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“Human Rights Situation in Turkey  
in the Aftermath of the Attempted Coup d’ État of 2016”

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## **Dedication**

This is dedicated to my parents who always supported me in every goal of my life.

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## Introduction

Human rights' definition, came into view for the first time in 1948 with the *Universal Declaration of Human Rights* (Straw 2013, p. 38) and it could be clearer expressed by United Nations' official organ for human rights. According to the High Commissioner for Human Rights of the United Nations:

*“Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. The full spectrum of human rights involves respect for, and protection and fulfilment of, civil, cultural, economic, political and social rights, as well as the right to development. Human rights are universal—in other words, they belong inherently to all human beings—and are interdependent and indivisible”* (High Commissioner for Human Rights 2008, p. 3).

In David Straw's *“Human Rights in Turkey”*, Turkey has been framed as a *“monstrosity worthy of horror movies that goes by the name of a government”* (Straw 2013, p. 132), in which *“ideas of equality”* gave birth to gross violations due to the fact that *“the relentless conversion from a religious to a secular social cohesion”* (Straw 2013, p. 159) affected democratisation process and human rights situation, stigmatising State's long history.

Until today, the main issues concerning human rights in Turkey are the admission of the Armenian Genocide that challenges Turkey's sovereignty (Straw 2013, p. 15), the long lasting Kurdish issue and Kurdistan Workers' Party (PKK), which has escalated in the 90's, as well as the equilibrium between secularists and the *“others”*. Turkey indicating negligence and unfruitful structured antiterror policy, resulted in many human rights abuses by not taking seriously individuals' rights protection (Reidy & Hampson & Boyle 2019, p. 162).

In the '80s and '90s, guerrilla warfare of the PKK against Turkish authorities, proclaiming an independent Kurdistan, resulted in many killings especially in the south-east, where Turkish security forces had been found participating in extrajudicial executions, assassinations, unsolved killings, "*disappearances*" and torture of Kurdish individuals in the pretext of State's answer to the rapidly increasing terrorism, provoking Helsinki Watch's condemnation in favour of the Kurdish minority's rights (Helsinki Watch 1993).

In addition, in the '00s, reform packages adopted due to the Turkish EU accession process lifted not only death penalty but also the prohibition of use of Kurdish language in institutions legalising Kurdish radio and television (BBC News 2002). The rise of the AKP in 2002 elections promoting a political campaign in favour of EU membership, embracing European policies and human rights and looking forward to improve State's democratisation process through the implementation of EU's political criteria, cooperated with global forces against the "*bureaucratic Kemalist elites*". The AKP's key to success based on the slogan "*the AKP does not only recognise their differences but encourage them to participate in politics with their identities*", promoting human rights, mobilised public support creating strong coalitions turning the remnants of the predecessor dissolved *Virtue Party*, banned for anti-secular attitude and for "*inciting hatred and enmity*", to the most successful political party of Turkey which promoted modernisation through a new prism, balancing between the West and Islam (Dagi n.d., p.p 1-14).

According to statistics analysis of the European Court of Human Rights is pointed out that Turkey since 1959 is the leading violator of human rights ranking first among all countries of the Council of Europe (European Court of Human Rights n.d. b; Bianet 2012). Specialists

argued that Erdogan, turned Turkey into an illiberal democracy, capturing State institutions, polarising society through nationalistic rhetoric, violating civil liberties in favour of his political will resulting in mass protests against Erdogan's "*competitive authoritarian regime*" (Esen & Gumuscu 2015).

The "*Gezi Park*" events on 30 May 2013, have been characterised a milestone of police's disproportionate abusive use of force against civilians, violating their right of assemble peacefully, followed by 8,000 injured people protesting against the park destruction in a few months, including their supporters regardless of their active role who have been prosecuted or pestered by authorities (Amnesty International 2013). Police, acting with no need of a warrant due to "*security package*" of 2015, emergency legislation in 2016 and the following presidential interference in the judiciary through constitutional amendments of April 2017, created a domino of violations which international mechanisms acting as control levers to the Turkish State, tried to identify, expose and raise them as a prodigious human rights drawback.

In 2016 during the State of Emergency, deterioration of human rights situation in Turkey resulted in essential violations. The thesis argues that prolongation of this situation, resulted in silencing the opposition forces in the society consolidating Erdogan's power. Forbye, international human rights mechanisms, in the limited framework of their powers, managed to cope with this problem succeeding in their purpose as politically leverage. Taking advantage of the failed coup of 16 July 2016, the President justified vast purges<sup>1</sup> against his considered

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<sup>1</sup> After the night of 16th July 2016 and Erdogan's statements for reinstating of the death penalty (Middle East Eye 2018b) John Dalhuisen, former Europe and Central Asia director for Amnesty International, stated : "*The sheer number of arrests and suspensions since Friday is alarming and we are monitoring the situation very closely. The coup attempt unleashed appalling violence and those responsible for unlawful killings and other human rights abuses must be brought to justice, but cracking down on dissent and threatening to bring back the death penalty are not justice*" (Amnesty International 2016a).



opposition forces and the military. Additionally, using emergency decrees, the regime he established is accused of having violated fundamental rights and freedoms, especially freedom of expression, suspending rule of law, the main instrument securing democratic values, backsliding democracy. Dismantling military, judiciary, academics, Members of the Parliament but also media and press, through emergency decrees, turned to standard law with the executive presidency in June 24th 2018, consisted Erdogan's most successful solution to muzzle opposition forces in Turkey.

Furthermore, the thesis argues that the two main organisations promoting and protecting human rights, the Council of Europe and the United Nations, played a significant role at this case, through supervisory human rights bodies. Their influence and experience impacted positively on individuals exposed to abuses or violations albeit the legal tools providing efficacy are limited. International Human Rights Law (IHRL), consisting of treaties protecting people's rights and liberties and Customary International Law (CIL), bind also non State Parties against any violation, prioritising the issue of domestic effective remedy (High Commissioner for Human Rights 2008, p. 4). Turkey, by ratifying the 9 core treaties regarding human rights but also these of the Council of Europe, has undertaken the deriving obligations. This thesis will try to demonstrate that the emergency law and the subsequent weakening of the domestic human rights mechanisms led to massive repression.

## Methodology

The thesis provides a summary of the emergency situation in Turkey and its consequences regarding International Human Rights Law due to the coup attempt in 2016. The topic is elaborated through International Human Rights Law's perspective instead of International Humanitarian Law (IHL) due to the fact that the latter concerns periods of an armed conflict instead of IHRL that is adjusted in all periods of time regardless an armed conflict. By examining the impact of emergency decrees in the post coup era and the related infringement of IHRL, especially the European Convention on Human Rights, the thesis relies on comparative analysis and provides credible information based for the most part on official documents of the Council of Europe and the UN, including press articles online. Moreover, this political crisis affected Turkish society creating polarisation amongst citizens generating as well a huge international interest concerning human rights protection.

Analysing official documents adopted in the context of the Council of Europe, the United Nations and academic articles, the imminent victimisation of political outsiders in Turkey came to the fore. In addition, the invaluable reports of the Commissioner for Human Rights, and Venice Commission of the Council of Europe provided thorough overviews of the situation in Turkey and emphasised the necessity of the protection of rights of individuals in emergency situations. The assortment of articles online regarding violations of freedom of expression of journalists and silencing of media in Turkey, limitations due to the limited access to official Turkish documents in the post-coup period, due to "*confidentiality issues*", pointed that Turkey

didn't succeed in giving the necessary "*moral support*" to its severity against the innocent "*alleged terrorists*" (Balzaq 2010, cited in Demirsu 2017, p. 144).

The analysis will proceed as follows. In Chapter I information will be provided on the historical background of the attempted coup and its definition. Following the presentation of the situation in Turkey in the aftermath of the attempted coup concerning human rights, the analysis will focus on the State of Emergency and its repercussions on citizens based on the legal analysis adopted mostly by the Council of Europe.

Chapter II will explore the role of the Council of Europe in evaluating the State of Emergency and its compatibility with the main instruments of human rights protection, Venice Commission, the Commissioner of Human Rights and the European Court of Human Rights. A careful examination of the purges and the regime established in the post-coup era suggests that human rights violations were perpetrated against the opposition. The fact that Committee of Ministers' role, Court's supervisor concerning decisions over State Parties, is not mentioned is why its actions rely exclusively on the reviews of the international human rights mechanisms which are elaborated here.

Chapter III will address the theoretical aspects of terrorism. Looking deeper into the wider context of emergency and counter terrorism law, it will be presented the concept of terrorism internationally through the United Nations perspective and also domestically through the Turkish legal framework. Special attention is given to the curfews, implemented from 2015 that still go on, which have been extended vastly in the post-coup era, deteriorating further more the life of Kurds. The aim is to explore the concept of terrorism in law which leaves space to potential abuses and violations. It is fairly impressive how antiterrorist measures may apply in

modern states, complicating human rights situation and affecting democratic values and rule of law.

The analysis will not cover the vast issue of human rights violations in Turkey. However, the thesis suggests that there is a decisive dark part in the governmental agenda that goes beyond the systematic abuse of human rights.

Footnotes will be made occasionally when is deemed necessary to provide crucial information over specific issues. The chosen Harvard referencing style is described in “*Style Manual for Authors, Editors and Printers 6th edition (AGPS Manual)*”, published by the Australian Government Publishing Services, taken by the official website of the *Southern Cross University* which is included in the bibliography. The thesis follows the formatting requirements of Harvard University.

## Chapter I

### Attempted Coup d' État - State of Emergency

#### The Coup Attempt of 15th July 2016

Turkey, having a long history of attempted coups, some of them being successful (1960, 1971, 1980) having a general level of popular support and some others not (like the last coup attempt), raised a huge wave of populism in Turkish society. Many political parties tried to take advantage of this crisis, like the AKP did. The military, symbolising the guarantor of the heritage of Kemal's secular establishment held many decades the primary interventional role in case Government deviates from the ideology of Kemalism, hastening to restore constitutional order through arms being *"the doctor of the sick child that Islam and Democracy gave birth to"* (Hansen 2018, p. 1,10).

