

# KHK

## ERDOĞAN'S RULE BY ROYAL DECREE TURKEY'S CONTEMPT FOR THE RULE OF LAW



### CRIMINAL ACCUSATIONS ON ABSURD PRETEXTS IN TURKEY

SEPTEMBER, 2017



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## *About Stockholm Center for Freedom*

*Stockholm Center for Freedom (SCF) is an advocacy organization that promotes the rule of law, democracy and fundamental rights and freedoms with a special focus on Turkey, a nation of 80 million that is facing significant backsliding in its parliamentary democracy under its autocratic leaders.*

*SCF, a non-profit organization, was set up by a group of journalists who have been forced to live in self-exile in Sweden against the backdrop of a massive crackdown on press freedom in Turkey.*

*SCF is committed to serving as a reference source by providing a broader picture of rights violations in Turkey, monitoring daily developments on fact-based investigative journalism and documenting individual cases of the infringement of fundamental rights. The founders of SCF are top-notch journalists who had managed national dailies in Turkey and worked for leading media outlets before they were forced to leave. They have the expertise, human resources and network on the ground to track events in Turkey despite serious challenges.*

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# Turkey's contempt for the rule of law

## INTRODUCTION

The Turkish government appears to enjoy governing the country with interim decree-laws that effectively sideline Parliament and have dismantled the independent judiciary under emergency rule, which has been repeatedly extended for over a year since a controversial July 15, 2016 coup bid. The government has implemented measures that have gone beyond addressing urgent security needs and has started using emergency powers to regulate matters that require inclusive and participatory discussion among all stakeholders.

The decree-laws were used to make drastic changes in the government such as paving the way for prosecution of members of Parliament by revoking immunity or empowering Turkey's notorious intelligence agency with complete impunity.<sup>1</sup> They were also utilized in regulations on seemingly trivial matters, from changing standards for winter tires<sup>2</sup> to banning matchmaking TV shows,<sup>3</sup> which have nothing to do with emergency rule. While defending itself at the Council of Europe and United Nations, the Turkish government often emphasized that the scope of the decree-laws issued in that respect has been limited to terrorist organizations in order not to interfere with the rights and freedoms of others.<sup>4</sup> Examples from the ground tell a completely different tale, however.

It is clear that under the emergency rule that was renewed for the fourth time on April 17, 2017, the authoritarian government of President Recep Tayyip Erdoğan has practically usurped legislative and judicial powers.<sup>5</sup> Acting on behalf of the legislature and the judiciary, President Erdoğan decides what is to be considered a crime and who is guilty, and requests the courts to do the necessary. "Our nation has already condemned

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1] "Turkish intelligence tied to Erdoğan by new gov't decree," 25 August 2017, <https://www.turkishminute.com/2017/08/25/turkish-intelligence-tied-to-erdogan-by-new-govt-decree/>

2] "KHK'da kar lastiği uygulamasında değişiklik," NTV 9 February 2017, [http://www.ntv.com.tr/otomobil/khkda-kis-lastigiuygulama-sinda-degisiklik,4h\\_ch2501k6g7I2huGki2g](http://www.ntv.com.tr/otomobil/khkda-kis-lastigiuygulama-sinda-degisiklik,4h_ch2501k6g7I2huGki2g)

3] "Evlilik programları KHK ile yasaklandı," Hürriyet, 30 April 2017, <http://www.hurriyet.com.tr/evlilik-programi-khk-ile-yasak-40442535>

4] Letter from Talip Küçükcan, member of Erdoğan's ruling political party AKP and head of the Turkish delegation at the Parliamentary Assembly of the Council of Europe (PACE), 23 February 2017

5] "Erdoğan artık açık açık söylüyor: Yasama, yürütme ve yargı..." Cumhuriyet, 18 January 2017, [http://www.cumhuriyet.com.tr/haber/turkiye/662027/Erdoğan\\_artık\\_acik\\_acik\\_soyluyor\\_\\_Yasama\\_\\_yurutme\\_ve\\_yargi....html](http://www.cumhuriyet.com.tr/haber/turkiye/662027/Erdoğan_artık_acik_acik_soyluyor__Yasama__yurutme_ve_yargi....html)



**Erdoğan enjoys governing Turkey with emergency law-decrees (KHK) instead of Parliament. So far, 439 laws were changed with 26 law-decrees.**

them with the harshest penalty, which is treason, in their hearts. I have no doubt that the courts, judging in the name of the nation, will render their verdicts accordingly,” he said in June 2017.<sup>6</sup>

In the event he is not satisfied with the court decisions despite the judiciary’s subordination to his rule, Erdoğan directly urges the people to execute the punishment: “None of these bloody murderers will avoid the severe fate that lies ahead. Their immorality during trials will not help them while they rot in prison. If they are released after serving their time, our nation will administer the necessary punishment whenever they see them on the streets.”<sup>7</sup> This is an open call for mob lynching and vigilante violence by the country’s leader, even after the suspects are found guilty on what seem to be completely fabricated charges and serve time in terrible conditions in Turkish prisons, where they are often subjected to torture and ill treatment.

It is worrying that Erdoğan’s ruling Justice and Development Party (AKP) electoral base already has a tendency toward lynching, of which there are painful examples. In the city of Samsun a former police commissioner was almost beaten to death by an Erdoğan fanatic in front of a crowd on the street, and video footage of the incident was shared by the assailant on social media.<sup>8</sup> The violence is directed not only at individuals but also at institutions that are targeted by the government. There were

6] “Erdoğan’dan mahkemede yalan söyleyen FETÖ’cülere sert tepki,” Yeni Akit, 1 June 2017, <http://www.yeniakit.com.tr/haber/erdogandan-mahkemede-yalan-soyleyen-fetoculere-sert-tepki-340058.html>

7] “Cumhurbaşkanı Sayın Recep Tayyip Erdoğan iç güvenlik birimleriyle iftar yemeğine katıldı,” 7 June 2017, <https://www.egm.gov.tr/haberler/Sayfalar/Cumhurbaskani-Sayin-Recep-Tayyip-Erdogan-ic-Guvenlik-Birimleriyle-iftar-Yemegine-Katildi.aspx>

8] “Fetö’den ihraç edilen emniyet müdürünü sokak ortasında tekme tokat dövdü...” Cumhuriyet, 10 March 2017, [http://www.cumhuriyet.com.tr/haber/turkiye/695697/FETO\\_den\\_ihrac\\_edilen\\_emniyet\\_mudurunu\\_sokak\\_ortasinda\\_tekme\\_tokat\\_dovdu...\\_Serbest\\_birakildi.html](http://www.cumhuriyet.com.tr/haber/turkiye/695697/FETO_den_ihrac_edilen_emniyet_mudurunu_sokak_ortasinda_tekme_tokat_dovdu..._Serbest_birakildi.html)

instances where these institutions were vandalized and attacked. Schools and bookstores that are linked to the Gülen movement<sup>9</sup> were raided and plundered.<sup>10</sup> At rallies, prominent AKP-linked figures known for their extremist views incited people to pillage by describing the properties of the movement as the spoils of war, in a mindset similar to that of the Islamic State in Iraq and the Levant (ISIL).<sup>11</sup>

While defendants were deprived of the right to due process and a fair trial, the courts have been put under continuous and overwhelming pressure by the political authorities. Erdoğan's personal lawyers have been attending what appear to be sham trials and acting as if they are inspectors overseeing judges and prosecutors.<sup>12</sup> The Turkish president also keeps the courts under pressure through his advisors. "I am monitoring the trials through all of my chief advisors. They follow hearings, particularly in Ankara and Istanbul. I am reading their reports on a real-time basis and keeping up with the proceedings," Erdoğan said in June 2017.<sup>13</sup>

Despite the ban on publishing or revealing pictures from courtrooms, members of Parliament from Erdoğan's AKP share their photos from court in order to prove their presence during the trials.<sup>14</sup> Sometimes they go so far as to decide how the procedural laws should be implemented and even dare to dictate how hearings should be held. In their interventions, claiming that the defendants are lying, they ask the judges not to take their statements into consideration, in a blatant interference by politicians in the conduct of hearings.<sup>15</sup> The intense pressure on courts makes fair trials and independent judgements impossible in Turkey.

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9] The Gülen movement is inspired by the teachings of the US-based Muslim scholar Fethullah Gülen, who advocates interfaith dialogue, science education, poverty eradication and community involvement. Gülen has been a prominent critic of Erdogan on corruption in the government and Turkey's aiding and abetting of armed jihadist groups in Syria and other places. Erdogan has declared a witch-hunt against the movement and launched a persecution unprecedented in Turkish history. According to Turkey's Justice Ministry statement on July 13 that 50,510 people have been arrested and 169,013 have been the subject of legal proceedings over alleged links to the movement. the Erdogan government also accused the movement of staging the failed coup. Gülen and his movement strongly denied having any role in the failed coup and called for an international investigation into it, but President Erdoğan — calling the coup attempt "a gift from God" — and the government initiated a widespread purge aimed at cleansing sympathizers of the movement from within state institutions without any criminal evidence, dehumanizing its popular figures and putting them in custody.

10] "İzmir'de Kolej operasyonu; Gülen'in odasına 2. Baskın," 22 July 2016, <http://www.egedesonsoz.com/haber/izmir-de-kolej-operasyonu-adi-degisti-gulen-in-odasina-2-baskin/931441>; "FETÖ'nün kitapçısı yağmalandı," Karar , 16 July 2016, <http://www.karar.com/malatya/fetonun-kitapcisi-yagmalandi-188988?p=2#>

11] "Balkanlıoğlu hoca: FETÖ'nün ganimetlerini tepe tepe kullanın," Yeniakit, 22 July 2016, <http://www.yeniakit.com.tr/video/balkanlioglu-hoca-fetonun-ganimetlerini-tepe-tepe-kullanin-11786.html>

12] "Erdoğan'ın avukatı FETÖ Davasında sinirlendi," Finans Gündem, 29 May 2017, <http://www.finansgundem.com/haber/erdoganin-avukati-feto-davasinda-sinirlendi/1198788>

13] "Reisi cumhurdan açıklama: Gönünüz ferah olsun, takip ediyorum," Haber365, 7 June 2017, <http://www.haber365.com.tr/gundem/reisi-cumhurdan-aciklama-gonlunuz-ferah-olsun-takip-ediyorum-h58423.html>

14] "Duruşmada fotoğraf çekilir mi?" Odatv, 8 June 2017, <http://odatv.com/durusmada-fotograf-cekilir-mi-0806171200.html>

15] "Cumhurbaşkanı Erdoğan'dan itirafçı uyarısı: Doğruyu söylemiyorlar," Yeni Şafak, 18 January 2017, <http://www.yenisafak.com/gundem/cumhurbaskani-erdogandan-itirafci-uyarisi-dogruyu-soylemiyorlar-2598693>

The justifications for court decisions show that the hurdles related to judicial proceedings are not restricted to these interventions, either. Many violations have been reported about the infringement of basic principles of law and fundamental rights enshrined in the international conventions with which Turkey is under obligation to comply. Arbitrary detentions, enforced disappearances and suspicious deaths under detention and in prisons have increased. The government totally disregards the principles of “necessity” and “proportionality,” which are benchmarks to measure whether decree-law are compatible with Turkey’s commitments when implementing measures taken under the state of emergency.<sup>16</sup> Legal remedies appear only on paper as there is no real recourse to justice in Turkey, with the appeals courts and Constitutional Court subordinated to the whims and emotions of one man, namely President Erdoğan.

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16] Nils Muižnieks, Human Rights Commissioner of the Council of Europe, said “I have very serious misgivings on both counts.” See his statement on “Measures taken under the state of emergency in Turkey”, 26 July 2016, <http://www.coe.int/en/web/commissioner/-/measures-taken-under-the-state-of-emergency-in-turkey>

A much-criticized bow taken by the head of Turkey's Constitutional Court Zühtü Arslan before Erdoğan indicated judiciary's total subordination to executive.



## 1. The principle of no punishment without law

The principle that no one can be found guilty of a crime unless it was a crime under the law at the time it was committed is a universally accepted cardinal rule that also applies to Turkey. Only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*). This principle is grossly violated in Turkish courts as tens of thousands have been dragged to jail on charges that were not considered a crime under the penal code.

