

Mandates 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; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
AL TUR 4/2017

11 April 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 26/3, 26/17, 34/27, and 32/32.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged violations of economic and social rights caused by the exercise of emergency powers and the implementation of emergency measures by the Government in the aftermath of the coup attempt of 15 July 2016 and the consequent situation of poverty that many of the affected individuals and their families reportedly suffer.**

The special procedures mandate holders have previously expressed concerns about Turkey's derogation from the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), and the alleged arbitrary arrest and detention of tens of thousands of police officers, judges, prosecutors, lawyers, human rights defenders, teachers and other civil servants, following the failed coup.¹ We note the reply of your Excellency's Government to the joint urgent appeal of 19 August 2016 (TUR 7/2016), which claims that the measures taken were necessary to eliminate threats posed by those who plotted the coup. Concerns about state of emergency measures and their compatibility with Turkey's obligations under international human rights law, were also raised by the Special Rapporteur on the promotion and protection of freedom of opinion and expression at the end of his official visit to Turkey in November 2016.² In this communication, we wish to specifically focus on the impact of the emergency decrees on the enjoyment of economic and social rights.

According to the information received:

In the immediate aftermath of the coup attempt of 15 July 2016, the Government suspended, dismissed, detained or arrested tens of thousands of soldiers, police

¹ AL TUR 6/2016; UA TUR 7/2016; UN experts urge Turkey to adhere to its human rights obligations even in time of declared emergency (19 August 2016),

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394#sthash.SlyPe5Xe.dpuf>

² <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20891&LangID=E>

officers, judges, prosecutors, teachers and other civil servants for their suspected link to Mr. Fettulah Gülen, who the Government alleges has orchestrated the coup attempt. On 20 July 2016, President Erdoğan declared a state of emergency in Turkey for a period of three months. On the following day, the Government notified its derogation from the ECHR and the ICCPR, as per article 15 of the ECHR and article 4 of the ICCPR respectively. Turkey remains in a state of emergency to date,³ which will reportedly be extended again in April 2017.

Since the state of emergency has been declared, the Government has been issuing a series of emergency decrees with the force of law (Kanun Hükmünde Kararname – “KHK”). These decrees ordered or authorized, *inter alia*, mass dismissals of members of the judiciary, armed forces and police, as well as civil servants serving various ministries, including the Ministry of National Education, the Ministry of Justice, the Ministry of Health, and the Ministry of Interior.⁴ The decrees specifically listed names of individuals who were subject to summary dismissals on the basis that they “have membership, affiliation or connection to the Fetullahist Terrorist Organization (FETÖ/PDY) which was established as posing a threat to the national security”.⁵ The decrees also authorized dismissals of others who were “considered to be a member of, or have relation, connection or contact 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 [*sic*]”, upon approval by designated officials.⁶ To date, up to 134,000 public servants have been reportedly dismissed from their posts on one of these grounds.⁷ Notably, the decrees prohibit re-employment or re-appointment of the concerned individuals in public service, thus the dismissal is permanent.⁸ Although the subsequent decrees reinstated some of the dismissed employees to their posts, such reinstatements concerned only a small minority.⁹

³ The state of emergency has been extended for another three-month period twice on 19 October 2016 and 19 January 2017.

⁴ The concerned decrees include: KHK 667 of 22 July 2016; KHK 670 and 671 of 17 August 2016; KHK672, 673 and 674 of 1 September 2016; KHK675 and 676 of 29 October 2016; KHK677 and 678 of 22 November 2016 KHK 679, 680 and 681 of 6 January 2017; and KHK 686 of 7 February 2017.

⁵ See for e.g., article 2, Decree with Force of Law No. 670 – 17 August 2016, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)061-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)061-e)

⁶ See article 4 (1), Decree with Force of Law No. 667 – 22 July 2016, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)061-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)061-e)

⁷ Turkey Purge has estimated that as of 28 March 2017, 134,610 public officials have been dismissed: <https://turkeypurge.com/>. In December 2016, the Parliamentary Assembly of the Council of Europe reported that 125,000 public servants have been dismissed since the failed coup. Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (“Monitoring Committee”), The failed coup in Turkey of 15 July 2016: some facts and figures (12 December 2016) (“Facts and Figures”), AS/Mon/Inf (2016) 14 rev3, para. 35.

