



**Human Rights Violations
Against Military Personnel
In Turkey**

27 June 2017

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1 Preface¹

On the night of July 15, 2016, elements of Turkish Military showed up on the streets, F-16s flew low and fast over Ankara and Istanbul, tanks blocked the bridges over the Bosphorus. It was a chaos rather than anything else. The publicized purposes of the dissenters were to overthrow the Government, realign the administration with the constitutional norms, and revive the democratic values, which are owed to the founder of the country-ATATURK. The chaos resulted in hundreds of lives lost and thousands of people wounded. The aftermath was even much worse.

On July 20th, Erdogan declared the State of Emergency and expanded the authorities of police and judiciary extremely. Later the State of Emergency was extended three times until 20 July 2017.² It looks like Erdogan would like to prolong it as long as possible. The reason is clear. The State of Emergency grants Erdogan and his Government extreme and unbounded power in ruling the country by decrees and removing the opponents. It is an essential tool to bypass the Parliament and the Constitutional Court. The measures adopted by the Government against the alleged coup ironically worked against the democracy itself. The practices seriously undermined the rule of law, the human rights, and the fundamental freedoms in the country.

The Government has not been eager to uncloak how the attempted coup took place. The parliamentary commission, which was established to investigate the coup attempt, was prevented from conducting a thorough probe when its work was abruptly stopped by the votes of ruling Justice and Development Party (AKP) lawmakers. The commission, controlled by the AKP majority, heard neither the suspects, accused of taking part in the coup or summon, nor key Government officials, including President Erdogan, intelligence chief Hakan Fidan and Chief of Turkish Military Gen. Hulusi Akar. These indications and inconsistencies in the coup trials suggest that the coup attempt has been either staged or controlled by Erdogan to set up his critics for mass persecution.

During the state of emergency, the Government has adopted numerous emergency state decrees, which are clearly in violation of basic human rights as indicated throughout the paper.

¹ The Authors of the study are several Turkish Government officials who were outside Turkey on 15 July 2016. The Government ousted them without any rationale; despite they had no role in planning or execution of the events. They firmly believe in democratic values and condemn any coup against a democratic government. The Authors cannot return to Turkey because of their lack of confidence in the severely degraded Turkish judicial system and prefer to stay anonymous for the safety of their families and the loved ones.

² The dates of the state of emergencies are 5 October 2016, 4 January 2017, and 19 April 2017 respectively. Each of them extended the state of emergency for three-month periods. The State of Emergency allows the Council of Ministers, which is led by the president, to pass decrees that have the force of law.

The Government interpreted its extraordinary powers too extensively and, took measures that went beyond what is permitted by the Turkish Constitution and by the international law. Erdogan's crackdown was devastating. It resulted in 138,148 sacked public servants, 102,258 detained citizens, and 50,889 arrested suspects. More than 8,271 academicians, 4,424 judges/prosecutors³, 160 Generals⁴, 10,017 elite military officers and 16,409 military cadets were purged. Turkey became world leader in imprisoning journalists⁵. 234 journalists were jailed and 149 media outlets were closed⁶.

Following the alleged coup attempt, the Anadolu Agency (official government news agency) and official television station TRT released images of torture.⁷ Similarly, torture and persecution in prisons have become widespread that were proved by the reports of the Human Rights Watch⁸ and Amnesty International⁹, which then invited Turkey to revoke the state of emergency rules.¹⁰ Numerous provisions in Turkey's emergency decree-laws have suspended key safeguards that protect detainees from torture and other ill-treatment.



Unfortunately, there are no effective remedies for these victims, including reparation for harm suffered. It is almost impossible to seek a remedy in Turkish courts, including the Constitutional Court, which has a mandate to hear individual complaints of fundamental rights violations. The Government has also deliberately made it very difficult, if not impossible, to

³ This number reflects around one-third of total number of judges and prosecutors in Turkish judicial system

⁴ Around 360 Generals exist in the Turkish Military.

⁵ from <http://tutuklugazeteciler.blogspot.de/>

⁶ Figures from <http://turkeypurge.com/>, as of 3 June 2017

⁷ <https://www.youtube.com/watch?v=FJgFlwztnio>

⁸ <https://www.hrw.org/world-report/2017/country-chapters/turkey>

⁹ <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/>

¹⁰ Human Rights Watch, "A Blank Check- Turkey Post-Coup Suspensions of Safeguard Against Torture," (The US, 2016); Amnesty International, "Independent monitors must be allowed to access detainees amid torture allegations," (2016), <https://www.amnesty.org/en/latest/news/2016/07/turkey-independent-monitors-must-be-allowed-to-access-detainees-amid-torture-allegations/>

exhaust domestic remedies by slowing down the process, suspending applications to judicial and administrative bodies, and simply letting pending cases linger indefinitely. Recently, Turkish Government released a new decree (Emergency Decree 690, art 56), declaring that all applications to any courts should be decided as “No place to rule on” and should be sent to the commission which members were appointed on May 15, 2017.

Many, who could not return or had to flee Turkey to avoid persecution and wrongful detention, have no access to the Turkish justice system to file motions through powers of attorney because Turkish consular services refuse to grant such documents.

The European Court of Human Rights [Hereinafter: ECtHR], whose judgments are binding Turkey, has so far rejected several complaints from Turkish applicants (Mercan vs. Turkey and Zihni vs. Turkey), citing non-exhaustion of domestic remedies. However, the case law of the ECtHR shows that the court can make an exception when it determines that domestic remedies are ineffective or if it would be too dangerous or not feasible for other reasons for victims to first apply to domestic courts.¹¹

Thousands of military personnel are suffering numerous human right violations. This article attempts to address these human rights abuses.

¹¹The case of Chiragov and Others v. Armenia (2015, 16 June) [http://hudoc.echr.coe.int/eng#{"fulltext":\["Chiragov%20judgment"\],"documentcollectionid":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-155353"\]}](http://hudoc.echr.coe.int/eng#{).

