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**Memorandum on the human rights implications  
of the measures taken under the state of emergency in Turkey**

1. The present memorandum follows up on the Commissioner's visit to Ankara between 27 and 29 September 2016. The Commissioner had previously visited Turkey in April 2016 (see the [press release](#) issued after this visit). He was preparing the report of this visit when a coup attempt occurred in Turkey on 15 July. The Commissioner condemned this attempt and reacted to certain measures taken in its aftermath through two statements issued on [20 July](#) and [26 July](#) 2016. The Commissioner decided to return to Turkey to express in person his solidarity with the democratic forces in Turkey in the aftermath of this attempted coup, as well as to receive updated information on relevant human rights developments, both on the human rights implications of the state of emergency declared in Turkey and on topics he had examined during his April visit.
2. During his September visit, the Commissioner met with Mr Mevlüt Çavuşoğlu, Minister of Foreign Affairs, Mr Bekir Bozdağ, Minister of Justice, Mr Zühtü Arslan, President of the Constitutional Court, as well as Mr Muhterem İnce, the Undersecretary of the Ministry of the Interior. He also met with the Chief Ombudsman and other ombudspersons, representatives of opposition political parties, and a number of NGOs. The Commissioner was unable to meet with the parliamentary oversight commission on the state of emergency which is to be established within the Parliament, as the Parliament was still in recess during his visit.
3. The Commissioner warmly thanks the Turkish authorities for the excellent co-operation he enjoyed for this visit, as well as the frank and open discussions he had with them in Ankara. He intends the following observations and recommendations as part of his duty to foster the effective observance of human rights and assist member states in the implementation of Council of Europe human rights standards, as set out in his mandate. He also sees them as a continuation of the good dialogue he enjoys with the Turkish authorities, despite the extremely difficult circumstances the latter face at present. These observations should not be seen as an exhaustive assessment of all the human rights implications of the measures taken since the declaration of a state of emergency in Turkey, but rather as highlighting the most immediate priorities which, if addressed, would facilitate the return to a sense of normalcy as regards the protection of human rights.

Introduction

4. The Commissioner once more expresses his firmest condemnation of the coup attempt of 15 July, the success of which would have marked the end of democracy in Turkey and the defeat of all the values underlying the Council of Europe. He wishes to express his sincere feelings of sympathy and solidarity with the Turkish people and Turkish democratic institutions who resisted and foiled this crime. He would also like to express his profound admiration for the civic courage of the people who risked their lives in doing so.
5. The Commissioner observes the deep trauma the coup attempt understandably caused in Turkish society, having heard many personal accounts of the terrible events of the night of 15 July and the shock, fear and indignation they caused. This trauma is all the more profound given the history of military coups and the massive violations of human rights they engendered in Turkey's recent history. The Commissioner would in particular like to pay tribute to the 241 persons, including 173 civilians, who lost their lives resisting the coup plotters and express his sincere condolences to their families. He also wishes to express his deep sympathy to the thousands who were injured.

