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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

TURKEY

GOVERNMENT MEMORANDUM[1]

ON THE MEASURES TAKEN DURING THE STATE OF EMERGENCY RELEVANT TO THE FREEDOM OF THE MEDIA

[1] *Translation provided by the authorities.*

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Understanding the regulations enacted through the Decree Laws issued within the scope of the State of Emergency and comprehending whether the measures taken in this context are necessary and proportional, depend on exactly knowing the dimensions of the danger of 15 July coup attempt and Fetullahist Terrorist Organization (FETO) exposed on the country's security and democracy as well as complete and correct understanding of Turkey's unprecedented struggle against global terrorism.

15 July Coup Attempt

On 15 July 2016, a bloody coup attempt against democracy and the state of law was made by a group among FETO members organized in the Turkish army.

During the coup attempt, an assassination attempt was made against Mr. President with helicopter and heavy weapons, İstanbul Bosphorus Bridge was closed by military tanks, the Chief of the General Staff was taken hostage, the Parliament was bombed while parliamentarians were inside, police special operations center was bombed and 50 police officers were martyred and the country was wanted to be dragged into an internal war that could result in death of hundreds of thousands of people.

On the other hand, the state television (TRT) was seized by the coup plotter terrorists and a "pirate coup release" was forced to be read. In addition, private media organizations have been raided and the media, which is the source of information for the public, have been tried to be made single voice. The coup plotters bombed the satellite control center TÜRKSAT with warplanes and wanted to cut off all television broadcasts other than the State television and the Internet.

Coup plotters opened fire from land and air with heavy weapons over the civilian people who were out in streets struggling with the coup plotters to stop the coup and to protect the democracy upon the call and support of Mr. President, Mr. Prime Minister and some politicians , and in consequence of these attacks with heavy firearms, 246 people were martyred and 2194 persons were wounded or became disabled.

Fetullahist Terrorist Organization (FETO)

When FETO leader was the imam of a mosque in İzmir, he decided to change the regime of Turkey, which is a democratic and secular social state of law, into a theocratic-totalitarian regime starting from the 1980's, and he has created a *"parallel state structure"* within the state for years in order to achieve his targets.

In order to accomplish the coup that was planned many years ago with an aim to seize the State and the Government, and to change the constitutional order, and to avoid any opposition or obstacle from the bureaucracy, FETO remarkably cadred especially in the armed forces, the judiciary and the police; infiltrated into bureaucracy, political parties, universities, non-governmental organizations; established private schools, private teaching centers and dormitories in order to provide proper cadre personnel and recruitment to the organization and raised those students as a loyal member of the organization; established banks, financial institutions, insurance companies, profession organizations in order to provide large finance resources to the organization; furthermore it has established media organizations like national and international TV channels, newspapers, magazines, radio stations, news agencies, web sites and publishing houses, and used them in the direction of basic goals and strategies of the organization. On the other hand, the organization has collected billions of Turkish Liras under the name of *"himmet"* from businessmen, tradesmen, sports and magazine communities, its own members, and from the salaries of all the judges, prosecutors, civil servants, soldiers, police it succeeded to place in the parallel state cadres. Moreover, FETO established such a structure not only in Turkey, but in about 170 countries all over the world. In the direction of its goals, strategies and targets of taking control of the state and government and to change the constitutional order, one of the most important methods FETO adopted, besides its other activities, is to taking hold of the media to take advantage of the broader target mass of the media by its power, domain and reaching capacity and to make use of the wide possibilities offered by the media to direct mass of people in the direction of its terrorist goals. Within the scope of the fight against terrorist organizations after the bloody coup attempt on July 15, FETO's activities in our country were stopped and its media institutions were liquidated. Similarly, some states that understood FETO's intentions and goals and its dangerous real mission have removed this organization from their countries and ended its operations. In the meantime, the Gulf Cooperation Council and the Organization of Islamic Cooperation declared FETO as a terrorist organization.

Turkey's Fight against Terrorism

The Republic of Turkey is at the target of many various international terrorist organizations due to its strategic position between Asia and Europe, and its proximity to the Middle East, the Caucasus and the Balkans, where disagreements and internal and external conflicts have continued for many years. Our country has been fighting for nearly 40 years against PKK, which is also regarded as a terrorist organization by the United States of America, Australia, Canada and European Union countries. During this combat, about 50 000 people, mostly

civilians and innocent people, were killed by this brutal organization. After July 15 coup attempt, the PKK increased its terrorist actions. Only in 2016, hundreds of innocent people lost their lives as a result of the PKK's terrorist actions. On 5 January 2017, the attack by members of the PKK terrorist organization against İzmir Courthouse with heavy weapons and a bomb-loaded vehicle was prevented without turning into a disaster by the security forces at the cost of their lives.

DAESH terrorist organization, which emerged after the civil war in Iraq and Syria, is also one of the biggest threats against Turkey. This terrorist organization (DAESH) has carried out many bloody terrorist actions in our country that have resulted in the death of hundreds of innocent people for the last 2 years. Recently, upon the threat on the southern border of our country and the increase of bloody terrorist actions against the civilian population, our country has started military operation against this organization in Syria by exercising its rights arising from international law. The latest terrible massacre of the terrorist organization DAESH targeting innocent people enjoying in a night club on the newyear still keeps its memory alive.

The Republic of Turkey has become a shelter for millions of innocent people who have escaped from conflict zones, especially from Iraq and Syria, despite all the terrorist attacks it has faced. There are about 3 million refugees who escaped from the civil war in Syria only, and took refuge in Turkey. While many western countries, which are in good condition from the economic point of view, are very hesitant to accept few asylum seekers, Turkey has embraced the refugees by fulfilling much more than its obligations under international law. The refugee issue is of great importance in terms of the security of the country as well as the economic and social impacts it brings.

Turkey, which came on the threshold of civil war especially with the coup attempt on 15 July, has declared state of emergency as of 21.07.2016 in accordance with national and international law, since it faced unprecedented attacks and threats of global terrorist organizations as never seen before. Meanwhile, in accordance with the objective of declaration of state of emergency, effective fighting has been carried out against terrorist organizations, mainly FETO, PKK and DAESH. Within this scope, necessary measures have been taken against terrorist organizations by Decree Laws issued in accordance with Article 120 of the Constitution. It is known that terrorist organizations use the media's power directly and indirectly to achieve their terrorist goals. The terrorist organizations mentioned above, in particular FETO, also use the media organs effectively. As a result of the investigations and prosecutions, since it was clearly observed that which media organs were possessed by those

terrorist organizations and what way they used for realizing their aims, it has become obvious that it is necessary to take some measures in accordance with the national and international law by the competent boards established by the authority granted by the Decree Laws.

It should not be forgotten that the Republic of Turkey is a state of law respecting democracy, rule of law and human rights. According to Article 90 of the Constitution, international agreements on human rights are considered as a part of her domestic law and even as the highest norm. Therefore, taking into account the magnitude and seriousness of the danger in the fight against terrorism, she takes the necessary and proportionate measures to fulfill her positive obligations under national and international law. The importance of media for democratic societies is well known and all media organs and institutions which are not connected with terrorist organizations continue their broadcasting and publishing activities freely without any restriction. As a matter of fact, there are already thousands of newspapers, magazines, television and radio channels, web sites, news agencies and publishing houses with different opinions and thoughts.

II.DECLARATION OF STATE OF EMERGENCY AND DEROGATION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

As it is known, in the direction of recommendation of the National Security Council, with the aim of taking steps in the most effective and rapid manner for promptly defeating the coup attempt of terrorist organization with all its components and removing the threat against democracy, state of law as well as rights and freedoms of the citizens in our country, state of emergency was declared by the Council of Ministers to be valid as of 21.07.2016 and 01.00 AM throughout our country for 90 days pursuant to Article 120 of the Constitution. Period of State of Emergency extended for the first time as of 19 October 2016, and for a second time as of 19 January 2017 for a period of 3 months, each.

The purpose of declaration of state of emergency is not to intervene to the freedoms but to enable the Government to make prompt decisions. The measures taken during the state of emergency did not cause any changes in daily life. No limitations to affect daily life concerning fundamental rights and freedoms are placed. Measures taken have been limited with the subject matters necessitated by the state of emergency.

State of emergency was not declared to limit the rights and freedoms of citizens but to enable the State act promptly within the scope of effective struggle against FETO, PKK, DAESH and other terrorist organizations. Within this scope, pursuant to Article 15 of the European Convention on Human Rights (ECHR), the notice of the derogation concerning the obligations for protection of rights and freedoms arising from the Convention was submitted to the General Secretary on 21 July 2016. In the derogation notice submitted by Turkey to the General Secretary of the European Union, by using the expression "together with other terorist actions during and after the coup attempt" while stating the scope of state of emergency measures, it should be taken into consideration that the statement of derogation is not only limited to FETO, but includes the fight against all terrorist organizations.

Again, pursuant to Article 4 of the United Nations (UN) International Covenant on Civil and Political Rights, notice of derogation was made to the General Secretary of UN by the Ministry of Foreign Affairs.

States take similar measures in the case of "war, general danger threatening the existence of national security, public order or the existence of nation". This situation is in accordance with the international law. Article 15 with the title "Derogation in time of emergency" of the ECHR guaranteed this condition. Thus, the European Court of Human Rights, which is the supervisor of implementation of the European Convention on Human Rights has made

various decisions with reference to Article 15 of the ECHR and has recognized some implementations of states proper and in place:

In Lawless/Ireland (1 July 1961) case; the applicant suspected of being a member of the IRA (Irish Republican Army) alleged that he had been held in the military detention camp in Ireland from July to December 1957, before being brought against the judge. Within the general context of Article 15 of the Convention, European Court of Human Rights evaluated that the essential and conventional conception of the expression "... other public emergency threatening the life of the nation" is clear enough, and decided that it is clear that there is a situation of "*An exceptional crisis or state of emergency situation that affects all the population and poses a threat to the life order of the society that constitutes the State*" and stressed that The Irish Government has the right to apply Article 15/1 of the Convention.

Aksoy/Turkey (18 December 1996): The conflicts between Turkey's security forces and the PKK members in the south-east have been viciously continuing since 1985. In the period of time the court examined the case, a state of emergency was declared in ten provinces, out of eleven, in this region of Turkey as of 1987. The applicant alleged, in particular, that he had been illegally detained in 1992 with the suspicion of that he had aided and abetted PKK terrorists. The Turkish Government stated that there was no violation of Article 5 of the Convention (right to freedom and security), taking into account that it declared notification of derogation in 1990 in accordance with Article 15 of the Convention. The Court considered that in the light of the current evidence, the PKK terrorist actions that took place in the south of Turkey constituted a general threat to the existence of the nation in the mentioned region, in terms of scope and special effects.

Article 15 of the Constitution of the Republic of Turkey, similar to Article 15 of the ECHR, clearly regulated how the administration should act in such circumstances. Pursuant to those regulations, the principles of "absolute necessity" and "proportionality" are obeyed sensitively in the measures taken during the state of emergency after the coup attempt.

III.FREEDOM OF MEDIA AND ITS LIMITATIONS

Freedom of media is a special form of freedom of expression and requirement of democratic society. In this direction, the free media has a vital role in ensuring persons' freedom of information and to access information in a timely and impartial manner from accurate, reliable sources. It is assumed that the media has a monitoring and watchdog mission, as often emphasized also in ECHR decisions, resulting from its task of providing the public with accurate information.

On the other hand, in the case of the conflict between the exercise of freedom of expression, freedom of media and the rights and freedoms concerning personal and private lives, and the protection of family life, courts emphasize the necessity of ensuring a proportionate and a fair balance between individual benefits and public interests.

In addition to the above mentioned freedom of the media, the media function also incorporates its duties and responsibilities. As emphasized in judicial decisions, media freedom is both a right and a duty. In fulfilling this freedom, the media must act in accordance with the responsible and conscious journalism rules as well as ethical and normative rules being a member of the media, and it has a content originating from the nature and normative structure of this right.

Besides this, like every right and freedom, there are also limits of this right arising from its nature, normative feature and qualification. The right and freedom field of media freedom is also stated in Article 10(1) of the ECHR. Receiving, giving, processing, publishing the information and news indicate the normative use of this right. Article 10 (2) of the ECHR specifies the reasons for which this right may be limited. Accordingly, the limitation will be based on a legal ground, will be directed to a legitimate aim, to be carried out with appropriate means; proportionality will be ensured between the means used and the limitation aim.

In the exercise of this right, just like every other rights and freedoms, freedom of media does not give the right and power to give or publish false, irrelevant news or news contrary to facts regarding persons, events and situations. The duty of the media, concerning the event, person, place and time relevant with the news or publication, is to act in accordance with the related regulations, professional ethics rules, principles and behaviors of the media, and to always inform the public in a correct, timely, complete and reliable manner in a democratic society. Otherwise, broadcasting for the purpose of attacking the honor, dignity and reputation of persons is not covered by the freedom of the media.

Furthermore, in democracies, the aim is to establish and maintain a healthy, peaceful, happy, secure, prosperous and well-being society. The main purpose and duty of democratic administrations is to ensure, protect and maintain the general well-being, and security of the individuals and the society, and it is necessary to take all kinds of legal and administrative measures to ensure this. The free media's fulfillment of its function and exercise of its rights and freedom also has a natural and normative limitation which must be assessed on the basis of this aim. If the publications are made for the purposes of disseminating, legitimizing, spreading and propagating terrorist activities instead of serving the purposes stated above, if they are done directly or indirectly for this purpose, this exercise, certainly cannot take advantage of natural and normative rights content of media freedom and protection, and cannot be evaluated under the scope of media freedom.

As a matter of fact, in the first paragraph of Article 5 of the Council of Europe Convention on the Prevention of Terrorism “the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed” is described as a public provocation to commit a terrorist offence.

IV.CURRENT ISSUES REGARDING THE MEDIA FREEDOM

In modern democracies, the media is often regarded as the fourth power coming right after the legislative, executive and judicial power. For, the media freedom is one of the greatest safeguards of global values such as democracy, rule of law and fundamental human rights. 15 July coup attempt can be given as an example of the importance of media freedom. At the night of 15 July, President of the Republic of Turkey talked on his cell phone during a live broadcast of a private television channel and called on the Turkish nation to resist the coup attempt which was launched against the unity and democracy of our country. Therefore, the Turkish nation was informed of the incident on time through all means of free media, furthermore, the Turkish nation united against the coup plotters especially by means of television channels and internet and repelled them.

Turkish nation witnessed the great benefits of the media freedom on the date of 15 July. However, the media is among the most corrupted freedoms due to its tremendous power and political, economic and social impacts over societies. It is essential to touch briefly on some problems related to media freedom faced by Turkey and the other modern democracies in the world.

1. The Problems on the Possession and Ownership of Means of Media

For a media outlet to be really independent, its identity, political stance, cultural background, political and economic relations should be explicit. Just as the entire world, Turkey has been facing some problems flowing from the ownership of media outlets and non-transparent nature of their connections. In the course of the investigations initiated in our country after the failed coup, it was revealed that many media outlets had relations to or affiliation with terrorist organizations. The decisions of liquidation of media organizations and the seizure of their assets taken pursuant to the Decree Laws within the scope of the State of Emergency are based on the grounds that they are affiliated with, related or connected to structures, formations or groups confirmed by the Nation Security Council to act against the national security.

Persons who were detained or taken under custody within the context of investigations launched during the fight against terrorist organizations were subject of these judicial measures because they are members of terrorist organizations or making propaganda in favor of them or they are suspected militants, not because they are journalists or employees of media outlets. The purpose of these investigations are not liquidation of media outlets or detention of the journalists, but to seize propaganda tools of terrorist organizations and detain suspected terrorists.

While evaluating this issue, it will be necessary to take into consideration the extent of roles of some media organisations played in encouraging the coups initiated in Turkey in the past. Especially on 28 February 1998, some media outlets played an active role in the coup known as "post-modern coup" and ended with the overthrowing of the government. This coup has been regarded in our country and by the entire world as a coup by the media outlets, launched against a legitimate government. It is possible to examine the relevant issues of these newspapers which issued military memorandum against the government at the time and praised terrorism and coup.

2. Use of the Means of Media by the Terrorist Organizations

Nowadays, the media has become one of the most important tools of propaganda and recruitment of members of terrorist organizations. It is known that terrorist organizations, DAESH and PKK in particular, made an intensive use of these media tools and recruited large numbers of members. In addition, it is observed that terrorist organizations utilize the means of media to spread fear to the public, create a chaotic atmosphere and make the State appear powerless. Various research shows that terrorist organizations make use of social media also to contact their militants, educate or transfer them, other than for purposes of propaganda and lobbying. It is understood that thousands of terrorists, recruited by terrorist organizations especially DAESH from foreign lands and known as foreign warriors, make contact with the organizations for the first time via social media. Thus, a lot of countries prepare comprehensive regulations to prevent such terrorist activities in cyber space. A draft of EU Directive dated 13 January 2016 to combat terrorism which is still under preparation, contains some crucial regulations in this area.

In addition to the use of media outlets directly by the terrorist organizations, terrorism is indirectly supported by outlets acting contrary the responsibilities of broadcasting and the rules of media ethics. The 8th and 10th paragraphs of the Recommendation on Media and Terrorism adopted by Parliamentary Assembly of the Council of Europe Rec 1706 (2005) are considered of high importance for the prevention of the circumstances stated above. The Parliament invited the media outlets to cooperate with each other and avoid being in a race against each other to publish sensational news and images prepared directly by the terrorists, not to act in favor of the interests of terrorists by creating platforms for propaganda or to incite fear which might be rooted in the public because of terrorist activities, to refrain from publishing shocking images or videos of terrorist activities which violate victims' dignity and privacy or aim at augmenting the influence of such activities over the public, victims and their

families, not to exaggerate the societal tension resulting from terrorism by news articles or commentaries and not to publish any hate speech.

The objective of the regulations in the Decree Laws issued within the scope of the State of Emergency with respect to the media, is prevention of the use of media tools by terrorist organizations such as FETO, PKK and Daesh. It has been revealed as a result of the investigations and research conducted after the 15 July that, FETO, having planned to seize state institutions by infiltrating all of them for about 40 years, established many television channels, websites, newspapers, journals, news agencies etc. under different names, which belong to different people and companies in order to achieve its purposes. Furthermore, various media outlets are owned directly or indirectly by the PKK that have been carrying out separatist terrorist activities against Turkey for so many years. The media institutions and organizations liquidated by the Decree Laws within the scope of the State of Emergency are media institutions confirmed to have relations to or affiliations with such terrorist organizations.

3. Espionage and the Issue on State Secrets

Unlawful disclosure of state secrets and espionage are globally considered as criminal offenses. Very recently, investigations were carried out on these issues in many European countries. There are still a lot of pending cases concerning these issues in several western countries. ECtHR does not regard unlawful disclosure of state secrets as freedom of expression as well. Accordingly, the states are able to make restrictions on the content of the news covered by journalists such as national security due to its being a highly sensitive issue and in that respect, coverage of some news content can be prevented by state institutions. (Observer and Guardian/United Kingdom) Likewise, prevention of unlawful disclosure of state secrets and espionage are already of utmost importance for the protection of world peace.

Moreover, as it is clearly stated by the ECtHR in the *Hadjianastassiou* case (App.12945/87, 16 December 1992), a very wide margin of appreciation should be granted to the State in terms of the protection of national security. Within the scope of this case, it was held that no violation of Article 10 had been established by the national authorities since sentencing the applicant for the disclosure of military secrets was considered within the margin of appreciation of the State.

As a matter of fact, no state secret can be valued above the secrets of other countries nor be prioritized in terms of protection. However, just as in the area of terrorism, international fight against crimes of illicit disclosure of state secrets and espionage becomes more challenging

because of the hypocrisies of certain countries. Indeed, some European countries welcomed the wanted criminals by showing them a warm hospitality, who were tried and convicted of disclosing state secrets, espionage and making terrorism propaganda and they were received and awarded by high ranking state officials in the name of freedom of the press. This situation is contrary to domestic and international law, thus definitely unacceptable.

4. Violation of the Principle of Lawfulness

ECtHR acknowledges that restrictions brought to the freedom of expression can be deemed legitimate only if they are in line with the law. The principle of lawfulness aims to ensure objectivity and prevent arbitrariness during restriction on freedom of expression. In this sense, it is important to underline the principle of lawfulness within the context of freedom of the media and terrorism propaganda.

Even though the freedom of expression is an indispensable element of a democratic system, in some developed western countries, the freedom of expression is restricted illegally and arbitrarily particularly by the violation of the principle of lawfulness. A method entitled "concluding non-transparent agreements with media outlets" that is used very often in such countries recently and aims at preventing the dissemination of certain content to the public, causes unlawfulness and arbitrariness. Some media outlets and States have been censoring and re-arranging web contents, in the name of cooperation against hate crimes and terrorism, without a court ruling or the decision of an independent regulatory board. However, such media outlets in close cooperation with some countries and international organizations, refrain from cooperating with certain countries and explicitly distinguish one terrorist organization from another. Such intervention in which no judicial authority participates, is severely criticized on account of inequalities in the implementation of restrictions by the states, organizations and individuals. For instance, codes of conduct adopted by the European Commission on 31 May 2016 along with the companies Facebook, Twitter, Youtube and Microsoft, entitle these companies with important authorities and responsibilities regarding the restrictions on freedom of expression and removal of contents.[1] Apart from the decision of the European Commission mentioned above, it is observed that some European and western countries concluded non-transparent agreements with large-scale internet companies and removed contents from the websites and had the content omitted from the beginning, without being subject to review of a judicial authority or an independent institution. Some countries

[1] http://europa.eu/rapid/press-release_IP-16-1937_en.htm

are even not satisfied with these agreements serving solely for arbitrariness and exert pressure on media outlets to be able to further intervene in the contents.[2]

Especially NGOs such as ARTICLE 19, ACCESS NOW and EDRI based in Europe and some human rights activists indicate that cleansing and re-arranging web contents are carried out against the rules of transparency and not based on court decisions.[3] However, "the principle of lawfulness" aims to ensure more transparent and proportionate implementations such as; restricting access to internet should not constitute an arbitrary action, the conditions for the restriction of the banned content should be specified by laws or case-law and that the banned websites and removal of content must be announced to the public. Moreover, blocking access to internet must be realized with a due process and announced effectively. In addition, the relevant parties should have the opportunity to appeal to the decision by means of legal remedies. Even though these are required by the principle of lawfulness when making restriction on freedom of expression, it is known that many countries take completely arbitrary actions on this matter. It is observed that in the name of cooperation with media organizations, some countries have been authorizing and encouraging media outlets to censor web content without any monitoring. As a result, courts in many western countries become dysfunctional since they are not referred to during cases of freedom of expression.

In our country governed by its constitution, the principle of lawfulness is attached a great deal of importance during restriction of freedom of expression and Article 10/2 of ECHR is also taken into account. Apart from the conditions stated in the Law, independent courts examine the existence of legitimate objectives and in democratic societies whether the criteria is met. Therefore, the criticism made by the NGOs operating in the field of freedom of expression concerning the restrictions implemented without court decisions are not valid for Turkey. The press can function freely in Turkey, even in the state of emergency regime. Whether the news makes harsh criticism or is offensive does not change this fact. In addition, in cases of commission of child pornography, hate crimes and terrorism propaganda through the media in Turkey, either independent courts take measures or measures taken by an administrative

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[2]http://www.sabah.com.tr/dunya/2017/01/15/almanyada-medyaya-ve-sosyal-paylasim-sitelerine-baski-artiyor
http://www.bbc.com/news/world-europe-36782874

[3]https://www.law.kuleuven.be/citip/blog/the-code-of-conduct-on-online-hate-speech-an-example-of-state-interference-by-proxy/https://www.article19.org/data/files/medialibrary/38430/EU-Code-of-conduct-analysis-FINAL.pdf,

https://www.article19.org/resources.php/resource/38588/en/freedom-of-expression-unfiltered:-new-policy-on-blocking,-filtering-and-free-speech

board are reviewed by independent courts. In our country, restriction of freedom of expression is not left to the initiatives and arbitrary actions of some internet companies. However, even though Turkey makes restrictions in conformity with the principle of lawfulness and transparency, some international organizations demonstrate Turkey as a country restricting freedom of expression more than other countries, in their list of countries concerning freedom of expression. If it would be possible to detect the off the record and non-transparent restrictions on internet which are made by some western countries such as European Union countries or USA, it will be understood that freedom of expression is subject to much further restrictions in other countries.