2 International Human Rights Conventions and Turkey

Although human rights are addressed through different international and regional conventions, we will benefit from the Universal Declaration of Human Rights [hereinafter: UDHR], European Convention on Human Rights [hereinafter: ECHR], International Covenant on Civil and Political Rights [hereinafter: ICCPR], and the International Covenant on Economic, Social and Cultural Rights [ICESCR].

On 22 July 2016, Turkey said that it would derogate from the ECHR without specifying which rights were referred to¹² and on 2 August 2016 that they would derogate from 13 articles of the ICCPR including those relating to humane treatment of detainees, the right to remedy, rights to liberty and security, fair trial and privacy. However, the Human Rights Committee indicated that human treatment of detainees (Article 10, ICCPR) and the right to remedy (Article 2(3)) cannot be derogated in any circumstances.¹³

Furthermore, according to ICCPR Article 4(2), with regard to following rights and prohibitions, no derogation is permitted even during times of public emergencies: the right to life, the prohibition of torture or cruel, inhuman, or degrading treatment or punishment, the prohibition of slavery, the prohibition of imprisonment because of inability to fulfill a contractual obligation, the principle of legality in criminal law, the recognition of everyone as a person before the law, and the freedom of thought, conscience, and religion.¹⁴ Article 15(2) of the Turkish Constitution contains a list of non-derogable rights, which apply even during public emergencies:

Even under the circumstances described in the first paragraph [in times of war, mobilization, martial law, or a state of emergency], the individual's right to life, and the integrity of his body and mind shall be inviolable except where death occurs through acts in compliance with the law of warfare; no-one shall be compelled to reveal his/her religion, conscience, thoughts or opinions or be accused on account of them; offences and penalties shall not be made retroactive, nor shall anyone be held guilty until so proven by a court ruling.

¹² Notification JJ8187C Tr./005-191, dated July 22, 2016, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2929966&SecMode=1&DocId=2380676&Usage=2>

¹³ See Human Rights Committee, General Comment No. 29, paras 13 (a) and 14, CCPR/C/21/Rev.1/Add.11, August 31, 2001, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno

¹⁴ Theo Van Boven, "Categories of Rights," in *International Human Rights Law*, ed. Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (Oxford: Oxford University Press, 2014), p. 150. ICCPR Article 4.

The first paragraph of the same article also points out that any derogation measure can only be to the 'extent required by the exigencies of the 'situation', so that the principles of necessity and proportionality apply even during emergency regimes, and that measures taken must be in conformity with Turkey's international obligations.

a. Right to Life

Every human being has the right to life. This fundamental right is enshrined in UDHR Article 3, ECHR Article 1 and ICCPR Article 6. States are under obligation to initiate an investigation of unlawful killings.

Since the coup attempt, at least 54 people were found dead in custody and in prisons or died after being released due to previous ill-treatment. According to ECtHR, States are under positive obligation to initiate an effective investigation against these suspicious killings. However, the Government did not initiate effective investigations into those murders and simply named them as "suicides".

For example, İrfan Kizilarслан, a colonel who was the head of the Kastamonu Gendarmerie Regional Command, was arrested on July 17 as part of an investigation into the coup attempt. It was stated that Kizilarслан, who was subsequently dismissed from the Turkish Military, allegedly committed suicide, using shoestrings, in his prison ward. An investigation was opened since security precautions are very strict in prison and shoestrings are forbidden there. However, the fate of the investigation is not known.



The Government is planning to reinstate the death penalty after the coup attempt. Turkey removed the death penalty from its constitution on May 7, 2004. On October 6, 2005, Turkey ratified the ECHR Protocol No.13 concerning the abolition of death penalty in all circumstances. According to Article 15 of the ECHR, there can be no derogation from Article 1 of Protocol No. 6 (abolishing the death penalty in peacetime) to the Convention, Article 1 of

Protocol No. 13 (abolishing the death penalty in all circumstances) to the Convention.¹⁵ Therefore, taking death penalty back will be a violation of international obligations.

States are under an obligation not to extradite people to a state where the death penalty is in effect. In the *Al-Saadoon and Mufdhi v. the United Kingdom*, 2 March 2010 (judgment), two Iraqi nationals who were Sunni Muslims, were accused of involvement in the murder of two British soldiers shortly after the invasion of Iraq in 2003. They complained that their transfer by the British authorities into Iraqi custody, put them at real risk of execution by hanging. The ECtHR found that there had been a violation of Article 3 of the Convention and that it was not necessary to decide whether there had been violations of Article 2 of the Convention or Article 1 of Protocol No. 13. As regards the latter, it took the view that “in respect of those States which [were] bound by it, the right under Article 1 of Protocol No. 13 not to be subjected to the death penalty, which admit[ted] of no derogation and applie[d] in all circumstances, rank[ed] along with the rights in Articles 2 and 3 as a fundamental right, enshrining one of the basic values of the democratic societies making up the Council of Europe” (paragraph 118 of the judgment).

Turkey’s Economy Minister Nihat Zeybekci has said that the ruling AKP Government would punish the plotters of the recent failed military coup attempt so severely that they would beg for death. “We will put them into such holes [jails] for punishment that they won’t even be able to see the sun of God as long as they breathe. They will not see the light of day. They will not hear a human voice. They will beg for death, saying ‘Just kill us...’ This [capital punishment] is what I also want from my heart. But never forget that even if we execute them all, I would not feel avenged.”¹⁶

b. Prohibition of Torture

Torture directly targets the core of human personality and dignity, and throughout history has created one of the more savage human rights violations. According to UDHR Article 5, “no-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁷ The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was specifically adopted to protect people from torture and ill-

¹⁵ ECtHR, “Derogation in time of emergency,” *Factsheet, Press Unit* (2017), accessed May 2, 2017, http://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf.

