



Strasbourg, 20 February 2017

**CDL-REF(2017)011**

**Opinion No. 872 / 2016**

Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**TURKEY**

**EXTRACTS**

**EMERGENCY DECREE LAWS**

**Nos KHK/668, 670, 671, 675, 677,  
679, 680, 683, 685, 685, 687**

**1-Decree Law no. KHK/668**

*Published in the Official Gazette no. 29783, dated 27 June 2016*

*Enacted as a law by Law numbered 6755 published in the Official Gazette no. 29898*

**Measures taken**

**Article 2** – (1) Those which belong to, connect to, or contact with the Fetullahist Terrorist Organization (FETO/PDY), established posing a threat to the national security:

a) Military personnel listed in Annex (1) have been discharged from the Turkish Armed Forces. Additional procedures shall be carried out in respect of them pursuant to the provisions of special laws.

b) Private radio and television organizations listed in Annex (2) have been closed down.

c) Newspapers and periodicals listed in Annex (3) and publication and distribution channels have been closed down.

(2) Regardless of a criminal conviction ruled, the military personnel discharged from the Turkish Armed Forces pursuant to subparagraph (a) of paragraph 1 shall be deprived of their military ranks and public official status and such persons shall not be readmitted to the Turkish Armed Forces; 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 and 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 the 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 Defense shall immediately notify the relevant passport authority as regards these persons. Upon such notification, the relevant passport authorities shall cancel their passports.

(3) Movable property as well as all kinds of assets, receivables, rights and all documents and papers that belong to the newspapers, periodicals, publishing houses and private radio and television organizations closed down shall be deemed to have been transferred to the Treasury without cost, and all real estate that belong to them shall be registered ex officio, 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 these be made against the Treasury. The Ministry of Finance shall carry out all procedures relating to transfer by receiving necessary assistance from all institutions concerned.

(4) Private radio and television organizations, newspapers and periodicals, publication and distribution channels 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 Annexes (2) and (3), 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. The provisions of paragraph three shall also apply to institutions and organizations closed down under this paragraph.

## **2- Decree Law no. KHK/670**

*Published in the Official Gazette no. 29804, dated 17 August 2016*

### **Measures related to transfer procedures**

**ARTICLE 5-** (1) As regards all kinds of movable and immovable properties, assets, receivables and rights as well as documents and letters (assets taken over) of institutions, organizations, private radio and television stations, newspapers, magazines, publishers and distribution channels that are closed pursuant to the Decree-Laws put into effect under the state of emergency declared throughout the country by the Decree of the Council of Ministers (dated 20 July 2016, no. 2016/9064) and that are transferred to the General Directorate for Foundations or the Treasury; the General Directorate for Foundations, in so far as foundations are concerned, and the Ministry of Finance, in so far as others concerned, shall be authorized to determine all kinds of procedures, to determine the scope, to administrate, to pursue lawsuits and start executive proceedings as well as to carry out all other procedures related to all kinds of receivables, bonds, cheques and other valuable papers, including advance, to determine obligations and liabilities that are related to the assets taken over and are certificated through ledgers, registers or documents that substantiate the conviction and to pay these obligations and liabilities within a reasonable period by making use of these assets, providing that it does not exceed the value of the assets taken over, that it does not impose a financial burden, that it does not result from bailment and that it concerns real commodity and service relationship with persons who does not have belonging to, connection or contact with the Fetullahist Terrorist Organization (FETO/PDY), to terminate or make payment of goods and service costs that have been undertaken and guaranteed but have not been provided by the closed institutions and organizations, to renounce collecting claims and receivables as well as undertakings and guarantees that are established as uncollectible or as providing no benefit in collecting and pursuing, to carry out all kinds of peace-related procedures, to reimpose and recover restrictions, which were imposed due to obligations resulting from credit or real commodity and service relationship related to the assets taken over and were lifted before, under the same conditions as they were lifted in order to ensure that credits or obligations are paid, to

take into account pledges of securities, to determine and remove the limits of the restrictions imposed on the assets taken over, to decide on the annulment and continuation of agreements including leasing, to take all kinds of necessary measures for management, assessment and disposition of assets taken over, to transfer, if required, assets taken over to public institutions and organizations, which are deemed appropriate, for their liquidations or sales, to return assets that are found not to fall within the scope of transfer, to determine the scope of assets to be taken over if closed institutions belong to real persons, to eliminate hesitations, to provide guidance on the application, to establish procedures and principles for the conduct of all these actions.

(2) Cash and other liquid assets from the assets taken over under this Article shall be monitored in trust accounts, and other assets shall be monitored in memorandum accounts. The amount corresponding to the disposed assets that are monitored in the memorandum accounts shall be transferred into the trust accounts. Obligations decided to be paid shall be paid from these trust accounts, and the remaining balance shall be recorded as revenue to the budget.