⁸ See article 4 (2), Decree with Force of Law No. 667 – 22 July 2016, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)061-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)061-e)

⁹ Only 737 out of 100,797 dismissed public servants have been reportedly reinstated to their positions. Within the Ministry of Education, dismissal decisions have been reversed in only 43 cases. Human Rights

The education sector has been most seriously affected by these sweeping measures, as the establishment of educational institutions was one of the core activities of the Gülenist movement and the Government reportedly believed that Mr. Gülen used the schools to recruit followers to infiltrate the state institutions.¹⁰ Within a few days of the failed coup, 15,200 officials of the Ministry of National Education were dismissed from their jobs and 21,000 private school teachers had their teaching licenses revoked.¹¹ 1,557 university deans, 1,176 of whom were employed by public universities, were effectively forced to resign upon request by the Higher Education Board.¹² By virtue of the emergency decrees issued over the last several months, a total of 33,099 public servants of the Ministry of National Education, who were mostly public school teachers, have been dismissed. The dismissals of school teachers and public servants serving the Ministry of National Education constitute almost one-third of the total number of dismissals (32.8 per cent).¹³ The higher education system has also been impacted and a total of 4,811 academics of all ranks from 112 universities have been reportedly dismissed to date.¹⁴ In addition, 22,474 work permits of personnel working in private education institutions – such as teachers, administrators, trainers and specialist tutors – have reportedly been revoked.

In addition to the mass dismissal of public servants, the emergency decrees also ordered the closure and dissolution of certain institutions, associations and foundations, on the basis that they “belong to, connect to, or contact with the Fetullahist Terrorist Organization (FETÖ/PDY)” or that they were “found to be a member of structure/entities, organizations or groups, or terrorist organizations, which are found established to pose a threat to the national security, or whose connection or contact with them have been found to exist [sic]”.¹⁵ Under KHK No. 667 of 22 July 2016, 35 health institutions, 934 schools, 109 student dormitories, 104 foundations, 1,125 associations, 15 universities and 29 trade unions have been liquidated, and their assets were transferred to the State

Joint Platform (IHOP), State of Emergency Measures in Turkey (23 February 2017), http://www.ihop.org.tr/wp-content/uploads/2017/03/Fact-Sheet-of-SoE_23022017.pdf.

¹⁰ Turkey's post-coup purges shake higher education, Reuters (30 August 2016), <http://www.reuters.com/article/us-turkey-security-education-idUSKCN1152DN>; Asli Aydintasbas, The Good, The Bad, and The Gülenists: The role of the Gülen movement in Turkey's coup attempt, European Council on Foreign Relations (September 2016). See also preliminary observations by the Special Rapporteur on freedom of opinion and expression at the end of his official visit to Turkey in November 2016: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20891&LangID=E>

¹¹ Monitoring Committee, Facts and figures, para. 6; BBC, Turkey coup attempt: Who's the target of Erdogan's purge? (20 July 2016), <http://www.bbc.com/news/world-europe-36835340>

¹² Monitoring Committee, Facts and figures, para. 6.

¹³ IHOP, State of Emergency Measures in Turkey (23 February 2017). See also: Human Rights Watch World Report 2017.

¹⁴ IHOP, State of Emergency Measures in Turkey (23 February 2017), http://www.ihop.org.tr/wp-content/uploads/2017/03/Fact-Sheet-of-SoE_23022017.pdf

¹⁵ Article 2, Decree with Force of Law No. 667 – 22 July 2016, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)061-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)061-e)

permanently and without compensation.¹⁶ While 175 of the 1,125 associations were subsequently re-opened by KHK No. 677 of 22 November 2016, the same decree ordered a closure of a further 375 associations, including national and local human rights organisations, women's rights organisations, and associations providing support to people living in poverty.¹⁷ Since the issuing of KHK No. 667, additional schools have been closed and the estimated total number of closed schools has reached over 1,000.¹⁸ Similarly, other decrees, most notably KHK No. 668 of 25 July 2016, ordered the closure of media-related entities, such as news agencies, newspapers, radio stations and television channels. A total of 180 media-related entities have been reportedly dissolved and only 20 of them have been re-opened to date.¹⁹ The dissolution of these institutions and entities has rendered thousands of academics, journalists, health workers and others jobless. Approximately 2,808 academics of the 15 closed universities lost their jobs because of the closure of their universities.²⁰ At the time of the visit of the Special Rapporteur on the right to freedom of opinion and expression to Turkey in November 2016, over 3,000 journalists were also unemployed as a result of the closure of media-related entities.²¹

