

**Observations Regarding the Joint Communication of the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and association dated 11 April 2017
(REFERENCE: AL TUR 4/2017)**

1. The Government would like to present its observations, along with relevant information and comments herein below in respect of the Joint Communication of the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and association dated 11 April 2017 (REFERENCE: AL TUR 4/2017).
2. At the outset, the Government would like to underscore that the scope and the necessity of measures taken in Turkey with respect to terrorist coup attempt of July 15, 2016, should be better assessed by paying attention and also giving due consideration to the severity of the threats posed by its perpetrators, namely Fetullahist Terrorist Organization/the Parallel State Structure (“FETÖ/PDY”). An information note on Fetullah Gülen, the founder and leader of the FETÖ/PDY and FETÖ/PDY is enclosed herewith for reference and perusal.
3. As explained in the enclosed information note, on the night of July 15, upon the instruction of founder and leader of the FETÖ/PDY, Fetullah Gülen, and in line with the plan approved by him, “a group of terrorists in uniforms” within the Turkish Armed Forces (“the TAF”) attempted to destroy the democracy for the purpose of overthrowing the elected president, Parliament and Government together with abolishing 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 lethal force including fighter jets, tanks, etc. The Bosphorus bridges connecting Asia and Europe were closed to traffic by the terrorists in uniform using tanks and heavy artillery.

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. Fighter jets (F-16s) bombarded the Parliament while in the session 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.

On the night of July 15, tanks ran over the civilians and some of them were killed and injured as a result of being trapped under the tanks. Fighter jets 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 the public. The civilians were shot indiscriminately by the putschists, snipers directly targeted people from strategic points, and the crowds were bombed and shot from these fighter jets. In brief, the civilians, who defended the democratic regime at the cost of their lives, were massacred by putschists. In the course of the coup attempt, 250 persons were killed and more than 2000 were injured.

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 mass media was forced to act with a single-voice against anyone opposing the coup attempt. The putschists also attacked the satellite control stations and wanted to cut off the internet and all television broadcastings, except for the state-run TV channel.

The democratic resolve of Turkish people together with the state has saved the democratic order against this terrorist campaign. The Turkish people from all walks of life and regardless of their political affiliations united on the streets on the night of July 15. Putting all the political and ideological differences aside, they peacefully gathered and jointly defended common democratic values and bravely stood against tanks, helicopters and fighter jets with only national flags in their hands in an exemplary unity for the democracy.

At that night, the Turkish nation came together under the democratic values irrespective of their political views and stances and resisted the coup attempt altogether. All segments of the Turkish people and all parts of the political spectrum 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 people were on democracy vigil. With this stand, the Turkish nation has reaffirmed its loyalty to democracy in the fight against FETÖ/PDY.

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

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 July 15. 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”)¹, 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.

A parallel structure was established by the FETÖ/PDY within all public institutions and organisations of the State, notably in the judiciary, security directorates, civil administration and armed forces. To attain its goals, the FETÖ/PDY used different methods; such as, unlawfully obtaining the questions of important official exams (the Public Personnel Selection Exam and the University Student Placement Exam etc.) and making its members gain success in these exams by way of cheating ; placing its members in public institutions

¹ 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.

and also in prominent schools and universities, dismissing the non-members by fabricating false documents and evidence to initiate judicial and administrative investigations against them; replacing its members in these cadres.

They formed structures in the public institutions by creating cells. The number of members of the cells is not over five and they are affiliated to an organisation brother. No cell is aware of the other. This organisational model has been developed to ensure the continuity of the other cells without being deciphered, in case a cell is revealed. A strict military/hierarchical discipline prevails in the organisation. The FETÖ/PDY established the intra-organizational communication among its members through confidential and encrypted means. For example, the investigations revealed that encrypted applications such as “By Lock” were used for the intra-organizational communication.