(3) The activities of the companies, which are associated with the closed down institutions, organizations, private radio and television stations, newspapers, magazines, publishers and distribution channels, shall be terminated and their trade registries shall be cancelled *ex officio*. Their assets other than the ones that have been taken over, shall be regarded as having been transferred to the Treasury without charge. The trustees, who have been previously appointed to such companies, can be assigned as liquidation officers or liquidation officers can be appointed to the companies in question. The Ministry of Finance shall have the authority to establish the procedures and rules regarding the application of this Paragraph and to apply them also in respect of the assets taken over in this manner in Paragraph 1.

(4) Those who have a claim with respect to the obligations and liabilities which can be subjected to determination within the scope of Paragraph 1 shall apply to the relevant administration with the ledgers, registers and documents that substantiate the conviction within the sixty days prescription period running from the date of entry of this Article into force. With respect to the closure procedures, which shall be carried out subsequent to the date of entry of this Article into force, the sixty days period shall start running from the date of closure.

(5) In the payment of obligations the following order shall be taken as a basis; tax obligations arising from the real asset itself, pledged receivables, employees' social security contributions, obligations such as taxes, duties, charges, surcharges and interests required to be paid to public administrations, obligations resulting from energy, communication and water use, obligations not exceeding five hundred Turkish liras regardless of their type and

the others.

(6) Education institutions built on the immovable properties that belonged to the foundations closed pursuant to the provisions of the Decree-Law no. 667 and whose possessions were transferred to the General Directorate for Foundations can be allocated to the public institutions and organizations without charge and to the legal persons subject to the private law in return for the payment of their values.

(7) Public institutions and organizations, real and legal persons and unincorporated organizations are obliged to provide information and documents to be requested under this Article within fifteen days. In this respect, those requested to provide information and documents cannot be relieved of this obligation on the basis of the written provisions in the special laws.

### **3- Decree Law no. KHK/671**

*Published in the Official Gazette no. 29804, dated 17 August 2016*

*Enacted as a law by Law numbered 6755 published in the Official Gazette no. 29898*

**ARTICLE 25-** The following paragraphs have been added to Article 60 of the Electronic Communications Law no. 5809 dated 5/11/2008 after the eight paragraph and the ensuing paragraph has been accordingly continued.

"(9) Depending on one or more grounds enumerated in Article 22 of the Constitution, the Prime Ministry shall determine the measures to be taken and notify the Authority for their implementation, in cases of exigent circumstances. The Head of the Authority shall immediately notify the operators, access providers, data centres and the relevant content and hosting providers of the Prime Ministry's decision relating to the measures deemed necessary. This decision shall be immediately fulfilled within two hours at the latest as of the notification of the decision. This decision shall be submitted within 24 hours to magistrate judge for approval. The Judge shall declare his/her decision within forty-eight hours, otherwise the decision shall be automatically revoked.

(10) The Authority shall take all kinds of measures or have them taken in order to protect the public institutions and organizations as well as the natural and legal persons against cyber attacks and to ensure deterrence against these attacks.

(11) The Authority may obtain and make use of information, documentation, data, and records from the relevant authorities within the scope of its tasks; it may benefit from archives, electronic data processing centres and the communication infrastructure and may contact with them and may take other necessary measures or have them taken in this regard. The Authority shall collaborate with the ministries, institutions and organizations in performing the tasks specified in this paragraph. In this regard, all kinds of information and documentation requested from the Authority, shall be fulfilled by the relevant ministries,

institutions and organizations without delay. The procedures and principles as well as other issues with regard to the requests for information and documentation made in accordance with this paragraph and fulfilling these requests shall be determined by the Prime Ministry.

(12) The natural persons and private legal entities shall not avoid fulfilling the requests relating to the Authority's tasks in this Article, by justifying the provisions of the legislation to which they are subject. The sanction in the second paragraph of this Article shall be imposed to those, who do not fulfil their obligations relating to the Authority's tasks except for the business administrators."

#### **4- Decree Law no. KHK/675**

*Published in the Official Gazette no. 29872, dated 29 October 2016*

#### **Broadcasting organizations**

**ARTICLE 5-** (1) News agencies, newspapers and magazines stated in the annexed list (7) which are affiliated with, related to or in connection with the terrorist organizations or the structure, formation or groups decided to be in operation against the national security of the State by the National Security Council have been closed. Provisions of third paragraph of Article 2 of the Decree Law No. 668 shall also apply to such agencies and institutions.

(2) Of the private radio and televisions closed pursuant to the Decree Law No. 668, those listed in the annexed list (8) have been removed from the relevant lists of the annexed list (2) and (3) of the mentioned Decree Law. First and third paragraphs of Article 2 of the Decree law No. 668 shall be deemed to have revoked together with all effects and consequences in respect of these institutions and organizations, from the date of the publication of the mentioned Decree Law.

