the Istanbul Assize Court).
- d. Criminal proceedings were initiated against certain public officials alleged to be members of FETÖ/PDY for committing political and military espionage by intercepting the communications of the Prime Minister in his house and offices through technical devices (file with docket no. 2014/412 before the 7th Chamber of the Ankara Assize Court).
- e. Investigation was initiated against certain public officials alleged to be members of FETÖ/PDY for eliminating the evidence (the deletion of user profiles relating to a project developed by the Intelligence Department of the Turkish National Police) in order to prevent the establishment of offences allegedly committed within the scope of the activities of the organization (investigation file no. 2014/74480 before the Ankara Chief Public Prosecutor's Office).
- f. Criminal proceedings were initiated against certain public officials alleged to be members of FETÖ/PDY for wiretapping, for the purpose of espionage, the crypto phones produced by the Scientific and Technological Research Council of Turkey (TÜBİTAK) and provided to high-ranking State officials including the Speaker of the Grand National Assembly of Turkey (GNAT or the Turkish Parliament), the Prime Minister, the Commander of the Turkish Armed Forces, the President of the Constitutional Court, the Deputy Prime Ministers, the Ministers and the Undersecretary of the National Intelligence Organization (file with docket no. 2015/202 before the 2nd Chamber of the Ankara Assize Court).
- g. An investigation was initiated with the allegation that the confidential meeting held on 13 March 2014 in the Ministry of Foreign Affairs and attended by the Minister of Foreign Affairs, the Undersecretary of the Ministry of Foreign Affairs, the Undersecretary of the National Intelligence Organization and the Deputy Chief of the General Staff had been covertly audio recorded for purpose of political and military espionage and these recordings had been published on the internet (Investigation file no. 2014/47602 conducted by the Ankara Chief Public Prosecutor's Office). The alleged fact that this act had been carried out by the members of FETÖ/PDY was mentioned in the indictment docket no. 2016/24769 of 6 June 2016 issued by the Ankara Chief Public Prosecutor's.
- h. A criminal case was initiated against the gendarmerie personnel (case file docket no. 2014/161 of the 7th Chamber of the Adana Assize Court) and judicial authorities (case file docket no. 2015/1 of the 16th Criminal Chamber of the Court of Cassation)

concerned on the ground that a truck which contained loads that belonged to the National Intelligence Organization was unlawfully stopped and tried to be searched on 1 January 2014 and three trucks were stopped and searched in Adana and that an investigation was initiated against those members of the National Intelligence Organization. The alleged fact that these acts had been carried out by the members of FETÖ/PDY in accordance with the objectives of the said organization was mentioned in the indictment docket no. 2016/24769 of 6 June 2016 issued by the Ankara Chief Public Prosecutor's Office.

- i. A criminal case was initiated against the alleged members of FETÖ/PDY on the ground that the investigation known as "Investigation into the Tawhid-Salam Organization" had been conducted in accordance with the objectives of FETÖ/PDY, and that telephone conversations of a large number of persons, including a number of high level public officials, journalists and scientists, had been unlawfully intercepted during the investigation in question (Investigation file no. 2014/41637 and indictment of the Istanbul Chief Public Prosecutor's Office).
- j. An investigation was initiated against the public officials who were allegedly members of FETÖ/PDY on the ground that they had wiretapped the phones of high level public officials and obtained confidential political and military information (Investigation file no. 2016/80080 of the Ankara Chief Public Prosecutor's Office).
- k. An investigation was initiated against the public officials who were allegedly members of FETÖ/PDY on the ground that the Branch of the Humanitarian Relief Foundation (IHH) in the Province of Kilis had been searched for purpose of espionage on 15 January 2014 (Investigation file no. 2015/4111 of the Van Chief Public Prosecutor's Office).
- l. Allegations that persons who were allegedly members of FETÖ/PDY gave questions of the public service entrance exams or promotion exams to the members of the organization in advance were the subject of a large number of investigations (Investigation files nos. 2010/100074, 2015/26827, 2015/156193, 2015/79801, 2015/80510, 2015/80526, 2015/80534, 2015/18314, 2015/80555, 2015/80559, 2015/41561, 2016/3801, 2015/80539, 2015/80550, 2015/166002, 2015/98865, 2015/70581, 2015/37022, 2015/39600 conducted by the Ankara Chief Public Prosecutor's Office).
- m. Criminal proceedings were initiated against two judges, who decided to release a number of suspects, who had been in detention within the scope of some investigations conducted in Istanbul and who had been allegedly members of FETÖ/PDY, on the ground that they allegedly rendered these decisions in accordance with the instructions of the same organization, of which they were members, even though they did not have such jurisdiction (Indictment of the Bakırköy Chief Public Prosecutor's Office dated 21 September 2015 and docket no. 2015/29385; see for the judgment of the Constitutional Court, *Mustafa Başer and Metin Özçelik*, application no. 2015/7908, 20 January 2016, in which the individual application lodged on the ground of alleged unlawful detention of judges in question was found inadmissible).
- n. Criminal proceedings were initiated against seventy three executives of the organization, including the founder and leader of FETÖ/PDY, Fetullah Gülen, for founding and leading an armed terrorist organization, attempt of overthrowing the Government of the Republic of Turkey or preventing it from performing its duties, committing political and military espionage, embezzlement, aggravated fraud, forgery

of official documents, laundering of assets acquired as a result of an offence, and unlawful recording, acquisition or disclosure of personal data and delivering it to others (indictment of the Ankara Chief Public Prosecutor's Office, dated 6 June 2016 and docket no. 2016/24769.