¹⁶ “Economy minister says gov’t will make coup plotters beg for death,” *Turkish Minute*, August 1, 2016, <https://www.turkishminute.com/2016/08/01/economy-minister-says-govt-will-make-coup-plotters-beg-for-death/>.

¹⁷ See also ECHR Article 3, ICCPR Article 7.

treatment.¹⁸ Prohibition of torture is a non-derogable right and may not be committed even in time of war or public emergency.¹⁹ Turkey considers ill-treatment and torture to be serious crimes, according to articles in its own Constitution as well as provisions of the Turkish Penal Code.²⁰

In a very troubling provision, emergency decree no. 667, Article 9 states, “individuals who make decisions and perform their duty in the context of this decree bear no legal, administrative, financial or criminal responsibility for those duties performed.” This sends a clear signal to police officers and other officials that they can abuse detainees and violate their rights without fear of legal or other consequences. It also is a clear breach of Turkey’s non-derogable duty under international law to prevent and punish acts of torture and ill-treatment. Mehmet Metiner, the head of the Prison Subcommittee of the Human Rights Investigation Commission in Parliament, officially announced that they would not investigate allegations of torture of those arrested for the alleged coup attempt.²¹ The statement of the AKP’s former Sakarya Deputy Ali Inci address to the alleged coup plotters clearly shows that the Government is motivated by vengeful emotions and is completely setting aside a fair judicial process; “I have some advice for you. You’d better commit suicide before we hang you”.²²

Also, Trabzon Office of Chief Public Prosecutor decided “non-prosecution of torture allegations” on 05 Jan 2017.²³ There are numerous incidents that prove systematic torture is taking place in Turkey after the attempted coup.

¹⁸ Adopted 10 December 1984, entered into force 26 June 1987, 1465 UNTS 85.

¹⁹*Ireland v. the United Kingdom*, judgment of 18 January 1978, § 163; *Soering v. the United Kingdom*, judgment of 7 July 1989, § 88; *Chahal v. the United Kingdom*, judgment of 15 November 1996, § 79; *Saadi v. Italy*, judgment (Grand Chamber) of 28 February 2008, § 127; *El-Masri v. “The former Yugoslav Republic of Macedonia”*, judgment (Grand Chamber) of 13 December 2012, § 195; *Al Nashiri v. Poland*, judgment of 24 July 2014, § 507.

²⁰ In Articles 94 and 95 of the Turkish Penal Code, torture and persecution are clearly regarded as crimes against humanity. The crime of torture in the Turkish Penal Code requires punishment of up to 12 years’ imprisonment with minimum sentencing set at three years. If the offense is committed against a child, pregnant woman, lawyer or another public official, the punishment changes to an 8 to 15-year sentence, and if it is sexual harassment then punishment becomes a 10 to 15-year sentence. The law says, “Those who participate in the crime are punished as those who commit the crime.” The penal provision for the crime of torture resulting in death is aggravated life imprisonment.

²¹ Stockholm Center for Freedom, “Suspicious deaths and suicides in Turkey,” March 2017, http://stockholmcf.org/wp-content/uploads/2017/03/Suspicious-Deaths-And-Suicides-In-Turkey_22.03.2017.pdf

²² *Ibid.*

²³ Trabzon Office of Chief Public Prosecutor, Prosecution No: 2016/15056, Decision No:2017/123.

Incidents



Torture is corroborated images and videos published online after the coup attempt. For example; one video released on YouTube on July 18²⁴ shows dozens of soldiers and officers sitting on the floor of what appears to be a sports hall with their hands tied behind their backs. A pro-Government officer, whose name is given in the description of the video, hits one of the detainees in the head with his gun. In September 2016 Hurriyet Daily News reported, “Notorious former prison torture methods have reemerged during the state of emergency declared after the July 15 failed coup attempt.”



²⁴ https://www.youtube.com/watch?v=yCNhcov_EfA

In one incident, a lawyer who was assigned a high-ranking officer as a client in the first few days after the coup attempt told HRW that when she first saw her client at Ankara Security Directorate headquarters, he had marks and injuries on his forehead and neck, scratches on his arms, bruises from handcuffs and scratches and bruises on the top of his feet. She said he also had a wound on his leg that looked like a piece of flesh was missing. The lawyer's request to have a private meeting with her client was denied, a copy of the medical report was not provided and police threatened the lawyer with detention as well. The client told the court how he was tortured while in custody before the judge ruled to arrest him formally. Police whispered to a judge as the hearing was in progress and threatened the lawyer with arrest during a break.

Detainees are forced to give statements under torture. In the court proceedings, most of them rejected their testimonies which they gave during detention because they said they were forced to give testimony under torture. On the right is the Aide de Camp to Chief of the Turkish General Staff after his forced testimony at the Police.



Inmates are prevented from getting proper medical examinations. When they have taken to the hospital, they are just made wait outside the hospital and the police went into the hospital to collect medical report.

According to the Istanbul Protocol, an internationally recognized set of guidelines for the documentation of torture, medical personnel should examine detainees in private and police and law enforcement officials should never be present in the examination room. Lawyers and doctors told to human rights organizations that police sometimes insisted during the examinations and often remained during the examination.

States are also under a positive obligation to prevent torture by civilians. If torture incident is reported, governments are under obligation to initiate an effective investigation into the situation.²⁵ Ironically, this rule was adopted in Istanbul, by the 2000 Principles on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading

²⁵ Nigel S. Rodley, "Integrity of the Person," in *International Human Rights Law*, ed. Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (Oxford: Oxford University Press, 2014), p. 174.

Treatment or Punishment. Similarly, CAT Article 7 states this rule. However, the Government did not initiate any investigation against lynching and severe beatings of soldiers and high-ranking generals.

