

## Descriptive Summary of Presidential Decrees Nos. 120 and 121

14 February 2023

As indicated in the notice of Derogation dated 10 February 2023, two large-scale earthquakes with magnitudes of 7.7 and 7.6 took place in Kahramanmaraş province on 6 February 2023. These natural disasters caused destruction in 10 provinces and directly affected around 13.5 million people. Many public service buildings were also damaged due to the earthquakes.

In this context, a pressing need has emerged to prioritise rescuing people trapped under the rubble, meeting the day-to-day needs (especially shelter) of the inhabitants of the region who survived the earthquake, identifying the damaged buildings, and discovering and securing the evidence. For this reason, in an aim to ensure public safety, provide all public services in an effective fashion and maintain public order, Presidential Decree no. 120 on Measures Taken in the Judiciary under the State of Emergency has been promulgated in the Official Gazette no. 32101-*bis* of 11 February 2023, as a first step, so that people do not suffer any loss of rights in the judicial sphere and that investigative procedures are conducted effectively. The Presidential Decree, of which a full translation has been enclosed herewith, may be summarised as follows:

1) All the time-limits that are related to the judiciary have been put on hold for a period of 2 months as from (and including) 6 February 2023 in the 10 provinces where a state of emergency has been declared.<sup>1</sup> Also, the time-limits will be put on hold for a period of 1 month as from 6 February 2023 with nation-wide effect in respect of those who have relatives by blood or marriage in the region in question or if they go to these provinces to rescue those affected by the disaster, to repair the damage and loss incurred or to meet the needs in those provinces. Similar facilities have been introduced for lawyers, as well. In addition, Article 2 § 9 (b) of the Presidential Decree authorises the Council of Judges and Prosecutors to take other measures that may be necessary.

In this framework, the Council of Judges and Prosecutors convened for an extraordinary meeting on 12 February 2023 and decided to postpone all hearings, deliberations and on-site inspections (except for urgent cases) until 6 April 2023 only in the provinces where the state of emergency is in place.

These measures may involve derogation from Article 6 § 1 of the European Convention on Human Rights (“the Convention”) in so far as relevant to “the right to a trial within a reasonable time”.

2) To ensure effective investigation of offences of theft and looting which may take place in the region, the Presidential Decree also provides that the custody period of 24 hours stipulated in Article 91 § 1 of Code of Criminal Procedure (Law no. 5271) shall be applied as 4 days only in areas where a state of emergency has been declared. This period may be extended by a maximum of 3 days by the written order of the public prosecutor, only exceptionally in cases where there are difficulties in collecting evidence or the number of suspects is high. During these periods, those against whom the relevant measure has been applied or their lawyers are, in any case, entitled to object to the custody orders under Article 91 § 5 of Code of Criminal Procedure (Law no. 5271).

It has become possible to assess objections against pre-trial detention, requests for release and review of pre-trial detention on the basis of the file, given the delay that may occur in the transfer of suspects or accused persons as well as the urgency of the matter. Decisions on requests for release may be delivered together with the review of pre-trial detention.

Furthermore, having regard to the possible delays in the provision of courthouse services and

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<sup>1</sup> For periods/time-limits to which this suspension is not applicable, see Article 2 § 2 of Presidential Decree no. 120, appended).

the physical impossibilities, the time-limit for review of pre-trial detention, which is normally carried out within 30 days at the latest as stipulated in Article 108 of Code of Criminal Procedure (Law no. 5271), has been amended as 60 days for one-time only.

Lastly, in view of the fact that it is not possible to use audio-visual communication systems because of the physical impossibilities resulting from the earthquake in relation to procedures of taking of statements or arrest warrants for pre-trial detention issued by the magistrate judgeships or courts located in regions where the state of emergency has been declared; it has been ensured that the actions in respect of the relevant person shall be taken by the magistrate judgeship or court where that person has been arrested. At the end of such an action, that person may be ordered to be placed in pre-trial detention or released, or a judicial supervision may be ordered.

The above-noted measures may involve a derogation from Article 5 of the Convention.

**3)** Furthermore, Presidential Decree no. 121 on Measures Taken in the Field of Health under the State of Emergency has been published in the Official Gazette no. 32103 of 13 February 2023.

The relevant decree contains possibilities such as allowing the establishment of mobile pharmacies and exempting these mobile pharmacies from some additional procedures required by the drug tracking system, for the purpose of ensuring that the injured survivors of the earthquake have access to the necessary treatment as soon as possible and protecting the public health in the region in general.

As these measures taken in the field of health do not provide for any restriction, they do not involve any derogation.

Annex: Unofficial Translation of Presidential Decree no.120