

**INFORMATION NOTE ON THE RECENT DECREE-LAWS 693 AND 694
ON CERTAIN MEASURES TO BE TAKEN AND AMENDMENTS TO BE
MADE UNDER THE STATE OF EMERGENCY**

1. Measures taken under the Decree-Law No. 693, dated 25 August 2017

Measures taken in respect of public officials:

A number of public officials who have a membership, affiliation or connection to terrorist organizations were dismissed from their duties and a number of retired military staff were deprived of their ranks.

Public officials who were reinstated:

A total of 57 public officials, who had been dismissed under previous decree-laws were reinstated as they were deemed to have no affiliation or connection to terrorist organizations according to the re-examinations made. Moreover, the measures in force based on previous decree-laws in respect of three military persons were revoked. The measures taken with respect to these persons shall cease along with all provisions and consequences thereof, applicable from the date of publication of the relevant decree-law. With a view to avoiding grievances, re-examination requests are assessed in detail and those whose objections were found rightful are reinstated to their former duties.

Measures in respect of institutions and organizations

A number of newspapers, associations and news agencies which had belonging to, affiliation or connection to terrorist organizations and had a special importance in funding them have been closed down.

Institutions and organisations which resumed their activities

Among those closed down as per previous decree-laws, one foundation, one health institution and one radio station was decided to resume their activities.

2. Amendments made under the Decree-Law No. 694, dated 25 August 2017

Reorganization of the Department of Human Rights as a principal unit within the Ministry of Justice

Through an amendment to the Law on the Organization and Duties of the Ministry of Justice, the Department of Human Rights, which used to operate subordinate to the General Directorate for International Law and Foreign Relations, is now among the principal service units of the Ministry of Justice through the strengthening of its administrative capacity.

The duties and powers of the Ministry of Foreign Affairs having been reserved, the Human Rights Department has been entrusted with duties such as drafting observations on behalf of the Government before the European Court of Human Rights (ECtHR), resorting to friendly settlement and unilateral declarations where necessary, taking the measures necessary for the execution of judgments rendered in respect of Turkey, translating ECtHR judgments and ensuring their notification to the relevant institutions, and taking measures, to the extent of its purview, for the elimination of human rights violations. The Department has been

organised as a dynamic unit with high representation capabilities. Even during state of emergency, a strong institutional structure is prioritised in the field of human rights.

Amendment to secure the right not to be labelled as a suspect

A preliminary assessment mechanism has been put in force prior to judicial investigations aimed at protecting the physical and mental integrity of a person, charged with a crime, from any undue attacks pending a final judgment.

As per Article 158 and other articles of the Code of Criminal Procedure (CCP), any denunciations or complaints were entered in the investigation records by the public prosecutor and investigation procedures were carried out on this record. Therefore, it was required to take the statement of anyone who was denounced as a suspect or at least a decision of non-investigation had to be given, referring to him/her as a suspect.

However, by Article 145 of the Decree-Law, paragraph 6 is added to Article 158 of the CCP, which enables that, in case it has been found clearly and without requiring a probe that the act which is the subject of the denunciation or complaint made to public prosecutor's offices does not constitute crime or if the denunciation or complaint is abstract and in general nature, a decision of non-investigation can be rendered.

Therefore, the denounced person shall not be referred to as a suspect. For example, a public prosecutor who considers that a denunciation made in respect of a person cannot be investigated clearly as a crime, will be able to protect the interests of this person by waiving to investigate the denunciation or complaint. Thus, in terms of fair trial, an unnecessary investigation burden is eliminated both for the State and for individuals. By notifying the decisions of non-investigation to the relevant law enforcement unit, it is also ensured that the records are amended. By recording these decisions to a separate system and restricting access to these decisions other than courts and public prosecutor's offices, individuals' "right not to be labelled as a suspect" shall be protected.

Other arrangements in the field of the judiciary

It has been ensured that resorting to the procedure of enforcement without a judgment in cases within administrative jurisdiction are prevented and existing enforcement proceedings are struck out.

With a view to combating drug crimes more effectively, some provisions of the Law no. 2313 on Controlling Narcotics and the Criminal Code have been amended to increase the penalties envisaged. Moreover, it has been stipulated that the measures of identification of communications and monitoring by technical means, which are contained in CCP provisions, can be used in respect of these offenses, that the vehicles used in drug trafficking shall not only be seized by way of an annotation in the registry but these vehicles shall be physically seized and forfeited as well.

Courts of appeals have been set as the legal remedy against arbitration decisions in respect of disputes arising between departments managed on general, supplementary or special budgets, municipalities, and departments or establishments whose capital is owned in part or full by the State, municipalities or private administrations. An appeal period of two weeks has been laid down.