5. Terrorist Propaganda and the Media

No country in the world considers terrorist propaganda or praising terrorist activities within the scope of freedom of expression. In the case of Leroy France, where a drawing (four skyscrapers demolishing in dust cloud after the collision of two airplanes) was submitted to the editorial team of a magazine the following caption representing the attack on the twin towers of the World Trade Centre USA on 11 September 2001, parodying advertising slogan of a famous brand "WE HAVE ALL DREAMT OF IT… HAMAS DID IT", ECtHR did not consider the caption above within the context of freedom of expression. Most of the actions regarded as terrorist propaganda in Turkey contain remarks which are much more serious than this, even some of them go far beyond serious remarks and include some operational planning.

Terrorism has no religion or nation. Those who seek to take advantage from terrorism, distinguish one terrorist organization from another or turn a blind eye to or support terrorist activities, should always remember that one day they might suffer from terrorism, too. Indeed, the suffering of people who lost their lives during 9/11 attacks, Brussels or Paris attacks are not to be regarded differently from the suffering of the departed persons during attacks in other parts of the world. Republic of Turkey continues its determined struggle against terrorist organizations without making a distinction between them. This determined attitude is what Turkey expects from its allies and friendly countries. In order to specify more clearly, Turkey expects that USA and European countries show the same amount of sensitivity towards terrorist organizations such as FETO and PKK as they do towards Daesh. Unfortunately, this is not what is happening today. Exhibition of images propagating the PKK which the EU considers as a terrorist organization, in the European Parliament and the fact that media outlets connected to the PKK or making its propaganda are provided with opportunities, can

be given as an obvious example of this situation. This attitude is highly political and also hostile to Republic of Turkey and Turkish nation.

On the other hand, some international organizations involved in propagating and lobbying activities of terrorist organizations directly or indirectly supported by some countries, have published lists aimed at slandering Turkey before the international community. It is not certain according to which criteria these lists are prepared. Most of the time, members of terrorist organizations detained or taken under custody are referred to as press members or media employees, trying to turn people against Turkey. Despite the fact that active participation in the coup attempt, being a member of terrorist organizations, commission of murder, injury or rape have no relation to the work of a journalist, those who committed those acts and assert that they are journalists are considered as detained journalists by some international organizations and this can be interpreted either as pure ignorance or an attitude highly political and hostile to Turkey.

Republic of Turkey experienced a coup attempt very recently and is still subject to serious terrorist attacks. In the last year, hundreds of citizens were martyred because of terrorism. Even under these circumstances, maximum effort is being focused on the protection of freedom of expression and democratic values. Contrary to the listing of countries published for political reasons by some international organizations, Republic of Turkey is ahead of many western countries in the protection of freedom of expression. Unbanned contents of numerous websites which reflect different political views in Turkey and hundreds of television, radio channels, newspaper, journals and other publications are clear examples of this situations.

V.RESTRICTION ON THE INTERNET ACCESS

While there has still been a lack of specific legislation for the internet in the world and in many democratic countries, in Turkey, with a view to ensuring restriction of fundamental rights and freedoms subject to legal supervision in line with the principle of legality, the internet actors and their responsibilities are clearly defined and the Notice and Takedown procedureis formed under the Law no. 5651. According to not only in the Constitution but European Convention on Human Rights and UN legislation, the first objective of the law is to fight with illegal content of Internet in the direction of legitimate aims.

The law is also in line with the restrictions of article 22 of Constitution of the Republic of Turkey, Article 19 paragraphs 3a and 3b of the International Covenant on Civil and Political Rights which came into force on 23 March 1976 and ratifed by Turkey on 23 September 2003 and Article 10 paragraph 2 of the European Convention on Human Rights.

1.Blocking Measures Taken By Administrative Authorities

No one in the world advocates the freedom of internet except in legal rules. It is not thought that anything that concerns society is out of legal regulation and non-supervision. According to the interests of the countries, the internet can subject to limitation and blocking measures.As a matter of fact, in many democratic countries, obstacles and restrictions can be also made to internet for various reasons. Within the framework of the provisions of the law, It is possible to see that in many democratic countries make restrictions to internet by courts and administrative bodies such as ministries.

In this context, implementing a measure that is intended as a last resort and set aside when the violating content is remedied, to block access to the said content, or if it is not possible, to block the entire broadcasting is not contrary to the human rights or functions of a democratic state, but on the contrary, is a requirement to protect the fundamental rights as it is aimed in at least ceasing the continuality of crimes in view of the fact the world of Internet offers a huge opportunity of committing serious crimes and illegal acts which have traumatic effects against the states' own political, social and economic stability. The provisions of the Law No 5651 on access blocking measures are based on these principles and do not pose any inconveniences in terms of freedom of expression.

2. The EU Practice Regarding Blockages and Restrictions

In the documents published by the EU regarding content regulation, the emphasis of "self-regulation" is striking. In this context, filtering and access blocking in democratic countries is generally carried out under the scope of "***volunteerism***" in cooperation with civil society,

police and ISP, without self-regulating regulation and clear regulation on the issue. But it is also a fact that governments have forced the representatives of the industry to make "***mandatory voluntary***" cooperation on content regulation. Declarations by government representatives that other sanctions would be implemented if "volunteerism" could not be established, pushes the ISPs to implement the necessary measures as "mandatory voluntary".

3. The Principles of Legality, Proportionality and Transparency in Turkey's Practices

The principle of legality is protected in each administrative sanctions applied. In the catalog crimes of the law (sexual abuse of children etc.), ICTA, penal judge of peace and the Public Prosecutor's Office could give access blocking decisions. However, ex-officio decisions on child online protection can be given by ICTA in case of the content or hosting providers of the web site is abroad.In domestic publications, ex-officio decisions can be only given by the crimes related sexual abuse of children, obscenity and prostitution.

Further, the amendment in the Law No. 5651 was made with the Law no. 6639 dated March 27, 2015. With the amendments, based on one or more reasons of protecting of national security and public order, right to life and protection of life and property, protection of public health, prevention of committing crime of the cases access blockingand/or content removing shall realized by judge or Authority upon order of Prime Ministery or relevant Ministries where delay is prejudicial. The decision given by Authority is also submitted for judge's approval to provide legal supervision.

With the other amendments in the Law 5651 in 2014, the principles of "limitation by law", and "proportionality" were pursued for fundamental rights and freedoms. In this context, the key features of amendments can be sorted as follows:

- The legal ground that provides the effective operation of the notice and takes down system is enforced.
- The penalty of imprisonment is revoked, and the penalties of restricting freedom are turned into pecuniary penalties.
- The method of effectively and rapidly application of precautionary measures by civil initiative is adopted by means of forming an Access Provider Association (APA).
- The opportunity to give limited decisions, instead of giving the access blocking decision for an indefinite period of time, with the amendment, is provided.
- The opportunity to eliminate the violations of personal right and the right to privacy in Internet environment, with restrained precautions in a very short time, is provided.

The Principle of Proportionality is Protected

Our implication about access blocking is based on proportionality principle. Access blocking decisions apply to content, i.e. only sections or parts (URL, etc.) of a website where breach is occurred. However, banning access to content by blocking the URL addresses will not stop the violation or in case of technical inadequacies of URL-based blocking, access blocking decisions may apply to the whole website as a last resort.

Access blocking decisions given in URL basis could only be executed in internet sites in “http” format. It is technically not possible to block access to content subject of violation in internet sites in “https” format. Against this background, when the content is not removed by the content or hosting provider in case of denial of access decisions, the only option at hand in order to block access to all relevant website. This situation is occurred as a last resort when the related internet site does not cooperate.

Therefore, on the basis of the problem that arises in practice, the relevant content and hosting providers do not comply with the laws of the country which is in conformity with the UN and EU norms, and do not fulfill the obligations.Thus, it would not be a fair approach to expect that Turkey will act solely on the basis of "moderation" unilaterally on the solution of the problem.

The Principle of Transparency is Protected

While '404' page error code is generated on the related access blocking web sites in many UN member countries' applications, information according to which decision and date that a web site is blocked locates on the blocking site in terms of 'transparency'. The information whether a site is blocked or not as part of the administrative measure can also be avaliable via eekg.btk.gov.tr address.In this way, contrary to the practice in many countries, citizens are allowed to use their appeal rights in Turkey.

4. The agenda Concerning the Social Media and the Limitations of Internet Band Width

With the Decree Decree No. 671 dated 15/8/2016, it is added to Article 60 of the Electronic Communication Law No. 5809 that "in accordance with one or more of the reasons listed in Article 22 of the Constitution, the Prime Minister determines the precautions to be taken and notifies the Authority (ICTA). The President of the Authority immediately notifies the operators, the providers, the data centers and the related content and hosting providers of the decision regarding the measures that the Prime Ministry deems necessary. The requirement of this judgment shall be fulfilled immediately within two hours from the moment of notification of the decision. This decision is submitted to the penal judge of peace for approval within

twenty-four hours. The judge declares his decision within forty-eight hours, otherwise the decision will automatically withdrawn."

It is stated in the Article 22 of Constitution that "Everyone has the right to freedom of communication. Secrecy of communication is fundamental. Unless there exists a decision duly passed by a judge on one or several of the grounds of national security, public order, prevention of crime commitment, protection of public health and public morals, or protection of the rights and freedoms of others, or unless there exists a written order of an agency authorised by law in cases where delay is prejudicial, again on the above-mentioned grounds, communication shall not be impeded nor its secrecy be violated. The decision of the authorised agency shall be submitted for the approval of the judge having jurisdiction within 24 hours. The judge shall announce his decision within 48 hours from the time of seizure; otherwise, seizure shall automatically be lifted."

The Example of France Regarding the Restrictions

Regarding the Extension of the State of Emergency on 19 November 2015 in France, it is added to article 4 paragraph 31 of legislation numbered 3237 that "The Ministry of the Interior may take all necessary measures through all public communication media on the Internet due to activities aimed at terrorist activities". According to this, while the measures in France continue to be implemented without being submitted to the judge's approval, in our country, the measures taken are presented to the judge's approval within 24 hours.

The Statistical Data on Decisions Blocking the Internet Access in Turkey

However, Most of blocked web sites (%99,5) given by our Authority as an ex-officio decision are about child sexually abuse, extreme pornography, prostitution and gambling.

VI.FREEDOM OF EXPRESSION IN TURKEY

Article 13 of the Constitution sets forth that fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality; Article 26 of the Constitution with the title 'freedom of expression and dissemination of thought' prescribes that everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. However, the exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary. Article 28 of the Constitution regulating the rules with respect to the freedom of media states that the press is free, and shall not be censored. The State shall take the necessary measures to ensure freedom of the press and information. In the limitation of freedom of the press, the provisions of articles 26 and 27 of the Constitution shall apply.

It is observed that Articles 25 and 26 in the second chapter of the Constitution mentioning freedom of expression, fundamental rights and freedoms are similar to the regulating system of European Convention on Human Rights.

-In reference to the State of emergency regime;

With the declaration of state of emergency, the pending State of Emergency Law No. 2935 enters into force and measures provided in Article 11 under the heading "Measures to be taken during violent activities" and through the reference made in Article 11, Article 9 becomes applicable. Declaration of a state of emergency is sufficient for the entry into force of these articles, issue of another Law or a Decree Law is not required in this respect. The Decree Laws which will be issued under the state of emergency, is enacted and put into effect pursuant to Article 121 of the Constitution, where there is need for measures or decisions apart from those provided in Law No. 2935. The Decree Laws issued under the regime of the state of emergency bring restrictions on any area related to individual rights and freedoms, within the framework of Articles 15 of the Constitution of the Republic of Turkey and the European Convention on Human Rights.

As is known, Article 15 of the European Convention on Human Rights grants the contracting parties the power to take measures derogating from its obligations to implement the state of emergency and from the guarantees stipulated under the Convention with respect to fundamental rights and freedoms, in case of public emergency threatening the life of the nation. In line with Article 15 of the Convention, Article 15 of the Constitution also provides that measures derogating from the guarantees of fundamental rights and freedoms embodied in the Constitution, apart from some exceptions related to the state of emergency, may be taken within the limited scope of state of emergency and in proportion to the purpose.

In accordance with Article 15 of the Constitution, no provision which is contrary to the right to life, the prohibition of torture and ill-treatment, the prohibition of accusation and compulsion due to freedoms of religion, conscience and expression, the principle of legality of offenses and punishments, the prohibition of slavery and the presumption of innocence are not stipulated in the decree laws to be issued under the state of emergency. Limitations may be imposed on individual rights and freedoms except for these by means of the laws enacted or decree laws issued during the state of emergency and it is observed that these limitations comply with the principle of "proportionality".

Moreover, in accordance with Article 1 of the Decree Law No. 685 which entered into force upon its publication on the Official Gazette dated 23.1.2017 numbered 29957, under the state of emergency declared within the scope of Article 120 of the Constitution and approved upon the decision of the Grand National Assembly of Turkey dated 21/7/2016 numbered 1116, a Commission to Review the Actions Taken under the Scope of State of Emergency has been established to evaluate and conclude the applications lodged against the actions directly prescribed in the provisions of the decree laws, without another administrative action, on the ground that they are members of, affiliated and connected with or related to terrorist organizations or an entity, structure or group which are deemed by the National Security Council to act against the national security of the State. This commission is also authorised to examine and evaluate the applications regading the closure of private radio and television corporations, newspapers and magazines, news agencies, publishing houses and distribution channels. Furthermore, it is possible to take legal actions in administrative justice against the decisions of this commission.

As is seen, an effective domestic remedy is ensured for the actions taken through decree laws within the context of fight against terrorism under the state of emergency.

- <u>With regard to the regulations in the criminal legislation;</u>

Freedom of press is enshrined in the Constitution and the cases where this freedom will be restricted is regulated in detail in the Constitution as well. Criminal sanctions are envisaged in the Code No. 5237 with respect to illegal prevention of the publication and broadcast of any kind of media organs. Furthermore, it is clearly provided in Article 218 of the Code No. 5237 that the statements of opinion which do not exceed the limit of information and which are made with the aim of criticism do not constitute a crime while Article 301 of the same Code stipulates that the statements of opinion made with the aim of criticism do not constitute a crime.

Under the Law No. 5187 regulating the freedom of press and the exercise of this freedom, it is provided that the press is free; the exercise of freedom of press can only be limited in compliance with the requirements of a democratic society and with the purpose of protecting the reputation and rights of others, public health and decency, national security, public order, public security and territorial integrity; preventing the disclosure of State secrets or the commission of a crime; ensuring authority and impartiality of the judiciary; the owner of periodicals, the director in charge and the author cannot be forced to disclose any kind of news sources including information and documents and to testify on this matter.

The permission which was required to investigate and prosecute the offense of "degrading Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State" under Article 301 of the Turkish Penal Code No. 5237 which entered into force on 1 June 2005 was removed. However, due to the increasing number of case files opened according to the mentioned provision of law, the investigation of the offenses within the scope of the mentioned article was subject to the permission of the Minister of Justice. Therefore, it is seen that the number of investigation permits granted by the Minister of Justice within the scope of Article 301 decreased considerably.

One of the main reasons for this is that "regarding freedom of expression, including freedom of press and pluralism of the media, Article 301 of the Turkish Criminal Code is no longer used systematically to restrict freedom of expression" as pointed out by the European Commission in Turkey 2009 Progress Report dated 14/10/2009. The decisions of the European Court of Human Rights related to freedom of expression are closely followed and taken into account during the examination of the files and references are also made to these decisions in our justifications.

As another reason, it has been considered that "Article 301 of the Penal Code of Turkey is eventually directly linked to the restriction of a freedom" as indicated in the preamble to the

Act No. 5759 to amend Article 301 and an approach which reserves the largest room for the freedom of opinion and of expression has been adopted.

Likewise, while adopting this approach, having regard to the statements indicating that "the investigation of the offense provided in the article is subject to the request of the Minister of Justice due to political interests of the country and this power granted to the Minister of Justice is the exercise of a discretionary power for the interests of the State and society rather than a judicial assessment", as prescribed in the justification of the decision on the rejection of the application dated 07/05/2009 numbered 2009/57 (registry no. 2009/25) lodged to the Constitutional Court on the allegation that the fourth paragraph of Article 301 is contrary to the Constitution, this discretionary power is exercised in favor of the freedom of opinion and expression.

In addition, a part of the amendments introduced by the Law No. 6459 to amend Some Laws within the Context of Human Rights and Freedom of Expression which entered into force upon its publication in the Official Gazette dated 30/4/2013 is as follows:

The elements of the offense of "printing and publishing leaflets and declarations of terrorist organizations" in the second paragraph of Article 6 of Anti-Terrorism Law No. 3713 have been regulated anew; printing and publishing the leaflets and declarations which legitimize the methods including force, violence and threat or praise or incite these methods instead of every leaflet and declaration have been accepted as an offense. With this regulation, the elements of the offense have been further concretized and it has been aimed at harmonizing with the ECHR standards within the scope of freedom of expression.

The elements of the offense of "making propaganda of a terrorist organization" in the second paragraph of Article 7 of the Law No. 3713 have been regulated anew; making propaganda of terrorist organizations which will legitimize the methods including force, violence and threat or praise or incite these methods has been accepted as an offense. Also, it has been prohibited that those who commit certain crimes as not being a member of a terrorist organisation (publishing leaflets and declarations, making propagandas, participating in illegal meetings and demonstration marches) on behalf of the organization cannot be punished under Article 220/6 of the Penal Code of Turkey.

With the amendment of Article 215 of the Code No. 5237, it has been set as a condition that an explicit and imminent danger to public order should occur for the commission of the criminal offense of "praising an offence and offender".

The elements of the offense of "making propaganda for the organization" have been regulated anew; the elements of the mentioned offense have been laid down anew with the amendment

to the eigth paragraph of Article 220 of the Code No. 5237, in line with the regulation in Article 7 of the Antiterrorism Law and the actions which will constitute the offense of propaganda have been further concretized and harmonized with the ECHR standards. Besides, it has been provided that this paragraph will only apply to armed organizations in the clause added to the sixth paragraph of the same article.

The elements of the offense of "discouraging people from performing military service" have been regulated anew; it has been envisaged that those who encourage or uses repetition which would cause the persons to desert or have the effect of discouraging people from performing military service will be punished and the elements of the mentioned offense have been concretized with the amendment to Article 318 of the Code No. 5237.

It is understood that the regulations in Articles 216, 299, 301 and 314 of the Penal Code of Turkey and the provisions of the Law No. 5651 comply with the standards of the European Court of Human Rights as to substance; the mentioned criminal proivisions do not pose any obstacle to the freedom of expression; similar regulations are also seen in many European states; certain drawbacks result from the practice rather than these regulations.

- With regard to the journalists against whom investigations and prosecutions are carried out;

The Republic of Turkey is a democratic state of law which is the founding member of the Council of Europe and adopts human rights, the rule of law and democracy as its basic references. Freedom of press is also enshrined in Article 28 of the Constitution and cannot be censored. In accordance with Article 90 of the Constitution, international agreements relevant to fundamental rights and freedoms are set as priorities where these agreements contradict the national legislation.

Within this context, it should be primarily indicated that no person has been taken into custody or detained solely for conducting journalistic activities in our country. The journalists who are currently kept in penal execution institutions are convicts or detainees within the scope of the administrative investigations or proceedings held by the public prosecutors for the actions with which they are charged and which constitute a crime in the criminal legislation (murder, forgery, membership of a terrorist organization such as FETO/PDY, PKK, DAESH, DHKP-C, attempts against the constitutional order etc.).

- With regard to the notification of the imputed crimes to those who are in penal execution institutions;

In accordance with the provisions of the Code of Criminal Procedure, suspects are informed in detail of the nature and reason of the accusations against them both during the arrest moment and the statement-taking before the law enforcement officials and public prosecutor

and when they are referred for detention and questioned by the court. Thus, no person has been uninformed of the accusations against them either in custody or in prisons.

Therefore, the suspects are informed of the imputed offenses during the judicial investigations in compliance with the provisions of the international agreements on human rights and in line with the aforementioned provisions of the legislation.

The Issue of Detained Journalists

- There are no convicted or detained journalists in the penitentiaries within the scope of Freedom of Press guaranteed by the Constitution.
- 40 names alleged to be detained journalists are the persons who have been sentenced for many offences, mainly terror crimes, whose appeal phases have been completed and whose sentences are finalized.
- 3 names are the persons who have been sentenced by local courts and whose appeal process have been continuing.

Examples of Crimes Committed by Detainees and Convicted Persons Alleging that they are Journalists:

- **A.İ.** Convicted for Bringing Bomb Mechanism from North Iraq with the Code Name Siyabend, Obtaining Bomb Equipment.
- **B.A.** Convicted for Raking Police Vehicle with Gunfire on 08.12.1992, Participating in Armed Attack in Hani District on 09.11.1992, Martyring 2 Policemen and Injuring 3 Policemen on 12.12.1992, Martyring 1 Soldier and Injuring 4 Soldiers as a result of Raking 1 Military Vehicle with Gunfire on 31.12.1992.
- **C.D.** Convicted for Possession of Explosive Substance, Illegal Participation in a Demonstration with a group of 300 People on 03.02.2011, Organizing the Illegal Demonstration for the Birthday of Abdullah Öcalan, the Leader of PKK terrorist organization in 2009.
- **M.D.** Detained for Preparing, Transporting and Placing Bomb Mechanism in Diyarbakır and Producing Explosive substance.
- **D.H.** Detained for taking actions within the scope of the Actions of the Terrorist Organization on Different Dates; The following have been seized concerning the Detainee: Interviews, Tape Records, Image Records found within the scope of the actions of the Terrorist Organization in the Cell House he stayed in Sakarya Province, and so many Posters, Pictures and similar Documents Affiliated with the Armed Terrorist Organization

in the Association Operating Illegally and Determined to be the Meeting Place within the scope of Terrorist organization actions.

- **N.Y.** Convicted for being a Member of the Organization through Conducting Groups to Make Illegal Actions by masking his face with Puşi (a kind of scarf) in Nevruz Celebrations of PKK, armed terrorist organization, on 21.03.2010, fighting against Security Forces with stones and rods in Doğubayazıt on 22.10.2008.
- **O.D.** Convicted for Bomb Attack to MÜSİAD Building on 30.07.2011.
- **Ş.Ö.** Convicted for being a Member of the Armed Terrorist Organization, having had 3 Handmade Pressure and Cluster Bomb in the Search Made in Diyarbakır on 09.05.2014, damaging Public Property.
- **E.S.** Convicted for Bomb Attack to the Coffee House in Maltepe on 28.05.1999, and Bomb Attack to Sinop Culture and Civic Group on 28.05.1999.
- **H.D.** Convicted for Bomb Attack in Kadıköy on 31.07.2001, and Armed Seizure of Topçular Branch of Akbank in Eyüp on 24.01.2003.
- **H.K.** Convicted for Martyring 2 Privates as a result of Armed Attack against 3 Gendarmerie Privates in Esenyurt on 09.12.1995, Raking the MHP's Election Communication Bureau with Gunfire in Haramidere on 22.12.1995, Bomb and Armed Attack to Police Vehicle and a Workplace in Avcılar on 30.11.1998.

Other Subjects Related to Freedom of Expression

a) The crucial impetus for the developments in the field of freedom of press and information and human rights within approximately the last 20 years, has been the membership process of the European Union (EU) and the reformist governments that came to power in 2002. As a consequence of the Accession Partnership Document which is considered as some kind of roadmap for the EU member states and includes the measures which need to be taken for membership, initiatives have been taken in our country for a series of reform works called "EU Harmonization Law Packages" and comprehensive changes including freedom of press and information have been introduced with these packages under the title of "Political Criteria" and efforts have been focused on the harmonization of the national legislation with the EU acquis.