At a particular incident, two Air Force Academy cadets (Murat Tekin and Ragip Enes Katran) and four young conscript soldiers were brutally beaten and stabbed to death on 16 July 2016 at the Bosphorus Bridge. Murat's sister, after having seen her brother's corpse at the morgue, told that Murat's throat was slit by the angry mob. Her account was also backed up by the autopsy report. The Government has not initiated any investigation into the brutal killings of the cadets and the soldiers.



ICCPR Article 10(1) provides that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of human person.” This article is treated as linked to Article 7, which prohibits torture and ill-treatment.²⁶ After detention phase, governments must prevent the existence of overcrowded prisons and limit time spent in cells.²⁷ It is reported that overcrowding in prisons has become widespread. Thus, physical and hygiene conditions in prisons are inadequate. Prisons are lacking access to adequate health care, potable waters, proper heating, and ventilation.

The Turkish Government is seeking from foreign states extradition of Turkish military officers assigned to abroad duties before the July 15th. States are required not to deport or send a person to a State where he or she will be subjected to the torture.²⁸ ECHR, in the 1996 *Chahal v UK*, said a Sikh victim of torture could not be deported to India even on national security grounds.²⁹

c. Right to Liberty and Security and Right to a Fair Trial

Right to Liberty

UDHR Article 9 prohibits arbitrary arrest, detention or exile. ICCPR Article 9 states, “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest and detention.” A deprivation of liberty must be based on legal grounds, which must be stipulated in the domestic law of the State. General Comment No. 29 by the Human Rights Committee states that regarding the derogations from ICCPR art. 9 (liberty);

The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party’s decision to derogate from the Covenant.

Thousands of military personnel were arrested even though they had no complicity in the

²⁶ Nigel S. Rodley, “Integrity of the Person,” p. 174.

²⁷ Ibid. p. 182.

²⁸ CAT Article 3 reads “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

²⁹ Rodley, p. 183, citing to *Chahal v UK* (1997), 23 EHRR 413.

attempted coup. The Government has not presented any concrete evidence against these charges and these charges against military personnel are without any individualized evidence or any individualized evidence of involvement in a criminal act.

Individuals do not lose their human rights because of detention.³⁰ Moreover, States are under a positive obligation to provide some specific right to detainees such as the right to be informed of reasons for detention,³¹ the right to humane treatment,³² the right to challenge the legality of detention to a court of law.³³ Detainees or arrested individuals must be brought promptly before a judge to control legality of detention or arrest.³⁴ During the state of emergency, the Turkish authorities have abused emergency provisions to stifle dissent, through the detention of large numbers of individuals, including both real and perceived critics of the Government and others. The emergency decree-laws extended police detention periods from four days to 30 days without any judicial review.³⁵ The ECtHR indicated that during a state of emergency, police detention without judicial review for 14 days violated the state's human rights obligations under the Convention.³⁶ The extended detention periods up to 30 days, allowed by the decree law, rendered detainees vulnerable to abuse and that police had in some cases explicitly.

Right to Fair Trial

UDHR Article 10 provides that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” The right to a fair trial is also elaborated in ICCPR Article 14 and ECHR Article 6. All human rights bodies accepted that everyone has a right to access courts of the first instance, while it is not explicitly addressed in fair trial provisions.³⁷

Courts must be independent and impartial. They must be independent of the executive and the parties to a dispute.³⁸ Regarding impartiality, judges must act without any personal

³⁰ Sangeeta Shah, “Detention and Trial,” note 7 above, p. 265.

³¹ ICCPR Article 9(2), ECHR Article 5(2).

³² ICCPR Article 10(1).

³³ ICCPR Article 9(4), ECHR Article 5(4).

³⁴ ICCPR Article 9(3), ECHR Article 5(3).

³⁵ Decree Law 667, Article 6 (a).

³⁶ *Aksoy v. Turkey*, Application No. 21987/93, judgment December 18, 1996, paras. 78, 86.

³⁷ Shah, note 22 above, p. 273.

³⁸ Shah, p. 275.

bias both parties, “they must not harbor preconceptions about the action before them and must remain uninfluenced by the media and public perception.”³⁹

Accusations prepared by prosecutors in Turkey often lack any evidence to support serious charges leveled against suspects. The judges and prosecutors just toe the Government line as they are afraid of being dismissed and arrested on trumped-up charges, as happened in the case of over 4,424 judges and prosecutors who were dismissed and arrested and whose assets were frozen.

Rights and principles of defendants in criminal trials include the presumption of innocence, freedom from self-incrimination, right to be informed of the charge immediately, right to an adequate defense, right to an effective remedy, no punishment without law. UDHR Article 11(2) says “no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.” This right is referred to as the “no punishment without law.”⁴⁰

Detainees and inmates are devoid of right to an adequate defense. According to decree-laws, when arrested, a person can be prohibited from seeing his/her lawyer for six months. Moreover, he or she also could be banned from hiring their lawyer of choice by the authorities. Thus, the freedom of suspects/inmates to choose their lawyers is restricted. The requirement for the reading of the indictments in court has been abolished. Thus, defendants have been deprived of their right to learn about the charges leveled against them even in court. For example, during a hearing in a trial with 270 defendants held on Jan. 31, 2017 in Izmir, some defendants indicated that they were not given the indictment in advance and in response, the presiding judge read out the 14-page summary of the 1,300-page indictment.

Detainees and inmates have a problem to hire an experienced and qualified lawyer to represent them. Delivering a speech during a ceremony, the chairmanship of the Istanbul Bar Association, Umit Kocasakal said, “they asked us to send lawyers, but we didn’t send them. ‘Do you think we are fools?’ we told them.”⁴¹ These remarks by an outgoing head of the world’s largest bar association with 26,000 lawyers came as a shock to many.⁴² These developments

³⁹ Ibid.

⁴⁰ See also ECHR Article 7.

