

**JOINT STAKEHOLDER SUBMISSION
TO THE
UN HUMAN RIGHTS COUNCIL'S UNIVERSAL PERIODIC REVIEW
OF
TURKEY**

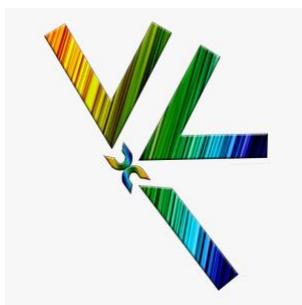
35th Session (Jan.-Feb. 2020)



HRD is a non-profit and independent civil society organization campaigning to defend human rights and to help people facing persecution all around the world and with a special focus on Turkey.

HRD is preparing reports concerning human rights violations, establishing contacts to other Human Rights NGO`s and stakeholders, State Officials and regional as well as international organizations. HRD is also giving legal advice to victims, initiating sue procedures on behalf of the victims (universal jurisdiction) and preparing official petitions to the relevant UN Human Rights Mechanisms.

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Victim Laborers Platform, is a Germany based initiative established by former members of unions, which were shut down in Turkey in the aftermath of the purge committed by the Turkish Government. Our members, who sought asylum in European Countries, are eager to bring light into the anti-democratic actions of the Turkish Government and the injustices our comrades in Turkey do face every day since July 2016.

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We, a group of former teacher and educator, who are victim of the purge of the Turkish Government, after July 2016, established in Germany our Victim Educators Platform. Our main goal is to be the voice of our dear colleagues in Turkey, who weren't as fortunate as we and are now facing a civil death. Furthermore, we try to bring into awareness the corrupted education system in Turkey and how the Regime is tightening its grip on the curricula.

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THE PURPOSE

In this report, we will try to examine how the AKP government restricted and ignored the right of property by ruthlessly using the sword of decree-law during the state of emergency with the excuse of the coup attempt which was stated in 15.07.2016 in Turkey.

We will try to explain how the AKP government used the decree-law tool against not only the members of Gülen movement which they held responsible for the coup but against anyone who they considered as critical towards them and how these restrictions and ignore of the right of property became affecting and victimizing all citizens of Republic of Turkey. Within this context, we will try to explain with examples how the right of property which is protected under international agreements, Constitution of Turkey and Laws was restricted.

THE RIGHT TO ORGANIZE AND THE BASE OF RIGHT OF PROPERTY

INTERNATIONAL AGREEMENTS

- 1- Protocol No. 1 To the Convention for the Protection of Human Rights and Fundamental Freedoms which protects different specified rights and freedoms than the ones in the convention
- 2- International Covenant on Civil and Political Rights of the United Nations
- 3- Charter of Fundamental Rights of European Union
- 4- The relevant provisions of the ECHR

SOME LEGISLATIONS WHICH FORM THE BASE OF THE RIGHT OF PROPERTY IN TURKEY

- 1- The article no. 35 of the Republic of Turkey is one of the first legal bases of the right of property and goes as following

Article 35

Everyone has the right of property and inheritance

These rights can only be restricted with law for public benefit.

Using the right of property cannot be against the public benefit.

Other than this article, the right of property is mentioned in the art. 43, 44, 46, 169, 170, 63, 168, 28 (8), 30, 38 (10), 60-61 and art. 13.

- 2- The articles of Turkish Civil Code which are relate.
- 3- In addition to the laws and articles mentioned above, there are many law regarding the property. The Constitutional Court and court practices of the Supreme Court that protects the right of property will be examined broadly within this context.

THE PROCEDURES AND PROBLEMS OF THE TURKISH GOVERNMENT WHICH STARTED BEFORE AND REACHED ITS PEAK IN 15.07.2016 THAT VIOLATED THE RIGHT OF PROPERTY

