

PARTICIPANT REPORT



UNIVERSAL PERIODIC REVIEW-TURKEY

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ASSOCIATION DEVELOPMENT OF INVESTMENTS AND BUSINESSES

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I. INTRODUCTION SUMMARY

1. All legal and practical implementation which Turkey has done and aims to do in the scope of human rights have been described in the National Report which was offered by Turkey during the second review process in 2015 and published by the UN on 30 October 2014. This report was prepared with reference to the information contained in the National Report.
2. After submission of the national report, a coup attempt has taken place on July 15, 2016 in Turkey and thereafter a state of emergency was declared as of 21 July 2016. And after that, a notification has been made to Turkey in accordance with the UN Convention Article 15 regarding reducing obligations related to fundamental rights and freedom.
3. However, the closure of media outlets, which will be specifically addressed in the report, has begun before the announcement of State of Emergency, and as of 2015, the appointed trustees decided to suspend the publication of the media.
4. However, even if these sanctions under Article 4 of the Convention on National and Civil Political Rights had been made after the announcement of the state of emergency, they should not violate the legal necessity and proportionality principle which is one of the cornerstones of international law and Turkish Constitution. However, as seen in practice and discussed in detail in the analysis section below, sanctions begin before the announcement of the state of emergency and then continue to increase. They show that the limits of the principle of necessity and proportionality have been seriously exceeded.
5. There have also been serious violations of rights related to the legal proceedings of the arrest of pregnant women and young children after the state of emergency; that the practices are contrary to Article 5 of the ECHR and Articles 16/4 and 116 of Criminal Execution Law No. 5275. After the state of emergency, these violations continued to increase seriously.
6. Peace Islands Association respectfully submits the upcoming universal periodic review of Turkey as a stakeholder.

Keywords: Right to a fair trial, No punishment against the law, Right to respect private and family life, Freedom of thought, conscience and religion, Freedom of expression, Right to an effective remedy, Prohibition of discrimination, Derogation in time of emergency, Restrictions on political activity of foreigners, Right of freehold.

II- LEGAL FRAMEWORK

1. Decree No. 668 of 25 July 2016 Article 2-1c and Article 2-3¹
2. Decree Law No. 670 of 15 August 2016 Article 5-3 and Article 5-6²
3. Article 16/4 of the Criminal Execution Law No. 5275³
4. Article 116 of the Criminal Law Enforcement Article No 5275⁴

¹ 2 Article 2 – (1) Those which belong to, connect to, or contact with the Fetullahist Terrorist Organization (FETO/PDY); c) Newspapers and periodicals listed in Annex (3) and publication and distribution channels have been closed down. (3) Movable property as well as all kinds of assets, receivables, rights and all documents and papers that belong to the newspapers, periodicals, publishing houses and private radio and television organizations closed down shall be deemed to have been transferred to the Treasury without cost, and all real estate that belong to them shall be registered ex officio, free and clear of any restrictions and encumbrances on the immovable, in the name of the Treasury in the land registry. Under no circumstances shall any claim or demand related to all kinds of debts of these be made against the Treasury. The Ministry of Finance shall carry out all procedures relating to transfer by receiving necessary assistance from all institutions concerned.

² (3) Movable property as well as all kinds of assets, receivables, rights and all documents and papers that belong to the newspapers, periodicals, publishing houses and private radio and television organizations closed down shall be deemed to have been transferred to the Treasury without cost, and all real estate that belong to them shall be registered ex officio, free and clear of any restrictions and encumbrances on the immovable, in the name of the Treasury in the land registry. Under no circumstances shall any claim or demand related to all kinds of debts of these be made against the Treasury. The Ministry of Finance shall carry out all procedures relating to transfer by receiving necessary assistance from all institutions concerned. (6) Education institutions built on the immovable properties that belonged to the foundations closed pursuant to the provisions of the Decree-Law no. 667 and whose possessions were transferred to the General Directorate for Foundations can be allocated to the public institutions and organizations without charge and to the legal persons subject to the private law in return for the payment of their values.

³ The execution of the prison sentence against a woman who is pregnant or who gave birth less than six months ago shall be postponed. If the child has died or has been given to someone else other than the mother, the prison sentence shall begin to be executed two months after the date of birth.

