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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

CONSTITUTIONAL AND LEGAL PROVISIONS¹

GOVERNING CURFEW

IN TURKEY

¹ *Non official translation*

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I. Constitution

Extraordinary administration procedures

A. States of emergency

1. Declaration of state of emergency because of natural disaster or serious economic crisis

ARTICLE 119- In the event of natural disaster, dangerous epidemic diseases or a serious economic crisis, the Council of Ministers meeting under the chairpersonship of the President of the Republic may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months.

2. Declaration of state of emergency because of widespread acts of violence and serious deterioration of public order

ARTICLE 120- In the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months.

3. Rules regarding the states of emergency

ARTICLE 121- In the event of a declaration of a state of emergency under the provisions of Articles 119 and 120 of the Constitution, this decision shall be published in the Official Gazette and shall be immediately submitted to the Grand National Assembly of Turkey for approval. If the Grand National Assembly of Turkey is in recess, it shall be immediately assembled. The Assembly may alter the duration of the state of emergency, may extend the period for a maximum of four months each time at the request of the Council of Ministers, or may lift the state of emergency.

The financial, material and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119 and the manner how fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15, how and by what means the measures necessitated by the situation shall be taken, what sorts of powers shall be conferred on public servants, what kinds of changes shall be made in the status of officials as long as they are applicable to each kinds of states of emergency separately, and the extraordinary administration procedures, shall be regulated by the Act on State of Emergency.

During the state of emergency, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, may issue decrees having the force of law on matters necessitated by the state of emergency. These decrees shall be published in the Official Gazette, and shall be submitted to the Grand National Assembly of Turkey on the same day for approval; the time limit and procedure for their approval by the Assembly shall be indicated in the Rules of Procedure.

B. Martial law, mobilization and state of war

ARTICLE 122- The Council of Ministers, under the chairpersonship of the President of the Republic, after consultation with the National Security Council, may declare martial law in one or more regions or throughout the country for a period not exceeding six months in the event of widespread acts of violence which are aimed at the destruction of the free democratic order or the fundamental rights and freedoms embodied in the Constitution and more dangerous than the cases necessitating a state of emergency; or in the event of war, the emergence of a situation necessitating war, an uprising, or the spread of violent and strong rebellious actions against the motherland and the Republic, or widespread acts of violence of internal or external origin threatening the indivisibility of the country and the nation. This decision shall be published immediately in the Official Gazette, and shall be submitted for approval to the Grand National Assembly of Turkey, on the same day. If the Grand National Assembly of Turkey is not in session, it shall be immediately assembled. The Grand National Assembly of Turkey may, when it deems necessary, reduce or extend the period of martial law or lift it.

During the period of martial law, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, may issue decrees having the force of law on matters necessitated by the state of martial law.

These decrees shall be published in the Official Gazette and shall be submitted for approval to the Grand National Assembly of Turkey on the same day. The time limit and procedure for their approval by the Assembly shall be indicated in the Rules of Procedure.

Extension of the period of martial law, for a maximum of four months each time, shall require a decision by the Grand National Assembly of Turkey. In the event of state of war, the limit of four months does not apply.

In the event of martial law, mobilization and state of war, the provisions to be applied and conduct of affairs, relations with the administration, the manner in which freedoms are to be restricted or suspended and the obligations to be imposed on citizens in a state of war or in the event of emergence of a situation necessitating war, shall be regulated by law. The martial law commanders shall exercise their duties under the authority of the Chief of the General Staff.

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 on account of them; offences and penalties shall not be made retroactive; nor shall anyone be held guilty until so proven by a court ruling.

II. Law no. 2935 of 25 October 1983 on State of Emergency

Article 3 – Declaration of State of Emergency

The Council of Ministers assembled under the chairmanship of the President shall declare a state of emergency:

(a) whenever there is in existence one or more natural disasters, dangerous epidemic diseases or serious economic crisis;

(b) whenever there appear serious indications resulting from widespread acts of violence which are aimed at destroying the free democratic order or fundamental rights and freedoms, or violent acts causing serious deterioration to public order, after consultation with the National Security Council,

in one or more regions or throughout the country for a period not exceeding six months.