C. Assessment of the National Security Council related to FETÖ/PDY

17. Within course of process, the National Security Council ("NSC") has adopted decisions to the effect that FETÖ/PDY poses a threat to the national security, that it is a terrorist organization and that it cooperates with other terrorist organizations.

18. In this context, relevant parts of the assessments of the General Secretariat of the NSC concerning FETÖ/PDY in the press announcements made related to the meetings of the Council are as follows:

a. Meeting held on 26 February 2014

"Issues and works being carried out concerning the security throughout the country has been assessed; in this regard, organizations and activities that pose a threat to the public peace and national security has been deliberated."

b. Meeting held on 30 April 2014

"Organizations that pose a threat to the national security and measures taken related to these organizations have been assessed."

c. Meeting held on 26 June 2014

"Information has been presented to the Council on the judicial and administrative activities carried out with respect to the illegal organizations within the State."

d. Meeting held on 30 October 2014

"It has been stressed that the fight against the parallel structures and illegal organizations, which pose a threat to the national security and disturb the public order and which carry out illegal activities under domestic and foreign legal disguise, will be resolutely maintained."

e. Meeting held on 30 December 2014

"The Council has been informed of the fight against the parallel State organization and illegal structures, and it has been stressed that the fight will be resolutely maintained."

f. Meeting held on 26 February 2014

"Information has been presented to the Council on the national and international works carried out against the parallel State organization and the illegal organizations under legal disguise."

g. Meeting held on 29 April 2015

"Detailed information has been presented on the fight against the parallel State organization and the illegal structures, which pose a threat to the national security, and it has been stressed that the fight will be resolutely maintained."

h. Meeting held on 29 June 2015

"It has been mentioned once again that the fight against all illegal organizations, notably the parallel State organization, which pose a threat to the national security, will be resolutely maintained."

i. Meeting held on 2 September 2015

“It has been stated that the fight being carried out against the parallel State organization within and outside the country, including in terms of economy, will be resolutely maintained.”

j. Meeting held on 21 October 2015

“It has been reiterated that the resolute fight against the parallel State organization, which poses a threat to the national security and acts in cooperation with other terrorist organizations, will be maintained in a multidimensional way.”

k. Meeting held on 18 December 2015

“It has been reiterated that the fight being carried out against the parallel State organization within and outside the country will be resolutely maintained.”

l. Meeting held on 27 January 2016

“The fight being carried out within and outside the country against the internal and external threats to the national security (...) and against the parallel State organization has been assessed comprehensively...”

m. Meeting held on 24 March 2016

“Activities being carried out for the peace and security of our citizens and protection of public order have been discussed in detail. In this respect,(...) emphasis has been put on the application of measures taken against the parallel State organization.”

n. Meeting held on 26 May 2016

“The activities being carried out for the peace and security of our citizens and protection of public order, the stage reached in the fight against terror and terrorists, and the measures taken against the parallel State organization, which poses a threat to our national security and is a terrorist organization, have been deliberated.”

D. Structure and Activities of FETÖ/PDY in Judicial Bodies

19. The fact that FETÖ/PDY was organized particularly in specially authorized courts and prosecutor's offices, which remained active until recently, that its members within the judiciary and security forces act in accordance with the instructions they receive from the organization's imams and with the organization's interests, and that they carry out practices containing serious legal issues in that regard have been discussed by the public for a long time.

20. In this context, in the indictment of 6 June 2016 issued by the Ankara Chief Public Prosecutor's Office, it has been mentioned that a significant number of members of FETÖ/PDY continue to exist within the judiciary, that the organization has thousands of judges and prosecutors, who are in a position to render all kinds of unlawful decisions and use public power for the favour of the organization through jurisdiction when they wish. It has been also alleged in the indictment in question that prosecutions and investigations concerning a number of events followed closely by the public in the recent years were carried out by the members of FETÖ/PDY within the judicial organization and in accordance with the objectives of this organization and with the instructions given by the judiciary imams, and that unlawful practices were carried out consciously during these prosecutions and investigations. In this regard, it has been alleged that the organization used case files such as “Şemdinli”, “Ergenekon”,

Sledgehammer”, “Military Espionage”, “Revolutionary Headquarters”, Oda TV” and “Match Fixing”, which led to intensive discussions in the public, in order to dismiss public officials, who were not members of the organization and worked in various State institutions and organizations, particularly the Turkish Armed Forces, and to neutralise individuals whom it considered as acting contrary to the organization’s interests within various civil environments.

