

The Declaration of the State of Emergency and Its Implications after the Failed Coup Attempt on July 15

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- **Why did Turkey declare a state of emergency?**
- **What does it mean and what are the implications of it?**
- **Does the state of emergency mean bypassing the Grand National Assembly of Turkey (TBMM)?**

On the evening of July 15, 2016, Turkey experienced a new and bloody example of coup d'états and coup attempts in her history. The attempt rather resembles the military coup of May 27, 1960 than that of September 12, 1980 for it was outside of the Turkish Armed Forces (TSK) chain of command. However, it was an idiosyncratic upheaval since a so-called religious organization made the attempt. The group had, over many years, penetrated not only the TSK but also all state institutions. Furthermore, the People of Turkey and TBMM, for the first time, were directly targeted and attacked by the so-called religious group, known as the Fettullah Gülen Terror Organization (FETO). The coup plot, at the hands of the FETO nested in the TSK, was primarily thwarted by the determination and bravery of the People of Turkey. Turkish Armed Forces, the Police, backing the legitimate government despite heavy losses, and Turkish Media acting in favor of democracy helped Turkey to successfully fend off the coup attempt. In addition to the People's stand; the decisiveness of the President of Turkey, Recep Tayyip Erdogan, the Government of Turkey, and po-

litical parties in the country; and the backbone of the TSK, taking sides in favor of the Nation against the plotters, were essential elements of this success.

Comprehensive discussions continue - and will continue for a long time - on the nature, the failure and consequences of the coup plot. However, we would certainly say in advance that the FETO is an armed terror organization that unhesitatingly attacked civilians and the TBMM with fighter jets and tanks. It is an undeniable fact that FETO members used contemptuous and violent methods to capture aid-decamps and chiefs of cabinets in the Turkish military. Thus, it has to be widely accepted that the above facts will be taken into consideration in judicial procedures and that it is a must to purge all members or supporters of FETO from all state institutions.

Following the plot, Turkey has immediately established public safety, subdued the perpetrators, and has begun to remove FETO members from the State and public institutions. To this end, in accordance with the rules and regulations, civil servants who have been identified as FETO members have been dismissed

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from all institutions, the Judiciary and the Security in particular, beside the TSK. Some others are under legal investigation. Necessary measures have been taken against possible runaways and all annual leave has been cancelled. Citizens of Turkey stood up en masse for “Democracy Watch” by not leaving critical locations and “manning” the squares across the country, thus providing support to the post-coup processes and operations. However, all these are just the prelude for a fight against FETO.

WHY HAS THE STATE OF EMERGENCY BEEN DECLARED?

In order to fight better against this threat, in addition to all of the above measures, the Council of Ministers met under the leadership of President Erdogan on July 20, 2016 and, on the advice of the National Security Council, has declared a state of emergency¹. A three-month state of emergency has been imposed because of the nature of the threat and the scope of the measures to be taken. The attempted and failed coup was plotted not only by a limited number of junta members in the TSK but also by extremely clandestine and manipulative FETO organization that has nested in all state and public institutions. FETO has infiltrated into the TSK and conducted secret activities for about 50 years. Still, it is not fully known yet what they are capable of and how far they can go. Moreover, the chain of command, the General Staff in particular, were held hostage by their own aide-de-camps, chiefs of cabinets, and adjutants. This reveals how extensive and insidious the danger is. Confessions released to the media² also support the current evidence and more significant information is expected to be gathered in the coming days.³

1 <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2016/07/20160721.htm&main=http://www.resmigazete.gov.tr/eskiler/2016/07/20160721.htm>. Access: 7.20.2015.

2 Levent Türkkân, aide-de-camp of Chief of General Staff Hulusi Akar, has confessed having the rooms of the Chiefs wired, but later others did the eavesdropping. <http://www.hurriyet.com.tr/ve-orgeneral-akar-in-yave-ri-40155810>. Access: 7.20.2015.

3 According to BBC's news, a system used by 40,000 FETO members that allow encrypted communication among them have been detected by Security Forces. <http://www.bbc.com/turkce/haberler-turkiye-36851344>. Access: 7.20.2015.

We see judges, prosecutors, security officers and top-level public authorities who unconditionally abide by FETO's demands. Sakarya University Assistant Professor Adil Öksüz is a senior FETO member, called *imam*, in charge of the TSK. He was captured at the Akıncı Air Force base, which was used as headquarters by the plotters. FETO affiliated judges, however, released Öksüz from custody and despite a warrant of arrest being issued, he still remains at large. That indicates the extent of the problem. It is imperative to have a long-term, decisive and persistent fight against FETO because of the constant threat of kamikaze attacks and sabotages designed, if not to overthrow the government, then at least to harm and damage the country.

During and after the coup attempt, all political parties and Turkish media, the military and bureaucracy have stood up with the government, and the number one reason for such solidarity is that FETO is very well known by all segments of the society. People in Turkey are very well acquainted with the demeanors of FETO members behind their shining and charming front pages and of their conduct when they have usurped power within the State. So, the entire society has united against FETO and its threats. There has been no serious allegation that the attempted coup was plotted by any other organization. Consequently measures to eliminate FETO members from state and public institutions have been welcomed by the society. That being said, the state of emergency is a constitutional provision and has become force majeure for the fight against FETO.

THE MEANING AND IMPLICATIONS OF THE STATE OF EMERGENCY (EXTRAORDINARY STATE)

Extraordinary administration procedures enter into force upon a state of national emergency or threat when the state cannot cope with the situation under ordinary laws and rules, and therefore is given additional authority. Common characteristic of such procedures is that authorities, particularly those requiring judgmental decisions, of the state are expand-

ed compared to ordinary times; therefore, it becomes easier to remove the threat.