⁴¹ Stockholm Center for Freedom, “Turkey’s descent into arbitrariness-the end of rule of law,” (April 2017) p. 6.

⁴² Ibid.

should be registered as concrete evidence for the elimination of the right to a defense to a great extent.⁴³ A significant number of the lawyers, who the bar associations are legally required to appoint, are withdrawn, leaving defendants without representation in trials. This move is attributable partly to ideological barriers and partly to pressure. The appointed lawyers are generally inexperienced and are vulnerable to pressure and manipulation. On May 16, 2017, Safak Pavey, a deputy from the Main Opposition Party, indicated that none of the Air Force officers (intern-pilots), jailed in Sincan Prison, has a lawyer to represent them.⁴⁴

Most worrisome of all is the existence of lawyers, who are appointed by pro-Government bars and do not work for their clients but against them. Many victims, who believe their lawyers have filed an individual application to the Constitutional Court on their behalf, get a rude awakening after learning that their lawyers haven't even made the application within the legally allotted time. The victims, who ask their lawyers to present their petitions and associated receipts, are put off and made to lose time. In many cases, where victims of human rights violations are unable to find lawyers to represent them, a chance to apply to the Constitutional Court or other courts in Turkey remains a mirage.

According to the new decree-laws, there is no longer privacy during meetings between lawyers and their clients. The authorities are allowed to record the meetings and ensure that an official attends them. Limitations on meeting times and periods have been introduced. The authorities have been permitted to block any exchange of documents and seize them. The authorities may prohibit prisoners from having with the lawyers they choose. Lawyers, who are being investigated or prosecuted, may be banned from defending their clients.

The pro-Government, radical and aggressive AKP supporters are deliberately allowed to sit among the audience in the many courts, which handle 15 July cases. During the court sessions, they insult and intimidate not only the defendants, but also their lawyers and the families of the defendants. The families of defendants refrain from attending the courts due to fear of offense and aggression. The lawyers of defendants are intimidated by these aggressive AKP supporters and bullied to quit defending soldiers, taking advantage of the lack of no decisive intervention by the judicial and police authorities.

⁴³ Ibid.

⁴⁴Şafak Pavey, "Cezaevi artık 'eza' evi," *Cumhuriyet*, May 17, 2017, http://www.cumhuriyet.com.tr/koseyazisi/741499/Cezaevi_artik_eza_evi.html.

Recently, the alleged coup trials started with a show of inhumanity by the Government. The defendants were booed by the crowd outside the purpose-built court, designed for mass trials.⁴⁵ Furious protesters, organized by the ruling AKP party, demanded the death penalty outside the court and flung nooses at the defendants as they were marched into the building handcuffed and held by the security forces.⁴⁶



President Recep Tayyip Erdogan incites publicly hatred against people who are arrested after the attempted coup. He said in a public speech on June 07, 2017 that if people affiliated with Turkey’s Gulen movement are released from prison after completing their prison terms, the Turkish public will “punish them in the streets”, underlining that he has been closely watching coup trials on a daily basis, Erdogan said in his speech: “If they [arrested military personnel] are released after completing their prison sentences, every time they see them in the streets, my people will punish them. They will spit in their faces. And they [arrested military personnel] are going to drown in my people’s spittle.”⁴⁷

⁴⁵ <http://www.bbc.com/news/world-europe-39998049>

⁴⁶ <https://www.euractiv.com/section/freedom-of-thought/news/tense-trial-opens-of-alleged-turkey-coup-ringleaders/>

⁴⁷ “Erdogan says people will punish Gulen followers in the Streets if they ever get out of jail,” Turkish Minute, June 8, 2017, <https://www.turkishminute.com/2017/06/08/erdogan-says-people-will-punish-gulen-followers-in-the-streets-if-they-ever-get-out-of-jail/>.

Dismissals under Decree-Laws

The Government has purged approximately 140,000 government employees without any effective administrative investigation or judicial probe. Although the number of professional military personnel involved in the events is around 2,000, the Government has dismissed more than 10,000 military personnel without any administrative investigation. No right to defense has been offered for the dismissals. Basic rights of administrative due process of the public servants have not been respected. In addition, thousands of military professionals have been forced to resign and retire early.

In contemporary law and the Turkish constitution, all acts and actions of the executive are subject to judicial review. The Constitutional Court refused to handle the acts related to decree-laws by saying it has no mandate to review them. This has adversely affected the administrative courts as well. Hence, it is highly unlikely for any judicial organization to accept reviewing acts carried out under decree- laws. Furthermore, Emergency Decree Law No. 690 prohibited jurisdictions of courts over dismissals by deferring all the applications to the State of Emergency Commission. Ironically, the commission was established on 15 May 2017 although, on 23 January 2017, the Decree-Law No. 685 had mandated the formation of the commission in one month. Furthermore, the structure of the commission lacks both the independence and the capacity to make the mechanism effective. Of the seven members of the commission, three are chosen by the Office of the Prime Minister, two by the Ministries of Justice and Interior and two by the High Council of Judges and Prosecutors (HSYK, the highest judicial body) - all institutions that were responsible for initial dismissal decisions⁴⁸. The commission will have to take hundreds of decisions per day during their proposed two-year mandate.⁴⁹ The ability of individuals to bring a case before the commission practically does not exist because of the fact that they will not be able to see the evidence, which was the basis for their dismissal and expulsion and thus will not be able to mount an effective defense.⁵⁰

The Turkish Military did not present any legal grounds for the dismissal. For example, a military person posted to a NATO base was first suspended from the duty without any explanation after the coup attempt. Then the personnel were sacked from service without any legal ground.

Similarly, emergency decree-laws suspended thousands of officers on the ground of suspected links to "terrorist organizations and structures presenting a threat to national

⁴⁸ Amnesty International, "No End in Sight, Purged Public Sector Workers Denied a Future in Turkey" (Amnesty International, 2017), p. 18.

