

Memorandum on the evolutions of the situation regarding human and trade union rights in Turkey after the instalment of the state of emergency

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1 Introduction: the failed coup and the state of emergency

1. On **15 July 2016, an attempted coup took place in Turkey**. The European Trade Union Confederation (ETUC) and the International Trade Union Confederation (ITUC) **both expressed their firmest condemnation** of that attempt, and stated that any terrorist attacks or unconstitutional efforts to seize power and overthrow democracy must be opposed. The European and international trade union movement further expressed its sympathy and solidarity with the people of Turkey and the Turkish trade unions, especially aware of the profound trauma – given the country's history of military coups – caused by the bombing of the Parliament, Presidential palace, security departments, bridges and roads, as well as the deaths of at least 250 people – 173 of them civilians – with 2,200 left injured. The ETUC and ITUC called for an independent investigation and eventual prosecution of those responsible, to be conducted with full respect for the rule of law.

2. In the aftermath of the failed coup, the **ETUC, with the ITUC**, expressed **concern** at the Turkish government's mass dismissals of public employees and other workers, as a reaction, in most cases without any basis of evidence or compliance with the rule of law, destroying the livelihoods of thousands of workers. The ETUC and ITUC also expressed their worries about changes introduced (decrees and laws) limiting democratic rights.

3. On 20 July, a **state of emergency** was announced under Article 120 of the Constitution. On 21 July, derogations from the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) were notified. The state of

emergency **came into effect on 23 July** for a period of three months¹. **Decree law n° 667** provides that public-sector employees whose names appear on lists annexed to those decrees or whose “*membership to, attachment or affiliation with terrorist organizations or with those structures, entities or groups whose involvement in activities against the national security has been decided by the National Security Council*” are to be **discharged** from public service and **cannot ever** be employed again – either directly or indirectly – in the public sector (Art. 4). Their passports are cancelled. No prior legal or administrative enquiry is required. The period during which people may be held in custody without a court order rose to 30 days.

2 International norms

2.1 Regarding dismissals

4. These provisions, associated with another 1983 **law on the state of emergency** indicating that ‘*decisions shall not be open to appeal*’, seem to **breach at least three international legal instruments** – related to dismissals – to which Turkey is a party: ILO Convention n° 158 on termination of employment, 1982; the European Convention on Human Rights (Art. 6 right to a fair trial; Art. 7 no punishment without law; Art. 13 right to effective remedy); and the European Social Charter (Art. 1§2 on the right to work; Art. 24 on the right to protection in cases of termination of employment).

It should be noted that the **Turkish Constitution explicitly specifies the duty of respect for obligations deriving from international law, even in the state of emergency.**²

5. In more concrete terms, **ILO C158 Convention (n° 158) on termination of employment, 1982³, ratified by Turkey in 1995, provides in Art. 4 that ‘the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service’, while Art. 5 provides that ‘The following, inter alia, shall not constitute valid reasons for termination: (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, **political opinion**, national extraction or social origin’.**

Moreover, Art. 8 stipulates that: ‘a) A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator’.

¹ Art. 120 of the Constitution states that ‘In the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months’.

² Art. 15(1): “In times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, **as long as obligations under international law are not violated**”.
https://global.tbmm.gov.tr/docs/constitution_en.pdf

³ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158

6. The European Convention on Human Rights⁴ ratified by Turkey in 1954 states in Art. 6 on the right to a fair trial that ‘a/ Everyone is entitled to a **fair and public hearing** within a reasonable time by an **independent and impartial tribunal** established by law; b/ Everyone charged with a criminal offence shall be **presumed innocent** until proved guilty according to law’.

Art. 7 – No punishment without law [an article from which there are NO POSSIBLE DEPARTURES] indicates 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’.

And Art. 13 - Right to an effective remedy foresees that “**Everyone** whose rights and freedoms as set forth in this Convention are violated **shall have an effective remedy** before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”.

7. The problem of the **increase in violations of human rights in Turkey** is illustrated by, amongst other things, the spectacular increase in appeals registered since the coup attempt before the European Court of Human Rights, following the measures taken and the introduction of the state of emergency⁵.

8. Finally, the (revised) European Social Charter⁶, ratified by Turkey in 2007, provides in Art. 1§2 on the right to work that “**With a view to ensuring the effective exercise of the right to work, the Parties undertake: (...) 2) to protect effectively the right of the worker to earn his living in an occupation freely entered upon**”. In its latest conclusions (adopted in 2017) the European Committee of Social Rights already found that Turkey was not in conformity with the article on the ground that “**the Martial Law No.1402/1971 does not adequately protect local government officials and employees**”⁷: the new decrees on the state of emergency have worsened the situation.

Art. 24 of the same Charter - The right to protection in cases of termination of employment, stipulates that ‘**With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise: a) the right of all workers not to have their employment terminated without valid reasons** for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service; b) **the right of workers whose employment is terminated without a valid reason to adequate compensation or**

⁴ http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁵ ‘In 2016, we have seen an increase of 276 % in appeals against Turkey:

- In 2015, 2,212 new appeals,
- In 2016, 8,308 appeals of which :
 - 65 % (5363) related to the events post-15 July;
 - 35 % (2945) related to other issues.
- (Speech of President Guido Raimondi 26 January 2017, only FR available)
http://www.echr.coe.int/Documents/Speech_20170126_Raimondi_JY_PC_FRA.pdf

⁶ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>

⁷ <https://www.coe.int/en/web/turin-european-social-charter/-/discrimination-remains-widespread-in-the-states-parties-to-the-european-social-charter>

other appropriate relief. To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have **the right to appeal to an impartial body**.