6. There is wide agreement in Turkish society that the Fethullah Gülen movement was responsible for this coup attempt. The Turkish authorities affirmed that FETÖ/PDY, the “Fethullahist Terrorist Organisation”/“Parallel State Structure”, was a secret, criminal organisation bent on taking over the democratic institutions and destroying the constitutional order in Turkey. They also stated that very strong evidence was available that members of the movement were behind the coup attempt, as well as numerous other illegal activities. There is also widespread agreement that the movement had infiltrated, in addition to the army, many sectors of society, including numerous state institutions and the judiciary.
7. Given the seriousness of the crimes committed by those who were behind the coup attempt and the obvious threat to Turkish democracy and the Turkish state, a swift and decisive reaction to that threat was both natural and necessary. As he stated from the outset, the Commissioner does not in any way question the decision of the Turkish authorities to declare a state of emergency and to derogate from the European Convention on Human Rights (ECHR) in such a context. The authorities repeated several times that this state of emergency was atypical in that it was not aiming at restricting the fundamental human rights of the Turkish citizens, but was targeted towards state institutions themselves.
8. Indeed, one of the most visible aspects of the measures taken on the basis of a series of decrees with the force of law (“Kanun Hükmünde Kararname” or “KHK”) adopted during the state of emergency concerned the suspension or dismissal of civil servants, as well as judges and prosecutors. However, the scope and application of these decrees have not been limited to the public sector. The decrees have introduced sweeping measures affecting, among others, civil society, municipalities, private schools, universities and medical establishments, legal professionals, media, business and finance, as well as the family members of suspects. In addition, the procedures established under the decrees represent a significant deviation from ordinary procedural guarantees in the context of both administrative and criminal law.
9. It is therefore clear that these measures created, directly or indirectly, sweeping interferences with the human rights of a very large number of persons. Among those directly affected, the Commissioner observes notably that, at the time of his visit and according to the figures provided by the Turkish authorities, 31 844 persons were in detention and 1 477 still in police custody, with several thousand other criminal proceedings still on-going. The Commissioner did not receive an official figure for the number of civil servants suspended or dismissed since 15 July, however various interlocutors estimated the figure to be ranging from 70 000 to 110 000 persons, including 3 400 judges and prosecutors. At least more than a thousand NGOs and trade unions, and more than a hundred media establishments were disbanded and liquidated without judicial proceedings. Measures have also targeted businesses, family members of suspected terrorists, as well as a number of municipalities. The Commissioner had already expressed his concerns about the proportionality of the measures contained in the first emergency decree in a [statement](#) mentioned above. These concerns, compounded by similar far-reaching measures introduced in subsequent emergency decrees, have not been allayed during the Commissioner’s visit.
10. Nevertheless, the Commissioner must commend the Turkish authorities for keeping the channels of communication with the Council of Europe open in such a turbulent period. He appreciates that the Secretary General of the organisation could visit the country very shortly after the attempted coup, followed by the Chair of the Committee of Ministers and the President of the Parliamentary Assembly. He further welcomes the visit of the European Committee for the Prevention of Torture (CPT) to Turkey at the beginning of September. He appreciates the fact that the Turkish authorities responded to his own statements following the coup attempt, and fully co-operated with his Office for the present visit. The Commissioner further welcomes and fully supports the on-going dialogue between Council of Europe experts and the experts within the Turkish Ministry of Justice regarding the human-rights aspects of the emergency measures, and strongly encourages the Turkish authorities to follow the guidance of the Council of Europe in this respect.

### General approach of the state of emergency


11. The Commissioner observes that the series of emergency decrees adopted in Turkey since July created very far-reaching, almost unlimited discretionary powers for administrative authorities and the executive in many areas, by derogation from general principles of rule of law and human rights safeguards ordinarily applicable in a democratic society. The vast majority of the interferences with human rights guaranteed under the ECHR which occurred during this period were a direct consequence of the exercise of this discretionary power. The Turkish authorities advance serious arguments that this approach was necessary considering that the state had to act extremely swiftly to counter an insidious, secret organisation posing an existential threat to Turkish democracy. However, the Commissioner notes that these measures do not only apply only to FETÖ/PDY, but to all terrorist organisations for the duration of the state of emergency. Furthermore, these arguments must be tested both against the harshness of the measures and the period of time during which they are applied. The Commissioner must also stress that far-reaching, discretionary powers exercised by the administration always engender a certain degree of arbitrariness and erode the rule of law, yet protection of human rights is impossible without the rule of law.
12. Considering the vast number of persons arrested, detained, suspended and/or dismissed, as well as legal persons disbanded by using emergency powers and procedures, it is inconceivable for the Commissioner that the clear and present danger to Turkish democracy, which was undeniably demonstrated during the attempted coup, has at present – two-and-a-half months afterwards - not diminished to a significant extent. Regardless of questions of compatibility between the emergency measures and human rights standards and basic principles of rule of law, the Commissioner believes that the time has come, as a first priority, to set aside the logic of emergency and revert to ordinary legislation as regards criminal and administrative procedures and safeguards when pursuing the aims that necessitated the state of emergency. The Commissioner notes with regret the Turkish government's intention to prolong the state of emergency for a further 90-day period, but hopes that this period can be curtailed. **In any event, the Turkish authorities should immediately start repealing the emergency decrees, starting with the provisions which allow the highest degrees of arbitrariness in their application and stray the widest from ordinary guarantees.**
13. The Commissioner is convinced that it is in the interest of the Turkish authorities to conduct this fight while fully upholding human rights, as well as general principles of law such as, among others, presumption of innocence, individuality of criminal responsibility and punishment, no punishment without law, non-retroactivity of criminal law, legal certainty, right to defence and equality of arms. In the Commissioner's view, the restoration of social peace and confidence in democratic institutions that Turkish society direly needs in the aftermath of the coup attempt can only be attained if all proceedings are conducted in a fully transparent manner, adhering to these general principles of law and human rights which are at the core of the Council of Europe.
14. As stressed by the Commissioner in his statement following the promulgation of the first emergency decree, a derogation from the ECHR does not entail a suspension of its application. Certain articles of the ECHR do not allow for any derogations whatsoever, including the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and servitude, and the rule of "no punishment without law". For other articles of the Convention, a derogation implies an altered application of the tests of necessity and proportionality to interferences with human rights during the state of emergency, in other words measures may only be taken to the extent strictly required by the exigencies of the situation.