The abhorrent attempted coup d' état of July 15th 2016 in Turkey, described by the Al Jazeera as *"the bloodiest coup in Turkey's 95-year political history"* (Al Jazeera 2017), and by the Constitutional Court of Turkey *"perhaps the most serious attack on the democratic constitutional order, fundamental rights and freedoms of individuals and national security in the history of Turkish democracy"* (Olcaý 2017), was condemned by the European Union, the Council of Europe and the United Nations as an appalling action opposed to democracy (European Commission 2018, p. 3; Council of Europe 2016, p. 1; United Nations 2016). A coup d' état attempt requires attempt to control a part or the whole of the armed forces and the police, by a small group instead of a larger group in a revolution (who basically are motivated by the

need for social, economic and political change), who then try to overthrow the existing Government replacing the officials with trustees of the new regime in a sudden and violent way, changing this way the fundamental policies of the nation (*Britannica Encyclopaedia* 2019, coup d' état entry).

In the case of Turkey, in July 15th 2016, at 10:30 p.m at night, the roads of Istanbul and Ankara, the Bosphorous and Fetih Sultan Mehmet Bridges, were blocked by “*terrorists in uniforms*” of the Turkish Army, in armoured vehicles and tanks, which combined with low altitude flights of aircrafts, intimidating citizens, attempted to take control of the Government (Cockburn 2016; Republic of Turkey 2016). Although a sprinkling of rebels, just 1.5% of the total number of armed forces involved (BBC News 2016a), raids to media organisations, attempts to paralyse the Internet and TV broadcasting, shots and killings, trapped people under tanks and bombings, led to 246 peoples left dead, including 36 alleged coup plotters (Said-Moorhouse, Vonberg & Fox 2017), having 2,194 people left wounded (Republic of Turkey 2016). According to official statements of President Erdogan, the mastermind of the attempt was the 78-year-old<sup>2</sup> Fethullah Gülen (Al Jazeera 2017; CBS 2016; Republic of Turkey 2016), an influential figure especially in the judiciary (Cingillioglu 2017, p. 56) placed by Foreign Policy amongst the “*Top 100 Public Intellectuals*” (Harrington 2011, p. 6).

Albeit controversial Turkish Muslim preacher and businessman, running more than 500 businesses including academic institutions<sup>3</sup>, Gülen being self-exiled in the Poconos Pennsylvania

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<sup>2</sup> Muhammed Fethullah Gülen was born in 27 April 1941 in Pasinler, Erzurum, Turkey.

<sup>3</sup> Berat Albayrak, Erdogan's son-in-law has been educated in one of these institutions (Farooq 2016).

since 1999, runs also a network<sup>4</sup> worth billions of dollars in Turkey and abroad (Al Jazeera 2017; Barton 2005) leading moreover the civic-religious, based on Turkish Sufism, movement “*Hizmet*”. The movement’s alliance with the AKP from 2009-2013 had been organised aiming to spread Turkish influence globally, as well as to reduce the impact of the military<sup>5</sup> inside Turkey, supporting Erdogan’s political and electoral struggle (Chudziak 2016, p. 8; Shaheen 2016). After 2013’s corruption scandal being exposed and the wiretapping incident which made Erdogan vulnerable to the press, Gülen methodically was accused by the President of being a proselytiser, a plotter and the heart and brain of the so-called the “*Parallel State*”.

According to Turkish officials, the “*Parallel State*” created by Gülen’s secret “*Nurcular*” network, difficult to be detected due to its informal structure (Chudziak 2016), along with his yearning for power, infiltrated State institutions through the years and succeeded to implement its “*secret agenda*”, staging the bloody coup attempt against constitutional order and the democratically elected Government (Aliyev 2012).

On the other hand, Gülen depicting himself without political aspirations and interests, his graduates and supporters participated into the chain of command in numerous State institutions influencing critical decisions. Nevertheless, Gülen claimed that the AKP staged the coup, in order to provide an excuse for the purges that followed (Çiçekoğlu & Turan 2019), against

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<sup>4</sup> Gülen’s school network consists of 6 universities and 700 schools in 115 countries, followed by more than 4 million people in Turkey (Aliyev 2012). Approximately 1.2 million people have been educated by these academic institutes (Farooq 2016). His earnings from the school network in the USA, running almost 150 schools with nearly 60,000 students, is an estimated \$ 500 million a year (Lepeska 2018; Anadolu Agency 2017).

<sup>5</sup> Refers to the *Balyoz* and *Ergenekon* coup show-trials which resulted in the dismissal of 254 secular military officers. Approximately 325 had been imprisoned for years, accused of membership and activity in terrorist organisation attempting to overthrow the Government. Later in 2016 it was proved by the court that the evidence had been fabricated (Chudziak 2016, p. 8).

members and sympathisers of his movement “*Hizmet Hareketi*”<sup>6</sup> which “*enlightened*”, influenced and offered financial support to millions of people in Asia and Europe through its academic institutions, its “*lighthouses*”<sup>7</sup>, enterprises and media. Moreover, running businesses achieved to deliver scholarships to the poor and managed to support the electoral campaign of Erdogan through Gülen’s prominent associates in politics, the judiciary and media satisfying Erdogan’s desire of becoming “*the most powerful person*” in Turkey (Filkins 2016).

The bomb attack of the Parliament and Presidential Complex by F-16s, which happened for the first time in Turkish history, as well as attacks against other State institutions like the TGNA<sup>8</sup>, the MIT<sup>9</sup> and Police Special Operations Center, jolted Turkish society.

Furthermore, the assassination attempt against the President of the Republic, in Marmaris region, being a State position depicting the national symbol of democracy, and the Prime Minister, depicting the head of the State, have been characterised by the Turkish Government as a threat and an imminent danger against Turkish nation and democratic values.

For the first time in Turkey’s history, the President used media sources to inform citizens about the attempted coup, broadcasting via *FaceTime*, urging citizens for their help to restore democracy, praising the power of the Turkish throng, even using mosques to spread out his messages against the plotters, sensitising common will (Sobaci 2017; TRT World 2016). As a result, the mobilisation of the 79 millions of the Turkish nation against the “*national threat*” became a reality followed by demonstrations in cities, resisting plotters, “*suppressing*” this way

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<sup>6</sup> In English: “*Service Movement*”.

<sup>7</sup> “*Lighthouses*”: the dormitories that Fethullah Gülen built to facilitate his followers to study at this educational institutions all around the world.

<sup>8</sup> TGNA: Turkish Grand National Assembly.

<sup>9</sup> MIT: “*Millî İstihbarat Teşkilatı*”, the Turkish National Intelligence Organization.



the attempted coup d' état by “*themselves*” and according to Erdogan, “*protecting to death their elected President...the rule of law, freedom, dignity, independence and future*” (Republic Of Turkey 2016).

In the immediate aftermath, purges against tens of thousands of people working in the military, police, civil service, academics and journalists especially those who used to work for newspapers, media platforms and media organisations owned by Gülen were prevalent. As stated by the Turkish Government, the “*Shadow State*” or “*Parallel State*” created by Gülen, named by the State as the terrorist organisation FETÖ/PDY<sup>10</sup>, attempted to overthrow the existing secular establishment, protected by the Constitution, violating Article 146 of the Turkish Criminal Code Law No. 765. By the same token, FETÖ is considered among Turks a terrorist organisation worse than ISIS (Farooq 2016) listing Gülen as one of the most wanted terrorists in Turkey (Tas 2017). Freelance journalist Gareth Browne, covering news for the *Telegraph*, *Middleeasteye*, *Foreign Policy* and others, stated in *Euronews*, that the attempted coup according to Erdogan, was a gift from Allah to help him eliminate anyone who was not loyal to him (Browne 2019).

### **The State of Emergency**

The State of Emergency (hereinafter the “SoE” or “OHAL”) was declared on July 21 2016, almost immediately after the attempted coup, in compliance with Articles 119-121<sup>11</sup> of the Turkish Constitution concerning the administration of SoE. It had been prolonged every three

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<sup>10</sup> FETÖ/PDY: “*Fethullahçı Terör Örgütü/Paralel Devlet Yapılanması*”, in English: “*Fethullahist Terror Organization/Parallel State Structure*”.

<sup>11</sup> The articles were amended right after the attempted coup on April 16 2017.

months and lasted until July 19 2018, verily interesting regarding that the omnipotent control of this difficult situation was publicised by the Government the next day after the attempt, leaving no future excuses for a further prolongation. According to the Constitution, the declaration of the SoE allowed *inter alia* the amendment of emergency decrees<sup>12</sup> by the President, directing the Council of Ministers, granting more power to local governors (*Valis*), bypassing Parliament, seizing decrees' review by the Constitutional Court (Baglayan 2016). However, emergency legislation aiming to “*restore the democratic legal order*” has to be “*within the limits established by the constitution and domestic and international obligations of the State*” (Venice Commission 2017b, p. 21).

Turkey being a State Party to human rights treaties of the Council of Europe and the United Nations is bound to follow and implement treaties concerning the protection of human rights and also to announce any derogation of the articles of the treaties. The Council of Europe was notified of the SoE, as International Law indicates, the same day of the declaration, and Turkey delivered a notice of derogation from the European Convention of Human Rights (ECHR), but did not specified, although Turkey owed to do so, the articles from which is going to derogate, compelling enough in view of the fact that securing the implementation of the articles of the ECHR regarding non-derogable rights and freedoms, is vital for a fair legal system.

On the other hand, Turkey on 21 July 2016, announced derogations in specific articles of the International Covenant on Civil and Political Rights (ICCPR)<sup>13</sup> of UN being clear enough

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<sup>12</sup> The State of Turkey during the State of Emergency after the attempted coup issued 36 decree-laws in total.