2.2 Regarding Trade Union rights

9. The above-mentioned provisions seem also to **breach at least six other international legal instruments** more specifically related to trade union rights to which Turkey is a party: those deriving from the UN; from the ILO; from the Council of Europe and the revised Charter.

10. At the international level, the **International Covenant of the United Nations on Economic, Social and Cultural Rights (ICESCR)**⁸, ratified by Turkey in 2003, foresees in **Art. 8 the freedom of association, the right of everyone to form trade unions and join the trade union of his choice, and the right to strike.**

11. Those measures also violate the well-known **ILO Convention (n° 87) Freedom of Association and Protection of the Right to Organise**⁹, 1948 and the **Convention (n° 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949**¹⁰, ratified by Turkey, in 1993 and 1952 respectively.

12. **ILO C135 Convention (n° 135) concerning protection and facilities to be afforded to workers' representatives, 1971**¹¹, ratified by Turkey in 1993, provides in **Art. 1** that **'Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements'**.

13. At European level, **the (revised) European Social Charter**¹², also states in **Art. 28 – The right of workers' representatives to protection in the undertaking** and facilities to be accorded to them, that *'With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking: a) they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking.'*

14. The **European Convention on Human Rights**¹³, already cited, foresees in its **Art. 11, para. 1** concerning the freedom of assembly and association that **"Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests"**. Even if, as said

⁸ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

⁹ http://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C087

¹⁰ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098

¹¹ http://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C135

¹² <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>

¹³ http://www.echr.coe.int/Documents/Convention_ENG.pdf

previously, Turkey has submitted a declaration related to the state of emergency, in accordance with Art. 15, it should be noted that the Turkish Constitution explicitly specifies the **duty of the respect** for the obligations deriving from international law, **even in case of state of emergency**.¹⁴

15. Those decrees were **first presented as a swift and decisive reaction** to the 'Fethullahist Terrorist Organisation' (FETÖ/PDY) that was allegedly responsible for the coup attempt and had infiltrated – in addition to the army – other parts of the public sector (state institutions, judiciary, etc.). However, as pointed out by the Council of Europe **Commissioner for Human Rights in its Memorandum of 7 October**: *"the Fethullah Gülen movement appears to have developed over decades and enjoyed, until fairly recently – 2013 - considerable freedom to establish a pervasive and respectable presence in nearly all sectors of the Turkish society"*.¹⁵ Several Ministers and President Erdoğan, made public statements in favour of Gülen over the years; the President himself even conceded: *"we have given you all that you asked for"*.

16. On **1 September, 33,838 prisoners** and persons detained for minor offences were **released** to make room for the people arrested during enquiries into the attempted coup d'état.

17. The **scope of those decrees**, and the ones that followed¹⁶ was nevertheless **rapidly extended** to: (i) all other alleged terrorists organisations; (ii) media, private schools, universities, medical establishments, municipalities, legal professionals, business, NGOs **and trade unions**, creating almost **unlimited discretionary powers for the administrative authorities and the executive**. Indeed, several of the criteria used for dismissals and suspensions have been kept secret and the lawyers have no access to their clients' dossiers, although some elements are published in the media. The goods of targeted associations and enterprises were confiscated.

18. **Among those dismissed or suspended were several thousand trade unionists including many members of the four ETUC affiliates in Turkey: Turk-is, Hak-is, Disk and Kesk**. The largest reported numbers (figures as per 21 November) came from **Kesk**: 2,077 members dismissed and 10,510 suspended, of whom 41 were still arrested. And more than 900 members of **DISK** were dismissed. Turk-is, and Hak-is have reported less. Kamu-Sen, another trade union confederation in the public sector (not an ETUC member, but the second largest confederation with 450,000 members) lost some 2,000 members. MemurSen, the biggest public union close to the ruling Justice and Development Party (AKP), also lost several thousand members. In **TOTAL**, it seems thus reasonable to state that **in November, at least some 20,000 trade unionists were dismissed or suspended** without appeal, a figure which does not consider the thousands of members of the two confederations seen to be close to FETÖ.

¹⁴ Art. 15(1): *"In times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated"*.
https://global.tbmm.gov.tr/docs/constitution_en.pdf

¹⁵ <http://www.coe.int/en/web/commissioner/-/the-commissioner-publishes-a-memorandum-on-the-human-rights-implications-of-the-emergency-measures-in-turkey>

¹⁶

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806db6f1>

3 Statements and recent developments

3.1 July – September 2016

19. Immediately,¹⁷ the **UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein**, called on Turkish authorities **to respond to the attempted coup by reinforcing the protection of human rights and by strengthening democratic institutions and checks and balances**. *"In the aftermath of such a traumatic experience, it is particularly crucial to ensure that human rights are not squandered in the name of security and in the rush to punish those perceived to be responsible"*. And on **19 August**, a group of **United Nations human rights experts urged the Turkish Government to uphold its obligations under international human rights law, even in the current time of declared emergency** following an attempted coup.¹⁸

20. **The ITUC and ETUC also reacted by strongly condemning the failed coup in Turkey** and offered their deepest condolences to the victims. *"Unconstitutional attempts – especially involving military force – to seize power and overthrow democracy are unacceptable. We call for the investigation and eventual prosecution of those responsible to be conducted in full respect for the rule of law. The ITUC and ETUC are **also deeply concerned** by the Turkish government's drastic purge launched in the immediate aftermath of the coup attempt. Many civilians are amongst the thousands of people arrested and detained. Tens of thousands of workers and citizens have now been dismissed or suspended from their jobs"*¹⁹.