Moreover, FETÖ/PDY has also undertaken intensive activities in the education sector and focused among others on press and media, health and finance sectors along with it. These sectors do not require large capital, allow to make easy profit, have much influence on the public and enable hiding and transferring funds easily when needed. They preferred the “service sector”, which is more suitable for exploiting people, evading taxes, taking in black money and avoiding its detection, which provides less employment and which does not require large amounts of capital. Moreover, the organization has attached importance to domestic purchases and sales rather than foreign trade and has subsequently established the Asya Katılım Bankası (“Bank Asya”) in order to finance its members’ investments in the education, media, trade, health, transportation, textile and food sectors.

In this view, it should be stressed that the coup attempt of July 15 was carried out by the FETÖ/PDY. The evidence obtained so far explicitly reveals that the coup attempt had been made in line with Fetullah Gülen’s orders and instructions. Within the scope of the investigations conducted on the coup attempt, many putschists were taken into custody on the charges of being part of the coup, and a great deal of evidence was obtained at the end of the searches performed. All the deciphering, analysis, classification and assessment of the evidences (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.) have indicated that the armed terrorist coup attempt was carried out by FETÖ.

4. The Government would also like to stress that the terrorist putschists attempted to overthrow the democratic constitutional order and thus threatened rights and fundamental freedoms of people. Therefore, the Turkish state has assumed its legitimate right and the duty to take all the necessary measures to completely eliminate this severe threat and danger posed against the survival of the nation and the state in accordance with its constitution and legislation, as permitted by international norms and obligations.

Taking the existing conditions into account and in order to fight effectively and swiftly against the FETÖ/PDY in line with the recommendation of the NSC, by the decision of the Council of Ministers, a nationwide state of emergency was declared as from 21 July 2016 for three months, pursuant to Article 120 of the Constitution and Article 3/1-b of the Law No. 2935 on State of Emergency. The decision was adopted by the Turkish Grand National Assembly (TGNA) on 21 July 2016 in line with the existing legislation.

With a view to ensuring the continuity of the effective implementation of measures for the protection of Turkish democracy, the principle of the rule of law, as well as the rights and freedoms of the citizens, the Council of Ministers decided to extend the State of Emergency for a period of three (3) months as from 19 October 2016, 19 January 2017, 19 April 2017 and 19 July 2017. Accordingly, extension decisions for the state of emergency were approved by the TGNA.

5. In this context, Turkey resorted to the right of derogation from the obligations in the European Convention on Human Rights (ECHR) and International Covenant on Civil and Political Rights (ICCPR). The notifications of derogation from Convention obligations were submitted to the Council of Europe in accordance with Article 15 of the ECHR and to the Secretariat of the United Nations in accordance with Article 4 of the ICCPR, concerning the rights permitted by the Conventions.

Turkey is fully aware of its obligations under international conventions and acts in full respect for democracy, human rights, the principle of rule of law in this process and due respect is shown to fundamental rights and freedoms, and the of rule of law is strictly observed.

Furthermore, similar to Article 15 of the ECHR and to Article 4 of the ICCPR, Article 15 of the Turkish Constitution clearly regulates how the administration must act in such situations. Pursuant to the regulations in question, the principles of “necessity” and “proportionality” have been sensitively complied with as regards the measures taken under the state of emergency in the aftermath of the coup attempt.

The Government also wishes to underline that while taking the measures under Article 15 of the ECHR, the State parties naturally continue to be subject to the supervision of the European Court of Human Rights (“ECtHR”). Thus, it should be stressed that the measures that may be resorted by Turkey in necessary circumstances, will certainly be in line with the principle of proportionality laid down in the ECtHR case-law and compatible with its adherence to the rule of law.

It has to be considered that Turkey has been fighting against the FETÖ/PDY, which is an atypical armed terrorist organisation and which is scarcely encountered in the world, unlike PKK or DAESH. In this perspective, the required measures are taken with a view to averting the organisation’s strength within the state. In the meantime, the scope of the Decree Laws issued in this respect has been limited to the terrorist organisations in order not to interfere with the rights and freedoms of others.