As regards sports matches, with a view to ensuring a more effective fight against illegal games of chance, betting and gambling crimes, investigative measures defined in the CCP, such as identification of communication and technical surveillance shall be taken in respect of those who offer these games without legal authorization. Moreover, imprisonment sentences are increased for organised gambling offenses and gambling using computer systems, to provide a more effective fight against these crimes.

It has been stipulated that, in conformity with ECtHR standards, as a requirement for the extradition to another country of foreigners convicted or detained or for realizing their exchange with those convicted or detained abroad, guarantees shall be sought that they will not be penalized on the basis of their race, ethnicity, religion or nationality, and not be subjected to torture, ill-treatment or otherwise degrading treatment or punishment. This circumstance shall be realized upon the request of the Minister of Foreign Affairs, the proposal by the Minister of Justice and the approval of the President.

It has been laid down that the Legal Department of the Directorate General of Migration Management shall be able to intervene existing or future trials and ex-parte proceedings in respect of victims of human trafficking.

The following arrangements have been made to speed up and raise the effectiveness of proceedings, and thus securing fair trial:

- By not allowing to send case files from one court of appeals to another on grounds of lack of jurisdiction, it has been avoided that these courts face a massive caseload on the first day;
- In attempted coup and terror crimes, the maximum period of remand detention is raised from three to five years, to be used where necessary;
- It has been enabled that, in cases where a secret investigator should be heard as a witness, he/she can be heard in a special setting where those entitled to be present in the hearing are absent or by altering his/her voice or image;
- In criminal proceedings which have reached the stage of decision, it has been made possible that, even if the mandatory defense lawyer does not attend the hearing the verdict can be announced. Therefore the case could be completed after taking the final statement of the defendant, without leaving the case in limbo;
- The authority to conduct investigations and prosecutions in respect of members of parliament has been granted to the Ankara Chief Public Prosecutor's Office and to the Ankara assize court respectively, since the city hosts the Turkish Grand National Assembly and its members;
- With a view to mitigating the caseload of assize courts which deal with terror crimes, their capacity as the direct appeal court for decisions given by prison enforcement judges has been revoked, according to which any assize court will be able to examine such appeals.

Upper and lower limits have been defined for legal representation fees that may be awarded on action for damages regarding acts and measures imposed during criminal proceedings. Therefore, the payment of high representation fees for cases launched against the administration over measures such as taking into custody and detention, has been eliminated.

Except for terror offenses, the conditions for lifting the disciplinary penalties, relating to time and a decision to be given, are withdrawn in respect of those acts prior to 1 August 2017, thus allowing the early release of around 13,000 convicts.

Since military jurisdiction is abolished, military prisons are closed down as well.

The implementation period of a temporary article added by the Decree-Law no. 674 to the Law on the Execution of Sentences and Security Measures, which includes provisions facilitating the building of modern prison establishments with human rights considerations, has been extended to 31 December 2020.

Arrangements relating to the Inquiry Commission on State of Emergency Measures

With a view to preventing unwarranted investigations on members of the Inquiry Commission and thus avoiding disruptions to the works of the commission, it has been laid down that investigations into its members on attempted coup or terrorism offenses be subject to authorization by the Prime Minister.

Moreover, in cases to be filed against the decisions of the Commission, accusations shall not be made against the Commission.

Other arrangements

It has been made obligatory for transportation companies to take the measures necessary for preventing the transportation of foreign passengers who are ineligible to enter or transit through the country, to provide for their food, lodging and health needs pending deportation, and to make the relevant notifications to these passengers. Various administrative penalties are laid down for those who fail to obey, for the prevention of irregular migration and entry into the country. With a view to ensuring that demining activities are conducted in a more efficient manner for the protection of the right to life, the National Mine Activity Center shall operate as a principal department under the Ministry of Defense.

Assessment and Conclusion

As has been summarized above, legal arrangements have been made for the continuity of the State and the restoration of public order by the decree laws. In particular, measures aimed at improving the effectiveness and efficiency in the judiciary are taken. Significant steps are being taken for the prevention of human rights violations through the re-structuring of the Department of Human Rights of the Ministry of Justice and a preliminary assessment mechanism prior to judicial investigations. As such, rather than interfering with the freedoms of individuals, these arrangements are for extending these freedoms.

Furthermore, to avoid grievances, other arrangements such as the reinstatement of a number of public officials and the reopening of a number of institutions have also been made following a re-examination in respect of them, with all their rights restored. The safeguards provided to members of the Inquiry Commission on State of Emergency Measures have been raised so as to create an environment and all conditions for their performing in an independent and impartial manner.

The Government continues to take measures to the extent required by the state of emergency for ensuring the establishment of public order at the level of human rights.