21. In the cases mentioned, a considerable number of suspects on trial were acquitted, some proceedings were reopened and convictions were revoked. Judicial process in some cases is still ongoing. Alleged irregularity in some of these cases constituted the subject matter of violation judgments of the Constitutional Court (see *Sencer Başat and Others* [PS], App. No: 2013/7800, 18/6/2014; *Yavuz Pehlivan and Others* [PS], App. No: 2013/2312, 4/6/2015; *Yankı Bağcıoğlu and Others* [PS], App. No: 2014/253, 9/1/2015).

22. As regards the allegations mentioned above, disciplinary proceedings were conducted against some members of the judiciary, who were allegedly members of FETÖ/PDY, by the High Council of Judges and Prosecutors (HCJP) and they were dismissed from the profession; furthermore, prosecutions and investigations were conducted by the judicial authorities.

23. By the constitutional amendments of 2010, judges and prosecutors were given the opportunity to elect members to the HCJP among themselves. Accordingly, judges and prosecutors elect seven regular and four substitute members among civil judges and prosecutors; and three regular and two substitute members among administrative judges and prosecutors. Pursuant to the election system established, each voter is entitled to vote for eleven candidates in civil judiciary and for five candidates in administrative judiciary. In the elections held in 2014, the Association of Judges and Prosecutors (YARSAV) and the Platform for Unity in the Judiciary (YBP) declared the candidates they supported. Some candidates other than those supported by these two judiciary organizations stated that they run in the election as independent candidates (namely without acting together with other candidates). When the results of the election is examined, it is understood that ten candidates from civil judiciary, who stated that they would run in the election as independent candidates and who were alleged members of the organization in question or allegedly have connections with it according to the jurists, received block votes from thousands of judges and prosecutors, and two of these candidates were elected as substitute members of the HCJP; five candidates from administrative judiciary received block votes from hundreds of judges, and two of them were elected as regular members of the HCJP. This made the discussions spread in public concerning the fact that the organization of FETÖ/PDY is significant in the judicial bodies.

E. Organization and Activities of FETÖ/PDY within the Turkish Armed Forces

24. In order to increase the understanding of the coup attempt of 15 July 2016, it is appropriate to briefly mention the findings, assessments and predictions in the indictment of 6 June 2016 issued by the Ankara Chief Public Prosecutor’s Office **shortly before the coup attempt**, which concerned the organization of FETÖ/PDY within the Turkish Armed Forces, its activities and the risks it poses to the security of the country. These findings, assessments and predictions can be summarized as follows:

- a. the Turkish Armed Forces is the institution to which FETÖ/PDY attach the greatest importance,
- b. The Turkish Armed Forces is the institution in which FETÖ/PDY has mostly employed its members and become dominant,
- c. Employment in the Turkish Armed Forces by FETÖ/PDY started a long time ago and the members of the organizations employed at the initial stage now have the rank of general or colonel,
- d. FETÖ/PDY specially trains its members who will become commissioned or non-commissioned officers,
- e. While approximately 400 personnel dismissed until 2003 for being a member of this organization, as from this date there is no personnel dismissed for the same reason,
- f. Personnel who are not members of this organization were discharged through certain investigations and proceedings, and instead of these personnel, the promotion of members of the organization is ensured,
- g. Air force pilots in particular, who are not members of this organization, were suspended from the institution in various ways,
- h. Significant portion of those, who have the rank of staff colonel, are members of this organization,
- i. FETÖ/PDY is a dominant power within the military justice and therefore investigations concerning the organization in question do not produce any results,
- j. This organization within the army has become so intense that it could impair the discipline in the army and cause weakness in the defence of the country,
- k. FETÖ/PDY has an armed organization, which is composed of its members in the commands of the armed forces, gendarmerie and police forces and contains almost ten thousand persons and which has a different hierarchical structure than the State,
- l. FETÖ/PDY is the largest, the most dangerous and the most organised terrorist organization that the State of the Republic of Turkey has ever faced throughout its history,
- m. FETÖ/PDY has gained armed strength, allowing it to change or overthrow the constitutional order, and it is the only organized power that could carry out a military coup,
- n. FETÖ/PDY makes the threats of military coup and civil war, relying on its effectiveness within the Turkish Armed Forces,
- o. There is a clear and imminent danger that FETÖ/PDY makes a coup attempt,
- p. Materialization of this danger leads to a widespread devastation for the State, the country might be driven into a civil war, millions of people might die and millions of refugees might arise, and the recovery of the State might not be possible,
- r. Elimination of FETÖ/PDY has now become a matter of survival of the state.