The state of emergency decision shall be published in the Official Gazette and immediately submitted for approval of the Turkish Grand National Assembly. If the Turkish Grand National Assembly is in recess, it shall be summoned to meet immediately. The Assembly may amend the duration of the state of emergency. On a request from the Council of Ministers, the Assembly may prolong the duration each time for a period not exceeding four months, or it may terminate the state of emergency.

The Council of Ministers, after declaring a state of emergency in accordance with provision (b) above, shall also consult the National Security Council before making a decision on questions related to the prolongation of the duration, alteration of the scope, or termination of the state of emergency.

The reasons for the decision to declare a state of emergency, its duration and scope shall be broadcast on Turkish radio and television and, if the Council of Ministers deem it necessary, also disseminated through other media.

Article 4. - Decrees having the force of law:

During a state of emergency, the Council of Ministers meeting under the chairmanship of the President of the Republic, may issue decrees having the force of law on matters necessitated by the state of emergency without complying it the restrictions and procedures laid down in Article 91 of the Constitution. Decrees having the force of law shall be published in the Official Gazette and submitted to the Turkish Grand National Assembly for approval.

Article 9. – Measures to be taken

Whenever a state of emergency is declared due to a natural disaster or dangerous epidemic disease, the following measures may be taken having regard to the events which necessitated the declaration:

(a) prohibition of people from residing in certain localities in the concerned region; restriction of entry into and departure from certain areas; evacuation of certain areas and transfer of people to other areas;

(b) suspension of training at all levels of official and private education and training institutions; closure, permanently or temporarily, of student dormitories;

(c) control and limitation of the opening and closing times, and if necessary the closure and requisition by the state, of casinos, restaurants, public houses, drinking places, taverns, discotheques, bars, dancing places, cinemas, theatres and other places of entertainment, clubs, gambling saloons, hotels, motels, camping grounds, holiday villages and other holiday establishments;

(d) limitation or suspension of annual vacation leave of personnel in charge of carrying out the services required under the state of emergency in a region;

(e) requisitioning, and if necessary, seizure of all communication media and instruments within the region;

(f) demolition of unsafe buildings, destruction of real estate and personal property which threaten [public] health, and of articles of food and other products which are deemed to be unhealthy;

(g) control, limitation and if necessary prohibition of the entry into or carrying out of the affected region of certain articles of food, animals, animal fodder or animal products;

(h) regulation of the distribution of essential goods;

(i) requisition and control of: essential supplies of food and oil used in cooking, heating, cleaning and lighting; medicines, chemical materials, instruments and other articles used in the protection of health, treatment of diseases and in medical science; goods and materials used in construction, industry, transportation and agriculture; the production, sale, distribution and storage of and commerce in other goods, materials, instruments and all kind of necessities; and closure of workplaces which are not of vital importance to the region;

(j) control of land, sea and air traffic, and the restriction or prohibition of the transportation of vehicles into or out of the region.

Article 11. Measures to be Taken in the Case of Violence Measures:

Whenever a state of emergency is declared in accordance with Article 3 (1)(b) to protect general security, safety and public order and to prevent the spread of acts of violence, in addition to the measures taken in accordance with Article 9, the following measures may be taken:

(a) imposition of a limited or full curfew;

(b) prohibition of any kind of assembly or procession or movement of vehicles in certain places or within certain hours;

(c) authorisation of officials to search persons, their vehicles or property and to seize goods deemed to have evidentiary value;

(d) imposition of obligation to carry identity cards by those living in or entering regions which are declared to be under a state of emergency;

(e) Prohibition of, or imposition of obligation to require permission for, the publication (including issuance of reprints and editions) and distribution of newspapers, magazines, brochures, books, etc.; prohibition of importation and distribution of publications published or reprinted outside regions declared to be under a state of emergency; and confiscation of books, magazines, newspapers, brochures, posters and other publications of which publication or dissemination has been banned;

(f) control and, if deemed necessary, restriction or prohibition of every kind of broadcasting and dissemination of words, writings, pictures, films, records, sound and image bands (tapes);

(g) taking or increase of special security measures for internal security of banks and sensitive public and private establishments;

(h) control and, if deemed necessary, suspension or prohibition of the exhibition of all kinds of plays and films;

(i) prohibition of the carrying or conveying of all types of weapons and projectiles, including those licensed by the state;