⁴ The provisions of this Law in Articles 9, 16, 21, 22, 26 to 28, 34 to 53, 55 to 62, 66 to 76 and 78 to 88 hereof concerning high-security closed penal institutions, the postponement of the execution of prison sentences due to illness, procedures of admission and registration, informing convicts, their relatives and those concerned, serving the sentence, complying with security and rehabilitation programs and with the rules of health protection, protection of the building and property, doors not to be open and contact to be prevented, personal items that may be kept in rooms and their annexes, searches, the nature of disciplinary penalties and the conditions for their implementation, reprimands, prevention from participating in certain activities, deprivation of paid work, deprivation or restriction of access to communication means, deprivation of accepting visitors, confinement in a cell, disciplinary measures and penalties applicable to minor convicts, disciplinary investigation, repetition of acts that call for a disciplinary penalty, execution and lifting of disciplinary penalties, measures that may be taken by the administration, use of constraining devices, rewarding, complaints and objections, transfers, transfer by reason of discipline, transfer due to necessity, transfer due to illness, measures to be taken during transfers, the right to see a lawyer or a notary, participation in cultural and artistic activities, freedom of expression, using the library, the right to benefit from periodical or non-periodical publications, the right to communicate by telephone, the right to receive radio and television broadcasts and to use the Internet, the right to send and receive letters, fax messages and telegrams, the right to accept presents sent from the outside on the days specified in this Law,

II- ANALYSIS

1. After a closely-known publicized anti-corruption operation made in 17/25 December 2013 in Turkey, there have been interventions in the process of judicial investigation and the prosecution which exceeded the separation of the forces.⁵
2. In addition, in the process that started with the related operations, there were regressions in contradiction to the basic principles of the constitution and international law in the functioning of the judiciary with the Magistrates Criminal Judges established in accordance with the Law No. 6545 dated 18.6.2014.⁶
3. As the interventions to the investigations of corruption started increasingly with the establishment of Magistrates 'Crimes Judges, the Magistrates' Crimes Judgeships were authorized to appoint trustees to the companies with reference to Article 133/1 of the Criminal Code Procedure.⁷
4. Following this authorization, firstly, in October 2015, a trustee was appointed to KOZA İPEK group, which had 22 companies with gold mining operations, television channels and different media organs.⁸ Following this, in November 2015, a trustee was appointed to Kaynak Holding, which also included 22 different companies, 1 association and 1 foundation.
5. The fact that the companies in which the trustee appointments are first given are media organs and as will be explained in the following examples to see the companies entering the closing process with the trustee appointments is a serious damage to freedom of expression and the fundamental human right regulated in Article 10 of the Constitution and the ECHR.
6. Regulatory decisions within the scope of criminal investigations for granting trustee assignments for companies in Turkey; this situation is subject to strict conditions in Article 133 of the Code of Criminal Procedure in Turkish legislation. If one of these conditions is missing, it is not possible to appoint a trustee to the company management. Accordingly, for the determination of trustee below are necessary;
 - The offense being committed must be one of the catalog crimes listed in Article 133-4 of the Code of Criminal Procedure.
 - Crime is committed within the framework of a company's activity
 - Committing a crime as a chain or continuous crime
 - Strong suspicion that the crime was committed
 - Necessary for revealing the material fact.
7. The appointment decisions of the Magistrates will cover the above-mentioned legal arrangements and should be justified in detail. However, when the decisions taken are examined, it can be seen that a single decision has made a trustee appointment to more than one company, to one association and one foundation. When this

⁵ The European Council of Turkey's progress report 2018 - Turkey's performance relating to investigation in corruption cases, prosecutions and convictions, particularly in cases of corruption that are closely monitored by the public, is still insufficient. No progress has been made on improving accountability and transparency in the work of public institutions.

⁶ The European Council of Turkey's progress report 2018 - The decisions of the magistrates' judges are increasingly distancing from the case-law of the European Court of Human Rights and rarely provide sufficient personalized justification. The recommendations of the Venice Commission in March 2017 should be urgently implemented.