F. Coup Attempt dated 15 July 2016 and afterwards

25. On the night of 15 July 2016, in our country, a group organized in the Turkish Armed Forces, attempted to abolish the democratic constitutional order with the use of force and violence.

26. In the first statement made by the General Staff, it was indicated that 8.651 military personnel were involved in the mentioned attempt and 35 planes including fighter jets of the Turkish Armed Forces, 37 helicopters, 246 armoured vehicles including 74 tanks and approximately 4.000 light weapons were used.

27. With the use of planes and helicopters, bomb and armed attacks were made against many places such as the Turkish Parliament, Presidential Premises, Ankara Security Directorate, the Police Special Operation Forces of the General Directorate of Security, the National Intelligence Agency (MİT) during the attempt. An attempt to assassinate the President was made; the convoy travelling together with the Prime Minister's vehicle was shot with

firearms; many senior military officials including the Chief of Staff were taken hostage and numerous public institutions were occupied with the use of weapons or attempted to do so be occupied.

28. Civilians, who went out for protesting, and the security officials, who resisted against the coup attempt, were attacked with the use of planes, helicopters, tanks, the other armoured vehicles and light weapons. During these attacks, nearly 250 persons (including the police officers, soldiers and civilians) lost their lives and over 2.000 persons were injured.

29. The group which made the coup attempt, issued a declaration on behalf of the "Peace at Home Council" via the Turkish Radio and Television Association (TRT), which the group occupied. The declaration stated that the Turkish Armed Forces completely took over the administration of the country; the political power was elbowed out the administration of the State; the State's administration would be performed by the Peace at Home Council; it would be ensured that all individuals and institutions, which were traitors, would be tried before the courts; a martial law was proclaimed throughout the country, a curfew would be imposed until a second order and all kinds of measures would be taken until a new constitution would be prepared.

30. During the coup attempt, attacks were made against the relevant institutions and organizations for the purpose of interruption of television broadcasts and access to internet throughout the country and the buildings of some private television channels were occupied. The coup attempt was rejected by the constitutional bodies, including the President. Upon the call of the President, the public went out and reacted to the coup attempt. The coup attempt was resisted by the security forces complying with the orders and instructions of the legitimate State authorities. All political parties represented in the Turkish Parliament and the civil society organizations declared that they did not accept the coup attempt. Almost all of the mass media publications made broadcasts against the coup attempt. The chief public prosecutor offices launched investigations against the coup plotters across the country and ordered the security forces to arrest the coup plotters. Consequently, the coup attempt, which encountered with a comprehensive and strong resistance, was prevented.

31. Following the coup attempt, numerous military personnel, police officers and judicial officials, who were regarded as the members of the FETÖ/PDY, were taken into custody throughout the country. Besides, thousands of public officials including judicial officials were suspended.

32. The National Security Council made a recommendation to the Government to declare a state of emergency in accordance with Article 120 of the Constitution by the

Recommendation no. 498, dated 20 July 2016. On 20 July 2016, the Council of Ministers, convened under the chairmanship of the President, decided to declare a state of emergency throughout the country for a period of ninety (90) days beginning from 21 July 2016, Thursday at 01.00. The said decision entered into force after it was published in the Official Gazette no. 29777, dated 21 July 2016.

33. The Decree-Law no. 667 on Measures Taken within the Scope of State of Emergency, which was deliberated by the Council of Ministers convened under the chairmanship of the President on 22 July 2016, entered into force following its publication in the Official Gazette no. 29779, dated 23 July 2016.

34. It was specified in the oral and written statements of the competent authorities and the general ground for the Decree-Law no. 667 that the members of the FETÖ/PYD performed the coup attempt. Within the scope of investigations launched just after the coup attempt, it was echoed publicly that some suspects allegedly involved in the coup attempt, made confessions regarding that both they and the mentioned attempt had connection with the FETÖ/PYD.

On the other hand, decision was taken by Erzincan High Penal Court with regard to that FETÖ/PDY is an armed terrorist organization before 15 July¹⁵ and the relevant decision was appealed by the parties and has not been finalized yet.

On the other hand, it is seen that detailed evaluations were made with respect to the structure and functioning of the organization and the acts of its members in the decision, dated 04/10/2016 and no 2016/430, of the High Council of Judges and Prosecutors with regard to the dismissal of the judges and public prosecutors who are the judicial members pursuant to the Decree Law no 667. (The decision is available at the website of the High Council of Judges and Prosecutors)

- **Do the authorities need a “reasonable suspicion” (enshrined in Article 5 § 1 (c) of the ECHR but also in Article 8 insofar as searches and seizures are concerned – “reasonable cause” notion) when ordering criminal-law measures (arrests, seizures, searches, etc)?**