21. **Kesk clearly recalled that Article 51 of the Constitution of the Republic of Turkey** (which ensures that **the right to form a trade union shall be regulated**), **Article 31 of the Law No. 6356 on Trade Unions and Collective Bargaining** (which states that the **unions and confederations may be closed** in accordance with the decision of a court upon the request of the Chief Public Prosecutor) and **Article 37 of the Law No. 4688 on Public Servants' Trade Unions and Collective Bargaining were violated**; the confederation **explained to the government authorities that trade unions and confederations cannot be closed down under the decrees**.

On **22 July**, **Kamu-Sen revolted against the sacking/suspension of public officials 'on the sole grounds that they belong to a specific trade union organisation'**. Kamu-Sen submitted a petition to the Prime Minister and the President, recalling that membership of a trade union organisation cannot constitute valid grounds for such measures. On 3 August, Kamu-Sen further recalled the presumption of innocence; the entitlement to a prior enquiry and to appeal.

Disk, on the **same 22 July**, issued a **statement** underlining that *"Turkey does not need torture, capital punishment and a state of emergency. Turkey does not need to see its parliament effectively side-lined. All these violations are part of the aims and goals of civilian and military coups. What Turkey needs is democracy, secularism and peace and for all its people to create a country in which all can freely practice their beliefs, express their thoughts and live in dignity. With its demands in favour of labour, peace, democracy and secularism, DİSK has always stood against all coups and all attempts to impose a dictatorship, and will do so once more against the new state of emergency"*.

¹⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/Turkey.aspx>

¹⁸ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394&LangID=E>

¹⁹ https://www.etuc.org/documents/turkey-ituc-and-etuc-deeply-concerned-government-purge#.WLib0_nhDcs

3.2 October 2016

22. The **Council of Europe Commissioner for Human Rights** published his **Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey** on **7 October**. In his conclusions, the Commissioner recognised *“that very serious crimes, which even amount to massive human rights violations, have been committed and must be punished (...)”*. **BUT** he believed that *“it is time for the Turkish authorities to curb certain excesses of the state of emergency”* and *“immediately start repealing the emergency decrees”*. It is *“inconceivable that **the clear and present danger to Turkish democracy (..) has – months afterwards – not diminished to a significant extent**”*. The Parliamentary Assembly of the Council of Europe (PACE) has set up an ad-hoc committee to investigate.²⁰

23. It was against this background that the **ETUC and ITUC**, having consulted their four members Turk-is, Hak-is, Disk and Kesk, **decided on a first joint mission to Ankara in mid-October**. The aim was to stand in solidarity with all Turkish trade unions, but also to discuss **recent evolutions** affecting trade union members in the country after the coup attempt. In meetings with the EU delegation and the ILO office, the joint delegation reiterated its unconditional support for the democratic values and trade union freedoms set out in ILO conventions and international and European Charters, **as well as full respect for the rule of law**. **In the joint statement adopted together with all four Turkish confederations, trade unions insisted on the fact that the failed coup could not lead to “constitutional changes that limit democratic rights or to the destruction of the livelihoods of thousands of workers”²¹.**

24. In Antalya, on **28 October**, an **ETUC ‘Youth Summit’** marked the conclusion of a two-year project supported by the European Commission, aiming at exchanges on specific issues between young workers from EU Member States and Turkey. During the farewell dinner attended by more than 150 people, a group of policemen arrived to **arrest one of the participants, a member of Disk**, without any mandate. The next day, and after having spent several hours in a detention centre, the only accusation against the young trade unionist made in court was that he **had participated in a demonstration in 2014, in other words TWO YEARS EARLIER**. Following representations by Disk and the ETUC, he was released.

25. Still on **28 October**, the **UN High Commissioner for Human Rights** reminded the Turkish authorities that **even during a state of emergency, the principles of legality, proportionality and necessity, due process guarantees and the presumption of innocence – fundamental requirements for a fair trial – must be respected**. He called on the Government to ensure full respect for human rights and maximum transparency in the administration of justice.

26. Whereas it could be expected that, **four month after the failed coup, the situation would have gradually come back to normal, the decrees and their impact accelerated**. On **29 October**, under a new Statutory Decree (No. 676), 10,131 more people were dismissed from public utilities, as well as hundreds of teachers, doctors, diplomats and academics including **Kesk and Disk members**. Another decree suppressed university chancellor elections. Under the new regulation, *“in state universities, the President of the Republic will*

²⁰ <http://www.coe.int/cs/web/commissioner/-/the-commissioner-publishes-a-memorandum-on-the-human-rights-implications-of-the-emergency-measures-in-turkey>

²¹ https://www.etuc.org/press/joint-statement-etuc-ituc-turk-hak-disk-kesk#.WKW7Bvk1_cs

*appoint the university chancellor among three candidates proposed by the Council of Higher Education". On **31 October**, police raided the house of *Cumhuriyet* Daily Editor-in-Chief Murat Sabuncu. On **1 November**, a caretaker was appointed to replace two co-mayors of the city of Diyarbakir (in the south east) who were arrested a few days before. On **4 November**, 12 elected members of the People's Democratic Party (HDP) – including co-chairs Ms Figen Yüksekdag and Mr Selahattin Demirtas – were detained.*

27. The **situation in the south east has also worsened** since Turkey was hit by several large-scale terrorist attacks by Daesh and some extremists connected to the PKK. The **ETUC condemns** any terrorist attacks. But the **EU reported that serious human rights violations and disproportionate use of force by the security forces in the south east had multiplied**. Many elected representatives and municipal leaders in the south east have been removed from their duties or arrested under terrorism-related charges, some of them based on measures introduced under the post-coup state of emergency, again in violation of human rights.²² Per some trade union sources, the newly appointed trustees in the municipalities in the south east dismissed trade unionists they found not in line with the ruling party. Numbers as important as 10,000 were cited.