⁷ Appointing a trustee for the administration of a firm Article 133 - (1) In cases where there are strong grounds of suspicion that the crime is being committed within the activities of a firm and it is necessary for revealing the factual truth, the judge or the court is entitled to appoint a trustee for the administration of the firm with the aim of running the business of the firm, for the duration of an investigation or prosecution. The decision of appointment shall clearly indicate that the validity of the decisions and interactions conducted by the organ of the administration depends upon the approval of the trustee, or that the powers of the organ of the administration has been transferred to the trustee. The decision on appointing the trustee shall be announced by the newspaper for the record of the trade and by other suitable means.

⁸ <http://www.hurriyet.com.tr/ekonomi/koza-ipeke-kayyum-40006405>

appointment is done Magistrates' Magistrates must give their decision of trustee assignments by presenting concrete evidence of which company's criminal activity continues to be committed within which catalog. However, in practice, these rules were not followed and as a result more than one company, association and foundation was closed with a single decision.

8. Objections to these decisions of Magistrates' Courts, is made to the nearest Magistrate Judge in the same degree in accordance with their own legal arrangements. The objections are rejected with a single sentence in a single hearing. However, these decisions that interfere with the right to property and freedom of expression need to be more convincing. The decision to reject the objection is final and although all unlawfulness is written separately, the right of reasoned decision has been violated with the rejection of the request without any justification. Thus, the decisions are finalized with a closed circuit system without an effective examination of the legality of the decisions made for hundreds of companies.
9. Turkey, in the second national reports, mentioned that the preview opens the way individual applications to the Constitutional Court and individual applications were made available to all individual rights' violations. Unfortunately, the implementation of this project has been a major problem and there have been huge delays in the decision of the Constitutional Court due to the increasing number of applications. However, these decisions must be made within a reasonable time pursuant to Article 6 of the ECHR.
10. For example, for the rejection of the Constitutional Court to examine the above-mentioned appeal has lasted for 3 years and in that time violations have not been prevented. In addition, during this period, with the coup event of July 15, 2016, a state of emergency was declared and those companies and associations which trustees were appointed by published Decree Law closed down. This process of operation has fundamentally damaged the principle of unlawful punishment which is one of the basic human rights.
11. Turkey is in the process of reviewing the second report to be presented to the UN; addressing the shortcomings in the legislation referred to in the trial of the European Court, 6 judicial reform packages were adopted in order to increase their effectiveness and facilitate access to justice, thus, preventing the repetition of human rights violations and strengthening the independence and impartiality of the judiciary. In this context, it is stated that improvements have been made in Turkish Criminal Code, Criminal Procedure Law and Anti-Terror Laws. However, in practice, Turkey, on the one hand to resolve deficiencies, established Magistrates' Court with a system that seriously overshadows judicial independence, impartiality and effectiveness in legislation contrary to the discourse in the National Report. Closed-circuit feature of Magistrate Judges have played an important role in the closure of the media organs which are cornerstones of freedom of expression in Turkey and several media organs were closed overnight.
12. It is not satisfied with the closure of media organs, also writers, television programmers, journalists and many employees working in these institutions were arrested.⁹
13. In addition to the appointment of trustees to the companies and closure of them in the future, as of July 21, 2016 State of Emergency has been declared in Turkey and human rights convention has been suspended. However, with this suspension, the limits of the proceedings to be carried out by the judiciary and law enforcement officers have become undefined. As a result, many human rights violations have occurred in judicial proceedings.¹⁰

⁹ <https://www.dw.com/tr/tutuklu-gazeteci-say%C4%B1s%C4%B1nda-t%C3%BCrkiye-%C3%BC%C3%A7%C3%BCnc%C3%BC-s%C4%B1rada/a-46780288>

¹⁰ <http://www.ihop.org.tr/2017/09/19/birlesmis-milletler-keyfi-tutuklamalar-calisma-grubu-3-basvuruya-iliskin-goruslerini-yayinladi/>

