



CROSSBORDER JURISTS ASSOCIATION

**Submission to the Rights Committee
142nd Session (October 14 - November 7, 2024)
For the consideration of Türkiye's second Periodic Report**

Violations of Civil and Political Rights in Türkiye

September - 2024

Violations of Article 25 (a) and (c) of the United Nations Covenant on Civil and Political Rights by Türkiye

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Cross Border Jurists Association's Submission to the United Nations Committee on Civil and Political Rights on Turkey dated September 2024

This presentation highlights areas of concern that may contribute to the Committee's assessment of the Turkish government's compliance with the Covenant in advance of the United Nations Committee on Civil and Political Rights' review of Turkey's compliance with the Covenant and presents questions and recommendations that the Committee should ask the state party.

The people mentioned in the report are public figures because they are mentioned in open sources.

Introduction: Documentation of Incidents of Violations of Article 25 (a) and (c) of the United Nations Covenant on Civil and Political Rights by Turkey during the Reporting Period

Since the last review of Turkey in 2012, no report on violations of Article 25 of the UNCRC has been submitted to the Committee, nor has Turkey been asked any questions on this issue. With the following documentation, it is intended that the Committee will ask Turkey about violations of rights related to dismissals in the public and private sectors following the corruption investigations against the government on 17/25 December 2013 and the military coup attempt on 15 July 2016, and mention these violations in its reports.

SUBJECT TITLE: Dismissals of public officials

REFERENCE REPORT(S): 1-The List of Issues Prior to Reporting (LOIPR) adopted at the 132nd session of the Committee in Turkey held on June 28-July 23, 2021 ([CCPR/C/TUR/QPR/2](#))

2-Paragraphs (a) and (c) of Article 25 of the **United Nations Covenant on Civil and Political Rights (UNCRPD)**.

3-Access to justice, right to a fair trial, and independence of lawyers and the judiciary (arts. 2, 7, 9, 10 and 14)

SUMMARY: Article 25 (a) of the UNCRC recognizes the equal right of everyone to enter the public service of his or her country. No citizen may be prevented from entering the public service except on reasonable legal grounds. As stated in paragraph 23 of the Committee's General Comment on Article 25, *'Paragraph (c) of Article 25 concerns the right and opportunity of citizens to access public service positions on terms of general equality. To ensure access on terms of general equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Positive measures may be taken where appropriate to ensure equal access to public services for all citizens. Basing access to public service on the principles of equality of opportunity and general merit and ensuring secure tenure ensures that persons holding public service positions are free from political interference or pressure. It is particularly important to ensure that persons are not*

discriminated against on any of the grounds set out in paragraph 1 of Article 2 in the exercise of their rights under Article 25 (c).'

In the document entitled **List of Issues Prior to Reporting (LOIPR) (CCPR/C/TUR/QPR/2)**, adopted at the 132nd session of the Committee held from 28 June to 23 July 2021, **the** Turkish government (Erdoğan and the AKP administration) was assessed as having participated in the coup attempt, No questions were addressed to the Government of Turkey regarding the situation of those dismissed from the public and private sectors without a judicial decision and the fact that nearly 200 thousand dismissed persons "will not be employed in the public/private sector as SSI (Social Security Institution) registered insured". However, as can be seen from the information detailed below, there are over 200 thousand people (military, police, civilian public personnel) who have been unlawfully dismissed from the public sector, and since they have no effective remedy in domestic law against their dismissal, the vast majority of them have not been able to return to their jobs and are trying to provide for their families with temporary jobs for which they have not received training in the face of the government's attitude towards condemning them to hunger. In the meantime, thousands of dismissed persons can apply to the ECtHR after a long period of time (5-7 years) of exhausting domestic remedies, which are not effective remedies. Considering that dismissals on the grounds of the July 15, 2016 coup attempt started to take place as of August 2016, and that judicial remedies for dismissals were used (5-7 years), it can be calculated how long it took for dismissed persons to be reunited through international jurisdiction (approximately 8-10 years).

In the following, information will be provided on the situation of those who were dismissed from the public/private sector on the grounds of the coup attempt of July 15, 2016, what the domestic remedies are in Turkey after the dismissals, whether they are allowed to be used effectively/fairly, and how all these facts constitute a violation of rights in the context of Article 25 (a) and (c) of the UNCRC, and this section will be requested to be included in the Committee's Concluding Observations.

A-EXPORTS FROM PUBLIC/PRIVATE SECTOR

1-Dismissals from Public Service

1. One of the most important practices of the persecution process in Turkey since July 15, 2016 is undoubtedly the mass dismissals from public office.
2. The dismissals from public office are the largest and most concrete mass elimination of the Hizmet Movement (hereinafter abbreviated as HH) volunteers. After December 17-25, 2013, Erdoğan and AKP rulers implemented a purge process against the Hizmet Movement. However, at that stage, since there was still a law/judiciary in Turkey operating under the ordinary system of governance, there could be no arbitrary dismissals of HH volunteers. However, on July 15, 2016, when the "coup attempt", which Erdoğan called "God's grace", took place on the night of July 15, 2016, "emergency rule" was declared on July 20, 2016. This paved the way for the dismissal of 2745 members of the judiciary on July 16 and the subsequent dismissal of tens of thousands of public and private sector personnel without effective investigative procedures. When independent judges and prosecutors were neutralized by arrest warrants at 01:00 on the

night of the coup attempt, the AKP and Erdoğan administration were left with no impartial and independent judiciary to review the dismissals from the public sector.