<sup>13</sup> Turkey specified derogations from Articles 2,3,9,10,12,13,14,17,19,21,22,25,26,27 of the ICCPR.

about what the derogations are going to be, providing a heavily long list (Scheinin 2016). It could be argued at this point that, disregarding the Council of Europe implies a greater fear of the United Nations. Derogation from Article 10, regarding humane treatment and human dignity, raised the concern of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of the UN, paying visits in Turkey, over the potential ill-treatment. Furthermore, the fact that Articles 2(3) and 14 referring to effective remedies and the right to a fair trial will put in danger the presumption of innocence, Human Rights Committee of the UN, raised his concern yet (United Nations 2018b).

Quite important, Article 148 of the Turkish Constitution says that, emergency decrees “*shall not be brought before the Constitutional Court*”, raising an issue of potential partiality, as well as Article 121 which provides that the decrees, having the force of law, cannot be examined by the Court:

*“...However, presidential decrees issued during a state of emergency or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance...”*

*“...decrees having the force of law issued during a state of emergency...shall not be brought before the Constitutional Court alleging their unconstitutionality as to form a substance”* (Constitution of the Republic of Turkey).

During the SoE, respecting human rights and limiting derogation is essential. The Turkish President became able to take emergency measures derogating not only from domestic law but from international treaties' obligations as well, like the ECHR and the ICCPR, signifying an extensive power which could be restricted at most only by the Turkish Parliament. For this reason, the essential Article 15 “*Derogation in time of emergency*” of the ECHR, oblige countries

to be in accordance with International Law and prohibits derogation from articles regarding them “*non-derogable*”.

The ECHR, adopted under the auspices of the Council of Europe and monitored by the European Court of Human Rights, oblige all contracting parties to secure the rights and freedoms enlisted in the Convention. In Section I Article 2, the foremost human rights, the *right of life* of all people is protected, except times of war (at this particular case, this situation cannot be regarded an act of war), forbidding a penalty which leads to a deprivation of this right without the existence of law and a court’s decision. Moreover, derogation from Article 3 “*Prohibition of torture*”, Article 4(1) “*Prohibition of slavery and forced labour*” (“*No one shall be held in slavery or servitude*”) and Article 7 “*No punishment without law*” is forbidden (Oraá 1992 ; ECHR) provoking a similar prime consideration.

The ICCPR, in Article 6, considering the *right to life* fundamental (“*every human has the inherent right to life*”), denotes its importance being the supreme, non-derogable human right that securing its guarantee gives meaning to all other rights, even during a SoE, because “*what freedom does a dead person need?*” (Nowak 2005, p. 122; High Commissioner for Human Rights, p. 8; Demirsu 2017, p. 205).

International legal framework providing international treaties which allow “*extraordinary limitations*” clear the way for contracting parties to protect and not violate human rights, securing democracy (United Nations 2003). The ICCPR and the ECHR, went further beyond this scope, to ensure the protection of fundamental<sup>14</sup> rights pointing out when and how a SoE should

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<sup>14</sup> Oraá argues that: “*it would be prima facie against the spirit of the treaties to make reservations to such fundamental rights*” (Oraá 1992).

be declared, listing non-derogable rights which at this particular case Turkey, as a contracting State, is responsible to follow, albeit the abusive potential use that may occur.

According to the ECHR, Article 15:

*“In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law”* (European Convention on Human Rights 1950).

According to the ICCPR, Article 4(1):

*“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”* (International Covenant of Civil and Political Rights 1976).

Likewise, the significant role of fundamental rights and liberties that must be protected from derogation and the importance of non-retroactive punishment are stressed as well in Article 15 concerning the *“suspension of the exercise of fundamental rights and freedoms”* of the Turkish Constitution:

*“the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution...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...conscience, thought or opinion...nor be secured on account of them...offences and penalties shall not be made retroactive; nor shall be held guilty until so proven by a court ruling”* (Constitution of the Republic of Turkey).

The emergency situation of 2016, the power obtained by the Turkish President extended in many more levels than before and overall this kind of declaration endeavoured Turkish State to get closer to eradicate the global movement of Hizmet, invoking Article 4 of the Covenant, indicating FETÖ/PDY as a direct threat against the life of the nation, backsliding the rule of law (European Commission 2018, p. 8), considering security of the nation as the ultimate goal. Security, playing an important role in eliminating risks and threats of life in modern democratic societies, especially in an emergency situation, raises the importance of the value of life in international legal framework.

Moreover, emergency decrees, led to a high rate of arrests, imprisonments and dismissals from public duty, many of them without evidence, affecting democracy and paralysing the implementation of standard domestic and International Law (European Commission 2018, p. 8). The attempt to draw measures under the SoE “*protecting*” this way democratic values according to State’s official narrative, threatened democracy and civil rights, targeting “FETÖ/PDY” and its alleged members who, according to the Turkish Government, penetrated State mechanisms (Venice Commission 2017a, p. 3). Habeas Corpus suspended, may lead to an abusive use of the emergency decrees, against international treaties that could form a “*constitutional dictatorship*” (United Nations 2003).

Furthermore, due to the coup attempt, the standard function of the Turkish Parliament was ceased (European Commission 2018, p. 12), aiding Turkish President to execute measures according to his personal will, followed by violation of rights of citizens including civil servants, officers of the army and the police, journalists, academics, the judiciary and Members of the Parliament lifting of their immunity (European Commission 2018, p. 13). European MP’s raised

democratic alertness (European Parliament 2018, p. 4) over the huge wave of purges, which originally began in 2014 being escalated 3 years later in the aftermath of the attempted coup (Çiçekoğlu & Turan 2019, p. 24,25), expressing feelings of condemnation resulting in the presumption that the President targeted opposition, using the failed coup as a pretext to hush their voices (Said-Moorhouse, Vonberg & Fox 2017).

The advisory body of the Council of Europe, the Venice Commission, composed of legal experts, in the Memorandum of 7th October of 2016, in regard to the *“human rights implications taken under the declared state of emergency”*, provided sustenance for Turkish Government to draw measures against the attempted coup d’état (Venice Commission 2016) which were implemented during a questionable prolongation of the SoE for almost two years, until Wednesday July 18 2018 (BBC News 2018).

When Turkey declared the SoE limiting instantly individual rights and freedoms through derogation, stability, peace and justice were periled. Establishment of extraordinary *“special powers of arrest and detention”* designed to confront a momentous crisis like this, came to an effect similarly like the standard limitations during a typical period of time (United Nations 2003). By the end of the day of the attempt, 1,019 members of the police had been arrested following more than 200 court officials who had been taken into custody until 18th July. In the aftermath, the *“witch hunt”* to dismantle Gülenist network generated the detention of more than 150,000 public servants and more than 50,000 had been arrested, including police and military officers (46 percent of the Turkish Armed Forces were fired), as well as civil servants, alleged of membership in a terrorist organisation according to Government’s statements (Barkey, 2017; Said-Moorhouse, Vonberg & Fox 2017).

The most important issue during a SoE is respect the principle of proportionality and non-discrimination, preventing severe damages of civil society, creating a balance between the rights and freedoms of individuals with State's interests and needs. Turkey's estimated 109,104 associations and 4,634 foundations concerning social aid, education, religious services, democracy, and other progressive and regressive civil society organisations, deepen rule of law and human rights pushing Government to follow more humanistic strategies and forcing implementation of the law without prejudice (Doyle 2016, pp. 2,3). In the case of Turkey, it is questionable if *"the right to derogate was not intended to be used by authoritarian regimes seeking to eliminate human rights and that cannot be used to save a specific government"* (United Nations 2003).

The element of proportionality, is even-more controversial here, because of the decrees applied against individuals and groups who expressed their opposition to Government's policy. Limits between the general freedom and freedom of individuality, bring to the surface the value of proportionality legitimising this way all the decrees that are going to be implemented during a SoE, observed also by the Commissioner of Human Rights, in his Memorandum of October 7 2016, concerning the serious dysfunctions affecting civil society and the private sector.

The crucial principle of non-discrimination protected by the Article 15(1) in the ECHR and the Article 26 of the Covenant of the UN obligate Turkey not to derogate on the grounds of *race, color, sex, language, religion or social origin* which is quite questionable taking into account that in case that the occurring purges could be proved that are directed against the members of the civil movement *"Hizmet"* consist a clear and immediate violation of the Convention.



Turkey had the obligation to restore normality as soon as possible, respecting rule of law and the principle of legality whereas, derogation is legal only for the period in which threat still exists or else must be terminated immediately (United Nations 2003). The Turkish State has done very few things to restrict extensive powers and broad interpretation of emergency laws and this is why Commissioner of Human Rights of the Council of Europe and other officials of international mechanisms raised their great concern over the prolongations of the SoE, doubting its scope.

On the other hand, if purges are directed against a terrorist organisation then the anti-terror law must be applicable and in line with International Law against terrorism. In modern Turkey, the widespread fear of terror generated the pursuit of stability through emergency legislation and expanded as a political phenomenon in society. The decrees, albeit expressed like an advance of good government, have been used as a political leverage combined with local factors shielding Erdogan from opposition. Attaining power, especially with the executive, became able to influence National Intelligence Agency, appoint rectors in universities (European Commission 2018) and trustees as well replacing the elected officials in municipal positions (Milan 2017). A total number of 93 mayors and co-mayors were taken into custody or dismissed through November 2017 and 71 of them were still in prison during the report of the European Commission (European Commission 2018). Without knowing when, how and where a terrorist may attack, an unstable political environment is created, raising a crisis in civil society leaving enough space for human rights violations (Dillon 2007).

The existence of these significant legally binding commands with force of law, protecting the endangered nation under attack and restoring constitutional order (United Nations 2003), led

to a high political pressure on judges and prosecutors<sup>15</sup>. For instance, Article 1 of the decree law No.: KHK<sup>16</sup>/667<sup>17</sup> “*decree on measures to be taken under the state of emergency*”, deemed “*necessary*” according to Erdogan to protect the country against terrorism, facilitated to eliminate Gülenistic remnants, characterised terrorists, in the State apparatus and society (Venice Commission 2016c, p. 2).