- With the amendments made to the *Press Law* on 9 April 2002, the extent of the press offenses was limited; the duration of closing the press organ for its publications constituting an offense was changed from "3 days - 1 month" to "1-15 days".

- Furthermore, the sentence of imprisonment set out for those who were responsible were reduced from “1-6 months” to “1-3 months”.
- Upon the annulment of Article 31 and additional article 3 of the *Press Law* on 9 August 2002, all the sentences of imprisonment were lifted for the offenses committed through press, thus *freedoms of expression and press* were expanded.
- With the amendment to Article 15 of the *Press Law* on 11 January 2003, provisions ensuring that the owner of periodicals, the director in charge and the author *cannot be forced to disclose any kind of news sources* and that they are protected by this means were introduced.
- In 2004, *a new Press Law No. 5187 was enacted based on a conscience adopting that freedom of press is a fundamental right for individuals and masses to the same extent as being a freedom for those who exercise it; the practices which caused the closure of publishing houses and the confiscation of printing equipment were lifted.*
- *Prospective penalties of suspension of publication were lifted* within the scope of freedom of expression and freedom of media, with the Law which is publicly known as the Third Judicial Reform Package and which entered into force on 5 July 2012.
- *The limitations on the right of publication and education in different languages and dialects* that Turkish citizens traditionally use in daily life were lifted on 9 August 2002.
- *The legal barriers put in the way of TRT and private televisions in broadcasting in different languages and dialects apart from Turkish* were lifted on 9 July 2003.
- *A channel of TRT state television, TRT 6 started to broadcast a full time service in Kurdish* as of 1 January 2009.
- A common project of Justice Academy of Turkey and the Council of Europe of the European Union, which is "Strengthening the Capacity of the Turkish Judiciary on Freedom of Expression" was officially launched on 11/12/2014 and the project is still ongoing. The jurisprudences of the European Court of Human Rights were examined within the scope of the project and a curriculum was prepared by benefitting from the case-laws of the Constitutional Court, the Court of Cassation and the Council of State including assessments in this regard. After the activities of trainers, the training works were completed by these trainers on regional basis.
- Within the scope of the project titled "Improving the Efficiency of the Turkish Criminal Justice System" which was carried out in coordination with the Directorate General for Criminal Affairs and closed on 10/12/2014, freedom of expression was addressed in

particular in the training modules especially related to fight against terrorism and cyber crimes within the framework of training materials prepared for the Justice Academy of Turkey.

b) The methodological errors regarding Turkey in the reports of the organizations such as RSF, Freedom House:

- *The survey questions* used by Freedom House to obtain the data to be used in relevant indexes *were again answered by its own team (representatives in the countries).* This *disrupts the reliability* of the mentioned index.
- The *standard survey questions* prepared by RSF are answered by the *network of 150 reporters working in this organization* and 18 nongovernmental organizations functioning in the field of freedom of expression and journalists. This situation brings into question *the reliability of the research method of the organization.*
- Moreover, assessments are made *by neglecting the economic magnitude of the countries.* For example, *the countries such as Turkey where a huge amount of daily newspapers are published and countries where only a few daily newspapers are published are put in the same equation.* This leads the countries, where a few newspapers are published, to figure at a higher level than the countries such as Turkey on the list since no violation is witnessed in terms of freedom of press.
- The publications are not intervened at source in line with non-transparent agreements signed between certain media outlets and some countries and international organizations, which is not again taken into consideration while preparing the lists.

c) Effects of the measures taken within the scope of state of emergency on freedom of press and expression in Turkey

- *Considering the Decree Laws issued during the State of Emergency, it will be seen that no regulation has been introduced to directly intervene with the media zone and to regulate this zone*.
- The allegedly existing pressure *concerns the media organs closed for* releasing news *in connection with terrorist organizations and serving as an instrument of the propagandas of* these organizations. It is the question of *national security and public order* within this context.
- Indeed, *the paragraph 19/3 of the United Nations International Covenant on Civil and Political Rights* states that “Freedom of press and freedom may be subject to certain

restrictions if it is necessary for the protection of national security, public order or of public health and morals."

d) Reasons for the closure of FETO-linked media organs following the coup attempt of July 15:

- Within this framework, any propaganda supporting terrorist organisations and any activity shown in disguise of journalism have been *lawfully* stopped *only on the basis of true and concrete evidence* and in accordance with the rule of law. The mentioned practice is addressed within the scope of fight against organizations targeting the state presence in each country of the world and is seen as a reasonable and legitimate activity of the state.
- *Fetullahist Terrorist Organization (FETO)* was called *"parallel state structure"* and *"illegal organisation carrying out ostensibly legal activities"* for the first time in the national security instruments on *26 February 2015,* following the press release on the meeting of the National Security Council and the organization was described as *an element officially threatening the internal and external security of the country.*
- Within this framework, the media outlets affiliated with FETO terrorist organization were also *lawfully* closed *since the coup attempt of July 15 constituted solid evidence,* depending on the limited authority granted to the government as a result of the state of emergency declared after the coup attempt on 15 July when the mentioned organization showed most concretely and brutally that it aimed at destroying the constitutional order, free environment and democracy of our country. Therefore, these closures should not be evaluated under the title of freedom of press and expression but as *ensuring the state presence after the direct connections with a terrorist organization and fighting terrorist organisations"*.

e) Press card activities in Turkey:

- Press card is provided by *a commission formed by the presidents and deputy presidents of unions and associations* representing journalism, *journalists and academicians as in the examples in Europe* (France, Italy, the UK etc.).
- *Directorate General of Press and Information of the Office of the Prime Minister* carries out *the secretariat affairs of this commission.* Therefore, contrary to what is known, *it is not the state but the aforementioned Press Card Commission formed by journalists* who decides whether the press members will carry a press card.

- The Commission *decides whether* the press members *will obtain a press card by evaluating their professional background, works and by examining whether they receive insurance premium.*
- As of *20 January 2017, 13819 press members have press cards* in our country.
- The conveniences provided to journalists include service-stamped passports which facilitates the visa process in their assignments abroad; the *right of early retirement* granted thanks to the increase in the de facto period of service in accordance with the Law No. 5510; *the right to obtain a gun license* for their security, *the right to benefit from innercity transport for free and intercity transport with reduced fares; visiting museums, galeries, exhibitions, stadiums etc. for free and participating in the official ceremonies at a position which will help them perfom their duty with more ease.*

VII.MEASURES TAKEN IN RELATION TO FREEDOM OF MEDIA IN THE DECREE LAWS ISSUED UNDER THE STATE OF EMERGENCY

Under the state of emergency, 19 Decree Laws have so far been published and the first five decree laws have been deliberated and enacted in the Plenary of the National Assembly. The enactment process is ongoing for the rest of these decree laws. The articles concerning the freedom of expression in the decree laws which have so far been issued are shown in the following table.

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 Article10 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 (ı) 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. "

"ı) 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.

VIII.AMENDMENTS INTRODUCED IN THE FIELD OF HUMAN RIGHTS BY THE DECREE-LAWS DATED 23 JANUARY 2017

As it is known, on 15 July 2016 the Fetullahist Terrorist Organization (FETO/PDY) staged a treacherous coup attempt in Turkey. In the aftermath of the coup attempt, on 21 July 2016 a state of emergency was declared throughout the country with a view to enabling that necessary steps against the FETO/PDY are taken in the most effective and expeditious manner. Within the scope of the said struggle, on 21 July 2016 Turkey notified that in accordance with Article 15 of the European Convention on Human Rights ("the Convention"), the obligations under the Convention have been derogated from. Having regard to the gravity of the threat faced with after July 15th and the urgency of the measures to be taken, it has become inevitable to take actions directly by virtue of the decree-laws. Nevertheless, regard being had to the circumstances changed in the meantime, Turkey has taken significant steps in the field of human rights as appropriate to the situation since it is adamant to preserve its democracy by living in democracy and to solve its problems within the scope of the principles of the state of law.

1-Establishment of the Inquiry Commission on the State of Emergency Measures

Pursuant to the Decree-Law no. 685, the Inquiry Commission on the State of Emergency Measures ("the Commission") has been established in order to carry out an assessment of, and render a decision on, applications related to certain measures directly conducted by virtue of the decree-laws on account of having contact with terrorist organizations. The Commission shall have the authority to conduct an examination as to the measures concerning the dismissal from office, the dismissal from studentship, the closure of institutions and organizations and the revocation of the ranks of retired personnel.

The Commission shall exercise its functions for a period of two years, and this may be extended for a period of one year per each extension. The Commission shall be composed of seven members, and those members shall be appointed to hold office for a term of two years. The Commission may, on the condition of compliance with confidentiality of investigations and protection of State secrets, obtain from all institutions and organizations any information or document related to its scope of duty.

Applications to the Commission may be lodged within sixty days as from the date on which the Commission starts to receive applications. Moreover, parties having legal interest shall be entitled to file annulment actions against the decisions of the Commission with the Ankara administrative courts which will be determined by the High Council of Judges and Prosecutors (HCJP).

Furthermore, the members of the judiciary who were dismissed from their profession upon the decisions of the HCJP and the high courts pursuant to the Decree-Law no. 667 and the Law no. 6749 have been entitled to bring an action directly before the Supreme Administrative Court. The provisions of this Decree-Law may also apply in respect of those who previously filed an action and even those in respect of whom a decision has already been issued.

The fact that a judicial remedy has been introduced against the decisions of the Commission is to provide the persons dismissed from profession or closed institutions and organisations with the opportunity to raise their requests before the independent judiciary. Besides, those have also been granted with the right to object, appeal and lodge an individual application before the Constitutional Court.

2- Shortening the Period of Custody

Pursuant to the Decree-Laws nos. 667 and 668 and the Laws nos. 6749 and 6755 upholding these Decree-Laws, the period of custody was extended to maximum of 30 days in respect of terror offences, attempt to stage a coup and collective offences during the state of emergency.

By the Decree-Law no. 684, it has been regulated that this period cannot exceed 7 days as from the moment of arrest, save for the period for bringing the suspect before the nearest court, but this period may be extended not more than 7 days in written form in compulsory situations such as difficulty in collecting evidence or high number of suspects. Thus, compliance with the European Court of Human Rights (the Court) judgements in the cases of Aksoy v. Turkey, Lawless v. the United Kingdom and Demirel group has been ensures.

It must be indicated at this point that the period of custody in respect of the offences other than the abovementioned offence types during the state of emergency and the offences in question at the end of the state of emergency is 1 day and, in the event of extension due to compulsory conditions, maximum of 4 days.

3- Lifting the Ban on Interviewing with Lawyer

The provision in the Decree-Law no. 668 and the Law no. 6755 which prescribes that the suspect's right to interview with his/her lawyer can be restricted for a period of 5 days by the public prosecutor's decision during the state of emergency, has been repealed.

To that effect, the general investigation provisions in Article 154 § 2 of the Code of Criminal Procedure shall be applied from now on. Accordingly, upon the request of the public prosecutor, the suspect's right to interview with his/her lawyer might be restricted for 24 hours by a judge decision, and his/her statement cannot be taken during this period. Thereby, with this amendment, the legislation has been brought in compliance with the Court's judgements in the cases of İbrahim v. the United Kingdom and Salduz v. Turkey group.

4- Regulation of the General Disciplinary Provisions as regards the Law Enforcement Officers

With the Decree-Law no. 682, the disciplinary provisions as regards the personnel serving in the Security General Directorate, the Gendarmerie General Command and the Coast Guard Command have been incorporated into an overarching disciplinary legislation.

Accordingly, two different types of sanctions have been introduced as disciplinary punishment concerning the dismissals; one of which is dismissal from profession with no possibility of being re-employed in the law enforcement institutions, and the other is dismissal from public service with no possibility of being re-employed in public service.

Amendments which have significant importance in the Court's judgments of the Batı and Erdoğan/Kasa group of cases have been introduced to the legal system. In particular, the personnel who inflict torture shall be dismissed from public service. It has also been regulated that disciplinary supervisors or disciplinary boards cannot impose any disciplinary penalty without taking the statements of defendant. Besides, the possibility to dismiss from public service of the personnel who engage in activities against the national security has been prescribed.

The closed and reinstated media outlets which were listed in the Annex of the Decree Laws issued under the State of Emergency are shown under the title "Statistics related to Closed/Reinstated Media Outlets".

IX.OPINION NO 872/2016, OPINION ON THE FREEDOM OF MEDIA OF TURKEY

The preliminary list of questions and answers to be discussed are enumerated below.

Questions related to the liquidation of media outlets and confiscation of their assets

1- What are the general criteria for establishing "membership to, affiliation or connection with the terrorist organizations" (see, for example, Article 3 of Decree Law no. 677), besides formal ownership? Where these criteria made public?

As a result of investigations, inspections and researches made after the coup attempt in our country, it has emerged that many media organizations are connected or affiliated with terrorist organizations. The decisions on all media institutions and organizations that are liquidated and having their assets confiscated by the Decree Laws under the State of Emergency are based on the reason that they are affiliated with, in relation or connection with the structures, formations or groups determined by the National Security Council to have acts against the national security of the State.

The major criteria on this regard are as follows; concerning the press and publishing organization;

1. broadcasting or publications aimed at promoting violence, armed struggle or rebellion, propaganda of terrorism, removing the democratic, secular legal order and abolition of the use of fundamental rights and freedoms, causing state organs unable to perform their duties and to encourage and incite the armed forces and law enforcement officers to overthrow the democratically elected government and the President through coup d'etat,
2. being financed by financial resources obtained from terrorist organizations and /or transferring their revenues to the terrorist organizations,
3. being used as a vehicle in order for laundering money obtained from terror,

The fact that their owners and/or managers within the enterprise are affiliated or in connection with terrorist organizations. These criteria are especially determined in Article 8 titled "Media Service Principles" of the Law No. 6112.

"ARTICLE 8 – (1) Media service providers shall provide their media services in line with the principles under this paragraph with an understanding of public responsibility. Media services;

a) shall not violate the existence and independence of the State of the Republic of Turkey, the indivisible integrity of the State with its country and nation,

or the revolutions and principles of Ataturk.

b) shall not inflame society to hatred and hostility by discriminating on the basis of race, language, sex, class, region, religion and sect, nor shall they form hatred within society.

c) shall not be contrary to the rule of law and the principle of justice and impartiality.

ç) shall not be contrary to human dignity and the principle of the privacy of personal life; shall not include humiliating, derogatory and defamatory expressions against persons and entities/organizations, beyond criticism.

d) shall not praise or encourage terrorism, depict terrorist organizations as powerful or rightful or portray terrorist organizations' intimidating and deterrent qualities. (Abolished second paragraph: 2/1/2017-Decree Law-680/18 art.)(…)

e) shall not contain and encourage broadcasts which discriminate on the basis of race, colour, language, religion, nationality, sex, disability, political and philosophical views, sect or similar reasons and contain and encourage broadcasts which humiliate persons[4].

f) shall not be contrary to the national and moral values of the society, general morality and the principle of family protection.

g) shall not praise commission of crime, criminals, criminal organizations or teach criminal techniques.

ğ) shall not contain abuse of children and powerless and disabled people or incite violence against them.(1)

h) shall not be of an encouraging nature concerning the use of addictive substances like alcohol, tobacco and narcotics or gambling.

ı) shall predicate on the principles of impartiality, truthfulness and accuracy and not impede the free formation of opinions in the society; news that can be investigated pursuant to the professional principles of the press shall not be broadcast without investigation or verification; shall not provide exaggerated sounds and images, any effect or music other than natural sounds while broadcasting news; archive or re-enactment images shall be indicated as it is, and the source of news obtained from agencies or other media sources shall be stated.

i) shall not present or declare anyone as guilty unless conclusively proven guilty by a judicial decision; shall not be in the form of affecting the trial process and impartiality other than being newsworthy during the judgment process in cases that have been passed to the judiciary.

j) shall not contain any elements that cause unfair competition and serve unfair interests.

[4] The expression "handicap" in this clause is amended as "disability" by Article 1 of the Law dated 25/4/2013 No. 6462.

k) shall not be biased towards or favoring political parties and democratic groups.

l) shall not encourage acts that will jeopardize the general health and/or protection of the environment and animals.

m) shall make sure that Turkish is used correctly, well, and comprehensibly without undermining its characteristics and rules; shall not make crude, inferior and slang use of the language.

n) shall not be obscene.

o) shall respect the right of people and institutions/organizations to reply and rectification.

ö) shall not contain contests or lotteries via information communication media, and no prizes shall be awarded to listeners or viewers or shall not act as an intermediary for giving the award of prizes.

p) Surveys and public opinion polls that have been arranged or commissioned by the media service provider shall take place before a notary public from the preparatory stages until the announcement of the results.

r) shall not exploit people by way of fortune telling or superstitions.

s) shall not contain programs that are contrary to social gender equality, encourage pressure/oppression on women and exploit women.

ş) shall not encourage or inure violence.

t) (Additional: 2/1/2017-Decree Law-680/18 art.) Can not present terrorist acts, offenders and victims in a way so as to serve to aims of terror.

(2) In radio and television broadcasts, any programs, which could impair the physical, mental, or moral development of young people and children shall not be broadcast within the time intervals that they may be viewing and without a cautionary/protective symbol.

(3) On demand media service providers shall ensure the provision of media services, which could adversely impact the physical, mental or moral development of young people and children in such manner that under normal circumstances they will not hear and see such services.

2- Is there any official document explaining reasons why a particular media outlet is considered as connected to a terrorist organization, and referring to specific evidence of such connections?

The coherence of the media organizations (on which sanction is imposed) with terrorist organizations is identified by; the intelligence reports of the provincial directorates operating under the General Directorate of Press and Information,Press Release Agency, Undersecretariat of the National Intelligence Organization and Directorate General of

Security, and evaluations taken from Supreme Council of Radio and Television, and especially information and documents obtained from the Governorships concerning local newspapers, radio and television channels. In addition, whether or not the media organizations have financial relations with the terrorist organizations are determined by the documents prepared by the Ministry of Finance Financial Crimes Investigation Board.

Moreover, there are provisions on this regard in clauses (a), (b), (d) and (t) of the first paragraph of Article 8 titled "Media Service Principles" of the Law No. 6112 on the Establishment of Radio and Television Enterprises and Their Media Services. The third paragraph added to Article 19 of the Law No. 6112 by the Decree Law No. 689 dated 02.01.2017 indicates that "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 shall be rejected".

3- Please indicate which provisions regulate liquidation of legal entities and confiscation of their assets under normal conditions (i.e. not during the state of emergency).What other sanctions (besides liquidation)may be imposed on a media outlet under the ordinary rules in connection with its publications?

According to Law No. 6112, the main duty and authority area of the Radio and Television Supreme Council Corporation, as the regulatory and supervisory authority concerning broadcasting services in audio-visual media field, is to make necessary regulations in this field and to carry out its supervision function by imposing the necessary sanctions in case of determining the violation of the Law and other related legislation in the broadcasting services provided by media service providers. Administrative sanctions to be imposed on media service providers within this scope are determined in Article 32 of the Law No. 6112. These sanctions are determined as warning, administrative fine, program suspension as an administrative measure and removal of the program subject to violation from the catalog concerning on-demand broadcasting services. Furthermore; in the case of repetition of the same violation within one year as of the notification of sanction decision to be given following the violation of Article 8(1a) " media service provider shall not violate the existence and independence of the State of the Republic of Turkey, the indivisible integrity of the State with its country and nation or the revolutions and principles of Ataturk", (1b) "media service provider shall not inflame society to hatred and hostility by discriminating on the basis of race, language, sex, class, region, religion and sect, nor shall they form hatred within society." and 8(1d) "media service provider shall not praise or encourage terrorism, depict

terrorist organizations as powerful or rightful or portray terrorist organizations' intimidating and deterrent qualities ", it shall be decided that the media service provider's broadcast be suspended up to ten days; and in case of second repetition, that the broadcasting license be cancelled pursuant to paragraph 5 of Article 32.

Additionally, in the case of broadcasting in violation to broadcasting prohibitions and restrictions stated in paragraph four of Article 7 of the Law No. 6112, broadcasting of the programs of media service provider shall be suspended for one day by the Supreme Board and in that case, paragraph four of Article 32 shall apply; if the violation is repeated within a year; it will be resolved that the broadcast of the media service provider shall be suspended up to five days, in case of second repetition, it will be suspended up to fifteen days and in case of the third repetition, its broadcasting license shall be revoked.

Article 33 of the Law No. 6112 regulates subjects which require imposing judicial sanctions. By virtue of the mentioned Article;

"(1) Members of the board of directors and the general manager of real persons and legal entities that broadcast without obtaining a broadcasting license from the Supreme Council or despite temporary suspension of their broadcasts or cancellation of their broadcasting licenses by the Supreme Council shall be penalised with a prison term from one to two years and an administrative fine from one thousand to five thousands days. Further, the security measures under Article 60 of the Turkish Penal Code No. 5237 shall apply against the legal entities. Broadcasting equipment and facilities that continue operations without permission will be sealed and shut down by the Supreme Council.

(2) Media service providers that conduct broadcasts out of the licence type and install transmitters without permission although having a broadcasting licence will be warned by the Supreme Council; and the provision of paragraph one will be enforced against those that continue broadcasting without permission despite the warning.

(3) The accountable manager of a private media service provider who does not keep their broadcast recordings for one year in accordance with Article 25 or not deliver them within the due period and as faithful to the originals despite a request by the Supreme Council or the Chief Public Prosecutor's Office shall be penalised with a judicial fine from one thousand to five thousands days.

(4)In case the records that have been sent are not the requested broadcast in terms of contents or there is alteration, removal, deletion in the recordings, the accountable manager of the private media service provider shall be penalised with a judicial fine from five thousand to ten thousand days."

Moreover, Article 53 of the Turkish Civil Code No. 4721 lays down that unless otherwise is stated in the law and incorporation certificate, the liquidation of the assets of a legal entity shall be executed according to the provisions relating to official liquidation of assets; Article 54 of the Turkish Civil Code sets forth that unless otherwise is provided by the law or incorporation certificate, or contrary statement is made by the authorized bodies, the assets of legal entity shall be transferred to the public association or corporation engaged in the same kind of activity or having the same object. Such assets shall be used only for the purpose they are assigned in the initial stage of incorporation to the extent it is deemed appropriate. The assets of legal entity subject to dissolution under court decision due to non-conformity with the laws or ethics, in all circumstances shall be transferred to the relevant public association. Article 55 states that the provisions of the law relating to public legal entities and business companies are hereby reserved. Provisions on official liquidation are regulatedunder Article 632 and the following articles.

Article 87 of the aforementioned Law prescribes the circumstances under which the association shall be dissolved *ipso facto*, under Article 88 dissolution of the association may be rendered by the general assembly at any time. Under Article 89, if the purpose of the association has become contrary to the law or ethics, the court shall dissolve the association by the motion of the public prosecutor or a relevant person and the court shall take all necessary measures including cancellation of functioning during the proceedings.

Article 116 of the mentioned Law regulates the dissolution of the association; the association shall be dissolved *ipso facto* and the name of the association shall be deleted from the official records upon obtaining court decision where the realization of the object becomes impossible and amendment of the object is out of question. Where it is not possible to amend the object of the foundation revealed to carry out restricted activities, or the object is determined to be contrary to the legislation or the object was banned afterwards; the association is dissolved upon request of the auditing board or, the Public Prosecutor.

It is thereby possible to take all necessary measures as follows: the association may be dissolved *ipso facto* under certain circumstances or at any time by the decision of the general board; if the objects of associations become incompatible with the law or ethics, the court may decide their dissolution upon the motion of the public prosecutor or a relevant official or authority and their functioning may be cancelled by the court during the proceedings.

It is ruled by the above mentioned articles that if it is not possible to alter the object of the association revealed to carry out restricted activities or the object of which is contrary to the

legislation or was banned afterwards, the association shall be dissolved during a hearing upon the application of the auditing board or public prosecutor.