For the purpose of taking arrest, search, seizure and similar protection measures regulated in the Code of Criminal Procedure no 5271 and performing the investigations regarding the actions causing state of emergency, during the state of emergency in a rapid and effective manner and without losing the evidences, the private investigation provisions were introduced with state of emergency Decree Laws. With these regulations, it was allowed to make search and issue arrest order with the written order of the public prosecutor in certain crimes without discriminating night and date, but the provisions of the Law no 5271 were not fully suspended. The other requirements required in the Law no 5271 for search and arrest, in other words escape or "reasonable" doubt requirements required for obtaining evidence were protected and no regulation that will lead to an application in contrary to the articles 5/1(c) and 8 of the European Convention of Human Rights was made. The changes prescribed with the Decree Having the Force of Law are only the regulations regarding authorization and are not the

¹⁵ Justified decision, Case no 2016/74, Decision no 2016/127 and dated 16/06/2016 of Erzincan High Penal Court

regulations which disregard the other requirements regarding search, seizure and arrest and eliminate the reasonable doubt and property and personal immunity assurances.

In the article 98 of the Criminal Procedure Code no 5271, the reasons for the arrest warrant are regulated. Accordingly, the arrest warrant can be issued by the criminal peace judge upon the request of the public prosecutor against the suspect who did not come upon call or to whom call cannot be made within the investigation period. Furthermore, in the case of objection to the decision for the rejection of the arrest request, the arrest warrant can be issued also by the objection authority. The public prosecutors and law-enforcement officers can also issue an arrest warrant against the suspect or defendant who escaped from the law-enforcement officer when caught or the arrested or sentenced who escaped from the prison or penal institution. The arrest warrant against the defendant who escaped within the proceeding period is issued by the judge or the court ex officio or upon the request of the public prosecutor.

The detention is the detainment of the person arrested by temporarily restricting his freedom so as not to cause damage to his health within the legal period until he is brought to trial in front of the authorized judge or he is released for the purpose of completing the transactions about him. It is also described as taking the person arrested under the surveillance and inspection of the law-enforcement officer because the public prosecutor's decision for detention causes its sentences and results as of the time of arrest. Therefore, the ground of the detention concept is based on arrest.

According to the article 91 of our Criminal Procedure Code, it can be decided to detain the person arrested due to a crime for the completion of the investigation with the decision of the public prosecutor. According to the second paragraph of the article 91, the detention depends on the necessity of this measure in terms of investigation and the presence of the concrete evidences showing the doubt that the person committed a crime. Therefore, the presence of the concrete evidences showing that the suspect committed a crime is necessary in order to be able to take arrest decision.

Pursuant to the provisions set forth in the Criminal Procedure Code no 5271 and with regard to the search and seizure measures regulated within the protection measures, in the case of reasonable doubt that the defendant can be arrested or the crime evidences can be obtained, the defendant, his properties, dwelling, workplace or other places belonging to him can be searched. If the asset values obtained as a result of the search are considered useful as a proof or considered to constitute the subject of the good or income seizure, the protection or seizure transaction can be performed by the law-enforcement officers upon the decision of the judge or with the written order of the public prosecutor in the cases where it is inconvenient for the decision of the judge to be delayed and of the law-enforcement supervisor in the cases where the public prosecutor cannot be reached in the event that the person who keeping the good does not deliver the good with his consent.

- **How the detention for 30 days without access to a court is supposed to contribute to fighting the conspiracy? The same concerns a 5-days detention without access to a lawyer (especially in the light of other draconian limitations on the confidentiality of the lawyer-client exchanges).**

a) Due to the reason that the number of the persons who are the members of FETÖ terrorist organization participating in the coup attempt is excessive and for the purpose of collecting the crime evidences by examining in a proper manner and performing a fair trial, pursuant to the item (a) of the first paragraph of the Article 6 of the Decree Law no 667; it was allowed

that detention period can be applied so as not to exceed thirty days as of the moment of arrest except for the mandatory period for sending the suspect to the judge or court closest to the place of arrest during the continuation of the state of emergency in terms of the crimes defined in the Sections Four, Five, Six and Seven of the Part Four of the of the Turkish Criminal Code no 5237 and the crimes included within the scope of the Anti-Terror Law no 3713 and collective crimes.

Accordingly, the detention period shall be applied in terms of the crimes specified above only during the continuation of the state of emergency so as not to exceed 30 days in total. In this way, it is aimed at executing the events causing the declaration of the state of emergency and the relevant investigations in a more effective and proper manner. This provision which increases the detention period to maximum 30 days shall not be applied in the case that the State of Emergency is abolished. Besides, the 30-day detention period which is allowed to be applied during the State of Emergency is not a period that is necessarily applied to each suspect. This regulation regarding the detention period is applied to the extent required by the state of emergency and the prosecution.