A Decree with Force of Law (“Decree Law”) is a legal measure permissible in the context of State of Emergency in Turkey. So far, a number of Decree Laws have been published in the Official Gazette. By the Decree Laws issued within the scope of the state of emergency, measures have been taken in proportion to the present situation that the administrative authorities are faced with, to the extent necessitated by the situation and in pursuit of a legitimate aim which is national security. Also, various forms of remedies, be they judicial or administrative, are available.

It should be reiterated that all measures taken during the state of emergency are in complete transparency. They aim at the protection of the democracy, the rule of law, as well as the rights and freedoms of the citizens and they are in accordance with Turkey's international obligations.

On the other hand, Turkey has continuously kept informing its international partners since the coup attempt and maintains uninterrupted cooperation with the international institutions, in particular the Council of Europe (CoE), the United Nations (UN) and the Organization for Security and Co-operation in Europe (OSCE).

6. The Government would like to stress that Turkey continues to fight against FETÖ/PDY and other terrorist organizations in line with its fundamental principles of the rule of law, democracy and human rights and also in accordance with its international obligations. In this regard, the main goals sought to be achieved in this extraordinary period are the elimination of the causes that gave rise to the state of emergency.

In this context, as regards the requested information in the current Joint Communication for the study on the impact of the emergency measures concerning the rights protected under ICESCR and other relevant international agreements, the Government would like to dwell upon the following below regarding the right to work, to an adequate standard of living, to education and to join and form trade unions.

Firstly, the relevant national legislation should be considered. Article 141 of Civil Servants Law No. 657 under the title of *"Rights and Obligations of the Officials Who are Suspended from Duty"*, stipulates that civil servants who are suspended from duty or who are arrested or taken into custody for any offence, whether related to their duty or not, shall be paid two-thirds of their salary during this period. They also continue to benefit from the social rights and assistance as prescribed in the said provision. In addition, Article 143 of the said Law prescribes that remaining one-third of their salary is paid accordingly and thus personal rights acquired in the social security regime is maintained, in case the suspension measure is revoked.

It should also be added that the procedure for closing trade unions, federations and confederations in accordance with Decree Law No. 667, Article 2, Annex 5 was carried out by the Ministry of Labour and Social Security.

The related provision titled as *"Measures concerning institutions and organizations closed down"* reads as follows: *"ARTICLE 2 – (1) d) Unions, federations and confederations listed in the Article V, which have belonging, affiliation, or connection with the Fetullahist Terrorist Organization (FETÖ/PDY), established posing a threat to the national security, have been found to exist, have been closed down."*

Secondly, the Government wishes to reiterate that those individuals have been dismissed or suspended not because of political, religious or other beliefs, but due to their membership, affiliation or connection with terrorist organizations and their support to them. No state can allow elements within public institutions that misuse their authority and public resources to realize illegal goals of terrorist organizations.

It has to be mentioned that the efforts of the FETÖ terrorist organization to expedite taking control of the state apparatus became stronger since mid-2000s. Members of the organizations who had already taken key positions in the judiciary and the police resorted to illegal methods to purge the opponents of the organization, including those in the army. Forged documents, faked evidence sham trials, illegal wiretapping, blackmailing etc. were used for this purpose. In short, the organization that started as a religious movement became a Parallel State Structure posing a grave threat to the democratic constitutional regime of Turkey.

The Government's efforts to eradicate this threat intensified in the recent years and the controlling power of FETÖ in most of the state institutions was eliminated. July 15 coup attempt was the last and bloodiest resort of the organization to usurp the power in Turkey.

As mentioned before, measures are taken within the limits of the rule of law and Turkey's international obligations. Yet, domestic remedies exist, be they judicial or administrative, for reviewing measures for those who claim they have been wrongfully suspected. To date, over 300 institutions that were shut down have been reopened and more than 30 thousand public employees have been reinstated through administrative boards of review, as of 21 July 2017.