Article 7 of the European Convention on Human Rights (ECHR), a legal text that is binding on the Turkish legal system, states that “no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”<sup>17</sup>

The European Court of Human Rights (ECtHR) made the application of Article 7 of the convention clear in its case law by saying that “the purpose of the principle enshrined in Article 7 of the Convention was to ensure that offenders knew in advance what acts engaged their criminal responsibility and what penalties they might make themselves liable to, and it could not be accepted that an individual should also be able to take decisions about whether to commit an offence with an eye to what might happen subsequently.”<sup>18</sup>

17] European Convention on Human Rights, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

18] Case of Scoppola v. Italy (No. 2), 10249/03, Grand Chamber, 17 September 2009, <http://hudoc.echr.coe.int/eng?i=001-94135>

Article 15 of the ECHR permits Turkey under emergency rule to derogate in a temporary, limited and supervised manner its obligation to secure certain rights and freedoms under the convention. The Turkish government invoked this right five days after the failed coup attempt last year. Similar notification was also sent to the UN under Article 4 of the International Covenant on Civil and Political Rights. However, the ECHR clearly states that no derogation of Article 7 is allowed even under wartime or extraordinary conditions. As such, Turkey is at least in blatant breach of Article 7 of the convention because neither opposing nor criticizing the government's policies is a crime, nor is affiliation with the Gülen movement, which was considered to be a civic and social group active in science education, interfaith dialogue, poverty eradication and community involvement.

To define an action as a criminal act a law must be enacted in due form by the legislature. Furthermore, the law has to be in conformity with the Turkish Constitution and international conventions to which Turkey is party. Turkey under the Erdoğan government's rule is not in compliance with these principles. In fact, the principle of no punishment without law has been systematically violated during the investigations through which almost 170,000 people have faced legal action (most in the form of detention) and more than 50,000 have been arrested on false charges under the state of emergency. In this period, being an alleged member of the Gülen movement has been enough to be labeled, accused and jailed as a "terrorist" without any further evidence. In fact, it has become the most popular category of crime in Turkey. Ironically, no final judgment has been made by the appellate courts, which makes it impossible, for the time being, to accept the existence of such a terrorist organization beforehand. Even if such a legal precedent were to be set soon, actions attributed to the individuals had to be considered criminal acts under the law at the time the offense took place.

In a report issued by the Venice Commission, an organ specialized in constitutional matters for the Council of Europe, of which Turkey is a member, it was noted that "the Government interpreted its extraordinary powers too extensively and took measures that went beyond what is permitted by the Turkish Constitution and by international law." The report pointed out that in a state of emergency, certain rights cannot be restricted and that "any other restrictions on rights must be demonstrated to be strictly necessary in light of the exigencies of the stated emergency."<sup>19</sup>

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19] Opinion on Emergency Decree Laws Nos.667-676 adopted following the failed coup of 15 July 2016 (12 December 2016) [http://www.venice.coe.int/webforms/documents/default.aspx?pdfId=CDL-AD\(2016\)037-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdfId=CDL-AD(2016)037-e)

The Venice Commission indicated that the government “took permanent measures, which went beyond a temporary state of emergency,” noting that hundreds of “civil servants were dismissed, not merely suspended.” Stressing that tens of thousands of public servants were dismissed on the basis of lists appended to the decree-laws without treating each case on its own merits, evidence and reasoning, the report said, “Basic rights of administrative due process of the public servants dismissed by the decree laws or on their basis have not been respected.”<sup>20</sup>

It further stated: “Collective dismissals ‘by lists’ attached to the decree laws (and similar measures) appear to have arbitrarily deprived thousands of people of judicial review of their dismissals.” The commission’s report maintained that civil servants were dismissed “because of the alleged connections of public servants to the Gülenist network or other organisations considered ‘terrorist’, but this concept was loosely defined and did not require a meaningful connection with such organisations.”<sup>21</sup>

The purge through decree-laws has not only resulted in dismissals and the loss of employment; it also paved the way for criminal prosecution of these people because their names were publicly announced in the decrees-laws as ‘people who are terrorists, or associated with terrorism or in contact with such groups’ without any judicial review or administrative investigation. For instance, decree-law no. 667 dated July 23, 2016, which was enacted for the purge of public officials, was also used later as a framework for criminal investigations.

The justification written by the Constitutional Court for the dismissal of two of its own members under pressure from the Erdoğan government in particular has broadened the limits of unlawfulness to an unprecedented level. Decree-law no. 667 states that “those who are considered to be a member of or have a relation, affiliation or contact with terrorist organizations or structures/entities, organizations or groups, described by the National Security Council as threats to the national security of the state”<sup>22</sup> were to be dismissed. Such vague and ambiguous wording is not only used for justification of the dismissals including the nation’s top judges but is also considered to be a sign of providing unlimited powers for the prosecutors to go after political opponents of the Erdoğan government.

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20] Ibid.

21] Ibid.

22] “667 Sayılı Kanun Hükmünde Kararname,” 23 July 2016, <http://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm>

## 2. The principle of non-retroactivity

The principle of non-retroactivity envisages that a criminal law cannot be applied to the past to prosecute crimes committed before the law was enacted. Moreover, the principle of legality assures that nothing is a crime unless it is

clearly defined and prohibited in the law. As a general rule, a criminal offense and its punishment must be described in the law. These fundamental principles are ignored in Turkey in ongoing prosecutions against the Gülen movement and other critics and opponents of the government.

The case law of the ECtHR is very clear on this. Article 7 of the convention guarantees not only the principle of non-retrospectiveness of more stringent criminal laws but also the principle of retrospectiveness of the more lenient criminal laws. “That

principle is embodied in the rule that where

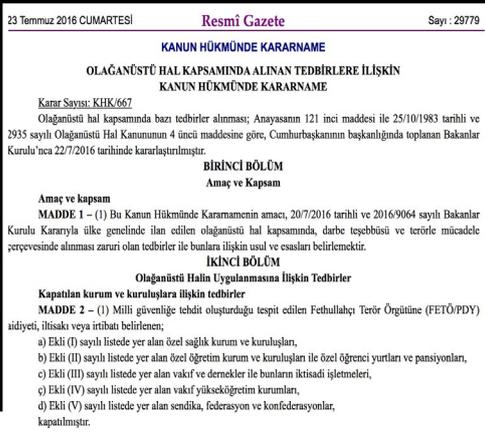
there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant,” the ECtHR said in the *Scoppola v. Italy* (No.2) decision.<sup>23</sup>

In clear violation of the Turkish Constitution and the ECHR, the Turkish government is using membership in duly authorized and officially registered institutions as pretexts to arrest and prosecute people although such membership is not defined as a crime in the law at all. For example, the private schools, cram schools, Bank Asya, union organizations, professional associations, charity organizations, foundations, media outlets and others that were founded by businessmen and professionals who were believed to be linked to the Gülen movement were declared terrorist entities overnight in Turkey after the failed coup of July 15, 2016. By extension, the government claimed, employees, members, volunteers and those who have sort of connections to these entities were deemed as terrorists.

All these were perfectly legal entities until Erdoğan declared them his enemies after corruption investigations that were made public on Dec.17-25,

23] “Case of *Scoppola v. Italy* (No. 2)”, 10249/03, Grand Chamber, 17 September 2009, <http://hudoc.echr.coe.int/eng?i=001-94135>

The government branded tens of thousands of people & hundreds of entities as terrorists in Official Gazette without a probe and trial.



2013 and that incriminated Erdoğan, his family members and his business and political associates. Some of these institutions had already been confiscated by the government even before the controversial coup attempt.<sup>24</sup> President Erdoğan had described the December 17/25, 2013 graft probes<sup>25</sup> as a coup against his government and initiated an all-out war against the Gülen movement, which he held responsible for the investigations, although he failed to present any evidence linking the movement to the graft probes.<sup>26</sup>

Council of Europe Commissioner for Human Rights Nils Muižnieks made perfectly clear the contradictions in Turkish government practices in going after the Gülen movement in a note he issued in October 2016. He recalled that the Gülen movement appears to have developed over decades and enjoyed, until fairly recently, considerable freedom to establish a respectable presence in all segments of Turkish society, including religious institutions, education, civil society and trade unions, media, finance and business. “It is also beyond doubt that many organisations affiliated to this movement, which were closed after 15 July, were open and legally operating until that date. There seems to be general agreement that it would be rare for a Turkish citizen never to have had any contact or dealings with this movement in one way or another.”<sup>27</sup>

The employees of Gülen-affiliated institutions, the schools, the students and their families; those who had an account or conducted transactions at Bank Asya, at one time the country’s largest Islamic lender; members of the Turkish Confederation of Businessmen and Industrialists (TUSKON), the largest business advocacy group that represented mostly small and medium-sized enterprises in Turkey; donors to the charity organization Kimse Yok Mu; and subscribers of critical magazines and newspapers such as Zaman, the most highly circulated daily in Turkey, which was seized by the government in March 2016; have suddenly been accused of “membership in a terrorist organization” despite the fact that none of these actions is defined as a crime in the Constitution or Turkish Penal Code. Therefore, the accusations made in indictments by the prosecutors or during trials lack any legal basis; yet, the government pursues criminal cases nonetheless as the independent judiciary has ceased to exist and the rule of law no longer exists in Turkey.

The Stockholm Center for Freedom’s (SCF) review of politically motivated

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24] “15 July Erdoğan’s Coup,” Stockholm Center for Freedom (SCF), July 2017, [https://stockholmcf.org/wp-content/uploads/2017/07/15\\_July\\_Erdogans\\_Coup\\_13.07.2017.pdf](https://stockholmcf.org/wp-content/uploads/2017/07/15_July_Erdogans_Coup_13.07.2017.pdf)

25] “10 soruda 17-25 Aralık operasyonları,” BBC Türkçe, 16 December 2014 [http://www.bbc.com/turkce/haberler/2014/12/141212\\_17\\_25\\_aralik\\_operasyonu\\_neler\\_oldu\\_10\\_soruda](http://www.bbc.com/turkce/haberler/2014/12/141212_17_25_aralik_operasyonu_neler_oldu_10_soruda)

26] “Erdoğan’dan çarpıcı 17 Aralık açıklaması: Yolsuzluk kılıfına girmiş darbe girişimi,” İHA, 14 January 2014, <http://www.iha.com.tr/haber-basbakan-erdogandan-carpici-17-aralik-operasyonu-aciklamasi-323825/>

27] “Council of Europe Commissioner for Human Rights. Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey” 7 October 2016, <https://rm.coe.int/16806db6f1>

indictments against the Gülen movement in the last couple of years shows that the Turkish government has blatantly violated the universally accepted principles of the rule of law, invented crimes that have no basis in the criminal code and pursued a witch-hunt against one of the largest social groups in Turkey on fabricated charges of terrorism, coup plotting and other criminal offenses.

### 3. Examples of fabricated charges in Turkey

The following acts have been primarily used by the Turkish government as pretexts for the arrest and prosecution of members of the movement although they are not defined as crimes in the law. The list is not exhaustive but is indicative of a larger problem in the abuse of the criminal justice system by the Turkish government and represents a clear breach of Turkey's obligations under international conventions. The Turkish government remains deliberately ambiguous when repeatedly asked about what criteria and evidence it has used to round up tens of thousands of people based on their alleged affiliation with the Gülen movement. But, based on warrant sheets, arrest orders, indictments and court trials, the criteria below, which have no basis in the law and do constitute criminal activity at all, appear to be driving the mass dismissals, arrests and escalating persecution in Turkey.



Turkey's largest circulated newspaper Zaman declared as terror entity by the government because of critical editorial policy.



#### 3.1. Subscriptions to the Zaman newspaper

With nearly 1 million sales and subscriptions, the Zaman daily was Turkey's highest<sup>28</sup> circulated newspaper.<sup>29-30</sup> It was one of the leading critical

28] Its circulation had been monitored by BPA Worldwide since 2007, the only newspaper in Turkey whose sales have been audited since 2007 by BPA Worldwide, a prestigious company that audits the circulation of business and consumer magazines worldwide. All its reports on Zaman have been published publicly. BPA is a founding member of the International Federation of Audit Bureaux of Certification (IFABC), a voluntary cooperative federation of audit companies in 34 countries around the globe.

29] "Zaman Gazetesi," Wikipedia, [https://tr.wikipedia.org/wiki/Zaman\\_\(gazete\)#cite\\_note-ABC-53](https://tr.wikipedia.org/wiki/Zaman_(gazete)#cite_note-ABC-53)

30] "Medyatava tiraj raporu," 5 January 2015, <http://www.medyatava.com/tiraj/2015-01-05>

## Zaman gazetesine abone olmak,

Bu haliyle şüphelinin, FETÖ/PDY silahlı terör örgütüne müzahir olan [REDACTED] Sağlık Derneğine üye olmak, 2015 yılı Haziran ayına ayına kadar şüphelinin eşi ve çocukları ile birlikte örgütün yayın organı olan Zaman gazetesine abone olmak, şüphelinin kalmakta olduğu annesine ait evde kolluk görevlilerince yapılan arama neticesinde ele geçirilen ve 15 Temmuz tarihinden sonra yasaklı yayınlar arasına alınan çok sayıda örgütsel dökümanları

newspapers that dared to publish articles about corruption investigations that rattled the Turkish government and incriminated Erdoğan and others.

