



Strasbourg, 25 July 2016

Ref : JJ8190C
Tr./005-192

NOTIFICATION OF COMMUNICATION

State : Turkey.

Instrument : Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature, in Rome, on 4 November 1950 (ETS No. 5), as amended by Protocols No. 11 and No. 14 (ETS Nos. 155 and 194).

Date of entry into force of the instrument : 3 September 1953.

Date of entry into force in respect of Turkey : 18 May 1954.

Communication: ETS No. 005 Res./Decl. Turkey.
(See Annex)

Date of effect of the communication : 24 July 2016.

Notification made in accordance with Article 59 of the Convention.

Copy to all member States.



ETS/STE No. 5

**CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS**

opened for signature, in Rome, on 4 November 1950

**CONVENTION DE SAUVEGARDE DES DROITS DE L'HOMME
ET DES LIBERTÉS FONDAMENTALES**

ouverte à la signature, à Rome, le 4 novembre 1950

Reservations and Declarations
Réserves et Déclarations

TURKEY

Communication transmitted by the Permanent Representative of Turkey and registered by the Secretariat General on 24 July 2016 - Or. Engl.

With reference to the Declaration made on 21 July 2016 by the Republic of Turkey pursuant to Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Permanent Representation of Turkey to the Council of Europe transmits the following Joint Declaration by the Grand National Assembly of Turkey as well as two information notes, for consideration and circulation by the Secretary General to the member States.

TURQUIE

Communication transmise par le Représentant Permanent de la Turquie et enregistré auprès du Secrétariat Général le 24 juillet 2016 - Or. angl.

Dans le cadre de la Déclaration faite par la République de Turkey le 21 juillet 2016 en application de l'article 15 de la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales, la Représentation Permanente de la Turquie auprès du Conseil de l'Europe communique la Déclaration commune par la Grande Assemblée Nationale de Turquie ainsi que les deux notes d'information ci-dessous pour considération et transmission par le Secrétaire Général aux Etats membres.

COPIE

Annex to the Notification JJ8190C Tr./005-192
dated 25 July 2016
ETS No. 5 - Article 15

JOINT DECLARATION BY THE GRAND NATIONAL ASSEMBLY OF TURKEY 16 JULY 2016

Grand National Assembly of Turkey (GNAT) has fulfilled its duty as the representative of the glorious and heroic nation under the threat of bombs and bullets. It has once again demonstrated that it is an Assembly worthy of its people. GNAT led the War of Liberation, built up the democratic parliamentary system and elevated a nation from poverty and destitution to the level of contemporary civilizations. And now, our Assembly responded to the coup attempt with one heart and one soul.

The resolute attitude of GNAT to the heinous coup attempt is extremely important for the further establishment of democracy in Turkey. The Iron Will of GNAT will always stand against every attempt targeting our nation and its veteran Assembly, as it has done so far. It was an historic moment that all of the political parties of the Assembly stood together with common stance and language and this will be recorded as such in history. This common stance and language will further strengthen our nation and national will. GNAT is on duty as one heart, and in its capacity as the Assembly of the nation, GNAT will make those who have attempted this coup pay the heaviest price within the rule of law. This declaration is the evidence that nothing will be the same again in Turkey.

Though we hold different opinions as four different political parties, we wholly stand by the national will, we will protect it, and we will always continue to do so. May our nation be assured. Our nation and the members of the Parliament did not fail our people. Once again, we strongly condemn the heinous attack perpetrated against our democracy, Nation and the Grand National Assembly of Turkey.

We call on all to stay away from acts of violence that are beyond democratic reactions. We pay tribute to our fallen, wish our injured people fast return to health, a speedy recovery to our nation. And we salute all of the friendly and brotherly countries that conveyed messages of support to our nation.