14. Turkey's commitments to allow freedom of expression, press freedom and in the recognition of freedom of assembly which is submitted in national reports, appeared as contrary in practice and the closure of media outlets continued with the confiscation of dissenting publications and authors' books.¹¹
15. The case-law of the ECHR, while specifying the scope of freedom of expression, stated that it constitutes one of the main sources of a democratic society that this freedom is not only for the disclosure of information and ideas that are deemed to be, but also valid for the disclosure of surprising and alarming thoughts that are contrary to the state and a part of society, which disturb them.
16. In addition, in the national report, when talking about women's rights regulations it has been mentioned that women will be more involved in the voting and to be voted and the necessary steps have been taken. But in practice, this has not taken place in the regulations mentioned in national reports and the arrest of pregnant and newly-gave-birth women has become an indication that commitments have not been met.
17. Furthermore, in the national report, under the title of right to freedom and security of persons, it is informed that for elimination of problems especially with regard to long detention periods, for practitioners to be more attentive to arrest and in order to create an alternative to arrest, protection measures, legal amendments including new regulations in favor of detainees and convicts have been implemented and the conditions of detention have been made more difficult. However, in practice and as will be explained with examples, there has been an increase in the number of prisoners, convicts and prisons in the last 10 years. Especially after the coup of July 15, 2016 behind the State of Emergency curtain number of people who went under investigation has increased to over 500,000. Although the conditions of detention have been made more difficult, the arrest of even babies with their mothers clearly shows that the commitments have not been fulfilled.¹²
18. The national report provides information that steps have been taken to accelerate judicial proceedings in favor of detainees or convicts and this was shown as the reason for the establishment of Magistrates. However, in practice, this situation was completely against the person under investigation and paved the way for easy arrests.
19. The conclusion of the proceedings in a reasonable time was considered by international law as one of the fundamental human rights and Turkey is a party to many of these contracts. It has been mentioned that in extraordinary periods, the application of human rights may be limited. However, these restrictions cannot be realized by completely suspending fundamental rights and freedoms. The principle of fair trial which is one of the requirements of fair trial, the establishment of the State of Emergency offices¹³ and the inclusion of decisions by these boards into the internal legal hierarchy has caused great victimization in the search for the rights of those who have lost their rights as a result of the state of emergency. That is, although the upper limit of the detention period has been reduced from 10 to 5 years with the new regulations, the relevant decision to apply to the state of emergency office for unjust detention and specify that the office should take a decision within 2 years caused great loss of rights¹⁴.
20. Turkey has submitted information that necessary steps were taken in the national report under a separate heading for women's freedom and equality for women. But as can be seen in practice, in Turkey where violence against women and death of women has increased, it has been revealed that the increase in the number of female detainees in prisons has reached enormous proportions. At the end of 2002, when the AKP came to

¹¹ <http://ilerihaber.org/icerik/evinde-fetullah-gulenin-kitaplari-olan-azeri-siyasetci-tutuklandi-58777.html>

¹² <https://aktifhaber.com/15-temmuz/tutuklu-hamile-hatice-sahnaz-dun-gece-dogum-yapti-h132899.html>

¹³ **Decree Law no. KHK/685:** Establishment of the Commission on Examination of the State of Emergency Procedures; Pursuant to Article 121 of the Constitution and Article 4 of the Law on State of Emergency dated 29.10.1983 and numbered 2935, the Council of Ministers convened under the presidency of the President on 23.1.2017.

¹⁴ **Decree Law no. KHK/683 Article 3- (1)** The Commission shall exercise its functions for a period of two years from the date of the entry into force of this Decree-Law. The Council of Ministers may extend this period for a period of one year per each extension, if deems necessary.

power, the number of women detainees increased from 2,108 to 10,019 as of May 15, 2018. Justice Ministry data show that the number of women prisoners in the past 16 years shows an increase of 375 percent.

21. The cases included in our report regarding the statutory decrees issued under the state of emergency and the rights violations caused by them are listed below:

Violations of Property and Right to Fair Trial;

Example 1; In accordance with Article 2-1c of Decree Law no. 667 of 22 July 2016, Kaynak Vakfı (the Welding Foundation) was closed without any court decision and all assets were transferred to the General Directorate of Foundations without charge.

Example 2: There is an announcement dated 18.11.2016 that the registration of Çağlayan Basım Yayın Dağıtım Ambalaj Sanayi ve Ticaret Anonim Şirketi' (Çağlayan Printing Publication Distribution Packaging Industry and Trade Joint Stock Company) has been deleted from the trade registry on the grounds that Article 6 of the Decree Law no.