⁴⁹ Ibid., p. 18.

⁵⁰ Ibid., p. 18.

security" without individualization or presenting any evidence that these personnel have committed any criminal act or any disciplinary crime. The concept of "suspected links to terrorist organizations and structures" was vaguely and loosely defined and did not require a meaningful connection with such organizations." The purge of 50,000 people almost in 2 days after the coup attempt is a clear indication of that these dismissals were based on previous illegal listings.

Indeed, the purge lists of thousands of innocent government officials and military personnel had been prepared by Erdogan's affiliates, long before 15 July 2016. For example, the ultra-nationalist Patriotic Party leader Dogu Perincek openly verified this at different occasions, stating that the purge lists were prepared by his supporters in the Military⁵¹. Erdogan's and Perincek's retired and active-duty military affiliates presumed that all the generals and high-ranking officers, who were not tried at the earlier Ergenekon and Balyoz trials, are most probably Gulenists and must be purged. Col Mustafa ONSSEL's talk on pro-Erdogan TV Haberturk was a real confession.⁵²

A dismissed soldier talked to Amnesty International as follows:

I was a soldier fighting terrorism, going on operations in the mountains, not sleeping in a proper bed, not eating good food or drinking clean water. I have seen friends die. I was doing a job that nobody wanted to do but I was regarded as a hero by society. Now I'm seen as a terrorist and a traitor. A soldier friend of mine was injured when we were terror attacked. He was off work for seven months, he nearly died. He was dismissed one month after returning to work.⁵³

Decree-laws also provided additional sanctions to discharged personnel including a life-long ban from working in the public sector (which includes the practice of law) and private security companies, annulment of passports, swift eviction from staff housing and the annulment of rental agreements between these persons and public or semi-public bodies.

Defendants' family members, who are not under investigation, were also subject to numerous sanctions, including evictions, termination of lease agreements, freezing of assets, annulment of passports. Many spouses have been arrested based on fake evidence and charges. Wives of Turkish military officers reveal how they were subjected to torture and abuse while they were under detention and how the ill-treatment later continued in prison

⁵¹ <https://www.youtube.com/watch?v=-MVsf2O5IIA>

⁵² https://www.youtube.com/watch?v=n-IGieQI_QI

⁵³ Amnesty International, *Ibid*, P. 13.

cells.⁵⁴

Amnesty International's report summarizes the case well:

The mass dismissals have been carried out arbitrarily on the basis of vague and generalized grounds of “connections to terrorist organizations”. Dismissed public sector workers have not been given reasons for their dismissal nor do they have an effective means to challenge the decisions. Not just summarily dismissed from their jobs, they have also been expelled from all forms of public service, meaning that many cannot continue their careers or maintain a livelihood without support from friends and relatives. With their passports canceled by the authorities, they cannot seek work abroad either.⁵⁷

d. Freedom of Thought and Freedom of Expression

Freedom of thought comprises freedom of conscience, religion or belief, which is protected under UDHR Article 18 and ICCPR Article 18.⁵⁸ ECHR Article 9 states that;

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

UDHR Article 19 and ICCPR Articles 19 and 20 provide the right to freedom of opinion and expression. Similarly, ECHR Article 10 provides that;

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may

⁵⁴ <http://stockholmcf.org/detained-wives-of-turkish-officers-subjected-to-abuse-letter-reveals/>

⁵⁷ Amnesty International, *Ibid*, p. 24.

⁵⁸ Kevin Boyle and Sangeeta Shah, “Thought, Expression, Association and Assembly,” in note 7 above, p. 218.

be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Accordingly, “no one can be forced to think in a particular way. Nor should anyone suffer prejudice, discrimination, or repression because of their views or opinions.”⁵⁹ Freedom of thought, conscience, and religion may not be derogated in times of emergency.

A scholar noted with regard to the dismissals: “The Turkish President has stated that the state of emergency has the sole purpose of combating terrorism, but the Turkish authorities have adopted an over-broad definition of terrorism, and emergency measures are therefore being used to fight against opposition groups. As a result, thousands of public officials were arrested during the state of emergency on charges related to supporting the terrorist organization. The measures taken under the state of emergency have prepared the ground to suppress the right to freedom of thought and expression. It is very clear that the Turkish authorities, by defining “criticizing the government’s policies” and “clarification of opposing views” as terrorist acts, have moved away from the main objective of the ongoing state of emergency in Turkey.”⁶⁰ The conduct of the Turkish authorities towards a large segment of society represents a restriction of democracy and freedom of expression.⁶¹

Amnesty International indicated: “State-sanctioned dismissals based on perceived or actual political affiliation violate the right to non-discrimination protected by Article 26 of the International Covenant on Civil and Political Rights (ICCPR) to which Turkey is a party.”⁶²

⁵⁹ Boyle and Shah, note 7 above, p. 226.

⁶⁰ Saeed Bagheri, “Derogating from Fundamental Human Rights under the Turkish State of Emergency” (OHRH Blog, 24 March 2017) <http://ohrh.law.ox.ac.uk/derogating-from-fundamental-human-rights-under-the-turkish-state-of-emergency/>, accessed March 25, 2017.

⁶¹ *Ibid.*

⁶² Amnesty International, *Ibid.*, p. 19.

e. The Right to Privacy

The right of privacy protects one's family life, his home, and his correspondence. Interferences with one of the rights protected by article 8(1) ECHR can only be justified if they are necessary for a democratic society.⁶³ This means that the interference has to respond to a pressing social need. According to Article 8(2) of the ECHR;

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

A military personnel deployed abroad, said after his dismissal, the police raided his parents' house twice and asked for him. The police did a search of the house, seized the cell phones and computer, and abused the parents with inhuman conduct and ill-treatment. In one case, the parents of a military person asked the police to show the search warrant and explain reasons for the search. The police responded, "If you don't want to be arrested, shut up."