Signatures:

The President of the Grand National Assembly of Turkey İsmail Kahraman
Group Chairman of the Justice and Development Party Binali Yıldırım
Group Chairman of the Republican People's Party Kemal Kılıçdaroğlu
Group Chairman of the Nationalist Movement Party Devlet Bahçeli
Group Deputy Chairman of the Peoples' Democracy Party İdris Bal

TRADUCTION (*)

Annexe à la Notification JJ8190C Tr./005-192
du 25 juillet 2016
STE n° 5 - Article 15

DÉCLARATION COMMUNE DE LA GRANDE ASSEMBLÉE NATIONALE DE TURQUIE **16 juillet 2016**

La Grande Assemblée Nationale de Turquie (GANT) a rempli son devoir en tant que représentant de la nation glorieuse et héroïque sous la menace des bombes et des balles. Elle a encore une fois démontré qu'elle est une Assemblée digne de son peuple. La GANT a conduit la Guerre de Libération, construit le système parlementaire démocratique et élevé une nation de la pauvreté et de la misère au niveau des civilisations contemporaines. Et maintenant, notre Assemblée a répondu à la tentative de coup d'un seul cœur et une seule âme.

L'attitude résolue de la GANT à la tentative de coup d'Etat odieux est extrêmement importante pour la poursuite de l'établissement de la démocratie en Turquie. La volonté de fer de la GANT sera toujours contre toute tentative visant notre nation et son Assemblée vétéran, comme elle l'a fait jusqu'à présent. Ce fut un moment historique où tous les partis politiques de l'Assemblée se sont levés ensemble avec une position et une langue communes et ce sera consigné en tant que tel dans l'histoire. Cette attitude et ce langage communs renforceront davantage notre nation et la volonté nationale. La GANT sers comme un seul cœur, et en sa qualité d'Assemblée de la nation, la GANT fera que ceux qui ont tenté ce coup paieront le prix le plus lourd dans le cadre de l'Etat de droit. Cette déclaration est la preuve que rien ne sera plus pareil en Turquie.

Bien que nous détenions des opinions différentes en tant que quatre partis politiques différents, nous soutenons entièrement la volonté nationale, nous la protégerons, et nous continuerons toujours à le faire. Que notre nation soit assurée. Notre nation et les membres du Parlement n'ont pas faillit à notre peuple. Encore une fois, nous condamnons fermement l'attentat odieux perpétré contre notre démocratie, Nation et la Grande Assemblée Nationale de Turquie.

Nous appelons tous à rester éloignés des actes de violence qui sont au-delà des réactions démocratiques. Nous rendons hommage à nos disparus, souhaitons à nos blessés retour rapide à la santé, un prompt rétablissement à notre nation. Et nous saluons tous les pays frères et amis qui ont transmis des messages de soutien à notre nation.

Signatures:

The President of the Grand National Assembly of Turkey İsmail Kahraman

Group Chairman of the Justice and Development Party Binali Yıldırım

Group Chairman of the Republican People's Party Kemal Kılıçdaroğlu

Group Chairman of the Nationalist Movement Party Devlet Bahçeli

Group Deputy Chairman of the Peoples' Democracy Party İdris Bal

STATE OF EMERGENCY DECLARED IN TURKEY FOLLOWING THE COUP ATTEMPT ON 15 JULY 2016

Fethullah Terrorist Organisation (FETÖ) has staged a coup attempt in Turkey on 15 July 2016. This bloody attempt against the democratically-elected Government as well as against the constitutional order was defeated by the Turkish State, through its resolve, acting together with its people and security forces. Despicable murderers attacked civilian people, crushed the democracy defenders on the streets under tank palettes, and even bombed the Turkish Parliament, the Grand National Assembly of Turkey. 246 Turkish citizens lost their lives and 2,185 were wounded.

In order to fight against the FETÖ terrorist organisation in a comprehensive and effective manner which poses a grave threat to survival and security of the nation through its clandestine infiltration to state mechanisms, the Council of Ministers of Turkey decided on 20 July 2016 that a nationwide state of emergency be declared as from 21 July 2016 for a period of ninety days, pursuant to Article 120 of the Constitution and Article 3 § 1 (b) of the Law on the State of Emergency (Law No. 2935).

The Council of Ministers took this decision in its meeting under the chairmanship of President Recep Tayyip Erdoğan, in view of the recommendation dated 20 July 2016, No. 498 of the National Security Council. The decision was endorsed by the Turkish Parliament on 21 July 2016.

