

DECREE WITH FORCE OF LAW

DECREE ON MEASURES TO BE TAKEN UNDER STATE OF EMERGENCY

Decree Law No.: KHK/667

On 22 July 2016 the Council of Ministers, meeting under the chairmanship of the President of the Republic, has decided to take certain measures under state of emergency pursuant to Article 121 of the Constitution and Article 4 of the Law no. 2935 on State of Emergency dated 25 October 1983.

PART ONE

Aim and Scope

Aim and scope

Article 1 – (1) The aim of this Decree Law is to establish measures that must necessarily be taken within the scope of attempted coup and fight against terrorism under the state of emergency declared throughout the country by the Decree Law of the Council of Ministers dated 20 July 2016 and numbered 2016/9064, and to determine procedures and principles relating to these measures.

PART TWO

Measures Related to Implementation of State of Emergency

Measures concerning institutions and organizations closed down

ARTICLE 2 – (1)

- a) Private health institutions and organizations listed in the Annex I,
- b) Private education institutions and organizations as well as private dormitories and lodgings for students listed in the Annex II,
- c) Foundations and associations and their commercial enterprises listed in the Annex III,
- ç) Foundation-run higher education institutions listed in the Article IV,
- d) Unions, federations and confederations listed in the Article V, which belong to, connect to, or contact with the Fetullahist Terrorist Organization (FETÖ/PDY), established posing a threat to the national security, have been found to exist, have been closed down.

(2) All movables and real estate as well as all assets, receivables and rights, and all documents and papers of foundations closed down shall be deemed to have been transferred to the General Directorate of Foundations without cost. Health application and research centres that belong to the foundation-run higher education institutions closed down, and all movable properties as well as all assets, receivables and rights and all documents and papers that belong to other institutions and organizations closed down shall be deemed to have been transferred to the Treasury without cost, and all real estate that belong to them shall directly be registered, free and clear of any restrictions and encumbrances on the immovables, in the name of the Treasury in the land registry. Under no circumstances shall any claim or demand related to all kinds of debts of those listed in paragraph one be made against the Treasury. The Ministry of Finance or the General Directorate of Foundations, according to its relevance, shall carry out all procedures relating to transfer by receiving necessary assistance from all institutions concerned.

(3) Private and foundation-run health institutions and organizations, private education institutions and organizations as well as private dormitories and lodgings for students, foundations, associations, foundation-run higher education institutions, unions, federations and confederations that have been found to be a member of structure/entities, organizations or groups, or terrorist organizations, which are found established to pose a threat to the national security, or whose connection or contact with them have been found to exist and which are not listed in the Annexes shall be closed down upon the proposal of the commission to be established by the minister in the relevant ministries and with the approval of the Minister. Provisions of paragraph 2 shall apply to institutions and organizations closed down under this paragraph.

(4) Students, registered to the higher education institutions closed down, shall be placed at State-run universities or foundation-run universities by the Council of Higher Education. Students to be placed as such shall continue to pay to the university concerned the tuition fees that they are required to pay to foundation-run higher education institutions until their graduation. The Council of Higher Education is responsible and authorized for establishing procedures and principles related to application of this paragraph, providing guidance on the application, taking all types of measures and eliminating hesitations that might arise.

Measures related to the members of the judiciary and those considered as members of this profession

ARTICLE 3 – (1) Continuation in the profession of those who are considered to be a member of, or have relation, connection or contact with terrorist organizations or structure/entities, organizations or groups established by the National Security Council as engaging in activities against the national security of the State, shall be found to be unsuitable and their dismissal from the profession shall be decided by the absolute majority of the Plenary Session of the Constitutional Court in so far as the members of the Constitutional Court are concerned; by the Board of the First

Presidency of the Court of Cassation in so far as Presidents of Chambers of the Court of Cassation and its members are concerned; by the Board of Presidency of the Supreme Administrative Court in so far as the Presidents of Chambers of the Supreme Administrative Court and its members are concerned; by the Plenary Session of the High Council of Judges and Prosecutors in so far as judges and prosecutors are concerned; and by a commission, consisting of President of a Chamber and a member to be determined by the President and Vice Presidents of Court of Accounts under the chairmanship of the President of Court of Accounts in so far as members of profession of the Court of Accounts are concerned. Firearms licenses and green passports of those whose dismissal from the profession is decided shall be cancelled and they shall be evicted from publicly-owned houses or houses owned by a foundation in which they live within fifteen days.

(2) Those who hold office as candidates of judicial and administrative judge and prosecutor positions on the date on which this Decree Law enters into force may be appointed as a judge or prosecutor, regardless of duration of their candidacies, if they are admitted to the profession by the High Council of Judges and Prosecutors upon the proposal of the Ministry of Justice.