On March 4, 2016, the Turkish government confiscated Zaman and appointed partisans to run the newspaper despite the fact that the Turkish Constitution explicitly bans seizure or confiscation of publication/broadcasting organs.<sup>31</sup> The editorial line of the newspaper became pro-Erdoğan overnight after the seizure.

The Zaman daily, right after the failed coup on July 15, 2016, was shut down with the emergency decree-law no. 668, dated July 27, 2016.<sup>32</sup> Arrest warrants were issued for its writers, reporters and executives, and most of them were eventually detained and many were formally arrested on trumped-up terror charges.<sup>33</sup> The problem is that there was no court decision about whether the Zaman daily had a link to terrorism. Moreover, even if there were such a decision, it cannot be implemented retroactively, and former employees and readers of the newspaper cannot be declared terrorists on the basis of this later invention by the government. The ban on the retroactivity of laws, except in favor of suspects, is one of the basic principles of criminal law.

This fundamental principle and specific provisions in the Turkish Constitution and law notwithstanding, many examples from arrest sheets and indictments indicate that a subscription to the Zaman daily is used as evidence of membership in a terrorist organization. Furthermore, the accusation is not confined to subscribers; their spouses and children, too, have been facing the same accusations.

Considering that Zaman was at one point in time selling 1,2 million copies a day, the Turkish government considers such a large number of subscribers to be suspects. The number multiplies when one factors the spouses and children in the tally.

31] Article 30 of Turkish Constitution states that “a printing house and its annexes, duly established as a press enterprise under law, and press equipment shall not be seized, confiscated, or barred from operation on the grounds of having been used in a crime.” See the text at Turkish Parliament’s web site [https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf)

32] 27 Temmuz 2016 tarihli Resmi Gazetede yayımlanan 668 Sayılı KHK <http://www.resmigazete.gov.tr/eskiler/2016/07/20160727M2-1.pdf>

33] “Zaman Gazetesinin eski ekibine operasyon,” Cumhuriyet, 27 July 2016, [http://www.cumhuriyet.com.tr/haber/turkiye/574815/Zaman\\_gazetesinin\\_eski\\_ekibine\\_operasyon.html](http://www.cumhuriyet.com.tr/haber/turkiye/574815/Zaman_gazetesinin_eski_ekibine_operasyon.html)

Today, thousands of people have been put under arrest simply for being a reader of a newspaper that was sold at almost all newsstands, was subscribed to and paid for by credit card and was published under guarantee of the law, the constitution and international agreements.

Correspondence and communications between law enforcement agencies and the courts show that investigations are proceeding slowly because determining the readers and subscribers of Zaman, who amount to several million when considering all the people who subscribed to the daily throughout the years, takes time. Nevertheless, the convictions in some cases reveal that all Zaman readers are considered terror suspects. Not only Zaman but other critical publications such as the Bugün daily, the Aksiyon weekly news magazine and the Sızıntı monthly periodical were also listed as criminal evidence by prosecutors who investigated their subscribers. If there is any record of a subscription, it is included as evidence in indictments.<sup>34</sup>



### 3.2. Being a client of Bank Asya

Bank Asya was the largest Islamic lender and one of the biggest private banks in Turkey<sup>35</sup> until it was unlawfully seized by the government in May 2015. The bank, which had 210 branches, 5,000 employees and around 1.5 million clients, was founded on October 24, 1996 upon formal approval from the regulators. It has operated under the supervision of the independent regulatory bodies in Turkey that were responsible for overseeing the banking sector. It

was a popular bank and among the top sponsors of sporting events, charitable work and community events. It was the official sponsor of the Turkish Football League at the secondary level between 2008 and 2012.<sup>36</sup>

The bank was one of three banks with the highest liquidity in Turkey, yet it was targeted by Erdoğan because its shareholders included investors who were seen as close to Gülen. Erdoğan

**Bank Asya, the largest Islamic lender, was raided by police and seized by government unlawfully.**



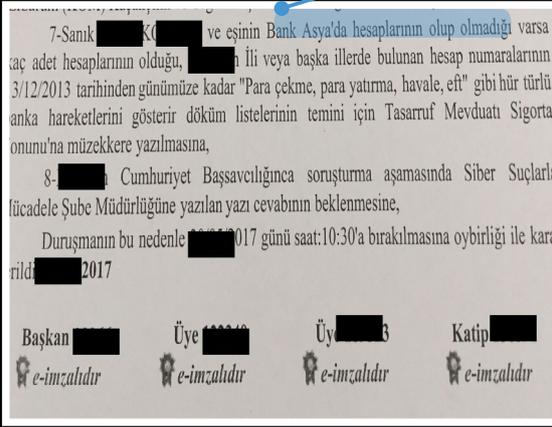
34] "FETÖcülerini tespit etmek için 12 soru," Milli Gazete, 15 August 2016, [http://www.milligazete.com.tr/iste\\_fetoculerini\\_tespit\\_etmek\\_icin\\_sorulan\\_12\\_soru/419985](http://www.milligazete.com.tr/iste_fetoculerini_tespit_etmek_icin_sorulan_12_soru/419985)

35] "Bank Asya," Wikipedia, [https://tr.wikipedia.org/wiki/Bank\\_Asya](https://tr.wikipedia.org/wiki/Bank_Asya)

36] "TFF Birinci ligin adı Bankasya ligi oldu," 16 January 2008, <http://www.tff.org/default.aspx?pageID=287&ftxtID=3027>

Bank Asya'da hesaplarının olup olmadığı

**Bank Asya managers, employees, clients were accused of terrorism for having an account.**



first tried to trigger a run on the bank by wrongfully claiming that the bank was already bankrupt, but failed in his attempts to do so. Then he orchestrated a legal case to take over the bank by using partisan prosecutors. The government not only came after the shareholders and bank managers but the account holders as well. At least 700,000 people were reportedly put under investigation for their connections to the bank.<sup>37</sup>

In some cases, the court documents say “the defendant and his/her partner/ husband/wife were investigated to find

out whether they had any account in Bank Asya or any transaction record with it. All kinds of banking transactions they made such as deposits, withdrawals, money orders and electronic fund transfers (EFT) were examined.” If any transaction record with Bank Asya is discovered, it is accepted as evidence of membership in a terrorist organization in the indictment, is treated as such in the trial, and the conviction is rendered accordingly.<sup>38</sup> This overreach has even irked lawmakers from Erdoğan’s ruling AKP. For example, AKP Manisa deputy Selçuk Özdağ complained about this situation.<sup>39</sup>

When prominent journalists Ahmet Altan and Mehmet Altan were arrested, the Sabah newspaper, which is owned by Erdoğan’s family, said regarding the search conducted by police at their houses: “A Bank Asya credit card was found during the search at Mehmet Altan’s house.”<sup>40</sup> Through their news reports, which are designed to steer judges and prosecutors in a certain direction, the media close to Erdoğan justifies a Bank Asya connection as a reason for arrest.<sup>41</sup>

According to current banking rules in Turkey, deposits of less than TL 100,000 are under state guarantee. Even if the bank faces bankruptcy, the Savings Deposit Insurance Fund (TMSF) has to pay this amount of money to

37] “700 bin kişi sorgulanıyor,” Hürriyet, 21 September 2016, <http://www.hurriyet.com.tr/700-bin-kisis-orgulaniyor-40228664>

38] “FETÖ sanığının Bankasya savunması itibar görmedi,” Anadolu Ajansı, 10 May 2017, <http://aa.com.tr/tr/turkiye/feto-saniginin-bank-asya-savunmasi-itibar-gormedi/815213>

39] “AKP’li Özdağ’dan sitem: Bank Asya’dan kredi çekmiştim, üniversitede olsam atılırdım,” Diken, 29 October 2016 <http://www.diken.com.tr/akpli-ozdagdan-sitem-bank-asyadan-kredi-cekmistim-universitede-olsam-atilirdim/>

40] “İşte Ahmet ve Mehmet Altan’ın evinden çıkan deliller,” Sabah, 19 September 2016, <http://www.sabah.com.tr/gundem/2016/09/19/iste-ahmet-ve-mehmet-altanin-evinden-cikan-deliller>

41] “13 Adımda FETÖ’den tutuklanma kriterleri,” Türkiye, 31 January 2017, <http://www.turkiyegazetesi.com.tr/gundem/442810.aspx>

depositors. The TMSF has repeatedly announced that it would pay those who have less than TL 100,000 in their accounts if Bank Asya were to go bankrupt.<sup>42</sup> Indeed, this statement is a kind of admission that depositing money in Bank Asya was not a crime. The number of clients who have less than TL 100,000 in deposits -- the state guaranteed amount -- in Bank Asya is around 1,2 million. It is understood that together with clients who have higher amounts of deposits or those who have other kinds of transaction records with Bank Asya, such as loans, money orders and EFTs, the number of people who have made any kind of transaction with the bank exceeds 1,5 million. All those people are considered potential criminals.

SCF's own research shows that 28 managers of Bank Asya are currently imprisoned in Turkey on trumped-up charges, while 16 managers with outstanding arrest warrants remain at large in Turkey or have fled the country to avoid jail where they will most likely be tortured, just like their colleagues who are already locked away in prisons. There is no exact data available on how many bank clients were imprisoned, but it is estimated to be in the thousands given the fact that the government uses that as evidence to charge people under anti-terror laws.



### 3.3. Union membership

Unions are among those civil society organizations that people close to the Gülen movement had founded according to the rules and regulations in effect at the time.<sup>43</sup> The Aksiyon-İş Union was established in education but soon expanded to include other industries and became a confederation of unions representing labor in various sectors.<sup>44</sup> Facing new competition that became popular in a very



**Aktif Eğitim-Sen, a union critical of Erdogan gov't, was forcibly shut down and its members were considered to be 'terrorists' by government overnight.**

42] "Bank Asya'da 1,2 milyon kişiye ödeme yapılacak," Sabah, 16 December 2016, <http://www.sabah.com.tr/ekonomi/2016/12/16/bank-asyada-12-milyon-kisiye-odeme-yapilacak-bank-asya-odemelerini-nasil-alacagim>

43] "Aksiyon İşçi Sendikaları Konfederasyonu," Wikipedia, [https://tr.wikipedia.org/wiki/Aksiyon\\_%C4%B0%C5%9F%C3%A7i\\_Sendikalar%C4%B1\\_Konfederasyonu](https://tr.wikipedia.org/wiki/Aksiyon_%C4%B0%C5%9F%C3%A7i_Sendikalar%C4%B1_Konfederasyonu)

44] "Aktif Eğitimciler Sendikası kuruldu," 18 May 2012, <http://www.egitimciyiz.com/aktif-egitimciler-sendikasi-kuruldu.html/>

short period of time, Memur-Sen, a pro-government union, was furious to see a new player in the union field. This issue has become one of the major areas of conflict between the Gülen movement and Erdoğan.