The purpose of the state of emergency is to take required measures in the most speedy and effective manner in the fight against FETÖ terrorist organisation in order to save the nation from this ferocious terror network and return to normalcy as soon as possible. Meanwhile, utmost care will be maintained with a view to upholding democracy standards as well as respecting the fundamental rights of citizens.

State of emergency is a measure regulated by the Turkish Constitution and relevant national legislation and also a practice permissible under international human rights law, including the European Convention on Human Rights.

During the period prior to 15 July 2016 when Turkey faced the coup attempt, the Turkish Government carried out its counter-terrorism operations against PKK and DAESH terrorist organisations in severe conditions without declaring a state of emergency. The Government spared no effort to carry out the measures in compliance with standards of the European Human Rights regime. Yet, in the face of grave and violent attacks against the national security and FETÖ terrorist organisation's widespread infiltration, as closely manifested during its coup attempt on 15 July 2016, the declaration of the state of emergency was deemed necessary.

In this context, Turkey resorted to the right of derogation from the obligations in the Convention as prescribed in the European Convention on Human Rights, permissible under Article 15 of the Convention. As stated in the Convention, a derogation is not a suspension of rights. It brings certain limitations to the exercise of certain rights to the extent strictly required by the exigencies of the situation.

The Republic of Turkey is fully aware of its obligations pertaining to democracy, human rights and the rule of law under international law. The Government will remain committed to respecting fundamental rights and freedoms while observing the principle of the supremacy of law.

../..

ETAT D'URGENCE DECLARE EN TURQUIE SUITE A LA TENTATIVE DE COUP D'ETAT DU 15 JUILLET 2016

L'Organisation Terroriste Fethullah (FETÖ) a mis en scène une tentative de coup d'Etat en Turquie, le 15 Juillet 2016. Cette tentative sanglante contre le gouvernement démocratiquement élu, ainsi que contre l'ordre constitutionnel a été battu par l'Etat turc, par sa volonté, agissant de concert avec son peuple et les forces de sécurité. Des meurtriers méprisables ont attaqué les gens civils, écrasé les défenseurs de la démocratie dans les rues sous les chars, et même bombardé le Parlement turc, la Grande Assemblée nationale de Turquie. 246 citoyens turcs ont perdu la vie et 2.185 ont été blessés.

Afin de lutter d'une manière globale et efficace contre l'organisation terroriste FETÖ qui constitue une grave menace pour la survie et la sécurité de la nation par son infiltration clandestine des mécanismes de l'Etat, le Conseil des Ministres de la Turquie a décidé le 20 juillet 2016, un état national d'urgence déclaré à partir du 21 juillet 2016 pour une période de quatre-vingt dix jours, conformément à l'article 120 de la Constitution et à l'article 3.1.b de la Loi sur l'état d'urgence (Loi n ° 2935).

Le Conseil des ministres a pris cette décision lors de sa réunion sous la présidence du Président Recep Tayyip Erdoğan, compte tenu de la recommandation en date du 20 juillet 2016, n° 498 du Conseil de sécurité nationale. La décision a été approuvée par le Parlement turc le 21 juillet 2016.

Le but de l'état d'urgence est de prendre des mesures nécessaires de la manière la plus rapide et efficace dans la lutte contre l'organisation terroriste FETÖ afin de sauver la nation de ce réseau terroriste féroce et de retourner à la normale le plus tôt possible. Pendant ce temps, le plus grand soin sera maintenu en vue de faire respecter les normes de la démocratie ainsi que le respect des droits fondamentaux des citoyens.

L'état d'urgence est une mesure régie par la Constitution turque et la législation nationale pertinente et également une pratique permise par le droit international des droits humains, y compris la Convention européenne des Droits de l'Homme.

Au cours de la période antérieure au 15 juillet 2016, lorsque la Turquie a fait face à la tentative de coup d'état, le gouvernement turc a effectué ses opérations de contre-terrorisme contre les organisations terroristes PKK et DAESH dans des conditions sévères sans déclarer l'état d'urgence. Le gouvernement n'a ménagé aucun effort pour mener à bien les mesures en conformité avec les normes du régime européen des droits de l'homme. Pourtant, face aux attaques graves et violentes contre la sécurité nationale et à l'infiltration généralisée de l'organisation terroriste FETÖ, telle qu'elle s'est manifestée de près lors de sa tentative de coup d'état le 15 juillet 2016, la déclaration de l'état d'urgence a été jugée nécessaire.