Furthermore, as of 17 July 2017, 17.974 personnel of the Ministry of Education were reinstated to the office through boards or subsequent Decree Laws. Besides, it should be clarified that the licenses of the teachers in private schools were not cancelled just because these persons were working at those schools, but because they had worked for FETÖ/PDY. After the cancellations, the situation of teachers who applied by claiming that they were wrongfully suspected were investigated by the Boards formed in provinces and as of 18 May 2017, 1.335 teachers licenses were issued back after due investigations.

7. The Government would like to refer to the related practice and legislation regarding the requested information on the support available to individuals and their families in question.

When the families of those, who have been dismissed from their professions by State of Emergency Decrees, apply to the Provincial Directorates due to their socioeconomic deprivation, the related assessment is made on the basis of the best interests of child and within the scope of the Circular No. 2016/04. The said Circular is prepared by the Directorate of Strategy Development of the Ministry of Family and Social Policy with the title of "*Measures to be taken within the scope of FETÖ/PDY*".

The General Directorate of Social Assistance of the Ministry of Family and Social Policy is carrying out its assistance programs in accordance with the Law on Social Assistance and Solidarity (Code No. 3294), the Law on Enpensioning the Turkish Citizens Who Turn 65 and who are Needy, Helpless and Orphan (Code No. 2022) and the Law on Social Services (Code No. 2828). The Social Assistance and Solidarity Foundations (SASF), founded in every province and sub-province within the context of the Code No. 3294, are organized as private law legal entities and provide assistances to the poor and needy citizens and if needed to the people who are admitted to Turkey in any circumstances whatsoever with the decision of their own Board of Trustees. There is no legal restraint for those mentioned in the aforesaid Communication to apply to the Foundation where they live and to benefit from cash and in-kind assistances provided by these Foundations.

8. As regards the measures taken to enable the students of the closed higher education institutions for the continuation of their studies, the Government would like to mention that the Council of Higher Education of Turkey has taken a number of General Board and Executive Board decisions to establish the rules and procedures in accordance with Article 2 of the Decree Law No. 687 of 23 January 2017.

The related provision states that: *“Students, registered to the higher education institutions closed down, shall be placed at State-run universities or foundation-run universities by the Council of Higher Education. Students to be placed as such shall continue to pay to the university concerned the tuition fees that they are required to pay to foundation-run higher education institutions until their graduation. The Council of Higher Education is responsible and authorized for establishing procedures and principles related to application of this paragraph, providing guidance on the application, taking all types of measures and eliminating hesitations that might arise.”*

In accordance with the specified rules and procedures of the Board decisions of the Council of Higher Education, 65.000 students, including 4.000 thousand of international students coming from 122 countries, who were attending the closed private higher education institutions which were established to have direct connection with FETÖ/PDY, were placed in other higher education institutions, as of 22 May 2017. The information regarding the decisions and actions taken was issued open and transparent way in the web site of the Council of Higher Education of Turkey.

It should be noted that the Council of Higher Education as a constitutionally independent non-political body, supports and maintains the free academic institutions in Turkey. Recent events and terrorist coup attempt in Turkey have shown that the members of the illegal organization have penetrated into the higher education system, too. As a threat to autonomy of the institutions and the academic freedom of the faculty members, it was needed to be vigilant in cutting the ties of any illegal organization with the universities.

The Council of Higher Education does its best to ensure that academic, scientific, and educational functions of the universities continue without any interruption. Moreover, the measures taken by the Council of Higher Education are directed towards ensuring and maintaining the academic autonomy of the universities. It is clear that a university system taken hostage by an illegal organization can exercise neither its freedom nor its academic autonomy.

9. The Government would like to reiterate that the right to legal remedies and in this regard the right to access to judiciary are among the fundamental rights and freedoms which are guaranteed in the Constitution as well as the conventions on human rights to which Turkey is a party.

The state of emergency, which has been declared following the coup attempt of July 15, aims at swift and efficient elimination of terrorist groups in the functioning of the state.

As stated earlier, several domestic remedies are available for those affected by the measures of the Decree Laws. In this context, in addition to already existing ones, the Government would like to state that a new domestic remedy has been introduced by Decree Law No. 685 which was enacted with a view to establishing the Inquiry Commission on the State of Emergency Measures (“the Commission”) under the state of emergency.