(j) prohibition, or the imposition of a requirement to obtain prior permission, for the possession, preparation, manufacture or conveying of all types of ammunition, bombs, destructive materials, explosives, radioactive materials and corrosive, caustic or ulcerating chemicals and all kinds of poisons, suffocating gases and other similar material; and confiscation of, or demand to submit [to the state], goods, instruments and tools used in the preparation or manufacture of the aforesaid items;

(k) prohibition of persons or groups of persons believed to be disrupting public order or public security from entering the concerned region, expulsion of such persons or groups from the region, or imposition of a requirement on them to reside in or enter specified places in the region;

(l) prohibition, restriction or regulation of the entry [of people] into and exit from establishments or institutions deemed essential for the security of the region;

(m) prohibition of, postponement of, or imposition of a requirement to obtain permission for, assemblies and demonstrations in both enclosed and open spaces; regulation of the time and place of permitted assemblies and demonstrations; and supervision, and if deemed necessary dispersal, of all kinds of permitted assemblies;

(n) [As amended by law no. 3076 dated 14 November 1984] Postponement of, or imposition of a requirement to obtain permission for, the retrenchment of labour for periods exceeding three months, except in cases of termination or cancellation of labour contracts at the request of workers, dismissal on grounds of immoral behaviour or breach of good faith, retrenchment on health grounds, or normal retirement.

(o) [As amended by law no. 3076 dated 14 November 1984] Suspension of the activities or associations for periods not exceeding three months, after considering each individual case;

~~(ö) [REPEALED] [As amended by Decree 3076 dated 14 November 1984] Postponement of decisions to enforce strikes and lock-outs for upto a maximum of one month;~~

(p) [Introduced by the law no. 3310 dated 3 September 1986] Planning and execution of operations, in so far as they may be necessary, beyond the borders of Turkey to capture or incapacitate persons who, having carried out [disruptive] actions in Turkey, have sought refuge in a neighbouring country. Such operations shall be carried out by the competent military commander, using the Army, Navy and Air Force, if needed after obtaining the requisite permission from the Government through the Office of the Chief of General Staff, at the request of regional governors, and within the framework of agreements arrived at between the Government of Turkey and that of the neighbouring country concerned. This power shall only extend to an emergency declared under Article 121 of the Constitution.

Article 14. Implementation of States of Emergency:

The duty of and authority for implementing states of emergency shall belong to:

(a) the governor of a province, if the state of emergency covers one province;

(b) the regional governor, if the state of emergency is declared in more than one province administratively connected to a regional governancy;

(c) the regional governors, with co-ordination and co-operation being provided by the office of the Prime Minister, if the state of emergency is declared throughout the country or in provinces within the jurisdiction of more than one regional governor. All the necessary powers shall be exercised by the abovementioned functionaries.

Regional governors may transfer, totally or partially, their duties and powers, to the governors of provinces covered by a state of emergency.

Article 25. Penal Provisions:

a) Within areas where a state of emergency has been declared on account of a natural disaster, dangerous epidemic disease or serious economic crisis –

(1) anyone whose actions constitute a breach of the measures taken by a regional governor or the governor of a province in accordance with the authority provided in this Act or in other statutes, or who disobeys orders or does not carry out the requirements of such orders, or who provides false proof of identity or refuses to provide proof of identity when demanded, is liable, in addition to the punishment prescribed for such actions in ordinary criminal law, to imprisonment for up to three months;

(2) anyone who spreads or conveys false or exaggerated news or information with intent to create panic among the public shall similarly be liable to additional punishment of imprisonment for between three months and one year and a minimum fine of five thousand Turkish liras. If such crime is committed by a person in association with a foreigner, the additional term of imprisonment shall not be for less than one year together with a fine of thirty thousand liras. If the crime involves publication and/or the use of broadcasting media, the penalty shall be doubled and imposed on both the person primarily responsible for the crime and anyone else connected with its commission.

b) Within areas where a state of emergency has been declared in accordance with Article 3(1)(b) of this Act

(1) anyone whose actions constitute a breach of the measures taken by a regional governor or the governor of a province in accordance with the authority provided in this Act or in other statutes, or who disobeys orders or does not carry out the requirements of such orders, or who intentionally provides false proof of identity or refuses to provide proof of identity when demanded, is liable, in addition to the punishment prescribed for such actions in ordinary criminal law, to imprisonment for between one and six months;

(2) anyone who acts in a manner which would constitute a breach of clause (A)(2) of this Article, shall be liable to a penalty which shall be double the penalty mentioned in the foregoing clause.

