



PURGED BEYOND RETURN?

NO REMEDY FOR TURKEY'S DISMISSED PUBLIC SECTOR WORKERS

AMNESTY
INTERNATIONAL



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Cover photo: 'Illustration depicting the isolation and marking out of dismissed public sector workers in Turkey' © Daniel Clarke

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EXECUTIVE SUMMARY

On the evening of 15 July 2016, elements within Turkey's armed forces attempted a violent coup. The coup attempt was quickly thwarted as thousands of people took to the streets and state forces overpowered the coup plotters. Hundreds died, and thousands were injured in a night of terrible violence. The government declared a state of emergency soon afterwards on 20 July 2016 with the stated aim of countering threats to national security arising from the coup attempt. While the state of emergency was initially declared for three months, it would be renewed seven times, and its remit broadened to include combatting terrorist organizations. The state of emergency finally ended on 18 July 2018, two years after it was first announced, having ushered in a period of tremendous upheaval in Turkish public life.

During the state of emergency, the government had the extraordinary power to issue emergency decrees with the force of law. These decrees were used to enact a wide variety of measures, affecting diverse issues from detention periods and NGO closures to snow tyre requirements. Around 130,000 public sector workers were dismissed by emergency decrees. Those dismissed include teachers, academics, doctors, police officers, media workers employed by the state broadcaster, members of the armed forces, as well as people working at all levels of local and central government. Their dismissals did not include specific evidence or details of their alleged wrongdoing. Instead, the decrees offered a generalised justification that they '...had links to, were part of, were connected to, or in communication with...' proscribed groups.

The arbitrary dismissals have had a devastating impact on those who lost their jobs and their families. They did not only lose the jobs they occupied; in some cases, they were entirely cut off from access to their professions, as well as housing and health care benefits, leaving them and their families without livelihood opportunities.

“Imagine you wake up one day and both you and your wife have been dismissed from your jobs. There is no other job for which you are equipped. You do not know how you will get by.”

A dismissed school teacher interviewed by Amnesty International in July 2018

For a long time, these dismissed public sector workers did not have any recourse against their dismissal as they had no access to ordinary administrative or legal channels in Turkey. Following considerable domestic and international pressure, the government passed an emergency decree in January 2017 setting up a 'State of Emergency Inquiry Commission' (hereinafter referred to as 'the Commission') to review decisions taken by the emergency decrees, including the appeals of purged public sector workers. Amnesty International research, which involved a review of procedures and a sample of decisions taken by this Commission and interviews with dismissed individuals and their families, reveals that the Commission – by its very design – is not set up to provide an effective remedy to the thousands of public sector workers dismissed from their jobs by emergency decrees. The combination of factors – including the lack of genuine institutional independence, lengthy review procedures, absence of necessary safeguards allowing individuals to effectively rebut allegations about their alleged illegal activity and weak evidence cited in decisions upholding

dismissals - resulted in the failure of the Commission to provide a recourse against dismissals, leaving more than a hundred thousand individuals, their livelihoods on hold, without a timely and effective means of justice and reparation.

The Commission does not have institutional independence from the government as its members are largely appointed by the government and may be dismissed simply by virtue of an 'administrative investigation' on the basis of suspicion of links to proscribed groups. Thus, the provisions for appointments and dismissals could easily influence the decision-making process; should members fail to make decisions expected of them, the government can just as easily dispense with them.

The unreasonably lengthy procedures of the Commission additionally affect its ability to provide a timely and effective remedy. The waiting period for the decisions Amnesty International reviewed ranged from four to 10 months, while many dismissed public sector workers are yet to receive a response from the Commission despite having submitted their applications over a year ago. The Commission is not bound by deadlines for making decisions, leaving dismissed public sector workers who appeal to it in complete uncertainty as to when they should expect a response. Considering the significant, often debilitating, impact of summary dismissals on the life of the dismissed public sector workers and their families, such long waiting periods for a first administrative decision further underline the ineffectiveness of the appeal and place dismissed individuals in even more precarious position.

“People look at you differently because of the dismissals. People are reluctant to even say hello to you. They go to great lengths to avoid even seeing you. Your neighbours look at you differently. They pretend not to see you when they walk down the street. While you do not know exactly what you have been accused of, you are labelled as a terrorist and left completely isolated, even from those closest to you. You look around you and all that’s left is your partner, your child and a few close friends and family”

A dismissed school teacher interviewed by Amnesty International in July 2018

Furthermore, the procedure before the Commission lacks important safeguards to ensure that applicants can mount an effective appeal. Applicants are not allowed to give oral testimony, to call on any witnesses, or to see any allegations/evidence against them in advance of their application. All applications are decided on a paper review, with no provision for actual hearings and the right to respond to allegations. Consequently, applicants have no chance to rebut the specific allegations against them and are forced to make vague, speculative applications against the generalised reason for their dismissal, preventing the Commission from having access to all relevant information to reach a fair decision.

Analysis of the Commission’s decisions also reveals that the reasons provided by the Commission to uphold dismissals lack merit and foregrounding in law. Innocuous lawful activities, such as minor interactions with banks, charities, trade unions, media outlets, civil society organizations and schools associated or perceived to be associated with proscribed groups are frequently used as proof of 'links' to such groups. The implementation of such a low threshold for evidence of 'links' effectively places the burden of proof on the applicant to prove an absence of links or associations with a proscribed group. Additionally, the fact that these activities were lawful at the time they were carried out is considered irrelevant by the Commission - affected individuals are deemed to have carried out these activities in full knowledge that they were interacting with proscribed groups.

While the decisions issued by the Commission do provide reasons for the ruling, albeit briefly, they lack an individualised analysis of how specific activities lead to the conclusion of links to proscribed groups in the specific case of an applicant. Instead, they provide identical explanation in all decisions. Some decisions also lacked sufficient information on the evidence that lead the Commission to conclude that an individual applicant had links to proscribed groups, once again making it extremely difficult for public sector workers whose appeals had been refused to mount a subsequent appeal at the administrative courts.

The Commission issued positive decisions in a small number of cases. However, legislation on reinstatements resulting from a Commission decision, does not allow a full restitution in all circumstances. Those found to be wrongfully dismissed from management positions suffer a demotion. Academics cannot be reinstated to the institution where they worked at the time of their dismissal. Members of the armed or security forces of certain ranks, as well as diplomatic staff, are reassigned to 'research centres', if reinstatement to their old jobs is not found suitable by the relevant Minister.

According to international human rights standards, victims of human rights violations are entitled to a full reparation, including restitution and compensation for the harms suffered. Where possible, restitution should restore the victim to the original situation before the violations occurred, while compensation should be provided for any loss, including cost of legal assistance, psychological harm, moral damage and lost

opportunities. However, many of the unfairly dismissed public sector workers are unlikely to access reparation even if their appeals to the Commission are granted.

Compensation for dismissed persons foreseen in legislation on the Commission covers financial and social benefits for the period they were unjustly dismissed. That said, it does not allow for consideration of additional financial losses one might have incurred or other harm, including to psychological and mental health, one may have suffered due to the arbitrary dismissal. The new law also explicitly bars individuals from pursuing compensation proceedings in the administrative courts, which contradicts international human rights standards. Individuals are thus afforded no viable remedy should they find their compensation package to be inadequate or unjust.

CONCLUSION AND RECOMMENDATIONS

Turkey's two-year state of emergency has resulted in serious human rights violations impacting on hundreds of thousands of individuals from all walks of life. Among them are the almost 130,000 public sector workers who were arbitrarily dismissed and permanently banned from working in the public sector or even in their profession as a whole. These dismissals continue to have devastating effects on those dismissed as well as their families.

Amnesty International's findings indicate that after more than two years since the first dismissals by emergency decree, dismissed public sector workers still do not have access to an effective remedy. The State of Emergency Inquiry Commission, ostensibly set up to serve this purpose, is in effect a rubber stamp for the government's arbitrary dismissals.

In order to comply with the human rights standards that they profess to uphold, Turkish authorities should reinstate all the dismissed public sector workers and, in any cases where individuals are reasonably suspected of wrongdoing or misconduct in their employment, or of a criminal offence, any decision on their dismissal should be made solely in a regular disciplinary process with full procedural safeguards. Should the Turkish authorities not undertake this change in direction, Amnesty International urges the international community to raise the concerns outlined in this report with Turkish authorities and urge them to provide adequate access to due process, including justice and reparation, to all dismissed public sector workers.

METHODOLOGY

As a part of this research, Amnesty International sought to assess the work of the Commission set up to review cases and appeals of public sector workers dismissed through the emergency decree and its ability to provide access to full and effective remedy to those affected. The findings included in this report are based on the review of 109 decisions issued by the Commission¹ and interviews with public sector workers, their legal representatives, representatives of non-governmental organizations and trade unions, as well as authorities. This report builds on the previous research conducted by Amnesty International in Turkey in 2017, the findings of which are published in *No End in Sight: Purged Public Sector Workers Denied a Future in Turkey*.