Various articles have also appeared in the media in this respect. For instance, Koray Çalışkan, a journalist with the Radikal newspaper, wrote that “the Gülen movement has taken the first step against the closure of private teaching institutions by leaving the Eğitim-Bir Sen union, which has close relations with the AKP. The Aktif Eğitim-Sen union, established last year, has attracted 35,000 members in only nine months, from unions that are close to the AKP.”<sup>45</sup>

After the corruption and bribery investigations of December 17/25, 2013, unions close to the movement came under increased pressure from the government. Using the controversial coup bid as a pretext, the Erdoğan government shut down all 19 unions, federations and confederations along with 35 health institutions, 1,043 private education institutions, 1,229 foundations and associations, and 15 universities with decree-law no. 667.<sup>46</sup> Their assets were confiscated as well. Administrators and members of the unions also faced detention and arrest in large numbers.<sup>47</sup>

Overnight, the Turkish government declared legally operating unions that it had allowed to be established and for whose members it had paid union membership fees to be criminal organizations and their members terrorists. Being a member of one of the unions has become grounds for conviction.<sup>48</sup> Even jurists and journalists close to the AKP said they could not defend this arbitrary and totally absurd situation. Ahmet Taşgetiren, a columnist for the Star newspaper, a daily controlled by the Erdoğan government, wrote: “As has been done since the very beginning of the struggle against FETÖ, if you have taken December 17/25 as a milestone and called participation in institutions close to the Hizmet movement support for terrorist activities, including some organizations that are legitimately operating under state supervision, that is a contradiction in itself. For example, Bank Asya continued its legitimate activities after December 17/25, TUSKON continued to operate in the same way, as did Aktif Eğitim-Sen. Moreover, the government paid the membership fee on behalf of the members that is required to join this union. Would it be reasonable to present a relation with an organization that is seen ‘legitimate’ by state as evidence of

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45] “Cemaatten mühim bir siyasi adım,” Koray Çalışkan, Radikal, 10 January 2013, <http://www.radikal.com.tr/yazarlar/koray-caliskan/cemaatten-muhim-bir-siyasi-adim-1165373/>

46] “667 sayılı Kanun Hükmünde Kararname,” 23 July 2016, <http://www.resmigazete.gov.tr/eskiler/2016/07/20160723.pdf>

47] “Bursada 19 FETÖcü Aktif-Sen üyesi adliyyeye sevk edildi,” Milliyet, 28 September 2016, <http://www.milliyet.com.tr/aktif-sen-uyesi-19-feto-cu-adliyyeye-bursa-yerelhaber-1570438/>; “Antalyada Aktif-Sen üyesi 30 tutuklu sanığın yargılanmasına başlandı,” 7 February 2017, <http://www.memurlar.net/haber/644648/aktif-sen-uyesi-30-tutuklu-sanigin-yargilanmasina-baslandi.html>; “Adana’da Aktif-Sencilere FETÖ Davası açıldı,” Sabah, 26 November 2016, <http://www.sabah.com.tr/guney/2016/11/26/aktif-sencilere-feto-davasi-acildi>

48] “Aktif-Sen üyesine 6 yıl üç ay ceza verildi,” 17 March 2017, <http://www.ogretmenlersitesi.com/haber/aktif-sen-uyesine-6-yil-3-ay-ceza-verildi-h38068.html>

a relationship with a terrorist organization?”<sup>49</sup>

The Cihan-Sen confederation, consisting of unions that were established by public employees, had 22,104 members in July 2016 according to government data.<sup>50</sup> A total of 18,015 of these members were under the roof of Aktif-Sen, which was established in the education sector. Today, all of these members are at risk of being charged with membership in a terrorist organization. Thousands of teachers have already been arrested and face prosecution just because they were members of these unions.<sup>51</sup>



### 3.4. Membership in business association TUSKON

The Turkish Confederation of Businessmen and Industrialists, best known by its acronym TUSKON, was the umbrella organization for 211 businessmen’s associations in Turkey and 150 others in several countries. It was organizing investment and business and trade fairs under the auspices of the Turkish government. However, TUSKON was shut down on July 23, 2016 with decree-law no. 667 on false terror charges. The government has seized almost 1,000 companies in the last year alone, and \$11 billion in



**TUSKON, the largest business advocacy group that mainly represented SMEs, was shut down because it criticized government on corruption.**

49] “Hukukçu diyor ki...” Ahmet Taşgetiren, Star, 14 June 2017, <http://www.star.com.tr/yazar/hukukcu-diyor-ki-yazi-1227444/>

50] Çalışma ve Sosyal Güvenlik Bakanlığından: 4688 sayılı kamu görevlileri sendikaları ve toplu sözleşme kanunu gereğince kamu görevlileri sendikaları ile konfederasyonların üye sayılarına ilişkin 2016 July istatistikleri, Resmi Gazete, <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2016/07/20160704.htm&main=http://www.resmigazete.gov.tr/eskiler/2016/07/20160704.htm>

51] “Acıpayamda FETÖ’den 22 kadın öğretmene gözaltı,” Hürriyet, 17 July 2017, <http://www.hurriyet.com.tr/acipayamda-fetoden-22-kadin-ogretmene-gozalti-40523866>; “Kayseri’de FETÖ’den 33 kadın öğretmene gözaltı,” CNNTürk, 3 March 2017, <http://www.cnnturk.com/turkiye/kayseride-fetoden-33-kadin-ogretmene-gozalti>; “Öğretmenlere FETÖ operasyonu 73 gözaltı,” Hürriyet, 6 June 2017, <http://www.hurriyet.com.tr/ogretmenlere-feto-operasyonu-73-gozalti-40481396>

corporate assets have been confiscated.<sup>52</sup> The personal assets of TUSKON members were also frozen or seized.

The main accusation mentioned in the indictment against TUSKON members is their participation in the 5th Ordinary Meeting of the TUSKON General Assembly, which took place on March 1, 2014. At this meeting the president of TUSKON, Rıza Nur Meral, delivered a bold speech in which he stated, in relation to the December 17-25 corruption probes, that politicians who want to be rich should quit politics and public office and venture into their own businesses instead.<sup>53</sup> Erdoğan took the criticism of corruption in his government personally and launched a crackdown on TUSKON, encouraging members to defect. When he failed to destroy the organization, he orchestrated a criminal probe and eventually shut down the business group with decree-laws. The businessmen who were present at the meeting and applauded Meral's speech were identified and eventually arrested.<sup>54</sup>

Today regarded as a terrorist organization,<sup>55</sup> TUSKON, with its more than 40,000 members, was the most popular and effective businessmen's organization in Turkey just three years ago.<sup>56</sup> Then-Prime Minister Erdoğan, accompanied by several Cabinet ministers in charge of economy and trade, used to participate in the general assembly meetings of TUSKON.<sup>57</sup> Even the wildest imagination could not have suggested that such a respectable organization would be labeled as and declared a terrorist organization. In what kind of justice system could one accept such arbitrary and unreasonable accusations as legitimate and regard the members of a perfectly legitimate organization as criminals by disregarding the legal principle of retrospectivity. This is unfortunately what has been happening for quite a while in Turkey.

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52] "Turkey Sees Foes at Work in Gold Mines, Cafes and 'Smurf Village'", David Segal, 22 July 2017, <https://www.nytimes.com/2017/07/22/business/turkey-akin-ipek-fethullah-gulen-recep-tayyip-erdogan.html>

53] "TUSKON toplantısında Hükümet açıkça tehdit edilmişti," 3 May 2017, <http://aa.com.tr/tr/turkiye/tuskon-toplantisinda-hukümet-acikca-tehdit-edildi/810787>

54] "TUSKON başkanını ayakta alkışlayan iş adamları hakkında gözaltı kararı," Diken, 21 August 2016, <http://www.diken.com.tr/tuskon-baskanini-ayakta-alkislayan-isadamlari-hakkinda-gozalti-karari/>

55] "Adana'da FETÖ sanığı işadamlarına dava," Milliyet, 5 May, 2017, <http://www.milliyet.com.tr/adana-da-feto-sanigi-is-adamlari-hak-kindaki-adana-yerelhaber-2019181/>; "Denizli'de işadamlarına yönelik ikinci FETÖ Davası," Hürriyet, 2 May 2017, <http://www.hurriyet.com.tr/denizlide-isadamlarina-yonelik-2nci-feto-dava-40444879>; "Bartın'da, FETÖ davasında işadamları hakim karşısında," 28 April 2017, <https://www.haberler.com/bartın-da-feto-davasinda-isadamlari-hakim-9555015-haberi/>

56] "Ticaret Köprüsünden 300 milyon dolarlık ihracat gelecek," Dünya, 27 October 2011, <https://www.dunya.com/gundem/ticaret-koprusunden-300-milyon-dolarlik-ihracat-gececek-haberi-157528>; "Türkiye'nin Afrika açılımında Gülen okulları ve TUSKON'un rolü büyük," T24, 7 January 2013, <http://t24.com.tr/haber/ft-turkiyenin-afrika-aciliminda-gulen-okullari-ve-tuskonun-rolu-buyuk,221159>

57] "Toplantıya Başbakan Erdoğan'ın yanısıra şu bakanlar katıldı: Devlet Bakanı ve Başbakan Yardımcısı Ali Babacan, Devlet Bakanı ve Başmüzakereci Egemen Bağış, Devlet Bakanı Hayati Yazıcı, Devlet Bakanları Zafer Çağlayan ve Faruk Nafiz Özak, Sanayi ve Ticaret Bakanı Nihat Ergün, Tarım ve Köyüşleri Bakanı Mehmet Mehdi Eker ve Ulaştırma Bakanı Binali Yıldırım." Bkz. "Erdoğan Hukukta otoban istedi, zenginliği demokrasiye bağladı," Hürriyet, 7 March 2010, <http://www.hurriyet.com.tr/erdogan-hukukta-otoban-istedi-zenginligi-demokrasiye-bagladi-14030784>



### 3.5. Volunteering for the Kimse Yok Mu charity



**Volunteers for Kimse Yok Mu, a charity group that is accredited to the UN ECOSOC, were accused of terrorism without any evidence.**



Kimse Yok Mu, a charity organization that was set up in 2004 in Istanbul<sup>58</sup> and had quickly developed internationally recognized relief programs in partnership with the UN High Commissioner for Refugees (UNHCR), was also targeted by the Erdoğan government because of its affiliation with the Gülen movement. The group was the only aid agency that held UN Economic and Social Council (ECOSOC) special consultative status. Having been active in 113 countries for years, Kimse Yok Mu developed the capacity to deliver emergency relief in disaster zones as well as to rebuild infrastructure in communities, thereby providing long-term assistance, which includes the construction of homes, hospitals, schools and health facilities.

However, it came under fire by the Turkish government when Erdoğan started attacking the Gülen movement. First, Kimse Yok Mu's licenses to raise, hold and use funds in charitable work were suspended<sup>59</sup> on September 22, 2014, and the charity was later shut down completely after the failed coup on July 15, 2016.<sup>60</sup> Volunteers, staff members and executives of Kimse Yok Mu faced legal action by the government. Many employees were jailed or faced arrest and prosecution on dubious charges.<sup>61</sup> Ironically, it was Erdoğan himself who participated in Kimse Yok Mu's fundraising drives and asked businesspeople to contribute to the charitable cause.<sup>62</sup> Hüseyin Avni

58] Wikipedia, [https://tr.wikipedia.org/wiki/Kimse\\_Yok\\_Mu\\_Derne%C4%9Fi](https://tr.wikipedia.org/wiki/Kimse_Yok_Mu_Derne%C4%9Fi)

59] "Kimse yok mu derneğinin yardım toplama yetkisi kaldırıldı," *Hürriyet*, 2 October 2014, <http://www.hurriyet.com.tr/kimse-yok-mu-derneginin-yardim-toplama-yetkisi-kaldirildi-27314395>

60] "Kimse Yok Mu derneği kapatıldı," *Hürriyet*, 23 July 2016, <http://www.hurriyet.com.tr/kimse-yok-mu-dernegi-kapatildi-40164991>

61] "Kimse Yok mu derneğine operasyonda 33 tutuklama," *Cumhuriyet*, 7 October 2016, [http://www.cumhuriyet.com.tr/haber/turkiye/611542/Kimse\\_Yok\\_Mu\\_Derneği\\_ne\\_operasyonda\\_33\\_tutuklama.html](http://www.cumhuriyet.com.tr/haber/turkiye/611542/Kimse_Yok_Mu_Derneği_ne_operasyonda_33_tutuklama.html); "Kapatılan Kimse Yok mu derneğine yönelik operasyonda 29 kişi tutuklandı," *aa*, 10 April 2017, <http://aa.com.tr/tr/turkiye/kapatilan-kimse-yok-mu-dernegine-yonelik-sorusturmada-29-kisi-tutuklandi-/793737>

62] "Erdoğan, 'Kimse Yok Mu' derneği aracılığıyla Somali için böyle yardım istemişti," *t24*, 28 September 2016,

<http://t24.com.tr/video/erdogan-2001-yilinda-insanlik-oldu-mu-kimse-yok-mu-dernegi-araciligiyla-somali-icin-boyle-yardim-istemisti,3202>

Mutlu, former governor of Istanbul and currently in pretrial detention, was arrested on terrorism charges because he donated TL 20 (\$6) to Kimse Yok Mu at one time.<sup>63</sup>



### 3.6. Doctors and medical professionals

The Gülen movement has been active in a wide range of industries and professions and as a result has established thousands of charity groups, foundations, associations and companies. In fact, those constituted the vast majority of the almost 2,000 nongovernmental organizations that were arbitrarily and summarily shut down by the government in the last year alone.