And **after assignment of trustees, the collective bargaining agreements**, which had been made between **TUM BEL-SEN (a KESK affiliated trade union)** and **relevant municipalities were unilaterally terminated** (for example, in Mardin Derik Municipality and Batman Municipality). **This also violates ILO Convention No. 98.**

3.3 November 2016

28. The **ETUC Women's Committee, meeting on 2-3 November 2016**, was informed that one of its **Kesk** representatives was unable to travel to attend the meeting. The Executive Board member of Kesk was dismissed from her job in the public sector followed by **confiscation of her passport**, preventing her participation, which was **arbitrary and unjustifiable**. The Women's Committee also noted that the case of this Kesk representative was not unique and **that many other workers** had been affected by such arbitrary decisions by the Turkish Government. These practices constitute violations of the right to work, trade union rights, and other fundamental labour rights. The ETUC Women's Committee strongly condemned the Turkish Government's actions and demanded the immediate reinstatement of these rights.

29. Still in **November**, several sources referred to some figures regarding the dismissals/suspensions mainly of public employees but also teachers and academics (estimated 48,500), journalists and former employees of banned media outlets (2,500 dismissed, of whom 142 have been detained), police officers (estimated 22,000), soldiers, and staff in the ministries of health, justice and the interior (estimated 34,000), local authorities and the business community. Some **35,000** citizens had been **arrested and detained** (31,844 by the beginning of October, per the Commissioner for Human Rights [CHR]). The most common reasons were: holding an account with Bank of Asia (with incredible cases such as a tenant and his family who, at the request of the landlord, a Gülen sympathiser, paid the rent into an account at that bank), belonging to trade unions close to Gülen (the case of workers who joined during recruitment campaigns conducted by those confederations, after the accident in a coal mine near the city of Soma in May 2014), or downloading an app such as WhatsApp ...etc.

²² https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_turkey.pdf

30. The **Turkish Human Rights Association**²³ (IHD) [*“Notorious former prison torture methods have remerged during the state of emergency declared after the July 15 failed coup attempt, in addition to overcrowding and poor conditions in Turkey’s jails”*] and **Amnesty International** [*Amnesty International has gathered credible evidence that detainees in Turkey are being subjected to beatings and torture, including rape, in official and unofficial detention centres in the country*] cited **allegations of mistreatment and torture** in the detention centres²⁴.

31. While suspended and under investigation (46,634 people per several sources in November), workers are entitled to two thirds of their salaries, but **those dismissed (76,659) and their families do not receive ANY MONEY** from the government; in addition, their **social securities are taken away**. Many institutions, more than 170 media, more than 1,000 NGOs, several sectoral federations of Aksiyon-is (with around 36,000 members in 2015) and Cihan-Sen, two trade union confederations close to the Fethullah Gülen movement, foundations and private companies have been shut down. Family members have been treated as suspects and their assets seized without evidence or for unjustified reasons.

32. Given that the **Turkish High Court declared itself ‘incompetent’** to examine appeals, **some ETUC-affiliated trade unions** and Kamu-Sen, among others, **have set up their own ‘appeal procedures’**. It is likely that several thousand appeals will be launched in Turkey and channelled to the European Court of Justice²⁵. However, in all cases launched against unlawful dismissals, the Turkish courts have decided to reject the allegations up until now.

33. The **European Commission’s 2016 Progress Report on Turkey**, issued on 9 November, underlined that following the failed coup, **“any allegation of wrongdoing should be established via transparent procedures in all individual cases. Individual criminal liability can only be established with full respect for the separation of powers, the full independence of the judiciary and the right of every individual to a fair trial, including through effective access to a lawyer**. Turkey should ensure that any measure is taken only to **the extent strictly required** by the exigencies of the situation and in all cases, stands the test of necessity and proportionality”²⁶.

34. On 18 November, the **United Nations Special Rapporteur on the right to freedom of opinion and expression** raised concerns over the Turkish government’s widespread attacks on independent opinion and freedom of expression in the country. *“The press, individuals online, artists, opposition voices and many others face unprecedented pressure, from censorship to outright detention”*, he declared. He urged *“the government to reverse this course and return to protecting and promoting the rights that all people in Turkey enjoy under their Constitution and international human rights law”*²⁷.

²³ <http://www.hurriyetdailynews.com/former-torture-methods-reemerge-in-turkish-prisons-human-rightsassociation.aspx?pageID=238&nID=103887&NewsCatID=339>.

²⁴ Cf. Amnesty International Turkey report: Independent monitors must be allowed to access detainees amid torture allegations, [Amnesty International](#), 24 July 2016.

²⁵ “A first appeal at the European Court against the dismissal of a teacher was declared inadmissible for non-exhaustion of domestic remedies (Zihni c. Turquie – n° 59061/16, <http://hudoc.echr.coe.int/fre?i=001-169704>). Nevertheless, this logic of subsidiarity cannot continue if the Turkish Constitutional Court continues to declare itself incompetent”. (Président Raimondi 26 January 2017, opcit).

²⁶ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_turkey.pdf

²⁷ http://www.un.org/apps/news/story.asp?NewsID=55600#.WKW-uPk1_cs

35. On **22 November**, **decree n° 678** was published. Art. 35 stated that *'A lawful **strike** or lock-out that has been called or commenced **may be suspended by the Council of Ministers for 60 days with a decree if it is prejudicial to public health, national security, urban public transportation services of the metropolitan municipalities, or economic or financial stability in banking services**'*. This decree **extends the scope of section 63 of Act No. 6356**, (Act on Unions and the Collective Agreement, November 2012). This Act, which allows the Government to suspend a strike considered prejudicial to national security and public health, and impose compulsory arbitration, already **provides excessive limitations to the right to strike in violation of ILO Convention N° 87**.²⁸ An extension of its scope is likely, leading to even broader limitations or a de facto ban on strikes by workers.