### Criminal law aspects

15. As regards on-going criminal proceedings, among the most immediate human rights concerns are consistent reports of allegations of torture and ill-treatment. The Commissioner does not automatically give credence to such allegations, but observes that the extension of the custody period to 30 days, practical changes to procedures for obtaining medical reports, and drastic restrictions to access to lawyers, as well as limitations on the confidentiality of the client-lawyer relationship, contributed to the persistence of such allegations. The fact that there is currently no functioning National Preventive Mechanism in Turkey and that the existing prison monitoring boards

have been disbanded and reappointed during such a crucial period only exacerbated the risks inherent in this situation.

16. As far as the relevant procedural safeguards are concerned, including the period of custody, restrictions to access to lawyers, as well as other deviations from criminal procedure, notably regarding restrictive measures taken directly by prosecutors, **the Commissioner urges the Turkish authorities to revert to the situation before the state of emergency as a matter of urgency.** The Commissioner thinks that this should be facilitated by the fact that the number of arrests have diminished since the coup attempt and in the light of the information provided by the Minister of Justice during the visit that in 95% of the cases so far the period of custody did not exceed 3-4 days in practice.
17. **The Commissioner further urges the authorities to authorise the publication of the forthcoming report of the CPT as soon as it is adopted and communicated by the latter.** In the opinion of the Commissioner, this would be the best way to dispel, once and for all, any doubts regarding torture and ill-treatment. **The Turkish authorities are further encouraged to implement, without delay, any recommendations that the CPT may address to them in this connection.**
18. The Commissioner understands that the Turkish authorities identify FETÖ/PDY as a terrorist organisation and see the measures taken against this organisation within the conceptual and legal framework of the fight against terrorism. The Commissioner does not question their prerogative or the fact that they have very valid arguments to do so. Nor does the Commissioner advocate in any way for a special treatment or protection of the human rights of those suspected of involvement in the attempted coup or who were otherwise engaged in illegal behaviour on behalf of this organisation.
19. The authorities pointed out to the Commissioner that the danger posed by this organisation became clear to the government and the public already previously, for **example during the period of 17-25 December 2013.** The Commissioner also took note of the information that the National Security Council had already designated FETÖ/PDY as a terrorist **organisation in 2015, while noting that the conclusions of this body are not addressed to the public, but to the Council of Ministers.**
20. Nevertheless, **the Commissioner must also take note of the fact that this organisation's readiness to use violence, a *sine qua non* component of the definition of terrorism, had not become apparent to Turkish society at large until the coup attempt. Furthermore, it has not yet been recognised as a terrorist organisation in a final judgment of the Turkish Court of Cassation which, according to the Turkish authorities, is a crucial legal act in the Turkish legal system when it comes to the designation of an organisation as terrorist. Despite deep suspicions about its motivations and modus operandi from various segments of the Turkish society, the Fethullah Gülen movement appears to have developed over decades and enjoyed, until fairly recently, considerable freedom to establish a pervasive and respectable presence in all sectors of Turkish society, including religious institutions, education, civil society and trade unions, media, finance and business. It is also beyond doubt that many organisations affiliated to this movement, which were closed after 15 July, were open and legally operating until that date. There seems to be general agreement that it would be rare for a Turkish citizen never to have had any contact or dealings with this movement in one way or another.**
21. **The Commissioner stresses that these considerations do not address the nature or motivations of FETÖ/PDY itself, but point to the need, when criminalising membership and support of this organisation, to distinguish between persons who engaged in illegal activities and those who were sympathisers or supporters of, or members of legally established entities affiliated with the movement, without being aware of its readiness to engage in violence. This point has also been stressed by the Secretary General of the Council of Europe. Given the vagueness of the basis for some of the administrative measures provided for in the emergency decrees and the fact that some administrative sanctions could be seen as displaying a criminal character (examined below), many people are justifiably afraid of facing sanctions while not having committed any illegal acts themselves.**