Tens of thousands of doctors, medical staff and professional health workers in Turkey and abroad and those who were employed by hospitals, health centers and medical schools affiliated with the Gülen movement were branded by the government as ‘terrorists’ as well.<sup>64</sup> Thousands of doctors who were employed by state institutions were also dumped in the same basket and were either purged by government decrees or arrested. Some were accused of crimes because they joined campaigns by movement-linked organizations to provide free-of-charge health care services to the needy in African countries.<sup>65</sup>



**The government witch hunt claimed the life of a doctor who committed a suicide when he got suspended over false terror charges.**

SCF’s review of indictments of doctors and medical professionals reveals the same copy-paste allegations used for nearly all suspects. Volunteering at or employment in a hospital or health center and membership in a professional organization were cited in indictments as criminal offenses that were categorized as “terrorism.” For example, Ekrem Yeter, the son-in-law of Bülent

Arınc, the former speaker of the Turkish Parliament and former deputy prime

63] “Vali Mutlu savunmasını ağlayarak yaptı,” Cumhuriyet, 24 August 2017, [http://www.cumhuriyet.com.tr/haber/turkiye/810174/Huseyin\\_Avni\\_Mutlu\\_savunmasini\\_aglayarak\\_yapti\\_\\_Ne\\_Musa\\_ya\\_ne\\_isa\\_ya\\_yaranabiliyorum.html](http://www.cumhuriyet.com.tr/haber/turkiye/810174/Huseyin_Avni_Mutlu_savunmasini_aglayarak_yapti__Ne_Musa_ya_ne_isa_ya_yaranabiliyorum.html)

64] “FETÖ’cülerin sağlık dernekleri durmuyor,” Sabah, 19 August 2016, <http://www.sabah.com.tr/ankara-baskent/2016/08/19/fetoculerin-saglik-dernekleri-durmuyor>; “FETÖ’nün sağlık yapılanmasına operasyon: 24 gözaltı,” 15 May 2016, <http://www.cnnturk.com/turkiye/fe-tonun-saglik-yapilanmasına-operasyon-24-gozalti>; “Denizli’de FETÖ’nün sağlık yapılanması davası,” Milliyet, 12 June 2017, <http://www.milliyet.com.tr/denizli-de-feto-nun-saglik-yapilanmasi-denizli-yerelhaber-2103966/>

65] “Denizli’de FETÖ’nün sağlık ayağı hakim karşısında,” 9 June 2017, <http://www.denizligazetesi.com/haberler/guncel/denizli-de-fetonun-saglik-ayagi-hakim-karsisinda/64182/>

minister, was arrested for chairing the International Health Federation, which represented numerous health associations. Yeter was released on probation and is awaiting trial.<sup>66</sup>

The International Health Federation was part of the Vefa Health Confederation (VESKON), which included five health and medical federations

and 118 associations in Turkey. It had 20,000 members.<sup>67</sup> VESKON decided to dissolve<sup>68</sup> itself on January 5, 2016 when the government launched a campaign to force its member hospitals and pharmacies into bankruptcy by unlawfully removing them from the government-run Social Security system, which provides health insurance payments to doctors, hospitals and pharmacies for covered patients. Despite the fact that VESKON ceased to exist six months before the coup attempt, many doctors, pharmacists and medical professionals were arrested and indicted due to membership in the health and medical associations.



**Ekrem Yeter, the head of the International Health Federation, arrested on fabricated terror charges and later released pending trial.**

SCF research shows the government shut down 50 hospitals and medical centers across Turkey, causing nearly 20,000 doctors, medical staff and health care professionals to lose their jobs. Moreover, 14 hospitals and 36 medical centers that were founded and operated by professionals who were believed to be linked to the movement were also shuttered without any evidence of crime. In total, some 7,200 people including hundreds of professors of medicine and thousands of doctors were working in these institutions.<sup>69</sup> In addition to that, 1,684 doctors and 7,505 healthcare workers were purged by government decree-laws from state-run institutions without any administrative or judicial review that suggested these people were involved in any crime. Health clinics and rehab centers were also impacted.

Raşit Tükel, the president of the Turkish Doctors Union (Türk Tabipleri Birliği in Turkish, TTB), said the dismissed doctors included highly successful

66] “Damattan Arınç’ı zora sokacak ifade,” Cumhuriyet, 6 June 2017, [http://www.cumhuriyet.com.tr/haber/turkiye/755152/Damattan\\_Arinc\\_i\\_zora\\_sokacak\\_ifade.html](http://www.cumhuriyet.com.tr/haber/turkiye/755152/Damattan_Arinc_i_zora_sokacak_ifade.html)

67] “VESKON tanıtım filmi,” <https://www.youtube.com/watch?v=QqPY20i1LHc>

68] “FETÖ’cü dernekler dökülüyor,” Star gazetesi, 5 January 2016, <http://m.star.com.tr/guncel/fetonun-dernekleri-dokuluyor-haber-1080371/>

69] Among this figure includes 675 professors and assistant professors who were specialized in medical science.

professionals and that some worked in various management positions in the TTB.<sup>70</sup> The government even shut down a fertility clinic run by a Turkish-Armenian doctor in Istanbul.<sup>71</sup>



### **3.7. Lawyers associations**

Lawyers and lawyers' associations,<sup>72</sup> the founders and members of which are considered to be close to the movement, appear to have been singled out in particular by the government in cracking down on opposition groups in Turkey. This clearly demonstrates the trouble with the justice system and casts serious doubts on the legitimacy of emergency rule. Criminal charges against lawyers have aimed at depriving tens of thousands of people of their fundamental rights of access to legal counsel, due process and a fair trial.

The fact that 523 lawyers including the heads of provincial bar associations were arrested and 1,318 lawyers have been prosecuted since 2016 speaks volumes.<sup>73</sup> In many cases, the government has obstructed or restricted access to case files by suspects and their lawyers, preventing them from challenging the evidence or preparing a defense in a timely manner before the trial starts. This is in breach of not only the ECHR but also UN conventions. According to Principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court, legal counsel shall be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.<sup>74</sup>

The Turkish government has also targeted Turkish lawyers' right to freedom of association. Thirty-four lawyers' societies or associations have been arbitrarily shut down in the last year alone. Following the closures, all of their assets were confiscated without compensation.

After long pretrial detentions, the government started rushing the trials, resulting in heavy sentences for lawyers on trumped-up "terror" and "coup"

70] "TTB ve Diyarbakır Tabip Odası: İyi hekimler hedef oldu", 8 May 2017, [http://www.cumhuriyet.com.tr/haber/siyaset/736654/TTB\\_ve\\_Diyarbakir\\_Tabip\\_Odasi\\_ iyi\\_hekimler\\_hedef\\_ oldu.html](http://www.cumhuriyet.com.tr/haber/siyaset/736654/TTB_ve_Diyarbakir_Tabip_Odasi_ iyi_hekimler_hedef_ oldu.html)

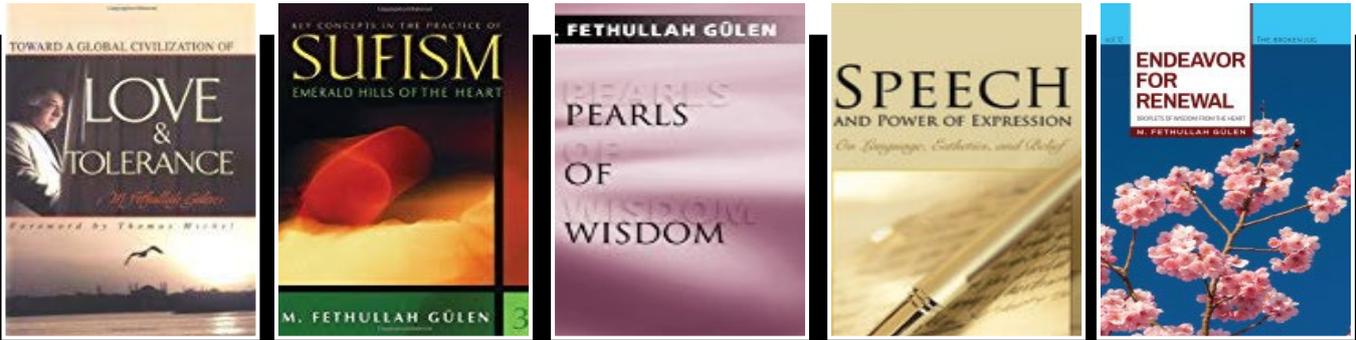
71] "Istanbul Armenian Doctor's Fertility Center Closed Down as Part of State of Emergency", 27 July 2016, <https://massispost.com/2016/07/istanbul-armenian-doctors-fertility-center-closed-down-as-part-of-state-of-emergency/>

72] "Anadolu hukuk Derneği'ne operasyon: 15 avukat gözaltında", Birgün, 3 August 2016, <http://www.birgun.net/haber-detay/anadolu-hukuk-dernegi-ne-operasyon-15-avukat-gozaltinda-122710.html> ; "Sivas'ta FETÖ'den tutuklanan avukatların yargılamasına başlandı", Hürriyet, 8 February 2017, <http://www.hurriyet.com.tr/sivasta-fetoden-tutuklanan-avukatlarin-yargil-40359881>

73] Situation in Turkey, 522 lawyers have been arrested since July of 2016, 23 July 2017, <https://arrestedlawyers.org/2017/07/23/situation-in-turkey/>

74] Report of the Working Group on Arbitrary Detention, United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, June 2015, <http://www.ohchr.org/Documents/Issues/Detention/DraftPrinciplesAndGuidelinesRightCourtReview.pdf>

charges that result in permanent disbarment. For example, the Erzincan 2nd High Criminal Court sentenced lawyers Cemalettin Özer, former president of the Erzincan Bar Association, and Talip Nayir, former board member of an association, to eight years, nine months and 10 years, respectively.<sup>75</sup> They had already been in pretrial detention for eight months.



64 books  
authored  
by Turkish  
Muslim  
intellectual  
Fethullah  
Gülen were  
banned.

### 3.8. Possession of the books of Fethullah Gülen

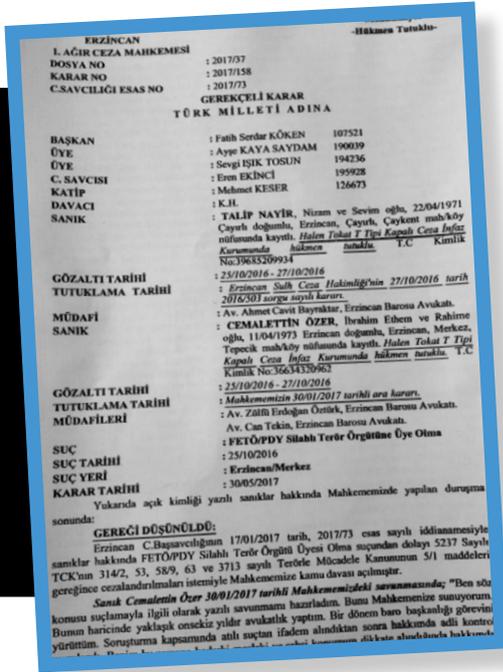
Following the July 15, 2016 coup attempt, one of the charges used for substantiating arrest warrants and indictments is possession of books or other published materials by Fethullah Gülen. With government decree-law no. 668, dated July 27, 2016, publishing houses that printed and distributed Gülen's books were shut down.<sup>76</sup> Following that, upon a petition by the Bakırköy Chief Public Prosecutor's Office, a penal court of peace ruled to ban the sale, distribution and publication of 672 books and digital media products authored by Gülen. The judgment also stipulated the collection of all published works by Gülen as criminal evidence and ordered a halt to their further publication.<sup>77</sup>

Considering that Gülen has authored 64 books so far, with some selling as many as 1 million copies in Turkey and many translated into dozens of other languages, the classification of these books as criminal evidence implicates millions in Turkey as suspects.

75] "Erzincan eski Baro Başkanı Cemalettin Özer'e 8 yıl hapis cezası", 30 May 2017, <http://www.aksam.com.tr/guncel/erzincan-eski-ba-ro-baskani--cemalettin-ozere-8-yil-hapis-cezasi/haber-628458>

76] 668 numaralı KHK, Resmi Gazete, 27 July 2016, <http://www.resmigazete.gov.tr/eskiler/2016/07/20160727M2-1..pdf>

77] "FETÖ elebaşı Gülen'in yasaklanan kitap ve cdleri," ABC Haber, 7 August 2016, <http://www.abchaber.com/gundem/feto-elebasigu-len-in-yasaklanan-kitap-ve-cd-leri-h1504.html>



Owning a book by Fethullah Gülen is now considered to be an evidence of terrorism in Turkey. Some books were sold as many as a million copy.