Arrestees of alleged Coup attempted in Silivri Prison are prohibited from communicating with their families via postal services or phones. The arrestees of other crimes, on the other hand, face no prohibition.⁶⁴ ECtHR ruled that stopping prisoners' correspondence interferes with the right to privacy.⁶⁵ Similarly, in *Golder v. the United Kingdom*, ECtHR concluded that the decision to prevent the prisoner from corresponding with his legal advisor violated Article 8 of the ECHR.⁶⁶

The Government publishes the names of dismissed public officials in emergency decree-laws, tagging them as affiliates of a terrorist organization. This is another violation of the right of privacy.

⁶³ UDHR Article 12, ICCPR Article 17.

⁶⁴ <http://t24.com.tr/haber/silivri-cezaevinden-mektup-gondermek-yasaklandi,365614>.

⁶⁵ *Campbell & Fell v. the United Kingdom*, judgment of 28 June 1984.

⁶⁶ *Golder v. the United Kingdom*, judgment of 17 June 1971.

f. Equality and Non-Discrimination

All human rights treaties guarantee the right to equality and prohibit any form of discrimination.⁶⁷ Therefore, any human being is given to a set of rights regardless of his/her status, race, color, sex, religion, political opinion or membership of a particular group. Similarly, states have an obligation to prevent any discrimination such as employment, education, healthcare, and housing.⁶⁸

According to emergency decree-laws, discharged public officials are prohibited from taking any government jobs. It is reported that the families of some of the arrested or discharged military personnel are prevented from government benefits. For example, children of some of the arrested military personnel were prevented from registering any school for a period of time. All children have a right to access education without discrimination.

g. Freedom to Move and the Right to Seek a Safe Place

Article 13 of the UDHR provides, “Everyone has the right to freedom of movement and residence within the borders of each State... Everyone has the right to leave any country, including his own and to return to his country.”⁶⁹

Dismissed personnel are not able to find a job since no one wants to hire them because of the Government pressure and of the act of branding them as “terrorists” with the lists in the decrees. The country is an open prison for these people. They are also subject to public hatred because dismissals with decree-laws cause stigmatization. On the other hand, emergency decree-laws dictate annulment of their passports. Therefore, these personnel are not able to leave the country to find a safe place. In one case, the Government prevented the wife of a dismissed military person abroad from leaving Turkey, although she was not subject to any investigation by the Government. The Government is carrying out this kind of illegal behaviors against dismissed public officials or opponents as a punishment without any trial.

Turkish consulates and embassies seized passports of some of the military personnel abroad. These personnel are left without valid passports and unable to obtain official documents such as birth certificates and powers of attorney. Consequently, other military personnel abroad are afraid to visit Turkish embassies and consulates. Some consulates have

⁶⁷ UDHR Article 1 provides that, “all human beings are born free and equal in dignity and rights.” See UDHR Articles 1, 2(1) and 7; ICCPR Articles 2,3 and 26; ECHR Articles 14 and Protocol No. 12.

⁶⁸ Daniel Moeckli, “Equality and Non Discrimination,” p. 170, note xxx above.

⁶⁹ Article 12, ICCPR; Article 2(2), ECHR Protocol (IV).

refused to serve military personnel abroad to citing technical difficulties as an excuse not to render services. Rejection of Identity Cards for the newly born babies has been experienced.

Arbitrary refusal of consular services to military personnel abroad is in violation of the Vienna Convention on Consular Relations and its Optional Protocols (1963).

h. The Right to Your Own Things and Protection of Property

According to Article 17, UDHR; “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.” Similarly, Article 1 of the Protocol I of the ECHR states; “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.” In order for the right to property to be fulfilled and for everyone to really enjoy the right to property, every individual should enjoy a minimum of property needed for living a life in dignity, including social security and social assistance. In a case from 2009, the European Court of Human Rights interpreted the right to property to include pre-retirement benefits.

Assets and property of some of the dismissed public officials were frozen or confiscated. The Government appropriated pension funds of many of the arrested and discharged personnel. This also includes a fund, called OYAK, which provides its military members with supplementary retirement benefits apart from the official retirement funds. The property subject to seizure must have been used in connection with or acquired by illegal activities. There is no evidence that the funds and property of the military personnel have been used in connection with or acquired by any illegal activities. These seizures are also in violation of due process.

i. Food and Shelter for All

UDHR Article 25 states;

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

UDHR Article 25 is said to be an elaboration of UDHR Article 1, which provides that “all human beings are born free and equal in dignity.”⁷⁰ ICESCR Article 11 strengthened this obligation for the States. UDHR Article 25 defined “adequate standard of living” as a standard for “the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.” States are required to facilitate access to food. Whenever an individual is unable to enjoy the right to adequate food, States are required to provide it.⁷¹ Any discrimination in access to food is also a violation of ICESCR Article 11. Dismissed military personnel are prohibited to take any public position like other dismissed officials. Due to the stigma of being branded “terrorists” under the decrees, many personnel have not been able to find any job at all. They have lost housing and health care benefits connected to their jobs. These are serious evidences, which show that these people lack adequate standard of living.

⁷⁰ Asbjorn Eide, “Adequate Standard of Living,” in note 1 above, p. 196.

⁷¹ Eide, p. 200 citing to CESCR, General Comment 15, HRI/GEN/1/Rev.9 (Vol I) 55.

3 Conclusion

Turkey has experienced five major coups since its foundation. The events of 15 July 2016 are not comparable to any of them. The head of the Main Opposition Party CHP Kemal Kilicdaroglu repeatedly called the events on 15 July 2016 “a controlled coup” and some called them a “Self-coup”. Erdogan denied, but failed to satisfy the nation and the international community. He and the Government officials contradicted themselves many times in explaining their version of the events. There are a lot of questions unaddressed. Many critical details are yet in the shadow. Neither the recently dismantled Turkish Parliamentary Investigation Commission, nor the ongoing trials provide satisfying answers.