Dans ce contexte, la Turquie a eu recours au droit de dérogation aux obligations de la Convention tel que prescrit dans la Convention européenne des Droits de l'Homme, autorisé par l'article 15 de la Convention. Comme indiqué dans la Convention, une dérogation n'est pas une suspension des droits. Elle apporte certaines limitations à l'exercice de certains droits dans la mesure strictement requise par les exigences de la situation.

La République de Turquie est pleinement consciente de ses obligations relatives à la démocratie, aux droits humains et à la primauté du droit en vertu du droit international. Le gouvernement restera attaché au respect des droits et des libertés fondamentales tout en respectant le principe de la primauté du droit.

../..

The purpose of the declaration of the state of emergency is not to restrict fundamental freedoms but to eliminate FETÖ terrorist organisation in a more speedy and effective manner.

Although the state of emergency has been declared for a period of 90 days, all extraordinary measures will be terminated once the result in the fight against the FETÖ terrorist organisation will be successfully attained.

Le but de la déclaration de l'état d'urgence n'est pas de restreindre les libertés fondamentales, mais d'éliminer l'organisation terroriste FETÖ d'une manière plus rapide et efficace.

Bien que l'état d'urgence ait été déclaré pour une période de 90 jours, toutes les mesures extraordinaires seront terminées lorsque le résultat dans la lutte contre l'organisation terroriste FETÖ aura été atteint avec succès.

INFORMATION ON THE TERRORIST ATTEMPT ON 15 JULY 2016 AND THE INVESTIGATIONS CONDUCTED AGAINST THE JUDGES AND PUBLIC PROSECUTORS

1. General information

The Fethullah Gülen Terrorist Organization (“FETÖ”) is a terrorist organization founded by Fethullah Gülen and aiming to overthrow the Government of the Republic of Turkey or prevent it from performing its duties partially or completely by using force, violence or other illegal methods, to exert pressure on, undermine or direct the State authority, to create an alternative authority, and thus to seize the State authority.

In accordance with its aims, FETÖ is carrying out its activities as cell-type structures in various public institutions, particularly within the judicial institutions, the Turkish Armed Forces and Police. The public officials who are members of the organization use their positions and authorities, equipments and the personnel of the institution they work in line with the aims of the organization.

FETÖ has so far carried out a great number of illegal acts appearing to be legal. In this regard, the acts of the organization include wiretapping the communications of the politicians from the ruling and opposition parties, in particular the President, the Prime Minister, the members of the Government, businessmen and high-ranking bureaucrats and using them in line with the aims of the organization; ensuring the employment of the members of the organization in the public institutions by manipulating the entrance exams held by such institutions as well as ensuring the delivery of orders of release in respect of the detained members of the organization by other unauthorized judges who are members of the organization.

On 15 July 2016 FETÖ carried out a terrorist attempt under the leadership of its military members within the armed bureaucracy in order to overthrow the democratically-elected government of the Republic of Turkey. This foiled terrorist action is the most important act revealing the danger posed by FETÖ.

The members of FETÖ bombed the Turkish Grand National Assembly, the Office of the Presidency, and the public institutions using the helicopters, planes and tanks which they had seized by stabbing their commanders in the back. They also opened fire on the citizens who took to the streets in order to protest against the coup attempt.

The police, the public prosecutors, and other elements of the armed forces immediately took necessary measures to foil the attempt of the members of the terrorist organization to stage a coup outside the Chain of command of the Turkish Armed Forces.

Above all, it was the Turkish nation who thwarted the plot. They displayed a historic solidarity as they took to the streets and remained defiant. They stood bravely in front of the tanks and stood by democratic order. The Turkish people are still continuing to stand guard of democracy in the streets and squares of all the cities, particularly Istanbul, Ankara and Izmir. The terrorists tried to broadcast their message by taking over studios of the State TV (TRT) and raiding private media outlets. Yet the plotters’ attempt to control the media did not last long. It must be noted that the Turkish media also played a key role in defeating the coup attempt. Moreover, they attacked the satellite control unit to block broadcasting of media outlets.

