

DECREE WITH FORCE OF LAW NO. 669 – 31 JULY 2016

PART 1

Aim, Scope and Measures

Aim and Scope

ARTICLE 1- (1) The aim of this Decree-Law is to take the necessary measures within the scope of attempted coup and fight against terrorism and to determine procedures and principles relating to the establishment of the University of National Defence 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.

Measures concerning the personnel of the Turkish Armed Forces and the Gendarmerie

ARTICLE 2- (1) The military personnel whose membership, affiliation and connection with the Fetullahist Terrorist Organization (FETÖ/PDY), which was established as posing a threat to the national security, have been found to exist and whose names are cited in the annexed lists no. 1 and 2 have been dismissed from the Turkish Armed Forces and those whose names are cited in the annexed list no. 3 have been dismissed from the Gendarmerie General Command. Procedures shall also be carried out in respect of them pursuant to the provisions of special law.

(2) Regardless of a criminal conviction ruled, those listed under the first paragraph shall be deprived of their military ranks and public official status and such persons shall not be readmitted to the Turkish Armed Forces and the Gendarmerie General Command; they shall not be employed once again in public service, assigned directly or indirectly; their membership to all kinds of boards of trustees, boards, commissions, boards of directors, supervisory boards or liquidation boards shall cease. Firearm and pilot's licenses held by them shall be cancelled and these persons shall be evicted within fifteen days, from public or foundation-owned houses in which they reside. These persons shall not be a founder, co-founder or personnel of private security companies. The Ministry of National Defence shall immediately notify the relevant passport authority as regards these persons. Upon such notification, the relevant passport authorities shall cancel their passports.

Measures concerning public officials

ARTICLE 3- (1) The periods of time to initiate an investigation laid down in the governing legislation shall not be applied during the period of the state of emergency in respect of public officials who have been suspended after 15 July 2016 on the ground of national security.

Postponement of bankruptcy

ARTICLE 4 - (1) During the period of state of emergency, under Article 179 of the Law on Enforcement and Bankruptcy (dated 9 June 1932 and numbered 2004), stock corporations and cooperative companies cannot file a request for the postponement of bankruptcy; requests filed to that end shall be dismissed by courts.

ARTICLE 12 - In the first paragraph of Article 10 of the Law on the Military Judges (dated 26 October 1963 and numbered 357), the expression “upon the decision on admission to profession by the Ministry of National Defence” has been added following the expression “having regard to”.

ARTICLE 13- Article 15 of the Law No. 357 has been amended as follows:

"ARTICLE 15- The procedure as to military judges' being reserved for first category and being first category shall be carried out by the Ministry of National Defence. (requirements and conditions of the procedure have been set out in the relevant paragraphs).

ARTICLE 14- Article 20 of the Law No. 357 has been amended as follows:

"ARTICLE 20- Without prejudice to the special provisions of this Law, resignations of military judges shall be accepted by the Minister of National Defence in accordance with the provisions regarding commissioned officers."

ARTICLE 15- Article 21 of the Law No. 357 has been amended as follows:

"ARTICLE 21- Regardless of their place of duty and capacity, the age limit for retirement of military judges shall be the same as that of other commissioned officers. In the event that they complete the obligatory time periods set out in the laws, military judges shall have the right to request their retirement under the specific conditions laid down in the special law. Requests for retirement shall be accepted by the Minister of National Defence.

The provisions of Additional Article 5 and Provisional Article 30 of the Law No. 926 shall be applied in respect of military judges as well.

Military judges shall continue to serve until the age limit prescribed for their respective ranks in accordance with the rules laid down in this Law and without prejudice to the provisions of the Law no. 926 on dismissal from profession, on cases of culpability which prevent being a military judge and on military judges holding the rank of general or admiral."

ARTICLE 16- Article 29 of the Law No. 357 has been amended as follows:

"ARTICLE 29- In the event that the actions of military judges do not comply with their positions and duties, the commission consisting of two first-category judges to be selected by the Minister of Defence under the presidency of the Undersecretary may impose the following disciplinary sanctions, after considering their defence submissions, on the military judges on the basis of the nature and severity of the action.

.... (Disciplinary sanctions and their requirements have been set out in the relevant paragraphs).

ARTICLE 17- Abolished Article 31 of the Law No. 357 with its heading has been amended as follows:

"Suspension from Office:

ARTICLE 31- Where it is considered that continuation of the military judge against whom an investigation is being conducted in his office would impair the proper conduct of the investigation or power and reputation of the judiciary, the Ministry of National Defence may, as an interim measure, order him to be suspended from his office or to be commissioned to another place of duty with temporary power until the investigation conducted against him is concluded.