Over the period of three months between July and September 2018, Amnesty International reviewed 109 decisions out of the total of 36,000 delivered by the Commission as of 5 October 2018. These decisions were shared with Amnesty International by trade unions, civil society organizations and individuals affected by the dismissals.² The Commission's decisions concern teachers, academics, police officers, health care professionals, members of the security forces, as well as civil service employees working for both local and central government. All the decisions reviewed were in relation to dismissed public sector workers, of which 92 were men and 15 women; in the case of two persons, their gender was not specified. Of the 109 decisions reviewed, seven cases resulted in the Commission finding in favour of reinstatement, which corresponds to the percentage of positive decisions amongst the 36,000 total decisions issued by the Commission (6.39% as of 5 October 2018).

Amnesty has also conducted a total of 21 interviews with dismissed public sector workers, including 15 men and four women, and their immediate family members, both female. All interviews were conducted in Turkish with no interpretation. Unless otherwise indicated, the names and other identifying details of the persons interviewed for this research were withheld to protect their identity and privacy. All have given their informed consent to the inclusion of their cases in this report.

Amnesty International wrote to the Ministry of Justice and to the State of Emergency Inquiry Commission on 20 July 2018 informing them of the findings presented in this report, requesting a meeting to discuss these findings, and inviting them to respond to a number of questions by 4 August 2018 so that their views could be reflected in this report. As of the time of publication, Amnesty International had not received a written response from either of these bodies. However, the organization was granted a meeting with representatives of the Ministry of Justice on 31 July 2018, during which many of Amnesty's written questions were addressed at length. Their responses are reflected and referenced in this report.

¹ There were 125,000 appeals in total made to the Commission as of 5 October 2018. The Commission has reached a decision with regard to 36,000 of these applications. Amnesty International has reviewed 109 of these decisions.

² Amnesty International approached trade unions, civil society organizations and individuals known to be affected by the dismissals requesting information and copies of any decisions received. The organization received 109 decisions, all of which were reviewed for the purposes of this research.

1. BACKGROUND: DISMISSALS AND HUMAN RIGHTS VIOLATIONS UNDER THE STATE OF EMERGENCY

On 15 July 2016, elements within Turkey's armed forces launched a violent coup attempt. Over 200 people died and over 2,000 were injured in a night of terrible violence across Turkey.³ Ultimately, the attempted coup failed and Turkey's government held on to power, yet the events of 15 July would have a transformative effect on the country. In the immediate aftermath of the failed coup, the government accused the US-based cleric Fethullah Gülen and the followers of his religious movement, to which they referred to as the 'Fethullahist Terrorist Organization' (FETÖ/PDY)⁴, of conspiring to overthrow the government. On 20 July 2016, the government declared a state of emergency and initiated a programme of mass dismissals within the public sector soon after.⁵ The state of emergency, initially declared for three months, was renewed seven times over the next two years, finally coming to an end on 18 July 2018.

State of emergency powers enabled the government to bypass parliamentary and judicial scrutiny when amending existing legislation or passing new laws in the form of decrees, and to derogate from its obligation to secure certain rights and freedoms ordinarily protected by the constitution and international conventions to which Turkey is a party. The human rights situation deteriorated rapidly as the authorities proceeded to abuse these extraordinary powers to target peaceful critics of the government, riding roughshod over individual rights. Arbitrary detentions and abusive prosecutions soared, with over 150,000 people estimated to have been taken into police custody during the state of emergency.⁶ The number of individuals detained pending prosecution or trial increased from just over 26,000 in July 2016 to more than 70,000 in March 2018⁷. There was a surge in reports of torture and ill-treatment; the government-imposed bans on assemblies and shut down thousands of associations, foundations, trade unions and other civil society organizations. It cracked down harshly on freedom of expression: at least 203 media outlets were closed⁸

3 See Amnesty International, No End in Sight: Purged Public Sector Workers Denied a Future in Turkey, 22 May 2017 and <https://edition.cnn.com/2016/07/16/middleeast/fethullah-gulen-profile/index.html>

4 'FETÖ/PDY' is the Turkish acronym for 'Fethullahist Terrorist Organization/Parallel State Structure'.

5 The first dismissals by decree occurred on 27 July 2016 with Emergency Decree No. 668

6 European Commission, *Commission Staff Working Document: Turkey 2018 Report*, 17 April 2018

7 Human Rights Joint Platform, *21 July 2016 – 20 March 2018 State of Emergency in Turkey: Updated Situation Report*, 17 April 2018, http://www.ihop.org.tr/wp-content/uploads/2018/04/SoE_17042018.pdf.

8 At least 25 of the closed media outlets were later allowed to reopen.

and over 150 journalists and media workers were imprisoned.⁹ The environment for human rights defenders became increasingly hostile, with people risking imprisonment for speaking out over rights violations.¹⁰ Many of the legal changes issued under the state of emergency remain in force following its expiry as they were issued as permanent amendments to existing laws, providing the authorities with a pretext to continue their restrictive approach to rights.

The state of emergency, with its far-reaching consequences, had a major impact on Turkish society. One of the areas in which this was most keenly felt was the public sector, where a series of purges left hundreds of thousands of people out of work. Dismissals of public sector workers during the state of emergency were conducted in a variety of ways. For example, over 4,000 members of the judiciary and military judges were dismissed under amended dismissal rules introduced during the state of emergency.¹¹

This report is concerned with the category of public sector workers, who were dismissed directly by emergency decrees¹² and who have been systematically denied access to an effective appeals process by the Turkish authorities. In violation of domestic and international law, these public-sector workers were initially given no right of appeal or legal challenge when they were dismissed¹³ and, unlike those dismissed using ordinary administrative procedures, they were not given reasoned, individual decisions for their dismissals. Rather, their dismissals were justified using a generic allegation: that they had unspecified 'links' to terrorist organizations or groups that threatened national security. No evidence was presented or details provided as to how the government had reached this conclusion about them.

"I tried to find a job after being dismissed. [...] I tried to find employment elsewhere in the private sector, but nobody was willing to employ me. They were all worried about somehow being affiliated with me. [...] I had to sell the family home as we could not keep up with our loan repayments and ended up moving in with my in-laws. [...] I trained as a boiler repairman and now earn a living repairing boilers. [...] I went from having a desk job in the Ministry of Finance to travelling to people's homes all day to repair their boilers. However, I am still grateful to have found some way of making money and providing for my two children, even if we do find it hard to make ends meet."

Former civil servant at the Ministry of Finance¹⁴

The number of public sector workers dismissed in this fashion stood at almost 130,000 by the end of the state of emergency. According to Turkish authorities, the dismissals were necessary 'for rapid purification of the public officials [...] considered to have connection or relation or be a member of the FETÖ/PDY'.¹⁵ As a result, the large-scale public sector purge primarily targeted individuals perceived to have ties to the religious movement fronted by US-based cleric Fethullah Gülen. Depositing money in Bank Asya after 25 December 2013, when it is alleged that Fethullah Gülen called on his followers to do so, membership in trade unions, having children enrolled in particular private schools or subscription to Cihan News Agency, deemed to be associated with the Gülen movement, were sufficient in the eyes of the government to establish ties to 'Fethullahist Terrorist Organization'.¹⁶ Shortly after the attempted coup, however, the net for the purge

⁹ Amnesty International, *Turkey: The State of Emergency has ended but urgent measures are now needed to reverse the roll back of human rights* (News article, 18 July 2018), <https://www.amnesty.org/en/latest/campaigns/2018/07/turkey-state-of-emergency-lifted/>

¹⁰ Amnesty International, *Weathering the Storm: Defending Human Rights in Turkey's Climate of Fear* (Index: EUR 44/8200/2018)

¹¹ The state of emergency procedure for dismissals within the judiciary were as follows as per Emergency Decree No.667, Article 3: members of the Constitutional Court could be dismissed by an absolute majority of the General Assembly of the Constitutional Court; members of the Court of Appeal could be dismissed by an absolute majority of the Court of Appeal 1st Presidency Council; members of the Council of State could be dismissed by an absolute majority of the Council of the Presidency of the Council of State; members of the Court of Accounts could be dismissed by an absolute majority of a commission formed by the Court of Accounts; while regular judges and prosecutors could be dismissed by an absolute majority of the Council of Judges and Prosecutors. Procedures for the dismissals of military judges were described later through an amendment made to this Article by Emergency Decree No. 668 issued on the official gazette four days later on 27 July 2018. Prior to the state of emergency, dismissals in the judiciary required a two-thirds majority of the above-named bodies. Emergency Decree No. 667 was adopted by the Parliament on 27 October 2017 as Law No. 6749. Dismissal decisions of the plenary of the Council of Judges and Prosecutors as well as the state of emergency commission under the Ministry of National Security are issued on the official gazette. Number of dismissals within the judiciary and of military judges are calculated through a review of these decisions. These types of dismissal decisions were open to either internal administrative appeals or to judicial appeals at courts, which provided a degree of legal and administrative recourse to those affected.

¹² Their names included in long lists in annexes attached to the end of emergency decrees.