36. The **European Parliament**, on **24 November**, adopted a resolution *"strongly condemning the disproportionate repressive measures taken in Turkey"* and *"called on the Commission and the Member States to initiate a temporary freeze of the ongoing accession negotiations with Turkey"* while underlining the *"strategic importance of EU-Turkey relations for both sides"*²⁹. Those concerns were reiterated on **28 November**, at an EP **Committee on International Trade (INTA) hearing** on the "modernisation of the EU-TR trade relations, towards a new trade framework".

3.4 December 2016

37. On **1 December**, the **Committee to Protect Journalists** issued its report "2016 prison census: 259 journalists jailed worldwide", finding that **Turkey imprisoned more journalists than any other country in the world in 2016**.³⁰ *"It is estimated that 148 journalists and media workers are in jail"*. Most recently, the **Turkey correspondent of the German newspaper Die Welt, Deniz Yücel** was formally arrested after having been detained on **14 February 2017** for publishing "terrorist propaganda".

38. On **2 December**, **United Nations human rights expert Nils Melzer** appealed to the **Turkish Government** *"to live up to Turkey's policy of zero tolerance on torture."*³¹ **"Torture and other forms of ill-treatment seem to have been widespread in the days and weeks following the failed coup, particularly at the time of the apprehension and during initial detention in police or gendarmerie lock-ups as well as in unofficial detention locations,"** the expert said, referring to numerous testimonies from inmates, their lawyers and civil society organisations.

39. In its **Joint Statement on 5-6 December**, the **EU-Turkey Joint Consultative Committee (JCC)**, meeting in Ankara, stressed that **'the right to fair trial and due process should be respected and that all measures taken should further strengthen democracy,**

²⁸ The ILO Committee on Freedom of Association in Case No 3084 (Turkey) stated that the concepts of national security and public health should be implemented in good faith and in accordance with the ordinary meaning of the terms "national security" and "public health". **"The Committee concludes that Art. 63 of Act No 6356 should be revised to ensure that the final decision on whether to suspend a strike rests with an independent and impartial body"**.

http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3237754

²⁹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P8-RC-2016-1276+0+DOC+XML+V0//EN>

³⁰ <https://www.cpj.org/imprisoned/2016.php>

³¹ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20977&LangID=E>

civil rights and social cohesion, respecting universal fundamental rights, the independence of the judiciary and the rule of law'. In line with Chapters 23 and 24, JCC members once again highlighted the attention the EU-Turkey dialogue needed to be given in order to foster the effective implementation of basic rights and freedoms based on: rule of law and the independence of judiciary; freedom of expression without fear of individual discrimination or punishment; media freedom that promotes diversity; freedom of association and assembly; women's rights and gender equality; **trade union rights**; rights of minorities, including sexual, religious or cultural groups; consumer rights.

40. On **12 December**, the **Council of Europe** declassified the report by the **Commission for compliance with Member States' obligations and commitments** which basically reiterates the inquiry by Ingebjørg Godskesen (Norway, European Conservatives) and Marianne Mikko (Estonia, Socialists), for the Parliamentary Assembly of the Council of Europe (PACE). This report gives a summary and precise timetable of the purges carried out by the Turkish regime after the attempted coup d'état³².

This report concluded that: *'As of 9 December 2016, and according to figures reported in media, there were:*

- **Over 125,000 persons dismissed**
- *Legal action against 92,607 suspects, **39,378 of whom have so far been arrested**, as part of the investigation into the failed coup attempt*
- *3,673 judges and prosecutors dismissed and 2,700 suspended*
- *177 media outlets shut down and 11 reopened*
- *Over 140 journalists arrested*
- *About 1,800 associations/foundations shut down*
- *About 2,100 schools, dormitories, and universities shut down*

In addition, as of 9 December 2016, per figures provided by the Union of South-eastern Anatolia Region Municipalities (GABB):

- *55 BDP co-mayors have been arrested;*
- *70 BDP mayors have been dismissed;*
- *43 trustees have been appointed in the 103 municipalities won by the BDP at the last local elections of 30 March 2014.*

41. Also on **12 December**, the **Venice Commission of the Council of Europe** developed a **report on the emergency decrees** and came up with the following key concerns³³:

- **Government is de facto legislating without any control by the Parliament or the Constitutional Court;**
- Measures taken are of a **permanent nature** beyond a temporary state of emergency;
- Implementation of emergency powers through **ad hominem legislation**;
- **Due process rights** of dismissed public servants and organisations dissolved **removed by decree laws**;
- **Loose definition of "terrorist"** organisation and **penalisation of family** members of alleged terrorists;
- Pre-trial detention without judicial control increased to 30 days and **limitation on the right to access to a lawyer**; and
- Removal of protection **against ill-treatment of detainees**.