The above-mentioned measures may be taken at any stage of the investigation and prosecution.

The provisions set out in the Law No. 926 with regard to suspension of the commissioned officers from office shall be applied in respect of those who have been suspended from their offices save for the provisions set out herein. The military judges are not to be separately suspended from office.

Suspension from office, as a requirement of disciplinary investigation, may remain in practice for three months at the most. If required by the nature of the disciplinary investigation, this period may be extended by the Ministry of National Defence for two months. If any decision is not given in respect of the relevant officer upon the expiration of these periods, he shall be allowed to resume his office.

In the event that the suspension from office is required by virtue of a criminal investigation or proceedings, the Ministry of National Defence shall examine the circumstances of the officer concerned within periods not more than two months and render a decision as to whether he would resume his office or not.

The decisions on the suspension from office shall be notified to the officer concerned.

If it is concluded at the end of the investigation that there is no need to impose a penalty of dismissal from profession or to proceed with the prosecution stage, the decision on the suspension from office shall be immediately revoked by the Ministry of National Defence.

At the end of the investigation or proceedings, the decision on the suspension from office rendered in respect of:

a) Those in respect of whom there is no need to proceed with prosecution and those who have been subject to prosecution but whose act, subject-matter of the prosecution, is not separately considered to require the penalty of dismissal from office,

b) Those on whom another disciplinary penalty has been imposed other than dismissal from office,

c) Those in respect of whom it has been decided that they would be acquitted; the criminal cases against them would be revoked for any reason whatsoever or would be discontinued or rejected; or

they would be convicted and subject to a penalty which would not require dismissal from their offices, shall be revoked without awaiting for the finalization of such decisions.

In the event that the acts, which are subject-matter of the investigation, do not impede the continuation of office, the Ministry of National Defence may at any time revoke the decision on the suspension from office or the decision on assignment to another place of duty with temporary power.”

ARTICLE 18- Of the Law No. 357

a) The expression “upon the proposal of the Presidency of General Staff”, which is specified in paragraph one of the Additional Article 3, has been abolished.

b) The expression “the command where they take office within the organization”, which is specified in paragraph one of the Additional Article 10, has been amended as “the Ministry of National Defence”.

ARTICLE 19- The following article has been added to the Law No. 357.

"ADDITIONAL ARTICLE 14- The ones in respect of whom a decree has not been issued despite completing the period of candidacy as of the publication date of this article shall be removed from office, and an action pursuant to Article 10 shall be taken in respect of them.”

ARTICLE 20- The following Provisional Articles have been added to the Law No. 357:

"PROVISIONAL ARTICLE 13- As regards the military judges who were in service on the date of entering into force of this Article, the dates of military judges’ being reserved for first category and being first category shall be re-designated by having regard to the provisions of this Law, without retracting their acquired rights and statuses and without retrospectively giving rise to financial rights and obligations.

PROVISIONAL ARTICLE 14- During the period of the state of emergency declared by the Decree-Law of the Council of Ministers, dated 20 July 2016 and numbered 2016/9064;

a) The safeguards provided for in Article 16 of the Law No. 357 shall not be taken account of when appointing military judges.

b) The procedures of dismissal from profession of the military judges who are considered to be a member of, to have connection or contact with terrorist organizations, or structures, organizations or groups which engage in activities against the national security of the State as established by the National Security Council shall be carried out in accordance with Article 3 of the Decree-Law on Measures Taken under the State of Emergency (dated 22 July 2016 and numbered 667)."

ARTICLE 42- The following provisional articles have been added to the Law No.1325.

"PROVISIONAL ARTICLE 1- Until cadres and structure of the Ministry of Defence are re-established and the necessary appointments are made within the framework of the Decree Law introducing this article and amendments made to this Law; the existing personnel working in the central and provincial cadres of the Ministry and in the units included in the cadre structure of the Ministry shall continue holding office until a new appointment is made.

PROVISIONAL ARTICLE 2- Pursuant to the Law No. 1453 on the Salaries of the Officers and Military Officers dated 18 May 1929, until actual cadres of 2017 are accepted and approved, appointments shall be made to the necessary cadres as a result of the restructuring of the organisation of the Ministry by the Decree Law introducing this article. The cadres in question shall be regarded to be created without the need of taking any other action when the appointment process is carried out. Extramural and transferal appointments to these cadres shall not be subject to the limitations prescribed in the Law on Central Administration Budget.”