¹³ The fact that these individuals were dismissed by emergency decree proved to be a major stumbling block for the Turkish legal system. The administrative courts held that these dismissals fell outside their remit as they were not decisions taken by public bodies but provided for in legislation. The Constitutional Court held that these dismissals fell outside their remit as they had limited authority to review emergency decrees under the constitution. There was therefore no Turkish court that would listen to appeals against dismissal by decree.

¹⁴ Interviewed by Amnesty International in August 2018.

¹⁵ Turkey - *Memorandum* prepared by the Ministry of Justice of Turkey for the visit of the delegation of the Venice Commission to Ankara on 3 and 4 November 2016 in connection with the emergency decree Laws (CDL-REF(2016)067-e), 23 November 2016.

¹⁶ Dismissed public sector workers were not provided with individualized grounds for their dismissals. However, the grounds listed here are identified by Amnesty International through interviews with dismissed public sector workers, representatives from the Ministry of Justice as well as review of decisions issued by the State of Emergency Inquiry Commission set up to review appeals against dismissals.

widened and people suspected of having ties to other proscribed groups in Turkey, such as the Revolutionary People's Liberation Party-Front (DHKP-C), the Kurdistan Workers Party (PKK), or the Kurdistan Communities Union (KCK), an organization linked to PKK, have also been targeted.

Turkish authorities explained large scale summary dismissals by arguing that public officials have to display 'high loyalty to the constitutional principles during both the process of being accepted for the office and the process of performance of the office' and when 'it is in any way established that the public officials do not fulfil this criterion, the State has discretionary power to terminate the public service rendered by such persons.'¹⁷ However, no employer, including the government or other public authorities, may arbitrarily and unilaterally decide that the employer/employee relationship is broken and summarily dismiss individuals from their employment. Any dismissal, including from public service, should be based on an employee's capacity and conduct in their employment and must only take place in the context of disciplinary proceedings with full procedural safeguards.¹⁸ However, Amnesty International's research presented in this report as well as in the report, *No End in Sight: Purged Public Sector Workers Denied a Future in Turkey*, published in May 2017 shows that these dismissals were carried out arbitrarily without a fair process and have resulted in a wide range of human rights violations.¹⁹

The arbitrary dismissal of these public sector workers and the absence of an effective appeals process is one of the worst human rights violations of the state of emergency period. Individuals who have been summarily dismissed from their jobs under the emergency measures face a severely curtailed ability to earn a living; they are barred from service in the public sector for life and publicly labelled as being linked to organizations deemed by the authorities to be terrorist organizations. Unable to earn a living in Turkey, dismissed public sector workers have been prevented from seeking employment abroad, as the decrees required the cancelation of their passports. Some have also lost housing and health care benefits connected to their jobs.²⁰

The arbitrary nature of the dismissals, and the absence of any appeal process to challenge these dismissals by decree, prompted criticism both domestically and internationally. In December 2016, the Venice Commission, an advisory body to the Council of Europe on constitutional matters,²¹ called for the establishment of an independent and impartial body²² to review, among other things, the cases of those dismissed by emergency decree.

An emergency decree was passed in January 2017, ostensibly to set up such a body. The State of Emergency Inquiry Commission (hereinafter referred to as 'the Commission') was tasked with reviewing acts directly undertaken by emergency decrees including dismissals from public sector. This report focuses on the practices of this Commission and its failure to provide an effective remedy to the scores of public sector workers who have been arbitrarily dismissed by emergency decree.

¹⁷ Turkey - *Memorandum* prepared by the Ministry of Justice of Turkey for the visit of the delegation of the Venice Commission to Ankara on 3 and 4 November 2016 in connection with the emergency decree Laws (CDL-REF(2016)067-e), 23 November 2016.

¹⁸ The International Labour Organization (ILO) Convention 158, in its Article 4 states: '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.' Article 7 states: '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.'

¹⁹ For a detailed review of international law standards that apply to the purge in public sector in Turkey, see Amnesty International, *No End in Sight: Purged Public Sector Workers Denied a Future in Turkey*, 22 May 2017. Within Turkish Law, the Law on Public Servants lists reasons for which a public servant can be dismissed from public service (Article 125) in Turkey (Section 7 of the Law on Public Servants, No. 657, which entered into force on 23 July 1965). Additionally, Articles 18 and 19 of the Turkish Labour Law (Law No. 4857), which applies to some of the dismissed public sector workers who do not fall under the Law on Public Servants, also spells out when a termination is justified or not. In both cases, the employer (in this case, Turkish government) can decide to terminate an employment contract, but the decision must be based on valid and justifiable reasons as outlined by law (both national and international).

²⁰ See Amnesty International, *No End in Sight: Purged Public Sector Workers Denied a Future in Turkey*, 22 May 2017 and <https://edition.cnn.com/2016/07/16/middleeast/fethullah-gulen-profile/index.html>

²¹ http://www.venice.coe.int/WebForms/pages/?p=01_Presentation&lang=EN

²² Venice Commission, *Opinion on Emergency Decree Laws Nos.667-676 Adopted Following the Failed Coup of 15 July 2016*, 12 December 2016, Paras.220-223

THE PURGE IN THE PUBLIC SECTOR IN NUMBERS

**ALMOST 130,000* PUBLIC SECTOR WORKERS WERE
DISMISSED BY EMERGENCY DECREE, INCLUDING:**



33,500+
TEACHERS



7,000+
HEALTHCARE PROFESSIONALS



31,500+
POLICE



6,000+
ACADEMICS



13,000+
SOLDIERS



AROUND 39,000
OTHERS

**As of 5 October 2018, only 6,000+ of these public sector workers have been reinstated to their jobs.*

Dismissals have affected all areas of the public sector with 129,612 public sector workers dismissed through emergency decrees issued during the two-year long state of emergency. 3,799 of these dismissed public sector workers were later reinstated also through emergency decrees. Dismissed public sector workers include over 33,500 teachers, 31,500 police officers, 13,000 soldiers, 7,000 health care professionals and 6,000 academics.²³ Thousands more public sector workers were dismissed from various other government departments.

While Turkey's state of emergency has come to an end, the government looks intent on continuing its mass purges. On 8 July 2018, only 10 days before the state of emergency expired, 18,632 public sector workers were dismissed in the last decree of the state of emergency, the single largest mass dismissal of public sector workers since 1 September 2016.²⁴ Furthermore, a new law passed on 25 July 2018 allows summary dismissals of public sector workers deemed to have links to terrorist organizations or other groups posing a threat to national security - akin to those announced through state of emergency decrees - to continue for another three years.²⁵

²³ Numbers in this paragraph are directly drawn from the attachments to emergency decrees where dismissed and reinstated public sector workers and their professions are listed.

²⁴ [Emergency Decree No. 701](#).

²⁵ [Law No. 7145](#), Article 26

2. STATE OF EMERGENCY INQUIRY COMMISSION: AN INEFFECTIVE REMEDY

The procedures and principles governing the work of the Commission were set out in Emergency Decree No. 685, which established the Commission itself. These are detailed in a brief guidance document published by the Prime Minister's Office in Turkey's Official Gazette on 12 July 2017.²⁶ Amendments were later made to Emergency Decree No. 685 through subsequent decrees numbered 690, 691 and 694.²⁷ In February 2018, the provisions of Emergency Decree No. 685 were ratified by Turkey's Parliament as part of Law No. 7075.²⁸

According to its founding decree, the purpose of the Commission was to assess and determine applications in relation to acts undertaken directly through executive decrees. In relation to public sector dismissals, its remit covered those dismissed by emergency decree due to alleged 'membership, affiliation, allegiance, connection, or links to either terrorist organizations or groups, structures, or entities deemed to be a threat to national security by the National Security Council.'²⁹

When recommending that an *ad hoc* body is established to review emergency measures, the Venice Commission wrote:

'The essential purpose of that body would be to give individualised treatment to all cases. That body would have to respect the basic principles of due process, examine specific evidence and issue reasoned decisions. This body should be independent, impartial and be given sufficient powers to restore the *status quo ante*,³⁰ and/or, where appropriate, to provide adequate compensation. The law should enable for subsequent *judicial review* of decisions of this *ad hoc* body...'³¹

The following chapters analysing the procedures and decisions of the Commission, however, show that they fall short of basic principles found in the Venice Commission's proposal or Turkey's obligations under domestic and international law. Based on a review of 109 decisions delivered by the Commission and interviews with dismissed public sector workers, their immediate family members, their legal representatives, and representatives of non-governmental organizations, trade unions, and the Ministry of Justice, Amnesty International found that the State of Emergency Inquiry Commission – as set up – is not capable of delivering an effective remedy to summarily dismissed public sector workers in Turkey. As a result, hundred thousand

²⁶ Official Gazette, [From the Prime Minister's Office: Rules and Procedures in Relation to the Workings of the State of Emergency Inspection Commission](#), 12 July 2017

²⁷ These amendments specifically relate to the rights and liabilities of Commission members and personnel ([Emergency Decree No. 690](#), Article 52; [Emergency Decree No.694](#), Articles 197, 200); procedures for identifying which government institutions possessed legal liability in any future court proceedings ([Emergency Decree No. 690](#), Articles 53, 54, 55; [Emergency Decree No.691](#), Article 12; [Emergency Decree No.694](#), Article 201) and details of specific procedures for reinstating academic personnel ([Emergency Decree No.694](#), Article 198).