3. 41,873 from the Ministry of Interior, 34,393 from the Ministry of National Education, 13,682 from the Ministry of National Defense, 7,755 from the Ministry of Health, 7,508 from the Council of Higher Education and Universities, 7,220 from the Ministry of Justice, 4,735 from the Prime Ministry, 2,669 from the Ministry of Finance, 1,404 from the Ministry of Labor and Social Security, 1,177 from the Ministry of Transport, Maritime Affairs and Communications, 1,177 from the Ministry of Food, Agriculture and Livestock, 1,115 from the Ministry of Energy and Natural Resources, 985 from the Ministry of Energy and Natural Resources, 605 from the Ministry of Family and Social Policies, 594 from the Ministry of Forestry and Water Affairs, 537 from the Ministry of Science, Industry and Technology, 512 from the Ministry of Environment and Urbanization, 488 from the Ministry of Youth and Sports, 481 from the Ministry of Foreign Affairs, 431 from the Ministry of Customs and Trade and 1,247 from other institutions and organizations.(As of 2022)
4. Of those dismissed by State of Emergency decrees, 107,138 are men and 22,273 are women.
5. In addition, a total of 4,296 judges and prosecutors were dismissed from the profession by 10 different HSYK and HSK decisions issued based on the Decree Law No. 667. Of those dismissed, 3,392 were men and 904 were women.
6. The distribution of those dismissed by the decree law according to some professions is as follows: 2,992 judges, 1,304 prosecutors, 818 professors, 965 associate professors, 1,644 assistant professors, 720 lecturers, 188 instructors, 1,675 research assistants, 1,981 doctors, 1,907 nurses, 773 midwives, 157 dentists, 68 pharmacists, 34,063 teachers, 2,271 engineers, 95 architects, 1,705 imams, 346 muezzins, 190 preachers, 696 Quran instructors, 63 muftis, 1,708 data preparation and control operators, 632 computer operators, 481 diplomats (Ministry of Foreign Affairs personnel), 151 lawyers, 87 legal advisors.
7. Only the number of those dismissed from the public sector is mentioned above, and this number does not include those whose schools were closed, whose graduations were deemed invalid, students in military schools, and students in police schools. With the addition of these, the number of victims is much higher than stated¹.
8. In their public speeches, AKP executives and some public officials have stated that they wanted to purge these people but the law did not allow them to do so, and that they achieved this in a short time with the Decree Laws issued after July 15.
9. AKP Executive and then Minister of Justice Bekir Bozdağ, in a television program he participated in, stated that these people were dismissed from their jobs not because they were criminals, but because of an administrative act².

¹ 2nd Year of the State of Emergency's Social Costs Research Report January 2019, p 197

² <https://youtu.be/VWWhpQSxHhrl>



10. AKP Executive and then Deputy Prime Minister Numan Kurtulmuş stated in a TV program that it would have taken years to dismiss these public officials from their jobs under ordinary law and that the State of Emergency was an opportunity for them. **As can be seen from this statement, nearly 130,000 public officials were dismissed not because they were criminals, but because they were not wanted by Erdoğan and AKP rulers³.**

2-Soldiers dismissed from the Turkish Armed Forces due to the Coup Attempt, Soldiers were profiled before July 15th

11. The Turkish Armed Forces (TSK) is a major military force with more than 664,000⁴ soldiers (active soldiers 664,049; reservists 465,563; quasi-military/civil servants 58,970; total number 1,188,582) and a member of NATO .⁵
12. As of July 2, 2016, there were 570,111 personnel serving in the TAF, 51,945 of whom were civil servants. The number of admirals and generals was 358, the number of officers was 39,287 and the number of non-commissioned officers was 96,391.⁶
13. On July 27, 2016, it was announced that 8,651 soldiers participated in the coup attempt. It was also stated that the number of those who participated/supported the coup attempt and the vehicles they used was 1.5 percent of the total number of soldiers in the TAF. It was also stated that 1676 of the 8,651 soldiers who participated in the coup attempt were non-commissioned officers and 1214 were military students⁷.
14. About two weeks after the July 15, 2016 coup attempt, 149 generals were dismissed from the Turkish Armed Forces with a State of Emergency Decree Law⁸.
15. Minister of Interior Efkan Ala announced on July 27, 2016 that 151 generals and admirals in the Turkish Armed Forces were arrested within the scope of coup investigations⁹.
16. Minister of National Defense Fikri Işık announced on December 10, 2016 that 16,409 military students were dismissed from the Turkish Armed Forces¹⁰.