³² <http://website-pace.net/documents/19887/2221584/AS-MON-INF-2016-14-FR.pdf/3e06bb1c-cdd9-4573-8652-b353b8508a54>

³³ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)

42. On **14 December**, the **ETUC Executive Committee unanimously adopted** a '**Statement on the evolution of the Turkish situation**'³⁴. The ETUC urged the Turkish government to:

- **Immediately review the decrees** on the state of emergency to ensure they conform with ILO Conventions and EU Charters;
- **Stop arbitrary dismissals**, investigations, persecutions and arrests by recognising the right to fair, objective and transparent trials and appeal procedures for all affiliated trade union organisations as well as the 120,000 people dismissed or suspended;
- **Start repealing the emergency decrees**;
- Revert to normal legislation which implies the **presumption of innocence**, individuality of criminal responsibility and punishment, and the right to equal defence;
- **Immediately redress the grievances** of innocent people who have been arrested or suspended;
- **Restore freedom of expression, speech, and the press**; reopen democratic media and associations;
- **Immediately release trade unionists and all those held** in prison for exercising their right to freedom of opinion and expression; ensure access to all others in detention;
- **Respect and implement ILO core labour standards**, Conventions **87 and 98 on trade union rights**'.

43. On **15 December**, **Human Rights Watch**³⁵ identified in its report "**Silencing Turkey's media**", "six trends in the attacks of the government against critical press: first, the use of criminal justice terrorism to prosecute journalists for terrorism, insulting public officials and crimes against "the state"; second, physical violence against journalists; third, government interference with editorial independence; fourth, government takeover and closure of media companies; fifth, fines and restrictions on distribution; and sixth, blocking of online websites"

3.5 January 2017

44. Between **2 January and 9 February 2017**, **EIGHT new decrees (D. 679 to 687)** were published while on **3 January**, the state of emergency was again extended for another period of three months, until **18 April**.

Some **8,321 more civil servants** were suspended/dismissed (D. 679) (still based on a list annexed to the decree, for notification only), while 278 were reinstated. And 83 new associations and foundations were closed. **Early February**, approximately a further **4,500 citizens and their families** lost their jobs.

Admittedly, decree **D. 685 (23 January)** does provide for the setting up of a '**State of Emergency Actions Monitoring Commission**'. **BUT** that Commission is made up of **seven people**, almost all appointed by the incumbent power and tasked with **examining, in the space of two years, the 60,000 probable cases**. This exemplifies another violation of the provisions of Art. 13 of the European Convention on Human Rights which guarantees, as already mentioned, the "right to an effective remedy and the principle that the **effective remedy mechanism** shall be **independent**, not open to the influence of the administration

³⁴ <https://www.etuc.org/documents/statement-evolutions-turkish-situation#.WLIjmvnhDcs>

³⁵ <https://www.hrw.org/report/2016/12/15/silencing-turkeys-media/governments-deepening-assault-critical-journalism>

and examinable." **The other necessary condition for being an effective mechanism is to collect necessary documents and to hear applicants' objections, evidences and defences.** The Commission, however, apparently will decide by only examining the file. The government of Turkey has not been submitting any document and evidences regarding the dismissals, suspensions, closure of the organizations and all other practices during the state of emergency.

Moreover, decree **D. 684** (same date) **reduces the custody period from 30 days to 7 days**, once renewable, **EXCEPT** for persons suspected of belonging to/sympathising with terrorist organisations, in other words the clear majority of the cases

45. Equally worrying is the fact that these **decrees set out a series of provisions, which have STRICTLY nothing to do with a state of emergency**: healthcare staff now being hired by the Ministry of Defence; licence plates delivered in future by notaries and no longer by the police; an obligation to carry snow tyres (D. 687) in winter, etc. Parliament is being further short-circuited. The President is taking over legislative and judicial powers.

46. On **21 January**, the **Turkish Parliament** adopted, at second reading, a proposal for **18 constitutional amendments** to be submitted for **a referendum on 16 April**. These proposals raised some serious **questions concerning the guaranteed democracy** and as to whether the separation of powers and the independence of the judiciary could be protected under the proposed reforms.

47. Indeed, as the **Parliamentary Assembly of the Council of Europe** stressed in its **Statement on 26 January** about the planned reforms to the Constitution³⁶: *'the Monitoring Committee expresses serious doubts about the desirability of holding a referendum under the state of emergency and on-going security operations in south east Turkey'*. The Committee likewise:

- *"notes with concern that the adoption procedure in parliament was speedy (six weeks in all) and marked by tense debates, infringement of the secrecy of votes, no continuous broadcasting of all parliamentary debates on television;*
- *has deep concerns as to whether the revised constitution – which will grant extensive powers to the President of the Republic – would guarantee the separation of powers, proper checks and balances and the independence of the judiciary, which are a prerequisite for democratic societies;*
- *observes that the stripping of the immunity of 154 parliamentarians in May 2016, the current detention of 11 parliamentarians, all belonging to the opposition Peoples' Democratic Party (HDP), has had a deterrent effect and will lead to serious restrictions on democratic debate in the run-up to the referendum"*.

36

<http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6507&lang=2&cat=3>

3.6 February 2017

48. On 8 February, the Committee of experts of the ILO³⁷ published its annual Report 2017 on the **Application of Conventions and Recommendations. Concerning Convention 158, Art. 4 and 5 - Valid reasons for termination**, the **“Committee noted the joint statement of the European Trade Union Confederation (ETUC), International Trade Union Confederation (ITUC), Confederation of Turkish Trade Unions (TÜRK-İS), Confederation of Turkish Real Trade Unions (HAK-IS), Confederation of Progressive Trade Unions of EMPLOYMENT SECURITY 514 Turkey (DISK) and Confederation of Public Employees’ Trade Unions (KESK), referring to a “massive wave of dismissals” in Turkey by the Government since July 2016, primarily in the public sector, and to a meeting in October 2016, with representatives of the ILO”**. The Committee recalled that Article 4 of the Convention provides that the employment of a worker shall not be terminated unless there is a valid reason connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service. The **Committee requested the Government to provide detailed information** in this regard by providing information on the practical effect given to Articles 4 and 5 of the Convention in relation to the reported “massive wave of dismissals” that has taken place since July 2016. (p. 512)