#### **Responsibility of Trustees and Administrators Appointed**

**ARTICLE 11-** (1) No personal liability may be imposed on the trustees appointed to agencies, institutions, private radio and televisions, newspapers, magazines, publishing houses as well as distribution channels and companies closed due to the fact that they are affiliated with, related to or in connection with the terrorist organizations or the structure, formation or groups decided to be in operation against the national security of the State by the National Security Council as well as administrators and liquidation officers assigned by relevant agencies pursuant to legislation, concerning public debts, born or to be born, of the agencies, institutions, private radio and televisions, newspapers, magazines, publishing houses, distribution channels and companies they are appointed or assigned to as well unpaid debts to Social Security Agency and unpaid debts of all kinds of worker's claims and debts arising from other legislation. Furthermore, the provisions of Article 35 and Repeated Article 35 of the Collection Procedure of Public Receivables No. 6183 dated 21/7/1963 and Article 10 of Tax Procedure Law No. 213 dated 4/1/1961 shall not apply to such persons.

### **Case and follow-up Procedure**

**ARTICLE 16** - (1) Concerning the cases filed before 17/8/2016 against agencies, institutions, private radio and televisions, newspapers, magazines, publishing houses and distribution channels which have been closed in accordance with the Decree Laws No. 2016/9064 dated 20/7/2016 issued by the Council of Ministers within the scope of the state of emergency declared throughout the country, and their real person or legal entity owners as well as the cases where hostility is directed against the Treasury and Directorate General of Foundations within this context, courts shall decide on rejection due to absence of cause of action pursuant to Article 5 of the Decree Law on Taking some Measures within the scope of State of Emergency No. 670 dated 15/8/2016. These decisions are final and rendered on file without waiting for the day of trial and the plaintiff is notified ex officio. The court expenses of the parties are left on themselves.

(2) Concerning the execution and bankruptcy follow-ups initiated before 17/8/2016 against agencies, institutions, private radio and televisions, newspapers, magazines, publishing houses and distribution channels which have been closed in accordance with the decree laws No. 2016/9064 dated 20/7/2016 issued by the Council of Ministers within the scope of the state of emergency declared throughout the country, and their real person or legal entity owners as well as the follow-ups where hostility is directed against the Treasury and Directorate General of Foundations within this context, enforcement offices shall decide on dismissal pursuant to Article 5 of the Decree Law No. 670. These decisions are final and rendered on file and the follow-up claimant is notified ex officio. The follow-up expenses of the parties are left on themselves.

(3) Concerning cases filed on and after 17/8/2016 against agencies, institutions, private radio and televisions, newspapers, magazines, publishing houses and distribution channels which have been closed in accordance with the decree laws No. 2016/9064 dated 20/7/2016 issued by the Council of Ministers within the scope of the state of emergency declared throughout the country, and their real person or legal entity owners as well as the cases against the Treasury and Directorate General of Foundations over closure or direct cancellation as well as enforcement and bankruptcy follow-ups, rejection or dismissal of case shall be decided due to absence of cause of action pursuant to Article 5 of the Decree Law on No. 670.

(4) In the decisions rendered under the first and second paragraphs, it shall be stated that the plaintiff or the claimant may apply within thirty days of period of prescription from the date of notification in accordance with the procedure set out in Article 5 of the Decree of Law No. 670. Administrative case may be filed against the decision rendered by the administrative authority upon administrative application. The administrative decision of the administrative authority is final and the dispute shall in no way be made subject of the

ordinary jurisdiction.

**5- Decree Law no. KHK/677**

*Published in the Official Gazette no. 29896, dated 22 November 2016*

**Institutions and organizations which have been closed and excluded:**

**ARTICLE 3 –(1)**

a) The associations listed in Annex (6)

b) Media organs listed in Annex (7)

which have membership to, affiliation or connection with the terrorist organizations or structures, formations or groups determined by the National Security Council to carry out activities against the national security have been closed.

(2) Movable properties and all kinds of assets, claims and rights, documents and instruments belonging to the associations and media organs closed within the scope of the first paragraph shall be deemed to be transferred to the Treasury free of charge. Immovable properties of these institutions and organizations shall be *ex officio* registered in the title deed in the name of Treasury being free and clear of all kinds of restrictions and right of encumbrance. Any right or claim cannot be demanded from the Treasury on account of any kind of obligations of such institutions and organizations. All procedures pertaining to such transfer shall be performed by the Ministry of Finance by means of receiving necessary assistance from all institutions.