22.  **The Commissioner therefore urges the authorities to dispel these fears by communicating very clearly that mere membership or contacts with a legally established and operating organisation, even if it was affiliated with the Fethullah Gülen movement, is not sufficient to establish criminal liability and to ensure that charges for terrorism are not applied retroactively to actions which would have been legal before 15 July.**

General considerations about administrative measures

23. The Commissioner observes that, although the emergency decrees have affected almost all sectors of public life, from the public to the private sector, the measures they foresee and the criteria and procedural framework they set out for their application are remarkably uniform:
- The measures concerned include mainly suspensions or dismissals from service for public employees and members of the judiciary, and complete dissolution and irrevocable seizure of assets for non-governmental or other private legal entities.
  - In terms of scope, they apply to anyone “assessed to be” a member of or belonging to a terrorist organisation, but also for acting in union (“iltisak”) or contacts (“irtibat”) with such an organisation. The criteria for assessing membership or contacts, or the degree beyond which such membership or contacts justify the application of the measures, have not yet been specified, either in the decrees or otherwise.
  - Where they do not outright provide lists of persons and legal entities being subjected to the measures, the decrees provide for simplified administrative procedures for the application of sanctions. These waive the ordinary administrative safeguards and involve decisions by restricted administrative commissions in each institution on the basis of which the relevant Minister takes a final decision.
  - Similarly, the High Council of Judges and Prosecutors (HSYK), the High Courts and the Constitutional Court are empowered to dismiss judges and prosecutors on the basis of an “assessment” (rather than a reasoned judgment) of their membership or contacts, without having to observe any of the constitutional or legislative safeguards designed to protect the members of the judiciary.
  - The decrees do not specify any evidentiary criteria or requirements on which these “assessments” must be based, thereby allowing for an extremely wide margin of appreciation to the executive and administration. Neither do they require the measures with respect to each natural or legal person to be reasoned or individualised.
  - Full legal, administrative, criminal and financial immunity is afforded to administrative authorities acting within the framework of the decree.
  - Administrative courts are prevented from issuing stays of execution regarding these measures.
24. The Commissioner was informed that in the practical application of these measures, the persons in question were not provided with evidence against them and were unable to defend themselves in an adversarial manner in many cases. Many had also not been aware of any investigation against them until their dismissal was notified to them by the administration or published in a decree. It has been reported that the operation of the administrative commissions has also been very opaque, and the Commissioner received allegations that certain decisions were based on simple hearsay or a global impression about the person, based for example, on their social environment.
25. As noted above, the tests of necessity and proportionality ordinarily applying to interferences with human rights protected under the ECHR are altered but not suspended during a period of derogation linked with a state of emergency. This would by definition also require any measure to be adapted to the groups and persons they affect in view of the aim pursued while restricting their rights.
26. In the opinion of the Commissioner, the application of such sweeping discretionary powers cannot be justified in the same way concerning the various groups they affect, as the rights protected under the ECHR and other international standards vary greatly from one sector to another.