These measures have had serious consequences for the individuals involved and their families. Those who were dismissed from their jobs have not been paid salaries owed to them or compensation of any kind. Their passports and rental contracts with public housing units have been automatically cancelled.²² They are barred from re-employment in public service and face significant obstacles in acquiring employment elsewhere, as they have been labelled and stigmatized as "Gülenist" and private sector employers are reportedly under pressure not to hire anyone who has been dismissed pursuant to the decrees.²³ Those who had their bank accounts in Bank Asya are no longer able to access their savings and their money was transferred to the State without compensation. Parents who had enrolled their children in schools that have been closed down have not been reimbursed for the school fees they have paid for the current and next school year. Left without alternative employment or compensation for their loss of earnings and savings, many of the affected employees and their families reportedly have

¹⁶ European Commission for Democracy through Law (Venice Commission), Turkey: Opinion on Emergency Decree Laws Nos 667-676 Adopted Following the Failed Coup of 15 July 2016, CDL-AD (2016) 037, Para. 81

¹⁷ Amnesty International, Turkey permanently closes hundreds of NGOs, 23 November 2016.

<https://www.amnesty.org/download/Documents/EUR4452082016ENGLISH.pdf>

¹⁸ IHOP has reported that 1,059 schools have been dissolved as of 23 February 2017, whereas Turkey Purge has reported 1,284 as of 7 April 2017. See: IHOP, State of Emergency Measures in Turkey (23 February 2017); Turkey Purge, <https://turkeypurge.com/purge-in-numbers>

¹⁹ IHOP, State of Emergency Measures in Turkey (23 February 2017).

²⁰ Ibid.

²¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20864>

²² Articles 5 and 8, KHK667.

²³ Private sector under gov't pressure not to hire people dismissed after July 15, Turkey Purge (3 January 2017), <http://turkeypurge.com/private-sector-under-govt-pressure-not-to-hire-people-dismissed-after-july-15>

been plunged into situations of poverty as a result and suffer from extreme financial hardships. The closure of a large number of schools and universities has also severely disrupted the education of students.

It is alleged that the measures have been implemented in a non-transparent and arbitrary manner without any individualized assessment. Indeed, the criteria for assessing one's link with FETÖ/PDY or any other organisation labeled as 'terrorist' have not been specified in the decrees and have never been made public.²⁴ In practice, the dismissals were reportedly based on an assessment of various factors, such as: engaging in financial transactions with Bank Asya and other companies associated with Mr. Gülen; being a member or manager of a trade union or association linked to Mr. Gülen; using the messenger application, "ByLock", which the Government claims was used by Gülenist operatives to plot the coup, and other similar encrypted messaging programmes; sending children to schools associated with Mr. Gülen; analysis of social media contacts and websites visited; police and secret service reports; and information received from neighbours and colleagues.²⁵ The Government's reliance on such indeterminate factors has reportedly led to dismissals of individuals who had no link with the coup attempt or the Gülenist movement. For example, some teachers reportedly had their money deposited in Bank Asya because it offered interest-free banking in accordance with Islamic principles²⁶ or its branch was conveniently located near their work location or home. They deny having supported, or otherwise having any affiliation with, the Gülenist movement. It has also been alleged that the Government used the coup attempt as a pretext to attack trade unionists who had no connection with the Gülenist movement. It has been estimated that some 20,000 trade union members have been dismissed or suspended, a large number of whom were affiliated with KESK (Confederation of Public Employees Trade Unions).²⁷ There are also reports indicating that members of the left-leaning trade union, Eğitim Sen (Education and Science Workers' Union), have also been targeted for suspension or dismissal.²⁸ Around 10,000 to 11,000 teachers who were members of Eğitim Sen have been reportedly dismissed and many were

²⁴ Council of Europe Commissioner for Human Rights, Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, 7 October 2016, CommDH (2016)35, para. 23. See also preliminary observations by the Special Rapporteur on the right to freedom of opinion and expression at the end of his official visit to Turkey in November 2016:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20891&LangID=E>

²⁵ European Commission for Democracy through Law (Venice Commission), Turkey: Opinion on Emergency Decree Laws Nos 667-676 Adopted Following the Failed Coup of 15 July 2016, CDL-AD (2016) 037, Para. 103.