The huge wave of arresting detaining and transferring Turkish judges raised the importance of independency, impartiality and quality of justice in Turkey. In most of cases that didn't follow formal procedures, decisions of dismissals were not legally reasoned and not based on evidence (European Commission 2018, pp. 24,26). Removal of more than 25% of the total amount of judges of the State (Moritz-Rabson 2018), an estimated number of 2,745 judges, including 2,204 positioned in criminal judiciary (UN News 2016) deemed tantalising regarding the huge amount of judges “*having any kind of relationship with a terrorist organisation*”. Other sources argued for more than 4,000 judges and prosecutors having been dismissed with the most non-evidential case that of the unfair detention of two out of seventeen Constitutional Court judges<sup>18</sup>, arguing that this decision came under Erdogan’s political pressure on the judiciary (Spencer 2018; Olcay 2017).

A sign of judicial backsliding, individual applications to the Constitutional Court of Justice raised from 20,376 in 2015 to 80,576 in 2016, indicating that the year of the attempted

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<sup>15</sup> “*In total, since the attempted coup, 4 399 judges and prosecutors have been dismissed from their positions of which 454 were later reinstated to their positions by the CJP. There are currently over 4,000 judges and prosecutors against whom legal action has been taken. Judges and prosecutors who were in pre-trial detention, remained without an indictment for more than a year on average.*” (European Commission 2018, p. 22)

<sup>16</sup> KHK: “*Kanun Hükmünde Kararname*”, in English: “*Decree Law*”

<sup>17</sup> KHK/667 is the first emergency decree issued by the Turkish Government.

<sup>18</sup> It refers to the case of the detention of the judges of the Constitutional Court, Mr Alparslan Altan and Mr Erdal Tercan, that had been accused of terrorism by the Constitutional Court.

coup the applicable decrees led to extensive purges (European Commission 2018, p. 27). Appointing trustees in place of dismissed judges, was firmly criticised by EU officials in particular Federica Mongherini and Johannes Hahn, described as a sign of an impartial and guided judiciary as well as an “*unacceptable*” measure which incapacitates judiciary (European Union 2016).

Moreover, Erdogan securing his power through public support (Arango 2016, p. 6), used the failed coup as an excuse, to implement vigorously his strategy of becoming the executive President, accused by many that the arrest list was prepared a year, at least, before the attempt (Amnesty International 2016b). The abusive power of a tangled perception of the SoE, promoted by oppressive governmental policies (Baglayan 2016) led to the justification of the detentions of Erdogan’s enemies, reducing President’s liability as the impartial *head* of the Turkish Nation.

## Chapter II

### The Council of Europe

The *Council of Europe* (hereinafter the “CoE”), located in Strasbourg, is the main and most important European system of protection of human rights, established in 1949, promoting fundamental freedoms and securing human rights worldwide (Νάσκου-Πεπράκη 2014, σ. 283). Consisting of 47 members, including Turkey, has the obligation to respect and protect human rights, democracy and the rule of law in accordance to its major achievement, the European Convention on Human Rights, (hereinafter the “Convention”), obligatory at any national level due to its incorporation into domestic State-law.

Turkey as a Member State of the CoE bears monitor by the CoE *Commissioner for Human Rights* (hereinafter the “Commissioner”) who pays visits to Member States aiding the rise of human rights alert and protection according to International Law and the Convention. Moreover, the Commissioner provides advices through reports, raising awareness on human rights and working closely with governments, national authorities, human right defenders and journalists (Commissioner for Human Rights 2019).

Nevertheless, the advisory and transnational body of the CoE, the *European Commission for Democracy through Law* (Venice Commission), established in 1990, provides recommendations on issues concerning constitutional law, including fundamental rights. The publication of its opinion, promotes democratic standards expressing if domestic legal framework meets international standards respecting human rights and the rule of law.

The *European Court of Human Rights* (hereinafter “ECtHR”), established in 1959, the most successful international human rights court, albeit CoE’s enlargement which brought to the surface a few problems concerning the numerous cases and the high rate of inadmissibility (Kurban 2016, p. 731-732). The Court adjudicates cases on alleging breached human rights referred to the articles of the Convention and its Protocols<sup>19</sup> turning the Convention into a “*living instrument*” through the continuing modification of its interpretation (Council of Europe 2014).

Individuals<sup>20</sup> may apply directly to the ECtHR submitting an application, firstly exhausting all domestic remedies, and if the application is admissible, meeting specific requirements, is followed by the examination of the complaints by the Court. An *actio popularis* application is prohibited. Court’s judgements on violations concerning human rights are binding for the State Parties monitored by the Committee of Ministers of the CoE applying the *restitutio in integrum* but it can also grant remedy if the Court does not do so (Ichim 2015, p. 33-34).

### **Venice Commission**

The President of the Commission, in his first statement condemning the attempted coup, expressed his strong concern over the backsliding of democracy considering the vast dismissals and arrests in the judiciary. According to him, respecting rule of law, presumption of innocence and right of defence following legal procedures, is essential for a protective human rights environment. The opinion no 858/2016 of the Commission, on the suspension of the second

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<sup>19</sup> The Protocol is a text adding further rights to the original Convention (Council of Europe 2014).

<sup>20</sup> Individual applications can be submitted by persons, groups, companies, NGOs instead of inter-State applications submitted by a State against another one.

paragraph of Article 83 of the Turkish Constitution concerning Parliamentary Inviolability, threatened Turkey's democratisation process due to its vagueness.

Parliamentary immunity, the democratic parliamentary privilege based on the rule of law protects parliamentarians' opposition against Government, political persecution and pressure of majority, safeguarding institutional framework of the Parliament (Venice Commission 2016a, p. 4). Lifting this privilege, named "*parliamentary inviolability*", combined with a manipulated by the Government judiciary may destroy "*freedom of expression*"<sup>21</sup> and lead to a political harassment from ideologically opposed political parties. Almost 2 months before the attempted coup, Turkish Government issued an amendment concerning 800 criminal cases for 139 deputies of the Turkish National Assembly. The disproportionate purge of 51 out of 59 deputies of the left-wing, pro-minority and pro-Kurdish Peoples' Democratic Party<sup>22 23</sup> (HDP) (Venice Commission 2016a, p. 8; European Commission 2019, p. 5), threatened the rights of different ethnic and religious minority groups, rights of women, intellectuals, artists, writers (People's Democratic Party n.d.).

The preservation of the balance between equality of citizens and protection of the elected representatives reassures freedom of expression in the Parliament<sup>24</sup>. According to the

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<sup>21</sup> The Commissioner intervened as a third party before the ECtHR supporting Members' of the Parliament freedom of expression, right to liberty and security considering the measures taken against them as disproportionate, targeting the politically opposed to Erdogan "HDP" (Council of Europe 2017d, p. 2-3).

<sup>22</sup> The right to appear in person and not via their representatives in court had been violated for a lot of HDP parliamentarians who were detained on grounds of terror-related allegations. Claiming security reasons, the authorities allowed them to participate only through video-conferencing system (European Commission 2018, p. 14).

<sup>23</sup> Co-chairs of HDP, Selahattin Demirtas, sentenced with 4 and years and 8 months in jail and Figen Yüksekdağ, remaining under arrest (European Commission 2018).

<sup>24</sup> The HDP faces the impartiality of the power of Erdogan and the 10 year sentence for being a "*leader of a terror organization*" of the former deputy co-chair and lawyer Aysel Tugluk, was based on no evidence at all (Ahval 2018a, 2018b; Hurriyet Daily News 2018).

Commission, suspension of inviolability led to the persecution of parliamentarians for “*offences related to speech*<sup>25</sup>, such as *insulting the President, an action that at least it should be tolerated, insulting a public officer, terror propaganda or incitement to hatred*” (Venice Commission 2016a, p. 11).

Suspension of inviolability during SoE led to violation of fundamental rights regarding the sanctions of political speech, especially taking into account the 104 cases of violation of the Article 10 of the Convention regarding the right to hold an opinion with no interference of the authorities, suppressing it under the wide prism of alleged propaganda on terrorism<sup>26</sup>. Moreover, the opinion of the Commission noticed that the wide interpretation of Turkish Constitutional articles as well as articles of the Turkish Penal Code concerning parliamentarians’ democratic right of freedom of expression, consists a misuse of the amending procedure (Venice Commission 2016a).

Taking into consideration Venice Commission’s opinion on the provisions of the emergency decree law No 674, regarding local democracy in Turkey, a mayor or a deputy mayor or council members who is suspended from duty or detained in relation to offences of aiding and abetting terrorism and terrorist organisations can be replaced by an appointee assigned by Turkish authorities, the Minister of Internal Affairs or the Governor<sup>27</sup>, taking also a permanent measure against him (Venice Commission 2016c, p. 9). Openness and transparency are major

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<sup>25</sup> Members of the Parliament had been arrested based only on public speeches accused of supporting terrorist activities as well as insulting the history of the nation.

<sup>26</sup> A total of 11,631 out of 37,551 members of HDP, were detained and 3,382 arrested. They all face terror related allegations. Moreover 55 out of 58 Members of the Parliament were facing legal charges (Ahval News 2018a).

<sup>27</sup> According to EU Commission’s Turkey Report 2018 this is an issue of concern because related to this law 11 local administrators were sentenced to a total of 89 years and 3 months in jail.

pillars in democracy, eliminating corruption and promoting accountability of the Government and the authorities and permanent measures based on lack of evidence could stop a functional democracy. Dismantling legal elected representatives, who clearly are voices of the opposition, reflects a misuse of democracy, establishing an ineffective and dependent local administration lacking compliance with International Law.

The Commission couldn't find a reasonable answer why, based on a list of “*very vague and wide criteria*” (Venice Commission 2017a, p. 4), challenging the principle of proportionality and necessity, public servants have been dismissed “*on the basis of decisions of the administrative entities*”<sup>28</sup>. Moreover, challenging the rights to a fair trial as well as prohibition of discrimination of the ECHR concerning the list of civil servants, stated that:

*“Thus, the Government has unfettered power to decide whether a person should have access to justice or not. Such a method of regulation ad hominem is incompatible with the principle of the rule of law”* (Venice Commission 2016b, p. 45).