(3) Private health institution specified in the list given in Annex (8), foundations specified in the list given in Annex (9) and associations specified in the list given in Annex (10) have been excluded from the relevant lines of the lists (I) and (III), which are enclosed with the Law no. 6749. The provisions set out in Article 2 of the Law no. 6749 shall be deemed to revoke along with all effects and consequences thereof in respect of institutions and organizations falling into the scope of this paragraph as from the date of 23 July 2016. The actions in respect thereof shall be performed by the relevant authorities namely the Ministry of Interior, the Ministry of Finance, the Ministry of Health or the Directorate General of Foundations.

**Restriction with respect to claims for damages**

**ARTICLE 6 –(1)** Within the scope of the decree-laws enacted under the state of emergency declared upon the Decision of the Council of Ministers dated 20/7/2016 and no. 2016/9064, the institutions and organizations closed for having membership to, affiliation, or connection with terrorist organizations or structures, formations or groups determined by the National Security Council to carry out activities against the national security may under no circumstances claim compensation for being closed.

### **Transfer of the power of trusteeship**

**ARTICLE 7 –**(1) The powers vested in the trustees taking office in the companies in respect of which it was decided that a trustee be appointed pursuant to Article 133 of the Code of Criminal Procedure dated 4/12/2004 and no. 5271 for having membership to, affiliation, or connection with terrorist organizations before the entry into force of this Decree-Law shall terminate on the date when this Decree-Law is issued without seeking for a decision rendered by a judge or a court or a request, and the management of the companies shall be immediately transferred by the trustees to the Saving Deposits Insurance Fund.

### **6- Decree Law no. KHK/679**

*Published in the Official Gazette no. 29940, dated 6 January 2017*

#### **Institutions and organizations which were closed down and excluded from the scope of relevant articles**

**ARTICLE 5-** (1)...

(4) The newspapers indicated in the annexed list (7) have been excluded, where relevant, from the relevant lines of the list no. 3 enclosed with the Law, dated 8/11/2016 and no. 6755, on the Adoption, upon being amended, of the Decree-Law on the Measures to Be Taken Within the Scope of the State of Emergency and on Making Arrangements with respect to Certain Institutions and Organizations and from the relevant lines of the list no. 7 enclosed with the Decree-Law, dated 3/10/2016 and no. 675 on the Measures to Be Taken Within the Scope of the State of Emergency. The provisions of the third paragraph of Article 2 of the Law no. 6755 and the provisions of the first paragraph of Article 5 of the Decree-Law no. 675 shall be deemed to revoke along with all effects and consequences in respect of the relevant newspapers, as from the entry into force of the relevant decree law.

### **7- Decree Law no. KHK/680**

*Published in the Official Gazette no. 29940, dated 6 January 2017*

#### **Provisions on Media Service Providers**

**ARTICLE 16-** First paragraph of Article 50(1g) and clause (i) of the same paragraph of the Law on Radio and Television of Turkey No. 2954 dated 11/11/1983 are amended as follows.

"Contracted personnel can be employed in the institution. All kinds of financial and social rights to be provided to the staff such as title, number of the personnel, cancellation and introduction of staff, fees, additional indicators to be applied for staff, special service indemnity, overwork fee etc. are determined by the Council of Ministers on the proposal of the Board of Directors. Total of financial and social payments as well as fees provided to the personnel cannot exceed the upper limit of total average fee determined within the scope of the decisions of Council of Ministers entered into force based on the Decree Law on making

amendments to the Decree Law on some Arrangements to Financial and Social rights of Civil Servants and Other Public Officers and to Some Laws and Decree Laws No. 631 dated 4/7/2001. "

"i) Contracted personnel is the domestic or foreign national persons employed by the Institution to conduct radio-television broadcasting, production, technical and information services in the institution staff and whose procedures and principles regarding employment and contract are determined by the Board of Directors. Those to be employed on this regard are subject to the provisions of Article 4(1a) of the law on Social Insurance and General health Insurance No. 5510 dated 31/5/2006 concerning their social securities. Wages of the contracted personnel are determined by the decision of Board of Directors upon the proposal of the Director General. The wages of the contracted personnel except those who actually work in channels broadcasting in foreign languages shall not exceed four times the ceiling of the contract fee applied to the persons employed according to the paragraph (b) of Article 4 of the Civil Servants Law No. 657 and no payment can be made except for this wages. The number of personnel to be employed in this way cannot exceed 300. However, in addition to this number, contracted personnel not to exceed 450 may be employed in order to be actually employed in television channels broadcasting in foreign languages. The number of contracted personnel referred to in this paragraph can be increased by the decision of the Council of Ministers. Contracted personnel other than foreign nationals may be assigned to administrative staff."

**ARTICLE 17-** The following paragraph has been added to Article 7 of the Law on the Establishment of Radio and Television Enterprises and their Broadcasts No. 6112 dated 15/2/2011.