## Administrative measures affecting employees in the public sector

27. Civil servants are in an objectively very different situation compared to legal persons and private entities. The Commissioner is fully aware that the ECHR does not guarantee access to employment in the public sector and that a relation of trust is essential in relations between civil servants and the state, affording a considerable margin of appreciation to the latter. However, even for this group, under the case-law of the European Court of Human Rights, such dismissals can still be considered an interference with Article 8 of the ECHR (right to respect for private and family life).
28. It also needs to be borne in mind that all measures taken under the state of emergency must be derogating from the ECHR only to the extent strictly required by the situation, and therefore must be proportionate to the aim pursued. This aim, in the context of Turkey's [derogation](#) to the ECHR, was to counter the severe dangers to public security and order, amounting to a threat to the life of the nation, "posed by the coup attempt and its aftermath together with other terrorist acts". In this connection, when it comes to the public sector, the threat posed by a public employee wielding the sovereign power of the state, such as military personnel, an intelligence officer, a police officer or a judge, cannot be compared to the risk represented by a teacher, academic or an unqualified worker. Whereas arguments can be made for a speedy dismissal outside ordinary procedural guarantees for the first group, the same reasoning would not apply to the second group, considering that far less intrusive measures are available, such as suspension pending a proper, individualised administrative inquiry with the requisite guarantees.
29. Even for the first group, the situation of military personnel cannot be compared to judges and prosecutors: in democratic societies special guarantees apply to the members of the judiciary to uphold their independence and impartiality. If there are serious reasons for thinking that they acted in ways incompatible with their function, their dismissal must be subject to the strictest scrutiny and highest evidentiary requirements. In the Commissioner's opinion, the relevant decisions of the HSYK did not meet such standards. He notes in particular that, while expounding at length on the threat posed by FETÖ, including anecdotal examples involving judges and prosecutors, these decisions included in their operative part only a universal, stereotypical and non-individualised reasoning to which two lists of 2 845 and 543 names were simply appended. Once more, suspension from duty while proper, individualised scrutiny takes place could have been a more proportionate option in the circumstances.
30. Whereas the Minister of Justice informed the Commissioner that civil servants were in many cases suspended first and dismissed later, these dismissal decisions were still taken under the decrees which do not require an adversarial proceeding or an individualised reasoning. Again, the Minister of Justice said that the decisions were individualised in practice and the files of each person reflected the data and information retained against them to assess whether they had acted loyally to the state. Both the Minister of Justice and the Minister of Foreign Affairs gave examples of such information or evidence that motivated the decisions of dismissal in some concrete cases.
31. However, the procedures clearly do not establish standards regarding such evidence, require their communication to the person concerned or the final assessment to be reasoned and based on this evidence. In such circumstances, it is conceivable that different administrations may have interpreted the same vague criteria concerning membership or contacts with a terrorist organisation in different ways, reaching different conclusions in similar cases, or considering legal actions taken in good faith as establishing guilt. This is a situation which naturally fuels all kinds of speculation concerning the reasons behind certain dismissals. As an example, many interlocutors of the Commissioner were convinced that the dismissal of around 10 000 teachers who were members of EĞİTİM SEN was motivated only by the fact that these teachers had participated in a strike organised by this legally established and operating trade union.
32. **This is why the Commissioner urges the Turkish authorities to render much more transparent the criteria to be retained to prove membership of FETÖ/PDY and other terrorist organisations, the degree beyond which contacts with these organisations can incur sanctions, as well as the kinds of information and evidence the authorities must assess to establish liability. At a minimum, persons should be able to have access to evidence against them and make their case before a decision is taken. Any such decision should be subject to effective remedies, including adversarial proceedings before courts of law.**