Turkey arrested more than 120 journalists and ordered the closure of 160 news outlets only 3 months after the attempted coup, making the country the biggest jailer of journalists (Phillips 2017, p. 171; Demirsu 2017, pp. 1, 117; Amnesty International, 2018) in the world backsliding rule of law, media pluralism and democracy. The majority of the owners of the most popular media outlets, owned at the same time energy and mining enterprises like the “*Ciner and Dogus Group*”, oil and industrial like the “*Demiroren Group*” (*Hurriyet* and *Posta* newspaper as

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<sup>28</sup> Article 4, of the decree law No 667 regarding public officials led to the conviction of six members of the political party of the HDP, and other public officials were detained pre-trial even if the charges had not been presented before their trial by the Turkish courts (European Commission 2018, pp. 13,14).



well as *CNN Turk* and *Kanal D*) and construction businesses like the “*Kalyon Group*”<sup>29</sup>. Affiliated with the Government due to business contracts, were publicising news in accordance with Erdogan’s policy, influencing the majority of Turkish public. Turkish Radio and Television Corporation (*TRT*)<sup>30</sup> owning several television channels and radio stations like *Anadolu*<sup>31</sup>, the only national news-agency, have been stigmatised as “*pro-Government*”. During the 17 years of AKP’s rule, it is criticised that businessmen affiliated with the Government, entered competitions lacking liability purchasing media outlets supported economically by the AKP. This incident, contributed in the shaping of the way of how news are being viewed, as well as raised doubts of the in-transparent distribution of public funds, ranking Turkey in the *Press Freedom* index, in number 156 out of 180 countries in 2018 and in 2019, backsliding media pluralism (Reporters Without Borders 2019).

In addition, the monitoring and censorship of social media<sup>32 33</sup> leading to detentions of hundreds of people for undesirable comments against the Turkish President and the Government (European Parliament 2018; Kingsley 2017), block of Wikipedia<sup>34</sup> (Kingsley 2017), Facebook,

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<sup>29</sup> *Kalyon Group* owes *Turkuvaz Media Group* which has been mainly involved in important projects, including İstanbul’s New Airport, Erbil Duhok Water Supply Project, Turkey-Cyprus Water Supply Project, İstanbul Region Natural Gas Steel Pipeline, İstanbul D-100 Highway Metrobus Line, Taksim Square Pedestrianization Project, and others (Reporters Without Borders n.d.).

<sup>30</sup> The President through the decrees took control over the State-run media outlets through the Directorate of Communications.

<sup>31</sup> The General Director of *Anadolu Agency* was an associate of Erdogan from 2011 until 2014 (Reporters Without Borders 2019).

<sup>32</sup> More than 100,000 websites have been banned (unofficial report).

<sup>33</sup> It has been reported that authorities have ruined computers and electronic devices in media companies in the pretext of “*investigations for hidden weapons*” (EuroMed 2016, p. 12).

<sup>34</sup> Wikipedia had been shut down by the Government on 29 April 2017.

Instagram and Twitter<sup>35</sup> (BBC News 2016) whenever Governments wishes (European Commission 2018, p. 36) let “*mentality to be continued*” in the aftermath of the SoE as well (Kenyon 2018). Elimination of safeguards concerning freedom of expression in media sector is also notable in Commission’s opinion No. 872/ 2016. Although the CoE agreed on the legal basis of the declaration of the SoE without doubting Government’s political decision, insisted on the unnecessary measures, especially these of detaining journalists<sup>36</sup>, under the allegation of “*membership*” of a terrorist organisation, without adequate reasoning, based only on journalist’s published article (Venice Commission 2017a, p. 22-23).

According to Article 4 of the decree law 667:

*“Those who are considered to be a member of, or have relation, connection or contact with terrorist organisations or structure/entities, organisations or groups, established by the National Security Council as engaging in activities against the national security of the State shall be dismissed from public service”* (Venice Commission, 2016).

Freedom of the media, constitutes an essential part of pluralism and the capability of expressing a political opinion through media, ensures democratic values. An estimated number of 159 journalists were arrested on terror-related allegations (European Federation of Journalists, 2018) many of them remained in prison till January 2019. The Commission, arraigned the proportionality of the measures, proposing the repeal of the disproportionate and unnecessary decrees (Venice Commission 2017a, p. 23), but stressed inadequate “*fact-finding capacity*” (Venice Commission 2017a, p. 4) over the cases of liquidation of media outlets and

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<sup>35</sup> More than 9,000 Twitter accounts have been reported by Turkish authorities (European Commission 2018, p. 36).

<sup>36</sup> According to EU Commission report of 2016 and 2018, Turkey is obliged to “*release journalists, human rights defenders, writers and academics being held in pretrial detention and has to stop the practice of intimidating, interfering with and putting pressure on the media*”.

persecutions of journalists<sup>37</sup>. Furthermore argued that, emergency legislation to seize opposing voices consists a restriction of human rights (Venice Commission 2017a, p. 7).

### **European Commissioner for Human Rights**

The CoE has received 104,789 applications concerning human rights situation in Turkey affecting an estimated number of 107,000 people who had been dismissed from their professions. The Commissioner, Nils Muiznieks, on 20 July 2016 condemned the attempted coup and its perpetrators, emphasising justice's fundamental principles, rule of law and human rights, that the authorities are obliged to follow. At this first statement, underlined media's reproduction of appalling pictures of people with visible signs of ill treatment and torture<sup>38 39</sup> indicating that Turkish authorities used methods against the Committee regarding the prevention of torture, consisting a clear violation of Article 3 "*Prohibition of torture*" of the ECHR where "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*" as well as doubting the safeguard of journalists and freedom of expression due to the closure of social media and violence (Commissioner for Human Rights 2016).

Turkish Ambassador Erdogan Iscan, immediately reacted for the "*subjective*" comments related to violations of International Law, reassuring that Turkish Government follows

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<sup>37</sup> Human rights defenders, reported that more than 160 broadcasters, 16 television channels, 23 radio stations, 45 newspapers, 15 magazines and 29 publishing houses have been shut down under the emergency legislation which later had been issued as official laws of the State (Amnesty International 2016a).

<sup>38</sup> Have been recorded methods like: denied food for up to 3 days, water for up to 2 days, rapes with truncheons or fingers, denied medical treatment. A lot of people have been seen beaten having bruises and broken bones, being covered in blood during the interrogations. (Amnesty International 2016b).

<sup>39</sup> Just 11 months after the attempted coup, a total of 2,278 people encountered torture and ill treatment and 11 people have been abducted. More than 2,500 individuals have been reported killed during operations against FETÖ and 68 Kurdish mayors remained imprisoned (Human Rights Association 2018).

international treaties and aims to bring to justice the members of FETÖ which is the terrorist organisation behind the coup attempt (Iscan 2016). The Commissioner expressed his thoughts for the alarming situation in Turkey making intelligible that, although encouraging plotters legal charge, he laid greater stress on proportionality and necessity of the measures taken to confront the crisis. He stated that, the ECtHR is responsible to determine the legality of the decrees taken after 16th of July, implying that any hint of violation will be detected by the international mechanisms of protection of human rights. Turkey's incompatibility with the ECHR concerning the first emergency decree KHK/667, even if a legal derogation happens, raised serious doubts over the illiberal, "*extremely wide and indiscriminate*" powers of the authorities that downplay human liberties in Turkey targeting not only members of FETÖ but others individuals or groups as well (Commissioner for Human Rights 2016c).

The Commissioner, stressed that the *right to a fair trial* is incapacitated due to Government's restrictions to the right of access to a lawyer and argued that the decrees extended to members and non-members (just affiliates) of terrorist organisations and not only against the perpetrators of the coup attempt. Prohibition of individuals to travel abroad as far as they are investigated or accused of *being a member of* or *in contact with* a terrorist organisation without judge's order, liquidation<sup>40</sup> of assets of thousands of institutions and organisations, arbitrary dismantling of the judiciary including members of the Supreme and Constitutional Court with no sufficient evidence affected not only suspects but their families too. Commissioner's visit in Turkey on September 2016 was on the scope of the measures taken considering administration,

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<sup>40</sup> According to KHK/667, occurred the immediate closure of 1,125 associations, 1,229 charities and foundations, 19 trade unions, 15 universities, 934 private schools, and 35 private medical establishments (Jones & Gurses 2016).

civil society, the private sector and the family members of alleged “*terrorists*” who have been affected by the decrees. His observations, were entirely in favour of the immediate turn to ordinary procedures, terminating the SoE as soon as possible regarding President’s political interference unnecessary and measures not effectively monitored (Council of Europe 2016a, p. 1,2,8,9).

The Commissioner has been characterised by Turkish Government as “*disinformation-affected*” person insisting that “*revolutionary steps*” towards democratisation (Republic of Turkey 2016, pp. 8,9,16) derived from proportionate measures respecting constitutional and international legal obligations (Republic of Turkey 2016, p. 1,17) deflecting all the considered, by the Commissioner, violations of human rights. He also stressed that President’s impartiality over media outlets which were expressing criticism against him, combined with a high rate of cases brought in justice concerning alleged members of terrorist organisations, have been extremely deteriorated after the failed coup, leading this way to the ban of media sources, suppression of news and overall a stagnation of several freedoms protected by International Law (Council of Europe 2017a, p. 3,4).