Even before the decree-law and the Bakırköy court decision, the government treated possession of books and magazines of the publishing houses listed as shuttered in decree-law no. 668 as a crime.<sup>78</sup> Fearing prosecution for owning such books and magazines that were perfectly legal before, people started burning or destroying them and even throwing them in the garbage. There were reports that the police collected some of these banned books from dumpsters and that people were arrested if their fingerprints were found on them.<sup>79</sup> In the town of Kadırlı in Turkey's southeastern province of Osmaniye, an imam who threw away books authored by Gülen was arrested, as reported in the media on July 23, 2016.<sup>80</sup> There were dozens of similar reports:

"Lawyer arrested while burying books,"<sup>81</sup>

"Architect arrested while burning books,"<sup>82</sup> "Teacher arrested while throwing books in the garbage,"<sup>83</sup> etc.

People were in a panic and tried to find ways to get rid of these books and magazines, which had been sold with the permission of the Ministry of Culture and could be found on the shelves of public libraries. Unfortunately, arrests for this reason had already started before decree-law no. 668. These written materials, which in no way promote terror or violence, were banned not by a judicial decision but by an administrative one. Following the said decree, the Gülen-affiliated NT bookstores, the largest bookstore chain in Turkey before it was seized by the government and later shut down, were raided by AKP followers.<sup>84</sup>

It should be recalled that criminal law bans the retroactive effect of laws. The Turkish Constitutional Court considered the collection of books

78] "Yeşilsirt'ta FETÖ operasyonu: iki tutuklama. Yüzlerce kitaba el konuldu," <http://muratlihizmetgazetesi.com/yesilsirt-ta-feto-operasyonu-2-tutuklama>

79] "Kitap üzerindeki parmak izinden FETÖ sorumlusu yakalandı," Memurlar.net, 7 December 2016, <http://www.memurlar.net/haber/630415/>

80] "Kadırlı'de FETÖ kitaplarını çöpe atan imam yakalandı," <https://www.osmaniye.net/osmaniye-haber/kadirli-de-feto-nun-kitaplarini-cope-atan-imam-yakalandi>

81] "FETÖ kitaplarını gömen avukat yakalandı," Beyaz Gazete, 30 July 2016, <http://beyazgazete.com/haber/2016/7/30/feto-kitaplarini-gomen-avukat-yakalandi-3402665.html>

82] "FETÖ kitaplarını yakarken yakalanan şahıs tutuklandı," 25 July 2016, <https://www.haberler.com/duzce-de-feto-nun-kitaplarini-yakarken-yakalanan-8645759-haberi/>

83] "FETÖ'cü darbeciler Kur'anı atmış," 28 July 2016, <http://www.memurlar.net/album/11052/11.resim>

84] "FETÖ'nün kitapçısı yağmalandı," Karar, 16 July 2016, <http://www.karar.com/malatya/fetonun-kitapcisi-yagmalandi-188988?p=2#>

The government seized the bookstore chain NT and removed all books from shelves that were authored by critics.



by Abdullah Öcalan, leader of the Kurdistan Workers' Party (PKK) terrorist organization, who is serving an aggravated life sentence, a violation of rights and reversed the judgment.<sup>85</sup> In a country where the rule of law is respected, books that do not promote terrorism or violence cannot be banned and people in possession of these books cannot be accused of membership in terror organizations.

However, more interestingly, biology, chemistry, mathematics and physics textbooks and test books as well as other relevant publications by publishing houses that were linked to the Gülen movement, which was operating in the fields of education and culture, with many training centers and the nation's best performing private schools, were banned,<sup>86</sup> and accordingly hundreds of thousands of these textbooks were burned.<sup>87</sup>

**Digiturk**

### 3.9. Cancellation of Digiturk subscriptions

One of the most arbitrary and absurd reasons for arrest in the wake of the July 15, 2016 coup attempt is the cancellation of Digiturk subscriptions. Digiturk,<sup>88</sup> which had previously been a subsidiary of the Çukurova Media Group, was seized along with the Akşam daily and Show TV and brought under the control of the government.<sup>89</sup> Other media organs of the group were handed over to businessmen affiliated with the AKP. The Akşam and Güneş dailies were transferred to Ethem Sancak, a member of the AKP's executive board.<sup>90</sup> Sancak recently turned these media outlets over to an associate of Erdoğan. Digiturk remained under the control of the Savings Deposit Insurance Fund (TMSF) for quite a long time. Then it was sold without a competitive bidding process, under dubious and questionable circumstances, to a Qatari

85] "Öcalan'ın kitabına toplatma kararı kalktı," Bianet, 11 December 2014, <http://bianet.org/bianet/ifade-ozgurlugu/160726-ocalan-in-kitabina-toplatma-karari-kalkti>

86] "MEB yasaklı yayınlar listesi," Karar, 17 October 2016, <http://www.karar.com/guncel-haberler/meb-yasakli-yayinlar-listesi-257583#>

87] "FETÖcülerin yazdığı ders kitapları imha edilecek," Ulke TV, 8 September 2016, <http://www.ulke.com.tr/guncel/haber/698902-fetoculerin-yazdigi-ders-kitaplari-imha-edilecek>

88] "Digitürk tarihçesi," <https://www.digiturk.com.tr/kurumsal/tarihce/>

89] "TMSF, Akşam Gazetesi ve Digitürke el koydu," Radikal Gazetesi, 24 May 2013, <http://www.radikal.com.tr/ekonomi/tmsf-ak-sam-gazetesi-ve-digiturke-el-koydu-1134857/>

90] "Ethem Sancak, AKP yönetiminde," T24, 21 May 2017, <http://t24.com.tr/haber/ethem-sancak-akp-yonetimine-girdi,405236>

## Digitürk aboneliği konusunda

6-Krea İçerik Hizmetleri ve Prodüksiyon Anonim şirketi vekili tarafından, 17/10/2016 tarihinde şüpheli hakkında Digitürk aboneliği konusunda Cumhuriyet Başsavcılığı'mıza hitaben yazılmış olan cevabi yazı,

business group having close relations with President Erdoğan.<sup>91</sup>

Digitürk was one of the leading actors in silencing the free media opposing Erdoğan. Firstly, TV networks close to the Gülen movement and

then Kurdish TV stations were portrayed as targets. On the one hand Erdoğan ordered public monopoly Türksat, which controls the satellite broadcasting sector, not to provide service to dissenting TV stations, and on the other, he requested that the Digitürk broadcasting platform exclude them from its channel list. Erdoğan's request, which was incompatible with freedom of the press and freedom of expression as well as commercial law, was immediately enforced. The civilian and political opposition protested this arbitrariness. Advocacy groups and press associations made statements

underlining the unlawfulness and arbitrariness of the government actions.<sup>92</sup>

A campaign to boycott Digitürk was initiated. This was supported by many including people who oppose the Gülen movement.<sup>93</sup> The main opposition CHP's present and former leaders, Kemal Kılıçdaroğlu and Deniz Baykal, respectively, too, supported the boycott.<sup>94</sup> Although the MHP, the junior opposition party in Parliament, was not institutionally supportive of this initiative, some MHP deputies joined the boycott.<sup>95</sup>

Even such a purely civil, democratic and lawful boycott was considered evidence allegedly underpinning the terrorist organization accusations levelled against the Gülen movement after July 15. Cancelling

91] "CHP'li Tanrıkulu: Digitürk'ün ihalesiz olarak Katar'lılara satıldığı iddiası doğru mu?" Haber46, 16 July 2015, <https://www.haber46.com.tr/politika/tanrikulu-digiturkun-ihalesiz-olarak-katarililara-satildigi-iddiasi-dogru-mu-h103931.html>

92] "Digitürk 7 kanalı yayından kaldırdı," Hürriyet, 8 October 2015, <http://www.hurriyet.com.tr/digiturk-7-kanali-yayindan-kaldirdi-sa-manyolundan-aciklama-geldi-30261195>

93] "Digitürk'e tepkiler çıg gibi: Kumandalı protesto. CHP bütün teşkilatlarından çıkariyor," 10 October 2015, <http://www.hukukihaber.net/gundem/digiturk-depremi-tepkiler-cig-gibi-kumandali-protesto-h64715.html>; "Digitürk'iden çıkıyorum," Ertuğrul Özkök, 9 October 2015, <http://www.hurriyet.com.tr/yazarlar/ertugrul-ozkok/digiturkten-cikiyorum-30277487>

94] "Kılıçdaroğlu'ndan Digitürk'e boykot çağrısı," Cumhuriyet, 9 October 2015, [http://www.cumhuriyet.com.tr/haber/siyaset/384097/Kilic-daroglu\\_ndan\\_Digiturk\\_u\\_boykot\\_cagrasi.html](http://www.cumhuriyet.com.tr/haber/siyaset/384097/Kilic-daroglu_ndan_Digiturk_u_boykot_cagrasi.html)

95] "MHP'li vekilden Digitürk'e boykot çağrısı," Gazete2023, 8 October 2015, <http://www.gazete2023.com/gundem/mhp-li-vekilden-digi-turk-e-boykot-cagrasi-h43808.html>



**Main opposition political party CHP boycotted the pro-government cable TV Digitürk.**

Digiturk subscriptions has been among the issues put under investigation. Information provided by the Digiturk company on the status of subscriptions was considered enough to put one under arrest, as happened in the case of M.K., who was prosecuted at the Antalya 8th High Criminal Court.<sup>96</sup>

This arbitrary practice led to grave injustices as well as enormous risks. Cancelling a Digiturk subscription is considered evidence of membership in a terrorist organization in some indictments. Likewise, making public statements in support of the boycott against Digiturk or instructing party bureaus across the country to broaden the said campaign as the main opposition Republican Peoples' Party (CHP) had done in protest of removal of critical TV networks from the Digiturk lineup were regarded as an aggravating circumstance, too. In a country where ordinary people are arrested for merely cancelling their cable television subscriptions in response to these boycott calls, it is difficult to imagine how the rule of law still applies.



### **3.10. Possession of one-dollar bills**

Another absurd “indication” that a person is linked to the Gülen movement is the possession of one-dollar bills, claimed by the Turkish government to have a secret code contained in the serial numbers used among movement members. It is not clear how the government came up with this conspiracy or based on what evidence, but many believe it was concocted by the Erdoğan regime to provide the appearance of mysterious plot to justify the persecution of members of the Gülen movement. The simple explanation for the serial numbers was provided by the Bureau of Engraving and Printing of the US Department of the Treasury, which stated that the first letter of such a serial number identifies the Federal Reserve Bank (FRB) that issued the note; since there are 12 FRBs,<sup>97</sup> this letter is always between A and L for one-dollar notes.

Many people were arrested just because they carried dollar bills in their wallets or kept them in their homes, and the arrest warrants pointed to the discovery of these bills during the execution of searches of residential or commercial locations. A striking example of this absurdity is the arrest of NASA physicist Serkan Gölge, a 36-year-old US citizen of Turkish origin. He was vacationing in his hometown in the Turkish border province Hatay and was arrested after the failed coup when he was at the airport to return to Houston.

96] “Digitürk iptali FETÖ üyeliği delili oldu,” Odatv, 24 April 2017, <http://odatv.com/digiturk-iptali-feto-uyeligine-delil-oldu-2404171200.html>

97] “Resources: Serial Numbers”, Bureau of Engraving and Printing, <https://www.moneyfactory.gov/resources/serialnumbers.html>

ri numaralı 1 dolar kağıt para,  
eri numaralı 1 dolar kağıt para,

**When police found a dollar bill during a search, that was regarded as evidence of a coup plotting against the government.**

-Fetullah Gülen'e ait Yeni Mülhazalar isimli Zaman gazetesinin vermiş olduğu kaset,  
-Aynı odada girişe göre sağ tarafta bulunan vitrinin üst kısmındaki Zaman gazetesi. Bugün  
-Aynı odada vitrinde bulunan siyah el çantası içerisinde [redacted] seri numaralı  
Sya Card kredi kartı.  
-Aynı odada vitrinde bulunan siyah el çantasının içerisinde [redacted] seri numaralı Bank  
Sya katılım hesap çüzdanı.  
-İkamecin girişe göre sağ tarafında bulunan oturma odasının içerisindeki siyah renkli valizin  
içerisinde ele geçirilen,  
- [redacted] seri numaralı 1 dolar kağıt para,  
- [redacted] 1F seri numaralı 1 dolar kağıt para,  
- [redacted] 2 hesap numaralı Bank Asya Döviz/Etkinlik Alış dekontu.