²⁸ [Law No. 7075](#), published in the Official Gazette on 1 March 2018. This Law was then amended on 25 July 2018 with Law No. 7145.

²⁹ [Law No. 7075](#), Article 1.

³⁰ The *status quo ante* is the previous state of affairs. In this context, it would refer to an individual's circumstances prior to their dismissal

³¹ Venice Commission, [Opinion on Emergency Decree Laws Nos.667-676 Adopted Following the Failed Coup of 15 July 2016](#), 12 December 2016, Para.222

individuals, their livelihoods on hold, continue to be denied a timely and effective means of justice and reparation.

2.1 PRECARIOUSLY INDEPENDENT

In its opinion on the dismissals, the Venice Commission recommended that the proposed *ad hoc* body for the review of emergency measures be independent and impartial. Yet the rules surrounding the composition of the Commission are such that it does not have institutional independence from the government as five of its seven members are appointed by the President, the Minister of Justice and the Minister of Interior, while the other two are appointed by the Council of Judges and Prosecutors, an entity widely regarded as being under government influence.³²

Furthermore, while Commission members are expected to fulfil their full terms in office³³ for a period of at least two years,³⁴ the President's Office may remove a Commission member by merely launching an 'administrative investigation' on the basis that Commission members might be suspected of 'membership, affiliation, allegiance, connection, or links to' proscribed groups.³⁵ There is a clear risk that this provision could influence the decision making of the Commission members; should they fail to make the decisions expected of them, the government that appointed them can just as easily dispense with them.

2.2 PROTRACTED PROCEDURE

"I feel like I have been put in quarantine for the last two years, as if I have some highly contagious disease. None of my friends even called me to offer their commiserations when I was dismissed. [...] Nobody wants to give you a job. [...] You become a shut-in, you don't have anyone to talk to. You feel like you have been marked in some way."

Former agricultural engineer at the Ministry of Food, Agriculture and Livestock. Received a decision from the Commission 18 months after his application³⁶

"I was essentially publicly branded, I was prevented from pursuing my academic career; I have had to go work on construction sites because nobody else would give me a job. If I am eventually returned to the public sector, it will be as a person who has suffered serious hardships, as a person who will need their sense of trust in the system restored..."

Former academic at a public university in Turkey. Currently awaiting a decision from the Commission having been dismissed in July 2018³⁷

According to ordinary administrative appeal procedures in Turkey, if an applicant submits an appeal to an administrative body and does not receive a response within 60 days of their application, their appeal is deemed to have been rejected. This rejection immediately grants the applicant the right to appeal to the administrative courts;³⁸ triggering a legal process that can go as far as the Constitutional Court.

However, these rules do not apply to the State of Emergency Inquiry Commission, which was exempted from the 60-day deadline for public bodies when it was set up. Indeed, the Commission is not bound by any deadline for making its decisions.³⁹ As such, dismissed public sector workers who appeal to the Commission do not know how long they may have to wait to receive a response to their application. In fact, among the 109 decisions Amnesty International reviewed, the waiting period for applicants ranged between four and 10

³² [Law No. 7075](#), Article 1(2). For assessments on the independence of the Council of Judges and Prosecutors, see for example, International Commission of Jurists, *Turkey: the Judicial System in Peril*, June 2016 and European Commission, *Commission Staff Working Document: Turkey 2018 Report*, 17 April 2018.

³³ [Law No. 7075](#), Article 4(1)

³⁴ According to [Law No. 7075](#), Article 3(1), Commission members are initially appointed for a term lasting two years. The President of Turkey may, however, extend the term of individual Commission members by a year when their previous term comes to an end.

³⁵ [Law No. 7075](#), Article 4(1)(e)

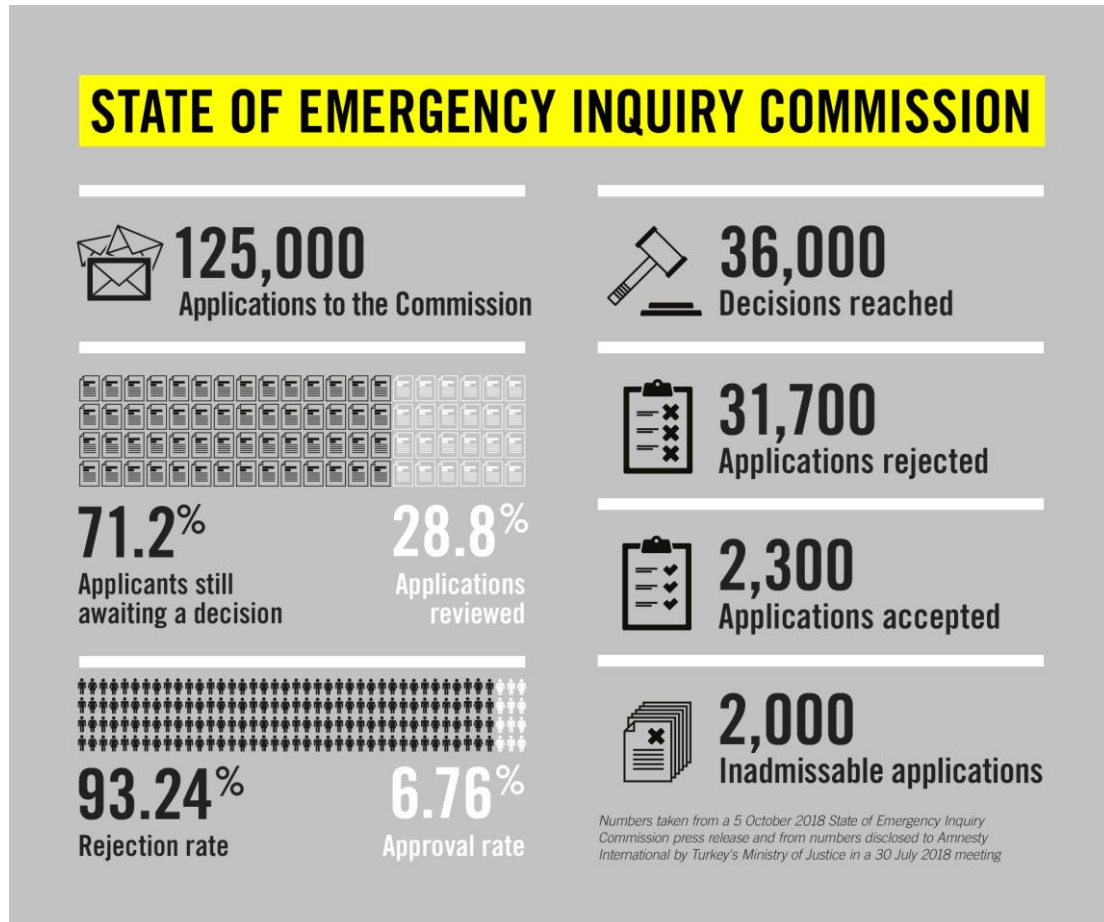
³⁶ Interviewed by Amnesty International in September 2018.

³⁷ Interviewed by Amnesty International in August 2018.

³⁸ [Code of Administrative Procedures, Law No. 2577](#), Article 10

³⁹ [Law No. 7075](#), Article 7(2)

months from the date of their application to the Commission.⁴⁰ However, the minimum period an applicant had to wait for a decision since their dismissal was 7.5 months, while some waited for as long as 21 months. There are others who are yet to receive a response from the Commission despite having been dismissed more than two years earlier or having submitted applications to the Commission over a year ago. Applicants who have not received a decision, who represent the vast majority of those who applied, have been given no indication of when it may be issued.



As of 5 October 2018, approximately 125,000 applications have been made to the Commission by individuals dismissed under state of emergency decrees. The Commission had issued 36,000 decisions by this date, which is just under 29 % of all applications. At least 2,000 of these applications were rejected at the admissibility stage, as the applicants had already been reinstated directly through executive decrees. The Commission decided that the applicant should be reinstated in only 2,300 of the remaining 34,000 applications.⁴¹ The proportion of positive decisions among decided cases is strikingly low – less than 7% of dismissals assessed following the admissibility assessment had been overturned by 5 October 2018. This is despite the fact that the Commission had intended to prioritize decisions over applications where the applicant had been acquitted in parallel criminal proceedings launched against them.⁴²

⁴⁰ Commission decisions do not list the date when the application was submitted. As such, Amnesty International took the deadline for a particular applicant as if that was the date of the application to the Commission. For example, all public sector workers dismissed by Emergency Decree 692 or earlier had to submit their applications by 14 September 2017. As such, this is taken as the application date for them.