In reference to trading companies; under the first paragraph of Article 124 of the Turkish Commercial Code No. 6102, it is stated that trading companies shall consist of ordinary partnerships and commandite partnership, joint stock, limited and cooperative companies. Article 125 sets forth that trading companies are legal entities and without prejudice to legal exceptions, trading companies shall enjoy all rights and undertake all obligations provided for legal entities under Article 48 of the Turkish Civil Code. Furthermore, Article 126 lays down that without prejudice to provisions particular to each company type, general provisions related to legal entities in Turkish Civil Code and on subjects which are not regulated in the Civil Code, the provisions of ordinary partnership of Turkish Code of Obligations shall apply to trading companies to the extent deemed appropriate to the qualities of each company type. Cancellation and dissolution of trading companies are regulated under different chapters and articles depending on the company type.

Apart from the circumstances of cancellation or dissolution particular to each company type regulated under the Turkish Commercial Code, with respect to the provision that general provisions on legal entities under Turkish Civil Code shall apply, trading companies shall be bound by Article 54 of the Turkish Civil Code ordering that "the assets of legal entity subject to dissolution under court decision due to non-conformity with the laws or ethics, in all circumstances shall be transferred to the relevant public association".

4- Is it possible that a media outlet was liquidated on the basis of the emergency decree laws for the articles, broadcasts, etc. which had taken place before the coup?

In this matter, it must be underlined that the Republic of Turkey is a democratic and constitutional State governed by the rule of law and respecting human rights. The Republic of Turkey has adopted international agreements on human rights in particular International Convention on Civil and Political Rights and European Convention on Human Rights and regarded the norms defined in as fundamental principles. No matter how offensive, shocking or worrying may be the statements published by any media organ prior to or after the attempted coup, they have not been subject of any civil or administrative investigation as long as they have fallen under the scope of Article 10/2 of ECHR. As stated above, before deciding to liquidate a media outlet by means of the Emergency Decree Law, whether it has affiliation with, connection or relation to a terrorist organizations is taken into account. During the evaluation of connection or relation to an organization, the published articles or content of the publications are definitely not considered as the sole indicative criteria. As mentioned in our

previous responses, before the liquidation decisions for media outlets, some comprehensive judicial and administrative research and enquiries take place. The purpose of dissolution of media outlets and the confiscation of their assets is combating terrorist organizations.

In this context, even before the 15 July, it was officially announced by the decision of Erzincan High Criminal Court that FETO/PDY is an armed terrorist organization. There are still many pending cases filed against this organization and its members. Since the beginning of 2014, FETO/PDY has been included in the list of terrorist organizations pursuant to the decisions of National Security Council, these decisions were made public and published on various media outlets. Furthermore, with the recommendation of National Security Council communicated to the Council of Ministers, all public institutions as well as the public have been informed of this matter. It has been thereby legally confirmed before the failed coup of 15 July that FETO/PDY structure was a terrorist organization. The principles which will be abided by during the management of media services and their boundaries have been also clearly prescribed under relevant Articles of the Constitution, Press Law and the Law on Radio and Television Organizations and Publications. Thus, it is observed that media outlets envisaged that they might be imposed administrative and judicial sanctions on account of their publications in favor of terrorist organizations which took place before the 15 July coup attempt.

Prior to the state of emergency, eight media outlets had been imposed sanctions by Radio and Television Supreme Council pursuant to the subparagraphs (a), (b) and (d) of the first paragraph of Article 8 of the Law No. 6112. Those outlets together with another one which had the same executive officers were liquidated within the scope of the Decree Laws.

5- According to Article 6 (1) of Decree Law no. 677, the legal entities closed for having connections with terrorist organizations "may under no circumstances claim compensation for being closed". Does this restriction apply to all institutions and organizations closed down, regardless of the fact that some of them have been reopened or will be reopened in the future?[5]

[5]Some media outlets closed down by Decree Law no. 668 were later withdrawn from the list and reinstated; see article 5 (2) of the Decree Law no. 675: "*Les radios et les chaînes de télévision privées ainsi que les quotidiens dissouts en vertu du décret-loi n° 668 et se trouvant sur la liste en annexe n° (8) ont été retirées des rangs concernés de la liste en annexe n° (2) et (3) du décret-loi précité. Les paragraphes 1 et 3 de l'article 2 du décret-loi n° 668 seront annulés dans tous ses effets pour les établissements et les institutions en question et ce, à partir de la date de publication de ce décret-loi.*".

As it is well known, Fethullahist Terrorist Organization/Parallel State Structuring organized a treacherous coup attempt in our country on 15 July 2016. Following the coup attempt, state of emergency was declared across the country to take necessary steps against FETO/PDY effectively and speedily. Besides, in accordance with the authority vested by Article 15 of the European Convention on Human Rights (Convention), Republic of Turkey lodged a request of derogation from some Articles of the Convention to General Secretary of the Council of Europe on 21 July 2016. Moreover, a request of derogation from International Covenant on Civil and Political Rights is also lodged. The right of property which is regulated under Article 1 of Protocol 1 of the Annex to the Convention also falls within the scope of this derogation. By exercising its right of declaration of derogation, Turkey indicated that it can partially derogate from its liabilities related to the right of property, provided that the essence of the right of property is preserved.

Article 6 of the Decree Law No. 677 which was issued on 22 November 2016 in reference to measures taken within the scope of State of Emergency is as follows:

"***Restrictions with respect to claims for compensation***

Article 6- *Within the framework of Decree Laws enacted under the state of emergency regime that was declared upon the Decision of the Council of Ministers dated 20/7/2016 and No. 2016/9064, institutions or organizations liquidated on the grounds that they have affiliation with, connection or relation to structures, establishments or groups revealed to act against the national security of the State by the National Security Council, or terrorist organization, shall under no circumstances claim for compensation in reference to their liquidation."*

The justification of the relevant article is as follows:

"Through this Article, it is ruled that institutions and organizations that were liquidated on the grounds of their connections to FETO/PDY or other terrorist organization, cannot claim for compensation following cancellation of judgments or proceedings related to them"

By the Decree Laws issued under the State of Emergency, institutions and organizations confirmed to have affiliation with, connection or relation to FETO/PDY or other terrorist organizations were liquidated to prevent terrorism propaganda and financing of terrorism. Judicial authorities will make evaluations in case those institutions assert to have suffered damages.

In the event that liquidated institutions or organizations are re-opened by a new Decree Law or by a decision of Commission for the Examination of Proceedings under the State of Emergency, the relevant institutions or organizations will be deemed open, effective from the date of liquidation. Their legal status prior to the liquidation will be preserved, regulations to

transfer their movables and immovables, documents, receivable assets and rights to the Treasury or Directorate General of Foundations will be deemed annulled along with all the judgments and outcomes in this respect.

Second paragraph of Article 10 of the Decree Law No. 685 concerning Commission for the Examination of Proceedings under the State of Emergency with respect to the liquidated institutions' applications of which were confirmed, is as follows:

"(2) In cases of confirmation of the applications concerning the closed institutions and organizations, the relevant provisions of the decree-law shall be considered null and void along with all of its 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."

As indicated above, provisions concerning the institutions and organizations re-opened following the confirmation of applications or the liquidation decisions of which are annulled, will be deemed null and void effective from the date of liquidation. It has been considered that the damages of such institutions and organizations will be compensated through preserving their legal status prior to the liquidation.

6- In the context of opinion CDL-AD(2016)037, the Turkish Government asserted that individual measures which had been commanded by the decree laws (in the appended lists) cannot be challenged either in ordinary courts or before the Constitutional Court.6 Are there any developments in this respect? Could the Turkish authorities provide the relevant cases (in English) or summaries thereof?

Through the Decree Law on Establishment of a Commission for Examination of Proceedings Under the State of Emergency No. 685 which was enacted after its publication in the Official Gazette dated 23/01/2017 and No. 29957, a Commission was established during the State of Emergency regime, to evaluate the applications with regard to proceedings launched and to make the final judgments thereof, directly pursuant to the provisions in the Decree Law, without the need for taking another administrative action. In accordance with Article 2 of the mentioned Decree Law determining the duties of the Commission, the Commission shall examine and conclude applications for annulment of proceedings launched pursuant to Decree Law provisions, such as dismissal of or discharge from public service, duties of an organization, profession; withdrawal from school; liquidation of foundations, associations,

[6] See CDL-AD(2016)037, § 207.

labor unions, federations, confederations, private medical institutions, private education institutions, higher education institutions of foundations, private radio and television institutions, newspapers, magazines, news agencies, publishing houses, chains of distribution; dismissal of titles of retired personnel. By virtue of the Decree Laws put into effect under the scope of the State of Emergency, proceedings which were directly launched regarding the legal status of real persons or legal entities and do not fall under the scope of the above-mentioned proceedings shall be handled by the Commission.

Article 11 of the Decree Law No. 685 rules that action for annulment against the decisions of the Commission may be filed with the Ankara administrative courts which are identified by the High Council of Judges and Prosecutors. Thus, an administrative mechanism is established to examine the applications against the proceedings launched directly by the Decree Law provisions and the Commission decisions are subject to judicial review. In the event that these provided domestic remedies are exhausted, there will be no obstacle for filing individual applications with the Constitutional Court on allegations of violations of rights.

7- In the context of opinion CDL-AD(2016)037, the Turkish Government also stated that "administrative application" is available to the organisations liquidated by the decrees.[7] Does this term – "administrative application" – refer to a hierarchical appeal to a higher administrative body, or to an appeal to a judicial body (administrative court)?

In the event that the liquidation decisions are not rendered directly pursuant to decree laws but issued based on proceedings initiated by administrative boards or commissions authorized by the decree laws, such proceedings of administrative nature can be challenged before administrative judiciary. For example, the fourth paragraph of Article 2 of the Decree Law No. 668 dated 25/7/2016 sets forth that private radio and television institutions, as well as newspapers, journals, printing houses and distribution channels which are affiliated with, connected or related to any structure, formation or group revealed to be threat to national security or terrorist organizations and which are not in the annexed list (2) and (3), shall be closed down in accordance with the Minister's Approval upon the motion of the commission formed by the relevant Minister. It has been considered that legal remedies are available to challenge such liquidations decided by administrative authorities by virtue of the authority vested by the Decree Law.

In accordance with the Decree Law No. 668 on Measures To be Taken Under the Scope of State of Emergency and Amendments to Some Institutions and Establishments and the Law

[7] Government's Memorandum, p. 37.

No. 6755 on Enactment of Amended Decree Law No. 668 On Measures To Be Taken Under the Scope of State of Emergency and Amendments to Some Institutions and Establishments, 16 television channels and 14 radio channels were dissolved on the grounds that they are affiliated with, connected or related to structures, formations or groups revealed to pose threat to national security or terrorist organizations, by the Minister's Approval upon the motion of the commission formed by the relevant Minister.

- Legal remedies to challenge decisions and proceedings which took place under the scope of decree laws during the state of emergency regime are available. The Decree Law No. 685 on Establishment of a Commission for Monitoring Proceedings During the State of Emergency regulates procedures and principles to be followed regarding the evaluation of challenges and the applications for legal remedies against decisions which will be taken.

Seven of the liquidated organizations brought actions against the decisions. The action brought by BIRLIKMED RADIO AND TELEVISION BROADCASTING INC. was annulled on the grounds that the plaintiff had no longer the right to be a party of the file. The action brought by a real person concerning Dyt Broadcasting Trading Inc. was dismissed by the court due to lack of competence. The actions brought by the liquidated organizations Taha Radio Television Inc. (AZADI TV, Azadi Amed RD), Doğu Group Media Services Broadcasting Inc. (Denge TV), Bizim İmparator (Emperor) Radio Television Broadcasting and Advertising Inc. (World Radio), Şok Media Broadcasting and Commercial Inc. (SES Radio) and Gün Radio and Television Broadcasting Inc. (NUR Radio) are still pending.

- The decisions of closure made with respect to the outlets which carry the logos/call signs of Zarok TV, Kudüs TV and Yön Radio among the closed radio and television corporates were revoked by the commission.

- The decisions of closure made with respect to the outlets which carry the logos/call signs of Zarok TV, Kudüs TV and Yön Radio among the closed radio and television corporates were revoked by the commission.

8- It is understood that a number of radio and television channels who had been liquidated by the first decree laws have been later withdrawn from the list (in annex 8 to the Decree Law no. 668 by virtue of article 5 (2) of the Decree Law no. 675). What particular procedure led to the withdrawal of those entities from the lists?

Upon the objections raised, it was requested to conduct a new evaluation process and send additional information regarding the publications of the relevant media outlets, their owners, directors and financial relations from the Directorate General of Press and Information, the Radio and Television Supreme Council, the National Intelligence Agency, the Directorate

General of Security and Governorates. As a result of the information obtained, the Council of Ministers carries out the revaluation process and the decision of closure made with respect to a media outlet is revoked by a new decree law when it is understood that there is no sufficient information and document to make the decision of closure with respect to the mentioned outlet.

Three outlets closed under the Decree Law No. 668 (SRT Television, Yağmur FM and UMUT FM), were also removed from the list of closed outlets, within the scope of the same procedure, under the second paragraph of Article 5 of the Decree Law No. 675 in accordance with the "principle of parallelism of authority and procedure".

9- Is there information regarding the payment of obligations and liabilities of institutions and organizations closed pursuant to the decrees? Were any payments made? To what extent were payments refused, and on what grounds? In how many cases did the Treasury and/or the General Directorate for Foundations make payments based on Article 5 (1) of Decree Law no. 670?

The procedures and principles regarding the acts and actions of the institutions and organizations closed in accordance with the Decree Laws issued under the state of emergency declared across the country upon the decision of the Council of Ministers dated 20/7/2016 numbered 2016/9064 and the legal persons with whom they are affiliated or the natural persons who are the owners, with respect to any kind of movables, immovables, assets, claims, obligations and liabilities which can be transferred to the Treasury and regarding the works of the offices and commissions in charge of carrying out these acts and actions are determined by the Circular No. 2016/1 of National Estate.

Central Coordination Office is defined in Article 5 of this Circular and the duties and powers of the Office are enumerated in Article 6. These are:

a)guiding the practices, removing the hesitations and taking any kind of measures in this respect,

b) coordinating the Provincial Offices in charge of actions taken through decree laws and Review and Evaluation Commissions,

c) providing and processing the information and documents needed by the provincial offices and the review and evaluation commissions and distributing them to these departments when necessary,

ç) giving opinions and recommendations about the requests of the Provincial Offices for the fulfillment of the obligations and liabilities based on the evaluation of the Review and Evaluation Commissions,

d) giving recommendations for the fulfillment of claims, guarantees and commitments which are irrecoverable or do not bring any benefits when collected or followed,

e) performing the other duties to be assigned.

The establishment of the provincial offices in charge of actions taken through decree laws is described in Article 8 and the duties and powers of these offices are enumerated in Article 9 of the Circular No. 2016/1. These are:

a) ensuring that assessments are made with respect to the assets of the legal persons with whom the closed institutions and organizations were affiliated or to the natural persons who are the owners,

b) ensuring that, among the acquired assets, cash amount of Turkish liras and currencies are immediately registered to escrow accounts and other financial assets are converted into cash in line with the procedure and registered to the escrow accounts; other assets are registered to regulatory accounts and the amount of discarded assets followed in regulatory accounts are registered to escrow accounts,

c) having the necessary actions taken with respect to any kind of claims including advances and bills, checks and other securities,

ç) as a result of the research to be carried out in the relevant public institutions and organizations by means of governorates, receiving the requests of the persons who are deemed to be members of, connected with or related to Fethullahist Terrorist Organization (FETO/PDY) for claims promoted with the convincing books, records and documents on the basis of the outlet which was affiliated with the closed institution or organization and of the institution or organization in these outlets and delivering these requests for registering in the accounting unit and for examination in the Review and Evaluation Commission,

d) ensuring the payment of the obligations which should be paid upon the decision of the Ministry,

e) having litigation and execution proceedings conducted,

f) returning the assets which are deemed to be outside the scope of the transfer by the Review and Evaluation Commissions; lifting blockage and measures,

g) having the valuation of immovables requested by the Review and Evaluation Commissions carried out,

ğ) taking any kind of necessary measures in order to manage, evaluate and remainder the acquired assets,

h) performing the other duties to be assigned.

Article 10 of the mentioned Circular defines the Review and Evaluation Commissions and the

duties and powers of the Commissions are enumerated in Article 11. These are:

a) inspecting the conformity of the assessments with the registries, account books and documents,

b) determining the claims and obligations which should be involved in the assets; giving opinions and recommendations regarding the following, collection and payment process,

c) giving opinions and recommendations with regard to the determining of the claims and rights and ensuring the payment of due obligations of the closed institutions and organizations and the legal persons with whom they were affiliated or of the real persons who are the owners,

ç) carrying out the necessary researches with respect to the allegations that, the closed institutions and organizations are not included in the assets which are deemed to have been transferred to the Treasury without charge or which are identified later among the assets delivered by the Provincial Offices in charge of the actions taken through decree laws.

d) giving opinions and recommendations with respect to the return of assets which are deemed to be outside the scope of transfer and the lifting of blockage and measures,

e) determining the ownership status of the buildings and movables used by renting and the simulation status of the contracts,

f) determining the scope of acquired assets in cases where they belong to a natural person,

g) determining the obligations and liabilities which are related to acquired assets and certified by convincing books, registers and documents; which do not arise from bails and which are based on the real relationship of goods or services, among the claims submitted by the Provincial Offices, by abstaining from exceeding the value of the acquired assets and from imposing an additional financial burden under all circumstances; and giving opinions and recommendations in this respect,

ğ) on the basis of companies with which the closed institutions and organizations were affiliated, enumerating in-kind tax obligations arising from the assets, pledged credits, insurance premiums of employees, obligations such as taxes, duties, charges, surcharges, shares which should be paid to public administrations, obligations arising from the use of energy, communication and water and others,

h) researching the ownership status of the buildings and movables used by renting and the simulation status of the contracts,

ı) valuating the movables,

i) requesting that the valuation of immovables is carried out by the Valuation Commissions,

j) giving opinions on the actions in dispute coming from the Provincial Offices in charge of the actions taken under the state of emergency,

k) giving recommendations regarding the measures which should be taken,

l) performing the other duties to be assigned.

The applications for credits regarding the obligations of the institutions and organizations closed in accordance with the decree laws issued under the state of emergency and the legal persons which were affiliated with these or the real persons who are the owners and the evaluation process regarding these applications within the scope of Article 5 of the Decree Law No. 670 continue in line with the procedure explained above.

There are 122 foundations which have been closed and any kind of movables and immovables and any kind of claims and documents belonging to them have been transferred to the Directorate General for Foundations.

Total obligations paid without court decision for 122 foundations, in accordance with Article 5 of the Decree Law No. 760 are 886.349,50 TL and no obligation has been paid depending on a court decision.

Questions related to the criminal prosecution of journalists, writers, bloggers, etc.

Legal framework and the recent statistics

10- Has there been any changes to the Penal Code of Turkey since the early 2016 (see CDL-REF(2016)011, Penal Code of Turkey), especially as regards "verbal act offences" – i.e. articles 125, 130, 216, 217, 220, 299, 300, and 301?

No amendment has been introduced to Articles 125, 130, 216, 217, 220, 299, 300 and 301 of the Penal Code of Turkey mentioned above since the beginning of 2016.

11- Regarding other provision of the Turkish law which may be qualified as "verbal act offence" (namely Articles 6 and 7 of the Anti-Terror Law no. 3713, and relevant provisions of Law no. 5816 on offences against Atatürk) – could we have an updated translation of the relevant provisions in English?

Translations of the requested legal regulations are presented as follows:

Anti Terrorism Law No: 3713

Disclosure and publication:

Article 6- Those who disclose or publish that a terrorist organization will commit crime against certain persons, whether or not giving the names and identities thereof but in a manner to put across who is targeted, or who disclose or publish the identity of officials on anti-terrorist duties or who identify such persons as targets shall be punished by imprisonment from one to three years.

(Amended second paragraph: 11/4/2013-6459/7 art.)Those who print or publish leaflets and declarations which legitimize or praise or encourage the terrorist organizations' methods comprising force, violence or threat shall be punished by imprisonment from one to three years.

Those who, contrary to Article 14 of this Law, disclose or publish the identity of informants shall be punished by imprisonment from one to three years.

(Amended fourth paragraph: 29/6/2006-5532/5 art.) If any of the offences defined above are committed through media, those in charge of such media who have not participated in committing the crime shall also be punished with judicial fine from one thousand days to five-thousand days. (Abolished last sentence: 11/4/2013-6459/7 art.)

(Additional article:29/6/2006-5532/5 art.; Abolished: 2/7/2012-6352/105 art.)

Terrorist Organizations

Article 7- (Amended: 29/6/2006-5532/6 art.)

Whoever founds, leads a terrorist organization, and becomes member of such an organization, with purpose to commit crime, in direction towards objectives prescribed in the Article 1, through methods of pressure, threatening, intimidation, suppression, and menace, by taking advantage of force and violence, shall be punished according to the provisions of the Article 314 of the Turkish Criminal Code. Whoever arranges activities of the organization shall also be punished as leader of the organization.

(Amended second paragraph: 11/4/2013-6459/8 art.) Those who make propaganda in order to legitimize or praise or encourage the terrorist organizations' methods comprising force, violence or threat shall be punished with imprisonment from 1 to 5 years. In case of committing this crime through media, the penalty to be given is increased by half. Furthermore, those in charge of such media who have not participated in committing the crime shall also be punished with judicial fine from one thousand days to five-thousand days. Below given acts and behaviors shall be punished according to provisions of this paragraph as well:

a) (Abolished: 27/3/2015-6638/10 art.)

b) Even though not in course of convention and demonstration, in a manner to reveal being a member or supporter of a terrorist organization;

1. to hang or carry emblem, pictures and signs of the terrorist organization,
2. to shout slogans,
3. broadcasting through audio means,
4. to wear uniforms with emblem, pictures and signs of the terrorist organization.

(Additional paragraph: 27/3/2015-6638/10 art.) Those who, fully or partially, veil their faces with the purpose to hide personal identity in a convention or demonstration which is turned into a terrorist organization propaganda shall be punished by imprisonment from three to five years. In case those who commit mentioned offences apply to force and violence, or keep or use any kind of arms, molotov and similar explosives, inflammable or wounding materials, the lower limit of the penalty to be given can not be less than four years.

If the offences prescribed in the second paragraph are committed inside any block, local, bureau or outlying buildings belonging to associations, foundations, political parties, labour and trade unions or their subsidiaries, or inside educational institutions or student hostels or their outlying buildings, then the punishment envisaged in this paragraph shall be doubled.

(Additional article: 11/4/2013-6459/8 art.) Even though not being a member to the terrorist organization but in the name of the organization, those who commit;

a) the offence prescribed in the second paragraph,

b) the offence prescribed in the second paragraph of Article 6,

c) the offence prescribed into offence of illegal participation to convention or demonstration prescribed in Article 28(1) of the Law No 2911 on Meetings and Demonstrations dated 6/10/1983

shall not be separately punished due to the offence prescribed in sixth paragraph of Article 220 of the Law No. 5237.

Law on Crimes Committed Against Atatürk No: 5816

Article 1- Anyone who publicly insults or reviles Atatürk's memory shall be punished by imprisonment from one to three years.

Anyone who destroys, cracks, spoils or pollutes the sculptures, busts and monuments representing Atatürk or the tomb of Atatürk shall be sentenced to heavy imprisonment from one to five years.

Anyone who encourages others to commit the above-mentioned crimes shall be punished as the real offender.

Article 2- In the case the offenses prescribed in Article 1 are committed by two or more persons collectively or in common or public places or through media, the penalty to be given shall be increased by half .

If the offenses prescribed in paragraph two of Article 1 are committed or attempted to be committed with force, the penalty to be given shall be increased by one fold.

Article 3- Direct prosecutions shall be filed by the Offices of Public Prosecutors for the crimes prescribed in this Law.

Article 4- This Law enters into force on the date of its publication.

Article 5- This Law is executed by the Minister of Justice.