Throughout the process, all the political parties, the Members of the Turkish Grand National Assembly and the people stood firmly by democracy, democratic politics, democratic institutions and the Constitution. A Joint Declaration in defence of democracy was issued during the extraordinary meeting of the General Assembly on the 16th of July.

During the operations held within the scope of the investigations initiated following the terrorist attempt to stage a coup, more than 10,000 members of FETÖ have been taken into custody so far. The operations still continue. Some members of the organization whose statements had been taken within the scope of the investigations confessed that the terrorist attempt in question had been carried out by FETÖ .

Unfortunately, more than 246 of our citizens and security officers, including very close friends of the President, were martyred and more than 2,500 were wounded as a result of the terrorist action.

Our President, our Prime Minister, our Government, the Members of the Turkish Grand National Assembly and the Turkish people all together defeated this coup attempt and stood by democracy and rule of law.

Although the coup attempt in question was lead by the members of FETÖ within the armed forces, there is strong suspicion that other members of the organization within the State bureaucracy supported the attempt in one way or the other. Furthermore, there is still a possibility of a new coup attempt.

Therefore, a State of emergency was declared across the country by the decree of the Council of Ministers in accordance with Article 120 of the Constitution upon the recommendation of the National Security Council to promptly defeat the terrorist organization with all its elements and to take the necessary steps in the most effective and expeditious manner for the purpose of eliminating this serious threat to democracy, rule of law and rights and freedoms of our people. This State of emergency came into effect on 21 July 2016 at 1 a.m. and will last for 90 days. It was approved by the Turkish Grand National Assembly during the extraordinary meeting held on 21 July 2016. The aim of that declaration is not to restrict the freedom of people but to enhance the efficiency and mobility of the Government.

Moreover, on 21 July 2016 the Secretary General of the Council of Europe was informed by the Turkish authorities that Turkey derogated from the European Convention on Human Rights ("the Convention") under Article 15 of the Convention since there is a general threat threatening the life of a nation.

2. Suspension of the judges and prosecutors from office and investigations conducted

FETÖ has been especially organized within the judicial institutions for decades. By way of producing false evidence in the investigations into the issues such as Ergenekon initiated in 2007 and Balyoz and military espionage initiated thereafter, dismissal operations started against the persons that are not members of the organisation within the armed forces. It was found established by the judgments of the Court of Cassation that false evidence had been produced in those investigations. The power that FETÖ obtained in the judiciary due to the operations in question reached its peak with re-structuring of the High Council of Judges and Prosecutors in 2010. They infiltrated the Council and appointed members of the organisation were to critical positions in the judiciary.

On 7 February 2012 the judges and prosecutors that are the members of FETÖ unlawfully issued an arrest warrant in respect of the Undersecretary of the National Intelligence Organisation while the President scheduled a surgery operation and just about to undergo the operation. The judges and prosecutors initiating the investigations against the Government on 17-25 December 2013 are also the members of this organisation.

On the other hand, it was recommended to the Government by the Resolution of the National Security Council dated 30 October 2014 that FETÖ was an organisation to be fought against, and accepted by the Resolution of the National Security Council dated 29 April 2016 that FETÖ is a terrorist organisation. Furthermore, it was also pointed out in the indictments prepared as a result of various investigations conducted throughout the country that FETÖ is a terrorist organisation.

For these reasons, the relevant authorities had been carrying out researches in order to identify the members of FETÖ before the failed coup attempt. As a consequence of the terrorist act committed with the purpose of staging a coup on 15 July 2016, suspension procedures and disciplinary have been initiated with the purpose of removing the members of FETÖ terrorist organisation that infiltrated into the State bureaucracy, mainly the judicial institutions, through structuring as cells.

In this respect, on 16 July 2016 investigations have been initiated and arrest warrants have been issued in respect of the members of FETÖ in the High Council of Judges and Prosecutors, the Constitutional Court and the other high courts by the Chief Public Prosecutor's Office of Ankara and in respect of its members taking office as judges and prosecutors in court-houses by the relevant Chief Public Prosecutor's Office with the charges of being an accomplice in the attempt of overthrowing the government and the legislative organ, attempting to abolish the Constitution, fomenting an armed insurrection and establishing an armed organisation.