"(4) By this Article, in case of broadcasting in violation of the restrictions brought by the Press Law No. 5187 dated 9/6/2004 ,the broadcasting of the programs of the media service provider shall be suspended for one day by the Supreme Council and in this case, paragraph four of Article 32 shall apply. It is decided that, in a year, the broadcastings of the media service provider shall be suspended for up to five days in case of violation repetition, up to fifteen days in case of repetition for the second time and the broadcasting license shall be canceled if it is repeated for the third time."

**ARTICLE 18-** The second sentence of Article 8 § 1 (d) of the Law no. 6112 has been repealed, and the following clause has been added to the same paragraph:

"t) [Media services] cannot present acts, perpetrators and victims of terrorism in a manner that would produce results serving the interests of terrorism."

**ARTICLE 19-** The following paragraphs have been added to Article 19 of the Law No. 6112.

"(2) The Supreme Council may reject license claims for reasons of national security, protection of public order and public benefit by taking the opinions of relevant institutions

regarding the license applications.

(3) License applications of media service providers notified by the National Intelligence Organization or the General Directorate of Security that their partners and the chairman and members of the board of directors are affiliated with or related to terrorist organizations are rejected."

**ARTICLE 20-** The expression of "(s) and (ş)" in the first paragraph of Article 32 of the Law No. 6112 is amended as "(s), (ş) and (t)" and the expression of '(a) and (b)' in the fifth paragraph of the same article is amended as "(a), (b) and (d)".

**ARTICLE 21-** First paragraph of Article 8 of the Law No. 6112 has been abolished.

**ARTICLE 27-** The following paragraph has been added to Additional Article 6 of the Law no. 2559:

"As regards the cybercrimes, the police shall be authorized to have access to identity information of the Internet subscribers and to conduct cyber inquiries with a view to establishing the competent Chief Public Prosecutor's Office in that regard. Access providers, host providers and content providers shall communicate the requested information to the relevant police unit established for the purposes of fighting against such crimes."

**ARTICLE 28-** In Additional Article 7 of the Law no. 2559;

a) The expression "and in virtual platform" has been added after the expression "at country level" in the first paragraph.

b) In the second paragraph, the expression "with a view to preventing commission of the offences listed [...], in accordance with order of a judge, or in cases where any delay is detrimental, order of the Chief of Turkish National Police or the Head of Intelligence Department" has been replaced with the expression "with a view to preventing commission of the offences listed [...], in accordance with order of a judge, or in cases where any delay is detrimental, order of the Chief of Turkish National Police, the Head of Intelligence Department of the Turkish National Police, or the head of the relevant department of cybercrimes only when cybercrimes are concerned"; and the expression "or data transmitted via data traffic between the link addresses and the Internet resources" has been added after the expression "communication through telecommunications" in the same paragraph.

c) In the fourth paragraph, the expression "or the communication link" has been replaced with the expression ", the relevant Internet connection address or the connection".

ç) In the eighth paragraph, the expression "by the officers of" has been replaced with the expression "by the officers of [...] and the officers of the relevant department of cybercrimes only when cybercrimes are concerned".

**8- Decree Law no. KHK/683**

*Published in the Official Gazette no. 29957, dated 23 January 2017*

**Agencies and institutions closed**

**ARTICLE 3-** (1) The private televisions stated in the annexed list (3) and which are affiliated with, related to or in connection with the terrorist organizations or the structure, formation or groups decided to be in operation against the national security of the State by the National Security Council have been closed.

(2) All movable property and all kinds of assets, receivables and rights as well as documents belonging to closed private televisions closed within the scope of paragraph one shall be deemed to be ex officio transferred to the Treasury free of charge and the immovables belonging to those shall be registered in the title deed on behalf of the Treasury without any restriction and incumbrance of real estate. No rights and demands can be asked from the Treasury due to all kinds of debts thereof. Transactions related to the transfer are carried out by the Ministry of Finance by obtaining the necessary assistance from all relevant institutions.

***(Private televisions closed pursuant to Annexed List 3 are:***

- 1) Sivas Dijital Yayıncılık Sanayi ve Ticaret A.Ş. TV Logo: on4***
- 2) Azermedia 12 Radyo Televizyon Yayıncılık A.Ş. TV Logo: Kanal 12)***

**9- Decree Law no. KHK/685**

*Published in the Official Gazette no. 29957, dated 23 January 2017*

**Formation of the Commission**

**ARTICLE 1-** (1) The Commission on Examination of the State of Emergency Procedures has been established in order to carry out an assessment of, and render a decision on, applications related to acts established directly through the decree-laws, without any other administrative acts being carried out, within the scope of the state of emergency declared under Article 120 of the Turkish Constitution and approved by the Resolution (no. 1116, dated 21 July 2016) issued by the Turkish Grand National Assembly, on the ground of membership of, or have relation, connection or contact with terrorist organizations, or structures/entities, or groups established by the National Security Council as engaging in activities against the national security of the State.