³ <https://www.tr724.com/numan-kurtulmusun-khk-itirafi-hukuk-uygulansaydi-2030a-kadar-bu-insanlari-atamazdik/>

⁴ https://tr.wikipedia.org/wiki/Asker_say%C4%B1s%C4%B1na_g%C3%B6re_%C3%BClkeler_listesi#IISS2010

⁵ https://www.nato.int/nato-welcome/index_tr.html

⁶ <https://www.sabah.com.tr/gundem/2016/07/02/tsk-personel-sayisini-acikladi>

⁷ <https://www.bbc.com/turkce/haberler-turkiye-36904517>

⁸ <https://t24.com.tr/haber/iste-tskdan-ihrac-edilen-general-ve-amirallerin-listesi,352220>

⁹ <https://www.ntv.com.tr/turkiye/darbe-girisiminin-bilancosu-aciklandi,cCRUntXkmEeOqwExUjW2xA>

¹⁰ <http://www.gazetevatan.com/22-bin-85-kisinin-tsk-ile-ilisigi-kesildi--1016220-gundem/?f=mobil>

17. In his statement dated May 6, 2017, Minister of Justice Bekir Bozdağ stated that 166 generals and 6810 colonels and lower ranks are under arrest¹¹ .
18. In a statement released by the Turkish Armed Forces on November 19, 2020, it was stated that the number of military personnel dismissed was 20,566¹² . In other words, 3 times the number of officers allegedly involved in the July 15 coup attempt were later dismissed due to "FETÖ" allegations. **Another question mark is why so many of these dismissed soldiers did not take part in the (alleged) coup attempt.**
19. The number of soldiers allegedly involved in the coup corresponds to a very low rate of 1.5 percent of the total number of soldiers. However, as can be seen from the data above, many more than this percentage have been dismissed from their jobs and arrested. Military experts say that such a small participation cannot be explained by the military hierarchy, given that 168 generals are on trial for the coup. It is estimated that there are around 200,000 soldiers under the command of these generals and officers. The fact that the events took place only in Istanbul and a few other provinces and that almost no serious military activity was observed in other provinces confirms this finding. The same experts also state that there is no military logic in the deployment of unarmed cadets and the presence of civilians in military units¹³ .
20. **After the July 15, 2016 coup attempt, the dismissals and arrests from the Turkish Armed Forces (TAF) were based on the previous plugs issued against the soldiers rather than their actions. This is evident in many trials.**
21. **As an example, in the official document signed by Infantry Staff Colonel Alper Eser, which was created with the list handed over by Ankara Provincial Police Chief Mahmut Karaaslan on 26.07.2016, it is seen that a plugging document was created by collecting information about many soldiers, including those serving abroad, through their families.** However, it is understood that a collective plugging document was prepared and processed by including these people in the document.

22. On the morning of July 16, 2016, at 4:30 a.m., five F-16 pilots who intervened in Akıncı Base, the center of the coup attempt, with F-16 planes and played a crucial role in the suppression of the coup attempt were later arrested on charges of being members of "FETÖ/PDY"¹⁴.
23. Lieutenant General Yıldırım Güvenç, who suppressed the coup plotters and took over Akıncı Base, was arrested for coup attempt and alleged membership in "FETÖ"¹⁵.
24. On the night of July 15, 2016, the pilot of the plane that brought the President to Istanbul¹⁶ (Annex 30) and the F-16 pilots who protected the President in the air¹⁷ were arrested and dismissed for allegedly being members of "FETÖ/PDY".

¹¹ https://www.sozcu.com.tr/2017/gundem/bekir-bozdog-son-rakami-acikladi-1834818/?utm_source=dahafazla_haber&utm_medium=free&utm_campaign=dahafazlahaber

¹³ 15 July Erdoğan's Coup, Stockholm Center for Freedom, https://stockholmcf.org/wp-content/uploads/2017/07/15-Temmuz-Erdogan%C4%B1n-darbesi_05.07.2017.pdf page 16

¹⁵ <https://www.kahraman.com/darbe-ussuna-bombalar-yan-protar-da-terasa-ekir-5-15-16>
<http://www.hurriyet.com.tr/yazarlar/sedat-ergin/akinciya-darbecilere-geri-alan-komutana-bakin-ne-oldu-40621645>

¹⁷ <https://tr.sputniknews.com/turkiye/201808161034779167-erdogan-ucak-eskort-feto/>

25. On July 16, 2016, former black pilot Colonel Uğur Kapan, who took Chief of General Staff Hulusi Akar from Akıncı Base and helicoptered him safely to Çankaya Mansion, was arrested on charges of coup attempt and being a member of "FETÖ/PDY".¹⁸
26. Sina Doğan, who was part of the three-man crew of the helicopter carrying Erdoğan and his family from their hotel to Dalaman Airport on the night of the coup attempt, was dismissed and arrested for "FETÖ"¹⁹.
27. Some of the police officers who provided security for the President in Marmaris on the night of the coup were arrested for being members of "FETÖ/PDY"²⁰.
28. On the night of July 15, technician Fatih Taş was first dismissed and then arrested after an inspector's report confirmed that he had prevented the coup plotters from landing at Denizli Çardak Airport on the night of July 15 by turning off the power to the planes that were to carry soldiers²¹.
29. On July 5, 2016, Brigadier General Mustafa Doğru and Colonel Ünal Bayhan, who were injured in the helicopter that crashed in Giresun, were arrested on charges of attempted coup²² while being treated at the hospital.²³ Mustafa Doğru was acquitted of attempted coup at the end of the trial, but was sentenced to 7 years and 6 months in prison on charges of FETÖ membership.²⁴
30. Lawyer Kemal Uçar, who represents some of the defendants in the coup attempt trials, stated in a statement that his client was an Air Force Academy Major General who was one of the people who were taken to Ankara on the day of the coup attempt, and that while he was the victim and complainant of the coup attempt in Ankara due to his experiences, he was being tried as a defendant in another court in Istanbul for coup attempt with 92 life sentences²⁵.
31. CHP Istanbul MP Barış Yarkadaş announced **that Petty Officer Esat Kalkan, who was martyred in Afghanistan on August 14, 2016, was "dismissed" with the decree law published on November 22.**²⁶

All these examples show that soldiers were dismissed and arrested based on pre-prepared profiling lists, regardless of whether they participated in the (alleged) coup attempt of July 15, 2016.