33. The Commissioner is particularly concerned about a number of additional sanctions which automatically apply to physical persons dismissed by decree or through the procedures established in decrees. These include a life-long ban from working in the public sector (which includes the practice of law) and private security companies, annulment of passports, eviction from staff housing and the annulment of rental agreements between these persons and public or semi-public bodies. The Commissioner also has grave concerns about the method of publishing a list of names annexed to decrees, which are laws in essence. It is beyond doubt that these persons will have to bear the stigma of having been assessed as having links with a terrorist organisation by the Turkish government itself, heavily compromising their potential of finding employment elsewhere.
34. These elements reinforce the view that, despite the executive or administrative nature of the dismissal decisions, the sanctions imposed can display a criminal character, blurring the distinction between administrative and criminal proceedings. The upholding of the principles of presumption of innocence, legal certainty, no punishment without law, individuality of crimes and punishments and due process are therefore of particular relevance. **This is an additional reason for the Commissioner to urge the authorities to stop applying these procedures and swiftly revert to ordinary procedures.**

#### Civil society and the private sector

35. Under the ECHR and the case-law of the European Court of Human Rights, the state does certainly not enjoy the same margin of appreciation applying to civil servants when it comes to legal bodies and private entities. Therefore, the Commissioner considers that applying the same logic described above in these cases is far more problematic from a human rights point of view and raises questions of proportionality *per se*.
36. Even within this sector, many objective differences exist, including the rights these entities must enjoy. While it can be argued that a private school or hospital is subject to some degree of governmental regulation, for example, this reasoning does in no way apply to a newspaper, for which freedom of expression, protected under Article 10 ECHR, must be a significant consideration. By contrast, the right to private property (Article 1 of Protocol No. 1 of the ECHR) would be at stake in both these cases. Likewise, the dissolution of an association or foundation, without a court order, constitutes one of the most serious interferences imaginable with the right to freedom of association (Article 11 ECHR).
37. The Commissioner understands the authorities' reasoning that private entities may provide logistical and financial support to terrorist activities. However, this risk could in all likelihood also have been eliminated in most cases by freezing their assets or suspending their activities, pending a final judicial decision, based on material evidence and individual reasoning. The Commissioner is not convinced that dissolution of private entities enumerated in long lists, in an entirely irrevocable fashion involving the takeover of their assets by the Treasury, was the most proportionate measure in order to strike a proper balance between the objective risks considered and the applicable human rights, including the rights to a fair trial, to property, to freedom of association, to freedom of expression and to an effective remedy. In any event, administrative measures are wholly inappropriate for these purposes in the Commissioner's view.
38. **For these reasons, the Commissioner calls on the Turkish authorities to stop applying the same sweeping measures, which use opaque criteria and would, at least in principle, allow for stereotypical and non-individualised reasoning and which derogate from the most basic principles of due process, indiscriminately to all these sectors, groups, individuals and private entities. There is an urgent need for a far more nuanced approach, taking into account the specific circumstance not only of each group, but also of each entity and individual, in order to ensure that the measures and sanctions are proportionate to those circumstances. A good indicator of such proportionality would be the consideration given to using ordinary procedures and safeguards to the widest extent possible in each case.**
39. **The Commissioner considers it particularly urgent to put an immediate stop to the closure, on the basis of a simple administrative decision or an executive order, of legal persons, such as newspapers, TV stations, associations, private companies, etc., and to the transfer of their assets to the Treasury. He considers that simplified rules allowing the transfer of**

**assets to public funds during on-going judicial proceedings can also lead to irrevocable damages. The authorities must reverse the measures already taken in this respect when this is still possible. At any rate, the final dissolution or transfer of property should never occur without a proper judicial review with a final judgement, which must include the possibility of remedial action where necessary, including compensation.**

40. The Commissioner noted with particular concern interferences with the right to freedom of expression and the freedom of the media, which occurred since 15 July, including the closure of many media establishments, as well as arrests and detentions of journalists. The Commissioner decided to address these issues in greater detail in another memorandum to be published later (see below).

