

INFORMATION NOTE ON THE DECREE LAW NO. 674 OF 1 SEPTEMBER 2016 ON THE MEASURES TAKEN UNDER THE STATE OF EMERGENCY

Aim

This Decree Law no. 674 has been enacted with a view to taking certain measures under the state of emergency.

Measures concerning the judiciary

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

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

The Decree Law has removed the obligation of the public prosecutors at the Regional Courts of Justice to submit preliminary opinions in writing in order to prevent backlog of cases before the public prosecutor's offices after they have been sent to the Regional Courts of Justice for a judicial review and enable them to be promptly brought before the bench of judges. However, the public prosecutors at the Regional Courts shall attend the hearings and continue to submit their opinions during the hearings.

The Code of Criminal Procedure has been amended. Accordingly, the assize courts have been empowered to appoint a trustee in addition to its authority to seize immovable properties, rights and receivables.

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

Following the entry into force of the Decree Law, the duties of trustees serving in companies to which a trustee has been appointed on account of their membership, affiliation or connection to terrorist organizations shall be terminated and their powers shall be transferred to the Savings Deposit Insurance Fund by the decision of a judge or a court. Moreover, where a trustee is appointed to a company with regard to a court decision after the date of entry into force of the Decree Law and during the period of the state of emergency, the trustee to be appointed shall be the Savings Deposit Insurance Fund. Furthermore, where it establishes that the current financial situation of the relevant companies is not sustainable, the

Savings Deposit Insurance Fund shall be entitled to decide that those companies be sold, liquidated or their assets be sold. The amounts to be obtained from the sales of the companies to which the Savings Deposit Insurance Fund has been appointed as trustee or of the assets of those companies shall be deposited into an interest bearing account until the conclusion of the proceedings with a final judgment.

The Savings Deposit Insurance Fund, which is an independent administrative authority, has been assigned to financially fight against FETÖ and other terrorist organizations and provide uniformity in the acts of trustees.

Other measures

No passport or travel certificate shall be granted to those established to be executives or employees of education and training institutions or health organizations as well as foundations, associations or companies abroad where it is established that such establishments have membership, affiliation or connection with terrorist organizations.

Moreover, the Municipality Law has been amended. Accordingly, where a mayor, a deputy mayor or a council member is suspended from duty or detained or in the event of their resignation or termination of their duty for aiding and abetting terrorist organizations, the Minister of Internal Affairs or the Governor shall make appointments to the relevant positions within no more than fifteen (15) days from the date of entry into force of the Decree Law. Furthermore, if it is understood that the failures in the provision of municipal services have an adverse effect on the fight against terrorism, the Governorship may decide that such services be provided by other public institutions or organizations.

Assessment and conclusion

It is evident from the measures briefly explained above that with the Decree Law no. 674 issued following the declaration of state of emergency, measures have been taken for the purpose of expediting the investigations and proceedings, effectively fighting against FETÖ and other terrorist organizations, and promptly restoring public security. Furthermore, various measures have been adopted in respect of the municipal administrators who have connection with terrorist organizations. The purpose of the declaration of state of emergency and the adoption of the Decree Law within this period is to protect the rule of law, democracy and human rights. The Decree Law has imposed no restriction on the rights and freedoms of the public.

The rule of law, democracy and human rights are the fundamental principles of the State of the Republic of Turkey. Accordingly, the State of the Republic of Turkey, which intends to fight against terrorism in accordance with the law, aims at establishing an effective and impartial judicial and security mechanism.