III. Law no. 1402 of 13 May 1971 on Martial Law

Article 2. Enforcement of Martial Law:

The duties and powers of police forces concerned with general security and public safety shall, in districts coming within the scope of a martial law proclamation, be transferred to the martial law command.

The entire police force in such districts shall be placed under the authority of the martial law commander. The police forces in districts under martial law shall report to the concerned military authorities for the discharge of their duties connected with martial law and to judicial and administrative authorities for the discharge of their other duties.

The National Intelligence Organisation shall co-operate with the martial law command.

The martial law commander shall exercise the duties and powers vested in him by this Act through the local police and military units placed under his command. Both in times of peace and in emergencies the martial law commander shall ask the garrison commander of his district or the garrison commander of the district nearest to him to place under his command as many such units as he may consider necessary. Such a request shall be complied with immediately.

(...)

Article 3. Duties and authorities:

The martial law commander is charged with the preservation and promotion of the general security, public safety and public order in areas where martial law is in force. He is furthermore authorized to take the following measures if necessary:

- a) to search: lodgings; all types of premises including those belonging to associations, political parties, trade unions and clubs; business premises; establishments belonging to persons (real or artificial, including autonomous corporations) and their dependents; all kind of covered and open spaces; and to intercept letters, cables and other consignments and search them as well as persons, without a warrant, application or demand for such acts, and to seize articles likely to be of evidentiary value or are liable to forfeiture;
- b) to impose censorship on, restrict or interrupt any publication and communication conducted by means of various means such as telephone, transmitters, radios, televisions including the broadcasts of Turkish Radio-Television institutions;
- c) to control all verbal, written and pictorial communications, films or sound transmissions, publications, correspondence, letters, cables and other consignments; to ban or impose censorship on all kinds of newspapers, periodicals and books, and on the printing or distribution of other publications; to prohibit the possession, or carrying into a martial law region of more than one copy of such publications; to seize all kinds of documents including books, periodicals, newspapers, brochures, posters, pamphlets, placards, records, tapes as well as broadcasting and communication media and to close down printing houses and record and tape manufacturing workshops; to take necessary measures to destroy those articles deemed by the martial law command to be objectionable or to return them to their owners if it is decided that they should not be confiscated; and to require special authorisation for the publication of new newspapers and periodicals;
- d) to control the movement of individuals convicted of offences against public order, individual freedom, public safety or state forces, or for murder or assault and battery, and those who are under general surveillance or have no fixed address in areas where martial law is in force or are suspects; to relocate persons found to be carrying out activities injurious to the general security and public order and to bar them entry to certain areas under martial law or to prohibit their settlement in such areas; and to deport those whose presence is deemed to be harmful to places outside areas where martial law is in force.

Those deported on the grounds that their activities are deemed to be injurious to the general security and public order may be ordered to remain outside the areas where martial law in force for a period determined by the martial law commander not exceeding five years and they may be compelled to reside in a place specified by the Ministry of the Interior;

- e) to prohibit the storage, preparation, production or transportation of all kinds of arms, ammunition, bombs, explosives, radioactive materials or gases and to order the delivery of these items and of articles, tools and instruments used in the fabrication or production thereof; to carry out searches for such articles and seize them;
- f) to ban or impose restrictions on trade union activities such as strikes, lock-outs, [balloting], etc.; to prohibit, prevent or take appropriate measures against destructive

activities, pillages, illegal occupation [of premises], boycotts, slow-downs, interferences with the freedom to work, illegal closures of workplaces, etc.;

