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Turkey had good reasons to declare the state of emergency but went too far with the emergency measures: Venice Commission

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Venice, 09.12.2016 – An [opinion](#) adopted today by the Council of Europe’s constitutional law experts – the [Venice Commission](#) – concludes that Turkish authorities had been confronted “with a dangerous armed conspiracy” and had “good reasons” to declare the state of emergency, but that measures taken by the Government went beyond what is permitted by the Turkish Constitution and by international law.

The opinion – as requested by the Monitoring Committee of the Council of Europe’s Parliamentary Assembly in the wake of the July coup attempt – decries measures taken to *dismiss* rather than suspend civil servants and to *liquidate* associations instead of putting them under temporary State control.

Even though provisions of the Turkish Constitution on the declaration of the state of emergency appear to be in line with common European standards, the Government implemented its emergency powers through *ad hominem* legislation. Thus, “tens of thousands of public servants” were dismissed on the basis of lists appended to emergency decree laws. Those collective dismissals did not refer to verifiable evidence, related to each individual case. According to the opinion, the speed with which those lists appeared implies that the collective dismissals were not accompanied even by a minimum of procedural safeguards. Those dismissals apparently are not subject to judicial review by the ordinary courts, or, at least, the accessibility of the judicial review remains a matter of controversy. Such method of purging the State apparatus creates a strong appearance of arbitrariness.

The opinion acknowledges alleged connections of some of the public servants to the Gülenist network or other organisations considered as “terrorist”. However, the concept of connections has been too “loosely defined and did not require a meaningful connection with such organisations,” which may reasonably cast doubt in the loyalty of public servants. The Commission stressed that even assuming that some members of the Gülenist network participated in the failed coup, that should not be used to extend criminal and disciplinary liability to all those who had some contact with the network in the past.

The opinion is concerned that it is unclear whether the Constitutional Court has the power to thoroughly review the constitutionality of the emergency decree laws, as it should. The Commission supports a proposal made by the Secretary General of the Council of Europe, concerning the creation of an independent *ad hoc* body for the examination of individual cases of dismissals, subject to subsequent judicial review.

The opinion criticises the provision granting the law-enforcement bodies the power to detain suspects in custody without judicial review for up to 30 days. The Commission is also concerned with possible limitations on the access of a detained suspect to a lawyer of his/her choice: any such limitations should be exceptional, and should be justified by the specific facts.

The entire opinion as adopted by the Venice Commission will be made available to the public on Monday 12 December.

During its fourth and final plenary session of the year, the Commission is set to adopt other opinions, including a joint opinion with the OSCE/ODIHR on a law on political parties in [Armenia, an amicus curiae](#) brief concerning the temporary re-evaluation of judges and prosecutors ([vetting law](#)) in [Albania](#), an opinion on draft law on the Constitutional Court of [Ukraine](#) and an opinion on draft law fighting cybercrime in [Moldova](#), among others.

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