



Joint Stakeholder Submission by the Arrested Lawyers Initiative¹ and the London Advocacy² to the UN Human Rights Council's Universal Periodic Review

TURKEY 35th Session (Jan.-Feb. 2020)

VIOLATIONS OF THE PROPERTY RIGHTS IN TURKEY

EXECUTIVE SUMMARY

1. This submission by the Arrested Lawyers Initiative (ALI) highlights a number of key areas of concern regarding Turkey's compliance with its international human rights obligations relating to property rights.

¹ **The Arrested Lawyers Initiative (ALI)** is a human rights group, founded in 2016, consists of lawyers across Europe. The ALI is based in Brussels, makes advocacy for lawyers persecuted due to exercising their profession. The ALI has produced more than 10 reports and factsheets which have been cited by the UN High Commissioner and Special Rapporteurs, the European Parliament, the US State Department and various NGOs.

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² London Advocacy (LAG) is a non-profit company limited by guarantee active bringing change in human rights through litigation. LAG produces country specific legal and political reports, coordinates litigation files under universal jurisdiction, assists asylum seekers in their appeal cases and trains new human rights lawyers.

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2. This submission examines violations to the property rights particularly under the Turkish State of Emergency and from the perspective of trustee appointments to private properties, or properties of foundations.
3. This submission ends with a recommendations section.

INTERNATIONAL AND CONSTITUTIONAL OBLIGATIONS OF TURKEY

4. The Republic of Turkey is a member of the United Nations and party to the ICCPR and the ICECSR. On 21 July 2016, the Turkish Government declared a state of emergency. The State of Emergency was effective until 18 July 2018. In Turkey's notification lodged with the Secretary-General of the United Nations, the following articles were mentioned as rights which would have been affected from the derogations: *art. 2§3 (right to an effective remedy); art. 9 (right to liberty and security); art. 10 (right to humane treatment in detention); art. 12 (freedom of movement); art. 13 (procedural guarantees in expulsion proceedings); art. 14 (right to a fair trial); art. 17 (right to privacy); art. 19 (right to freedom of expression); art.21 (right of peaceful assembly); art. 22 (freedom of association); art. 25 (political rights); art. 26 (equality before the law); art. 27 (protection of minorities) of the ICCPR*. Considering article 4 ICCPR and the United Nations' Human Rights Committee's General Comments numbered 29, 32, 35, it can prima facie be said the derogations of the right to an effective remedy (art. 2§3), the right to humane treatment in detention (art. 10) and the protection of minorities (art. 27) are invalid, as they refer to non-derogable rights.³

VIOLATIONS OF PROPERTY RIGHTS UNDER STATE OF EMERGENCY

5. At the very beginning of the State of Emergency rule, on 21 July 2016, 934 private schools, 109 dormitories, 35 hospitals, 15 private universities, 19 unions, 104 foundations and 1125 associations were dissolved and all their assets including real estates, chattel goods, bank accounts, intellectual properties and other financial assets were transferred to the public treasury.⁴ During the emergency rule, the Turkish Government enacted 32 Emergency Decrees. Of those ten decrees 146 foundations, 1427 associations, 15 foundation-owned universities, 19 trade unions, 49 private health institutions, 2271 private educational institutions (i.e., schools, student dorms and boarding houses) and 174 media outlets, which belonged to private corporations, were closed down. The reasons for these measures were presented as their having affiliation, connection, or relation to, or having belonged to either the Fetullahist Terrorist Organization (FETÖ/PDY)⁵ or to the terrorist organizations or structures, formations or groups that were determined by the NSC to have carried out activities that were

³ International Commission of Jurists, 'Justice Suspended: Access to Justice and the State of Emergency in Turkey' (2018), 9 <<https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf>> accessed 4 March 2019.

⁴ <https://arrestedlawyers.org/2018/06/05/the-right-to-property-has-been-eroded-under-emergency-rule/>

⁵ See, Art. 2 of Emergency Decrees Nos. 667-668.