3- Layoffs in the Private Sector

32. One of the biggest impacts of Erdoğan and AKP's eradication activities against HH has been in the private sector. Prior to July 15th, Erdoğan had started the process of seizing companies linked to the HH, appointing trustees close to him and purging former employees. After July 15, with the decree laws issued, all private companies, foundations, associations, trade unions, etc. that were connected or close to the HH were seized. Tens of thousands of people working in these sectors were laid off.

¹⁸ <https://www.hurriyet.com.tr/gundem/orgeneral-akari-akinci-ussunden-cankaya-koskune-goturen-pilot-albay-ugur-kapanin-ifadesi-40247211>

¹⁹ <https://www.gazeteduvar.com.tr/politika/2017/12/08/15-temmuz-gecesi-erdogani-tasiyan-helikopterdeki-personel-tutuklandi>

²⁰ <https://tr.sputniknews.com/turkiye/201709091030068350-15temmuz-erdogan-polisler-feto/>

²¹ <https://www.gazeteduvar.com.tr/gundem/2018/01/25/feto-tutuklusu-teknisyen-darbecilerin-inmesini-ben-engelledim>

²² <https://www.sozcu.com.tr/2016/gundem/son-dakika-haberi-giresunda-askeri-helikopter-dustu-1303898/>

²³ <https://twitter.com/ademyarlan/status/1279889452605849600?lang=en>

²⁴ <https://www.cumhuriyet.com.tr/haber/o-komutana-hapis-cezasi-1161427>

²⁵ <https://twitter.com/HDemirtasTR/status/974036003529875462>

²⁶ <http://www.durusgazetesi.com/siyaset/baris-yarkadas-sehit-astsubayi-bile-ihrac-ettiler-h36691.html>

33. With the State of Emergency decrees, 35 health institutions, 934 schools, 109 student dormitories, 104 foundations, 1125 associations, 15 universities and 19 trade unions belonging to the HH were closed²⁷. When it is considered that all of the people in these closed institutions are unemployed, it is seen that the number of people laid off in the private sector is much higher than those laid off from the public sector.
34. After July 15th, Erdoğan and AKP rulers called for the dismissal of other HH volunteers employed in the private sector who had nothing to do with HH. These calls were answered and thousands of people were dismissed.
35. **The number of dismissals in the public sector is well known, as they were made by State of Emergency decrees to neutralize the administrative investigation process. In the private sector, however, the situation is much more complex. There have been layoffs from small town restaurants to very large companies. The situation has become such that even a well-established football club like Fenerbahçe has terminated the membership of some of its members on the grounds of HH contact²⁸.**
36. To give a few examples of dismissals in the private sector as reported in the media, 306 security guards at Antalya Airport²⁹ and 211 employees at Turkish Airlines were dismissed because of their links to HH.

4- International Labor Organization (ILO) Resolution on Public and Private Sector Layoffs

37. **In the March 24, 2021 ILO decision³⁰**, the unlawfulness of the Erdoğan Administration's dismissal of HH volunteers for union reasons and other arbitrary criteria on the grounds of the State of Emergency was emphasized.³¹
38. The decision also **states that the State of Emergency Inquiry Commission**, which was established by the Erdoğan Administration as an appeal authority for those dismissed from public office on the grounds of the State of Emergency, is **not an effective remedy**.

B-REINSTATEMENT REGULATIONS FOR THOSE DISMISSED BY THE EMERGENCY DECREE

39. Article 4, paragraph 2 of the Decree Law No. 667 issued on July 21, 2016 reads as follows: *"Those who are dismissed from their duties pursuant to the first paragraph cannot be employed in public service again, nor can they be directly or indirectly assigned; all kinds of trustee boards, boards, commissions, boards of directors, supervisory boards, liquidation boards and other duties held by those who are dismissed from their duties are also deemed to have been terminated. The provisions of this paragraph shall also apply to those who do not hold the title of public officer while performing the duties listed in this paragraph."* **Pursuant to this paragraph, it is clear that those who are dismissed from public office will never be employed in public institutions.**

²⁷ <https://t24.com.tr/haber/ohal-kararnamesiyle-kapatilan-dernek-ve-okullarin-illere-gore-listesi,351578>

²⁸ <http://samiy10.gazetevatan.com/dev-feto-temizligi--1137789-futbol-samiy10-haber/>

²⁹ <https://www.hurriyet.com.tr/fetocu-diye-isten-cikarilan-guvenlik-gorevlile-40732845>

³⁰ https://www.ilo.org/gb/GBSessions/GB341/ins/WCMS_776590/lang--en/index.htm Access Date: 23.4.2021

³¹ <https://www.hukukihaber.net/uluslararasi-calisma-orgutu-nun-ilo-87-ve-158-nolu-sozlesmeler-baglaminda-turkiye-karari-makale,8945.html>