⁴¹ The number of applications by dismissed public sector workers, which the Commission found inadmissible (2,000 as of 30 July 2018) was shared with Amnesty International during a meeting with the representatives of the Ministry of Justice on 31 July 2018 in Ankara. Other numbers in this paragraph are drawn from an announcement on the official website of the State of Emergency Inquiry Commission providing statistics as of 5 October 2018: : <https://ohalkomisyonu.tccb.gov.tr/duyurular>.

⁴² Kemal Karadağ, Anadolu Ajansı, *OHAL Komisyonu 17 bin başvuru karara bağladı*, 18 May 2018, <https://www.aa.com.tr/tr/turkiye/ohal-komisyonu-17-bin-basvuru-karara-bagladi/1149677> [Turkish].

The long wait for justice does not necessarily end when the Commission delivers its decision. Individuals whose applications are rejected by the Commission can apply to one of the four mandated first instance administrative courts in Ankara within the 60 days of their rejection.⁴³ If rejected again, they can then appeal to the appropriate regional administrative court followed by a further appeal to the Council of State (Danıştay). Once this process is exhausted, the Constitutional Court could review their case.

The administrative courts in Turkey are typically slow-moving and the mandated Ankara courts are likely to be inundated with new applications should the Commission continue to reject the vast majority of appeals made to it. Going through this administrative court system is likely to take years and involve considerable legal expenses⁴⁴ that few out-of-work former public sector workers could realistically afford. Three individuals interviewed by Amnesty International reported submitting to the administrative courts generic appeal templates they had found online as they could not afford the services of a lawyer. Affording legal representation looks set to become a progressively larger issue the longer the legal process continues; even further disadvantaging individuals who have fallen victim to mass purges.

'I could not afford to use the services of a lawyer for my application because it was too expensive. I had to use a template I found online as the basis for my application. I edited this template, trying to figure out what the reasons behind my dismissal might have been, trying to adjust the template to fit my circumstances. I made an entirely speculative application to the Commission on what I thought might be the grounds for my dismissal.'

Former civil servant at the Ministry of Finance⁴⁵

On 31 July 2018, representatives from the Ministry of Justice told Amnesty International that they expected the Commission to respond to all applications by dismissed public sector workers within the next two years. They explained that they considered this to be an acceptable period for a first instance judicial decision. They also argued that appeals lodged at the Commission were administrative appeals and that the Commission was not a judicial body, suggesting, therefore, that it did not need to uphold all fair trial principles. Ministry representatives were not aware of any Administrative Court decisions in relation to the Commission's decisions, but explained that they considered it reasonable for the first instance administrative court process to take at least seven months from a negative Commission decision.⁴⁶

Considering the huge impact that these summary dismissals have on the life of the dismissed public workers and their families, such long waiting periods for a final decision further underline the ineffectiveness of the appeal and place dismissed individuals in even more precarious position.

2.3 INADEQUATE PROCEDURAL SAFEGUARDS

"The grounds for dismissal were not disclosed and we were not given even the slightest chance of making an effective appeal. [...] We made an appeal without knowing what exactly we were appealing against. We [only] saw the grounds [for dismissal] – the school attended by our child, a subscription to Cihan News Agency – when we received the Commission's decision."

Spouse of a dismissed public sector worker⁴⁷

Public sector workers dismissed through emergency decrees issued prior to the date the Commission began receiving applications were given a 60-day window between 17 July 2017 and 14 September 2017⁴⁸ to submit their applications themselves or via a legal representative. Dismissals arising from new emergency

⁴³ [Law No. 7075](#), Article 11. Initially, only two administrative courts, Ankara Administrative Court No. 19 and No. 20, were tasked to review appeals concerning the decisions of the State of Emergency Inquiry Commission. On 24 September 2018, two additional administrative courts, Ankara Administrative Court No. 21 and No. 22, were also set up for this purpose. Relevant decisions issued by the Council of Judges and Prosecutors on 28 November 2017 and 7 September 2018 are available at the official website of the Council: <http://www.hsk.gov.tr/DuyuruArsivi.aspx>.

⁴⁴ According to the minimum fee scale set by the [Turkish Bars Association](#), engaging a Turkish lawyer to write (400 TL), submit and oversee an appeal in an administrative court with no verbal hearing (990 TL) after a two-hour consultation (435 TL) will cost a minimum of 1,825 TL. [According to a report published in Cumhuriyet in September 2017](#), the average monthly wage in Turkey in 2017 was just under 1,595 TL per month.

⁴⁵ Interviewed by Amnesty International in August 2018.

⁴⁶ Amnesty International delegation's meeting with the representatives of the Ministry of Justice on 31 July 2018 in Ankara.

⁴⁷ Interviewed by Amnesty International in July 2018.

⁴⁸ https://www.basbakanlik.gov.tr/Forms/Article/pg_Article.aspx?Id=ea28c983-f189-493a-b937-68925e492157 [Turkish]; [Emergency Decree No.685](#), Article 7(3)

decrees brought into force after 17 July 2017 were to be appealed to the Commission under these provisions within 60 days of the new decree's enactment. Applicants must fill out an online form where they can explain reasons for their appeal. They then have to submit the printout of this form along with any other evidence to the relevant governorship or the institution they were dismissed from. Applicants in prison have to submit their application to the prison management. Applicants are not allowed to give oral testimony, call on any witnesses, or see any allegations/evidence against them in advance of their application.⁴⁹ The guidance determines that all applications shall be decided by a paper review of their dossiers, with no provision for actual hearings or the right to respond to allegations.⁵⁰

The procedures before the Commission significantly fall short of established standards set forth in Turkish legislation concerning the dismissal of public servants. According to Article 129 of the Law on Public Servants, for example, a public servant whose dismissal is requested has the right to review the investigation file, have witnesses heard, and defend themselves personally or through their representative, orally or in writing in front of the discipline board. According to Article 130 of the same law, a public servant cannot face disciplinary sanctions including dismissal without having the chance to make a defence.⁵¹ Similarly, Article 19 of the Turkish Labour Law, which applies to some of the dismissed public sector workers who do not fall under the Law on Public Servants, states that an employee cannot be dismissed even for reasons allowed by law without a chance to defend themselves against the allegations.⁵²

At the time of their dismissal under emergency decree, public sector workers were not provided with official reasons on why they are dismissed beyond a generalized justification put forth in relevant executive decrees that they were assessed to have links to terrorist organizations. As such, when they submit their applications to the Commission, dismissed public sector workers do not know what specific allegations they are facing, nor do they have knowledge of any evidence used against them. Since the Commission cannot grant them a hearing,⁵³ they are not able to learn the allegations or evidence against them during the proceedings of the Commission either.

All applicants to the Commission interviewed by Amnesty International said that they had to speculate about the reasons for their dismissals while making their applications. While those who were being tried within the framework of a criminal prosecution or who had faced administrative inquiries prior to their dismissals by decree had a better chance of guessing the exact grounds for their dismissals, others - not subjected to such proceedings - found themselves in complete darkness as to the reasons for their dismissals. A dismissed teacher interviewed by Amnesty International showed documentary evidence of numerous freedom of information requests that he had submitted to the Ministry of Education in relation to his dismissal. All his freedom of information requests had been rejected, on the grounds that measures taken under the emergency decrees fell outside the remit of the law on freedom of information.⁵⁴

Certain interviewees reported that information that had not come up in any previous criminal or administrative proceedings was brought up by the Commission in their decision. 'I submitted my appeal on the basis of questions I had faced during a criminal investigation that was launched and dropped after my dismissal. In the Commission's decision they presented allegations that I did not even know existed.'⁵⁵ This interviewee, a dismissed teacher, had been questioned over their membership of a trade union and their banking activity with Bank Asya in the course of a criminal investigation that subsequently had been dropped. They made their appeal to the Commission on the basis of questions they had faced during this investigation and primarily addressed their state-subsidized trade union membership and the ownership of an account at Bank Asya that contained a mere 200 Turkish Lira (equivalent to approximately 29 Euros).⁵⁶ However, the Commission's decision made reference to new allegations that the interviewee was not aware of and was therefore unable to address in the course of their application; namely their choice of schooling for their child and donations to a then legally registered Turkish charity, Kimse Yok Mu?.

By forcing individuals to submit appeals against their dismissals with, at best, only being able to guess what they might be accused of, the Commission procedure fails to respect applicants' rights to know the

⁴⁹ Official Gazette, [From the Prime Minister's Office: Rules and Procedures in Relation to the Workings of the State of Emergency Inspection Commission](#), 12 July 2017, Articles 6, 7, 8, 13

⁵⁰ Law No. 7075, Article 9; Official Gazette, [From the Prime Minister's Office: Rules and Procedures in Relation to the Workings of the State of Emergency Inspection Commission](#), 12 July 2017, Article 14

⁵¹ Section 7 of the Law on Public Servants, No. 657, which entered into force on 23 July 1965.

⁵² Turkish Labor Law No. 4857, 22 May 2003.