(2) The Commission shall be composed of seven members. Three members shall be assigned by the Prime Minister from among public officials; one member shall be assigned by the Minister of Justice from among judges and prosecutors who hold office in central organization of the Ministry of Justice and in related and affiliated institutions; one member shall be assigned by the Minister of Interior from among personnel held the class of civil

administration; and two members shall be assigned by the High Council of Judges and Prosecutors from among rapporteur judges who hold office in the Court of Cassation or in the Council of State. The Commission shall elect a Head and a deputy Head from among its members through an election to be held.

(3) The quorum for meetings and decisions of the Commission shall be four members. Members cannot abstain from voting.

#### **Tasks of the Commission**

**ARTICLE 2-** (1) The Commission shall carry out an assessment of and render a decision on the following acts established directly through the decree-laws under the state of emergency:

a) Dismissal or discharge from the public service, profession or organization being held office.

b) Dismissal from studentship

c) Closure of associations, foundations, trade unions, federations, confederations, private medical institutions, private schools, foundation higher education institutions, private radio and television institutions, newspapers and periodicals, news agencies, publishing houses and distribution channels.

ç) Annulment of ranks of retired personnel.

(2) The scope of duty of the Commission shall also contain acts that do not fall within the scope of paragraph 1 and that are directly regulated with respect to the legal status of natural or legal persons by the decree-laws that are brought into force under the state of emergency.

(3) In relation to the acts mentioned this article, no separate application shall be lodged for the additional measures introduced by decree-laws put into force under the state of emergency and for the acts subject to judicial review.

#### **Term of Office of the Commission**

**ARTICLE 3-** (1) The Commission shall exercise its functions for a period of two years from the date of the entry into force of this Decree-Law. The Council of Ministers may extend this period for a period of one year per each extension, if deems necessary.

(2) First appointed members of the Commission shall hold office until the expiry of two years. If it is decided that the period should be extended, new members shall be determined in accordance with the procedure set out in paragraph 2 of Article 1. Members who have previously held office may be reassigned.

#### **Guarantees and rights of members**

**ARTICLE 4-** (1) Members cannot be dismissed on any account before their terms of office expire. However, a member shall be dismissed by the Commission, if it is found that;

a) the member have failed to attend a total of five Commission meetings within one calendar year, without any reason that could be accepted by the Commission,

- b) it is documented by a medical board report that the member is unfit to work due to a serious disease or disability,
- c) the conviction pronounced in respect of the member due to offences he/she has committed related to his/her duties becomes final,
- ç) the total duration of the member's temporary unfitness for work lasts more than three months,
- d) an investigation or prosecution is initiated against the member for offences listed in Articles 302, 309, 310, 311, 312, 313, 314 and 315 of the Turkish Criminal Code (Law no. 5237, dated 26 September 2004),
- e) an administrative investigation against the member is initiated by the Prime Ministry or a permit for prosecution against the member is issued on the ground that the member concerned is a member of, or have relation, connection or contact with terrorist organizations, or structures/entities, or groups established by the National Security Council as engaging in activities against the national security of the State.

New members shall be assigned, in accordance with the procedure set out in paragraph 2 of Article 1, within two months at the latest for membership that becomes vacant due to death, resignation or any other reasons.

(2) Members shall continue to obtain their financial and social rights from their institutions. The Prime Ministry shall separately pay to members each month, as an additional payment, the difference between the total amounts that are paid to members by their institutions in a month pursuant to their financial rights and the amounts to be calculated by multiplying the indicator number of 142,000 by the civil servants' salary coefficient, without being subject to any tax and deduction, except for the stamp tax, and in proportion to their terms of office.

(3) Conduct of an investigation against the members of the Commission shall be subject to the permission of the Prime Minister or a Minister assigned by the Prime Minister pursuant to the Law no. 4483 on Prosecution of Civil Servants and Other Public Officials (dated 2 December 1999). The Council of State shall decide on objections filed against a decision granting or not granting permission for investigation.

#### **Power to request information and document**

**ARTICLE 5-** (1) The Commission may request all kinds of information and documents related to its scope of duty from the relevant bodies.

(2) Without prejudice to the provisions of the legislation related to the confidentiality of investigation and the State secrets, public institutions and organizations as well as judicial organs are obliged to submit to the Commission all kinds of information and documents it needs within the scope of its duties, without delay, or to enable them for an on-site examination.

#### **Confidentiality**

**ARTICLE 6-** (1) Members and those, who are assigned with respect to the Commission works, may not disclose to anyone, except for organs that are legally granted authority on the subject, any confidential information, personal data, trade secrets and the related documents, belonging to the public, to those concerned or to third parties, that they obtain during their performance of their duties, and they may not use them for their own interests or for the interests of third parties. This obligation shall continue to exist after the expiry of their terms of office.