49. On 15 February, the Council of Europe³⁸ issued its **Memorandum on freedom of expression and media freedom in Turkey**. The Commissioner **“urged the Turkish political leaders in the strongest possible terms to change course and start separating what is a terrorist action from criticism and dissent, and to display the responsibility and tolerance expected in a democratic society. (...) Firstly, the state of emergency should be lifted, and an end should be put on the numerous unacceptable infringements of freedom of expression, and media freedom and academic freedom, that it engendered. The more, Turkish authorities should profoundly review the Criminal Code and the Anti-Terrorism Law to bring those texts and practices in compliance with the jurisprudence of the European Court of Human Rights.”**

50. On 23 February, the Human Rights Association (IHD) published an updated fact sheet about the state of emergency measures taken in Turkey. The fact sheet includes **invaluable information regarding the state of emergency measures in Turkey** under the titles of Declaration of State of Emergency, Decrees Having the Force of Law, Measures, Dismissals, Dissolved Institutions etc.

³⁷ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_543646.pdf

³⁸

<https://wcd.coe.int/com.intranet.InstraServlet?command=com.intranet.CmdBlobGet&IntranetImage=2961658&SecMode=1&DocId=2397056&Usage=2>

3.7 March 2017

51. On 1 March, the Secretary General Thorbjørn Jagland of the ECHR issued a press statement³⁹ on the occasion of the visit of Mr Bekir Bozdağ, Minister of Justice of Turkey: *"It is imperative for Turkey and Europe that the judicial safeguards for all those who have been dismissed or are in prison are based on the European Convention on Human Rights and on the case law of the European Court of Human Rights. The Commission that will be set up in Turkey to go through the cases for those who have been dismissed, organisations that have been closed, schools and news outlets that have been closed, private property that has been confiscated, must work independently and on the basis of the ECHR"*.

52. Meanwhile, several International and European federations, representing different specific sectors, have also reacted to the decrees and measures in Turkey. A few recent examples follow:

The European Public Services Union's (EPSU) Executive Committee adopted on 8-9 November a Statement⁴⁰ recalling that *"In the aftermath of the failed coup in Turkey on 15 July last, EPSU, its International sister federation PSI and the labour movement at large strongly condemned both the attempted coup against the Turkish government and the latter's subsequent disproportionate reaction. (..) The Executive Committee urged the Turkish government to stop the arbitrary dismissals of civil servants and other workers. Those who have been suspended or dismissed should have recourse to trade union officials and the courts to represent their interests. Unless there is proof of their involvement in the coup attempt they should be reinstated in the civil service immediately"*. And on 17 February, EPSU protested at the new dismissals of leaders and trade union officials from BES (public administration), SES (health) and other federations: *"the accusations are made without evidence and in manners that violate Turkish law and European and international norms. Testimonies show how the already existing pressure on trade unionists and their work before the coup has turned into repression after 15 July"*.

53. On 29-30 November, the regional meeting of the European and International Federations of Journalists' (EFJ-IFJ) affiliates from the Balkans and Eastern Europe took place in Istanbul. *"The gathering of more than 10 international journalists' representatives showing solidarity under the state of emergency with so many journalists in jail (over 120), under prosecution (thousands), without jobs (over 10,000,) was warmly welcomed by the colleagues and local media"*. More recently, on 10 February, the EFJ has backed its affiliate Turkish Journalists Association (TGC) in **condemning new restrictions imposed on broadcasters by governmental decree number 680** published on 06/02/2017. The Executive Board of the Turkish Journalists Association (TGC) announced that *"the restrictions imposed on broadcasting by Radio and Television Authority (RTUK) officials represent a direct intervention in the profession of journalism and aim at making censorship a permanent institution"*.

³⁹ <http://www.coe.int/en/web/portal/-/press-statement-by-secretary-general-thorbj-rn-jagland-on-the-occasion-of-the-visit-of-mr-bekir-bozdag-minister-of-justice-of-turkey>

⁴⁰ http://www.epsu.org/sites/default/files/article/files/Statement%20on%20Turkey_%20adopted%20EN.pdf

54. On **20 January**, **IndustriAll global and Europe** **protested** vigorously against the **Decrees** by the Turkish Ministerial Cabinet, which seek to **ban strikes** in the **metallurgy industry**, a flagrant violation of workers' fundamental right to resort to strike action, which is a right guaranteed by the Turkish Constitution as well as by ILO Conventions and case law.

The International Centre for Trade Union Rights addressed, in February, a **letter to the Turkish President**, stressing its “*great concerns about the **continuing climate of violence and intimidation for trade unionists in Turkey**. Also in January 2017, ICTUR understands that the Turkish government continued to **use decrees citing national security threats to ban strikes** at several enterprises. On 18 January, a strike at the Asil Çelik steel mill in Bursa was banned. On 20 January, over 2,000 workers in the 13 factories owned by ABB, General Electric and Schneider Electric were informed that their strike was banned, mere hours after it had begun. (..) ICTUR wishes to remind the government that **these measures amount to serious, widespread and ongoing violations of workers' freedom of association, enshrined in the ILO's fundamental Conventions, all eight of which Turkey has ratified. (..)** Regarding the **banning of strikes**, the Committee has noted that the “**responsibility for suspending a strike** on the grounds of national security or public health **should not lie with the Government, but with an independent body** which has the confidence of all parties concerned” (ILO Digest, para. 571).*

A few months earlier, Mr. Kanber Saygılı, Board Member of **DISK** and President of **Limter-İş Union (International and European Transport Federations)**, was detained on the picket line of TEDİ Warehouse in Tuzla, İstanbul. Police claimed the picket line was banned due to the state of emergency.