40. **In addition, with the coding made in the electronic data system of the Social Security Institution regarding those unlawfully dismissed from the private and public sectors, it has become impossible for these individuals to work in an insured job³².** The code number '36' has been used for employees whose workplaces were closed down by the Decree Law, and the code number '37' and the note "Dismissed from Public Service" has been used in SSI records for those dismissed from the public sector by the Decree Law. Therefore, it has become virtually impossible for those dismissed by the Decree Law to work in the private sector³³.
41. Dunja Mijatovic, Council of Europe Commissioner for Human Rights, in her report following her visit to Turkey on 01-05 July 2019, stated that HH volunteers were left to "civilian death" due to some regulations preventing them from finding a job again as a result of their dismissal with the State of Emergency Decree Laws. (Pa. 87)³⁴
42. Those who were dismissed from their jobs by the Emergency Decree were prevented from taking public office or working in a company or for someone else by various methods. Therefore, as a solution, those dismissed by the emergency decree have tried to hold on to life through trade and production, such as opening their own workplaces and farming. In Turkey, as in other countries, such businesses are subject to permits and licenses. In Turkey, such permits and licenses have been denied or subsequently revoked for those who were dismissed from their jobs by emergency decrees. Examples of these unlawful practices are given below.
43. Halime Demir's private education institution in Sakarya, where she was working as a teacher, was closed down by a state of emergency decree. Her employment was also canceled. As a result of the investigation initiated against her, the Sakarya Chief Public Prosecutor's Office issued a decision of non-prosecution on 15.01.2019 from the file numbered 2019/1340. Upon this decision, Halime Demir requested a new work permit from the Governorate of Sakarya. The Governorate rejected her request with its letter dated 12.09.2019. The letter stated that the request was deemed inappropriate by the "Commission on Membership or Liaison to Structures, Formations and Groups or Terrorist Organizations that are Determined to Pose a Threat to National Security." (ANNEX-38) As can be seen, Halime Demir, who was acquitted by a judicial authority, was deemed guilty by an administrative body without any justification. The denial of Demir's license and her inability to practice the profession she has acquired through years of hard work is clearly against the law and means that the person concerned is condemned to extinction.
44. Ramazan Tekin was dismissed from his job as a teacher by a state of emergency decree. Due to his dismissal by decree, he was not allowed to work as a teacher in state institutions and private educational institutions due to the records recorded in the population registration system and the social security system. Therefore, he chose to make a living by opening a café and running it. He made all the preparations for the opening of the café and applied for a license to operate it. Anamur Municipality rejected his application with a letter dated 31.07.2018³⁵. The rejection was based on the security investigation. Ramazan Tekin was subjected to discriminatory treatment compared to other persons in the same situation. This discrimination is clearly unlawful. This is because, like many others under the Emergency Decree, Tekin has always been prevented from working as a teacher, which is his own job, and from working in the private sector, and this practice has prevented him from opening and running his own workplace.

³²<https://tele1.com.tr/ohal-sona-erse-bile-36-kod-numarasi-ile-fisleme-devam-ediyor-73217/>

³³ <https://www.dunya.com/ekonomi/is-sozlesmelerinin-fesih-halinde-hangi-sgk-cikis-kodlari-kullanilmalidir-haberi-603612>, <https://www.ozdogrular.com/v1/content/view/36381/255/>

³⁴ <https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>

³⁵<https://www.gazeteduvar.com.tr/turkiye/2019/11/26/khkli-oldugu-icin-is-yeri-ruhsati-alamadi-artik-korkmuyorum/>

45. In the report prepared by the Rights to Life Association based on interviews conducted between June 2020 and August 2020 with 52 people who were dismissed by the state of emergency decree on job search processes; some employers received threatening phone calls saying "*do you realize who you are hiring, are you sure you will hire this person*", some employers said "*if we employ you, the next day the civil police will come and threaten us, if we don't listen, they will send the financier, If we don't listen to them, they appoint a trustee*", that even a bead stringing job at home, which brings in 300 liras (approximately 35 euros) a month, is not given to the applicant because he/she is a member of the state of emergency decree regime, and that at least 150 job applicants are not hired because the records show that they are members of the state of emergency decree regime.³⁶

C-WORKERS KILLED IN WORK ACCIDENTS DUE TO BEING FORCED TO WORK IN JOBS FOR WHICH THEY WERE NOT TRAINED

46. Many people who were dismissed by emergency decree decrees and could not work in either the public or private sectors in their areas of expertise were forced to work in jobs in which they had no experience or knowledge in order to survive for themselves and their families. In the words of Dunja Mijatovic, the Council of Europe Commissioner for Human Rights, many people left to civilian death have become victims of occupational accidents while working in fields in which they have no experience in order to survive. A few examples of deaths due to accidents at work will be given here.
47. Aslan Duman was dismissed from his job with the Decree Law No. 668 after working as a teacher for years. As he could not find a job in private schools due to the reasons mentioned above, he tried to make a living by working in construction despite having no previous experience. On April 14, 2019, he died as a result of a construction accident.³⁷
48. Bünyamin Aydoğan was dismissed from his teaching job by a state of emergency decree. Since he could not work as a teacher again in public and private schools, he tried to support his family through construction work. On 11.12.2018, he died as a result of a work accident at the construction site where he was working.³⁸
49. Kazım Kurnaz was dismissed from his job with Decree Law No. 700 after 10 years as a geography teacher. He was not allowed to practice his profession in private schools either. He worked in construction to earn a living. On February 1, 2019, he died as a result of a work accident.³⁹

While conducting research in the field of bioengineering, Assoc. Prof. Dr. Mustafa Camaş was dismissed from Tunceli University Faculty of Engineering with the Decree Law No. 672 issued on September 1, 2016, and then started working as a construction worker to earn a living. However, he died as a result of a work accident on March 22, 2021.⁴⁰ Mustafa Camaş had 24 researches published in the international Science Citation Index and 232 citations to his articles.

