

## **KESK'S EVALUATION ON THE PERIOD AFTER COUP ATTEMPT AND THE EMERGENCY DECREES**

Among others, 15 July coup attempt was against democratic acquisitions achieved by the oppressed and labourers who have paid the price for democratic gains for decades. It is clear from the confessions and documents took place in the printing press, if the coup attempt were succeed, economic, social, democratic rights and freedoms and trade union rights of the labourers that have been not in a good condition already would be abolished as a first operation. Hence, firstly September 12, 1980 military coup, all military coups in the history of republic of Turkey lifted right to association and organization of the labourers, closed down the institutions and associations of laborers and banned actions and activities. Our confederation is against coups and disapproves this coup attempt. KESK adopts a principled attitude against the coup attempt from the first.

At that moment, it is seen that the coup attempt was defused and removed. In terms of the practices of the government after the coup attempt, however, implementation of legal arrangements which can be possible only during the coup periods is very perturbative.

On the grounds of the attempted coup three month state of emergency was declared, the parliament and the constitution are nearly suspended. By the emergency decrees which enable limitless authorization for the government, basic rights and freedoms were suspended. The spokesperson of the government also declared that the European Convention of Human Rights was derogated.

Till now, three emergency decrees have been issued and practices we are familiar from the September 12, 1980 coup have been implemented. We would like to express that during this period there is not any supervisory mechanism so far and all power have been concentrated on the hand of government and particularly at the presidency.

Emergency Decree No. 667 which was in use since its publication on the Official Gazette dated July 23, 2016 includes not only the concepts that can be linked the situations regarding coup attempt but also concept of `counter terrorism` which is ambiguous and can be considered more generally. As it can be observed from the numerous investigations and trials those were launched in the past and are still continuing, on the grounds of such broad concept of terrorism all dissident groups can be pointed as targets, can be repressed and criminalized.

In our country where monist, antidemocratic and authoritarian practices are very prevalent, reminding us the regime of authoritarian ruling the state of emergency practices can eliminate living spaces of all dissident groups and such practices against opponents can be considered as `legitimate` on the basis of emergency decrees that are going to be in force during the state of emergency period.

It appears that the government is seeking to solve all problems of the country through the emergency decrees and-or refers such decrees to create a legal base for arbitrary applications. Such decrees that can be issued in case of state of emergency appear to breach universally protected principle of proportionality. As this principle is also protected by the Constitution and international conventions, it is also a marker showing that proportionality norms and principle is being eliminated.

The Emergency Decree No 667, which is approved by the President, Prime Minister and the members of the Council of Ministers, regulates the closure of many special education, training and health institutions, associations and foundations, 19 trade unions and 2 trade union confederations.

Fundamental rights are protected by Article 15 of the Constitution and accordingly they cannot be suspended in case of the state of emergency. Emergency Decree, however, violates the Article 15 and arranges the decision to close trade unions by violating many articles of law and constitution on one hand, international conventions on the other. In accordance with the 3rd Paragraph of Article 2 in the Emergency Decree “closed institutions cannot be limited to those.” Such statement also shows that remained trade unions and confederations are under threat of closure.

It is stated that the Emergency Decree is only about the institutions and organizations whose links and attachments with the Fetullah Terrorist Organization or FETÖ/PDY that is identified as a threat to the national security are proven. However, during past two weeks many public employees working in the state institutions were dismissed and there was not any legal base given for such practices. This arbitrary dismissal of employees we witnessed till now feed our increasing concerns that such practices can be easily transformed into a witch hunt.

We, KESK underline that we are against closure of trade unions and confederations and without exception. Trade union rights are protected under the Constitution. Closure of confederations and trade unions through emergency decrees clearly violates the Constitution. Article 51 of the Constitution states that the right to form a trade union is regulated under the law and the right to form a union shall be solely be restricted in accordance with the legal provisions. Article 31 of the Law No. 6356 on Trade Unions and Collective Labour Agreements states that trade unions and confederations shall be dissolved by a Court decision, upon the request of the Chief Public Prosecutor of the Republic. Again, Article 37 of Law No 4688 on The Public Employee Trade Unions and Collective Labour Agreements states that trade unions and confederations shall be closed in accordance with the decision of the domestic courts which is authorized to hear work trials upon the request of the Chief Public Prosecutor.

Additionally, the State of Emergency Act does not have any authority to close trade unions down. Such practice of closure is the Martial Law practice. In accordance with the legislation, trade unions and confederations shall be closed only if the martial law is declared.

During state of emergency, governors have broad authorities to prevent, to delay or to prohibit trade unions` open or closed meetings, publications, and press meetings.

Emergency decree regulates the aspects regarding “any threat against national security” and “being in contact with terror organizations” by using phrase “fixation or identification” of relevant link with illegal element. Nevertheless, relevant article of the Emergency Decree which concerns public officials, the boundaries of the definition regarding such identification is more flexible and extended. In terms of public officials` condition it includes the phrase of “whose contact with such an organization is evaluated” instead of ‘identification.’ Although the question how such a fixation or identification is made is debatable and unclear; questions such how this evaluation will be made and on which base and what will be the determinant for such an evaluation appear carrying important risks for all public employees.