He was accused of being a CIA agent, and the evidence was a dollar bill.<sup>98</sup> The Committee of Concerned Scientists and Endangered Scholars Worldwide issued a plea for his release.<sup>99</sup> Nineteen-year-old student Yavuz Selim Yayla was arrested for having US dollar bills in his backpack on July 22, 2016 as he was on his way to spend time with his father, who lives in the US.<sup>100</sup>

The indictments filed against defendants by prosecutors claimed the movement distributed F-series dollar bills to top administrators in the network, while C-series to managers and J-series to all members were handed out.<sup>101</sup> There is no evidence that this was the case, and the movement denied any such conspiracy or secret communication. Perhaps the only and very simple explanation is provided by the Bureau of Engraving and Printing, which states that F-series one-dollar notes were printed by the FRB in Atlanta, the C series in Philadelphia and the J series in Kansas City.<sup>102</sup>

The US Federal Reserve reported \$11.7 billion in one-dollar bills in all letter series in circulation as of 2016<sup>103</sup> and plans to issue \$2.4 billion in 2017 and \$2.2 billion in one-dollar bills for the year 2018.<sup>104</sup> Considering the billions of one-dollar bills in circulation, it is far-fetched



**NASA physicist Serkan Gölge, a 36-year-old US citizen, was arrested in Turkey while on vacation because of a dollar bill found in his possession.**

98] "An American in Turkey's Prisons. In for a Crime? No, in for a Dollar", Lindsey Snell, 26 November 2016, <http://www.thedailybeast.com/an-american-in-turkeys-prisons-in-for-a-crime-no-in-for-a-dollar>

99] "Joint Letter of Appeal on Behalf of Serkan Golge, Imprisoned US Citizen and NASA Physicist of Turkish Descent", 25 October 2016, <http://concernedscientists.org/2016/10/committee-of-concerned-scientists-and-endangered-scholars-worldwide-advocate-for-nasa-scientist-arrested-in-turkey/>

100] "No Seriously, Arrested for the Dollar in His Pocket", Kimberly Dozier, 19 September 2016, <http://www.thedailybeast.com/arrested-for-the-dollar-in-his-pocket>

101] "İşte FETÖ'nün 1 dolar şifresi", 9 August 2016, <http://www.sabah.com.tr/gundem/2016/08/09/iste-fetonun-1-dolar-sifresi>

102] "Resources: Serial Numbers - Federal Reserve Bank and Serial Number Relationship Table", Bureau of Engraving and Printing, <https://www.moneyfactory.gov/frbsntable.html>

103] "Currency in Circulation: Volume as of December of each year, the US Federal Reserve, [https://www.federalreserve.gov/paymentsystems/coin\\_currircvolume.htm](https://www.federalreserve.gov/paymentsystems/coin_currircvolume.htm)

104] "Currency Print Orders: 2018 Federal Reserve Note Print Order", [https://www.federalreserve.gov/paymentsystems/coin\\_currency\\_orders.htm](https://www.federalreserve.gov/paymentsystems/coin_currency_orders.htm)

Digital encryption messaging application ByLock is criminalized by Turkey.



to describe people as suspects in a major conspiracy in Turkey based only on possession of a dollar bill.



#### 4. Criminalization of encrypted software

The Turkish government is also moving forward with a campaign to criminalize encryption software that is publicly available based on a controversial claim that a smart-phone application called ByLock is used by members of the Gülen movement. It alleges that the app is a secret communication tool among its members and makes the argument that whoever downloaded it from the Internet is a “terrorist,” be it a journalist who wanted to protect his sources or an NGO worker who tried to keep a victim’s identity confidential.

Critics say, however, that the use of a technological application is not a criminal activity nor is it evidence of membership in a terrorist organization. Judicial experts suggest that a person cannot be accused for using a certain means of communication, adding that they can be accused only if there is an element of crime in their messages. They also say that a court order is required to conduct technical surveillance and to be able to present the findings in court as evidence. The case law in Turkish courts stipulates that technical surveillance data collected without a court order is not considered admissible evidence.

Yet, prosecutors and courts under pressure from the Erdoğan government continue to treat as suspects the hundreds of thousands of people whose names purportedly appeared on a list that was prepared by Turkey’s National Intelligence Organization (MIT) as alleged to have downloaded the ByLock software. Many believe the list is based on unlawful profiling of

Kimden	Kime	Yazisma
135027	178666	abi buyrun
135027	178666	abi evle alakali durumu netistirince gelip ev tutacam insallah
178666	135027	yer degismis ufuk akademi olmus abim
178666	135027	abin bayloc acilmadi
178666	135027	ysin aksam gm dersane ogretmenlerine makrube yapicaz 2 tane
178666	135027	abim sen sabah baksan 2 makrube buyuk tencere zini sofra bezi varmı eksik ne varsa sabah soylesen yeteebilirsem ben 10 gibi gelirim tabi yetise bilirsem
178666	135027	trm abim a.r.o
178666	135027	simdiden soyleyeyim abim demek baskani oluyoruz sen mader ben maseder acilen onumuzdeki hafta
178666	135027	acilen halletmemiz lazim

unsuspecting citizens based on their critical views of the government. A letter sent by Turkey's Security Directorate General to all police units in the country in October 2016 told police officers to secure confessions from individuals who have been detained due to their use of ByLock because mere use

of the application is not considered a crime. Yet tens of thousands of people continue to languish behind bars in Turkey for simply downloading the application.

For example, Aydın Sefa Akay, a judge for the United Nations Mechanism for International Criminal Tribunals (MICT), was arrested on terrorism and coup charges on September 21, 2016 based on, among other things, his use of ByLock software. During a hearing at the Ankara 16th High Criminal Court, Akay said he used ByLock along with other instant messaging programs. Akay said he downloaded the application from the Google Play Store upon the recommendation of a friend from Burkina Faso. In its resolution dated February 8, 2017, the UN held that Akay enjoyed privileges and immunities accorded to diplomatic envoys under international law when engaged in the business of the mechanism, even while carrying out their functions in their home country. The case was referred to the UN Security Council, which was asked to oblige Turkey to comply with his release. In June 2017 Akay was handed down a sentence of seven years, six months on charges of membership in a terrorist organization; yet, the court decided to release him subject to the imposition of a travel ban. If Akay's sentence is upheld by the Supreme Court of Appeals, he will be sent to prison to serve his time in prison.

The criminalization of encrypted software drew the ire of David Kaye, United Nations special rapporteur on the promotion and protection of the right to freedom of opinion and expression, who said in his report in June 2017 that "[t]he authorities have linked ByLock to the Gülen movement, claiming that it is a secret communication tool for Gulenists. The arrests take place sometimes merely on the basis of the existence of ByLock on a person's computer, and the evidence presented is often ambiguous. Reportedly, the MIT obtained a list of global ByLock users that has been used to track and detain persons. Tens of thousands of civil servants reportedly have been

**Downloading and/or using a publicly available smart-phone application called ByLock is enough to accuse somebody of terrorism in Turkey without any regard to its contents.**

dismissed or arrested for using the application.”<sup>105</sup>

Turkey’s government-controlled judicial council, the Board of Judges and Prosecutors (HSK), downgraded the status of Antalya Regional Court of Justice head judge Şenol Demir and appointed him as a judge in another province after he refused to accept the use of ByLock as evidence of a crime.

Demir recently reversed a judgment by a Denizli court that had ruled for the imprisonment of Hacer Aydın, a Gülen movement follower in Denizli, for six years, three months over the use of ByLock. In his judgment Demir said “ByLock alone, as suggested by MIT [National Intelligence Organization], cannot be enough for evidence of a crime.”<sup>106</sup>



## 5. People who are punished in place of their relatives

In some case where police failed to locate wanted people, their family members and relatives were arrested instead.

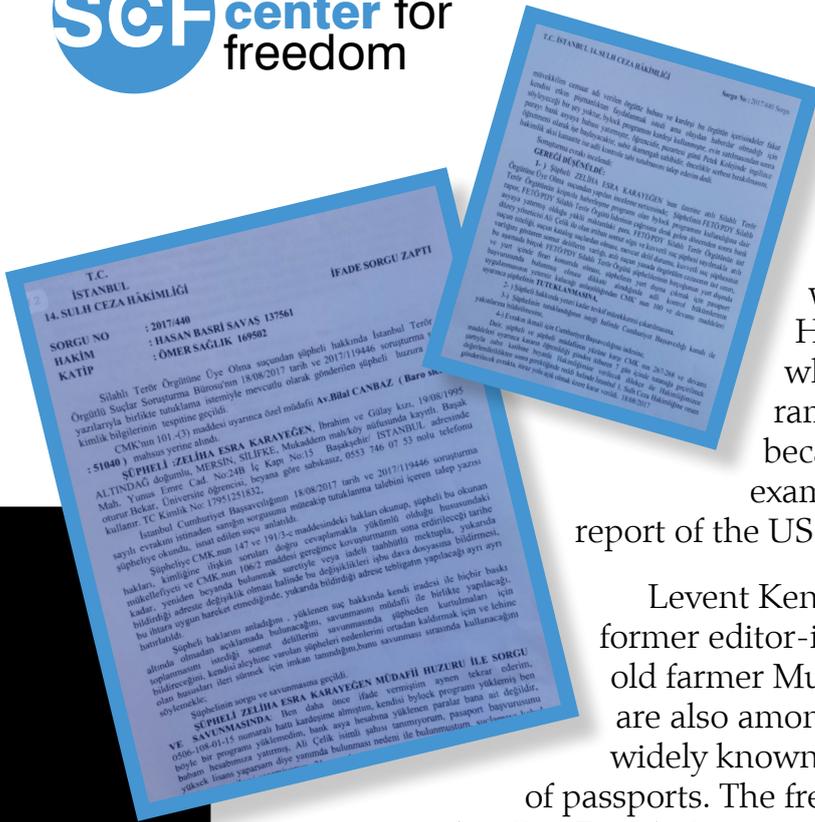


One of the most outrageous illegal practices carried out in Turkey has manifested itself in the form of violation of the principle of individual criminal responsibility. Various examples were brought to the attention of the public, and many others were cited in international reports. A well-known case is that of journalist Bülent Korucu. When police could not find him at home, they arrested his wife, Hacer Korucu, a housewife and mother of five, and kept her under arrest for eight

months. The indictment clearly stated her husband’s situation as legal grounds for her arrest and prosecution. Sermet Şükür, father of renowned Turkish

105] “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey”, 6-23 June 2017, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A\\_HRC\\_35\\_22\\_Add\\_3\\_E.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_22_Add_3_E.docx).

106] “ByLock’u delil saymayan hakim sürüldü”, 14 may 2017, <https://www.evrensel.net/haber/319569/bylocku-delil-saymayan-hakim-suruldu>



The government not only jailed the journalist Ibrahim Karayegin but also his daughter.

football player Hakan Şükür, was detained when police were unable to find his son. Hakan Şükür is also a former lawmaker who parted ways with Erdoğan in protest of rampant corruption in the government and became a leading critic of Erdoğan. These two examples were cited in the 2016 human rights report of the US Department of State.<sup>107</sup>

Levent Keneş the brother of journalist Bülent Keneş, former editor-in-chief of Today's Zaman, and 81-year-old farmer Mustafa Türk, father of author Cemal Türk, are also among those who were arrested.<sup>108</sup> Another widely known form of punishment is the canceling of passports. The freedom of movement for Dilek Dündar, journalist Can Dündar's wife, was restricted when she was prevented from overseas travel because her husband, a journalist who is wanted by the authorities, was a fugitive. The authorities seized her passport at the airport as she was leaving the country. The son of Ercan Gül and the daughter of Şahin Alpay shared the same fate.<sup>109</sup> Zeliha Esra Karayegen, the 21-year-old daughter of İbrahim Karayegen, who was the managing editor of the now defunct Zaman newspaper and is currently in prison pending trial, was also arrested and put in jail. She was arrested on August 18, 2017 on charges that her father had opened an account at Bank Asya to cover her college expenses and tuition.

## 6. Violation of the right to work

The arbitrariness and lack of rule of law in Turkey have resulted in deprivation of the right to work and social security in many cases. In the social security registry of teachers who were unlawfully dismissed from their jobs in the aftermath of the coup attempt, it is mentioned that they were dismissed due to their membership in what the government calls the “FETÖ terrorist organization.” This stain on their past employment records prevents them from working in private schools and educational institutions.