²⁶ Teachers who deposited money in Bank Asya for interest-free banking dismissed, columnist says (26 October 2016), Turkish Minute, https://www.turkishminute.com/2016/10/26/teachers-deposited-money-bank-asya-interest-free-banking-dismissed-columnist-says/?utm_content=buffer5d348&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

²⁷ ETUC statement on the evolution of the Turkish situation (16 December 2016), <http://www.uni-europa.org/2016/12/16/statement-evolution-turkish-situation/>

²⁸ See: Human Rights Watch World Report 2017 ("Around 11,000 teachers in the southeast who were mainly members of the left-leaning Eğitim Sen trade union were also suspended.").

convinced that the reasons for their dismissal related to their trade union membership and their participation in a strike in December 2015 in protest against the violence and curfews imposed by the Government in predominantly Kurdish cities in the Southeast.²⁹ Prior to the coup attempt, trade unionists of KESK and Eđtim Sen, among others, have been subject to repression and harassment by the Government.³⁰

Concern has also been expressed about the lack of procedural safeguards in the implementation of the emergency decrees. Most of the decrees are allegedly *ultra vires*, as only five out of the 21 decrees issued so far have been debated and approved by the Turkish Grand National Assembly, as required by the Turkish Constitution.³¹ Furthermore, the dismissal decisions or decisions to dissolve institutions are not subject to any evidentiary standards, further investigation or legal review.³² The persons subject to dismissals are reportedly not provided with any opportunity to review the evidence against them and challenge the dismissal decision.³³ By contrast, the administrative authorities making decisions on dismissals pursuant to the decrees are granted full legal, administrative, criminal and financial immunity.³⁴

In January 2017, the Government has reportedly established an administrative commission to address cases of wrongful dismissals or liquidations. There are, however, doubts over its independence, capacity and effectiveness.³⁵ Out of seven members of the commission, five of them are appointed by the executive (three by the Prime Minister, one by the Ministry of Justice and one by the Ministry of Interior), when the quorum of the commission is only four. The commission's mandate is envisaged for a period of two years only, even though it is expected to face thousands of cases. It appears, furthermore, that examination of cases will be based on a review of documents without participation of the persons concerned,

²⁹ See: Council of Europe Commissioner for Human Rights, Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, 7 October 2016, CommDH (2016)35, para. 31; Human Rights Watch, Turkey (January 2017), https://www.hrw.org/sites/default/files/turkey_2.pdf; IFEX, No space for peace talk in Turkey's state of emergency (13 December 2016), https://www.ifex.org/turkey/2016/12/13/state_emergency/

³⁰ See for e.g. TUR 5/2012.

³¹ The decrees which have received parliamentary approval are: KHK No. 667; KHK No. 668; KHK No. 669; KHK No. 671; KHK No. 674.

³² Council of Europe Commissioner for Human Rights, Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, 7 October 2016, CommDH (2016)35, para. 23.

³³ *Ibid*, at para. 24.

³⁴ *Ibid*, at, para. 23.