D- REMEDIES AGAINST PUBLIC SECTOR DISMISSALS AND WHETHER THESE REMEDIES ARE EFFECTIVE/JUST

³⁶ <http://www.yahader.org/files/KHK.pdf>, pp. 25-27, Access Date: 16.04.2021

³⁷ <https://www.evrensel.net/haber/377532/insaatta-calisan-khkli-ogretmen-is-cinayetinde-yasamini-yitirdi>

³⁸ <https://www.cnnturk.com/turkiye/khk-ile-issiz-kalan-ogretmen-insaatta-oldu>

³⁹ <https://boldmedya.com/2019/04/30/insaatta-dusup-hayatini-kaybeden-khkli-kazim-ogretmen-beraat-etti/>

⁴⁰ <https://halktv.com.tr/khkli-akademisyen-mustafa-camas-is-cinayetinde-yasamini-yitirdi-451754h>, Access Date: 24.03.2021

1- OHAL COMMISSION PRACTICES

Again, the victims whose rights were usurped in the post-July 15 period were prevented from demanding their rights directly before the courts, and the "State of Emergency Inquiry Commission" (OHAL Commission), which is fully affiliated to the Government, was established and it was regulated that applications against the State of Emergency procedures should be made to this commission. Although the decree on the establishment of the State of Emergency Commission was published on 23.1.2017, it was not established until July 2017, and it started to issue decisions on 22.12.2017. The mandate of the SoE Commission expired on January 22, 2023. During its 5-year term of office, 127,292 applications were made to the State of Emergency Commission. The Commission, which is recognized by the Constitutional Court and the European Court of Human Rights as a "domestic remedy to be exhausted", accepted 17,960 of the files and rejected 109,332 files.

The SoE Commission has conducted a purely pseudo-commission, acting in line with the expectations and decisions of the Erdoğan Administration rather than taking universal principles as a basis. The Commission decided to reinstate hundreds of thousands of dismissals and unlawful practices at a rate of not even 10%, and rejected 90% of the applications without justification or on unlawful grounds⁴¹. The State of Emergency Commission did not even reinstate and rejected the applications of many victims of the State of Emergency who were dismissed from their professions during the State of Emergency on the grounds that they were affiliated with the HH but were acquitted or dismissed after a judicial investigation.⁴² As such, the Commission has become the approval authority for discriminatory and criminal against humanity acts of the Government aimed at stalling the international community and victims.

50. In the report prepared by Amnesty International on the dismissals in Turkey and their consequences, "Dismissals Without Return"⁴³, it is emphasized that hundreds of thousands of people who were directly dismissed by emergency decrees were systematically prevented from accessing effective appeal processes and that practices such as the State of Emergency Commission, which were introduced later, were purely intended to distract the international public opinion.

2-CONSTITUTIONAL COURT DECISIONS

51. On the other hand, the Constitutional Court has ceased to be an effective domestic remedy, finding inadmissible almost all individual applications alleging violations of fundamental rights during HR investigations or trials. For example, almost all individual applications to the

⁴¹ A total of **131,922 measures, 125,678 of which were dismissals from public office** (3,213 demotions, 270 dismissals from overseas students, 2,761 closures of institutions and organizations), were **taken** by the Decree Laws issued under the State of Emergency. As of **31/12/2020**, the number of decisions made by the Commission, which started the decision-making process as of December 22, 2017, is **112,310 (13,170 acceptances and 99,140 rejections)**. **61** of the acceptance decisions **are** related to the reopening of closed organizations (associations, foundations, student dormitories, television channels, newspapers). <https://ohalkomisyonu.tccb.gov.tr/>

⁴² OHIIK decision dated 30.01.2019.

⁴³ https://www.amnesty.org.tr/public/uploads/files/Dismissals%20report_TR%20version%281%29.pdf

Constitutional Court against unjust and arbitrary arrests have been rejected as inadmissible.⁴⁴ Furthermore, in its 4/6/2020 judgment on former judge Yıldırım Turan, the Constitutional Court explicitly declared that it would not comply with the ECtHR's 3.3.2020 case law on former judge Hakan Baş v. Turkey, which emphasized that the arrest of judges on terrorism charges on the grounds of the existence of a state of publicity in violation of legal guarantees is contrary to the Convention.⁴⁵

52. In addition, although the rights violation judgments issued by the Constitutional Court in favor of the applicants in individual applications against HH trials are binding, local courts did not comply with these judgments. For example, despite the violation of rights rulings issued by the Constitutional Court in favor of detained journalists Mehmet Altan and Şahin Alpay, local courts did not order their release.⁴⁶