Turkish Government, accused the Commissioner of being biased using “*unacceptable*”<sup>41</sup> words in his Memorandum, concerning judicial authorities, pointing FETÖ’s dangerous infiltration in State “*organs*” stressing that the imminent threat of terrorist groups as DAESH, PKK/YPG and DHKP/C, illustrated the necessity of the measures taken, justifying proportionality and derogation from the ECHR. According to Commissioner’s Memorandum on

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<sup>41</sup> The Commissioner used the phrase “*judicial harassment*” to describe the rigid interpretation of the Turkish Judiciary which led to the encouragement of public officials to target groups and sectors in civil society (Council of Europe 2017a, p. 5).

freedom of expression and media freedom in Turkey in 2017, media pluralism and independence were struck down, making the governmental pressure on journalists<sup>42</sup> a daily phenomenon, strongly suggesting the termination of the influential pro-Government media sources monopoly. Turkey insisted over the rightful actions taken by the Government asserting that imprisonment of journalists were related with hatred speech, inciting or promoting defamation against the President and his values exceeding the “*limits of criticism*” as well as that they were charged of encouraging unlawful or armed terrorist organisations (Council of Europe 2017b, p. 3). The Commissioner also criticised the appointment of trustees in media companies like the *Koza Ipek* and *Feza Group*, adopting pro-Government editorial policy, the massive closure of media outlets and the excessive force against journalists depicting the overall situation of dissonance stating:

*“...neither the attempted coup, nor other terrorist threats faced by Turkey, can justify these measures, which represent not only unprecedented infringement of media freedom in the experience of the Commissioner, but also a clear disavowal of rule of law and due process”* (Council of Europe 2017a, p. 8).

Moreover, stated that Turkish officials although having downplayed the severity of the situation, the re-opening of at least 300 organisations and the restoration of 30,000 public servants after international pressure indicates the effective result of Commissioner’s work (Muznieks 2017). Government’s negligence and complicity in the infringement of freedoms have been regarded as proof of inadequate security situation which requires a swap emanating from ECHR in order to create a relationship built on mutual trust and respect, delivering social peace to the people.

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<sup>42</sup> On 15 May 2017, Murat Celikkan, a famous human rights defender and co-director of Truth Justice Memory Center, had been sentenced to 18 months in prison as well as Sirri Süreyya Onder, a Kurdish film director, actor, screenwriter, columnist and politician who has been sentenced with 3 years and 6 months in prison on charges of terrorism (ANF News 2017 ; Turkish Minute 2018b).

Thus, in addition to Commissioner's third party intervention before the ECtHR defending the right of freedom of expression of individuals being criminally prosecuted due to emergency legislation is another sign of authorities' wide interpretation of terror-related offences. The Commissioner, supported the important role of journalists, human rights defenders, academics, users of social media and Members of the Parliament, intervening as a third party in the Court's proceedings participating also in hearings in conformity with Article 36 paragraph 3 of the ECHR. Mr. Muznieks intervened in more than 20 applications, emphasising lack of credibility of the charges<sup>43</sup>, excessive use of detention without "*relevant and sufficient reasoning*" but also pointing the wide interpretation of the ineffective "*crime list*"<sup>44</sup> and decree laws, including the stifling judicial activities targeting specific individuals and groups. He argued that judicial arbitrary decisions against the above mentioned target groups are "*a broader pattern of repression against those expressing a dissent of criticism*" (Council Of Europe 2017c, p. 4-8). Purges against parliamentarians, mayors and co-mayors, human right defenders and journalists reach the conclusion that the authorities, systematically violated<sup>45</sup> their rights censoring individuals protesting against governmental policies (Council of Europe 2017d, p. 6).

In relation to Turkish intellectuals' purges, the signed petition of "*Academics for Peace*" in 2016, titled "*We will not be a party to this crime*", against State's policy, curfews and

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<sup>43</sup> Lack of credibility of the charges had been emphasised by John Dalhuisen, Amnesty International's Director for Europe and Central Asia in his statement right after the coup attempt on 18th July 2016 stating:

*"We urge the Turkish authorities to " show restraint and respect for the rule of law as they carry out the necessary investigations, granting fair trials to all those in detention and releasing anyone for whom they do not have concrete evidence of participating in criminal acts. A backslide on human rights is the last thing Turkey needs"* (Amnesty International 2016a).

<sup>44</sup> It refers to the "*catalogue crimes*", a list of crimes in the Code of Criminal Procedure containing crimes concerning constitutional order and the security of the Turkish State (Council of Europe 2017c, p. 6).

<sup>45</sup> Detainees were prevented from seeing family members and to be visited by their lawyers (Amnesty International 2016a).

“*massacre*” operations against Kurdish provinces fighting the PKK, resulting the loss of many innocents’ lives, was another hit against targeted groups. This firm expression of academics’ disappointment infuriated Erdogan targeting the “*darkest of the dark*” (EuroMed 2019, p.12) academic community in the post coup era. Accusing professors of universities like Prof. Dr Umit Bicer, and members of academic community like Mehmet Altan of “*terrorist propaganda*” (EuroMed 2016, p 12) the President ordered police investigations against many of the 1,128 “*so-called intellectuals*”<sup>46</sup> signatories, arresting hundreds of them, provoking a series of intimidating<sup>47</sup> practices such as expelling<sup>48</sup> them from institutions without following legal procedures, canceling their passports, forbidding<sup>49</sup> them to work in universities, confiscating their personal belongings to be searched by the police and making it impossible for them to work in public institutions for a lifetime (Human Rights Foundation of Turkey 2019, p. 16-19). The Commissioner, regarding the above mentioned practices a violation of freedom of expression, stressed his concern over the biased judiciary which under political pressure became prone to arbitrary decisions challenging the principle of presumption of innocence (Council of Europe 2017d, p. 4-6). The Turkish State until today, has shut down a lot of Gülen movement schools not only in Turkey but worldwide ordering the closure of Gülen’s academic institutions in many

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<sup>46</sup> The President accused them of treason using also the phrase “*pseudo academics*” (Human Rights Foundation of Turkey 2019).

<sup>47</sup> A great number of teachers of Gülen movement schools have been abducted by MIT in Mongolia, Moldova, Kosovo, Malaysia, Gabon and other countries in order to be intimidated and terrorised accused of terrorism (Turkish Minute 2018a).

<sup>48</sup> Until January of 2018 approximately 386 academics were banned from universities (European Commission 2018, p. 36).

<sup>49</sup> The licenses of 21,000 teachers in the private sector have been revoked and an estimated 20,000 teachers and administrators were also suspended (Shaheen 2016).



countries like Afghanistan, Azerbaijan, Pakistan, Sudan, Somalia, South Africa cooperating with Turkish authorities but not in Europe, listing 250 Gülen schools, and in the USA (Lepeska 2018).

### **European Court of Human Rights**

The Court's mission to interpret Convention's laconic albeit crystal clear language, to examine and decide whether personal interest is damaged or not on individual applications, offering binding decisions for State Parties (Ichim 2015, pp. 6-10), played a decisive albeit controversial role in the case of Turkey.

Turkey is listed first amongst State Parties of the CoE who have violated human rights<sup>50</sup>, taking into account the statistics of the ECtHR, with a total number of 3,128 out of 3,532 judgements that at least one violation has been found by the Court for the period between 1959-2018. The most interesting part is that the freedom-right which is violated in most cases, is the *right to a fair trial*, having 919 judgements concerning violation of the Article 6 of the Convention (European Court of Human Rights a, n.d.). According to statistics, the Court found violations in 77 out of 88 judgements in 2016, 99 out of 116 in 2017 and 140 out of 146 in 2018, in which the majority concerned violation of Article 6 "*rights to a fair trial*" implying a biased judiciary. The alteration in the balance of power in Turkey after the attempted coup led to the inevitable rise of a transitional judicial mechanism which incorporated political aspects resulting in trials with controversial judgements. Due to the short period between the attempted coup in

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<sup>50</sup> An estimated 163 cases of violations out of 168 of the European Convention on Human Rights have been reported in a period of 2 years after the attempt (European Commission 2018, p. 30).

2016 and today, the exhaustion of domestic remedies<sup>51</sup> to be admissible, and the numerous cases pending before the Court, judgements concerning human rights violation in the post-coup period are limited, especially after the law implications regarding Turkish Constitutional Court (Olçay 2017).

In the aftermath of the coup attempt, inadmissible/struck out applications to the Court, rose sharply from 4,042 in 2016 to 30,063 in 2017, whereas applications allocated to a judicial formation were 8,303 in 2016 and 25,978 in 2017 and most of the cases concerned dismissal of judges and civil servants (European Court of Human Rights 2018, p. 11,58). The period between 2016 and 2018 the Court found violations of Article 5 “*right to liberty and security*”, violation of Article 10 “*freedom of expression*” in cases like “*Mehmet Hasan Altan V Turkey*” (App No. 1327/17) regarding the detention of an academic and journalist, “*Ali Gürbüz V Turkey*” regarding criminal proceedings against the proprietor of the newspaper “*Ulkede Özgür Gündem*”, “*Sahin Alpay V Turkey*” (App No. 16538/17) regarding the detention of a journalist, “*Selahattin Demirtas V Turkey*” (No.2) ( App No. 14305/17) regarding the detention of the former co-chair of HDP and presidential candidate. The Court stressed its opposition to the persisting pre-trial detention, supporting Turkish Constitutional Court’s ruling against this tactic and raised doubts over the effectual domestic remedies of Turkey (European Court of Human Rights 2018b).

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<sup>51</sup> The Court has already dismissed a lot of cases regarding “*failure to exhaust domestic remedies*” like: “*Mercan V Turkey*” (App No. 56511/16), “*Zihni V Turkey*” (App No. 59061/16) who applied directly to the ECtHR, “*Catal V Turkey*” (App No. 2873/17), “*Köksal V Turkey*” (App No. 70478/16).

A great number of communicated cases<sup>52</sup> included complaints of journalists, writers and MPs over their arbitrary and excessive lengthy detention, claiming that it was not according to domestic law and with no plausible evidence asserting that they were victimised, stigmatised and targeted, due to their Government-criticising leftish journalistic work, (Baglayan 2017) or oppositional critic, insisting on accusations of judicial harassment. Nevertheless, Court's inability to provide justice for "*post-coup victims*" has been firmly expressed as well as the fact that the Court never ordered Turkey to express sincere feelings of remorse for conspicuous human rights violations, upset victims and their families (Ichim 2015, p. 18). Court's decisions characterised controversial by individuals who regarded the over-a-year length to reach a decision disappointing as well as argued over the incapability of the Court to adjudicate cases regarding job dismissals<sup>53</sup> proclaiming a reevaluation of Court's scope (Spencer 2018) in spite of its prestigious credibility, due to its documented findings and precious contribution to legal mobilisation (Mecellem 2018).