Example 3: Işık Yayıncılık Ticaret Anonim Şirketi cited -as Işık Yayınları- in the list of publishing houses closed in Decree Law no. 668 were directly closed together with 5 journals and 15 publishing houses under it.

Example 4 : Sürat Basım Yayın Reklamcılık ve Eğitim Araçları Sanayii Ticaret Anonim Şirketi (Sürat Printing Publication Advertising and Educational Tools Industry Corporation) was listed -as Sürat Basım Yayın Reklamcılık ve Eğitim Araçları- in the list of publishing houses closed in Decree Law no 68.

Example 5: Utt Yayıncılık ve Eğitim Gereçleri Ticaret Anonim Şirketi (Utt Publishing and Education Equipments Trade Joint Stock Company) has announced that the record of the trade registry was deleted on 23.11.2016 on the grounds that it was closed down pursuant to Article 5 of Decree Law no. 670.

Violation of the right to reasoned decision;

Example 6; On 17 November 2015, with the decision of Istanbul Anatolian 10th Magistrates' Court, 19 companies decided to appoint a trustee to a foundation and an association with a single decision and a single reason. The decision was made without showing which individual legal entity was charged with which offense and which evidence was related to which company or association or foundation.

Violation of the right to freedom;

Example 7: Given the attachment, as seen in Report of Human Rights Violations Experienced In Prisons prepared by Turkey's main opposition party, especially the human rights violations taking place in terms of women prisoners.

Violation of the prohibition on torture and ill-treatment:

Example 8: Information on the day of the incident to all political prisoners that were interviewed: On the date of 05.08.2016, it was stated that around 50 execution officers entered the F/2 Ward with swearing and insults, handed out items, damaged them, battered all the prisoners in the ward and took all the prisoners in an area with reverse handcuffs. Subsequently, prisoners Mehmet Aktaş, Furat Ünver and Kazım Benek were beaten and taken to the ready-force room. They were subjected to rough beating and bastinado (falaka) for over an hour in this room. Prisoners in the ready-force room were obliged to make the slogan of “Blessed is the person who says I am a Turk’ and swearing and insults continued. After about 1 hour of bastinado (falaka) and torture, three prisoners were taken to the cells and kept in the cell for about 2 hours. The other prisoners were taken to the ventilation of a forensic ward with coarse beatings and were subjected to intense torture. Swearing and insults continued throughout the torture. The prisoners were then taken to open visit in this state. The guards insulted the relatives of the prisoners and some of the relatives were beaten. **OBSERVATION AND DETERMINATION REPORT OF ANTALYA L TYPE CRIMINAL EXECUTION INSTITUTION TO HUMAN RIGHTS ASSOCIATION, ISTANBUL BRANCH, PRISON COMMISSION.**

Example 9: Ömer Faruk Gergerlioğlu, member of the Parliamentary Human Rights Investigation Commission who has been closely monitoring problems in prisons, says he acted as soon as he learned of the prison sentence given to a mother of a baby in Tekirdağ Prison. He says how come a mother with a baby and 10 days in the cell? **As of today, it is not known how many mothers are in prison. The last updates were on the 31 October 2018. As of that day, there were 743 children between 0-6 years and 343 children between 0-3 years in prisons. Şaban Yılmaz, General Director of Prisons and Detention Centers, who answered the questions of the members of the Parliamentary Human Rights Investigation Commission, gave the number on 14 November 2018. 743 children means 743 mothers of which 519 are convicted and 224 are arrested. Gergerlioglu of the HDP has so far filed 18 parliamentary questions about mothers who have been imprisoned with their babies, but none of them have been answered.**

22. In the light of the examples given above, closure of the said publishers, implementation of the provisions of arrest against pregnant women and those with infants, despite the provisions of national and international legislation shows that it is clear that the arrangement with the State of Emergency Decrees is contrary to the guarantees of being a State of law, freedom of thought, fair trial principle and torture and ill treatment principle.