3-THE POSITION OF THE COUNCIL OF STATE AS A HIGH COURT IN CASES AGAINST DISMISSAL DECISIONS AND OHAL COMMISSION DECISIONS

53. In its decision dated 06.12.2018 and numbered 2016/46807, the 5th Chamber of the Council of State reversed the decision on the grounds that *"the plaintiff was not provided with the information and documents in the investigation file and was not given the appropriate time to make a defense"*.⁴⁷ On the other hand, in its decision dated 12.03.2020 and numbered 2016/53272, the same Chamber did not consider the dismissal of the plaintiff, a former judge, without taking his defense as unlawful and rejected his reinstatement despite his acquittal in the criminal case.⁴⁸
54. In its decision dated 06.02.2017 and numbered 2014/2390, the Administrative Case Chambers Board of the Council of State ruled that it is not possible to use data for intelligence purposes as evidence in⁴⁹. However, in its decision dated 17.06.2019 and numbered 2016/58016, the 5th Chamber of the Council of State accepted the allegation of ByLock use as evidence in the lawsuit filed by a former judge dismissed by the Decree Law and rejected the lawsuit.
55. The 12th Chamber of the Council of State ruled that the process of reappointment of a person who was dismissed from the civil service due to a 12-year and 6-month prison sentence for membership of a terrorist organization (other than the organization that the Government and the Judiciary call FETÖ (such as PKK or DHKPC)) was in compliance with the law. Even this decision regarding the terrorist organization is not applied to those who were dismissed from their jobs by the Decree Law Decree Decree Laws by claiming that they are members of the Hizmet Movement, as an indicator of discrimination and hatred. The source of this

⁴⁴ <https://www.tr724.com/bireysel-basvurular-da-tazminat-yolunun-da-tuketilmesi-zorunlu-mu-1/>

⁴⁵ <https://kronos34.news/tr/aym-yasalarimizi-biz-daha-iyi-yorumlariz-diyerek-aihm-ictihatina-uymadi/>, <https://anayasagundemi.com/2020/09/16/forum-av-benan-molu-aym-ihama-karsi-turan-basvurusu-vs-bas-v-turkiye-karari/>

⁴⁶ <https://www.cumhuriyet.com.tr/haber/yargi-sistemi-coktu-mahkeme-aymnin-resmi-gazetede-gerekcesini-detanimadi-908948>

⁴⁷ <https://www.memurlar.net/haber/878818/savunma-hakki-kullandirilmadan-meslekten-cikarma-karari-verildi-danistay-iptal-etti.html>, Accessed on 11.03.2021

⁴⁸ <https://forum.khkhaber.com/topic/20625-dan%C4%B1%C5%9Ftay-5-daire-201653272-e-20201930-k-667-say%C4%B1%C4%B1-khk-yle-kamu-g%C3%B6revinden-%C3%A7%C4%B1kar%C4%B1lan-hakim/>, Erişim Tarihi: 11.03.2021

⁴⁹ <https://forum.khkhaber.com/topic/5445-dan%C4%B1%C5%9Ftay-i%C3%87dari-dava-daireleri-kurulu-e-20142390-k-2017346-i%C3%87stihbari-bilgi-ile-i%C5%9Flem-yap%C4%B1lamaz-aile-ile-ilgili-k%C4%B1s%C4%B1m-var/>, Erişim Tarihi: 16.03.2021

discrimination is the emergency decrees issued during the State of Emergency declared on July 20, 2016, which are still in force.

56. In February 2024, the Presidency of the Council of State made the following statement in response to the storm in the Turkish government and press when it decided to reinstate **387 of** the 4788 judges/prosecutors who had been dismissed up to that date *"In 4,246 of the 4,788 cases decided, the case was dismissed on the merits in 4,246 cases, in 11 cases the case was dismissed on the grounds that the case was out of time, in 51 cases the petition was dismissed, in 15 cases there was no need for a decision, in 123 cases the case was deemed not to have been filed*

<https://www.aa.com.tr/tr/gundem/danistaydan-meslekten-ihrac-edilen-hakim-ve-savcilarla-ilgili-kararlara-iliskin-aciklama/2721438>

This statement alone is enough to prove that the Council of State is far from being capable of independent judgment, that it is incapable of ruling within the framework of judicial independence and impartiality, that it is forced to rule under the pressure of the government and the circles fueling hatred against HH, and that there is no effective and fair judicial remedy for those dismissed from public service in Turkey.

57. **Regarding these 387 judges/prosecutors**, whom the Council of State, albeit exceptionally, decided to reinstate, the **Minister of Justice, who is a member of the Government, made a statement immediately after the decision (17.2.2024) stating that an investigation had been opened against them again**. Thus, as stated in the entirety of this topic, it is once again confirmed that there is a discriminatory and hate-oriented approach to ensure that a public official who has been subjected to an investigation on the allegation that he/she is a member of the Hizmet is not allowed to return to the profession, even if the judicial decision is in his/her favor.

