

## **The 15<sup>th</sup> July Coup Attempt and the State of Emergency: A New Challenge for the Constitutional Democracy in Turkey**

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Distinguished participants,  
Ladies and gentlemen,

I would like to thank the Chief Justice of Indonesian Constitutional Court, Mr Hidayat, for his warm and generous hospitality.

It is pleasure to be here and speak to such distinguished colleagues.

As you know, our country has experienced a flagrant coup attempt recently. Fortunately, the perpetrators have failed and our democratic regime survives because of brave resistance of Turkish people.

There is no doubt that the recent coup attempt created a new constitutional and legal situation in Turkey. This is perhaps one of the most serious challenges that our constitutional democracy has faced so far.

### **What happened on 15 July 2016?**

I would like to give you a brief information about what happened at that night by showing you a short video.

[Video 2 min]

It was indeed a horrible day for all of us in Turkey. It was the day that lasted more than a hundred years to borrow the words of Chinghiz Aitmatov. I was at home with my family while the fighter jets (F 16s) started to bomb parliament which is only a few kilometre away from us. It was as if we, ourselves, were bombarded. My youngest son, who is only 12, kept asking me

this question with a trembling voice: “Daddy are these warplanes going to bomb us?”. I said “No”, but I was not sure my answer was correct.

I wasn’t sure because the following day we found out that the perpetrators, a faction/junta within the army, launched a terrorist campaign firing at their own people and bombed the Turkish Parliament, Office of the Presidency and Police Headquarters.

This attempt soon was taken under control due to the continuous efforts of the political leadership including the President and the Parliament, of all political parties, the media, and significant sections of security forces from both the army and the police. Above all, it was the democratic will and resistance of the Turkish people which proved to be decisive in stopping this coup-attempt. The failed coup attempt is an indication of Turkish people’s awareness and the consolidation of Turkish democracy.

### **Judicial Reactions to the Coup Attempt**

The Turkish Constitutional Court made a press statement at the very beginning of the coup attempt, after a couple hours when we realized it was a coup attempt. In the statement we pointed out that we repudiate all kinds of antidemocratic attempts against the constitutional order and stand beside of democratic constitutional state. The Turkish Constitutional Court’s press statement played an important role to protect constitutional order and democratic values by demoralizing the plotters and encouraging the Turkish nation.

The Constitutional Court’s firm reaction to the attempted coup was followed by other high courts such as the Council of State, the Court of Cassation, and the Military Court of Cassation. On 16 July 2016 the public prosecutor ordered to arrest hundreds of thousands of people who were believed to be either the plotters of the coup or connected with the organisation behind the coup. They include 2 judges of constitutional court, 140 members of the Court of Cassation, 48 members of Council of State, and more than 3000 (three thousands) judges and prosecutors of first instance courts.

The authorities stated from the very beginning that the failed coup was planned and executed by the “Gülenist terrorist organisation” (FETÖ), which is also known as “Parallel State Structure” in Turkey. As explained in the previous indictments and court decisions, this group created a parallel organization in key posts of the state, especially in security, judiciary and civil bureaucracy. For a long time, the group acted more like a messianic organization than a simple Islamic faction and functioned in secrecy within state institutions. “Concealment” has been the

key tactic of the members of the organisation. The members of this group are ordered to disguise their affiliation with movement. (Decision of Turkish Constitutional Court in its plenary sitting dated 4/8/2016, Docket no. 2016/6 (Miscellaneous file) Decision no. 2016/12, § 15).

### **The Reaction of Government: State of Emergency**

State of Emergency is a measure regulated by almost all constitutions and international human rights law, including European Convention of Human Rights.

The Council of Ministers decided on 20 July 2016 that a nationwide state of emergency be declared for a period of ninety days in order to fight against the “FETÖ” terrorist organization in a comprehensive and effective manner which poses a grave threat to survival and security of the state through its clandestine infiltration to state institutions.

It must also be noted that, like France, Turkey resorted to the right of derogation from the obligations in the European Convention on Human Rights for a 3 month period as prescribed in Article 15 of the Convention.

I must say that the coup attempt which was a kind of heinous terror attack is more extensive and disruptive compared to the terror attacks in France or in any other European state. It may be compared to 9/11 of the USA in terms of traumatic affect it created.

During the state of emergency, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, may issue decree laws on matters required by the state of emergency. Under normal circumstances, the Constitutional Court shall examine the constitutionality of decree laws. Article 148 of the Turkish Constitution stipulates that decree law issued during a state of emergency, martial law or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality.

Nevertheless, within the state of emergency period, the administrative acts and activities are subject to judicial review. The only limitation for administrative courts is that they may not render stay of execution decisions in the cases regarding decisions and acts of administration in the 90 day state of emergency period.

The right to individual application before the Constitutional Court is also available for individuals. Ultimately, they may still lodge an application to the European Court of Human Rights, if they are not satisfied with the decisions of the Constitutional Court, after having exhausted domestic remedies.

The authorities have constantly stated that the purpose of the declaration of the State of Emergency, is not to restrict fundamental freedoms of our citizens, but to eliminate terrorist organization behind the coup attempt in a more rapid and effective way.