- g) to prohibit or impose restrictions on meetings, whether held in covered places or in the open, and on demonstrations; to fix and assign places for such meetings and to control them; to require permission for the establishment of new associations, trust funds and organisations founded on the basis of official deeds; to ban the activities of all kinds of associations, trust funds and other organisations or subject such activities to the requirement of prior permission.
- h) to control, as and when necessary, commercial and industrial establishments producing, fabricating, storing, transporting or selling essential goods; to take appropriate legal action against persons hoarding such materials, selling them at exorbitant prices, stopping or slowing down their production or refusing their transportation; and to take or cause to take appropriate measures for the provision of such goods and close down establishments refusing to comply with such orders;
- i) to control or close down restaurants, clubs, casinos, cafes, beer houses, taverns, theatres, cinemas, night clubs, gambling saloons, hotels, motels, camping sites and other similar places and to determine and limit the hours during which they shall remain open;
- j) to take necessary measures relating to the control of land, sea and air traffic and to restrict or prohibit for security purposes the entry and exit of transportation vehicles;
- k) to impose restrictions on entry into and exit from areas where martial law is in force;
- l) to impose restrictions on the movement of people; to impose curfews; and, as and when necessary, to introduce appropriate civil defense measures;**
- m) to compel all public and private establishments in areas under martial law to take appropriate measures; and, if necessary, to requisition the premises, vehicles and personnel of the Treasury, state economic enterprises and establishments and organisations of the local administration, municipality and banks;
- n) to execute the decisions of the Council of Ministers relating to martial law;
- o) to suspend temporarily the education and training carried out in primary and secondary schools and in universities; and to require concerned individuals and committees of such establishments to lift or shorten any such suspension of educational activities;
- p) to order the severing of relations between students who have been deported from areas under martial law after their presence in such areas has been deemed harmful, and their educational or training establishments; and to require the concerned authorities apply the special rules and regulations of such establishments;
- r) the incidents which led to the declaration or continuation of martial law under Article 122 of the Constitution occur in the border areas of the Turkish Republic and where those responsible for such incidents are established to have taken refuge in neighbouring countries, to plan and put into execution, within the context of agreements entered into with such neighbouring countries, operations beyond Turkey's frontiers on a limited scale using, as appropriate, land, air or naval forces, each time with the permission of

the government and the Chief of the General Staff, with a view to apprehending the culprits or rendering them ineffective.

In the exercise of the abovementioned powers, regard shall be had to the constitutional provisions relating to the privileges and immunities recognised by international law for diplomatic representatives and delegations and to [legislative privileges].

Article 16. Offences and Penalties:

Persons acting in contravention of measures adopted by the martial law commander in areas where martial law has been declared, failing to abide by any orders or instructions [issued by the martial law commander], intentionally giving false information about their identity or refusing to provide proof of their identity when demanded to do so, are liable to be punished with imprisonment for between three months and one year.

Persons spreading or conveying unfounded or exaggerated news or rumours with intent to create unrest or panic among the public are liable to be punished with imprisonment for between six months to two years and with a monetary fine of not less than five thousand lira. If the offence is committed in collusion with a foreigner the term of imprisonment shall not be less than one year and the fine not less than five thousand lira. If the offence is committed by the press or other mass media those responsible (directly and indirectly) shall be liable to a double punishment.

Persons deported from areas where martial law is in force re-entering such areas or entering areas where they have been forbidden entry, and persons failing to notify the security authorities in their new places of residence of their previous domiciles or of the address to which they intend to move shall be liable to be punished with imprisonment for between two months and four months for a first offence and for between four months and one year for a second or subsequent offences.

IV. Law no. 5442 on Provincial Administration

Article 11

- a) The governor shall be the superior of all general and special law enforcement forces and organizations. He shall take necessary measures to prevent crimes from being committed, protect public order and security. For this purpose, he shall employ the general and special law enforcement forces of the State; the superiors and officers of such organizations shall be obliged to immediately execute the orders issued by the governor.
- b) The governor shall secure the border and coasts of the country, and execute all affairs relating to border and coastal security according to the provisions in force.
- c) The governor shall have the duty, inter alia, to secure peace and security, personal immunity, safety of private property, public well-being and the authority of preventive law enforcement.

The governor shall take necessary decisions and measures to this end. Provisions of Article 66 shall apply to those who do not comply with such decisions and measures

Article 66

The local civil administrator shall impose penalties, pursuant to Article 32 of the Law on Misdemeanours, on those who resist or make difficulty or disobey the implementation and execution of decisions and measures duly taken and notified or announced by the general provincial council or administrative committee or the highest civil administrator based on the powers conferred by laws.

However, in the event of an outbreak of social events which endanger the public order and public security or safety of people's life and property, those who act contrary to the measures taken by the governor in order to secure the public order, shall be punished by a prison term of 3 months to 1 year.