⁵³ Law No. 7075, Article 9; Official Gazette, [From the Prime Minister's Office: Rules and Procedures in Relation to the Workings of the State of Emergency Inspection Commission](#), 12 July 2017, Article 14

⁵⁴ Telephone interview conducted in July 2018. Interviewee was a dismissed teacher.

⁵⁵ Telephone interview conducted in July 2018. Interviewee was a dismissed teacher.

⁵⁶ According to the Turkish Lira/Euro exchange rate published on the [website](#) of the Central Bank of the Republic of Turkey on 3 October 2018.

allegations against them and the capacity to mount an effective appeal. The requirement on applicants to make an appeal without being notified in any detail of the reasons for their dismissal in effect compels them to try to defend themselves against non-specific and generalized accusations.⁵⁷

These procedures preventing an effective appeal run contrary to Article 14 of the International Covenant on Civil and Political Rights (ICCPR)⁵⁸ and Article 6(1)⁵⁹ of the European Convention on Human Rights (ECHR) and fail to meet the International Labour Organization (ILO) Convention 158 requirements on dispute resolution and procedures for appeals against termination.⁶⁰

The fact that applicants cannot mount an effective appeal not only breaches their procedural rights but also means that the Commission cannot have access to all relevant information to reach a fair decision. This is further aggravated due to the lack of oral hearings.

Additionally, government institutions and judicial bodies can refuse to provide information and/or documents relevant to the investigation of the Commission if they deem them to fall under legal restrictions preventing disclosure on the grounds of confidentiality of investigations or state secrets.⁶¹ Governments should not be permitted to keep state secrets or other information confidential that prevents victims of human rights violations from seeking or obtaining a remedy for their violation.⁶² The possibility of withholding of information on the basis of state secrecy is all the more worrisome considering the routine and arbitrary use of such secrecy and confidentiality orders in criminal proceedings in Turkey. Amnesty International requested information from the Commission, as well as the Ministry of Justice, on how many times the Commission was denied information from relevant authorities on such basis, but as of the publication of this report, did not receive a response.

2.4 A FLAWED REVIEW OF MERITS

It is not clear based on what criteria the Commission is expected to accept or reject applications. The law and regulations governing the functions of the Commission and its mandate with regard to determining individuals cases are very brief and vague, stating only that applications will be assessed purely on the basis of whether 'membership, affiliation, allegiance, connection, or links' to proscribed groups can be determined on the basis of documents and information supplied by government bodies.⁶³ Fundamentally, there is a lack of clarity regarding what constitutes 'membership, affiliation, allegiance, connection, or links' to proscribed groups. When asked about how the Commission interprets these, representatives from the Ministry of Justice told Amnesty International that they did not think the Commission makes a separate assessment on whether there is evidence of 'membership,' or 'affiliation,' or 'allegiance,' or 'connection, or links', but instead a 'general assessment' on these. Indeed, in all the negative decisions Amnesty International reviewed, the Commission found the information demonstrated a 'link' to proscribed groups. A 'connection' was found in addition to a 'link' in 28 cases, where individuals had been convicted in parallel criminal proceedings.

There is also no guidance on the standard of evidence to be used by the Commission when determining the existence of such associations.⁶⁴ There is no requirement that there be any evidence of unlawful activity or wrongdoing under the laws in place at the time the relevant activity took place. Of the 109 decisions reviewed by Amnesty International, 22 upheld dismissals where the individuals dismissed had no criminal

⁵⁷ [Emergency Decree No.685](#), Article 9; Official Gazette, [From the Prime Minister's Office: Rules and Procedures in Relation to the Workings of the State of Emergency Inspection Commission](#), 12 July 2017, Article 14

⁵⁸ International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

⁵⁹ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950.

⁶⁰ ILO Convention 158 Articles 8, 9 and 10

⁶¹ According to the [Rules and Procedures in Relation to the Workings of the State of Emergency Inquiry Commission](#) Article 12, all relevant government bodies are obliged to present the Commission with documents upon request presenting the facts, findings and evidence that might have led to an applicant's dismissal. However, the exceptions listed here are provided in [Law No. 7075](#) Article 5(2).

⁶² See, for example, Tshwane Principles on National Security and the Right to Information, <https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf> Principle 30. The Principles, adopted in 2013, were drafted by 22 organizations and academic centres in consultation with more than 500 experts from more than 70 countries to provide guidance to those engaged in drafting, revising, or implementing relevant laws and policies related to how to ensure public access to government information without jeopardizing legitimate efforts to protect people from national security threats.

⁶³ Official Gazette, [From the Prime Minister's Office: Rules and Procedures in Relation to the Workings of the State of Emergency Inspection Commission](#), 12 July 2017, Article 12 and Article 14(2).

⁶⁴ Official Gazette, [From the Prime Minister's Office: Rules and Procedures in Relation to the Workings of the State of Emergency Inspection Commission](#), 12 July 2017, Article 14

investigations brought against them. Amnesty International's review of the 109 Commission decisions demonstrates that innocuous activities that were entirely lawful at the time they were carried out, such as depositing money in Bank Asya linked to the Gülen movement after 25 December 2013, when it is alleged that Fethullah Gülen called on his followers to do so, the use of the 'ByLock' smartphone app that was legal to download, but was allegedly used by members of the Gülen movement, or membership of trade unions that were officially registered in Turkey, have been considered evidence of 'links' to proscribed organizations by the Commission mirroring government's approach in deducing membership or links to proscribed groups.⁶⁵ That these activities were lawful at the time they were carried out is considered irrelevant by the Commission - affected individuals are deemed to have carried out these activities in full knowledge that they were interacting with proscribed groups.

Similar reasoning is used for those who had previously participated in trade unions banned after the state of emergency was put in place. There is no requirement for evidence that an individual engaged in unlawful activity in support of a proscribed group - the mere membership of a trade union which at the time was lawfully registered is seen as proof of links sufficient to justify their dismissal. This reasoning appears to have been drawn in part from the decisions of the Turkish Court of Cassation, which has held that while such activities cannot be deemed evidence of membership of a terrorist organization, they can be used as evidence of 'support' for such organizations.⁶⁶ This is an extremely problematic decision as the standard it establishes for 'supporting a terrorist organization' is so low as to include completely innocuous activities far removed from any illegal activity or wrongdoing.

Nevertheless, the Commission's decisions fail to uphold the basic requirements set out in this ruling of the Court of Cassation. According to the courts, in order to establish that an individual has 'supported' a proscribed group, the accused has to know that the group in question is 'an armed terrorist organization.' However, the Commission's decisions do not provide any analysis or proof of such knowledge on the part of the applicants. Instead, applicants are presumed to know that a trade union of which they were a member, a media group to whose output they subscribed, a private school to which they sent their children, or a bank with which they had an account, were part and parcel of a proscribed group that had been established as an 'armed terrorist organization.'

Ninety-nine of the decisions reviewed found that the applicant had 'links' to FETÖ/PDY. When asked how trade union membership, media outlet subscriptions, and depositing money in Bank Asya after December 2013 could prove links to this organization, Ministry of Justice representatives said that it was public knowledge that these activities constituted support for FETÖ/PDY.⁶⁷ Even if this was the case, however, so-called public knowledge is not a sufficient ground to conclude that a particular individual had links to a proscribed group for interacting with institutions and outlets that were in fact hitherto legal to do business with.

Of the 109 decisions seen by Amnesty International, only seven overturned the dismissal while 102 dismissals were upheld. In those 102 cases where dismissals were upheld, the reasons cited by the Commission are listed below. Often, multiple reasons were cited in a single case.

- Criminal conviction,⁶⁸ investigations or ongoing prosecutions (merely citing the fact that they existed without going into specific details) – 87 times;
- Allegedly downloading the messaging encryption app ByLock - 67 times;
- Depositing money in Bank Asya after 25 December 2013 - 62 times;
- Administrative investigations (merely citing the fact that they existed without going into specific details) -48 times;
- Subscriptions to Cihan News Agency - 47 times;
- Donations to charities said by the government to have links to the Gülen movement - 45 times;
- Attendance of offspring at schools said by the government to have links to the Gülen movement - 41 times;

⁶⁵ See for example, statements made on 7 September 2016 by Nurettin Canikli, the advisor to the prime minister then, listing various criteria used in dismissing public sector workers: <https://www.sozcu.com.tr/2016/gundem/bakanlar-kurulu-sonrasi-onemli-aciklamalar-3-1382045/>

⁶⁶ Full text of the judgment is available at: <https://www.memurlar.net/haber/728893/yargitay-in-bank-asya-ve-sendika-uyeliklerine-dair-kararinin-tam-metni.html> [Turkish]

⁶⁷ Meeting with the representatives of the Ministry of Justice, 31 July 2018, Ankara.

⁶⁸ Of the 28 first instance convictions, at least 23 were pending on appeal at the time of the Commission's decision.

- Membership of trade unions presumed by the government to be linked to Gülen movement - 42 times;
- Connections to certain associations presumed by the government to be linked to Gülen movement - 12 times; and
- Employment history (for example having worked for businesses or organizations ‘associated’ with a proscribed group) - 11 times.