The emergency decree laws seem to have two main objectives. First, they aim to demilitarise the social and political life and to ensure the full democratic and civilian control on armed forces. To this end, the army forces of land, air and navy were attached with the Ministry of Defence. Likewise, some of the military schools (colleges) were closed down.

Second objective of the decree laws is to completely eliminate the “Parallel State Structure” which was defined by the National Security Council as a terrorist organisation even before the coup attempt.

Decree Law on Measures Taken within the Scope of State of Emergency no. 667 clearly states that members of the judiciary including the Constitutional Courts (Article 3) and all state officials (Article 4) shall be dismissed from the profession or public service, if they are considered to have affiliation, membership, cohesion, or connection to terrorist organizations or to groups, formations or structures determined by the National Security Council to be engaged in activities against the national security of the State.

### **The Turkish Constitutional Court’s Stance**

As one of the “guardian”s of democratic constitutional order, the Turkish Constitutional Court promptly reacted and took immediate measures during and after the failed coup attempt.

The Court first initiated a disciplinary investigation about two member judges who were arrested and subsequently detained on remand within the scope of the criminal investigation. The Plenary of the Constitutional Court removed them from the office pursuant to Article 3 (1) of the Decree Law no. 667.

In addition, the Court administration removed totally thirteen (13) rapporteurs coming from the other public bodies and institutions and seconded to the Constitutional Court from office, and sent back to their institutions. It has been informed that suspension from office and detention decisions were rendered about eight (8) of these rapporteurs.

We also decided on 29 July 2016 that one (1) rapporteur, seven (7) assistant rapporteurs and fifty-six (56) staff members be suspended from office until a final evaluation is made, pursuant to Article 4 of the Decree Law no. 667.

In its decision concerning the removal of member judges from the Court, the Constitutional Court (a) explained the meaning of the coup attempt for constitutional democracy, (b) interpreted the relevant provision of the Decree Law no. 667. According to the Court, the 15 July attempted coup was the most devastating attack against democratic constitutional order, constitutional rights and liberties and national security. It was already a dark mark in the history of the Turkish democracy (§ 68).

The Court also interpreted the parameters of Article 3 of the Decree Law no. 667 in the following terms. According to the aforementioned article, applying the measure of dismissal from profession on Constitutional Court Judges;

- a. it is necessary that a Judge is considered to have “affiliation”, “membership”, “cohesion”, or “connection” to terrorist organizations or to groups, formations or structures determined by the National Security Council to be engaged in activities against the national security of the State and,
- b. that this consideration is decided by the absolute majority of the Plenary of the Constitutional Court.

To apply the measure it does not require absolutely a bond between a Constitutional Court Judge and a terror organization, terror activities and by the way the coup attempt; but it is found sufficient if there is a link to a “structure”, “formation” or “groups” that are determined by the National Security Council to be engaged in activities against the national security (§ 84).

On the other hand in order to apply the measure of dismissal from profession, it is not obligatory that the link is in the form of an “affiliation” or a “membership”; a “cohesion” or “connection” is already regarded sufficient (§ 85).

In the end the article states that “certainty” for the link between the Judges and the structures, formations or groups determined by the National Security Council to be engaged in activities against the national security is not required. Nevertheless, it is found sufficient that such a link is “considered” by the Plenary of the Constitutional Court. This consideration expresses the “opinion” that is formed by the absolute majority of the Plenary. Without doubt this consideration is independent from the existence of a criminal liability (§ 86).

The necessity to rely on a certain type of evidence to form this opinion is not set forth in Article 3 of the Decree Law no. 667. It is up to the absolute majority of the Plenary of the Constitutional

Court based on which aspects this opinion will be formed. What is important here is to stay away from arbitrariness while forming an opinion (§ 87).

Applying these arguments to the current case, the Court declared that taking into account of the circumstances of the concrete case, the social background information that they are related to the mentioned structure and the common opinion of the Constitutional Court Judges that was formed over time, it is considered that these two Judges have such links to the above mentioned structure that it is not appropriate for them to carry out their profession (§ 98).

The Court has emphasised that otherwise the credibility of and respect for the judiciary would be impaired. It was decided unanimously that it is not appropriate for the members of the Constitutional Court to remain in office and that they be dismissed from their profession (§§ 99, 100).

### **Conclusion**

Turkey faced a devastating terrorist coup attempt that our country had ever faced before.

I would like to mention that there is no doubt that Turkish Constitutional Court is to ensure the fundamental freedoms and rights of individuals in the state of emergency period. Turkey is getting normalized and our Court has been exercising its vital role in the normalization period as in other times.

There is no doubt that the application of decree laws will increase the number of individual applications before the Constitutional Court. That will deteriorate the situation regarding the already heavy workload of the Court. I am sure we will sort out this problem by employing effective means.

We, as the Presidents and Judges of constitutional or supreme courts, should be very well aware of the fact that if there is no democratic constitutional order, there would be no constitutional rights to be protected by these courts.

Thank you for your attention.