55. On **5-8 December**, at **the European Trade Union Committee for Education's (ETUCE)** Conference in Belgrade, **ETUCE member organisations condemned “the Turkish government for using the failed coup attempt to justify (a) its undemocratic and authoritarian actions against the Turkish education community and (b) the abuse of power against those who are not afraid to raise their voice to advocate for democracy, high quality education and decent working conditions for education personnel”** and reaffirmed their commitment to strive and advocate for democracy and fundamental rights”. To that effect and unanimously adopting the Resolution "Solidarity with the Turkish education community"⁴¹, they clearly confirmed their aim to further support and demonstrate solidarity with their Turkish member organisation and its affiliates.

On **7 February**, **ETUCE** issued a joint response with the **ETUC to a Greek federation** which raised the case of a **teacher sacked** by the Turkish Ministry from a Xhanti school **because ‘he was no longer following the school's religious line’**, in fact he was accused of being pro FETO. **The teacher won his appeal, but the school board refuses to take him back.**

On **27-28 February**, **EI (Education International) /ETUCE** organised the second mission to Ankara. EI/ETUCE member organizations met representatives from **Eğitim Sen, KESK** (the Turkish Confederation of Public Employees' Trade Unions), and dismissed teachers in Turkey. In the frame of the mission, the EI/ETUCE delegation met also with representatives of the Delegation of the European Union to Turkey, ILO, UNICEF and with officials of various embassies in Ankara and discussed further actions of solidarity.

⁴¹ https://www.csee-etu.org/images/attachments/RS_Turkey_EN-ADOPTED.pdf

56. **SEVEN MONTHS after the failed coup**, the **purge thus continues** with new sackings, suspensions, and intimidation of trade unionists. A few recent examples follow:

On **21 December**, **KESK** initiated its **march** between **Istanbul to Ankara** under the slogan “**I want my job and my bread**” organised to draw attention to the **impact the mass dismissals had on workers**. The union planned to march for 10 days but had to cut the protest short due to **violent police interferences**. Workers were met with tear gas/ rubber bullets when they gathered in Istanbul.

On **26 January 2017**, a member of **Kesk affiliated trade union TÜM BEL-SEN** was finally released after 4 month of imprisonment. She had been under police custody and kept in detention for days, despite she had an 18-month baby; a trial is pending although she was not brought before the court.

On **Monday 13 February**, the President of the Istanbul branch of **Egitim-Sen/Kesk** (teachers) was arrested at 2 am in the morning, and has been in custody ever since.

End **February**, some **3,131 members of Kesk have been dismissed** (in comparison to **2,077 on 21 November**, which is a thousand more in 3 months). There are still 721 suspended members and this figure is continuously increasing. **77 members of Kesk are still in prison and 122 members were exiled**. In total, 330 executive board members of Kesk have been dismissed.

57. In **18 January**, a **Professor** of Labour Economics and the Coordinator of **DISK** Headquarters was detained in Istanbul Atatürk Airport and his passport was seized. The Professor was going to Paris to address a panel discussion at the Sorbonne University.

Genel-İş (Union of General Services), a member of DISK representing municipal and health workers, reported that 912 of its members were dismissed and 134 were suspended because of the emergency decrees. There are 56 Genel-İş members under arrest or detention and the **union office in the Şırnak Province has been demolished**.

As of **22 February**, more than **1,000 members of Disk** have been dismissed, without any fair trial or investigation, during the state of emergency period. Most of them are municipal workers who were working for municipalities in the south east.

58. After the **KAMU-SEN** President publicly declared that he would vote against the constitutional amendments in the referendum, a group of 25 forced itself into the union offices to **attack him in January 2017**.

On **11 February 2017**, the **Chairman of the Türk Büro Sen union – affiliated of Kamu-sen - WAS SHOT AT** in Ankara. **He escaped without injury, but his driver was shot in the foot and taken to hospital**. It is understood that the Chairman has been campaigning for voters to reject the proposed constitutional reform in the upcoming April referendum.

59. According to **TURK-is**, by end February, some **150,000 people** have been dismissed or suspended, of whom **19,000 were reintegrated**.

4 Conclusion

60. ***In conclusion, since the failed coup of 15 July, 21 Decrees have been adopted in Turkey in the framework of the State of Emergency; those decrees clearly breach several International and European legal instruments as well as the Turkish constitution (ILO Conventions; the International Covenant on Civil and Political Rights -ICCPR; the International Covenant of the United Nations on Economic, Social and Cultural Rights – ICESCR; the European Convention on Human Rights – ECHR; and the European Social Charter revised.***
61. ***In seven months, more than 125,000 public employees, other workers and citizens have been dismissed or suspended with their families; the decrees violate the principles of legality, proportionality and necessity, due process guarantees and the presumption of innocence – fundamental requirements for a fair trial. The purge continues with new sackings, suspensions, and intimidation of trade unionists.***
62. ***The ETUC insists URGENTLY that, at European, international and ILO level, voices are raised to demand an end to the measures taken within the framework of the state of emergency, and which are contrary to international legal instruments – conventions and charters. Many observers believe that after the referendum on April 16, the situation could get EVEN WORSE.***
63. ***The ETUC also stresses the importance of maintaining and developing dialogue between Turkish and European trade unions and, beyond that, between civil society organisations in general, and reaffirms its commitment to fostering long-term cooperation with its Turkish members. This, however, will only be possible if fundamental rights and freedoms are respected.***