**Procedure and Time-limit for Applications**

**ARTICLE 7-** (1) The applications to the Commission shall be lodged through the Governor's Office. Those, who are dismissed or discharged from public service, profession or organization in which they hold office, may also submit to the last institution in which they hold office. The date on which an application is lodged with the Governor's Office or the institutions concerned shall be deemed as the date of the application. The Governorships and the institutions concerned shall communicate the applications lodged with them to the Commission without any delay. Repeated applications shall not be put into process.

(2) Provisions of paragraph 2 of Article 10 of the Code of Administrative Procedure (Law no. 2577, dated 6 January 1982) shall not apply to the applications lodged within the scope of this Decree-Law.

(3) The applications which are not lodged within sixty days as from the date of receiving of applications with regard to the decree-laws which entered into force before the date when the Commission starts to receive applications shall not be put into process. For the applications with regard to the decree-laws which enter into force after the date when the Commission starts to receive applications, those which are not lodged within sixty days as from the date of publication on the Official Gazette of a decree law shall not be put into process, either.

**Preliminary examination**

**ARTICLE 8-** (1) The applications lodged with the Commission shall be subject to preliminary examination in terms of compatibility with the requirements sought. Following the preliminary examination, the applications which were not lodged within the prescribed period, in which the applicant has no legal interest in respect of the issue, which do not fall within the scope of this Decree-Law and which do not bear the other procedural requirements shall be dismissed. The procedures and principles concerning the application of this Article shall be determined by the Commission.

**Examination and decision**

**ARTICLE 9-** (1) The Commission shall perform its examinations on the basis of the documents in the file. The Commission may, following the examination, dismiss or accept the application.

### **Execution of the decisions**

**ARTICLE 10-** (1) In case of acceptance of the application concerning those who were dismissed from public service, the decision shall be notified to the State Personnel Administration. The appointment proposals of the personnel notified in this manner shall be made, within fifteen days, by the State Personnel Administration, having regard to province they reside in, for the positions appropriate to their former status and titles in the public institutions and organizations apart from the institutions in which they were employed; except for those whose assignments in other institutions are not possible due to their status, titles and the duties they performed. Among those who have been reinstated in the public office under this paragraph, with respect to the appointments of the persons who were dismissed from the public service when they were serving as an administrator, the former cadre and position titles held by them before serving as administrator shall be taken into account. The cadres and positions regarding the personnel under this head shall be considered as having been established, allocated and endorsed, regardless of the provisions of other laws and without the need for any other action, as from the date of receiving of approvals for appointments concerning the relevant persons by the public institutions and organizations to which appointment proposals were made. The cadres and positions considered as having been established, allocated and endorsed shall be regarded as having been included in the relevant part of the tables annexed to the Decree-Law no. 190 on General Cadre and its Procedure, dated 13 December 1983.

(2) In cases of acceptance of the applications concerning the closed institutions and organizations, the relevant provisions of the decree-law shall be deemed to revoke along with all effects and consequences in respect of the institution and organization in question, as from the publication of the decree-law at issue. The actions thereof shall be performed by the Ministry of Interior, the Ministry of Finance, the Ministry of Health or the Directorate General for Foundations, where relevant.

### **Judicial Review**

**ARTICLE 11-** (1) The action for annulment against the decisions of the Commission may be filed with the Ankara administrative courts which are determined by the High Council of Judges and Prosecutors.

(2) Those who were considered to be inappropriate to perform their duties and who were dismissed from their duties under Paragraph 1 of Article 3 of the Decree-Law no. 667 of 22 July 2016 on the Measures Taken within the Scope of the State of Emergency and Paragraph 1 of Article 3 of the Law no. 6749 of 18 October 2016 on Amendment and Acknowledgement of the Decree-Law on the Measures ; Taken within the Scope of the State of Emergency, may file an action with the Council of State as the first-instance court, within sixty days as from the date on which the decision becomes final.

### **Secretariat**

**ARTICLE 12-** (1) The secretariat services of the Commission shall be carried out by the Prime Ministry. A sufficient number of personnel shall be allocated to the Commission for performance of these services.

(2) The Prime Ministry shall make an additional monthly payment to those assigned for the secretariat within the scope of the Commission works, provided that it does not exceed the amount to be calculated by multiplication of (11,000) indicator with monthly coefficient regarding the public officer. Additional payment shall not be subjected to any tax or deduction, except for the stamp tax. The additional payments shall be made in line with the procedures and principles to be set forth by the Head of the Commission, regard being had to criteria in payment such as the class, cadre title, manner of appointment of the assigned personnel, the importance and difficulty of their duty and their term of office. No further payment for overtime work shall be disbursed to these personnel under any head.