Members of the High Council of the Judges and Prosecutors

On 16 July 2016 the Plenary Assembly of the High Council of Judges and Prosecutors terminated the memberships of 5 members affiliated with the FETO in the extraordinary session by virtue of the report prepared by the assigned investigator.

Pursuant to the reference to the Law no. 2802 with respect to the membership requirement prescribed by Article 18 § 1 (a) of the Law no. 6087 on the High Council of Judges and Prosecutors, the decision for the termination of membership was rendered on the ground that the requirement to be elected as a member of the High Council of Judges and Prosecutor are failed. This provision includes the condition of "not being under investigation for a criminal offence to be punished with more than 3 month imprisonment" prescribed in order to be a judge or a prosecutor under Article 8 (h) of the Law no. 2802. In this decision, it was concluded that continuation of those members' memberships would impair the respectability, impartiality and credibility of the judiciary.

Judges and Prosecutors

On 16 July 2016, in the extraordinary session, the 3rd Chamber of the High Council of Judges and Prosecutors granted authorization to launch an investigation against a number of judges and prosecutors for being accomplice of attempt of overthrowing the government and the legislative organ, attempting to abolish the Constitution, fomenting an armed insurrection and establishing an armed organisation.

On the same day, investigations were initiated and arrest warrants, custody orders and search warrants were issued in respect of the members of the above mentioned terrorist organisation among judges and prosecutors countrywide.

After examining the document concerning the authorization to initiate investigations, the Inspection Board of the High Council of Judges and Prosecutors that took action in view of the gravity of the coup attempt requested that 2735 judges and prosecutors, in respect of whom authorization to initiate investigations was granted, be suspended from office for three months on the grounds that there exists strong criminal suspicion that they involved in the alleged offences and the security of the investigation and influence and respectability of the judiciary power must be protected.

The 2nd Chamber of the High Council of the Judges and Prosecutors decided the 2735 judges and prosecutors in question to be suspended from office for 3 months.

The investigations initiated in respect of the suspects are still being carried out by both the Inspection Board of the High Council of Judges and Prosecutors and the Chief Public Prosecutor's Offices of the provinces.

1352 judges and prosecutors have been detained so far. 312 judges and prosecutors have been released on the condition of judicial control. 366 judges and prosecutors are currently under custody.

Members of the Constitutional Court and the Other High Courts

Within the scope of the investigation initiated by the Chief Public Prosecutor's Office of Ankara, investigations have been initiated and arrest warrants and orders of custody have been issued in respect of 2 members of the Constitutional Court, 140 members of the Court of Cassation and 48 members of the Supreme Administrative Court for being an accomplice in the attempt of overthrowing the government and the legislative organ, attempting to abolish the Constitution, fomenting an armed insurrection and establishing an armed organisation. 2 members of the Constitutional Court, 4 members of the High Council of Judges and Prosecutors and 106 members of the Supreme Administrative Court and the Court of Cassation in total have been detained so far.

In the event that suspects are caught red-handed while committing a crime foreseen severe punishment, the investigations in respect of the members of the high courts must be directly conducted pursuant to provisions of the Code of Criminal Procedure (Article 16 § 1 of the Law on the Establishment and Rules of Procedure of the Constitutional Court; Article 46 § 1 of the Law on the Court of Cassation and Article 46 § 1 of the Law on the Court of Cassation on the basis of Article 82 § 1 of the Law on the Supreme Administrative Court).

As the suspects have been caught red-handed while committing a crime requiring severe punishment in the jurisdiction of assise courts, the investigations in respect of them are directly conducted under the above mentioned provisions.

The rule of law, democracy and human rights are founding fundamental principles of the Republic of Turkey. Therefore, proceedings are carried out by independent and impartial courts in line with the rule of law principle and our international commitments. In this respect, the suspects have the right to legal assistance and the right to lodge an objection against the measures of custody and detention taken in respect of them. Furthermore, in the course of their questioning, the suspects are reminded that they may request concrete evidence to be collected, and given the opportunity to invalidate the existing grounds of suspicions against them and put forward the facts in their favour.

21.07.2016.