III- SUGGESTIONS

1. Torture and ill-treatment in prisons must be terminated immediately and all allegations should be investigated individually.
2. Judicial proceedings of detainees should be accelerated.
3. Prisoner treatment of children held with their mothers in penal institutions should be terminated and care as close as to conditions outside the prisons should be ensured, taking into account the interests of the child.
4. Pursuant to Article 4 of the Penal Code No. 5275, the release of pregnant and detained women should be decided, and at least the proceedings should be continued with a protection measure other than detention.
5. Prison conditions should be reviewed and human rights seminars should be organized for the relevant officials in accordance with national and international legislation. The torture and ill-treatment of women in prisons should be terminated immediately and the necessary deterrent sanctions imposed on those concerned.
6. Proceedings should be expedited in accordance with the principle of proportionality and should be terminated in a reasonable time without further victimization.
7. Prisons must be reopened to the Prison Monitoring Commissions and independent supervision.
8. A regulation should be introduced in which the decisions of the Magistrate can be more effectively audited and the appeal authority can make more effective decisions.
9. Closed media organs, considering that the statutory decrees published in the state of emergency are limited to the period in which the state of emergency is declared, should be allowed to reopen within the framework of the principles of fair trial and freedom of expression.
10. Since the situation is the same in all legally enacted Decree Laws, in other words, it is not possible for a State Decree Law to be a law, all laws that are essentially absent must be revoked under this rule. In other words, since the law cannot be amended by a regulation that does not have the power to change the law, all the provisions of the Decree Laws will have to come into force as if they had never been abolished.
11. The questioning proposals submitted to the TGNA (TBMM), in particular concerning women and pregnant prisoners, should not be left unanswered within the framework of the right to information guaranteed by the ECHR and the national report and the answers to be given in a legal sense should take concrete steps.¹⁵
12. The decision to apply uniform dress for political prisoners in prisons should cease as soon as possible without causing further victimization in accordance with the principle that the prisoners have not yet been punished and that the defendant benefits from suspicion.¹⁶¹⁷

¹⁵ https://www.yeniasya.com.tr/gundem/700-cocuk-niye-cezaevinde_493542 (Gergerlioglu of the HDP has so far filed 18 parliamentary questions about mothers who have been imprisoned with their babies in prison, but none of them have been answered.)

¹⁶ <https://tr.sputniknews.com/turkiye/201712261031556613-tek-tip-kiyafet-cezaevi/>

¹⁷ **THE DECREE LAW NO. 696 Article 103-** The following additional clause has been added to Law No. 5275. “Additional Article No. 1” Through the Additional Article No. 1 to Article 103, detainees or convicts who fall within the remit of the Anti-Terror Law – with the exception of juveniles and pregnant women - are required to wear the attires provided them by the administration of the penitentiary institution, when they are being taken out of the institution to attend a hearing. A proportional disciplinary penalty is provided for those acting contrary to the arrangement. With the said arrangement, it is aimed to prevent the terrorist propaganda and to enable judges, public prosecutors who perform judicial duties and experts and witnesses to reach the truth in an independent and impartial manner without being influenced by probable pressures, and therefore it is aimed to secure the public order. This arrangement will be effective on the date the by-law regarding this article enters into force.

13. As mentioned in national reports to detain and arrest conditions made difficult, to be able to take this decision, "strong suspicion based on concrete evidence" measure was introduced. Within the framework of this regulation, a commission should be established within the TGNA and necessary investigations should be carried out to investigate the reasons for the increase in arrest and detention statistics.

IV- CONCLUSION

Turkey, which has made great progress in the field of human rights with its democratization package in 2010, following the 17/25 December 2013 corruption operations, which were closely followed by the national and international press, the media experienced significant decrease in media democratization and human rights violations. As of 2015, there have been human rights violations protected by the constitution and international conventions to which it is a party through the procedures for assigning trustees to companies, associations and foundations. As a consequence of this process, the freedom of expression, one of the basic principles of human rights, has been severely damaged because of the discontinuation of the media. The 15 July 2016 coup event took place and there were disruptions in fulfilling the above-mentioned commitments presented in the national report and the state of emergency (OHAL). While it is necessary to protect women and children's rights at the maximum level in accordance with its own internal legislation, the commitment has been made in the national report and the international conventions to which it is a party, serious grievances have been experienced as explained by the examples of the state of emergency (OHAL) practices. As an NGO and stakeholders about Turkey, democratization, and we extend our analysis to effectively implement the fundamental principles of human rights and our views with respect.