12- Considering the time since the coup attempt, how many criminal cases have been brought against journalists, writers, bloggers, etc. for "verbal act offences" (see above)? The Turkish authorities are asked to give figures related to the number of pending cases opened since 15 July 2016, as well as figures covering previous periods (for example, for the calendar years of 2015 and 2014), for comparison. The Commission would be interested in obtaining figures for each type of the "verbal act offence" separately, in order to see which provisions have been used most often.

Comprehensive works should be carried out in order to present statistical data on this matter. These statistics will be presented when they are provided completely.

13- Insofar as "verbal act offences" are concerned, to what extent Turkish courts distinguish between value judgments and statements of facts (especially in relation to offences under Articles 125, 299, 301 of the Penal Code)? Regarding value judgments, how do the Turkish courts distinguish between constitutionally protected criticism of State policies, public figures etc., on one hand, and criminally punishable statements on the other?

(The information note presented to the Delegation of the Venice Commission during their Ankara visit on 13-14 January 2016 in order to prepare the opinion on Articles 216, 299, 301, 314 of the Turkish Penal Code, includes detailed explanation of these issues. This information note is appended to the USB drive.)

It was understood that during the proceedings of crimes regulated under Articles 299 and 301 of the Turkish Penal Code No. 5237, it was confirmed that statements made by the suspects, which are defined as cursing, led to the mentioned crimes; statements apart from these are assessed within the context of the right to criticize; within the scope of the crime prescribed under Article 301 of the Law No. 5237 "Insulting the Turkish Nation, Republic of Turkey and State institutions and organs in public" and in accordance with the values mentioned in this Article, it is confirmed that, the crime in Article 301 is not committed on grounds that the statements which are made following an incident and defined as cursing, were addressed to a particular person and not made generally.

The decision of the Constitutional Court dated 14/12/2016 with the Case No. 2016/25 and Decision no. 2016/186 indicates that launching prosecutions regarding defamation and cursing to the President of the Republic is subject to the approval of the Minister of Justice, this authority vested with the Minister of Justice can be interpreted as the exercise of the power of discretion in the best interests of the State and the public other than as a judicial

evaluation, the authority also serves as a guarantee for those allegedly committed crimes and Article 299 of the Law No. 5237 is not contrary to the principle of constitutional state.

14- Does Article 39 of the Turkish Constitution relate only to the civil proceedings in defamation or also to the criminal proceedings? What does "the right to prove the allegations" in this Article imply? What if the defendant is incapable of proving beyond reasonable doubt the truthfulness of the statement s/he has made, but may demonstrate that the factual statement was at least plausible and based on some credible (yet not conclusive) source of information? Is there a "public interest" defence in such cases (cf. the notion of "public interest to determine whether the accusation is true" in Article 127 p. 1)?

The right to prove the allegations embodied in Article 39 of the Constitution is regulated in Article 127 of the Penal Code of Turkey No. 5237 concerning the criminal proceedings. The provision of article is as follows:

"Proof of the accusation

Article 127- (1) Where an accusation, the subject matter of which constitutes a criminal offence, is proven, the person shall receive no penalty. The accusation shall be assumed to be proven upon the finalisation of a guilty verdict against the insulted person concerning such accusation. Otherwise, where there is an application to prove the accusation is true the acceptance of such will depend upon whether there is a public interest to determine whether the accusation is true or whether the complainant consents to the process of proving the accusation.

(2) Where a person is insulted by referring to an act which has been proven, there shall be a penalty."

If the subject matter of the insult constitutes an accusation of a criminal offense against another person, investigations and prosecutions will be initiated in particular regarding this offense. Within the scope of the case heard regarding the insult, the proceedings carried out with respect to the accusation will be made a prejudicial question. In other words, the decision made with respect to the insult may be taken upon the conclusion of the case heard regarding the accusation. If the accusation is proved in the case heard on this matter, an acquittal will be declared on account of the insult. However, there should be public interest or the insulted person should consent to the process of proving the accusation as prescribed by law. The courts do not consider that proving the accusation is an absolute requirement for the acquittal of the insult. They make decisions according to the nature of each fact, having regard to whether the suspect accused of the insult may know if the other party is completely innocent while making allegations which are the subject matter of the offense and whether there is

convincing but non-conclusive evidence beyond reasonable doubt concerning the fact which is the subject matter of the insult. In the proceedings carried out in this regard, the case is taken into account within the scope of the right to freedom of expression and dissemination of thought and the rights to denunciation and complaint stipulated in Articles 26, 36 and 74 of the Constitution.

Seditious speech, hate speech, blasphemy etc.; public support to and apology for the ends and means of "criminal organisations"

15- Is it possible to give examples of recent cases based on Articles 299 and 301, where the journalists were prosecuted for "insulting the President" or "degrading Turkish nation"? Article 301 contains an exception from criminal liability which covers "the expression of an opinion for the purpose of criticism" – does the same exception apply to Article 299? Again, how do the courts distinguish between constitutionally acceptable criticism and criminally punishable forms of expression under Articles 299 and 301?

(The information note presented to the Delegation of the Venice Commission during their Ankara visit on 13-14 January 2016 in order to prepare the opinion on Articles 216, 299, 301, 314 of the Turkish Penal Code, includes detailed explanation of these issues. This information note is appended to the USB drive.)

Within the scope of Article 299 of the Turkish Penal Code, regulating the crime of "Insulting the President of the Republic", as of 15/07/2016, the number of files lodged to our Ministry with regard to the insults to the President Recep Tayyip Erdoğan is 3161.

On 15/07/2016, following the coup attempt initiated in our country, President Recep Tayyip Erdoğan announced that for once only, he pardoned those who acted in disrespect to his personality and insulted him and withdrew the cases. This authority to permit prosecutions vested with the Minister of Justice under Article 299 of the Law No. 5237, can be interpreted as the exercise of the power of discretion in the best interests of the State and the public other than as a judicial evaluation. However, despite all these, as of 15/07/2016, the prosecution of 508 files were not permitted, also, the prosecution of 50 files were not permitted for other reasons, thus total number of files the prosecutions of which were not allowed, is 558.

It was understood from the files that 8 suspects out of 558 files are journalists.

-Court decision set as a precedent: At the end of the proceedings launched upon the allegation that the accused M.E Ç. who is a columnist in the Newspaper Sözcü insulted the President with the following statements of his column titled "Ergün Poyraz Cleans the Cemetery" dated 05.03.2015 "…*He wrote various books in jail. The Erdoğan family who read the books written inside and outside jail, were very irritated. Because his books disturbed*

those quackers at the top of the government the most. While he was cleaning, the grave with the writing "Fatiha for Erdoğan's Soul" on the headstone caught his eye!...", Küçükçekmece 2nd Criminal Court of General Jurisdiction "returned the acquittal of the accused" in its decision dated 17/02/2016, with the Case no. 2015/254 and Decision no. 2016/133, "on the grounds that the content of the news is in conformity with the apparent reality, the participant is a political personality and political public figures should be more tolerant of severe criticism than other people, the remarks made and the photo published along with the column are associated with the subject of the column, the column does not involve an insulting language, the principle of proportionality is not violated, the relevant column does not cross the boundaries of the right to inform and criticize exercised by the press, the phrases in the relevant column do not involve value judgment which would degrade the participant, the phrases do not dishonor or besmirch his reputation, the style used while conveying the message of the column does not infringe upon the law, thus the acts allegedly committed by the accused are not defined as crimes in the law".

- It is observed that, under Article 301 of the Penal Code of Turkey No. 5237, the provision stating that “the expression of an opinion for the purpose of criticism does not constitute an offence” is not regulated under Article 299 of the same Code but this does not mean that it will not apply for this article; this is at the discretion of the courts. As clearly stipulated in Article 26 of the Constitution of the Republic of Turkey, in the ECHR and in the Press Law No. 5187 as well as in the case-laws of the local courts and the Court of Cassation, the statements of opinion made for the purposes of criticism are considered within the scope of freedom of expression and even the severe criticism and vulgarity against the political power and the President who is the head of the executive power are taken into account within the framework of freedom of expression and press.

- Following the coup attempt in Turkey on 15/7/2016, as a consequence of the press statements of President Recep Tayyip Erdoğan indicating that he had forgiven, for once only, those who disrespected and insulted him and he had withdrawn the cases, prosecution permits were not granted to a large extent, in the dossiers submitted to the Directorate General for Criminal Affairs in the Ministry of Justice upon the request for prosecution permit, due to the offenses of insulting the President, whereas, under Article 299 of the Code No. 5237, the power of the Ministry of Justice to grant prosecution permits is a power of discretion in favour of the State and public interest rather than a judicial assessment.

16- According to the Turkish Government hate speech is criminally punishable under Article 216 only where it creates “an explicit and imminent danger to public security”. Is it possible

to give few examples, from a re-cent case-law of the Turkish courts, of a statement which has been found as creating such danger? Does this exception apply in the context of Articles 299 and 301?

Within the scope of the offense “provoking the public to hatred, hostility or degrading” in the first paragraph of Article 216 of the Penal Code of Turkey No. 5237, “the case where an explicit and imminent danger to public security emerges”, which is one of the legal elements of the offense, is not required as a legal element in the offenses under Article 299 and 301 of the Penal Code of Turkey No. 5237 as well as the offense “degrading a section of the public on grounds of social class, race, religion, sect, gender or regional differences” in the second paragraph of Article 216.

17- How often the journalists were prosecuted for committing an offence “on behalf” of a criminal organisation, without being members (Article 220, alone and in conjunction with Article 314)? Is it possible to be prosecuted for publications which support ideas, values, goals and methods of an organisation declared “criminal”, solely on the basis of the content of the publication? Should the courts establish other factors, besides the content, to trigger liability under those provisions?

In line with the paragraph added in Article 7/4 of the Law No. 3713 by the Law No. 6459 dated 11/4/2013, making propaganda does not constitute the offense of membership of an organization. These persons may only be held responsible for making propaganda of the organization. If the action constituting an offense in the penal code and special laws is taken for the purposes of the organization, the perpetrators may be held responsible for committing an offense on behalf of the organization even though they are not the members of the organization.

18- To be brought to liability under Article 220, is it necessary that the criminal character of an organisation is recognised officially, and, if so, at which stage and in which form (by a final court judgment or otherwise)?

Fundamental legal elements of a criminal organization are stipulated in the first paragraph of Article 220 of the Turkish Criminal Code. Due to the reference made in paragraph three of Article 314 concerning armed terrorist organizations, the provisions in Article 220 are also apply for the organizations that are established to commit terror crimes.

In order to mention about an "organization" within the scope of above-mentioned two articles, pursuant to the provision of first paragraph of Article 220; the followings are required;

- The existence of an organization to be established to commit actions which are considered as a crime by the Law,

- The organization must be qualified to commit crime as regard to its structure, quantity of its members as well as its tools and equipments,
- The number of members of the organization must be at least three persons.

The existence of these criteria is evaluated at every stage by the authorities operating in the judicial process. In other words, this evaluation is made by law enforcement units and the public prosecutor during the investigation process initiated upon denunciation and complaint, by the courts during prosecution (case) process, and by related higher courts during appeal process. The fact that "criminal organization" or " terrorist organization" nature of an organization is fixed in absolute terms with a definitive judgment, certainly requires the existence of a definitive judgment of conviction. However, this fact, until reaching at the definitive judgment phase, does not mean that such a classification/ evaluation could not be made by competent authorities. As a matter of fact, public prosecutors file a criminal case upon the evaluation made as a result of the prosecution; first instance courts give conviction sentence if they deem it appropriate as a result of the trial, and appeal authorities reach at "definitive judgment" phase when they approved the decision upon deeming proper the evaluations made.

Whether or not the formation of an organization is an organization, or the character of the organization is decided by courts. The crime of being an executive or member of the organization as regards leaders, executives and members of the organization generates with the establishment of the criminal organization. Aid to the organization and propaganda, however, generates only after the court decides that it is an organization or if it clearly known that it is an criminal organization. Because these crimes are deliberate and willingly committed crimes, in other words, they are the crimes committed with direct intention. Establishing a criminal organization is a concrete danger crime. It is enough that it has been established to commit a crime. Committing crime is not necessary. Since it is not a harm crime, the formation of danger is sufficient.

For example, the first Supreme Court decision on approval of a conviction decision made for being a member to DAESH terrorist organization is dated 15 July 2015. The structure, actions and terrorist organization nature of DAESH was examined in detail in the mentioned decision of the Higher Court. The decision was the first approval decision made on DAESH. However, first instance court decision (Bayburt High Criminal Court) affiliated with the mentioned approval decision was dated 5/11/2014 while the criminal case was dated 26/6/2014.

19- In how many cases, since the beginning of the emergency regimes, the journalists, bloggers etc. have been arrested and detained on remand in connection with “verbal act offences”?

Comprehensive works should be carried out in order to present statistical data on this matter. These statistics will be presented when they are provided completely.

20- Are the new rules of criminal investigations, introduced by the emergency decree laws (in particular extend-ed time-limits for the judicial review of detention on remand, limitations on the confidential contacts with lawyers etc.), applicable to the “verbal act offences”? In practice, how often the arrested journalists have been subjected to these new rules? In particular, how often the judicial review of the detention order has been delayed, and how often the right of confidential access to a lawyer has been delayed or limited, in ac-cordance with the new procedure?

During the coup attempt on 15 July, approximately ten thousand soldiers were caught in *flagrante delicto* for attempting to abolish the constitutional order by force of arms. Furthermore, a large number of people have been detained for committing terror offenses within the scope of the active fight against terror organizations, notably FETO which attempted the coup throughout the country. Therefore, the number of convicts and detainees exceeds the capacity of penal execution institutions. As a consequence, due to the increasing number of meetings with lawyers, it was deemed appropriate to set specific days and times in a week, also having regard to the requests of the lawyers, so that no one loses their rights in this regard. It is definitely not possible to mention that convicts and detainees are deprived of the right to see their lawyers.

For example; there are 5960 detainees who committed terror offenses on Ankara Sincan campus. There are 1669 detainees who are kept for these offenses only in Sincan T-type Closed Penal Institution. It is not physically possible for these detainees to see their lawyers for an unlimited duration. Moreover, such meetings will also make it impossible for other detainees to see their lawyers, as well.

Confidentiality decisions are made by the Public Prosecutor's Offices or the courts upon the request of these offices, with respect to several ongoing investigations. It is clear that the duration of meetings between them and their lawyers will be prolonged when the lawyers can have full access to the files upon the lifting of these confidentiality decisions or the commencement of the trials.

On the other hand, the duration of meetings between all convicts/detainees and their lawyers will be normalized when the state of emergency is lifted.

Putting this aside; Article 23.5 under the title "Legal advice" in the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules is as follows;

23.5. A judicial authority may in exceptional circumstances authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security.

Furthermore, in Article 24.2 under the title “Contact with the outside world”, it is stipulated:

“Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.”

These regulations has laid down the circumstances and the motives on which limitations will be imposed on the meetings between the convicts and detainees and their lawyers.

In the first paragraph of Article 59 titled "Right to see a lawyer or a notary" under the Law No. 5275 on the Execution of Penalties and Security Measures which entered into force in the Official Gazette dated 29/12/2004, it is stipulated that “the convict shall have the right to meet a lawyer for three times at most without a power of attorney, within the framework of legal practice.”

The second paragraph regulates that “meetings with a lawyer or a notary shall take place upon presentation of professional identity cards, except for holidays and within working hours, in places allocated for this purpose, out of hearing but within sight for security reasons.”

In the third paragraph, it is envisaged that "a lawyer may not have meetings with several convicts at the same time, even if he/she holds powers of attorney issued by them."

The fourth paragraph of the same article is as follows: “(Amended on 25/5/2005 by Article 5 of the Act No. 5351) Lawyers' documents and files related to defence and their records of the meetings with their client shall not be subject to examination. However, the relationship of the convicts sentenced for the offenses under Article 220 of the Code No. 5237 and the fourth and fifth parts of the fourth chapter in Volume II of the same Code and their lawyers; the documents given by these persons to their lawyers or vice versa may be examined by the judges of execution as well as the presence of an official during the meetings, upon the request of the Public Prosecutor's Office and the decision of the judge of execution, in cases where there are findings or documents showing that

the actions constituting an offense are taken, the security of the penal execution institution is endangered, they act as intermediaries for organizational communication between the members of terrorist organizations or other criminal organizations. In case of such a decision, the relevant persons may raise objection in accordance with the Law No. 4675."

The fifth paragraph is regulated as follows: "(Clause added on 25/5/2005 by Article 5 of the Act No. 5351) Provided that it complies with the international agreements to which the Republic ot Turkey is party to and with the principle of reciprocality, Turkish or foreign convicts against whom there are ongoing investigations or prosecutions in foreign countries, who want to bring an action before the courts of foreign countries or international judicial authorities or for or against whom there are pending cases may meet their foreign lawyers, provided that these investigations and prosecutions are limited to the actions which will be or are brought and that a power of attorney is submitted. Foreign lawyers who do not have a power of attorney may see the convict accompanied by a lawyer registered in Turkish bar association."

In accordance with Article 116 titled "Obligations of detainees" under the same Law, these provisions are also applicable to detainees.

As it is seen, also before the state of emergency, certain limitations were imposed on the meetings between the convicts or detainees and their lawyers when deemed necessary, in accordance with the international legislation and the case-law of the ECtHR.

Following the coup attempt on 15 July 2016, it was indispensable to take a series of additional and interim measures so that the investigations concerning the members of terrorist organizations could be carried out quickly and in line with the fundamental rules of law.

As a result of the investigations; it is known that many Western states implemented similar interim provisions under the state of emergency even though they suffered much less than Turkey did. Putting this aside, it is known that many civilians, soldiers and police officers lost their life in the mentioned coup attempt.

Moreover, it is obvious that the mentioned practices and measures taken serve the purpose of the State to protect itself and its democracy so that the investigations against DAESH, PKK, al-Qaeda, FETO/PDY and similar organizations which intensely launch attacks in Turkey can be conducted quickly and in line with the fundamental rules of law.

In the first paragraph of Article 2 titled "Basic principle of execution" in the Law No. 5275 on the Execution of Penalties and Security Measures, it is provided that "the rules concerning the execution of penalties and security measures shall be implemented without discrimination

between convicts as regards race, language, religion, denomination, nationality, colour, gender, birth, philosophical belief, ethnic or social origin, political or other opinion, economic power or other social status, and without making any privilege to anyone."

The second paragraph stipulates that "in the execution of penalties and security measures, there shall be no cruel, inhuman, degrading or humiliating treatment."

As it is seen, the principle of equality, one of the main principles of criminal law applies identically in the Law No. 5275 on the Execution of Penalties and Security Measures. Therefore, there is no preferential treatment, which is not envisaged in the Laws, towards all the convicts/detainees kept for civil, terror or organized offenses.

Within this context, it is clear that there will be no preferential treatment towards those who work as journalists and are detained in the penal execution institutions for the offenses stipulated in the Penal Code of Turkey.

On the other hand, in the subparagraph (m) of Article 3 of the Law No. 6755, it is provided that "the right of the suspect in custody to see their lawyers may be limited for five days upon the decision of the public prosecutor. The suspect may not testify during this period." This regulation was repealed by Article 11 of the Decree Law No. 684 dated 23 January 2017.

X.STATISTICS RELATED TO CLOSED/REINSTATED MEDIA OUTLETS

	CLOSED								REINSTATED						NET NUMBER OF CLOSED ORGANIZATIONS
ORGANIZATIONS	**667**	**668**	**675**	**677**	**679**	**683**	**APPROVED**	**TOTAL**	**673**	**675**	**677**	**679**	**APPROVED**	**TOTAL**	
ASSOCIATION*	1125				83			**1583**				7		**182**	**1401**
FOUNDATION	104							**143**			175		2	**20**	**123**
UNION/FED/ CONFED	21						39	**31**			18				**31**
NEWS AGENCY		3	2				10	**5**							**5**
NEWSPAPER		45	10	7				**62**		6		11		**17**	**45**
MAGAZINE		15	3	1				**19**							**19**

PUBLISHING HOUSE / DISTRIBUTION CHANNEL		29						**29**							**29**
RADIO		23		1			15	**39**		2			1	**3**	**36**
TELEVISION		16				2	18	**36**		1			2	**3**	**33**
HEALTHCARE ORGANIZATION	35							**35**			1			**1**	**34**
EDUCATIONAL INSTITUTION	934						1411	**2345**	53				33	**86**	**2259**
STUDENT DORMITORY	109						846	**955**	1				16	**17**	**938**
UNIVERSITY	15							**15**							**15**

	NUMBER OF CLOSED ORGANIZATIONS THROUGH DECREE LAWS (NET)				NUMBER OF CLOSED ORGANIZATIONS UPON APPROVAL (NET)			TOTAL (NET)
ORGANIZATION	**FETO/ PDY**	**PKK/KCK, DHKP/C AND OTHER LEFTIST ORGANIZATIONS**	**DAESH AND SIMILAR ORGANIZATIONS**	**OTHER**	**FETO/PDY**	**PKK/KCK, DHKP/C AND OTHER LEFTIST ORGANIZATIONS**	**DAESH AND SIMILAR ORGANIZATIONS**	
ASSOCIATION	1136	253	12					**1401**
NEWSPAPER	40	5						**45**
MAGAZINE	16	3						**19**
RADIO	21	1			4	10		**36**
TELEVISION	15			2	5	11		**33**
NEWS AGENCY	3	2						**5**

FETO/PDY

	NUMBER OF ORGANIZATIONS CLOSED FOR THEIR AFFILIATION WITH FETO/PDY		
ORGANIZATION	**NUMBER OF CLOSED ORGANIZATIONS THROUGH DECREE LAWS (NET)**	**NUMBER OF CLOSED ORGANIZATIONS UPON APPROVAL (NET)**	**TOTAL (NET)**
ASSOCIATION	1136		**1136**
NEWSPAPER	40		**40**
MAGAZINE	16		**16**
RADIO	21	4	**25**
TELEVISION	15	5	**20**
NEWS AGENCY	3		**3**

OTHER ORGANIZATIONS

	NUMBER OF CLOSED ORGANIZATIONS THROUGH DECREE LAWS (NET)			NUMBER OF CLOSED ORGANIZATIONS UPON APPROVAL (NET)		TOTAL (NET)
ORGANIZATION	**PKK/KCK, DHKP/C AND OTHER LEFTIST ORGANIZATIONS**	**DAESH AND SIMILAR ORGANIZATIONS**	**OTHER**	**PKK/KCK, DHKP/C AND OTHER LEFTIST ORGANIZATIONS**	**DAESH AND SIMILAR ORGANIZATIONS**	
ASSOCIATION	253	12				**265**
NEWSPAPER	5					**5**
MAGAZINE	3					**3**
RADIO	1			10		**11**
TELEVISION			2	11		**13**
NEWS AGENCY	2					**2**

Item No	Name of Newspapers	Province	Decree Law Regulating the Closure	Decree Law Regulating the Reinstatement
1	Adana Haber Gazetesi	Adana	668	
2	Adana Medya Gazetesi	Adana	668	
3	Akdeniz Türk	Adana	668	
4	Şuhut'un Sesi Gazetesi	Afyonkarahisar	668	679
5	Kurtuluş Gazetesi	Afyonkarahisar	668	675
6	Lider Gazetesi	Afyonkarahisar	668	675
7	İscehisar Durum Gazetesi	Afyonkarahisar	668	675
8	Türkeli Gazetesi	Afyonkarahisar	668	679
9	Antalya Gazetesi	Antalya	668	
10	Yerel Bakış Gazetesi	Aydın	668	
11	Nazar	Aydın	668	
12	Batman Gazetesi	Batman	668	679
13	Batman Postası Gazetesi	Batman	668	
14	Batman Doğuş Gazetesi	Batman	668	
15	Bingöl Olay Gazetesi	Bingöl	668	675
16	İrade Gazetesi	Hatay	668	
17	İskenderun Olay Gazetesi	Hatay	668	
18	Ekonomi	Istanbul	668	
19	Ege'de Son Söz Gazetesi	Izmir	668	675