According to the records dated 28/10/2016, from 45,225 people who are detained within the scope of FETÖ/PDY investigations, 61,1% (27514 people) were remained in detention for 1-5 days, 24,1% (11042 people) for 6-10 days, 9,4% (4139 people) for 11-15 days, 3,7% (1760 people) for 16-20 days, 1,2% (478 people) for 21-25 days, 0,5% (292 people) for 26-30 days.

b) According to the Article 3 of the Decree Law no 668, it is possible to restrict the detained suspect's right to negotiate with the lawyer by five days with the decision of the public prosecutor so as to be limited to certain crimes. However, it is not possible to take a statement within this period of time. The purpose of introducing the mentioned provision is to prevent the terrorist organizations from forcing the suspects via their lawyers and to prevent information leakage to the other persons who could not have been arrested yet, but who are likely to be arrested according to the evidences obtained during the investigation via the lawyers.

To prevent the members of the terrorist organization from establishing organizational communication via the lawyers is one of the measures which is required to be taken in the fight against terrorism. The suspects' right to access to the lawyer is not absolutely prohibited. The suspects can always access to the assistance of a lawyer to be assigned by the bar.

- **To order “supervised visits” by the lawyer – do the authorities have to have a proof (verifiable and recorded evidence) of collusion of the lawyer with the clients or a mere suspicion would suffice? Would the authorities communicate their decision and the reasons thereof to the lawyer concerned and his client? Is there a possibility of appeal?**

With the item (d) of the Article 6 of the Decree Law no 667, the detainees' who are present in the penal institutions during the state of emergency right to negotiate with their lawyers and the limits of the negotiation confidentiality were defined. In the event that those who are detained due to the crimes specified in the article abuse the legal assistance such as the possibility of endangering the security of the society and institution, communicating with the organization members or continuing the organizational activities, it was made possible to record, make under the custody of an official, limit or prohibit the negotiations. **In the item, the procedure of the mentioned measures and also the measures which will ensure that the detainee can access to the right to legal assistance in the case that the prohibition decision is taken were regulated and it is not possible to completely limit this right of the detainee.**

With the item (g) of the Article 6 of the Decree Law No 667, the procedures and principles regarding the prohibition of the lawyers who is selected or assigned, from his advocacy duty in the case that there is a prosecution or proceeding against him due to the same crime in the prosecutions executed with regard to the crimes specified in the article, were regulated. The interference of the organization-connected lawyers to the prosecutions so as to remain out of the scope of the right to legal assistance prevents the material fact from being revealed. The prevention of this type of extrajudicial interferences is of greater importance in terms of the prevention of the repetition of the perilous events causing the declaration of state of emergency and the proper execution of prosecutions concerning these events . When it comes to the terror crimes, a similar prohibition opportunity is included also in the Article 138a and following Articles of the German Code of Criminal Procedure so as to be applied for the ordinary periods.

In the article 6 of the Decree Law no 676 which came into force by being published on the Official Gazette dated 29 October 2016 and no 29872;

the fourth paragraph of the article 59 of the Law on Execution of Penalty and Security Measures dated 13/12/2004 and no 5275 was amended as follows, the following paragraphs were added after this paragraph to the same article and the other paragraph was continued accordingly.

The following provisions were included.

“(4) During the meeting, the documents or document copies and files which the sentenced gave to his lawyer or the lawyer gave to the sentenced and the records that they kept with respect to the dialogue between them cannot be examined, the meeting which the sentenced made with his lawyer cannot be heard and recorded.

(5) If any information, finding or document regarding that the security of the society and the penal institution is endangered, the terrorist organization or other crime organizations are oriented, orders and instructions are given to these organizations or confidential, clear or encoded messages are forwarded with their comments is obtained in the meetings of the persons who are sentenced due to the crimes defined in the article 220 and in the Sections Four, Five, Six and Seven of the Part Four of the Second Book of the Turkish Criminal Code and the crimes within the scope of the Anti-Terror Law dated 12/4/1991 and no 3713 with their lawyers, the meetings can be recorded as sound or video with a technical device, the officer can be made available in the meeting for the purpose of monitoring the meetings made by the sentenced and the lawyer, the documents or document copies and files which the sentenced gave to his lawyer or the lawyer gave to the sentenced and the records that they kept with respect to the dialogues between them can be seized or the days and hours of the meetings can be limited for three months with the request of the office of chief public prosecutor and the decision of the judge of execution.

(6) The office of the judge of execution can decide to shorten or end the period that it states in the decision as well as it can extend the period for several times so as not to be more than three months by evaluating the compliance of the sentenced with the rules, the danger that the sentenced poses in terms of the society or the penal institution and the development of the sentenced in the rehabilitation works.

(7) If it is understood that the meeting made by the sentenced included within the scope of the fifth paragraph was made for the purpose specified in the same paragraph, the meeting is immediately ended and this issue is recorded with its ground. Before the meeting is started, the parties are warned on this matter.