Evidence of ‘links’ to proscribed groups was found in all 102 negative decisions reached by the Commission. In all 28 cases where individuals had been convicted in parallel criminal proceedings,⁶⁹ the Commission found evidence of ‘links and connections’ to proscribed groups, citing their convictions as evidence in support of this conclusion. ‘Connection’ was also found in some cases where the individual was once a subject of a criminal investigation, which did not lead to a prosecution but instead was closed. Of the decisions reviewed by Amnesty International, 99 found links to FETO/PDY and three found links to PKK/KCK. There were no links found in the remaining seven decisions and the individuals were reinstated.

Two decisions concluding ‘connection and links’ to a proscribed organization, referred to ‘contextual investigations’. However, they did not provide any details about what these ‘contextual investigations’ entailed or found. Others referred to ‘personnel information file’ where suspicions of involvement with a proscribed group or participating in gatherings of a proscribed group were listed as ‘intel’ without stating the basis of such suspicions or direct source of them. Such vague accusations once again make it extremely difficult for public sector workers whose appeals had been refused to mount a subsequent appeal at the administrative court.

The implementation of such a low threshold for evidence of any wrongdoing effectively places the burden of proof on the applicant to prove an absence of links or associations with a proscribed group while the government can merely point to innocuous activities - allegedly ‘publicly known to be associated with proscribed organizations’ - as evidence of the applicant’s guilt.

A key flaw of the decisions of the Commission in upholding dismissals is that many of them are based on activities which are protected by rights and freedoms enshrined in Turkish and international law, such as the rights to freedom of association⁷⁰ and freedom of peaceful assembly.⁷¹

In setting out its vision for a body to review dismissals under the state of emergency, the Venice Commission had emphasized that it was important that the *ad hoc* commission provides reasoned decisions specific to each application.⁷² While the decisions issued by the State of Emergency Inquiry Commission do provide reasons, these are not sufficiently individualised. The assessment section of the decisions, where the Commission describes how the evidence presented led it to reach a particular conclusion, contain near identical blocks of text in all decisions Amnesty International reviewed and do not involve an analysis of the individual circumstances or situation. For example, in decisions where evidence of an applicant having deposited money at Bank Asya after 25 December 2013 was put forward, the assessment referred to a report of Turkey’s Banking Regulation and Supervision Agency dated 28 May 2015 according to which the bank was under the direction of Fethullah Gülen to fund the organization and Gülen ordered on 25 December 2013 for money to be deposited in the Bank. In all the 62 decisions referring to Bank Asya accounts as evidence, the Commission automatically concludes that the applicant had deposited money at the Bank ‘responding to the order of the leader of the organization to provide financial support’. None of these decisions question whether the person was even aware of the said order from Fethullah Gülen or if there could be other reasons why one may deposit money in a particular bank.

“They dismissed us without reason and now they’re trying to find excuses for our dismissals. In my administrative appeal, my lawyer pointed out that I had deposited money into Bank Asya all of 14 months after Gulen’s call [to make deposits in the bank]. At that point, the bank had been taken over by the Banking Regulation and Supervision Agency (BDDK) and was therefore under government control. Yet this was brought up as a justified ground for dismissal in the Commission’s decision regarding my case.”

Dismissed teacher⁷³

⁶⁹ At least 23 of these convictions were pending on appeal at the time of the Commission’s decision.

⁷⁰ Constitution of the Republic of Turkey, Article 33; ECHR, Article 11; ICCPR, Article 22

⁷¹ Constitution of the Republic of Turkey, Article 34; ECHR, Article 11; ICCPR, Article 4

⁷² Venice Commission, *Opinion on Emergency Decree Laws Nos.667-676 Adopted Following the Failed Coup of 15 July 2016*, 12 December 2016, Para.222

⁷³ Interviewed by Amnesty International in July and October 2018.

In conclusion, the reasons provided by the Commission to uphold dismissals by and large lack merit and foregrounding in law and severely limit the ability of affected individuals to enjoy other rights, such as the right to an adequate standard of living. By upholding these unfair and arbitrary dismissals, the Commission has proven itself unfit for purpose as a reviewing body, falling short in terms of standards for due process and specific evidence of individual wrongdoing. In effect, the Commission's purpose appears to be to rubber stamp the decisions issued by the government under the emergency decrees. As such, it only prolongs the wait that summarily dismissed individuals will have to go through before accessing an effective remedy.

3. FAILURE TO ENSURE EFFECTIVE RESTITUTION AND COMPENSATION

I was restored to my old job in the same government department... They paid me the money I would have received if I had not been dismissed but they did not pay me the interest that would have accrued on this money during my time out of work. Our right to bring compensation proceedings through the courts has been taken away. We went through a lot of difficulties while I was out of work, my wife is still in therapy because of the psychological trauma she suffered, so to have this right taken away too... only compounds our sense of the injustice.”

Former civil servant at the Ministry of Finance⁷⁴

3.1 RESTITUTION

Article 10(1) of Emergency Decree Number 685 that established the Commission also describes the circumstances under which individuals may be reinstated to the public sector. These were amended through a new law adopted by the parliament on 25 July 2018.⁷⁵ Under the latest provisions, if the Commission reaches a positive decision regarding an individual’s application for their reinstatement, it must refer them to

⁷⁴ Interviewed by Amnesty International in July and September 2018

⁷⁵ [Law No. 7145](#), Article 22 amends Article 10(1) of [Law No. 7075](#) that adopted the [Emergency Decree 685](#).

the last government department they worked for. In the case of academics, the Commission must refer the individual to their employers, the Council of Higher Education (YÖK), a state agency.

There are several restrictions in relation to restitution set out by Article 10(1). Prior to the amendments of 25 July 2018, these restrictions explicitly prevented individuals from being restored to the same institution they had worked for before their wrongful dismissal. The amended provisions state that reinstatement to the previous position should be a priority. However, amendments to Article 10(1) do not foresee the transfer of public sector workers reinstated prior to the amendments to the institutions from where they were dismissed.

Amended provisions continue to provide for restrictions in the case of academics and those who were in managerial positions, similar to the restrictions for individuals from these categories which existed before the amendments. In these cases, individuals are to be restored to non-management positions, effectively suffering a demotion; if they were in a management position at the time they were dismissed; if they are academic personnel, they cannot be reinstated in the institution where they last worked, and priority must be given to reinstating them in institutions based outside Ankara, Istanbul and Izmir and which were established after 2006, also limiting the chance of academics to be reinstated to the institution where they had worked prior to their wrongful dismissal.

In its 31 July 2018 meeting with Amnesty International, the Ministry of Justice responded to concerns about this 'demotion' process by insisting that holding management roles is not a right that belongs to the person but a choice made by their employer. The promotion of individuals to management roles is therefore deemed to be the prerogative of the institution/department in question, rather than the individual's right.

The law adopted by the Parliament on 25 July 2018 also introduced a new procedure for members of the armed/security forces of certain ranks and diplomatic personnel whose reinstatement has been ordered by the courts or by the Commission. 76 Instead of being reinstated, these individuals are to be appointed to 'research centres' within the Ministry of Defence, the Ministry of the Interior, or the Ministry of Foreign Affairs, if the minister responsible for their branch of the armed/security forces or diplomatic services objects to their reinstatement to the same position they occupied prior to their dismissal.⁷⁷ There is no obligation for the minister to give reasons for their objection. Members of the armed forces of the rank of major and above, and members of the security forces of the rank of commissioner are to be appointed as 'researchers'.⁷⁸ Everyone else is to be given a 'suitable' role in these research centres on an ad hoc basis. 79

As a consequence of these wide-ranging provisions, reinstated public sector workers face the possibility of being left in a position that is materially worse than the one they had enjoyed prior to their wrongful dismissals, falling short of restitution of the *status quo ante*. This runs contrary to international human rights standards on reparation, which is an inherent and necessary part of the right to an effective remedy for human rights violations.⁸⁰ These standards, elaborated in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, require states to restore the victim of a violation to the situation prior to the violation, for example, through restoration of liberty, enjoyment of human rights, identity, family life and restoration of employment and return of property.⁸¹ Emergency Decree Number 685 does not explicitly establish an appeals process for individuals left unsatisfied with the incomplete restitution they receive. Instead, unsatisfied public sector workers must apply to the administrative courts. Additionally, anyone who does not take up their new positions within 10 days of receiving the formal notice of their reinstatement loses their right to reinstatement or their salaries that are to be paid for the period they were wrongfully dismissed.⁸²

Finally, where individuals are not reinstated to their former positions, whether this may be for security or other reasons, it is likely that some stigma may remain attached to them because of this, despite the finding by the Commission that they have been wrongfully dismissed.

⁷⁶ [Law No. 7145](#), Article 23 introduces an Article 10/A to [Law No. 7075](#)

⁷⁷ [Law No. 7075](#), Article 10/A(1)

⁷⁸ [Law No. 7075](#), Article 10/A(2)

⁷⁹ [Law No. 7075](#), Article 10/A(2)

⁸⁰ See for example, the General Comment No. 18 on the right to work of the UN Committee on Economic, Social and Cultural Rights (paragraph 48) and the General Comment No. 31 of the UN Human Rights Committee (paragraphs 16 and 17).