20	Demokrat Gebze	Kocaeli	668	
21	Kocaeli Manşet	Kocaeli	668	
22	Bizim Kocaeli	Kocaeli	668	
23	Haber Kütahya Gazetesi	Kütahya	668	
24	Gediz Gazetesi	Kütahya	668	
25	Zafer Gazetesi	Kütahya	668	679
26	Hisar Gazetesi	Kütahya	668	679
27	Turgutlu Havadis Gazetesi	Manisa	668	
28	Milas Feza Gazetesi	Muğla	668	
29	Türkiye'de Yeni Yıldız Gazetesi	Niğde	668	679
30	Hakikat Gazetesi	Sivas	668	675
31	Urfa Haber Ajansı Gazetesi	Şanlıurfa	668	
32	Ajans 11 Gazetesi	Şanlıurfa	668	
33	Yeni Emek	Tekirdağ	668	
34	Banaz Postası Gazetesi	Uşak	668	
35	Son Nokta Gazetesi	Uşak	668	
36	Merkür Haber Gazetesi	Van	668	
37	Millet Gazetesi		668	
38	Bugün Gazetesi		668	
39	Meydan Gazetesi		668	
40	Özgür Düşünce Gazetesi		668	
41	Taraf		668	

42	Yarına Bakış		668	
43	Yeni Hayat		668	
44	Zaman Gazetesi		668	
45	Today's Zaman		668	
46	Özgür Gündem Gazetesi	Istanbul	675	
47	Azadiya Welat Gazetesi	Diyarbakır	675	
48	Yüksekova Haber Gazetesi	Hakkari	675	
49	Batman Çağdaş Gazetesi	Batman	675	679
50	Cizre Postası Gazetesi	Şırnak	675	
51	İdil Haber Gazetesi	Şırnak	675	679
52	Güney Expres Gazetesi	Şırnak	675	
53	Prestij Haber Gazetesi	Van	675	679
54	Urfanatik Gazetesi	Şanlıurfa	675	679
55	Kızıltepe'nin Sesi Gazetesi	Mardin	675	679
56	Ekspres Gazetesi	Adana	677	
57	Türkiye Manşet Gazetesi	Çorum	677	
58	Dağyeli Gazetesi	Hatay	677	
59	Akis Gazetesi	Kütahya	677	
60	İpekyolu Gazetesi	Ordu	677	
61	Son Dakika Gazetesi	Izmir	677	
62	Yedigün Gazetesi	Ankara	677	

Item No	Name of Magazine	Province	Decree Law Regulating the Closure	Decree Law Regulating the Reinstatement
1	Akademik Araştırmalar Dergisi		668	
2	Aksiyon		668	
3	Asya Pasifik (Pasiad) Dergisi		668	
4	Bisiklet Çocuk dergisi		668	
5	Diyalog Avrasya Dergisi		668	
6	Ekolife Dergisi		668	
7	Ekoloji Dergisi		668	
8	Fountain Dergisi		668	
9	Gonca Dergisi		668	
10	Gül Yaprağı Dergisi		668	
11	Nokta		668	
12	Sızıntı		668	
13	Yağmur Dergisi		668	
14	Yeni Ümit		668	
15	Zirve Dergisi		668	
16	Tiroj Dergisi	Istanbul	675	
17	Evrensel Kültür Dergisi	Istanbul	675	
18	Özgürlük Dünyası Dergisi	Istanbul	675	
19	Haberexen Dergisi	Samsun	677	

Item No	Name of News Agency	Decree Law Regulating the Closure	Decree Law Regulating the Reinstatement
1	Cihan Haber Ajansı	668	
2	Muhabir Haber Ajansı	668	
3	Sem Haber Ajansı	668	
4	DİHA (Dicle Haber Ajansı)	675	
5	Jin Haber ajansı	675	

Item No	Name of Radio Outlet	Decree Law Regulating the Closure	Decree Law Regulating the Reinstatement
1	Aksaray Mavi Radyo	668	
2	Aktüel Radyo	668	
3	Berfin FM	668	
4	Burç FM	668	
5	Cihan Radyo	668	
6	Dünya Radyo	668	
7	Esra Radyo	668	
8	Haber Radyo Ege	668	
9	Herkül FM	668	
10	Jest FM	668	
11	Kanaltürk Radyo	668	

12	Radyo 59	668	
13	Radyo Aile Rehberi	668	
14	Radyo Bamteli	668	
15	Radyo Cihan	668	
16	Radyo Fıkıh	668	
17	Radyo Küre	668	
18	Radyo Mehtap	668	
19	Radyo Nur	668	
20	Radyo Şimşek	668	
21	Samanyolu Haber Radyosu	668	
22	Umut FM	668	675
23	Yağmur FM	668	675
24	Batman Fm	677	

RADIOS CLOSED/REINSTATED UPON THE DECISION OF THE COMMISSION

Item No	Name of Radio Outlet	Status of Reinstatement
1	Uşak Radyo Klas	
2	Art Radyo	
3	Azadi Amed Radyo	
4	Özgür Gün Radyo	
5	Doğu Radyo	
6	Özgür Güneş	
7	Özgür Radyo	
8	Patnos FM	
9	Radyo Dünya	
10	Radyo Karacadağ	
11	Ses Radyo	
12	Rengin FM	
13	Yön Radyo	Reinstated
14	Ört FM	
15	Cuma Radyo	

Item No	Name of TV Outlet	Decree Law Regulating the Closure	Decree Law Regulating the Reinstatement
1	Barış TV	668	
2	Bugün TV	668	
3	Can Erzincan TV	668	
4	Dünya TV	668	
5	Hira TV	668	
6	Irmak TV	668	
7	Kanal 124	668	
8	Kanaltürk	668	
9	MC TV	668	
10	Mehtap TV	668	
11	Merkür TV	668	
12	Samanyolu Haber	668	
13	Samanyolu TV	668	
14	SRT Televizyonu	668	675
15	Tuna Shopping TV	668	
16	Yumurcak TV	668	
17	on4	683	
18	Kanal 12	683	

TELEVISIONS CLOSED/REINSTATED UPON THE DECISION OF THE COMMISSION

ITEM NO	Name of TV Outlet	Status of Reinstatement
1	Tele9	
2	Kanal 35	
3	Art TV	
4	Azadi TV	
5	Birlikmedya TV	
6	Denge TV	
7	HTV Hayat	
8	imc	
9	Jiyan TV	
10	Mezopotamya TV	
11	Özgür Gün TV	
12	TV 10	
13	Van Genç TV	
14	Van TV	
15	Zarok TV	Reinstated
16	ÖRT TV	
17	Gaye TV	
18	Kudüs TV	Reinstated

ANNEX-I NATIONAL REGULATIONS ON THE ISSUE

NATIONAL LEGISLATION

1- CONSTITUTION OF THE REPUBLIC OF TURKEY

I. Nature of fundamental rights and freedoms

ARTICLE 12- Everyone possesses inherent fundamental rights and freedoms, which are inviolable and inalienable. The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his/her family, and other individuals.

II. Restriction of fundamental rights and freedoms

ARTICLE 13- (As amended on October 3, 2001; Act No. 4709)

Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence.

These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality.

III. Prohibition of abuse of fundamental rights and freedoms

ARTICLE 14- (As amended on October 3, 2001; Act No. 4709)

None of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights.

No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms recognized by the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution.

The sanctions to be applied against those who perpetrate activities contrary to these provisions shall be determined by law.

IV. Suspension of the exercise of fundamental rights and freedoms

ARTICLE 15- In times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.

(As amended on May 7, 2004; Act No. 5170) Even under the circumstances indicated in the first paragraph, the individual's right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable except where death occurs through acts in conformity with law of war; no one shall be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused onaccount of them; offences and penalties shall not be made retroactive; nor shall anyone be held guilty until so proven by a court ruling.

C. Freedom of communication

ARTICLE 22- (As amended on October 3, 2001; Act No. 4709)

Everyone has the freedom of communication. Privacy of communication is fundamental.

Unless there exists a decision duly given by a judge on one or several of the grounds of national security, public order, prevention ofcrime, protection of public health and public morals, or protection of the rights and freedoms of others, or unless there exists a written order of an agency authorized by law in cases where delay is prejudicial, again on the above-mentioned grounds, communication shall not be impeded nor its privacy be violated. The decision of the competent authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his decision within forty-eight hours from the time of seizure; otherwise, seizure shall be automatically lifted.

Public institutions and agencies where exceptions may be applied are prescribed in law.

VII. Freedom of thought and opinion

ARTICLE 25- Everyone has the freedom of thought and opinion.

No one shall be compelled to reveal his/her thoughts and opinions for any reason or purpose; nor shall anyone be blamed or accused because of his/her thoughts and opinions.

VIII. Freedom of expression and dissemination of thought

ARTICLE 26- Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing.

(As amended on October 3, 2001; Act No. 4709) The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or

protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

(Repealed on October 3, 2001; Act No. 4709)

Regulatory provisions concerning the use of means to disseminate information and thoughts shall not be deemed as the restriction of freedom of expression and dissemination of thoughts as long as the transmission of information and thoughts is not prevented.

(Paragraph added on October 3, 2001; Act No. 4709) The formalities, conditions and procedures to be applied in exercising the freedom of expression and dissemination of thought shall be prescribed by law.

IX. Freedom of science and the arts

ARTICLE 27- Everyone has the right to study and teach, express, and disseminate science and the arts, and to carry out research in these fields freely.

The right to disseminate shall not be exercised for the purpose of changing the provisions of articles 1, 2 and 3 of the Constitution.

The provision of this article shall not preclude regulation by law of the entry and distribution of foreign publications in the country.

Freedom of the press

ARTICLE 28- The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee.

(Repealed on October 3, 2001; Act No. 4709)

The State shall take the necessary measures to ensure freedom of the press and information.

In the limitation of freedom of the press, the provisions of articles 26 and 27 of the Constitution shall apply.

Anyone who writes any news or articles which threaten the internal or external security of the State or the indivisible integrity of the State with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets or has them printed, and anyone who prints or transmits such news or articles to others for the purposes above, shall be held responsible under the law relevant to these offences. Distribution may be prevented as a precautionary measure by the decision of a judge, or in case delay is deemed prejudicial, by the competent authority explicitly designated by law. The authority preventing the distribution shall notify a competent judge of its decision within twenty-four hours at the latest. The order preventing distribution shall become null and void unless upheld by a competent judge within forty-eight hours at the latest.

No ban shall be placed on the reporting of events, except by the decision of judge issued within the limits specified by law, to ensure proper functioning of the judiciary.

Periodical and non-periodical publications may be seized by a decision of a judge in cases of ongoing investigation or prosecution of crimes specified by law; or by order of the competent authority explicitly designated by law, in situations where delay may constitute a prejudice with respect to the protection of the indivisible integrity of the State with its territory and nation, national security, public order or public morals and for the prevention of crime. The competent authority issuing the order to seize shall notify a competent judge of its decision within twenty-four hours at the latest; the order to seize shall become null and void unless upheld by a judge within forty-eight hours at the latest.

General provisions shall apply when seizing and confiscating periodicals and non-periodicals for reasons of criminal investigation and prosecution.

Periodicals published in Turkey may be temporarily suspended by court ruling if found to contain material which contravenes the indivisible integrity of the State with its territory and nation, the fundamental principles of the Republic, national security and public morals. Any publication which clearly bears the characteristics of being a continuation of a suspended periodical is prohibited; and shall be seized by decision of a judge.

Right to publish periodicals and non-periodicals

ARTICLE 29- Publication of periodicals or non-periodicals shall not be subject to prior authorization or the deposit of a financial guarantee.

Submission of the information and documents specified by law to the competent authority designated by law is sufficient to publish a periodical. If these information and documents are found to contravene the laws, the competent authority shall apply to the court for suspension of publication.

The principles regarding the publication, the conditions of publication and the financial resources of periodicals, and the profession of journalism shall be regulated by law. The law shall not impose any political, economic, financial, and technical conditions

Protection of printing facilities

ARTICLE 30- (As amended on May 7, 2004; Act No. 5170)

A printing house and its annexes, duly established as a press enterprise under law, and press equipment shall not be seized, confiscated, or barred from operation on the grounds of having been used in a crime.

II- PENAL CODE OF TURKEY

Prevention of the Exercise of Freedom of Belief, Thought and Conviction

Article 115

(1) Any person who uses force against, or threatens, another person in order to compel him to alter or declare, or in order to prevent him from declaring or disseminating, his religious, political, social, or philosophical beliefs, thoughts or convictions shall be sentenced to a penalty of imprisonment for a term of one to three years.

(2) (Amended on 2 March 2014 – By Article 14 of the Law no. 6529) Where communal religious worship or ceremony is prevented by the use of force, threats or by any other unlawful act a penalty in accordance with paragraph 1 shall be imposed.

(3) (Added on 2 March 2014 – By Article 14 of the Law no. 6529) Where life styles originating from beliefs, thoughts or convictions are interfered with or altered involuntarily by using force, threats or by any other unlawful act, a penalty in accordance with paragraph 1 shall be imposed.

Common Provision

Article 119

(1) Where the offences of preventing education and training; preventing activities of a public institution or professional institution considered to be a public institution; preventing exercise of political rights; preventing exercise of the freedom of belief, thought and conviction; violation of the residence immunity; violation of the freedom to work and labour are committed: a) by using a weapon;

b) while concealing an identity or with an unsigned letter or by using a particular symbol;

c) together by more than one person;

d) by taking advantage of the power to invoke fear derived from a criminal organisation which exists, or is assumed to exist;

e) By misusing the influence derived from public office,the penalty to be imposed shall be doubled.

(2) During the commission of these offences, if Aggravated Injury on Account of its Consequences occurs, then the provisions relating to intentional injury shall be additionally applied.

Hatred and Discrimination

Article 122 – (Amended on 2 March 2014 – By Article 15 of the Law no. 6529)

(1) Any person who

(a) Prevents the sale, transfer or rental of a movable or immovable property offered to the public,

(b) Prevents a person from enjoying services offered to the public,

(c) Prevents a person from being recruited for a job,

(d) Prevents a person from undertaking an ordinary economic activity on the ground of hatred based on differences of language, race, nationality, colour, gender, disability, political view, philosophical belief, religion or sect shall be sentenced to a penalty of imprisonment for a term of one year to three years.

III- TURKISH LAW ON THE RIGHT TO INFORMATION

Right to Information

Article 4- Everyone has the right to information.

Foreign residents in Turkey and the foreign legal entities operating in Turkey can exercise the right in this law, on the condition that the information that they require is related to them or the field of their activities; and on the basis of the principle of reciprocity.

All rights and obligations arising from international conventions to which Turkey is a party are reserved.

The Obligation to Provide Information

Article 5- The institutions and agencies are required to apply administrative and technical measures to provide every kind of information and document, with the exceptions set out in this law, to provide the information for applicants; and to review and decide on the applications for access to information promptly, effectively and correctly.

The other legal regulations which are incompatible with the provisions contained herein shall cease to be applicable as of the date this Act comes into force

CHAPTER THREE

Application for Access to Information

Procedure of Application

Article 6- The application for the access to information is made through a petition that includes the name, surname, residence or the work address of the applicant and the signature; where the applicant is a company, its title and the address, and the signature of the authorised person together with a certificate of authorisation, to the institution that possesses the information or the document. The application can be made also through electronic or other types of communication tools, provided that the identity and the signature of the applicant can be legally determined.

The information and the document that is requested must be clearly specified in the petition.

IV- PRESS LAW

Freedom of the Press

Article 3 – The press is free. This freedom includes the right to acquire and disseminate information, and to criticize, interpret and create works.

The exercise of this freedom may be restricted in accordance with the requirements of a democratic society to protect the reputation and rights of others as well as public health and public morality, national security, and public order and public safety; to safeguard the indivisible integrity of its territory; to prevent crime; to withhold information duly classified as State secrets; and to ensure the authority and impartial functioning of the judiciary.

Owner of the Periodical

Article 6 – Natural persons and legal entities as well as public institutions and organizations may own periodicals.

If the owner of a periodical is below 18 years of age or restricted, paragraph 2 of Article 5 shall apply for the legal representative, and if the owner is a legal entity, it shall also apply to the authorized representative of the legal entity.

News Source

Article 12 – The owner of the periodical, responsible editor, and owner of the publication cannot be forced to either disclose their news sources including information and documents or to legally testify on this issue.

Confiscation and Prohibition of Distribution and Sale

Article 25 – The public prosecutor may confiscate three copies at most of all printed matter for examination. If inconvenience results from delays in the examination, police may confiscate the printed matter.

So long as an examination or investigation is launched, all printed matter may be confiscated through a judge's order under Law Concerning Crimes Committed Against Atatürk's Principles No. 5816 dated 25.07.1951, the Reform Laws stated in Article 174 of the Constitution, paragraph 2 of Article 146, paragraphs 1 and 4 of Article 153, Article 155, paragraphs 1 and 2 of Article 311, paragraphs 2 and 4 of Article 312, paragraph (a) of Article 312 of Turkish Penal Code No. 765 and paragraphs 2 and 5 of Article 7 of Anti-Terror Law No. 3713 dated 12.04.1991.

Notwithstanding their language of publication, if there is strong evidence that periodicals and non-periodicals published outside of Turkey entail crimes stated in the afore-mentioned paragraph 2, their distribution or sale in Turkey may be prohibited upon the order of the Office of the Chief Public Prosecutor through the verdict of the local criminal judge. If

inconvenience results from delays in the examination, a decision of the Chief Public Prosecutor will be sufficient. This order shall be presented for judicial approval within 24 hours at the latest. If the judge does not approve within 48 hours, the decision of the Chief Prosecutor shall be null and void.

Those who intentionally distribute or sell publications or newspapers prohibited under the preceding paragraph shall be as responsible for the offense as the owner of the publication.

V- LAW ON REGULATION OF PUBLICATIONS ON THE INTERNET AND COMBATING CRIMES COMMITTED BY MEANS OF SUCH PUBLICATIONS OF TURKEY

The decision to deny access, and implementation thereof

ARTICLE 8- (1) A decision to block access to internet publications shall be issued if there are adequate grounds for suspicion that the content constitutes:

a) Any of the following offences under the Turkish Criminal Code, Statute 5237, dated 26/9/2004,

1) Incitement to commit suicide (article 84),

2) Sexual exploitation of children (article 103, first paragraph),

3) Facilitating the use of narcotic or stimulant substances (article 190),

4) Supply of substances which are dangerous to health (article 194),

5) Obscenity (article 226),

б) Prostitution (article 227),

7) Providing premises or facilities for gambling (article 228).

b) Any of the offences under the Law on Offences against Ataturk, Statute 5816, dated 25/7/1951.

(2) A decision to block access may be issued at the investigation stage by a judge, and at the prosecution stage by a court. A decision to block access may also be taken at the investigation stagey a public prosecutor in circumstances where a delay would present a risk. In such circumstances, the public prosecutor shall submit his/her decision for approval by a judge within 24 hours and the judge shall give his/her decision within a maximum of twenty-four hours. If the decision is not approved within this period, the measure shall be immediately lifted by the public prosecutor. (Additional sentence: 6/2/2014-6518/article 92) A decision to block access may also be issued for a specified limited period if it is considered that this will serve the intended purpose. An objection to such a decision implemented as a precautionary measure may be made under the Criminal Procedure Code, Statute 5271 dated 4/12/2004.

(3) A copy of the decision to block access issued by the judge, court or public prosecutor shall be sent to the Presidency so that the necessary measures can be implemented.

(4) The decision to block access shall be issued ex officio by the Presidency if the content or hosting provider of the publications with content which constitutes offences as specified in the first paragraph is located outside the country, and also in the case of publications with content which constitutes offences mentioned in subsections (2) and (5) and (6) of section (a) of the first paragraph, even if the content or hosting provider it located within the country. The access provider shall be notified of this decision and shall be requested to take the necessary action.

(5) The measures necessary to implement a decision to block access shall be carried out immediately, within a maximum of four hours as from the notification of the decision.

(6) If the identity of the persons who created the publication subject to the Presidency's decision to block access is identified, an official complaint shall be made by the Presidency to the Office of the Chief Public Prosecutor.

(7) If, subsequent to investigation, a decision not to prosecute is issued, the decision to block access shall automatically become invalidated. In this case, the public prosecutor shall send a copy of the decision not to prosecute to the Presidency.

(8) If the prosecution results in an acquittal, the decision to block access shall automatically become invalidated. In this case, the court shall send a copy of the acquittal verdict to the Presidency.

(9) If content which constitutes the offences listed in the first paragraph is removed from publication, the decision to block access shall be lifted by the public prosecutor in the investigation stage, and by the court in the prosecution stage.

(10) Responsible officers of hosting or access providers who fail to take the action necessary to implement the decision to block access as a precautionary measure shall, unless the act constitutes an offence which incurs a heavier penalty, be punished by a judicial fine equivalent to from five hundred to three thousand days.

(11) If the decision to deny access issued as an administrative precaution is not implemented, an administrative fine of from ten thousand to one hundred thousand New Turkish Lira shall be imposed by the Presidency on the access provider. If the decision is not implemented within 24 hours as from the moment that the administrative fine is imposed, a decision may be made by the Authority, at the request of the Presidency, for the authorisation to be cancelled.

(12) Appeals against administrative fines imposed by the Presidency or the Authority for offences specified by this Law may be made in accordance with the provisions of the Administrative Procedure Code, Statute 2577 of 6/1/1982.
(13) (Addition: 5/11/2008-5809/article 67) Objection may be made to decisions of judges and courts sent to the Presidency on the basis of the provisions of the Criminal Procedure Code, Statute 5271 dated 4/12/2004.
(14) (Addition: 12/7/2013-6495/article 47) Institutions and organisations specified in section (d) of the first paragraph of article 3 of the Law Regulating Taxes, Fund Contributions and Royalties collected from the Proceeds of Games of Chance, Statute 5602 dated 14/3/2007 may, if it is identified that offences within their area of responsibility have been committed in the internet medium, issue a decision to block access in respect of such publications. Decisions to block access shall be communicated to the Presidency of Telecommunication and Communication for implementation.
(15) (Addition: 26/2/2014-6527/article 17) The decision of a judge given at the investigation stage on the basis of this article, and the decision of a judge given according to articles 9 and 9/A shall, in locations where there is more than one criminal court, be issued by the criminal court specified by the High Council of Judges and Prosecutors
(16) (Addition: 10/9/2014-6552/article 127; Cancellation: By Constitutional Court judgment number E: 2014/149, K: 2014/151 of 2/10/2014.)

“Removal of content and/or blocking of access in circumstances where delay would entail risk

ARTICLE 8/A- (1) A decision for the removal of content and/or the blocking of access in the internet environment may be taken by a judge for one or more of the following reasons: in order to protect the right of life or security of life and property, in order to protect national security and public order [ordre publique], in order to prevent the commission of a crime, or in order to protect public health, or, in circumstances where a delay would present a risk, by the Presidency, subsequent to a request by the Office of the Prime Minister or a Ministry concerned with the protection of national security and public order [ordre publique], the prevention of the commission of crime or the protection of public health. The access providers and the content and hosting providers shall be immediately notified by the Presidency of the decision. Measures necessary for the removal of the content and/or blocking of access shall be implemented immediately, within a maximum of four hours as from the notification of the decision.

(2) Any decision for the removal of the content and/or blocking of access issued by the Presidency at the request of the Office of the Prime Minister or the relevant Ministries shall be submitted by the Presidency for approval by a magistrate within 24 hours. The judge shall announce his/her decision within 48 hours; otherwise the decision shall automatically lapse.

(3) Decisions taken to prevent access under the scope of this article shall be issued in the form of a block imposed on access to the relevant publication, section, or part in which the offence was committed (in the form of the URL etc). However, in circumstances in which, for technical reasons, access to the content relating to the offence cannot be prevented, or where a violation cannot be prevented by means of blocking access to the relevant content, a decision may be given for complete denial of access to the internet site.