[107] Country Reports on Human Rights Practices for 2016, Bureau of Democracy, Human Rights and Labor, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265482>

[108] “FETÖ'nün şifresini çözecek şahsın babası gözaltında,” 29 August 2016, <http://turgutulivi.com/fetonun-sifresini-cozecek-sahsin-babasi-gozaltinda/>

[109] “Ne yapalım, boşanalım mı?” Ayşe Yıldırım, Cumhuriyet, 8 October 2016, [http://www.cumhuriyet.com.tr/koseyazisi/612024/Ne\\_yapalım\\_\\_Bosanalım\\_mi\\_.html](http://www.cumhuriyet.com.tr/koseyazisi/612024/Ne_yapalım__Bosanalım_mi_.html)



In a response from the Ministry of Education to a petition, it was stated that dismissed teachers (as a result of their terror connections) cannot work in private schools or tutoring centers. Official stigmatization of the dismissed teachers makes it impossible for them to get a job even outside of their field of study, no matter if they are proven to be guilty or not.<sup>110</sup> They are also denied their right to seek redress and claim their rights before judicial authorities or at the inquiry commission established to hear complaints about state of emergency measures.<sup>111</sup> Mehmet Erdoğan, a deputy from the Nationalist Movement Party (MHP), stated that while the schools that were closed by decree can apply to the said commission to claim their rights, the teachers are deprived of this right.<sup>112</sup>

The fired employees were deprived of their right to challenge the government decisions to dismiss them when the Supreme Court of Appeals ruled that employees of institutions that were shut down by government decree-laws cannot file suits for compensation, reinstatement of their positions or severance pay. This ruling was not only against the right to seek a judicial review for government actions but also violated Turkey's bankruptcy law, which requires the payment of employees' salaries and benefits after the liquidation of assets of companies and organizations that have been shut down or forced into bankruptcy.<sup>113</sup>

110] "Meslekten ihraç edilenler özel sektörde çalışabilir mi?" 15 July 2017, <http://www.ogretmenlericin.com/meb/kamudan-haber/meslek-ten-ihrac-edilenler-ozelde-calisabilir-mi-ozel-sektorde-is-imbani-18888.html>

111] "FETÖ'den ilişığı kesilene mahkeme yolu kapalı; devlette iş yok," Türkiye Gazetesi, 23 July 2016, <http://www.turkiyegazetesi.com.tr/gundem/388560.aspx> ; "KHK mağdurları için kurulan OHAL Komisyonu'na KHK ile atılanların başvurması yasak," Oda Tv, 21 July 2017, <http://odatv.com/khk-magdurlari-icin-kurulan-ohal-komisyonuna-khk-ile-atilanlarin-basvurmasi-yasak-2107171200.html>

112] "Kapatılan okullarda çalışan ve çalışma izinleri iptal edilen öğretmenlerin durumları," 20 July 2017, <http://www.ogretmenlericin.com/meb/kamudan-haber/kapatilan-okullarda-calisan-calisma-izni-iptal-edilen-ogretmenlerin-durumu-19073.html>

113] "Yargıtay'dan emsal olacak KHK kararı: kapatılan kuruma karşı dava açılmaz," Sabah, 15 January 2017, <http://www.sabah.com.tr/gundem/2017/01/15/yargitaydan-emsal-olacak-khk-karari-kapatilan-kuruma-karsi-dava-acilamaz>

Moreover, not only were the teachers dismissed from their jobs, but also their teaching licenses were declared invalid. In this context, the right to seek employment that was legitimately obtained by long years of university education was seized by a retroactively implemented decree. As a result, those teachers now have no other option than to work in the unregistered economy if they are lucky enough to find a job and without social security benefits. Many



**Sport fans who launched a banner that asked to keep hunger-striking educators alive were detained by police.**

were forced to take jobs that are far below their level of education and totally divorced from their field of expertise. In some cases where teachers set up their own private companies to offer tutoring for students, police raided the companies and arrested the teachers.<sup>114</sup> The government also refused to respond to inquiries filed by dismissed individuals who sought information about the reason for their dismissal under the law on the right to obtain information.<sup>115</sup> Perhaps the most outrageous act by the Turkish government was to arrest dismissed government employees when they visited the government commission -- set up on January 23, 2017 to hear cases of victimization resulting from the decree-laws -- to file an application with the hope of reversing dismissal decisions.<sup>116</sup>

Amnesty International called the mass dismissals of Turkish public sector workers a “professional annihilation” that has had a catastrophic impact on their lives and livelihoods. “The mass dismissals have been carried out arbitrarily on the basis of vague and generalized grounds of ‘connections to terrorist organizations.’ Dismissed public sector workers have not been given reasons for their dismissal nor do they have an effective means of challenging the decisions.”<sup>117</sup>

The Venice Commission also underlined that “the public servants concerned should have been able, at least, to know the evidence adduced against them and be allowed to comment on that evidence before any decision

114] “Kaçak iki etüd merkezine FETÖ operasyonu: 12 gözaltı,” Sözcü, 9 August 2017, <http://www.sozcu.com.tr/2017/gundem/kacak-2-etut-merkezine-feto-operasyonu-1965580/>

115] “OHAL Komisyonuna hak aramak için başvuru da yasak,” TR724, 11 August 2017, <http://www.tr724.com/ohal-komisyonuna-basvuru-icin-hak-aranmasi-da-yasak/>

116] “OHAL Komisyonuna başvuran FETÖ’cü yakalandı,” Memurlar.net, 5 August 2017, <http://www.memurlar.net/haber/685761/ohal-komisyonuna-basvuran-feto-cu-yakalandi.html>

117] Turkey: No end in sight: purged public sector workers denied a future in Turkey, Amnesty International, 22 May 2017, <https://www.amnesty.org/en/documents/eur44/6272/2017/en/>

**The government did not even allow dismissed teachers to provide private tutoring and arrested them for teaching maths to kids.**



on dismissal was taken.”<sup>118</sup> Yet, dismissed public employees only discovered that their names were on a list when it was published in the Official Gazette. In addition, they did not know why or based on what evidence, if any, they had been dismissed. They were prevented from accessing their files because they were classified.

The clear violations of the articles of the Turkish Constitution regulating the freedom to work and contract (Article 48 states that “[e]veryone has the freedom to work and conclude contracts in the field of his/her choice. [...]”) and the right to social security (Article 60 states that “[e]veryone has the right to social security. The State shall take necessary measures and establish an organization for the provision of social security.”) are a reality for thousands of citizens. Thus, rather than assuming its responsibility in ensuring these rights are respected, the Erdoğan government has acted in violation of the Turkish Constitution and prevented people from freely finding the job of their choice and without any hindrances.

The pension system in Turkey is a protection for those who have worked for a certain period of time to be able to live on in their post-work life. The protection of social security is directly related to a number of regulations including those on setting wages in accordance with the standard of living; securing the employees’ enjoyment of the right to health within the framework of insurance and health services; holding employers responsible for pecuniary and non-pecuniary damages in cases of occupational accidents and disease; providing citizens with free care services when necessary; and preventing unregistered employment. The Turkish government’s actions have not only resulted in mass dismissals but also the loss of severance payments, compensation and in some cases pensions for public employees.<sup>119</sup>

In fact, not only the Turkish Constitution but also a number of conventions to which Turkey is party and under obligation to comply with were violated. For example, the International Covenant on Civil and Political

118] “Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session, 9-10 December 2016”, CDL-AD(2016)037-e Turkey, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)037-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)037-e)

119] “Yurttaş hakları el kitabı/Çalışma hakkı,” <http://yereldemokrasi.net/nasil-mudahil-olabiliriz/yurttas-haklari-el-kitabi/bolum-ii-haklarimiz-cigeneniyor-ne-yapabiliriz/calisma-hakki>

Rights (ICCPR)<sup>120</sup> as well as the ECHR,<sup>121</sup> which protect the right to non-discrimination, were violated by the Turkish government when they dismissed public employees in large numbers just because they were believed to be affiliated with a social group such as the Gülen movement. In 2016 alone, the ECtHR found Turkey in breach of Article 14, which bans discrimination.<sup>122</sup> The International Covenant on Economic, Social, and Cultural Rights (ICESCR),<sup>123</sup> guaranteeing the right to work, and provisions of International Labour Organization (ILO) Convention 158 that protect against termination of employment by arbitrary dismissal without due process were also violated by Turkey. The government dismissed tens of thousands of people without even bothering to seek their defense in the face of allegations of “terrorism” and as such violated Article 7 of ILO 158, which states that “the employment of a worker shall not be terminated for reasons related to the worker’s conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.”

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120] Article 26 of ICCPR to which Turkey is a party clearly rules out any discrimination based on political or other opinion. It states that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

121] Article 14 of the ECHR provides that “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

122] Violation by Article and by State, European Court of Human Rights Statistics, [http://www.echr.coe.int/Documents/Stats\\_violation\\_2016\\_ENG.pdf](http://www.echr.coe.int/Documents/Stats_violation_2016_ENG.pdf)

123] Article 6.1 of the ICESCR recognizes §the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

## CONCLUSION

It has become clear that the non-observance of international norms relating to the rule of law, due process and the right to a fair trial, established in the Universal Declaration of Human Rights, the European Convention on Human Rights, the International Covenant on Civil and Political Rights and other relevant international instruments ratified by Turkey, has formed a pattern that suggests a systematic and deliberate campaign of persecution targeting a social group, the Gülen movement, rather than an exception or anomaly under emergency rule in Turkey.

The Erdoğan government is bent on destroying the lives of millions of people for their real or alleged affiliation with the movement, jailing over 50,000 including 668 babies<sup>124</sup> with their mothers in the last year alone. Almost 170,000 government employees were dismissed from their jobs without any judicial or administrative review and marked as “terrorists” for life by government decree-laws. Incidents of torture and ill treatment in detention and prisons increased when 90 people died under suspicious circumstances that in some cases were declared suicides by authorities without any effective probe.<sup>125</sup> Cases of abductions and enforced disappearances<sup>126</sup> by elements of the Turkish security forces totaled 13 as of August 30, 2017.

Subscriptions to the Zaman daily, Sızıntı magazine and the like, having an account at Bank Asya or having made a transaction through Bank Asya, keeping books and magazines written by Fethullah Gülen or published by firms close to the Gülen movement, being a member of associations or unions linked to the movement and even cancelling a Digiturk subscription are cited as criminal evidence in almost all indictments that SCF has reviewed. In light of this, tens of thousands of the participants and volunteers of the Gülen movement who have been the target of the witch-hunt launched by the government have been put under abusive criminal investigation and punished.

Thus, the fundamental principles of law such as “no crime without law,” “individual criminal responsibility,” “the ban on retroactive criminal laws,” “a requirement qualifying the commission of an offense” and “equal protection under the law” have explicitly, intentionally, widely and systematically been violated. In addition, arbitrary and unlawful prohibition decisions concerning

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124] Turkish Gov't Jails 108 Babies And Children More In Past 3 Months, Bringing Total To 668, 15 August 2017, <https://stockholmcf.org/turkish-govt-jails-108-babies-and-children-more-in-past-3-months-bringing-total-to-668/>

125] Suspicious Deaths And Suicides In Turkey – Updated List, 28 August 2017, <http://stockholmcf.org/suspicious-deaths-and-suicides-in-turkey-updated-list/>

126] Time to act on enforced disappearances in Turkey, 27 August 2017, <http://stockholmcf.org/enforced-disappearances-in-turkey-2/>

newspapers, TV stations, magazines and books, and in some cases the collection and destruction of published materials are typical examples of the violation of the freedoms of thought and expression. The practices of depriving individuals of the right to work and benefit from social security have clearly breached the Turkish Constitution as well as international conventions.

SCF shares the concerns of UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, who complained about the Turkish government's systematic prevention of investigations into human rights violations and voiced deep concern at the mass arrest and sacking of public employees and the renewed state of emergency there, saying a "climate of fear" now reigned.<sup>127</sup> Turkish President Erdoğan and his government should stop violating international agreements to which Turkey is party and instead should be complying with them in full.

SCF calls on the Turkish government to lift emergency rule, restore the rule of law, cease torture and ill treatment in detention and prisons, provide full and unfettered access of detainees to their lawyers, investigate thoroughly and effectively any cases of abuse of power by authorities, release all political prisoners including 283 jailed journalists and drop all charges against them, return seized assets to their rightful owners with compensation and reparations and insure the accountability of public officials.

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<sup>127</sup> U.N. rights chief questions due process in Turkey purges, 1 May 2017, <http://www.reuters.com/article/us-turkey-security-un-idUSKBN17X1CZ>

**ERDOGAN'S RULE BY ROYAL DECREE**

# **TURKEY'S CONTEMPT FOR THE RULE OF LAW**

**CRIMINAL  
ACCUSATIONS  
ON ABSURD  
PRETEXTS  
IN TURKEY**

**SCF**

stockholm  
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