The Court, in relation to the arbitrary purges against judges and the unlawful detention of judge Alparslan Altan, member of Turkish Constitutional Court, reached the decision that there had been violations of his rights concluding to: "*alleged lack of reasonable suspicion that the applicant had committed an offence*" stressing that a mere suspicion of membership in a terrorist organisation does not justifies a sufficient reasoning for a detention, even during a SoE,

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<sup>52</sup> Refers to cases: "*Mehmet Murat a d Others against Turkey*" (Application no. 23199/17), "*Ayşe Nazlı Ilıcak against Turkey*" (Application no. 1210/17), "*Ali Bulac against Turkey*" (Application no. 25939/17), "*Atilla Tas and Murat Aksoy against Turkey*" (Application nos. 72/17-80/17), "*Mehmet Hasan Altan against Turkey*" (Application nos. 13237-13252/17), "*Demirtas and 11 others against Turkey*" (Application no. 14305/17), "*Ilker Deniz Yücel against Turkey*" (Application no. 27684), "*Ahmet Sik against Turkey*" (Application no. 36493/17), "*Okumus V Turkey*" (Application no. 58984/17), "*Aynur Horzum and others against Turkey*" (Application no. 4475/18).

<sup>53</sup> According to Director General of Human Rights and Rule of Law Mr Giakoumopoulos job dismissals are not fundamental human rights so cases concerning such cases cannot be subjects to the ECtHR (Spencer 2018).

underlining the importance of unbiased scrutiny in such cases, stressing that Turkey doesn't have a "*carte blanche*" over the articles of the ECHR (European Court of Human Rights 2019). The Court found harassment, self censorship and intimidation against opposition media owners exposing that free voices of media were not only restrained withal silenced, showing once more Erdogan's tactic which was the discourage of individuals working on news sources through arrests based on terrorism allegations (European Court of Human Rights 2019b).

Moreover, in relation to the great pressure to countries by Erdogan in which academics were teaching, resulting in illegal extraditions in cooperation with local authorities, the Court fined countries like Moldova due to unlawful deprivation of applicants liberty, violating International Law, domestic law as well as the ECHR (Url 2019a). The "*witch-hunt*" against Gülenists is continued and escalated with the conspiracy theories for the abduction of Gülen himself from the USA, after the close contact between Erdogan's son-in-law Berat Albayrak, the Foreign Minister Mevlüt Cavusoglu and Lieutenant General Michael Thomas Flynn, the former National Security Advisor of the United States during Trump's presidency, accused by American prosecutors that tried to influence Americans over the attempted coup facilitating the extradition of Gülen, "*a person legally residing in the United States*" (Lee 2018).

## Chapter III

### Terrorism and Human Rights in South-east Turkey

#### The Legal Doctrine of Terrorism

In Turkey, the fact that the ongoing war with the PKK has become an “*eternal*” problem and a consistent fight against domestic terrorism, had raised this issue up to a social and political level affecting “*victims of terrorism*”. In the wide context of the combat against terrorism, many violations of human rights occurred, damaging rule of law which relies on the doctrine “*social risk based on the objective responsibility of the State*” (Baginska 2017, p. 360). In the case of Turkey, terrorism has been expressed through alleged terrorist acts from FETÖ and the PKK, activating a crisis which generated the SoE, curfews and restrictions of fundamental rights and freedoms in a violent way. Violence gives birth to violence and if someone could have put violence into a the framework of terrorism, the result could be a hybrid kind of war with endless victims, undermining democratisation.

Terrorism, although not a new concept, is developed quite recently in international legal framework and concept’s success against this universal phenomenon has been considered dubious (Gross & Aoláin 2006, p. 386). The fact that terrorism is not in the context of “*core international crimes*” like genocide and war crimes, but also due to the distinction between domestic and international terrorism and the wide interpretation of its definition, jurisdiction falls under domestic courts rather than international courts (Demirsu 2017, pp. 67-68). For this reason it is more important for the reader to grasp the counter-terrorism Turkish legal framework.

Nevertheless, International Law elevated this phenomenon into a global scale, that sometimes, balance between the implementation of domestic counter-terrorism law and international treaties concerning the protection of human rights, undermines fundamental freedoms and rights of individuals.

The law to Fight Terrorism, issued in 1991 in Turkey known as Anti-Terrorism Law, has been the legal-key which opened the way for a fierce confrontation between the Turkish “Nation-State” and the PKK, regarding among else the economical support for terrorism a criminal offence.

According to Article 1, terrorism is defined as:

*“...any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat. An organization for the purposes of this Law is constituted by two or more persons coming together for a common purpose. The term "organization" also includes formations, associations, armed associations, gangs or armed gangs as described in the Turkish Penal Code and in the provisions of special laws” (Law to Fight Terrorism 1991).*

EU accession process and its political criteria, Convention on the Prevention of Terrorism, parliamentary amendments of 2006 concerning Anti-terrorism Law, the Law Amending the Powers and Duties of the Police in 2007, permitting further power to policemen overpassing judge’s order, fingerprinting and photographing everyone not only due to criminal behaviour but for daily bureaucratic reasons, use of officers’ weapon in case of resistance especially when suspect’s movement indicates a fatal outcome, the Law on the Prevention of the

Financing of Terrorism in 2013, the controversial “*Domestic Security Bill*” in 2015, an immediate respond of the AKP after the unparalleled Gezi park events against Government’s policies granting more power to the police and civil servants and among else allowed the 48 hour wiretapping without a judge’s order, use of firearms against protestors who use or going to use Molotov bombs, strengthened Turkey’s tools against terrorism but also “*provided additional pretext or alibis for authoritarian revisions*” (Daily News 2015; Demirsu 2017; Aytar 2006).

Turkish Penal Code, through reforming packages, incorporated several criminal offences concerning terrorism amending articles regarding the highly controversial “*propaganda making*” accusation. This fact, not only limited the right of freedom of expression but also implemented high penalties, legalising actions threatening “*public order*”, presenting them as “*national threats*”, removing limitations concerning excessive force and torture (Demirsu 2017, pp. 120-121), prohibiting the full/semi cover of the face during demonstrations that could easily have an impact on someone who is affected by tear gas during a protest. Moreover these vague provisions of the law, extended against any suspect that seems to have connections with terrorist organisations, even if this person is not a member. This controversial policy and legal framework affected Kurds protesters more than anyone else because of its wide interpretation, especially demonstrations and protests of Kurdish political movements, leading to impartiality towards the proper function of rule of law (Demirsu 2017, pp. 114-118).

The above mentioned contentious legal framework concerning counter-terrorism, prepared the ground for the upcoming literal emergency legislation, challenged the balance between human rights and fight against terrorism, having a negative impact to fundamental rights of Turkish citizens belonging to specific classes (Demirsu 2017, pp. 123-124).

United Nations admitted the vague international legal contextualisation of terrorism which “*attack[s] directly the values of the U.N Charter*” defining terrorism as any act of violence, causing death or severe bodily harm or property damage, or economic losses, against civilians or non-combatants for political or ideological purpose considering terrorism “*unjustifiable*” on any ground:

*“criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes...[terrorism acts] are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them”* (High Commissioner for Human Rights 2008, pp. 5-7).

The law against terrorism in Turkey, targeted more or less the PKK through Government’s anti-terror policy, counter-terrorism strategies and security operations sometimes including heavy weaponry, operating in conjunction the police, military and special units. Armed conflicts between security forces and the PKK, especially in south-east Turkey became a subject of International Humanitarian Law which protects non-combatants in times of war against terrorist attacks. When the rage affects citizens, especially women, children and elders not carrying weapons, employing methods such as bombings in cities, air attacks and indiscriminate operations in urban environment, results in disproportionate outcomes victimising innocents lives.

It is argued that the integral relationship between terrorism, human rights and security in Turkey relies on the “*othering*” of the domestic enemy, creating the victimisation of protestors accusing them of propaganda, using the shield of democratisation, providing Government’s policy as the only safe-place, suppressing fundamental rights and liberties. Terrorism is strongly



connected with organised crime, parallel economy and black-market, affecting international community and “civilised” modern societies (Demirsu 2017, pp. 221,227-229). The duty to protect the country instead of other equally important duties, listed first amongst Turks, creating police-military coalition the main lever of counter-terrorism, which in tandem with nationalism shapes a strong bond which through the veil of promoting national sensibilities, strengthens the idea of restraining human rights (Demirsu 2017, pp. 191-211). So a future debatable question arises; *is terrorism resorting to the excuse of freedom of expression and authoritarianism resorts to the suspension of freedoms and rights?*

### **South-east Turkey, Kurds and Curfews**

Even-though SoE emerged through the attempted coup targeting initially plotters-members of FETÖ and its affiliates, repression extended further to Kurds due to the 30 year Kurdish issue resulting to an estimated number of 40,000 people left dead (Middle East Eye 2018a). In Turkey, having a legacy of violations of human rights during anti-terrorist operations in the past (Council of Europe 2016d, p. 2), Government’s policy concerning terrorism is the monopoly of interest in the name of the AKP and the “*nation*”, polarising society and making people choose between governmental policy or becoming the “*other*” (Demirsu 2017, pp. 192,193).

Legitimisation of violence turned to be State’s main achievement according to human rights defenders (EuroMed 2016, p. 11). The escalating rate of the round-the-clock open-ended with no “*legal basis*” (Council Of Europe 2016 d, p. 4) curfews in hundreds of cities in Turkey,

especially in Cizre, Sur, Silvan and Lice (United Nations 2017), resulting in house confinement for citizens in the south-east for a long period and moreover security operations against the PKK<sup>54</sup>, the so-called “*separatist terrorist organisation*” as well as the “*urban wing*” of the PKK, the Kurdistan Communities Union (KCK), and the “*younger wing*”, the Patriotic Revolutionary Youth Movement (YDG-H), have targeted individuals, mostly Kurds, living in the south-east.