(4) A complaint concerning the persons who developed and published the internet content which is the subject of the offence under this article shall be submitted by the Presidency to the Office of the Chief Public Prosecutor. The information necessary to gain access to the perpetrators of these offences shall, upon the decision of a magistrate, be provided to the judicial authorities by the content, hosting and access providers. Responsible officers of any content, hosting and access providers who fail to provide such information shall be punished by a judicial fine equivalent to three thousand to ten thousand days, unless the act constitutes an offence which incurs a heavier penalty.

(5) Access providers and content and hosting providers which fail to comply with a decision for the removal of the content and/or blocking of access under this article shall be subject to a civil penalty of between fifty thousand Turkish Lira and five hundred thousand Turkish Lira."

Removal of content from publication, and blocking of access

ARTICLE 9- (Amended: 6/2/2014-6518/article 93)

(1) Real persons, legal entities and institutions and organisations may, if they assert that their rights have been violated as a consequence of content published in the internet environment, apply for removal of publication of that content by means of a warning to the content provider or, if the content provider cannot be contacted, to the hosting provider, or they may also apply directly to a magistrate to request denial of access to the content.

(2) A response shall be provided within a maximum of 24 hours by the content and/or hosting provider to requests made by real persons, legal entities and institutions or organisations who assert that their rights have been violated as a consequence of content published in the internet environment.

(3) A judge may order blocking of access within the scope of this article in accordance with the demands of those whose personal rights have been violated by content published in the internet medium.

(4) The judge shall primarily issue decisions to block access within the scope of this article by means of blocking of access to the particular publication, part or section of the content (in the form of URL etc) which is alleged to have occasioned the violation. No decision shall be given to block access to the whole of the content of an internet site other than where this is unavoidable. However, if the judge is convinced that the violation cannot be halted by blocking access by specifying the URL address, s/he may rule that all access to everything published on the internet site in question must be blocked, on condition that s/he specifies the grounds for such a ruling.

(5) Decisions given by the judge to deny access within the scope of this article shall be sent directly to the Union.

(6) The judge shall make a decision on an application made under the scope of this article within a maximum period of 24 hours without holding a hearing. An objection to such a decision may be made on the basis of the Criminal Procedure Code, Statute 5271 dated 4/12/2004.

(7) If the blocked content is removed from publication, the judge's decision automatically becomes invalidated.

(8) A decision to block access sent by the Union to the access provider shall be implemented by the internet access provider immediately, within a maximum of four hours.

(9) If the publication subject to a decision by a judge for blocking of access due to violation of personal rights within the scope of this article, or a publication of the same character, is also published in other internet sites, the existing decision shall also be applied to those other addresses if an application is made by the person concerned to the Union.

(10) A responsible person who fails to comply in a proper and timely fashion with the decision of the magistrate, as specified in the terms of this article, shall be punished by a criminal fine equivalent to from five hundred days to three thousand days.

Blocking access to content on grounds of the confidentiality of private life

ARTICLE 9/A- (Addition: 6/2/2014-6518/article 94)

(1) Persons who assert that the confidentiality of their private life has been violated by a publication in the internet environment may, by applying directly to the Presidency, request that access to that content be blocked.

(2) Such a request shall specify the full address (URL) of the publication which is the cause of the violation of the right, shall explain the nature of the violation, and shall provide details verifying the identity of the applicant. Any application which does not contain these details shall not be processed.

(3) The Presidency shall immediately inform the Union in order to ensure that this request is implemented, and access providers shall carry out the request immediately, within a maximum of four hours.

(4) Denial of access shall be accomplished by blocking access to the video, picture, part, section, or publication (in the form of the URL etc) which is violating the confidentiality of private life.

(5) Persons who demand blocking of access shall submit their demand for prevention of access on the grounds that the publication content presented in the internet environment is a violation of the confidentiality of their private life to a magistrate within twenty four hours of the demand for blocking of access. The judge shall assess whether or not the confidentiality of their private life has been violated by publication of the content presented in the internet environment, shall announce his/her decision within a maximum of forty-eight hours, and shall send the decision directly to the Presidency. Otherwise, the measures for denial of access shall automatically be lifted.

(6) An objection to such a decision may be made by the Presidency on the basis of Statute 5271.

(7) If the content which is the subject of the denial of access is removed from publication, the judge’s decision shall automatically become invalidated.

(8) In circumstances where it is considered that delay may present a risk of violation of the confidentiality of private life, the denial of access shall be carried out by the Presidency upon the direct instructions of the President. (Repealed sentence: 26/2/2014-6527/article 18)

(9) (Addition: 26/2/2014-6527/article 18) A decision to block access issued by the President under the terms of the eighth paragraph of this article shall be submitted by the Presidency for approval by a magistrate within 24 hours. The magistrate shall announce his/her decision within 48 hours.

ANNEX-II DECISION OF THE COURT OF CASSATION

REPUBLIC OF TURKEY

COURT OF CASSATION

19th Criminal Chamber

DECISION OF THE COURT OF CASSATION

ON BEHALF OF THE TURKISH NATION

Case No: 2016/11728

Decision No: 2017/247

Letter of Notification No: KYB (Extra Ordinary Appeal) - 2016/266144

The case file, annexed to the letter of the Ministry of Justice dated 31/05/2016 No. 5590 consisting of the request for reversal in the interest of justice (extraordinary appeal), which is against the decision of Bursa 1st Criminal Judgeship of Peace dated 09/02/2015 and with miscellaneous file number 2015/768 about the admission of objection against the decision of Bursa 2nd Criminal Judgeship of Peace dated 26/12/2014 with miscellaneous file number 2014/2058 that is in regard to admission of the request of attorney of İsmet Büyükataman for blocking access to article titled "What does the report that was prepared in Bursa and sent to Prime Minister Erdoğan contain 2" dated 09/02/2014 and published on the website www.gazetebursa.com.tr , was submitted to the relevant chamber through the notification of Court of Cassation Chief Public Prosecution Office dated 29/06/2016 and No. KYB.2016-266144, then it was examined.

In the notification:

In Article 9/1 of the Law on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publications, it is stated that "Real persons, legal entities and institutions and organizations may, if they assert that their rights have been violated as a consequence of content published in the internet environment, apply for removal of publication of that content by means of a warning to the content provider or, if the content provider cannot be contacted, to the hosting provider, or they may also apply directly to a Peace Judge in Criminal Matters to request denial of access to the content." In Article 9/3 of the aforementioned Law it is stated that " A judge may order blocking of access within the scope of this article in accordance with the demands of those whose personal rights have been violated by content published on the internet.". In accordance with the above-mentioned Articles, the appeal was accepted on the grounds that the article by which denial of access was requested by the appealing authority, falls within the scope of press freedom. After it was observed that the claimant is a member of parliament and the article's subject is recent

according to the date of the article and after it was understood that the content of the article in question has exceeded the limits of the right to inform others and violated personal rights of the claimant, the appeal was accepted in writing. This decision was deemed inappropriate, on account of that, reversal of the decision in the interest of justice was requested in accordance with Article 309 of the Code of Criminal Procedure No. 5271.

A- FREEDOM OF EXPRESSION

Freedom of expression is one of the cornerstones of pluralist and constitutional democracies. Although there are different definitions for this concept, according to the general belief, freedom of expression is an opportunity and freedom of reaching a certain information and opinion (being informed, notified), not being condemned for having certain opinions or thoughts and disseminating such opinions and thoughts through legitimate means. Thus, the freedom of expression does not only safeguard the freedoms of thinking of, speaking of or explaining a certain thought or information, but also safeguards the freedoms of "having an opinion", "receiving, conveying and disseminating news or opinions". Moreover, modes, forms and means of expression should be considered within the scope of this freedom.

Freedom of expression is deemed one of the primary rights in the category of individual rights and duties of the documents related to human rights law and in constitutions. Therefore, freedom of expression is an inalienable and unavoidable right.

A.I- RELATED LEGAL REGULATIONS:

Article 19 of the UN Universal Declaration of Human Rights dated 10 December 1948 states that; "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

Article 19 of the UN International Covenant on Civil and Political Rights dated 16 December 1966; "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

The first paragraph of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms dated 4 November 1950 indicated that; "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."

Charter of Paris for a New Europe, Conference on Security and Cooperation in Europe dated 21 November 1990 states that; "Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is an essential safeguard against an over-mighty State. Their observance and full exercise are the foundation of freedom, justice and peace."

"…Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person."

In the first paragraph of Article II-71 of Treaty Establishing A Constitution For Europe dated 13 October 2004, it is stated that; "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."

In Article 13 of the Constitution of the Republic of Turkey, it is ruled that; "Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality."

Article 14 of the Constitution of the Republic of Turkey rules that; "None of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights.

No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms recognized by the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution.

The sanctions to be applied against those who perpetrate activities contrary to these provisions shall be determined by law."

Article 25 of the Constitution lays down that; "Everyone has the freedom of thought and opinion. No one shall be compelled to reveal his/her thoughts and opinions for any reason or purpose; nor shall anyone be blamed or accused because of his/her thoughts and opinions."

Article 26 of the Constitution rules that; Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media,

individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing."

These regulations safeguard the freedoms of expression and imparting a thought and freedoms of science and arts which are among fundamental human rights.

That the freedom of expression which emanated from the 1789 French Revolution is not eternal and illimitable and it may be limited when needed is explained in the international and national legal norms.

A.II- RESTRICTIONS:

To that end:

Article 29 of the UN Universal Declaration of Human Rights dated 10 December 1948 rules that;

"1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. "

Article 30 of the Declaration is "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

Second paragraph of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms dated 4 November 1950 is "The exercise of these freedoms, since it carries with it duties and responsibilities, may 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."

Article 17 of the Convention sets forth: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

Such regulations give discretionary power to states in order to regulate their communities and set the limits of freedom of expression by taking into account the criteria in Article 10 of the Convention.

European Court of Human Rights reviews if the national authorities exercise their discretionary power in consistent with Article 10 of this Convention, through the case files brought before them.

National authorities have to exercise their discretionary powers related to freedom of expression by laws, only if there is an urgent public need or obligation, the restriction has a legitimate objective, provided that the restriction is not implemented excessively.

Despite the fact that the Convention underpins the need for every member state to determine the same standards for restrictions, value judgments depend on the country.

In most of the contemporary countries; calumny, statements and expressions damaging honor and reputation, obscene remarks, writings, pictures or statements, warmongering, expressions which aim to alter the legal system forcefully, incite hatred, discrimination, hostility and violence are not considered in the scope of freedom of expression and are considered crimes and punished.

Article 13 of the Constitution of the Republic of Turkey lays down: "Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality."

Article 14 of the Constitution sets forth: "None of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights.

No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms recognized by the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution.

The sanctions to be applied against those who perpetrate activities contrary to these provisions shall be determined by law."

The second paragraph and the following paragraphs of Article 26 of the Constitution prescribe: "The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and

the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

Regulatory provisions concerning the use of means to disseminate information and thoughts shall not be deemed as the restriction of freedom of expression and dissemination of thoughts as long as the transmission of information and thoughts is not prevented.

The formalities, conditions and procedures to be applied in exercising the freedom of expression and dissemination of thought shall be prescribed by law."

B- PRESS FREEDOM

Article 28 of the Constitution subtitled "Freedom of the Press" under the title "Provisions relating to the press and publication" rules that: "The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee.

(Repealed on October 3, 2001; Act No. 4709)

The State shall take the necessary measures to ensure freedom of the press and information.

In the limitation of freedom of the press, the provisions of articles 26 and 27 of the Constitution shall apply.

Anyone who writes any news or articles which threaten the internal or external security of the State or the indivisible integrity of the State with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets or has them printed, and anyone who prints or transmits such news or articles to others for the purposes above, shall be held responsible under the law relevant to these offences. Distribution may be prevented as a precautionary measure by the decision of a judge, or in case delay is deemed prejudicial, by the competent authority explicitly designated by law. The authority preventing the distribution shall notify a competent judge of its decision within twenty-four hours at the latest. The order preventing distribution shall become null and void unless upheld by a competent judge within forty-eight hours at the latest.

No ban shall be placed on the reporting of events, except by the decision of judge issued within the limits specified by law, to ensure proper functioning of the judiciary.

Periodical and non-periodical publications may be seized by a decision of a judge in cases of ongoing investigation or prosecution of crimes specified by law; or by order of the competent authority explicitly designated by law, in situations where delay may constitute a prejudice with respect to the protection of the indivisible integrity of the State with its territory and

nation, national security, public order or public morals and for the prevention of crime. The competent authority issuing the order to seize shall notify a competent judge of its decision within twenty-four hours at the latest; the order to seize shall become null and void unless upheld by a judge within forty-eight hours at the latest.

General provisions shall apply when seizing and confiscating periodicals and non-periodicals for reasons of criminal investigation and prosecution.

Periodicals published in Turkey may be temporarily suspended by court ruling if found to contain material which contravenes the indivisible integrity of the State with its territory and nation, the fundamental principles of the Republic, national security and public morals. Any publication which clearly bears the characteristics of being a continuation of a suspended periodical is prohibited; and shall be seized by decision of a judge."

Article 32 of the Constitution titled "Right of rectification and reply" indicates: ‘The right of rectification and reply shall be accorded only in cases where personal reputation and honour is injured or in case of publications of unfounded allegation and shall be regulated by law.

If a rectification or reply is not published, the judge decides, within seven days of appeal by the individual involved, whether or not this publication is required.’

First Article of the Press Law No. 5187 titled ‘Objective and Scope’ regulates "The purpose of this Law is to regulate freedom of the press and the exercise of this freedom.

This Law covers the printing and publication of printed works."

Article 3 of the aforementioned Law titled "Freedom of the Press " states: "The press is free. This freedom includes the rights to acquire and disseminate information, and to criticize, interpret and create works.

The exercise of freedom of press may only be restricted in accordance with the requirements of a democratic society for the protection of the reputation and rights of others as well as of community health and morality, national security, public order, public safety and territorial integrity; for the prevention of the disclosure of state secrets and commission of crimes, and for safeguarding the authority and impartiality of judicial power."

Article 9 of the Law on Regulation of Publications on the Internet and Combating Crimes Committed By Means of These Publications No. 5651, titled "Removal of the content from publication and blocking of access" states: "(1) Real persons, legal entities and institutions and organisations may, if they assert that their rights have been violated as a consequence of content published in the internet environment, apply for removal of publication of that content by means of a warning to the content provider or, if the content provider cannot be contacted,

to the hosting provider, or they may also apply directly to a Criminal Peace Judge/magistrate judge to request denial of access to the content.

(2) A response shall be provided within a maximum of 24 hours by the content and/or hosting provider to requests made by persons, who assert that their rights have been violated as a consequence of content published in the internet environment.

(3) A judge may order blocking of access within the scope of this article in accordance with the demands of those whose personal rights have been violated by content published on the internet.

(4) The judge shall primarily issue decisions to block access within the scope of this article by means of blocking of access to the particular publication, part or section of the content (in the form of URL etc) which is alleged to have occasioned the violation. No decision shall be given to block access to the whole of the content of an internet site other than where this is unavoidable. However, if the judge is convinced that the violation cannot be halted by blocking access by specifying the URL address, s/he may rule that all access to everything published on the internet site in question must be blocked, on condition that s/he specifies the grounds for such a ruling.

(5) Decisions given by the judge to deny access within the scope of this article shall be sent directly to the Union.

(6) The judge shall make a decision on an application made under the scope of this article within a maximum period of 24 hours without holding a hearing. An objection to such a decision may be made on the basis of the Criminal Procedure Code, No. 5271 dated 4/12/2004.

(7) If the blocked content is removed from publication, the judge’s decision automatically becomes invalidated.

(8) A decision to block access sent by the Union to the access provider shall be implemented by the internet access provider immediately, within a maximum of four hours.

(9) If the publication subject to a decision by a judge for blocking of access due to violation of personal rights within the scope of this article, is also published in other internet sites, the existing decision shall also be applied to those other addresses if an application is made by the person concerned to the Union.

(10) A responsible person who fails to comply in a proper and timely fashion with the decision of the Peace Judge in Criminal Matters, as specified in the terms of this article, shall be punished by a criminal fine equivalent to from five hundred days to three thousand days."

In Article 9/A of the Law titled "Blocking access to content on grounds of the confidentiality of private life" rules: "(1) Persons who assert that the confidentiality of their private life has been violated by a publication in the internet environment may, by applying directly to the Presidency, request that access to that content be blocked.

(2) Such a request shall specify the full address (URL) of the publication which is the cause of the violation of the right, shall explain the nature of the violation, and shall provide details verifying the identity of the applicant. Any application which does not contain these details shall not be processed.

(3) The Presidency shall immediately inform the Union in order to ensure that this request is implemented, and access providers shall carry out the request immediately, within a maximum of four hours.

(4) Denial of access shall be accomplished by blocking access to the video, picture, part, section, or publication (in the form of the URL etc) which is violating the confidentiality of private life.

(5) Persons who demand blocking of access shall submit their demand for prevention of access on the grounds that the publication content presented in the internet environment is a violation of the confidentiality of their private life to a Peace Judge in Criminal Matters within twenty four hours of the demand for blocking of access. The judge shall assess whether or not the confidentiality of their private life has been violated by publication of the content presented in the internet environment, shall announce his/her decision within a maximum of forty-eight hours, and shall send the decision directly to the Presidency. Otherwise, the measures for denial of access shall automatically be lifted.

(6) An objection to such a decision may be made by the Presidency on the basis of the provisions of the Law No. 5271.

(7) If the content which is the subject of the denial of access is removed from publication, the judge’s decision shall automatically become invalidated.

(8) In circumstances where it is considered that delay may present a risk of violation of the confidentiality of private life, the denial of access shall be carried out by the Presidency upon the direct instructions of the President. (Repealed sentence: 26/2/2014-6527/article 18)

(9) (Addition: 26/2/2014-6527/article 18) A decision to block access issued by the President under the terms of the eighth paragraph of this article shall be submitted by the Presidency for approval by a Peace Judge within 24 hours. The magistrate shall announce his/her decision within 48 hours."

Freedom of expressing opinions is one of the indispensable fundamental rights and freedoms. The press is one of the most important and effective ways to exercise this freedom. Press freedom includes the right to information, to disseminate, criticize, interpret information and create works. Freedom to express thoughts and press freedom are fundamental rights both for those utilizing them and also for the persons and groups who have the right to learn the truth. (Centro Europa 7 S.R.L. and Di Stefano, § 131). Thus, press freedom is, on the one hand the freedom to impart news and opinions related to the public, on the other hand, it is public's right to be informed of such information. In that way, the press being crucial for the public's right to information can have the role of an "observer of the society" or "watchman".

In pluralist, liberal and democratic societies, the freedom of expression is not only interpreted as the expression of general knowledge, unharmful or trivial thoughts but also of opinions which are offensive, worrying, shocking and are not approved by some parts of the public.

The press has the duty to raise awareness for the social problems among the public, release correct and truthful information, enlighten the public objectively vis-a-vis ongoing problems, incidents and events, form discussions encouraging the public to think further, criticize, warn and monitor the administrators. The press must release right, recent and non-pejorative information which is in the form of statements, criticism and value judgment, in the best interests of the public, the form of the release of information and its subject must be correlated intellectually. However, it must not be forgotten that the press freedom contains the right of the press to resort, in a certain extent, to exaggeration and provocation.

Freedom of expression of the press and other media organs offers to the public one of the best tools to spread the opinions and behaviors of administrators and to criticize them. It is beyond doubt that the exercise of the freedom of expression (by persons such as journalists) carries with it "duties and responsibilities". Article 10 of the Convention provides that guarantee provided that journalists offer "correct and credible" information in line with the deontology of journalism and they act in good faith (Goodwin, § 39; Mc Vicar, § 83-86; Colombani, § 65).

In circumstances where press freedom contradicts with the human values, it is unlikely that the legal order can preserve both the press freedom and the human values at the same time. One of these concepts will eventually be more prioritized than the other, as a result, it will be possible that the less prioritized concept be preserved less than the more prioritized concept, under certain circumstances. Public benefit is the basic criterion here. While the printed and visual press exercise their duty, they must ensure that the publication be genuine, to the public benefit and interest the public, also the subject be current and lastly the balance between the

form and essence be preserved. The press must function within the boundaries of objectivity. The press should not be held responsible for the publications of the events, if they turn out to be unreal afterwards.

For the past twenty years, internet has been spreading very fast in our country, and this spread carried with it the concept of freedom of expression. That is to say, all principles valid for the freedom of the press are also valid for the internet. Article 10 of the Convention does not only guarantee the freedom to give, impart information; it also contains the right of the public to be informed (Observer et Guardian, § 59). As the internet sites are easily accessible and contain enough capacity to store and impart substantial amount of knowledge, this enables public to access current information speedily and thus helping dissemination of the knowledge. Therefore, freedom of expression allows the formation of archives on the internet. (Limited no 1 and 2, § 27).

In the judgment of Handyside v. The United Kingdom rendered by the European Court of Human Rights (Application no. 5493/72, 07/12/1976), it is stated that: "Freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".

In the judgment of *Lingens v. Austria* (Application No: 9815/82, 08/0701986), it is indicated that: "In this connection, the Court has to recall that freedom of expression, as secured in paragraph 1 of Article 10 (art. 10-1), constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment. Subject to paragraph 2 (art. 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society' (see the above-mentioned *Handyside v. United Kingdom* judgment, para. 49).

These principles are of particular importance as far as the press is concerned. Whilst the press must not overstep the borders set, inter alia, for the "protection of the reputation of others", it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest.

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at

large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues." (See above the judgment of Lingens v. Austria, para 41-42). The judgment of Scharsach and News Verlagsgesellschaft v. Austria (39394/98, 13/11/2003) states that: "Considering, on the one hand, that Mrs Rosenkranz is a politician and, on the other, the role of a journalist and the press of imparting information and ideas on matters of public interest, even those that may offend, shock or disturb, the use of the term “closet Nazi” did not exceed what may be considered acceptable in the circumstances of the present case." (See above Scharsach and News Verlagsgesellschaft decision, para. 45).

In the judgment of Von Hannover v. Germany dated 07/02/2012 (No.2) (No.40660/08 and 60641/08), Grand Chamber of the European Court of Human Rights made detailed evaluations concerning "freedom of expression" and determined certain criteria in this regard:

ii. Freedom of expression

101. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfillment. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”. As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, among other authorities, Handyside v. the United Kingdom, 7 December 1976, § 49, Series A no. 24, Editions Plon v. France, no. 58148/00, § 42, ECHR 2004-IV; and Lindon, Otchakovsky-Laurens and July v. France [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV).

iii. The margin of appreciation

104. The Court reiterates that the choice of the means calculated to secure compliance with Article 8 of the Convention in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States’ margin of appreciation, whether the obligations on the State are positive or negative. There are different ways of ensuring respect for private life and the nature of the State’s obligation will depend on the particular

aspect of private life that is at issue (see X and Y v. the Netherlands, cited above, § 24, and Odièvre v. France [GC], no. 42326/98, § 46, ECHR 2003-III).

Likewise, under Article 10 of the Convention, the Contracting States have a certain margin of appreciation in assessing whether and to what extent an interference with the freedom of expression protected by this provision is necessary (see Tammer v. Estonia, no. 41205/98, § 60, ECHR 2001-I, and Pedersen and Baadsgaard, cited above, § 68).

105. However, this margin goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court (see, mutatis mutandis, Peck v. the United Kingdom, no. 44647/98, § 77, ECHR 2003-I, and Karhuvaara and Iltalehti, cited above, § 38). In exercising its supervisory function, the Court's task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on (see Petrenco v. Moldova, no. 20928/05, § 54, 30 March 2010; Polanco Torres and Movilla Polanco v. Spain, no. 34147/06, § 41, 21 September 2010; and Petrov v. Bulgaria (admissibility dec.), no. 27103/04, 2 November 2010).

107. Where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011, and *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 57, 12 September 2011).

(iv) The criteria relevant for the balancing exercise

108. Where the right to freedom of expression is being balanced against the right to respect for private life, the criteria laid down in the case-law that are relevant to the present case are set out below.