⁸¹ Principle 19 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005. The Basic Principles and Guidelines specifically mention 'gross' violations of international human rights law and serious violations of international humanitarian law. However, principles 18 to 20 referred to in this report provide appropriate guidance on what may constitute an adequate reparation in cases of all human rights violations.

⁸² [Law No. 7075](#), Article 10 as amended by [Law No. 7145](#).

3.2 COMPENSATION

The 25 July 2018 amendments to the Emergency Decree Number 685 reversed the original position⁸³ and introduced the possibility to obtain compensation by individuals who had been restored to employment in public service by the Commission. According to this, compensation for individuals reinstated by the Commission is to equal the total of their financial and social benefits for the period they were unjustly dismissed.⁸⁴ While at first glance this may seem like a viable compensation template, this does not allow for consideration of additional financial losses one might have incurred or other harm, including psychological harm, one may have suffered due to the arbitrary dismissal. The new law also explicitly bars individuals from pursuing compensation proceedings in the administrative courts⁸⁵, which contradicts international human rights standards. Individuals are thus afforded no viable remedy should they find their compensation package to be inadequate or unjust.

⁸³ [Law No. 7145](#), Articles 22-24

⁸⁴ [Law No. 7075](#), Articles 10 and 10/A

⁸⁵ [Law No. 7145](#), Article 22

4. INTERNATIONAL LAW AND STANDARDS

FULL AND EFFECTIVE REPARATION

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law:

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

(a) Physical or mental harm;

(b) Lost opportunities, including employment, education and social benefits;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.⁸⁶

Turkey is party to ILO Convention 158 concerning termination of employment, which protects against arbitrary dismissals without due process. Among the most relevant protections contained within the Convention are those that prohibit employees' employment being terminated for reasons other than legitimate ones related to the worker's capacity and their conduct in their role, and require that individuals'

⁸⁶ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

employment is not terminated without their first having the opportunity to defend themselves against the allegations made against them.⁸⁷

- The procedures surrounding such dismissals, and in particular a lack of a fair and effective appeal procedure, threaten the rights to fair trial in civil proceedings guaranteed under Article 6(1) of the ECHR and in Articles 14 and 15 of the ICCPR.⁸⁸ According to judgments of the European Court on Human Rights relating to the application of Article 6 of the ECHR in civil proceedings, fair trial rights guarantees include: practical and effective access to an independent and impartial court or tribunal,
- the principle of legal certainty (that the law must be set out with sufficient clarity to enable those subject to it to regulate their conduct),
- the court or the tribunal to communicate the documents at its disposal and allow the appellant necessary time to submit further arguments and evidence,
- adversarial proceedings, which mean the right of all 'parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed,'
- equality of arms,
- sufficient reasons for decisions,
- an oral hearing under certain circumstances, and
- right to a final decision within a reasonable time on disputes concerning civil rights.⁸⁹

Turkey's failure to provide an effective means by which those whose rights are violated can obtain a remedy for these violations is also a violation of its obligation to ensure the right to a remedy under Article 2(3) of the ICCPR and Article 13 of the ECHR.⁹⁰

⁸⁷ ILO Convention, in its Article 4 states: '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. Article 7 states: '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.'

⁸⁸ Articles 14 and 15 of the ICCPR and Article 6(1) of the ECHR provide for fair trial rights. Article 14.1 of the ICCPR states: 'In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...'

⁸⁹ The relevant case law of the European Court, with reference to specific judgments on each point, is summarised in the Court's Guide on Article 6 of the European Convention on Human Rights—Right to a fair trial (civil limb) (updated 30 April 2018) https://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf, in Section IV on Procedural requirements.

⁹⁰ Article 2.3 of the ICCPR states: 'Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.' Article 13 of the ECHR makes similar provision.

5. CONCLUSION

“We will not return as the people we were... The positions we return to will not be the positions we once occupied... One of the most fundamental values a person has is their sense of justice. In Turkey, the justice system is in thrall to the politicians... it changes according to the political climate... The moment you lose the sense that you have [access to] justice, you lose your sense of belonging to a country.”

Former academic at a public university in Turkey⁹¹

Turkey's two-year state of emergency has resulted in serious human rights violations impacting on hundreds of thousands of individuals from all walks of life. Among them are the almost 130,000 public sector workers who were arbitrarily dismissed and permanently banned from working in the public sector or even in their profession as a whole. These dismissals continue to have devastating effects on those dismissed as well as their families.

The State of Emergency Inquiry Commission was set up ostensibly to provide a remedy to these people. However, its procedures fail to grant them a chance to mount an effective appeal and its decision simply serve as a rubber stamp for the government's arbitrary dismissals finding innocuous activities as evidence of 'links' with proscribed groups. Even those who may get a positive response to their appeal at the Commission are not guaranteed restitution and compensation. Furthermore, in the absence of full details of the allegations and evidence against them even after a decision by the Commission, it is difficult for public sector workers, whose appeals had been refused, subsequently to mount an effective appeal before the administrative courts.

Three months after the end of the state of emergency and more than two years since the first dismissals were announced, the Turkish authorities are moving further away from a solution, rather than closer to it. The authorities should reinstate all public sector workers dismissed by emergency decrees. In any cases where individuals are reasonably suspected of wrongdoing or misconduct in their employment, or of a criminal offence, any decision on their dismissal should be made only in a regular disciplinary process with full procedural safeguards.

Should the Turkish authorities not undertake this change in direction, Amnesty International urges the international community to raise with Turkish authorities the situation of the public sector workers arbitrarily dismissed through emergency decrees and the urgent need that they have access to due process and full reparation.

⁹¹ Interviewed by Amnesty International in September 2018.

6. RECOMMENDATIONS

TO THE GOVERNMENT OF TURKEY

Reinstate dismissed public sector workers;

- Reinstate to their previous jobs all public sector employees, who were dismissed through emergency decrees issued under the state of emergency.
- Ensure that, in any cases where individuals are reasonably suspected of wrongdoing or misconduct in their employment, or of a criminal offence, any decision on their dismissal is made only in a regular disciplinary process with full procedural safeguards.

Ensure that reinstated public sector workers have access to full reparation, including restitution and compensation;

- Ensure that public sector workers are reinstated to the jobs and institutions they were dismissed from.
- Compensate public sector workers dismissed by emergency decrees for any damages, including loss of earnings, mental harm, moral damage and costs required for legal or expert assistance, medicine and medical services and psychological and social services.
- Ensure that public sector workers have the right to contest their compensation packages in administrative courts.

End arbitrary dismissals;

- Repeal Article 26 of the Law No. 7145, adopted by the Parliament on 25 July 2018, which allows for the summary dismissal of public sector workers, deemed to have links to terrorist organizations or other groups posing a threat to national security, to continue for another three years.
- Ensure that any disciplinary proceedings are brought on the basis of an employee's capacity and conduct in their employment rather than their political opinion or exercise of their human rights such as freedom of expression, peaceful assembly, or freedom of association.
- Ensure that in the event of any disciplinary proceedings resulting in suspension or dismissal, the consequences do not result in denial of human rights, notably, the right to work, freedom of movement, health, housing and adequate standard of living.

TO THE INTERNATIONAL COMMUNITY

- Regarding the Council of Europe: The Secretary General, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to request the Venice Commission to review the effectiveness of the State of Emergency Inquiry Commission as a remedy for the public sector workers arbitrarily dismissed through emergency decrees issuing an opinion on the Law 7075 and Articles 22-24 and 26 of Law 7145.
- Regarding the EU, the Council of Europe, their member states, and other states: Ensure that all political dialogues and bilateral discussions with Turkey are used to raise concern over the situation of the public sector workers arbitrarily dismissed through emergency decrees and the urgent need to provide them with access to due process and full reparation, including restitution and compensation.

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PURGED BEYOND RETURN

NO REMEDY FOR TURKEY'S DISMISSED PUBLIC SECTOR WORKERS

Turkey's two-year state of emergency has resulted in serious human rights violations impacting on hundreds of thousands of individuals from all walks of life. Among them are the almost 130,000 public sector workers who were arbitrarily dismissed and permanently banned from working in the public sector or even in their profession as a whole. These dismissals continue to have devastating effects on those dismissed as well as their families.

A State of Emergency Inquiry Commission was set up in January 2017 ostensibly to provide a remedy to these people. This report focuses on the practices of this Commission and demonstrated its failure to provide an effective remedy to the scores of public sector workers who have been arbitrarily dismissed by emergency decrees.

More than two years since the first dismissals were announced, the hope for justice becomes slimmer. The authorities should reinstate all public sector workers dismissed by emergency decrees. In any cases where individuals are reasonably suspected of wrongdoing or misconduct in their employment, or of a criminal offence, any decision on their dismissal should be made only in a regular disciplinary process with full procedural safeguards.