V. Article 32 of the Law no. 5326 on the Law Misdemeanours

Persons acting contrary to the lawful orders given by competent authorities within judicial proceedings or in order to secure public safety, public order or public health, shall be punished with an administrative fine of 100 Turkish Liras. The punishment is imposed by the authority who gives the order.

VI. Code of Criminal Procedure

Custody

Article 91

- (1) If the individual, who has been arrested without a warrant is not released by the public prosecutor in accordance with the above mentioned Article, then it may be ordered that he be taken into custody with the aim of completing the related investigation. The duration of the custody shall not exceed 24 hours, beginning from the moment of the arrest; the necessary time for transporting the suspect to the nearest judge or court of the place where the arrest had occurred, shall not be included. The necessary time for transportation to the nearest judge or court where the arrest had occurred, shall not exceed 12 hours.
- (2) Taking an individual into custody requires that this measure is necessary in respect to the investigation and that evidence exists, which indicates the belief that the individual has committed an offense.
- (3) If the crime has been committed collectively and if there are difficulties in collecting evidence of the crime, or there are a large number of suspects, the public prosecutor may order in writing an extension of the custody period for 3 more days, not exceeding one day at a time. The order of extension shall immediately be notified to the individual who has been taken into the custody.
- (4) In case of *flagrante delicto* concerning the crimes mentioned below, law enforcement officer-in-chief mandated by the governor may order a custody measure up to 24 hours or in case of widespread acts of violence in the event of an outbreak of mass events which may cause serious disturbance to public order, up to 48 hours. Where the reasons justifying custody cease to exist, the Public Prosecutor is informed immediately, or informed in any case at the expiration of the above mentioned time-limits about the measures taken. In case the person is not released, the procedure described in the above-mentioned provisions applies. However, the person shall be brought before a judge within 48 hours or in case of collective crimes within four days at the latest. The provisions on custody also apply to persons who are taken into custody under this paragraph.
 - a) Crimes concerning acts of violence committed during social events.
 - b) Following Crimes indicated in the Penal Code no. 5237 of 29/09/2004;
 1. Intentional killing (art. 81 and 82), Reckless killing (art. 85),
 2. Intentional Injury (art. 86, 87),
 3. Sexual Assault (art. 102),
 4. Child molestation (art. 103),
 5. Theft (art. 141, 142)

6. Robbery (art. 148, 149)
 7. Production and Trade of Narcotics and Psychotropic Substances (art. 188),
 8. Acting Contrary to Measures to Contain Contagious Disease (art.195)
 9. Prostitution (art. 227),
 10. Ill treatment (art. 232),
 - c) Crimes indicated in the Anti-Terror Law no. 3713 of 12/04/1991
 - d) Crimes indicated in Article 33 (a) of the Law on Public Demonstrations,
 - e) **Violation of curfew measure taken on the basis of the Law no. 5442 of 10/06/1949 on Provincial Administration**
 - f) Crimes indicated in Article 3 of the Law no. 5607 on the Fight against Smuggling of 21/03/2007.
- (5) The individual who has been arrested without a warrant, his defense counsel or his legal representative, his or her spouse, or a blood relative of first or second degree may file a motion with the Justice of the Peace against the interaction of arrest without a warrant, or against the written order by the public prosecutor on taking the individual into custody or on the extension of the custody period, in order to achieve an immediate release from custody. The Justice of the Peace shall conduct an immediate inspection on the files and shall make a ruling before the period of 24 hours has expired. If the arrest without warrant, or taking into custody or extension of custody period is appropriate, the motion shall be denied or a decision shall be rendered stating that the individual arrested without a warrant shall be immediately arraigned to the public prosecutor, accompanied by investigative documents.
- (6) After the individual arrested without a warrant has been released, due to the expiration of the custody period, or upon the decision of the Justice of the peace, the same individual shall not be arrested without a warrant for the same offense, unless new and sufficient evidence related to the conduct that was the ground of his previous arrest without a warrant has been obtained, and the public prosecutor gives an order.
- (7) In cases where the individual who is taken into custody is not released, he shall be arraigned the latest at the end of these periods of time before the Justice of the Peace and interrogated. During the interrogation, his defence counsel shall also be present.