Measures concerning public officials

ARTICLE 4 – (1) Those who are considered to be a member of, or have relation, connection or contact with terrorist organizations or structure/entities, organizations or groups, established by the National Security Council as engaging in activities against the national security of the State shall be dismissed from public service;

a) upon the proposal of the Force Commander concerned, with the recommendation of the Chief of the General Staff and by the approval of the Minister of Defence in so far as the personnel who are subject to Law no. 926 on the Turkish Armed Forces Personnel (dated 27 July 1967) are concerned,

b) upon the proposal of the Commander of the Gendarmerie Forces and by the approval of the Minister of Interior in so far as the personnel who are subject to Law no. 2803 (dated 10 March 1983) on Organization, Duties and Powers of the Gendarmerie are concerned,

c) upon the proposal of Coast Guard Commander and by the approval of the Ministry of Interior in so far as the personnel who are subject to the Law no. 2692 (dated 9 July 1982) on Coast Guard Command are concerned,

ç) by the approval of the Minister of Defence in so far as the personnel who work for the Ministry of Defence are concerned,

d) upon the proposal of the President of the Council of Higher Education and by the decision of the Council of Higher Education in so far as the personnel who are subject to the Law no. 2914 on Higher Education (dated 11 October 1983) are concerned,

e) upon the proposal of a commission that is established by the governor and meets under the chairmanship of the governor and by the approval of the Minister of Interior in so far as the personnel of local administrations are concerned,

f) upon the proposal of the commission that is established by the relevant or related Minister and meets under the chairmanship of the highest administrator of the institution or organization concerned, and by the approval of the relevant Minister, in so far as the personnel, employed in all kinds of positions and status (including workers) who are subject to the Law no. 657 on Civil Servants (dated 14 July 1965) and other legislation except for those set out in Article 3 of this Decree Law, are concerned,

g) upon the proposal of chief of the department and by the approval of the chief who is authorized to appoint in so far as the personnel employed in all kinds of positions and status (including workers) in other institutions that are not under the authority of, or associated with a Ministry.

(2) Those dismissed from service under paragraph one shall not anymore be employed in public service, and they shall not, directly or indirectly, be assigned; all kinds of membership in a board of trustees, a board, a commission, a board of management, a supervisory board or a liquidation board under the responsibility of those dismissed from service and their other tasks shall be deemed to have ended. Provisions of this paragraph shall apply to those who perform a task set out in this paragraph but do not have the status of public official.

(3) Firearm licenses and pilot licenses of those dismissed from service under this Article shall be cancelled, and they shall be evicted from publicly-owned houses or houses owned by a foundation in which they live within fifteen days. These persons shall not be a founder, co-founder or personnel of private security companies.

(4) Appointment shall be made to the personnel cadres and positions of personnel, dismissed from service under this Article, in a number to be determined by the Council of Ministers without being subject to any restrictions imposed by the Law on Central Administration Budget and other legislation.

Measures concerning investigations conducted

ARTICLE 5 – (1) Those against whom an administrative action is taken on the ground of their membership to, or connection or contact with structure/entities, organizations, groups or terrorist organizations, which are found established to pose a threat to the national security, and those against whom a criminal investigation or prosecution is conducted for the same reason shall immediately be reported to the passport department concerned by the institution or organization that takes action. Upon this information, the passports shall be cancelled by the passport departments

concerned.

Investigation and prosecution procedures

ARTICLE 6 – (1) During the period of state of emergency, with regard to the offences enumerated under Fourth, Fifth, Sixth and Seventh Sections of Fourth Chapter of Second Volume of the Turkish Criminal Code no. 5237 dated 26 September 2004, the offences falling under the Anti-Terror Law no. 3713 dated 12 April 1991 and the collective offences;

a) The period of custody shall not exceed thirty days as from the time of arrest, save for the required period for the suspect to be brought before the judge or the court which takes office at the nearest place to the place where the suspect was arrested.

b) The military persons who have been arrested are handed over to the law enforcement officers.

c) Within the scope of the investigations carried out, the statements of all suspects, victims and witnesses, including the public servants, may also be taken by the law enforcement officers, without a distinction being made on the basis of their duties and titles.

ç) The detention orders in respect of the military persons shall be executed in the penitentiary institutions which are set out in Article 111 of the Law no. 5275 on the Execution of Penalties and Security Measures of 13 December 2004.

d) Where there is a risk that public security and the security of the penitentiary institution is endangered, that the terrorist organization or other criminal organizations are directed, that orders and instructions are given to them or secret, clear or crypto messages are transmitted to them through the remarks during the interviews between the detainees and their lawyers; the interviews may be recorded auditory or audio-visually via technical devices, the officers may be made present during the interviews between the detainee and his/her lawyer with a view to monitoring the interview, documents or document templates and files given by the detainee to his/her lawyer or vice versa and the records kept by them concerning the interview between them may be seized, or days and hours of the interviews may be limited upon the public prosecutor's order. In the event that the interview of the detainee is understood to be made for the aim set out above, the interview shall be immediately ended, and this fact shall be recorded into minutes together with the grounds thereof. The parties shall be warned about this issue prior to the interview. In the event that such minutes are drawn up in respect of a detainee, the Office of the Magistrates' Judge could ban the detainee from interviewing with his/her lawyers, upon the public prosecutor's request. Decision on banning shall be immediately served on the detainee and the relevant Bar Presidency with a view to assigning a new lawyer. The public prosecutor may ask for replacement of the lawyer commissioned by the Bar. The commissioned lawyer shall be paid in accordance with Article 13 of the Law no. 5320 on the Enforcement and Application Procedure of the Criminal Procedure Code of 23 March 2005.