³⁵ See: European Commission for Democracy through Law (Venice Commission), Turkey: Opinion on the measures provided in the recent emergency decree laws with respect to freedom of the media (Opinion 872/2016), 13 March 2017, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)007-e), at para. 88.

and certain confidential documents may not be disclosed to the persons concerned.³⁶

While we do not wish to prejudge the accuracy of these allegations, we express our deep concern about the far-reaching scope of the emergency decrees and their impact on the enjoyment of economic and social rights, including at least the following rights: the right to work, to an adequate standard of living, the rights to education and the benefits of science, and the right to form and join trade unions. The non-fulfilment of these rights bears a direct consequence on the subsistence and integrity of the affected individuals, rendering them vulnerable to poverty. Your Excellency's Government's derogation from the ECHR and ICCPR does not affect Turkey's obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other international agreements that protect economic and social rights. The derogation from certain obligations under the ICCPR furthermore "does not give a carte blanche to ignore all obligations under the ICCPR"³⁷. Also, any measures derogating from or limiting human rights obligations must meet strict criteria set out in international human rights law. There are strong indications that such criteria have not been met. We wish to offer a brief analysis below.

(a) Turkey's obligations under the International Covenant on Economic, Social and Cultural Rights

Turkey is a State Party to the ICESCR and remains subject to its obligations under this treaty, notwithstanding its state of emergency and its derogation from the ECHR and ICCPR. It should be underlined here that the ICESCR does not contain a derogation clause.

The emergency decrees have had a clear impact on several rights protected by the ICESCR. The mass firing of public servants without any recourse and effectively depriving them of their means to secure their livelihoods have had a significant impact on the right to work and to an adequate standard of living as protected under the ICESCR. To the extent that the emergency decrees closed down a large number of schools and universities, the enjoyment of the right to education has been also severely curtailed, which is especially problematic in relation to primary and secondary education. Furthermore, the emergency decrees appear to have ignored the right to form and join trade unions, given the dissolution of a large number of trade unions and the dismissal of trade unionists working for public institutions, allegedly based on their trade union membership and related activities. Having regard to these significant effects on economic and social rights protected under the ICESCR, it appears as if your Excellency's Government is taking the position that it can ignore these rights during the current state of emergency.

³⁶ *Ibid.*, at para. 86.

³⁷ UN experts urge Turkey to adhere to its human rights obligations even in time of declared emergency (19 August 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394#sthash.SlyPe5Xe.dpuf>

While the ICESCR permits certain limitations (but not derogations) on the rights guaranteed therein, the emergency decrees do not appear to be permissible limitations within the meaning of the Covenant. The criteria for permissible limitations set out in the ICESCR are deliberately narrow and restrictive, as the primary purpose of limitations is to protect the rights of individuals, rather than permitting the imposition of limitations by States.³⁸ Article 4 of the ICESCR provides that the State may subject the economic and social rights “only to such limitations as are determined by law in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”.³⁹ Based on the *travaux préparatoires* of the ICESCR, guidance by the Committee on Economic, Social and Cultural Rights (“Committee”) and the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (“Limburg Principles”), as well as jurisprudence and commentaries regarding similar provisions in the ICCPR and the ECHR, the following can be set about the application of article 4, ICESCR in the situation in Turkey described above.

For limitations to be “determined by law”, they must be spelt out in national law that is accessible, foreseeable and sufficiently precise to enable a citizen to regulate his or her conduct, and that is consistent with human rights standards.⁴⁰ The law must not “be arbitrary or unreasonable or discriminatory”,⁴¹ and must provide for “adequate safeguards and effective remedies against illegal or abusive imposition or application of limitations on economic, social and cultural rights”.⁴² According to this interpretation, the mass dismissals of public servants in Turkey can hardly be described as limitations as “determined by law”, as most of the emergency decrees have not been approved by the Turkish Grand National Assembly and they are far from clear or accessible to everyone, as the criteria for the dismissals were not even made public or informed to the concerned individuals. They also do not provide for procedural safeguards to prevent the abusive exercise of the emergency powers, such as a requirement to provide written justifications for the dismissal or an opportunity for the affected individual to seek a legal review of the dismissal decision. The decrees also do not seem to provide for effective remedies for violations of human rights that may result from the implementation of the measures. While an administrative commission has now been set up to deal with individual complaints, its power seems to be limited to reinstating the concerned individuals and institutions to the original position. It does not seem to have the power to grant other forms of remedies, such as compensation, which may be a critical ingredient of an

³⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (The right to the highest attainable standard of health) (2000), para. 28.

³⁹ Article 4, ICESCR.