ARTICLE 44- Paragraphs 2 and 3 of Article 14 of the Law No. 1602 have been amended as follows:

“Each chamber shall be composed of one president and six members. Four of the members shall be military judges and two of them shall be commissioned officers who are not military judges.

The deliberations of the chambers shall be held with the participation of five members, one of whom shall not be a judge. Decisions shall be taken by majority vote.”

ARTICLE 104- (1) War Colleges, military high schools and training schools for non-commissioned officers have been shut down. The following actions shall be taken in respect of the personnel serving in these commands:

a) Provisional Article 4 of the Law on the Organization, Duties and Powers of the Gendarmerie dated 10 March 1983 and No. 2803 and Provisional Article 7 of the Law on Coast Guard Command dated 9 July 1982 and No. 2692 shall be respectively applied to the personnel of the Gendarmerie General Command and the Coast Guard Command and their cadres.

b) Other personnel shall be appointed to the cadres available in the Turkish Armed Forces.

(2) The Law on War Colleges dated 24 May 1989 and No. 3563 has been abolished.

ARTICLE 105- (1) On the publication date of this Decree Law:

a) Cadets receiving education in the military high schools and training schools for non-commissioned officers shall be transferred by the Ministry of National Education to the schools suitable for their status by taking into consideration the secondary school placement scores obtained by them at the date when the entrance exam was held.

b) Cadets receiving education in the war academies, faculties or academies, and the vocational colleges of non-commissioned officers (including the Gendarmerie) shall be transferred by the Council of Higher Education to faculties and academies suitable for their status by taking into consideration the placement scores obtained by them at the date when the university exam was held.

c) Cadets who would be graduated as of 30 August shall not be appointed as commissioned or non-commissioned officers. These cadets shall be awarded a diploma by the appropriate faculties and academies to be designated by the Council of Higher Education on the basis of the placement scores obtained by them at the date when the university exam was held.

No compensation shall be received from those in respect of whom an action has been taken within the scope of this article.

The Council of Higher Education shall be competent and authorized to determine, to guide the implementation of the principles and procedures concerning the application of this article, and to take all measures, and to eliminate hesitations likely to occur in respect thereof.

(2) Any debt shall not be imposed, in pursuance of the relevant legislation, on the cadets who left or were dismissed from the military schools affiliated to the Turkish Armed Forces for any reason before the date when this Decree Law enters into force. The debts that have incurred shall not be collected, and actions that have been initiated shall be discontinued. The amounts previously collected from such cadets shall not be reimbursed to them.

Personnel to be transferred

ARTICLE 107- (1) the Council of Ministers is entitled to establish the procedure and principles concerning the transfer of the personnel, determined by the Commissions pursuant to Article 106, to the Turkish Armed Forces, the University of Health Sciences, other higher education institution along

with the Ministry of Health and its related institutions, and other issues concerning the transfer.

(2) The cadres to which the transferred personnel will be appointed, as created as of the appointment dates without the need of any other action, shall be regarded to be added to the departments of the related institutions in the charts annexed to the Decree Law No. 190 and the Decree Law No. 78.

(3) If the total net amount of salary, supplementary scale, all kinds of salary increase and allowance, additional payments, contract fee and other financial rights (excluding overtime payment and shift payment) received by the personnel transferred in their previous cadres and positions on the date of the transfer exceeds the total net amount of salary, supplementary scale, all kinds of salary increase and allowance and all other financial rights of the new cadres and positions to which they are transferred, including contract fee and additional payments of circulating capital, the balance shall also be paid as allowance, without being subject to any cuts, until the difference ends, as long as they continue to hold their offices in positions to which they are transferred.

(4) The personnel transferred who were subject to the Law No. 926 shall continue to be subject to the Law No. 926 in respect of promotion, salary and other financial and social rights. They shall perform their compulsory services for the Turkish Armed Forces in the institutions transferred. Promotion of these personnel shall be carried out by the Minister or the Rector according to their relevance. Their additional payments of revolving fund shall be calculated on the basis of the tax base of personnel in the same position and status in their institutions, and shall be paid following deduction of the health allowance.

(5) The salaries and payments that must be paid to the personnel transferred after the date of the transfer shall be paid by their new institutions, and settlement concerning these payments shall not be sought between institutions.

Transfer of students

ARTICLE 108- (1) Those, who receive education in the higher education institutions that are alienated under the provision in this Part, shall be transferred to the education institutions to be specified by the Council of Higher Education by having regard to their placement scores in the university entrance exam. The Council of Higher Education shall be competent and authorized to determine, to guide the implementation of the principles and procedures concerning the application of this article, and to take all measures, and to eliminate hesitations likely to occur in respect thereof.