- 1- According to all the articles of Law, court practices, international agreements and the art. 35 of Turkish Constitution, while all restrictions against the right of property must be done by a “Law” which should be passed by the Grand National Assembly of Turkey, the base of all the unjust and illegal procedures and treatment against especially the members of Gülen movement and all other opposition against AKP government is established by the decree-laws which were passed by the council of ministers. These decree-laws have the impact of laws but legally, they are not Law. Although in the art. 35 of Turkish Constitution it is clearly indicated and ordered that “the restrictions against the right of property should only be made by Laws”, this clear provision of the Constitution is being violated by the AKP government to eliminate the members of Gülen movement and other oppositions.
- 2- According to the court practices of Constitutional Court, Supreme Court and the Council of State as well as the opinions of scientific doctrines, the decree-laws of state of emergency can only be issued for the duration of state of emergency and being restricted with the fields and topics that are necessary for state of emergency. But the AKP ignores these criticisms and continues to apply these administrative regulations although the state of emergency has been expired.
- 3- The procedures of AKP government towards the right of property are also against the international obligations which are accepted with the ECHR, International Covenant on Civil and Political Rights of the United Nations, Paris Convention and many other international conventions.
- 4- The AKP government confiscated the assets of the NGO’s such as foundations, companies, charities, unions etc. that belonged to the members of Gülen movement with the decree-laws. These assets are taken from their owners and registered to the State treasury. Many of the directorates of land registry in big cities such as İstanbul, Ankara and İzmir were busy for registering those assets to the treasury after the decree-law was issued. While the net worth of the confiscated immovable assets is unclear, it is estimated that it is worth more than 20 billion dollars.
- 5- The assets of many universities and higher education institutions are confiscated with the claim of being the properties of Gülen Movement. The universities that belong to the foundations in Turkey are established with the laws passed by the National Assembly. These universities which were established by the parliament are closed and their assets confiscated by the administrative initiatives of the government and with the excuse of belonging to the Gülen Movement. Each year, those universities and foundations were inspected and asked to fix the issues if there were any. There were no warnings or precautions about these foundations and universities until they were closed and they even got praised and awarded by the inspection authorities. The legal existence of the foundations and universities against whom there were no discipline or penal investigations was removed by the one-sided act of the government.
- 6- The “International Covenant on Civil and Political Rights of the United Nations” which was accepted by the decision of the General Assembly of the United Nations in 16 December 1966 started to provide verdicts in Turkey after it was accepted and approved

in 23 December 2003. According to the art. 22 of this covenant with the title “the right to organize”:

“Everyone has the right to gather and assembly. There can be no restrictions on this right except the restrictions which are necessary in a democratic society, which are legally predicted and which are to protect the national security, public security, public order, health and the rights and freedoms of the others.

Turkey is bound to this agreement by 23 December 2003 and Turkish State is obliged to respect the right of organization of its citizens.

7- According to the art. 17 of Charter of Fundamental Rights of European Union with the title “right of property”:

“Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.”

8- The procedures for investigating and confiscating the assets of foundations, companies and unions because of the crimes they committed are regulated. According to the art. 60 of the Turkish Penal Code; “In case of the conviction because of the intentional crimes committed for the benefit of the legal entity by misusing the authority with the participation of the organs and representatives of the legal entity that operated with the authorization given by a public institution, the cancellation of operation is decided. The verdicts of confiscation of assets are applied to the private persons and legal entities.”

9- Although it is clearly regulated in Turkish Penal Code that in case the foundations, companies, unions etc. commit crimes, their official authorisations can be cancelled and assets be confiscated, the condition of applying these is the decision of “A CONVICTION BECAUSE OF A CRIME”.

10- But while the right of property of foundations, companies and unions which had the right of property for tens of years which were established and operated within the laws and constitution of Turkish Republic are taken away, their assets were transferred to different persons and institutions, *they weren't paid any compensations* and the possibility for appealing was extinguished.

The official authorizations of the institutions which were established and operated within the constitution and laws of Turkish Republic are cancelled by a decree-law issued by the government without any penal investigation or verdict and their assets are confiscated with and administrative act by the government.

The ECHR and Constitutional Court in their decisions in the previous years regarding the restriction of the right of property of legal entities and confiscation of assets by the state underlined the issues such as if there were penal investigations and convictions against them and if the assets were used in crime or not.

11- While the decree-laws issued during state of emergency should be valid only during state of emergency and should have a precautionary nature, although there were no clear court decision and conviction against the authorities or legal entity of companies,

foundation, unions, universities etc. whose assets were confiscated due to the connection with Gülen Movement, the institution called Saving Deposit Insurance Fund was authorized for the confiscation of assets and these assets were started to be sold to third persons. This unlawful act will cause irretrievable damages in the future. The haste of the political will to sell these assets removes the legal security and causes complex issues such as how these legal entities against whom there is no penal investigations can get their assets back.

12- The assets of the legal entities which are confiscated are provided to the people or institutions which are tied or close to the political ideology of the political will and some of the assets are even used as the provincial and regional headquarters of AKP.

A SUMMARISED INFORMATION REGARDING THE DECREE-LAW ISSUED BY AKP GOVERNMENT WITH THE EXCUSE OF STATE OF EMERGENCY AND THE USURPED RIGHTS AND ASSETS RELATED TO THEM

The information included in this part are based on official data and reports and can be accessed from internet. The severity of the unlawfulness of the AKP government will be understood better when these data are examined.

1- THE COMMISSION REPORT OF EXAMINATION OF STATE OF EMERGENCY PROCEDURES IN 2018
(https://ohalkomisyonu.tcgb.gov.tr/docs/OHAL_FaaliyetRaporu_2018.pdf).

According to this report:

In accordance with the art. 2 of the Law no. 7075 that regulates the duty of the commission, it was stated that 131.922 legal entities and real persons had the right to apply to the commission. (125.678 who are dismissed from public duty, 270 who are dismissed from study, 2761 closed institution, 3213 personnel whose ranks are removed).