<https://www.aa.com.tr/tr/gundem/adalet-bakani-tunc-mesleklerine-geri-donen-387-isimle-hakim-ve-savci-alakali-hsk-olarak-yeniden-inceleme-baslattik/3140278>

E-PROTECTION FOR ALL PUBLIC OFFICIALS WHO ARE FOUND TO HAVE COMMITTED UNLAWFUL ACTS IN TERMS OF E-DISMISSAL FROM THE PUBLIC AND OTHER MATTERS

58. First, Article 9 of the State of Emergency Decree Law No. 677 dated 22/7/2016 stipulates that public officials who take decisions and fulfill their duties within the scope of the State of Emergency shall not be held legally, administratively, financially and criminally liable for their duties.
59. Article 37 of Law No. 6755 dated 8/11/2016 strengthened this immunity and immunity from prosecution granted to public officials: *"Persons who take decisions, execute decisions or measures within the scope of the suppression of the coup attempt and terrorist acts committed on 15/7/2016 and acts of terrorism and their continuation, persons who take duties within the scope of all kinds of judicial and administrative measures, and persons who take decisions and fulfill duties within the scope of the decrees with the force of law issued during the state of emergency shall not be held legally, administratively, financially and criminally liable for these decisions, duties and acts."*

With this regulation and the methods used in the dismissals, arbitrariness in dismissals from the profession has increased, and judges who would make just decisions by observing universal principles within the judiciary have been prevented from making decisions.

RECOMMENDATIONS:

On the issue examined under the heading of "Dismissals of public officials", the Committee stated that the actions and procedures concerning nearly 200 thousand people dismissed by the Turkish government from the public and private sectors on the grounds of the July 15, 2016 coup attempt were in clear violation of Article 25 (a) and (c) of the UNCRC. (a) and (c) of Article 25 of the UNCRC, that the actions and proceedings are "not objective and reasonable, contrary to the principle of equal opportunities for recruitment or reinstatement on merit and without discrimination, and that all dismissals from the private and public sectors are politically motivated" and recommends that the Government of Turkey take the following urgent measures

1- It should be recommended to establish an independent and impartial Council of Judges and Prosecutors and a judiciary in compliance with the decisions of the International Court of Human Rights in order to ensure that those who have been dismissed from the **public** and private sectors since 17/25 December 2013 for allegedly being a member of a terrorist organization are subjected to an effective and fair investigation and that objections/cases against dismissals are heard through a fair judicial mechanism.

2- Despite the Council of State's decision to reinstate 387 Judge-Prosecutors out of 4788 dismissed Judge-Prosecutors, the Minister of Justice's statement dated 17.2.2024, stating that these individuals, who have been investigated several times before, have been re-investigated and have not yet been allowed to start working, should be recommended to the Government to comply with the decisions of the Judiciary and to give up hate-oriented practices against a group of people because the Judiciary does not implement even these exceptional decisions despite being under political and arrest pressure.

3- It should be recommended that Articles 4, 5 and 7 of the Anti-Terrorism Law No. 3713, which includes the definition of terrorism, which has led to the dismissal of tens of thousands of people **from the public** and private sectors, be amended in accordance with the United Nations Covenant on Civil and Political Rights to state that "non-violent expressions of thought that do not have the characteristics of armed action will not be considered as terrorist crimes, and only acts involving violence and force will be considered as terrorist crimes." It should be emphasized that the state has a positive obligation to ensure freedom of expression.

4-a) Decree Laws No. 667-687, a total of 21 emergency decrees issued by the Government of Turkey on July 23, 2016 for the dismissal of persons in the public sector on the grounds of the attempted coup d'état of July 15, 2016, **including the provision that the aforementioned persons may not return to work,**

b) All dismissal decisions issued by the High Council of Judges and Prosecutors from the first dismissal decision dated 24.08.2016 until today,

c) All dismissal decisions issued by the Ministry of National Defense after 16 July 2016,

Legislation should be recommended for its annulment.

5-The government of **Turkey** should be recommended to end the practice of writing Code 36 and Code 37 on the Social Security Records of persons dismissed from the public/private sector on the grounds of the coup attempt of July 15, 2016, which means "this person was dismissed by the Decree Law for a reason related to terrorism". This is because even if the person concerned receives a verdict of non-prosecution or acquittal as a result of the investigation, since this "code" is not removed from the SSI records, when the employer sees this code when applying for another job, they prefer not to hire the applicant out of fear that "I will be arrested if I hire a person with a decree of emergency decree". Thus, it becomes impossible for the person with a state of emergency decree to find a job in another field after the profession from which he or she was dismissed. According to UNCRPD 25, *"citizens shall have the right and opportunity to access public service positions on conditions of general equality. To ensure access on terms of general equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable."* The Government of Turkey's implementation of the Code violates this right and should be recommended to be abolished.

Article 9 of the State of Emergency Decree Law dated **6-22/7/2016** and numbered 677 states that public officials who take decisions and fulfill their duties within the scope of the State of Emergency shall not be held legally, administratively, financially and criminally liable due to these duties. Since all dismissals in the Public and Private Sectors took place during the State of Emergency (State of Emergency Administration), this means that "Public Officials" who cause people to lose their jobs by Illegally Recording/Publishing/Publishing and Using Personal Data, which causes these people to be dismissed from their jobs, will not be investigated for these actions and transactions throughout their lives. Such an arrangement cannot be accepted in a state of law, and it should be recommended that a legal amendment be made to eliminate Article 9 of the Decree Law No. 677 in order to ensure that those who have been dismissed from public office have the right to file complaints and lawsuits against these officials who are responsible in an effective and fair manner.