⁴⁰ See: The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, E/CN.4/1985/4, Annex, Principles 15-18; Amrei Müller, Limitations to and Derogation from Economic, Social and Cultural Rights, *Human Rights Law Review* 9:4 (2009), 557-601 at 579.

⁴¹ Principle 49, The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN doc. E/CN.4/1987/17, Annex.

⁴² Principle 51, The Limburg Principles.

effective remedy in this context, given that the concerned individuals and institutions lost their earnings, assets and savings.

Furthermore, limitations under the ICESCR must be “compatible with the nature of the[...] rights” provided by the State under the ICESCR. This has been interpreted as imposing a requirement on States Parties to guarantee the minimum essential levels of each of the rights and respect its “minimum core” obligations under the ICESCR under all circumstances,⁴³ so that article 4 does not result in limitations of “rights affecting the subsistence or survival of the individual or integrity of the person”.⁴⁴ In the context of the right to work, the Committee on Economic, Social and Cultural Rights stated that the minimum core obligation encompasses, *inter alia*, the obligation to ensure the right of access to employment and to avoid any measure that results in discrimination and unequal treatment in the private and public sectors.⁴⁵ Given the effects that the emergency measures have on the right to work for tens of thousands of individuals and the likelihood that they will be severely restricted in finding other forms of employment under the current state of emergency, as well as the unequal treatment of individuals with links to trade unions and unclear links with certain organizations that have been forbidden, there is concern that the measures in question are not in conformity with these minimum core obligations. The denial of the right to work has significant implications on the realization of other human rights, most notably the right to an adequate standard of living. As the Committee has highlighted, “the right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity”.⁴⁶ Work is a basic source of income for workers to support themselves and their families and to live in dignity. Thus the measures to unfairly deprive individuals of their work on a permanent basis cannot be reconciled with the State’s obligation to satisfy a minimum essential level of the right to an adequate standard of living. Furthermore, the mass dismissals of teachers and academics and the wide-scale closure of educational institutions seem incompatible with the essence of the right to education, guaranteed under article 13 of the ICESCR. The Committee has made clear that academic freedom is at the heart of the right to education, stating that “the right to education can only be enjoyed if accompanied by the academic freedom of staff and students”.⁴⁷ The Committee indicated that “the denial of academic freedom of staff and students”, as well as “the closure of educational institutions in times of political tension in non-conformity with article 4” constitute violations of the right to education.⁴⁸

Limitations under article 4 must furthermore be “solely for the purpose of promoting the general welfare in a democratic society”. This phrase is to be interpreted

⁴³ Müller, at 579. As for an explanation of the “minimum core” obligations, see: Committee on Economic, Social and Cultural Rights, General Comment No. 3, The Nature of States Parties’ Obligations, at para. 10.

⁴⁴ Principle 47, The Limburg Principles.

⁴⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 18, E/C.12/GC/18 (2005), para. 31.

⁴⁶ *Ibid*, at para. 1.

⁴⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 13, E/C.12/1990/10 (1999), para. 38.

⁴⁸ *Ibid*, at para. 59.

restrictively, so that any limitations must be directed at promoting the dignity and well-being of the population as a whole, in a manner that does not impair the democratic functioning of the society.⁴⁹ It is doubtful that the large-scale purge of over 100,000 civil servants on the basis of ambiguous criteria can be said to promote the well-being of the Turkish population as a whole. These measures have been widely described as a “witch-hunt” that goes well beyond targeting those who plotted the failed coup, but that persecutes any individual and group that is deemed critical of the Government,⁵⁰ thereby undermining democracy and the rule of law and destroying public confidence in the State.

Limitations pursuant to article 4 must be also proportional to legitimate aims pursued. In this regard, the Committee stressed that “the least restrictive alternative must be adopted where several types of limitations are available” and measures must “be of limited duration and subject to review”.⁵¹ As discussed above, the emergency decrees ordering or authorizing mass dismissal of civil servants are not of limited duration and do not seem to be a product of careful consideration of various less restrictive measures. Rather, they seem to reflect a unilateral and arbitrary decision on the part of the authorities to collectively fire public servants and close down certain institutions, without taking into account its potentially discriminatory impact.