Consequently, on the basis of these subjective criteria about 80.000 public employees have been dismissed so far. Hundreds of public employees are being added to this number day by day. Such regulation of a dismissal of a public employee without fair trial and without right to defense is not acceptable.

On the ground of the failed coup attempt, the government dismissed 280 members of KESK affiliated trade unions without any proven reason, although our members have been subjected to repression and intimidation of FETO setup for years. Via the Emergency Decree, the interval for bringing a prosecution against the operation of suspension of an employee is also lifted. Therefore, it is not possible to resort to the jurisdiction for the suspension of execution. We have worry for that by taking advantage of the coup attempt the government will increase repressions against our confederation and other opponent organizations.

As it is stated by the ruling cases of the European Court of Human Rights and reports of the Venice Commission, any permanent measure that is formed through violation of proportionateness, effectiveness, constitutionality, rule of law, fundamental rights, principles of democracy by crossing the line of state of emergency interval clearly constitutes a contradiction to the standards of European Commission.

There are many articles which contradict the right to fair trial as a whole in relevant emergency decree. In accordance with the Emergency Decree, detention period shall be extended to 30 days. During the investigations, all suspects`, victims` and witnesses` statements can also be taken by the law-enforcement officers. In line with the Emergency Decree following possibilities are resolved; confidentiality during the meetings between detainees and their lawyers can be lifted, relevant staff can personally accompany to the meeting and meetings can be recorded, a meeting can be interrupted under the initiative of the administration, lawyer can be banished by making an official report and a defense counsel can be invited from the bar association. Documents the lawyer brings along the meeting with the detainee can be seized and meeting period can be restricted. In case the minutes are taken down about the detainee and upon the request by the public prosecution office and the decision by Penal Judge of the Peace, the meeting of lawyers with detainees can be prohibited. If this is the case, the Bar Association will provide a lawyer for the detainee. In line with this regulation, the rights of detainee to meet with people whom are chosen by the detainee his\herself and who are except from detainees family members, trustees and judicial factors are put away and access of the right to phone is restricted.

Similarly; the procedure of ban on the right to confer with a lawyer during the investigation is regulated particularly. This regulation is a marker pointing that violation of the right to confer with a lawyer/the right of defense will become prevalent. It is also possible to take the regulation as that the person who is being prosecuted and investigated may enjoy only three lawyers` assistance on the same level. Restricting the right to defense this article may also stonewall the informing defendants about the offenses being charged as it states only summary of the indictment and of the documents that may be replaced with the indictment can be read by the accused. Again at the same level, a decision can be made by taking the file in the absence of the accused, namely accused may not be present during the hearing.

Within the scope of this emergency decree decision makers and who implements decisions are exempted from judicial, administrative, criminal responsibility. Therefore, standing trial of all responsibilities and responsible of all violations regarding suspension of universal basic rights and principles are stonewalled by this article.

There are obvious markers that the government is seeking to take advantage of the state of emergency as it suspended the parliament and constitution and started to govern the country by the emergency decrees and to use it in order to carry out its plans against working life, job security and our rights.

Emergency Decree No. 668 dated July 27, 2016 also regulates recruitment of contractual teachers. Accordingly, a candidate can be recruited if he/she complies with the provisions of Law No 657 and if he/she passes the oral exam that is made by the Ministry in accordance with the written exam (KPSS) results. This application may cause a new setting up cadres in public offices. Required criteria and qualifications to pass the oral exam are not set clearly in terms of recruitment of contractual teachers during this period. Therefore, it is apparent that principles of objectivity and equality which have to be considered in recruitments in the public offices are lifted. Such practices contradict with the international principles.

This regulation appears to be limited in the area of education. However, the Emergency Decree also states that “recruitment in order to hire employees to the cadres that are empty because of dismissals can be made for cadres and positions as it is determined by the Council of Ministers and it is independent from restrictions under the law and legislation.” Such statements during such a chaotic period can be used as an excuse of implementation of vulnerable employment and flexible working in the public offices. We are also concerned about the statement that “trade unions and confederations that have not been closed yet shall be closed upon the offer of the State of Emergency Council which will be established following period and the confirmation of relevant minister.” We are concerned that this statement is formed to threat the trade unionist and rights and freedom struggles carried out by our trade unions and confederations. It might be referred in the following period to block our struggle that we will carry out to protect our job security.

As a result, there are common characteristics of three emergency decrees issued after the coup attempt. These characteristics deteriorate the fundamental rights and freedoms and enable all kind of arbitrary applications.

Coup attempt cannot be an excuse of having a big power to eliminate democratic dissidents without any democratic supervision through state of emergency.

Unfortunately the course of events is on this direction and after the coup attempt, government takes another route, instead of what peoples and labourers of this country need. The people and labourers of this country need civil peace, solution of the problems through dialogue and negotiations, democratic steps that will be taken to reduce the social tension.

Our confederation will protect democratic, politic and economic gains of labourers in all conditions as it did in the past. It will not make concessions from its struggle for trade union rights, peace and democracy no matter what it costs.

Best Regards

**Executive Board**