Curfew’s purpose, to prevent terrorists’ future activity putting an end to their free movement into these areas, “*affected citizens’ rights and freedoms*” (Council of Europe 2016d). The intense period between the lost of AKP’s absolute majority in the elections of 2015, due to the success of the HDP, which was achieved again the same year, in combination with the sudden fall of the negotiations between Öcalan and Erdogan and the cease fire between the PKK and Turkey (2013-2015), drastically affected in a negative way Government’s plans and military operations against the PKK and Kurds in general (EuroMed Rights 2016).

Although some interim measures of the ECtHR concerning the dubious curfews<sup>55</sup>, which were “*implemented for the protection of the safety of the citizens*”, the majority of the cases, appealed between 2015-2016, were rejected due to the “*non exhaustion of domestic remedies*” (Daily News 2019). There have been reported grave abuses and human rights violations, including unlawful killings, destruction of private property, bury of the dead by security forces in unknown places, restricted access to health service and education, detention of rescuers, sexual harassment, physical violence and “*falaqa*”. It has been reported also that

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<sup>54</sup> The PKK has been recognised as a terrorist organisation also by the USA and the EU.

<sup>55</sup> During 16 August 2015-16 August 2016, have been established 111 confirmed curfews in more than 35 districts of 9 cities in south-east Turkey, 321 civilians have died, the majority being of children, female and elders (Human Rights Foundation of Turkey 2016).

individuals have been forced to get naked and being photographed by authorities, threatening them later that they will upload the photos on the internet in an effort to make them testify against alleged PKK members. Without indictment for anyone of the State officials perpetrators, having been accused of ill-treatment from the night of the attempt until the end of the same year (United Nations 2017, p. 19; United Nations 2018b) the ineffective domestic remedy continued.

Moreover, killings, abuses, excessive use of force and enforced disappearances right after the failed coup (United Nations 2017, p. 14) were followed by the displacement of more than 200,000 Kurdish people just in months, reaching almost half a million, affecting mostly the district of Sur with approximately 95 % of its population having been displaced (United Nations 2017, p. 14), indicated the severity of the problem. Additionally, the great number of alleged terrorists being incarcerated resulted in the phenomenon of overcrowded prisons with more than 40,000 prisoners, albeit people being arrested in south-east Turkey is not officially known and proved (United Nations 2017, p. 16). In the UN report titled *“Report on the human rights situation in South-East Turkey”*, covering the period between July 2015 to December 2016, there are photos taken by satellites showing schools, private properties, roads and UNESCO-protected monuments before and after bombings which resulted in numerous deaths of Kurds. On top of that, the fact that Turkish authorities prevented people to resettle these areas or to collect their personal belongings made situation even more alarming concerning property rights and freedom of movement (United Nations, 2017 p. 10).

The fact that a number of forensic examiners were imprisoned for affiliation with terrorists followed by substitution by Erdogan’s *“trustees”* or inexperienced medical personnel led to the documentation of inadequate or non accurate documents with insufficient examination

of body abuses, signified the political pressure in the context of security operations against the PKK (United Nations 2018b). A characteristic example of the vicious circle of blood, are the reports for exposed naked dead bodies, mostly women's, with no eyes lying on the street exposed to native people and the dragging of dead bodies having marks of sexual abuse and torture by military vehicles. (EuroMed 2016; Union of Southeastern Anatolia Region Municipalities 2016).

The link between terrorism and human rights violation during curfews in areas living mostly Kurds, is highlighted again reading reports of individuals stating that psychological traumas and fear of the authorities during curfews emerged not only because of the clashes between fighters of the PKK and State forces but also by the threatening of children by the police. Confronting individuals as terrorists is not very uncommon for Turkey taking into account the heritage of ill-treatment practices, especially during the early stages on detention in police cells right after the arrest, where most of the abuses have been recorded, before the main incarceration (United Nations 2018b).

Both UN and CoE via their human rights organs, were always expressing serious concerns over the situation in south-east Turkey especially after the failed coup. Proportionality and legality issues raised also over the curfews declared by the local authorities to combat the PKK. Although curfews were declared for a limited time period of hours in certain areas, increased into months and extended yet in space and in context, transformed from police to military operations, in the name of the public interest. These operations, resulted in anti-terror operations using terror and heavy weaponry as well, affecting just in one district a disproportionate number of citizens instead of terrorists with a ratio of 1 to 440 locals (Council of Europe 2016d).

## Conclusions

According to our working hypothesis, the situation of human rights in Turkey, has deteriorated in the aftermath of the attempted coup due to the declaration of the SoE and resulted in an attempt to silence opposition inside and outside the Parliament, for Erdogan's personal political purpose. We presented the documentation and examined the legality of the declared situation with regard International Human Rights Law in order to confirm the working hypothesis.

All credible information based on official documents of international organisations indicated that the Turkish Government never succeeded in "*yielding the results needed*" to comply with International Law (Muiznieks 2017) concerning violations of human rights. The President of Turkey during the SoE, in order to achieve complete control over State apparatus, breached articles of the Convention and also the ICCPR, deteriorating the situation of human rights, especially those of specific target groups. Silencing voices, without indictment due to insufficient documents and evidence constitutes an argument that Turkey leant towards an unstable, fragmented and flawed State in terms of human rights, if not a competitive authoritarian regime, implementing a personalised policy in the name of its President securing his personal and political interests (Esen & Gumuscu 2015).

The disproportionate interpretation/use of "*undermining of social peace and stability*", the lack of effective domestic remedies and the wide interpretation of counter-terrorism law in south-east, the difficulty of *necessity* and *proportionality* to be proved in international court, due to *top secret* characterisation, brought to the surface the necessity of a functional judiciary and

rule of law. Suspending “*equality of opportunities*” in a modern democracy shutting down media organisations due to the KHK/667 part 2<sup>56</sup>, resulted in the parliamentary concurrence by majority on January 2017 of the proposed amendments, making “*the oral questions and the vote of confidence to the executive beyond the bounds of possibility*” (European Commission 2018 ). Turkey’s referendum on 16th April 2017, reinforced Erdogan’s status and capabilities, affirming constitutional amendments planned only by the coalition of the President with the MHP<sup>57</sup>, bypassing Parliament.

“*Democracy cannot be saved*” (McCann 2016) and human rights cannot be protected if International Law and the recommendations of monitoring mechanisms are not implemented or taken seriously and the role of the ECtHR is undermined. The guarantee of democratic stability does not exist if breaches of rule of law lead to ineffective domestic remedies and disrespect of fundamental freedoms. Interventions concerning legal and factual derogation under Article 15 of the ECHR before the Court by third parties, indicate the severity of the problem and justify the great mobilisation of international system. Moreover, the Parliamentary Assembly of CoE (PACE) stopping the “*post monitoring*” phase of Turkey on 25 April 2017, due to the disproportionate emergency measures stipulates the backsliding concerning human rights, democracy and rule of law which were not “*addressed in a satisfactory manner*” (Council of Europe 2017e).

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<sup>56</sup> According to KHK/667/Article 2: “*private organizations, foundations, associations and their commercial...which belong to, connect to, contact with Fethullahist Terrorist Organization (FETÖ/PDY) established posing a threat to the National Security have been found to exist, have been closed down*” (Venice Commission 2016).

<sup>57</sup> In Turkish: “*Milliyetçi Hareket Partisi*”, the Nationalist Movement Party.

The President's "*fulfilled dream*" (Pitel 2018) consisting in maximising his executive power<sup>58</sup>, after the first ever issued executive presidency<sup>59</sup> in Turkey, that "*will allow authorities under the executive presidency, for the next 3 years, to dismiss judges and all public officials arbitrarily*" (Human Rights Watch 2018), became a reality: in other words, Erdogan may hold the presidency and the leadership of Turkey's ruling political party simultaneously. Nominating appointees in the Government (European Commission 2018, pp. 11,12; Pitel 2018) as well as members of the Board of Judges and Prosecutors<sup>60</sup> (Url 2019b) wounded independent judiciary and separation of powers, fused legislature and judiciary, especially when judicial procedures went under President's auspices (United Nations 2018), generating a new upcoming proficient elite which may lead to a newborn political order, reshaping Turkish society.

The post-coup purges demonstrated a "*new order*", a technical and institutional reconstruction of the Turkish State through the control of media, judiciary, army, police, MIT and education sector, deeper consolidating President's power and governmental control (Chudziak 2016). National Intelligence Service directly under Erdogan made it easier to control the use of "*top secret*" information.

In the wide context of combating terrorism, the President presented himself as the only effective solution to counter domestic enemies. Attempts to eliminate terrorist organisations and

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<sup>58</sup> In 19th July 2018, associate analyst at Control Risks, George Dyson, stated in CNBC News that: "*In some ways, the new presidential system of government gives him (Erdogan) more power; more clearly than the state of emergency did, I wouldn't go so far to say that this is a 'state of emergency mark two' situation, but the practices and attitudes of the government will continue like before*" (Ellyatt 2018).

<sup>59</sup> Approximately 5,000 articles regarding powers of the Prime Minister have been transferred to the President after the executive presidency acquiring immense power (Hurriyet Daily News 2018b).

<sup>60</sup> The Executive President has the right to appoint 4 out of 13 of the Council of Judges and Prosecutors, to appoint 12 out of 15 judges of the Constitutional Court and also to extend the duration of SoE for 6 months instead of 3 that was before (European Commission 2018, pp. 11,12).

“*national*” threats like Gülen and his affiliates, PKK or even other “*imaginary*” threats, could be legal if International Law was respected, without opposition becoming incapable to be represented or expressed openly. The motto: “*opposition with AKP is conflated with betrayal and terrorism*” (EuroMed 2016, p. 15) is the accurate key-phrase for the situation during the reported period and brings to mind the famous phrase of President G.W. Bush: “*[e]very nation in every region now has a decision to make: Either you are with us or you are with the terrorists*” (Demirsu 2017, p. 65) or Erdogan’s phrase on the Kurds situation: “*either like it or leave*” (“ya sev, ya da terk et”) (Straw 2017, p. 19).



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