(8) If a record is kept about the sentenced pursuant to the seventh paragraph, the meeting of the sentenced with his lawyers can be prohibited by the judge of execution for six months upon the request of the office of chief public prosecutor. The prohibition decision is immediately notified to the sentenced and the relevant presidency of bar for the assignment of a new lawyer. The office of chief public prosecutor can request from the presidency of bar the replacement of the lawyer notified by the bar. The fee is paid to the lawyer assigned according to the provision of this paragraph in accordance with the article 13 of the Law on Enforcement and Application Manner of the Criminal Procedure Code dated 23/3/2005 and no 5320.

(9) The objection can be made against the decisions taken by the judge of execution pursuant to this article in accordance with the Law no 4675.

(10) The provisions of this article are applied also against the sentenced who are present in high security penal institutions according to the third paragraph of the article 9 and the sentenced who are sentenced due to the crimes set forth in the fifth paragraph and meet with their lawyers in the capacity of suspect or defendant due to another crime.

(11) The criminal peace judge justice of the peace is authorized to take a decision about the arrested at the investigation stage and the court is authorized at the proceeding stage in accordance with the provisions of this article.”

The principles which regulate the meetings which the sentenced and arrested will make with their lawyers were present also before the enforcement of the Decree Laws no 667 and 676 in the article 59 of the Law no 5275.

In the mentioned regulation, the provision that during the meeting of the sentenced with his lawyer, the documents or document copies and files which the sentenced gave to his lawyer or the lawyer gave to the sentenced and the records that they kept with respect to the dialogue between them cannot be examined, the meeting which the sentenced made with his lawyer cannot be heard and recorded was introduced as a rule; a limitation which only covers those who are sentenced due to the crimes defined in the article 220 and in the Sections Four, Five, Six and Seven of the Part Four of the Second Book of the Turkish Criminal Code and the crimes within the scope of the Anti-Terror Law dated 12/4/1991 and no 3713 was introduced; if any information, finding or document regarding that the mentioned sentenced and arrested receive orders and instructions from the organizations of which they are a member or confidential, clear or encoded messages are forwarded with their comments, the meetings can be recorded as sound or video with a technical device and an officer can be made available in the meeting for the purpose of monitoring the meetings made by the sentenced and the lawyer for three months with the decision of the judge of execution upon the request of the public prosecutor.

Furthermore, the judicial remedy is available against the restriction decision taken by the office of the judge of execution.

In accordance with the Decree Having the Force of Law, the supervision of an officer in the meetings made with the arrested with their lawyers and the recording of the meetings if required were considered appropriate, provided that the Public Prosecutor will decide, in order to ensure that the security of the society and penal institution is no endangered, the terrorist organization or other crime organizations are not oriented and the confidential, clear or encoded messages are not forwarded for the purpose of breaking the order and instruction chain.

Considering the physical opportunities of the penal institutions in the meetings of the sentenced and the arrested with their lawyers due to the unanticipated increase in the penal institutions

after the coup attempt of 15 July, it is not possible for many arrested and sentenced persons to meet with their lawyers at the same time. The unlimited negotiations made with the lawyer in this way prevents another sentenced and arrested from meeting with his lawyer. For this reason, it was aimed that all arrested and sentenced persons take advantage of the right of defense equally. Moreover, the right of defense is regulated in article 36 of the Constitution and everyone has the right to a fair trial by taking advantage of the legitimate means and remedies.

Moreover, a necessity arised in taking the prudent measures required by the situation due to the structure of FETÖ terrorist organization members which conceals itself skilfully, their inclusion in every section of the society, the presence of lawyers among the members, the findings regarding the lawyers who are the organization members conceal the evidences related to the investigations by using their professional assurances and due to the reason that mainly the organization members who had previously penetrated into the Turkish Armed Forces and the other militants of the organization made an armed and bloody coup attempt all around the country in line with the instructions of the organization leader Fetullah Gülen during the Coup Attempt of 15 July, approximately 250 people from the civil public and security personnel resisting to the bloody coup attempt martyred, and more than 2000 people injured.

It is considered that the regulations made within this framework are the regulations which comply with the article 15 of our Constitution and the European Convention of Human Rights, are as required by the situation and are not in contradiction with the international obligations.

- **Would the lawyer and the accused have access to full case-file with the bill of indictment, in addition of “explanation” which may be given to them before the trial? Or this measure provides that some materials may be withheld from the defence but submitted to the judge nevertheless?**

In the second paragraph of the Article 153 of the Law No 5271, it was resolved that at the request of the public prosecutor, the defense lawyer's power to do so may be restricted by decision of the district judge dealing with criminal matters, if his examining the contents of the file or taking copies is likely to jeopardize the aim of the ongoing prosecution; and in the third paragraph, however, it was resolved that the provision in the second paragraph will not be applicable to the records of statements given by the apprehended person or suspect as well as to the written expert opinions and the records of other judicial proceedings at which the aforementioned persons are entitled to be present. With the Decree Law no 668, no new situation was introduced in terms of the examination of the file content of the defense lawyer or the restriction of his authorization to take a copy from the documents and this right which was granted to the judge with the regulation introduced was also granted to the public prosecutor during state of emergency.