Extraordinary administration procedures are declared by constitutional bodies and are enforced in accordance with constitutional provisions and within the frame of constitutional rules. “State of emergency” procedures do not mean undemocratic, unlawful and arbitrary governance. Constitutional rights, the rule of law, and judicial review of all state bodies are in force in a status of “extraordinary state”. Besides, these procedures are mentioned in the constitutions of democratic states of law, and when necessary, they are applied with no hesitation.⁴ The latest example is seen in France, a state of emergency was declared a year ago due to the terror attacks and it has been extended for six months following last week’s acts of terror in Nice. The French President declared a state of emergency based on Articles 16 and 36 in the French Constitution and the following measures have been enforced since November 15, 2015:⁵

- Security remains high across the country (in public spaces – schools, universities, transport terminals- extra police and armed guards),
- School trips being cancelled with students being banned from taking trips using public transport,
- Tightening of border controls and restrictions at airports and train stations,
- Police authorized to search homes without a warrant,
- Banning of protests and public gatherings,
- Ensuring control of the press and radio.

In addition, France has also given power to administrative bodies to declare curfew.⁶

4 For instance, German Constitution; a.80/a, Dutch Constitution; a.103, Spanish Constitution; a.116, Portuguese Constitution; a.19, Polish Constitution; a.228, Russian Constitution; a.88, the Constitution of the Republic of South Africa, a.37.

5 “France’s state of emergency laws explained in 90 seconds”. BBC. November 19, 2015. <http://www.bbc.com/news/world-europe-34852916>. Access: 7.20.2015.

6 “What does a ‘state of emergency’ mean in France?”. France 24. November 15, 2015. <http://www.france24.com/en/20151115-what-does-france-state-emergency-mean>. Access: 21.07.2016.

Similarly, the U.S. took various measures to establish law-and-order during protests and demonstrations of African-Americans in Ferguson and Baltimore, and declared a state of emergency shortly after.

In the Turkish Constitution, there are two types of extraordinary administration procedures: The State of Emergency and Martial Law. For a state of emergency two different reasons are set in the Constitution: (1) According to Article 119, in cases of natural disaster, dangerous epidemic diseases or a serious economic crisis, and (2) according to Article 120, in cases of serious indications of widespread acts of violence or serious deterioration of public order because of acts of violence.⁷ At present, the latter is in force in Turkey. Martial Law, on the other hand, is regulated under Article 122 of the Turkish Constitution and is enforced in cases of widespread acts of violence more dangerous than the cases necessitating a state of emergency. Both in a State of Emergency and Martial Law, authorities of the state are expanded, but in the case of Martial Law military posts are in charge and Martial Courts are established. Since controls and authorities are transferred to soldiers, fundamental rights are more restricted. This is the main reason behind Turkey’s declaration of State of Emergency rather than Martial Law. In a state of emergency, power is granted to civilian authority and judicial authority rests with common civil courts – in accordance with the principle of natural judgement.

According to the 1982 Constitution, the Council of Ministers meeting under the chairmanship of the President of the Republic may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months. This decision shall be published in the Official Newspaper and shall be immediately submitted to the Grand National Assembly of Turkey for approval. The As-

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

sembly may alter the duration of the state of emergency, may extend the period for a maximum of four months each time at the request of the Council of Ministers, or may lift the state of emergency. In other words, the National Assembly has the final say on the declaration of a state of emergency.

During the state of emergency, the Council of Ministers, meeting under the chairmanship of the President of the Republic, may issue decrees having the force of law on matters necessitated by the state of emergency. They shall allow rapid and effective action against an existing threat. It is claimed that these decrees will push TBMM aside. According to the Constitution, however, these decrees shall be published in the Official Newspaper, and shall be submitted to the Grand National Assembly of Turkey on the same day for approval where the Assembly has the authority to amend, reject or approve them (a.121/last) Moreover, state of emergency decrees are resorted to, only if need be, within democratic states of law.

The most critical outcome of a state of emergency is the expansion of the State's authorities. What these authorities are and how they shall be exercised are regulated in the State of Emergency Law which is contained under State Codes but not enforced under normal circumstances; however, it comes into effect when a state of emergency is declared. Although there are constitutionally granted rules and procedures; considering the statements issued by the President and the Government officials, rules and procedures of the declared state of emergency will be enforced only to ease and accelerate the fight against FETO but will not

affect, and/or make difficult, the daily lives of citizens. The state of emergency will allow necessary measures to be taken rapidly and effectively so as to ensure the conduct of safe and sound probes against thousands of soldiers, police officers, and civilians, following the clashes between police and the FETO faction in the military. It will also facilitate to put public order back on track and return to normal economic life. As Prime Minister Binali Yildirim says, "*The state of emergency has been declared for the State not for the People.*"

In conclusion, the aforementioned authorities, to be exercised during the state of emergency, are subject to judicial control. Ways for an action for annulment are wide open against the decisions of state of emergency officials and it is also possible to file claims for damages resulted from such decisions. Aside from this, the statutory decree for the decision of the stay of execution in a state of emergency has been aborted by the Constitutional Court in 1991. In other words, judicial control is fully applicable on the administration during the state of emergency and that is not unfavorable from the perspective of a state of law.

Being under multiple terror threats in an extremely volatile region suffering protracted civil wars, Turkey encountered a military coup attempt. Turkey has managed to elude a short-term threat owing to the tremendous devotion and self-sacrifice of her Nation and State. However, it seems that assaults are not over yet and a long-term fight will be needed against future attacks. One of the judicial measures to overcome such aggression is the declaration of a state of emergency. It is expected that Turkey will restore public order with minimum damage under the state of emergency.



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