Erdogan and his Government benefitted from the turmoil to change Turkey’s governmental system in favor of their desires. The nation voted to abandon the parliamentary system for an executive presidency, which grants Erdogan a 21st-century sultanate minimally curbed by the Parliament, essentially changing the country’s regime from a democracy to a dictatorship⁷². They won a recent contentious referendum in April 2017 for substituting the country’s struggling democracy with an emerging dictatorship. Unfair campaign circumstances, vast practices of intimidation to the voters, and millions of ballot frauds could best define how the country concluded the referendum. Erdogan had the victory through a controversial referendum, which was tarnished with allegations of fraud⁷³.

The extended “State of emergency” severely eroded the spirit and essence of democracy in the Country. Erdogan’s and the Government’s follow-on crackdown was disastrous. Issues of illegal Decree-Laws, arbitrary reshaping crucial Government departments, purge of approximately 140,000 government officials, legally baseless detention and arrests of thousands and torture of many citizens are a few examples. There is no effective appeal against dismissal from employment or expulsion from public service under the decrees⁷⁴. The rule of law has been catastrophically undermined, human rights abuses are at their peak in the country’s history. The rule of law is just a dream for millions of inhabitants in Erdogan’s country-wide prison.

⁷² <http://www.economist.com/news/leaders/21720590-recep-tayyip-erdogan-carrying-out-harshest-crackdown-decades-west-must-not-abandon>

⁷³ <https://www.bloomberg.com/politics/articles/2017-04-18/the-fraud-claims-tainting-turkey-s-referendum-win-quicktake-q-a>

⁷⁴ Amnesty International, Ibid, p. 17.

Resources

All the links below are reachable as of 08 June 2017.

- Official indictments of 15 July
- Aksoy v. Turkey, Application No. 21987/93, judgment December 18, 1996, paras. 78, 86.
- Amnesty International, “No End in Sight, Purged Public Sector Workers Denied a Future in Turkey” (Amnesty International, 2017), p. 4.
- Article 12, ICCPR; Article 2(2), ECHR Protocol (IV).
- Articles 94 and 95 of the Turkish Penal Code
- Asbjorn Eide, “Adequate Standard of Living,”
- Campbell & Fell v. the United Kingdom, judgment of 28 June 1984.
- CAT Article 3
- Daniel Moeckli, “Equality and Non Discrimination,”
- ECHR Article 3, ICCPR Article 7.
- ECHR Article 7.
- ECtHR, “Derogation in time of emergency,” Factsheet, Press Unit (2017), accessed May 2, 2017, http://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf.
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- <http://www.bbc.com/news/world-europe-39998049>
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- <https://www.bloomberg.com/politics/articles/2017-04-18/the-fraud-claims-tainting-turkey-s-referendum-win-quicktake-q-a>
- <https://www.euractiv.com/section/freedom-of-thought/news/tense-trial-opens-of-alleged-turkey-coup-ring-leaders/>
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- <https://www.turkishminute.com/2016/08/01/economy-minister-says-govt-will-make-coup-plotters-beg-for-death/>.
- <https://www.turkishminute.com/2017/06/08/erdogan-says-people-will-punish-gulen-followers-in-the-streets-if-they-ever-get-out-of-jail/>.
- <https://www.youtube.com/watch?v=FJgFlwztnio>
- <https://www.youtube.com/watch?v=-MVs2O5IIA>
- https://www.youtube.com/watch?v=n-IGieQI_QI
- https://www.youtube.com/watch?v=yCNhcov_EfA
- Human Rights Committee, General Comment No. 29, paras 13 (a) and 14, CCPR/C/21/Rev.1/Add.11, August 31, 2001, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo
- Human Rights Watch, “A Blank Check- Turkey Post-Coup Suspensions of Safeguard Against Torture,” (US, 2016); Amnesty International, “Independent monitors must be allowed to access detainees amid torture allegations,” (2016),

<https://www.amnesty.org/en/latest/news/2016/07/turkey-independent-monitors-must-be-allowed-to-access-detainees-amid-torture-allegations/>

- ICCPR Article 10(1).
- ICCPR Article 9(2), ECHR Article 5(2).
- ICCPR Article 9(3), ECHR Article 5(3).
- ICCPR Article 9(4), ECHR Article 5(4).
- Ireland v. the United Kingdom, judgment of 18 January 1978, § 163; Soering v. the United Kingdom, judgment of 7 July 1989, § 88; Chahal v. the United Kingdom, judgment of 15 November 1996, § 79; Saadi v. Italy, judgment (Grand Chamber) of 28 February 2008, § 127; El-Masri v. “The former Yugoslav Republic of Macedonia”, judgment (Grand Chamber) of 13 December 2012, § 195; Al Nashiri v. Poland, judgment of 24 July 2014, § 507.
- Kevin Boyle and Sangeeta Shah, “Thought, Expression, Association and Assembly,” in note 7 above, p. 218.
- Nigel S. Rodley, “Integrity of the Person,” in International Human Rights Law, Ed. Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (Oxford: Oxford University Press, 2014), p. 174.
- Notification JJ8187C Tr./005-191, dated July 22, 2016, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2929966&SecMode=1&DocId=2380676&Usage=2>
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- Trabzon Office of Chief Public Prosecutor, Prosecution No: 2016/15056, Decision No:2017/123.
- Turkish Government Decree-Law 667, Article 6 (a).
- UDHR Article 1 provides that, “all human beings are born free and equal in dignity and rights.” See UDHR Articles 1, 2(1) and 7; ICCPR Articles 2,3 and 26; ECHR Articles 14 and Protocol No. 12.
- UDHR Article 12, ICCPR Article 17.

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