According to the third paragraph of the article 153 of the Law no 5271, the restriction decision cannot be made against the records including the statement of the arrested person or the suspect, the expert reports and the records regarding the judicial transactions which the mentioned persons are authorized to present. A regulation restricting this right set forth in the Article 153 of the Decree Law no 668 was not introduced.

Pursuant to the fourth paragraph of the article 153 of the Law no 5271, it was stipulated that the restriction decision will be removed as of the date on which the bill of indictment is accepted by the court. According to this case, if a civil law suit is initiated, there is no obstacle for all evidences other than the evidences having the characteristic of "state secret" in the case file to be examined.

- **Is it possible to conduct searches in places not belonging to the suspect plotters or their documents seized? The status of information obtained during such searches if later the judge refuses to confirm the necessity of such measures.**

In the article 116 of the Law no 5271, it was regulated that if there is a reasonable doubt about the suspect can be arrested or the crime evidences can be obtained, the suspect or the defendant and his properties, dwelling, workplace or other places belonging to him can be searched. Furthermore, in the article 117 of the same Law, it was allowed to search another person and his properties, dwelling, workplace or other places belonging to him for arresting the suspect or defendant or obtaining the crime evidences. According to both cases, making the search was qualified to the presence of the events which allow to accept the presence of the person searched or the evidences of the crime in the places specified.

The search measure has two important dimensions, namely the prohibition of obtaining evidence and the prohibition of evaluating evidence. The contradictions to law in the issues which are in the position of a means in obtaining the evidences cause the evidence prohibitions to arise as well. The search should be necessarily fulfilled in compliance with the procedures specified in the law as each protection measure. The legal transactions which are performed without complying with this procedure shall be deemed to have been obtained in contradiction to the law.

On the other hand, with regard to the prohibition of evaluating evidence, the regulation "The charged offense can be proved with all kinds of evidences obtained in compliance with the law." was introduced in the second paragraph of the Article 217 of the Law no 5271. Under the circumstances, it is prohibited to prove the charged offense with the evidence which was obtained in contradiction to the law. In this case, the evidences obtained as a result of a search made in contradiction to the provisions of the article 116 and other articles of the Law no 5271 cannot be used in the judgment.

On the other hand, it is possible also for the persons about whom the search and seizure measure in contradiction to the law was applied to request from the State their pecuniary and non-pecuniary compensation pursuant to the article 141 of the Law no 5271.

It is thought that the consideration regarding the evidences obtained as a result of the search process performed with the written order of the Judge, public prosecutor or authorities of police forces were obtained by not complying with the terms stipulated in the law and that these evidences are the evidences which will unbalance the proceeding against the defendant and cause the proceeding to become unfair is an issue which is in the discretion of the court which will perform the proceeding according to the characteristic of the concrete event and the nature and importance of the law rules infringed.

6. Institutional changes regarding courts

- **Are there any changes to the structure/competence of military courts?**

With the Decree Law no 668, the authorization to establish and remove the Military Courts was granted to the Ministry of National Defense. With the Decree Law no 669, the disciplinary and personnel affairs of the Military Judges were taken to the body of the Ministry of National Defense and it was allowed to assign the military officers from other ranks in place of the staff

members in charge at Military High Administrative Court.¹⁶ There is no change with regard to the structure of the Military Courts in the Decree Laws

- **What is changing in respect of the composition of disciplinary commissions hearing cases against judges?**

With regard to the dismissal of the judges, the 2nd Department of the High Council of Judges and Prosecutors is authorized. However, with the Decree Law no 667, in favor of those concerned, instead of the 2nd Department consisting of 7 persons it was stipulated that the dismissal decision is taken, discussed and concluded by the General Assembly consisting of 21 people in which the Minister does not participate.

- **Dissolution of the associations of judges – on what grounds, and what does it mean for the judges who used to be members of those associations? Would it be correct to assert that most of the dismissed judges belonged to a particular association?**

It is not possible to make an evaluation according to the judicial unions to which the dismissed judges and prosecutors are members and there are those who are members to different unions among the dismissed judicial members.

V. ANNEXES

1. Erzincan Assize Court, 16.06.2016, File no 2016/74, Decision no 2016/127
2. High Council of Judges and Prosecutors 4/10/2016, Decision no 2016/430
3. Constitutional Court 4.8.2016, Decision no 2016/12

¹⁶ 668 sayılı KHK MADDE 4- (1) Article 1, paragraph one of the establishment of Military Courts and trial Procedures, no. 353, dated 25 October 1963, has been amended as follows and the second paragraph of the same article has been revoked: "Military courts empowered to exercise judicial powers shall be established by the Ministry of National Defense by taking the opinion of the Force Commands, taking into account the organizational structure and the geographical location of the military units and the workload of the courts and abolished by the same procedure."