In the same report, 131.922 precaution procedures were applied. The number of applications made to the commission by 31 December 2018 was 125.600.

2- According to the internet news in BBC TÜRKÇE in 19 July 2018
(<https://www.bbc.com/turkce/haberler-turkiye-44799489>)

During the state of emergency, 1767 foundations, unions and federations were closed by decree-laws and 109 dormitories, 934 private schools, 15 universities, 49 medical institutions, 15 news agencies, 20 TV channels, 25 radios, 70 newspapers, 20 periodicals and 29 publish houses were closed.

3- According to the CHP report which can be accessed by https://content.chp.org.tr/file/24857.pdf_in_12.01.2018, 2271 educational institutions, 848 student dormitories, 360 courses, 139 foundations, 1412 associations, 15 universities, 19 unions were closed

All the movable and immovable assets of these institutions were confiscated and registered to the treasury. As it is seen in these news and reports, the attitude of AKP towards the right of property and other human rights became severe enough to be called as genocide. The next move of the AKP government would be gathering people into concentration camps, killing them or leaving them to hunger and despair.

PREVENTING THE RIGHT TO LEGAL REMEDIES AND THE PROBLEMS ENCOUNTERED DURING THE LEGAL PROCESSES

- 1- There is a problem regarding the legal entities who try to remedy the procedures of AKP government. Many of the authorities of those legal entities are either in jail or abroad so they have problems to file cases. Again, the headquarters of those legal entities are confiscated and they cannot access to the files and documents so it is difficult to file cases for them. It is nearly impossible for those people to get their rights in domestic law because the only way for it is to apply to the Commission of State of Emergency which was established only for delaying the process of the applicants. It has been 3 years since the coup attempt but the commission did not finalize anything in the meantime. In case the result is negative from the commission, administrative cases should be opened which would take 5 to 10 years in Turkey's situation. In case this application is also rejected, applying and getting a result from the Constitutional Court would take 3-4 years. In case this was also rejected, one of the authorities the applicant can appeal to is the ECHR. It is impossible to get a result from such kind of a system and even if one gets a result, the case would take 10-15 years. The existence of such a situation itself is a violation of rights.
- 2- One of the barriers put by the AKP government is that within 60 days after the rejection of an application by the Commission, a cancellation case can be opened against the institution in which the subject worked by the authority of the Ankara Administrative Courts. The AKP granted the victims the possibility to open a case only in the administrative courts to make it last for years. It is impossible for the Ankara Administrative Courts to deal with 100.000 cases. Also, the AKP government assigns partisan judges and prosecutors to make the problem worse and prevents the other decisions that will come out of the other administrative courts in the country, which is considered as a law trick that the demon itself cannot think of.

Conclusions and Recommendations and for the UPR Working Group on Turkey:

It is impossible for a legal entity whose assets are confiscated for the allegation of being a member of Gülen Movement to get a result for the violation of right of property. The attitude of some international institutions such as ECHR strengthens them in this case because the ECHR is not willing to deal with the cases as the number is too high. The ECHR requests the domestic law remedies to be exhausted first and it makes the AKP government more ruthless and unlawful.

If the ECHR would give up on its opinion of necessity of the exhaustion of domestic law remedies considering the victimization of people for 3 years at least for the cases from Turkey, it would stop the unlawful attitude of the AKP government for some time.

All the institutions related to EU should know that the people started to lose their hope from the system in Turkey because of the unlawfulness. It will be inevitable for the EU to face migration and refugee problems in close future.

After the coup attempt, during the confiscation of unions, universities, foundations, associations, companies that belonged to private persons or legal entities, neither the art. 60 of Turkish Penal Code, Code of Criminal Procedure art. 128 or anti-terror law art. No. 20 were

applied. The decision of confiscation was made by the decree-laws of state of emergency which is an administrative act and will be removed when the state of emergency expires.

In our opinion, because of the fact that there were no public cases and investigations or decisions of confiscation, the return of the confiscated assets can be requested in the future but the perfect time should be waited.

Some problems such as the Istanbul elections and the political atmosphere that can emerge afterwards and the economic conditions may weaken the position of the judicial authorities under the political will's impact and reasonable decisions can be made at that time. It is impossible to find the persons and lawyers right now who can track the applications for return of the assets and even the ones who can make these applications.

Within this context, according to the political and economic situation until the end of summer and beginning of autumn 2019, the relevant authorities should be approached in a case of a breakdown and the return of the confiscated assets can be requested because of the reasons that the state of emergency ended, there was no penal investigation against the legal entities and there was no investigations in accordance with the Turkish Penal Code 60, CCP 12, anti-terror law 20. The legal struggle can start during the process afterwards.

Until then, we can proceed to reach to the lawyers and managers of the legal entities which were closed, gather information about their situation and be prepared for possible changes.