(i) Contribution to a debate of general interest

109. An initial essential criterion is the contribution made by photos or articles in the press to a debate of general interest (see *Von Hannover*, cited above, § 60; *Leempoel & S.A. ED. Ciné Revue*, cited above, § 68; and *Standard Verlags GmbH*, cited above, § 46). The definition of what constitutes a subject of general interest will depend on the circumstances of the case. The Court nevertheless considers it useful to point out that it has recognised the existence of such an interest not only where the publication concerned political issues or crimes (see *White*, cited above, § 29; *Egeland and Hanseid v. Norway*, no. 34438/04, § 58, 16 April 2009; and *Leempoel & S.A. ED. Ciné Revue*, cited above, § 72), but also where it concerned

sporting issues or performing artists (see *Nikowitz and Verlagsgruppe News GmbH v. Austria*, no. 5266/03, § 25, 22 February 2007; *Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal*, nos. 11182/03 and 11319/03, § 28, 26 April 2007; and *Sapan v. Turkey*, no. 44102/04, § 34, 8 June 2010). However, the rumoured marital difficulties of a president of the Republic or the financial difficulties of a famous singer were not deemed to be matters of general interest (see *Standard Verlags GmbH, cited above, § 52, and Hachette Filipacchi Associés* (ICI PARIS), cited above, § 43).

(ii) How well known is the person concerned and what is the subject of the report?

110. The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion, related to the preceding one. In that connection a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures (see *Minelli v. Switzerland* (admissibility dec.), no. 14991/02, 14 June 2005, and Petrenco, cited above, § 55). A fundamental distinction needs to be made between reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example, and reporting details of the private life of an individual who does not exercise such functions (see *Von Hannover*, cited above, § 63, and *Standard Verlags GmbH*, cited above, § 47).

In the decision of the General Criminal Board of Court of Cassation dated 13/02/2007, Case No. 2007/7-28, Decision No. 2007/34, the following evaluation was made concerning the requests of reply and correction within the scope of the Press Law No. 5187; "Democratic societies are based on fundamental rights and freedoms. In such societies, the State is tasked with preserving and developing fundamental rights and freedoms. The freedom of thought and expression is indispensable among other fundamental rights and freedoms. The press is one of the most important ways by which this freedom can be utilized.

Whilst the press has the duty of enlightening the public objectively and truthfully, relating to all events which concern or are likely to concern the society, forming discussions which would encourage the public to think further about various problems, providing public with correct and realistic knowledge regarding social and political events, criticizing, warning and monitoring the administrators and raising awareness of individuals concerning the problems of the society and all individuals therein, the press is vested with certain rights in order to utilize when fulfilling its above-mentioned duties. These are the right to receive and impart

information, right to criticize, right to interpret and right to create works. These rights which emanate from Article 28 and following articles of the Constitution and which are regulated under Article 3 of the Press Law No. 5187 constitute reasons of compatibility with the law, in case of crimes committed through the press. For the rights to impart, criticize and interpret the information to be accepted, the information in the form of statements, criticism or value judgments should be correct, current and in the best interests of the public, an intellectual correlation should be present between the form of its release and its subject, also the explanations should not include 'derogatory' remarks."

In a political system where its criticism is not allowed, there can be no freedom. Criticism of the politicians is an indispensable element of the democratic administration system. Persons with political identities should be more tolerant to rude, severe and offensive criticism than others.

In the first paragraph of Article 9 of the Law No. 5651, it is stated that " (1) Real persons, legal entities and institutions and organisations may, if they assert that their rights have been violated as a consequence of content published in the internet environment, apply for removal of publication of that content by means of a warning to the content provider or, if the content provider cannot be contacted, to the hosting provider, or they may also apply directly to a Peace Judge to request denial of access to the content." Through this regulation, it is ensured that persons, if they assert that their individual rights have been violated as a consequence of content published in the internet environment, may apply for removal of publication of that content by to the content provider or, if the content provider cannot be contacted, to the hosting provider, or they may also apply directly to a Peace Judge to request denial of access to the content. As there is no explicit definition regarding "violation of individual rights" under the Article, whether there is violation or not should be evaluated in accordance with the explanations above.

In the present case related to request of reversal in the interest of the law (extraordinary appeal);

Regarding the news titled "What does the report that was prepared in Bursa and sent to Prime Minister Erdoğan contain 2" stating that "on the date of crime committed, MHP General Secretary and Deputy of Bursa İsmet Büyükataman supported a political party candidate which was introduced to him by a close friend of his, prior to the local elections and that candidate won the elections because of him, in return, he was awarded with flats constructed by municipal contractors as well as with villas and cars" that was published on www.gazetebursa.com.tr on the date 09/12/2014, the appealing authority assessed whether

individual rights of claimant İsmet Büyükataman were violated or not, in accordance with the criteria of the aforementioned decisions. In accordance with Article 9 of the Law No. 5651, it has been agreed that "individual rights have not been violated as a consequence of the content published on the internet" and it has been decided that the appeal, made against the decision on refusal of request to block access to the content, on the grounds in line with the case and the scope of the file, be inadmissible.

For the reasons above, it has been unanimously decided on 16/01/2017, that the request of reversal in the interest of law by the Court of Cassation Chief Public Prosecution Office be REJECTED, on the grounds that it is not deemed appropriate.

Presiding Member Member Member Member

ANNEX-III CERTAIN DECISIONS OF THE SUPREME COUNCIL OF RADIO AND TELEVISION AND THE COURT DECISIONS GIVEN UPON THE APPEALS AGAINST THESE DECISIONS

I- **In the Decision No.7 dated 10.03.2016 of the Radio and Television Supreme Council, it is briefly said that;**

In the prime-time news broadcasted in *Gün Radyo ve Televizyon Yay. A.Ş.* with *Özgür Gün TV logo* on 05.01.2016, there was a news about the death of 2 women and the detentions in Silopi, with sub-titles " 2 Kurdish Woman Politicians Murdered in Silopi" and " 27 People under Detention in Silopi" and with the sub-voice "People's decisive resistance against attacks and blockade continues in the district " and later on during the news, HDP Şırnak Deputy (Member of Parliament/MoP) Ferhat Encü called the program via telephone and upon the speaker's question like " As we mentioned in our news, prohibitions continue, attacks continue but also the murder of civil people continue, as well. Today we have reached at the funeral of three women who have not been heard of since yesterday. What will you say on this regard?" Encü said:

" .....There is a brutality here for 24 days..... We are faced with a power mentality, a state mentality that deems proper all sorts of torture, all sorts of massacres and in an effort to legitimize these massacres. We have repeatedly spoken here through your means that this is such a barbarity which both forces our people to migrate and causes houses to be bombed, plundered and collapsed, our people killed in the middle of the streets, our mother's funeral was kept in the middle of the street for 7 days and funerals are still being kept in the streets for 22 days. Unfortunately, only the people of Silopi are resisting against this brutality, against this barbarism for 24 days..... unfortunately, these attacks was made with tanks and artilleries, putting forward all war arguments , I would like to express here that we are confronted with a DAESH-style gang with no humanitarian mentality and that violates the war law." and added:

".....We are going through a period in which we are experiencing a practice that does not only include raising their voices against this brutality, against these massacres, we are now experiencing a practice where words become meaningless. We are now in the belief that the words, acts and thoughts should be put into practice, otherwise, they are likely to add our mothers, old fathers and children to the 3 comrades who were murdered today, because the attack is still ongoing, there are condensed attacks.",

In its reasoned decision, the Radio and Television Supreme Council, mentioning the expert report, reached at the decision that the principle of "media services shall not violate the

existence and independence of the State of the Republic of Turkey, the indivisible integrity of the State with its country and nation" in Article 8(1a) of the Law No. 6112 is violated stating that the statements in the TV program accused the state of applying terrorism and these accusations damage the integrity of people with the state, and the principle of "media services shall not inflame society to hatred and hostility by discriminating on the basis of race, language, sex, class, region, religion and sect, nor shall they form hatred within society" in Article 8 (1b) of the Law No. 6112 is violated, stating that there is a call for practicing the thoughts by favoring ethnic origins.

Therefore, it is decided that, concerning Gün Radyo ve Televizyon Yay. A.Ş. with Özgür Gün TV logo;

1- Due to violation of the provision of "(Media services) shall not be contrary to the existence and independence of the State of the Republic of Turkey, the indivisible integrity of the State with its territory and nation" in Article 8(1a) of the Law No. 6112, by considering the seriousness of violation as well as the medium and area of the broadcast, pursuant to first paragraph of Article 32 of the same Law,

a) By considering that the corporation's commercial communication income declaration amounts to TL 53.390,00 belonging to December 2015 in which the violation is detected, it will be penalized with an ADMINISTRATIVE FINE amounting to TL 14.359 since the administrative fines for television corporations shall not be less than TL 10.000 (ten thousand) (TL 14.359 determined pursuant to revaluation ratio for 2016);

c) It will be notified about that transactions should be made according to the provision of " If the same violation is repeated within a year following the notification of the sanction decision resulting from the violation of the principles in subparagraphs (a) and (b) of the first paragraph of Article 8, it will be resolved that the broadcast of the media service provider shall be suspended up to ten days; and in case of the second repetition, its broadcasting licence shall be revoked.." in fifth paragraph of Article 32 of the Law No. 6112 in case of repeatition of the same violation within one year,

2- Due to the detection of repeated violation within one year, of the provision of "(Media services) shall not incite the society to hatred and hostility by making discrimination on the grounds of race, language, religion, sex, class, region and sect or shall not constitute feelings of hatred in the society. " in Article 8 (1b) of the Law No. 6112,

a) It's broadcast to be suspended for one day pursuant to fifth paragraph of Article 32 of the Law No. 6112,

b) The corporation will be notified about the fact that it's broadcasting license will be revoked pursuant to fifth paragraph of Article 32 of the Law No. 6112 in case the mentioned violation is repeated for a second time.

II- In the Decision No.27 dated 01.07.2015 of the Radio and Television Supreme Council, it is briefly said that;

It was concluded that the speeches made in the TV program titled *"Derin Bakış"* on *Samanyolu Haber Yayıncılık Hizmetleri A.Ş.* on 21.03.2015 contained broadcasting that was contrary to the indivisible integrity of the state and the nation, affecting the judicial process and its impartiality and comprising insults and slander beyond the limits of criticism. There were statements as "if Abdullah Öcalan is a terrorist, then Atatürk, also, is a terrorist ", "GÜLTEKİN AVCI said: Everything's changed now. The condition for being a patriot, prerequisite for being a patriot became to love Öcalan. ",

"GÜLTEKİN AVCI said: '…In Turkey, AKP is only addressing those who are in its own harmony. It treats as a terrorist and coup plotter to those who are out of its own harmony. Everyone goes through these benches. Judgeships of Criminal Court of Peace (Magistrate judges) are the gearwheels of those benches. Project cou.... As Mr. Remzi said, they are project courts. They are carrying out the projects coming to them.....You are in arms of DAESH, You are in arms of El-Kaide. You are in arms of PKK. You are sleeping with all terrorist organizations.", and Gültekin Avcı said: "Absolutely. If Öcalan was the president, he could not increase the value of PKK this much. It's so clear. I mean he could not provide such room to PKK. He would not do it as it would attract the attentions insofar. But thanks to AKP and Erdoğan, they really flourished the star of PKK in an incredible manner and somehow provided it to be completely integrated with its alignments."

In the reasoned decision including detailed information from the expert report;

"it is proven that clauses (a) and (ç) of paragraph 1 of Article 8 of the Law No. 6112 is violated through statements towards "division, separation, establishing another state of Kurds" in the broadcasting subject to the violation as well as expressions having the nature of insult and slander beyond the limits of criticism against the government and judiciary members.

It is understood from the records of the Supreme Council that warning sanction was imposed on the mentioned corporation pursuant to Article 8(1ç) of the Law No. 6112 for their broadcastings on 26.06.2013, 22.08.2013 by Supreme Council Resolutions No. 48, 21taken priorly in the meetings dated 06.08.2013, 24.09.2013 and No. 2013/46, 2013/54, respectively.

Since there are more than one violation of broadcasting principles by the same broadcasting and since both of the violations require administrative fine sanction, and since it is prescribed

that the heaviest punishment (single) will be given concerning the mentioned violations pursuant to Article 15(1) of the Misdemeanors Law No. 5326, it is decided that " Administrative Fine" sanction should be imposed on the mentioned broadcasting corporation due to the violation of Article 8(1a) of the Law No. 6112 pursuant to Article 32 of the Law ." Consequently;

1- Concerning the mentioned broadcasting;

a- It is unanimously decided that there is violation of the provision of "(Media services) shall not be contrary to the existence and independence of the State of the Republic of Turkey, the indivisible integrity of the State with its territory and nation …" in Article 8(1a) of the Law No. 6112,

b- It is unanimously decided that there is violation of the provision of "(Media services) shall not be contrary to human dignity and the principle of respect to privacy, shall not include disgracing, degrading or defamatory expressions against persons or organizations beyond the limits of criticism." in Article 8(1ç) of the Law No. 6112,

2- Since there are more than one violation of broadcasting principles by the same broadcasting and since both of the violations require administrative fine sanction, and since it is prescribed that the heaviest punishment (single) will be given concerning the mentioned violations pursuant to Article 15(1) of the Misdemeanors Law No. 5326; due to the violation of the provision of "(Media services) shall not be contrary to the existence and independence of the State of the Republic of Turkey, the indivisible integrity of the State with its territory and nation …" in Article 8(1a) of the Law No. 6112 and ""(Media services) shall not be contrary to human dignity and the principle of respect to privacy, shall not include disgracing, degrading or defamatory expressions against persons or organizations beyond the limits of criticism." in Article 8(1ç) of the Law No. 6112 and pursuant to Article 32 of the same Law, it is decided that;

a- ADMINISTRATIVE FINE amounting to TL 13.601 should be imposed on SAMANYOLU HABER YAYINCILIK HİZMETLERİ A.Ş. broadcasting with SAMANYOLU HABER logo, by considering that the corporation's commercial communication income declaration amounts to TL 77.689,10 belonging to February 2015 in which the violation is detected and since the administrative fines for television corporations shall not be less than TL 10.000 (ten thousand) (TL 13.601 determined pursuant to revaluation ratio for 2015),

c) The broadcasting corporation shall be warned on the issue that; pursuant to the fifth paragraph of Article 32 of the Law No. 6112; ‘If the same violation is repeated within a year following the notification of the sanction decision resulting from the violation of the

principles in subparagraphs (a) and (b) of the first paragraph of Article 8, it will be resolved that the broadcast of the media service provider shall be suspended up to ten days; and in case of the second repetition, its broadcasting licence shall be revoked.'

Samanyolu Haber Yayıncılık Hizmetleri A.Ş. applied to Administrative Court for the annulment of the Decision. In the judgement of Ankara 18. Administrative Court dated 02.11.2016 Docket No. 2015/2199 No. 2016/3181, the application was decided to be dismissed as the way of appeal is open, stating that speeches in violation of the State's indivisible integrity were supported in the mentioned broadcast, there were slander and insults, the broadcasters acts in a way to more provoke the speakers.

III- In the Decision No. 40 dated 22.04.2015 of the Radio and Television Supreme Council, it is briefly said that;

Newscaster: "Dear audience..... Selim Kiraz, the public prosecutor of Berkin Elvan case, has been taken hostage in his room....The crisis continues right now, the illegal organization has some demands, claims and announced that they will take negative actions against Selim Kiraz unless the mentioned demands are met. Kamil Maman, the reporter of Bugün newspaper, is at Çağlayan Courthouse right now. Kamil Maman, could you tell us, what's going on there right now?

Newscaster: "Turkey woke up to an interesting day today. Power interruption and taking hostage of the public prosecutor. It's making a connection between the two events. If this incident is a reflection of this, it gives a very important idea, this event may have happened as a result of such an interruption. Dear audience, on the 6th floor of Çağlayan Courthouse, the hostage action continues.... It is alleged that Selim Kiraz, İstanbul Public Prosecutor of Berkin Elvan case has been taken hostage. Ömer Çağlak, also, just expressed this hostage action. It is alleged that the action has been carried out by DHKP-C terrorist organization. Two militants of the DHKP-C terrorist organization are alleged to carry out this action, two militants are alleged to carry out this action. Allegedly, these two people, two members of the DHKP-C terrorist organization entered the room, entered into the room of the public prosecutor Mehmet Selim Kiraz. They forced out the woman secretary and locked the room. Then, they wrapped M. Selim Kiraz's mouth and photographed it as there is a gun on his head and then shared it via Twitter account. At that time, the police were interfering here. The police came to the door but it is claimed that two gunshots were fired at that time. These are initial information, of course. Later, the police were pulled back and special teams came here, as Ömer Çağlak has just told. By saying special teams, Ömer Çağlak shared with you the information that the negotiator teams came here. Let's have a brief look at who is Prosecutor

Mehmet Selim Kiraz? Mehmet Selim Kiraz is the prosecutor investigating Berkin Elvan case, dear audience. His room is on the 6th floor. 6th floor of Çağlayan Courthouse. Of course, an important question here is that, was this security vulnerability experienced due to the power failure, and was it possible for those people to enter into with weapons? We said that a photo of the prosecutor was shared with a gun on his head. By members of the illegal terrorist organization on Twitter. Such a photo of the prosecutor was shared. In this photo, we see that the person holding the gun at the time is a person in a suit. But how could this person who is well dressed put the gun in? This is a question mark. Did this happen due to a security weakness, a security weakness that could be connected with this power interruption? This is a question mark. .....the terrorist organization. Has some demands. They want those demands to be met. (Image match) Here are the operations teams, dear audience. Special teams reflected in the camera in this way. Dispatched to Çağlayan Courthouse. The hostage crisis continues on the 6th floor. Negotiator teams are also here. And they will try to negotiate with these two alleged members of the DHKP-C terrorist organization, or the negotiation process may have already begun at this moment. As we said, these people, who are mentioned as DHKP-C members, have some demands and want their demands to be met. They have given a certain period of time. If the demands are not met during this time, they have certain threats related to the prosecutor..... Hostage crisis continues to be seen, dear audience. Today is a very active day for Turkey. There was an electricity shortage in about 40 cities. There were some negative developments in the result of this power interruption. We attracted attention to the intersection of transportation and the traffic, but the specialists attracted attention that there may be some other consequences of this situation. In particular, they talked about the consequences regarding the country's defense. Here is a different view. We do not know right now. Is this event on the 6th floor of Çağlayan Courthouse is related with that? Is the security weakness caused due to the power failure? These are surely the questions to be answered. Is not there any other security protocol applied when such a power failure occurs? This is important. If this event is carried out in connection with the power interruption, why and how could it be possible for those who took the guns inside? These are important questions. Of course, we expect the authorities to explain this....."

.....

The fact that terrorist actions are widely covered in the media unconsciously and occupying news agendas may lead to terror fact spread to every part of the society and lead to negative consequences such as the fact that the terrorist organizations' beliefs may increase to what they do and defend, movement of other terrorist organizations, direction of terrorist

organizations on the agenda of the country, heroization of organization members and new participation, and show terrorist organizations more powerful than they actually are.

There are important regulations in Europe and the USA for the presentation of terrorist news. The 8th and 10th paragraphs of Recommendation Decision Rec 1706 (2005) on Media and Terrorism, adopted by the Parliamentary Assembly of the Council of Europe, are of great importance. iv. To avoid acting towards the interests of terrorists by adding fear to the public or providing a platform for propaganda to the terrorists

British public service broadcaster BBC's terrorism-related publications show the following principles:

- Terrorism news should be given responsibly; it should not be forgotten that the rumors about terrorism are lethal.
- The BBC should not be a tool for terrorist propaganda and promotional purposes.
- The language used by terrorists should not be used as a member of the press.

The US, British and Spanish media did not show the bloody views after the attack to Twin Towers in the USA and the actions in London and Madrid in the past, but they make the propaganda of terrorists through the broadcast they do in so many terror attacks in our country and they merely prove Thatcher's words as "Propaganda is the oxygen of terrorism ".

There has been views as "Consequently, the media service provider corporation broadcasting with BUGÜN TV logo is thought to have violated the rule of "(Media services) shall not glorify and encourage terror; shall not display terrorist organizations as powerful or justified and shall not portray terrifying and deterrent features of terrorist organizations. They shall not present the act, the perpetrators and the victims of terror in a way serving for the interests of the terror." stated in article 8(1d) titled "Principles for Media Services" of the Law on the Establishment of Radio and Television Enterprises and Their Media Services No. 6112.",

As a result of analyzing decipher records and video images belonging to the mentioned broadcast; it is understood that, in the mentioned broadcast, images of Prosecutor Kiraz were brought to the screen with guns attached to his head, mouth-wrapped and handcuffed in Çağlayan Courthouse during the news given relating to the hostage action by DHKP-C members against Prosecutor Mehmet Selim Kiraz in charge of carrying out the investigation on Berkin Elvan case.

It has been evaluated that the broadcasting of the photograph served by the members of the terrorist organization on the screen in such a direct way that would serve to propaganda of the organization and cause indignation in the society and thus violate Article 8(1d) of the Law No. 6112.

Therefore, due to violation of Article 8(1d) of the Law No. 6112, pursuant to the provision of first paragraph of Article 32 of the Law, it has been deemed appropriate to impose "administrative fine " sanction concerning the mentioned Broadcasting Corporation.

Decision: Concerning the corporation titled BUGÜN TELEVİZYON VE RADYO PRODÜKSİYON A.Ş.; due to the violation of the provision of "(Media services) shall not glorify and encourage terror; shall not display terrorist organizations as powerful or justified and shall not portray terrifying and deterrent features of terrorist organizations. They shall not present the act, the perpetrators and the victims of terror in a way serving for the interests of the terror." stated in article 8(1d) titled "Principles for Media Services" of the Law No. 6112, it has been decided pursuant to first paragraph of Article 32 of the same Law, that;

1- ADMINISTRATIVE FINE amounting to TL 13.601 should be imposed on the mentioned corporation, by considering that the corporation's commercial communication income declaration amounts to TL 212.341,08 belonging to February 2015 in which the violation is detected and since the administrative fines for television corporations shall not be less than TL 10.000 (ten thousand) (TL 13.601 determined pursuant to revaluation ratio for 2015)."

Bugün TV applied to administrative court for annulment of the decision. In its judgementdated 09.03.2016 Docket No. 2015/1595 Decision No. 2016/773 of Ankara 12. Administrative Court, it is said that; news bulletins and live broadcasts are made with certain periods on media service provider corporation which is broadcasting with Bugün TV logo, the screen was divided into two while latest development expression was on the screen during the live speech of Kemal KILIÇDAROĞLU, party leader of CHP, on 31 March 2015, it is determined that cornering the taking hostage of Public Prosecutor Mehmet Selim KİRAZ charged in İstanbul Çağlayan Courthouse, by terrorist organization militants, images of Prosecutor Kiraz were brought to the screen with guns attached to his head, mouth-wrapped and handcuffed that are served to media by terrorist organization members were brought o screen with sub-title " Latest News- Action in Çağlayan Courthouse- Illegal Organization members took hostage the Public Prosecutor", in return, it is evaluated as violation of Article 8(1d) of the law No. 6112 stating that showing such an image openly on screen may serve as a propaganda for the organization and may lead to indignation in the public and therefore administrative fine was imposed, and then it is understood that the case for annulment of the administrative fine is filed with a claim stating that it is unlawful to impose administrative fine by handling only some parts of the broadcasting, not all of it.

In this case, since the role of media is so significiant in increasing the efficiency of terrorist actions, news on terror should be different from normal news, the principle of broadcasting to

be taken into account must be responsibility rather than competition and rating, the media which might be the best advertisement tool for terror should avoid fear and concern environment in society so as to go beyond freedom of expression, and since its evaluated that broadcasting the image of Prosecutor Mehmet Selim Kiraz charged in Çağlayan Courthouse served by the terrorist organization members to the media while guns attached to his head, mouth-wrapped and handcuffed is in the nature to serve as a propaganda for the organization and may lead to social indignation, there is no legal violation to impose administrative fine amounting to TL 13.601,00 on the plaintiff pursuant to first paragraph of Article 32 due to violation of Article 8(1d) of the Law No. 6112." and the demand is decided to be dismissed as the way of appeal is open.