(b) Limitations on the right to form and join trade unions

The right to form and join trade unions is guaranteed by article 8, paragraph 1 of the ICESCR. This right may be specifically subject to limitations under article 8, paragraph 1(a), provided that they are “prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others”.⁵² This limitation clause has been interpreted similarly to the general limitation clause contained in article 4 of the ICESCR. The phrase “prescribed by law” is read synonymously with the phrase “determined by law” under article 4⁵³ and, as discussed above, the measures contained in the emergency decrees cannot be considered to have been “determined by law” within the meaning of article 4. Article 8, paragraph 1 (a) imposes further restrictions in that the limitation must be “necessary”, implying that it “a) responds to a pressing public or social need; b)

⁴⁹ See: Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The individual's duties to the community and the limitations on human rights and freedoms under article 29 of the Universal Declaration of Human Rights : A contribution to the freedom of the individual under law : Study*, E/CN.4/Sub.2/432/Rev.2 (1983); *The Siracusa Principles, Principles 19-21*.

⁵⁰ See: *The Economist*, *A conspiracy so immense* (10 September 2016), available at: <http://www.economist.com/news/europe/21706536-turkeys-post-coup-crackdown-has-become-witch-hunt-conspiracy-so-immense>; Tim Arango, Ceylan Yeginsu and Safak Timur, *Turks See Purge as Witch Hunt of ‘Medieval’ Darkness*, *The New York Times* (16 September 2016), https://www.nytimes.com/2016/09/17/world/europe/turkey-erdogan-gulen-purge.html?_r=0

⁵¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (The right to the highest attainable standard of health)* (2000), para. 28.

⁵² Article 8, paragraph 1 (a), ICESCR.

⁵³ Principle 59, *The Limburg Principles*.

pursues a legitimate aim; and c) is proportional to that aim”.⁵⁴ While the protection of “national security” may constitute a legitimate aim in the face of real threats to “the existence of the nation, its territorial integrity or political independence”,⁵⁵ the measures to immediately and permanently dissolve trade unions and to divest of their assets seem disproportionate to the aim, especially when there appears to be no publicly available evidence that these unions were directly implicated in the coup attempt. Furthermore, it is noted that article 8, paragraph 3, specifically preserves the State obligations under the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize, which Turkey has ratified. It prohibits States from taking measures that would prejudice the guarantees provided for in the 1948 Convention, including the right of workers and employers to establish and join organisations of their own choosing, and the guarantee that such organisations shall not be liable to be dissolved or suspended by administrative authority.

In connection with the closure and dissolution of associations, foundations and trade unions, we also wish to recall the report of the Special Rapporteur on the right to freedom of peaceful assembly and of association⁵⁶, which stressed that ‘The right to freedom of association applies for the entire life of the association’⁵⁷. The suspension and involuntary dissolution of an association are the severest types of restrictions on freedom of association. As a result, in order to comply with applicable international human rights law, it should be possible only when there is a clear and imminent danger resulting in a flagrant violation of national law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient’.

(c) Impact of derogation from the ICCPR on the right to form and join trade unions

The right to freedom of association, including the right to form and join trade unions, is also guaranteed by article 22, paragraph 1 of the ICCPR, from which the Turkish Government has expressly derogated. Reference should be made here to article 5 (2) of the ICCPR however, which states that there “shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.” In other words, a derogation from a right protected by the ICCPR cannot be misused to restrict or derogate from rights under other human rights treaties, such as the right to join and form trade unions under the ICESCR, especially since the right to join and form trade unions in article 8, ICESCR cannot be derogated from.

⁵⁴ Principle 10, The Siracusa Principle.

⁵⁵ See Principle 62 of the Limburg Principles (“National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence.”).

⁵⁶ A/HRC/20/27, paragraph 75.

⁵⁷ European Court of Human Rights, *United Communist Party of Turkey and Others v. Turkey*, No. 19392/92, para. 33.

With regard to the right to freedom of association in article 22 of the ICCPR, it should be emphasized here that measures derogating from the obligations under the ICCPR are permissible only “to the extent strictly required by the exigencies of the situation” and “provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”.⁵⁸ In all respects, it is difficult to maintain that the measures undertaken pursuant to the emergency decrees constitute a necessary and proportionate response to the circumstances in compliance with these criteria.