### **Procedures and principles**

**ARTICLE 13-** (1) The procedures and principles concerning the applications and the functioning of the Commission shall be set out and announced by the Prime Ministry upon the proposal of the Commission.

### **Transitional Provisions**

**PROVISIONAL ARTICLE 1-** (1) The first members to be assigned to the Commission shall be selected within a month as from publication of this Article.

(2) Within the scope of this Decree-Law, the date on which the Commission will start to receive the applications shall be announced by the Prime Ministry, not later than six months as from the date of publication of this Article.

(3) With respect to those who previously lodged an application with a judicial authority or filed an action for the matters which fall within the scope of duty of the Commission, the procedure and periods of time set out in Article 7 shall be applied.

(4) Those who were considered to be inappropriate to perform their duties and who were dismissed from their duties pursuant to Paragraph 1 of Article 3 of the Decree-Law no. 667 and Paragraph 1 of Article 3 of the Law no. 6749 prior to entry into force of this Decree-Law, may file an action within sixty days as from the date of entry into force of this Decree-Law, on the basis of the provisions set out in Paragraph 2 of Article 11. In this regard, the cases pending before the administrative courts shall be transferred to the Council of State. The provisions of this paragraph shall apply to the cases which were filed and concluded before the date of entry into force of this Decree-Law.

**Decree Law no. 687 of 9 February 2017  
(extract, unofficial translation)**

**Article 10** – Article 149/A of Law no. 298 of 26/04/1961 on Fundamental Principles of Elections and on Electoral Role is repealed.

**Commentary to Decree Law no. 687  
(Unofficial summary of the essence of provisions repealed by Decree Law no. 687):**

**Article 149/A of Law no. 298:**

**OFFENCES RELATING TO PRIVATE RADIO AND TV BROADCASTING**

**Article 149/A of Law no. 298** - If a private radio or TV channel breaches the provisions of **Article 55/A** of the present law or a rule determined by the Supreme Board of Elections, then a warning may be imposed on the channels with national broadcasting by the Supreme Board of Elections; the warning may be imposed by local board of elections on local broadcasting channels or the channel in question may be required to formulate an open apology during the same broadcast. In case of non-compliance or recurrence, the Supreme Board of Elections or local board of elections shall decide to stop the broadcasting of the program from one to twelve times. In the event of recurrence, the Supreme Board of Elections shall decide to stop the broadcasting of the private radio or TV channel with national broadcasting from five to fifteen days and the local board of elections shall decide to stop the broadcasting of local private radio or TV channel from three to seven days.

Such decisions shall be executed by the highest relevant civil authorities.

The responsible officials of a private radio or TV channel whose broadcast was stopped according to first paragraph shall be punishable by administrative fines from 15 000 to 100 000 Turkish Liras. The responsible officials of a local radio or TV channel shall be punishable by fines from 500 to 5 000 Turkish Liras.

**Article 55/A of Law no. 298** - Broadcasts made by private radios and televisions from the date of beginning of elections until the date of voting shall be subject to **Articles 5, 20, 22 and 23 of Turkish Radio and Television Law No. 2954** and of Paragraph 2 of Article 31 of the same Law.

From the date of beginning of elections until 24 hours before the date of elections, political parties and candidates may participate to discussions, interviews or panels in TV or Radio channels, together or individually, and express their point of views. The meetings organised by the candidates or political parties may be live broadcast on TV and Radio channels.

The Supreme Board of Elections shall be responsible for and authorised to define the principles of broadcasting by private radios and televisions according to the provisions of the preceding paragraph.

The Supreme Board of Elections shall be responsible for and authorised in supervising, auditing and evaluating the conformity of broadcasts to principles set forth above by private radios and televisions broadcasting throughout Turkey and the county election boards of the location where broadcasting is made, for private radios and televisions operating locally.

Objections may be lodged to provincial election boards within 24 hours against decisions of county election boards. The decision of the provincial election board shall be final. The

Supreme Board of Elections shall be authorised to describe the private radios and televisions broadcasting throughout Turkey. The resolution of the Supreme Board of Elections with that respect shall be published in the Official Gazette.

**Article 5 of Law no. 2954** sets forth the general principles of broadcasting: conformity to the Constitution, integrity of the territory, protection of the national sovereignty, Republic, public order, public interest, protection of morals, prohibition of incitement to violence, protection of private life and honour of persons, and in particular, the principle of impartial broadcasting and not to broadcast on behalf of a political party and not to be the instrument of a particular thought or conviction.

In particular, Article 5 point (m) reads as follows: "Sufficient broadcasting on subjects which the public opinion has an interest in with a view to allowing its free and healthy development; not to make one sided or biased broadcasting and not to be the instrument of any political party, political group or group of interest in order to promote its opinions or beliefs."