- considered to be against the national security⁶. The assets of these were transferred to the Treasury, or to other relevant public entities, without cost or compensation.⁷
6. According to Mehmet Ozhasaki who was the then Minister of Environment and Urban Planning, the total value of the real estates confiscated from the dissolved legal entities is 15 billion Turkish liras.⁸ There are no reliable reports available about the value of those entities' other assets such as brand values, intellectual properties, chattel goods etc.
 7. Apart from the above-mentioned general reasoning, the Emergency Decrees present neither an individualized justification nor a definition of 'membership, relation, connection, contact, affiliation, link', nor the assessment criteria that were used to determine that the public servants be dismissed and legal persons closed down. To this must be added that the Emergency Decrees entirely exclude the real and legal person concerned from the decision-making process, and they do not require any adversarial proceeding prior to dismissal and closure.
 8. Another aspect of the violation of the right to property is suspending proprietors' rights by assigning trustees to companies and foundations. The Turkish Government used anti-terror laws to violate the right to property even before the coup attempt. Article 133 of the Turkish Criminal Procedure Code (CMUK) which was applied only once from the date it entered into force (2005) to 2015; has been used by Turkey to exterminate its dissidents since October 2015. Under article 133 of the CMUK, if one of its shareholders or the company itself is being investigated for offences related to terrorism, the company may be seized by appointing the trustee with the decision of the Peace Criminal Judge.⁹
 9. Under the emergency rule, the Turkish Government's policy of seizing assets of dissidents went into a new phase; with new emergency decrees, the company seizing policy was centralized and the Savings Deposit Insurance Fund (TMSF) was authorized to run and liquidate (without waiting for the end of jurisdiction) the seized companies(Decree Law No. 674, Article 19-20).
 10. As of 9 May 2019, the TMSF controls and manages 1124 seized companies¹⁰ **and also the assets of 127 persons**. As announced on the website of the SDIF, the total worth of the seized companies is 49.4 billion Turkish liras.¹¹
 11. The right to property is envisaged by article 17 of the UDHR and the Turkish Constitution. Neither articles 35, 46 or 47 of the Constitution, which stipulate the right

⁶ See, Art. 3 of Emergency Decrees Nos. 677, 683, 689; Art. 4 of Emergency Decrees Nos. 693, 697; Art. 5 of Emergency Decrees Nos. 675, 679; Art. 7 of Emergency Decree No. 701.

⁷ See, Art. 2 of Emergency Decrees Nos. 667-668; Arts. 5 and 10 of Emergency Decree No. 670; Art. 3 of Emergency Decrees Nos. 677 and 683.

⁸ <https://www.dunya.com/gundem/15-milyar-liralik-tasinmaz-devlete-gecti-haberi-332663>

⁹ <https://arrestedlawyers.org/2018/06/05/the-right-to-property-has-been-eroded-under-emergency-rule/>

¹⁰ <https://www.tmsf.org.tr/tr/Sirket/Kayyim>

¹¹ <https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.veri>

to property, expropriation and nationalization, nor Law No. 2935 (arts. 9-11) allow the Government to adopt such excessive measures.

12. Although the derogating from the ICCPR gives the Turkish Government an authority to adopt extraordinary measures, the Turkish Government went beyond what is strictly required by the exigencies of the situation. The overall impact of emergency measures on natural and legal persons has been excessive in its scope, by both failing to distinguish between different degrees of alleged culpability and by being permanent in effect.¹²
13. Article 2§3 ICCPR require that any person whose rights or freedoms are violated shall have an effective remedy. **The Inquiry Commission on the State of Emergency Measures, which was established to fulfill this duty, is far from providing an effective remedy.** The Commission accepted only 4,750 applications, which corresponds to 7.5% of the total number of applications, rejecting the rest of the applications. Amnesty International described decisions of the Commission as a rubber stamp for the Government's arbitrary dismissals finding innocuous activities (i.e former membership to labour unions closed under emergency decree) as evidence of 'links' with proscribed groups.¹³
14. Turkey has fallen short of its obligation under the ICCPR and the ICECSR. Measures relating to the dissolution of legal persons and confiscation of their assets fall short of the requirement of proportionality, given that the same effect could have been accomplished by temporary measures.¹⁴

RECOMMENDATIONS

The Arrested Lawyers Initiative calls upon the Government of Turkey to significantly improve the overall conditions for property rights in the country. In particular, the Government of Turkey should:

1. Repeal legislation and decrees implemented under the state of emergency, and compensate for all loses induced by those legislations and decrees;
2. Establish strong legal mechanisms that will check the powers of the executive under states of emergency;
3. Take immediate steps to ensure that all legislation is compliant with its obligations under international human rights law;

¹² Council of Europe Parliamentary Assembly, Resolution 2209 (2018) on the state of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights (which was adopted by the Parliamentary Assembly on 24 April 2018) Para. 14.

¹³ Amnesty International, Purged Beyond Return No Remedy For Turkey's Dismissed Public Sector Workers (2018), 26 <<https://www.amnesty.org/download/Documents/EUR4492102018ENGLISH.PDF>> accessed 23 April 2019.

¹⁴ Conference of INGOs of the Council of Europe, Opinion on the Impact of the State of Emergency on Freedom of Association in Turkey (30 November 2017) Para. 78.

4. Lift the decision of closure of legal persons, and return their confiscated assets to the owners and declare all restitutions publicly and transparently so that the restitution processes can be validated by international bodies;
5. Provide adequate compensation to those who have had their property rights violated in consultation and agreement with UN bodies to ensure that reparation is indeed adequate.,
6. Amend its anti-terrorism legislation in order to have a legislation compliant with the ECHR case law.