The establishment of the Commission aims to carry out an assessment of, and render a decision on, the applications related to dismissal or discharge from public service, profession or organization in which the persons held office, dismissal from studentship, closure of institutions and organizations, revocation of ranks of retired personnel directly conducted by virtue of the Decree Laws on account of having membership, affiliation or connection with terrorist organizations without carrying out any other administrative action. Thus, the Commission will specifically address measures that are taken directly by Decrees.

The Commission is entitled to take binding decisions with due process. Its decisions are also open to judicial control. In this scope, the actions for annulment can be filed against the decisions of the Commission before the Ankara administrative courts, which will be determined by the Council of Judges and Prosecutors (CJP). Accordingly, individual application to the Constitutional Court is applicable. At the same time, the supervision of the European Court of Human Rights (ECtHR) continues.

The Government would like to underline that the establishment of this new mechanism is in line with the recommendations by the Council of Europe. Moreover the ECtHR has already ruled that the remedy introduced by Decree Law No. 685 constitutes an accessible remedy².

It should also be highlighted that the members of the Commission were appointed on 16 May 2017 and the Commission commenced functioning on 22 May 2017. Subsequently, the Commission started receiving applications as of 17 July 2017 following the publication of its Rules and Procedures in the Official Gazette on 12 July 2017.

Within this scope, the Government would like to remind that the Commission's establishment and its subsequent work is prescribed by the provisions of the Decree Law No. 685 of 23 January 2017 and Decree Law No. 690 of 29 April 2017.

The Decree Law No. 685 foresees that the Commission shall exercise its functions for a period of two years and this may be extended for a period of one year per each extension.

In compliance with the said Decree Law, the Commission is composed of seven members, including judges and prosecutors, and the Commission shall take its decisions by majority of votes.

² In its latest decision on 12 June 2017 in the case of *Köksal v. Turkey* (70478 /16) the ECtHR has unanimously declared the application inadmissible. The case concerned the applicant's dismissal by legislative decree in the context of measures taken after the attempted *coup d'état* in Turkey. The Court dismissed the application for failure to exhaust domestic remedies, finding that the applicant had to use the remedy provided for under Decree Law No. 685 which provided for the setting-up of a commission with the task, in particular, of adjudicating upon appeals against measures adopted directly by Decree Laws issued in the context of the state of emergency, including the dismissals of civil servants. The ECtHR stated also that the decisions taken by the commission could then be appealed against before the administrative courts, whose decisions in turn could be challenged before the Constitutional Court by individual petition. It was also reminded by the ECtHR in its decision that when that highest court had examined a case and gave its judgment, any individual could submit a complaint under the Convention to the European Court.

It is also stated in the said Decree Law that the members of the Commission shall be appointed to hold office for a term of two years and in the event that their period of office is extended, same members may be appointed once again or new members may be elected.

According to the Decree Law, the Commission is authorized to ask all information and documents needed from all institutions and organizations in accordance with the legislation related to the confidentiality of investigation and the State secrets.

As regards the related provisions of Decree Law No. 685, the applications may be lodged within 60 days as from 17 July when the Commission begins to receive applications. As for Decree-Laws to be issued after 17 July, the applications may be lodged within 60 days starting from the date of publication of these Decree-Laws.

In addition, with Decree Law No. 690 of 29 April 2017, new regulations on working methods of the Commission were set in place with a view to increasing its effectiveness. In this view, in order to ensure their independence, the members of the Commission cannot be held accountable for the performance of their duties in judicial, administrative, criminal and financial terms.

10. In light of the above, it is clear that Turkey conducts its struggle against terrorism in accordance with national and international law, while at the same time attaching particular importance to the protection of all fundamental rights and freedoms.

Consequently, it should be stressed that Turkey is committed to protecting its democracy in accordance with the principles of rule of law. As emphasized in the preceding paragraphs, due process is ensured through all available domestic remedies. Individuals and institutions can apply to these mechanisms against all acts and actions.

Enc. 1