

## **INFORMATION NOTE ON THE DECREE-LAW NO. 671 OF 17 AUGUST 2016 ON THE MEASURES TAKEN UNDER THE STATE OF EMERGENCY**

### **Aim**

The Decree-Law has been enacted under the state of emergency with a view to taking the necessary measures with respect to the attempted *coup* and the fight against terrorism, and arrangements have been made regarding some institutions and organizations.

### **Measures concerning military Jurisdiction**

In cases where the candidacy of a military judge or prosecutor has been terminated, costs and expenses will also be reclaimed with respect to the military judges who have a civilian background.

The provision which provides that the Minister of National Defence has the power to order the dismissal of military judges upon the proposal of the military justice inspector has been abolished.

### **Measures concerning academicians**

With a view to ensuring no difficulty in providing academics for some universities and strengthening the academic infrastructure, the age of retirement will be increased from 72 to 75 and that the term of this practice will be extended until 2020.

### **Measures concerning Telecommunications Communication Presidency**

The Telecommunications Communication Presidency has been closed and all of its powers have been handed over to the Information and Communication Technologies Authority (ICTA).

It has been decided that wiretapping and the processes as regards the communication via telecommunication will be concentrated in and carried out by a sole unit within the body of the ICTA.

By the amendment made to the Electronic Communication Law no. 5809, it has been provided that on one or several of the grounds (*national security, public order, prevention of crime, protection of public health and public morals, or protection of the rights and freedoms of others*) listed in Article 22 (*Freedom of communication*) of the Constitution, in cases of exigent circumstances, the Prime Ministry shall determine the measures to be taken and notify them to the ICTA for their implementation. It has also been provided that the decision which is to be notified to the operators, access providers, data centres, and content and hosting providers by the ICTA shall be implemented within two hours, that the decision shall be submitted within twenty-four hours for the approval of the magistrate judge and that where no decision shall be announced within forty-eight hours, it shall automatically be annulled.

### **Imposing injunction for compensating damages**

With a view to compensating damages suffered by natural and legal persons and public institutions and organizations on account of terror crimes (*offences against state security, offences against the constitutional order and its functioning, national defence, offences against state secrets and espionage set forth in the Turkish Criminal Code and the offences falling into the scope of the Anti-Terror Law no. 3713*), it has been enabled that restrictions as to the transfer and assignment or establishing property rights or the power of

disposition concerning the properties of **the suspects or accused**, or land, sea or air transportation vehicles may be imposed. Decision of restriction can be rendered by the magistrate judge at the investigation stage and by the court during the proceedings. In the event that the civil court does not give a decision for the continuance of the restriction within one year, the restriction shall be ipso facto lifted.

### **Arrangements concerning enforcement regime**

With respect to the offences committed before 1 July 2016 (**except for:** offences of homicide; offences of battery committed against lineal consanguine, siblings and spouses or against a person who cannot defend himself physically or mentally, as well as, aggravated battery on account of its consequences committed against again these persons; offences against sexual integrity; offences against privacy and confidentiality of life; offence of production and trade of drugs; offences against state security; offences against the constitutional order and its functioning; offences against state secret and espionage set forth in the Turkish Criminal Code; and the offences falling into the scope of the Anti-Terror law no. 3713),

- Those who served **half** of their sentence in penitentiary institutions might be released on probation.
- Concerning the convicts of good conduct who will be released on probation within **two years** or in a shorter period; the remaining part of their sentence until the date of probation might be release on parole.

### **Arrangements concerning personnel regime**

Arrangements have been made with respect to the personnel recruitment procedures in the Turkish Armed Forces and the Security Directorate. Cadre of judges and prosecutors has been created in the Ministry of Justice.

### **Assessment**

It is evident from the measures briefly explained above that with the Decree-Law no. 671 issued after declaration of state of emergency, measures have been taken for the purpose of effective fight against the Fetullahist Terrorist Organization (FETÖ) which completely infiltrated into the State's institutions and to prevent the violations of human rights.

There have been arrangements as regards the measures to be taken and the sanctions to be imposed by the Communication Technologies Authority and the powers granted to the relevant Authority. As a result of this arrangement, the provisions set forth in the Law no. 5651, which govern the procedure for restriction of internet, shall also be applied in respect of other means of communication, but by order of the Prime-Ministry. On the other hand, the Communication Technologies Authority can take any necessary measure or have them taken by the institutions in order to ensure that the public institutions and natural and legal persons be protected against cyber-attacks and to promote deterrence from these attacks.

By the arrangement made in accordance with the Decree-Law, terms and conditions of parole and probation have been eased. Thus, overpopulation of detainees/convicts in penitentiary institutions will be avoided. In this respect, it has been planned that the human rights violations in places where freedom is restricted will be prevented.

There have also been arrangements as regards the imposition of injunction, with the decision of judge, on the assets of the persons suspected or accused of the terror crimes listed

in the Turkish Criminal Code and the Anti-Terror Law. The aim is to compensate the damage given by the plotters to public and private assets. Thus, within the framework of protecting the rights of those who suffered damage and in the context of the State's fulfilling its positive obligations, the right to property may be restricted within the limits of the provisions of international conventions.

The rule of law, democracy and human rights are fundamental principles of the State of the Republic of Turkey. The Turkish Government upholds the rule of law even in the fight against the terrorist coup attempt.