Measures derogating from obligations under the ICCPR are designed to be of “an exceptional and temporary nature”⁵⁹ and the severity, duration and geographic scope of such measures must be “strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent”.⁶⁰ In terms of duration, neither the state of emergency declared in Turkey nor the emergency decrees under it can be characterized as a temporary and proportionate measure. To date, the state of emergency has been extended twice, seemingly without an objective assessment of the situation and careful public justification as to why a continued proclamation of a public emergency is necessary. The only explanation provided is the need to fight against the “FETÖ/PDY terrorist organization” and to protect Turkish democracy, the principle of the rule of law, as well as the rights and freedom of the citizens,⁶¹ which are all expressed in broad and rather abstract terms. Although it is recognized that the state of emergency may have existed in the immediate aftermath of the coup attempt, the Government has not furnished sufficient information to demonstrate that the state of emergency continues to exist more than 8 months after the failed coup attempt.⁶² The dismissal decisions also have a permanent effect and the dismissed public servants have not had a possibility to seek a legal review of the decisions. Such an effectively indefinite effect of the emergency decrees signals a lack of proportionality in the circumstances.

The material scope of the emergency decrees also seems overbroad and disproportionate to the stated objective of fighting against the “FETÖ/PDY terrorist organization”. Firstly, the emergency decrees are not only directed at individuals and organisations with a connection with the FETÖ/PDY terrorist organization, but also those with a connection with *any* organisation deemed to pose a threat to the national security. Such a broad coverage appears to be at odds with the requirement that a derogation must be limited to the extent strictly required by the exigencies of the situation – that is, to deal with “an actual, clear, present or imminent danger” posed by those who allegedly plotted

⁵⁸ Article 4, paragraph 1, ICCPR.

⁵⁹ Human Rights Committee, General Comment No. 29: State of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11 (2001), para.

⁶⁰ Principle 51, The Siracusa Principles.

⁶¹ See the reply of the Turkish Government, dated 1 December 2016.

⁶² European Commission for Democracy through Law (Venice Commission), Turkey: Opinion on Emergency Decree Laws Nos 667-676 Adopted Following the Failed Coup of 15 July 2016, CDL-AD (2016) 037, para. 40.

the coup, not merely “an apprehension of potential danger”.⁶³ Secondly, the unclear and indeterminate criteria for assessing a connection with terrorist organizations also appear to indicate that the measures are not carefully tailored to ensure their proportionality to the aims pursued. They have effectively granted the Government unfettered discretion over dismissals, which directly goes against the principle of proportionality.

The burden of justifying a measure derogating from or limiting rights lies with the State.⁶⁴ On the basis of the information available, it has not been sufficiently demonstrated that the emergency decrees ordering or authorizing the mass dismissal and the closure of certain institutions and entities is a legitimate and proportionate measure justified under international human rights law.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate whether the Government has undertaken any study of the impact of the emergency measures described above on the economic and social rights protected under the ICESCR and other relevant international agreements, including in particular the impact of these measures on the right to work, to an adequate standard of living, to education and to join and form trade unions.
3. Please provide information on any financial or in-kind support available to individuals and their families, who have lost their work or housing by virtue of the emergency decrees.
4. Please indicate what remedial measures have been taken to enable the affected students to continue their studies after their schools and universities have been closed down by the emergency decrees.
5. Please provide information on:
 - (a) a range of remedies that the administrative commission may grant to the individuals negatively affected by the decrees;
 - (b) how many and what type of cases has the administrative commission has considered so far and what remedies have been granted;
 - (c) how much financial and human resources has been allocated to the administrative commission in order to adequately deal with a large volume of cases.

⁶³ The Siracusa Principles, Principle 53.

⁶⁴ See: The Siracusa Principles, Principles 12 and 64.

6. Please provide a detailed justification for the continued proclamation of the state of emergency given the alleged impact of the state of emergency on a range of economic and social rights, as well as civil and political rights.

We would appreciate receiving a response within 60 days.

We intend to publicly express our concerns as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Philip Alston
Special Rapporteur on extreme poverty and human rights

Koumbou Boly Barry
Special Rapporteur on the right to education

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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