e) The detainees may only be visited by his/her spouse, relatives of the first and second degrees and the first degree relatives-in-law and his/her guardian or trustee only where the relevant documents are submitted. The powers of the Ministry of Justice and the Chief Public Prosecutor's Office shall be reserved. The detainees shall enjoy the right to telephone conversations for once every fifteen days and for a period not exceeding ten minutes, limited to the persons set out in this subparagraph.

f) Only the registration number -instead of the clear identity- of the relevant officers shall be written on the records prepared by the public officers working in the penitentiary institutions where the detainees are held. Where it is deemed necessary to receive the statements of officers of the institutions, writ of summons or subpoena shall be sent to the relevant officer's work address. The work addresses shall be indicated in the statement records and minutes of hearings of these persons.

g) Within the scope of the investigations performed, the defence counsel selected under Article 149 of the Criminal Procedure Code no. 5271 of 4 December 2004 or assigned under Article 150 thereof may be banned from taking on his/her duty if an investigation or a prosecution is being carried out in respect of him/her due to the offences enumerated in this Article. The Office of Magistrates' Judge shall render a decision on the public prosecutor's request for a ban without any delay. Decision on banning shall be immediately served on the suspect and the relevant Bar Presidency with a view to assigning a new counsel.

ğ) Within the scope of the investigations and prosecutions, at the most three lawyers shall be present during statement-taking and questioning periods or hearings.

h) Prior to the hearings before the criminal courts, bill of indictment or the document which substitutes for bill of indictment shall be read out or summarized and explained.

ı) Review of detention, objection to detention and requests for release may be concluded over the case file.

i) Where deemed appropriate by the judge or the court, suspects or accused persons may be questioned via audio-visual communication technique or they may be summoned to the hearings.

Granting a monthly duty disability pension and other rights

ARTICLE 7 – (1) With regard to the calculation of monthly pensions, under Article 21/1(j) of the Anti-Terror Law no. 3713, to be granted to civilians who lost their lives or became disabled due to the coup attempt and terrorist

act of 15 July 2016 and the subsequent relevant acts, the provisions set out in subparagraph (h) of the same paragraph shall be taken as a basis, and they, the beneficiaries and those falling under subparagraph (h) shall be ensured to benefit from the other rights enshrined in the relevant legislation in the same manner. However, the total amount of monthly pensions to be granted to widows and orphans cannot be less than the pension to be granted to the disabled or deceased himself/herself. Moreover, the provisions concerning monetary compensation of the Law no. 2330 on Monetary Compensations and Monthly Pensions of 3 November 1980 shall be applied in respect of these persons and those who were injured because of these acts. As regards the monthly pensions to be granted in this manner, there shall be no requirement of not owing premium debt or debt concerning premium, including general health insurance premiums.

(2) Retirement bonuses of those who fall within the first paragraph and who are entitled to receive retirement bonuses under the Law no. 5434 on Retirement Fund of the Republic of Turkey of 8 June 1949 shall be paid in accordance with Article 21/1 (a) of the Law no. 3713, which shall not be less than 115 times as much as the highest public officer salary (including additional indicator). Among the civilians who fall within the first paragraph but are not entitled to receive retirement bonus, those who cannot maintain his/her life by way of performing necessary activities and became disabled to the extent that they need other persons' help and support and legal heirs of the deceased persons shall be paid additional compensation in the amount of 170 times as much as the highest public officer salary (including additional indicator), and other disabled persons shall be paid additional compensation in the amount of 115 times as much as the highest public officer salary (including additional indicator) by the relevant institutions in accordance with the principles and procedures concerning monetary compensation.

Abolishment of the rights of easement and usufruct and termination of lease contracts

ARTICLE 8 – (1) The relevant institution and organization shall ex officio abolish the rights of easement and usufruct and terminate the lease contracts of the beneficiaries and leaseholders of all immovable properties of which belong to public administrations within the scope of general budget and administrations within the scope of special budget, regulatory and supervisory agencies, social security institutions, local administrations and associations and entities set up by these administrations, other public agencies, boards, supreme boards and organizations, public economic enterprises established under special law and their subsidiaries, establishments and entities and the immovables whose 50 % or more shares are owned by the other public subsidiaries and foundations set out in Public Financial Management and Control no. 5018 of 10 December 2003; in the event that they are considered to be a member of, related to or in connection with the structures/entities, organizations, groups or terrorist organizations which have been found to pose a threat to national security.

Liability

ARTICLE 9 – (1) Legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and fulfil their duties within the scope of this Decree Law.

Stay of execution

ARTICLE 10 – (1) Stay of execution cannot be ordered in the cases brought as a result of the decisions taken and acts performed within the scope of this Decree Law.

Enforcement

ARTICLE 11 – (1) This Decree Law shall enter into force on the date of its publication.

Execution

ARTICLE 12 – (1) The Council of Ministers shall execute the provisions of this Decree Law.

Recep Tayyip ERDOĞAN
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