#### Sanctions affecting persons other than the suspects

41. **A series of measures of particular concern to the Commissioner are those which target directly or are liable to affect family members of suspects in an automatic fashion. In addition to the evictions, termination of lease agreements and freezing of assets of the said suspects, which are likely to create unnecessary hardship and victimisation for family members, the Commissioner notes other measures of an administrative nature, such as the possibility for annulling passports of spouses of suspects who are themselves not under investigation and the unlimited access by administrative authorities to the personal data of family members of suspects. This approach raises extremely serious concerns with regard to Article 8 of the ECHR.** The Commissioner is worried that such measures will inevitably fuel the impression of “guilt by association”, already voiced by many of his interlocutors. **In the opinion of the Commissioner, any measure treating family members of a suspect also as potential suspects should not exist in a democratic society, even during a state of emergency.**

#### Remedies

42. The authorities themselves have recognised, at the highest political level, that mistakes and injustices have been committed during this period. In the light of the considerations above, the Commissioner thinks that this was inevitable given the nature of the measures adopted and applied. The Commissioner welcomes the government’s announcement that administrative commissions will be set up to review such cases. However, the added value of such a measure would be very limited if this review is not rendered significantly more transparent and less arbitrary than the procedure underlying the initial decisions. Neither would such an administrative review eliminate the need for a fully transparent judicial process. It will be a significant challenge for Turkey to demonstrate that, even in a context where close to 3 500 members of the judiciary have been dismissed and thousands imprisoned, Turkish courts can still provide effective remedies for potential human rights violations caused by arbitrary measures taken by the executive or the administration, or even by the judiciary itself.
43. In this context, the Commissioner notes in particular the information provided by the Minister of Justice that persons whose names are annexed to decrees are considered to be dismissed by a law, and therefore would not have a judicial remedy. It was also not yet certain whether the Constitutional Court is competent to receive individual applications and provide remedies in such cases. The President of the Constitutional Court informed the Commissioner that the Constitutional Court would be taking a decision on this matter very soon. In this connection, the Commissioner observes that the Constitutional Court is already being stretched to its limits by more than 20 000 new applications it has received since 15 July which might further compromise its ability to provide an effective remedy in practice. At any rate, the risk for a huge number of applications to the European Court of Human Rights is very present and tangible.
44. The Commissioner observes that there is a great deal of confusion as to the remedies available to different groups and categories, including among legal professionals. **The Commissioner urges the Turkish authorities to communicate very clearly and precisely about the legal remedies available to the different categories of persons affected by the emergency measures. They should take all precautions, including by ensuring that the relevant judicial authorities have the necessary experience and resources, to ensure that these remedies can operate in practice.**



### Other considerations

45. The Commissioner has concerns about the fact that one of the emergency decrees introduced amendments to the Municipality Law, allowing the Turkish government to replace mayors or deputy mayors who have been dismissed or arrested for membership or aiding and abetting of a terrorist organisation, rather than allowing municipal councils to replace them or renewing the local elections at the earliest opportunity. This poses fundamental problems vis-à-vis principles of local democracy and is likely to create resentment in the local populations concerned, as it can be perceived as a collective sanction.
46. In this connection, the Commissioner finds it very problematic that the Turkish government already introduced amendments to many laws through emergency decrees, thus entirely bypassing ordinary legislative procedure. These include such crucial laws as the Anti-Terrorism Law, Code of Criminal Procedure or the Provincial Administration Law which are likely to have a direct impact on the protection of human rights in Turkey, an impact which would carry on after the lifting of the state of emergency. In the Commissioner's opinion, it would be appropriate to repeal these amendments at the end of the state of emergency and re-submit them, if necessary, to the Parliament for enactment, after a proper parliamentary procedure. In this connection, the Commissioner highly appreciates the assurances given by the Minister of Justice that any permanent amendment would be first discussed and enacted by the Parliament.
47. As the parallel with the state of emergency in France is often made by the Turkish authorities, the Commissioner must point to several crucial differences between the states of emergency in Turkey and in France, which for its part has been subject to serious [scrutiny and criticism](#) by the Commissioner both when it was enacted and extended. At the most fundamental level, the Commissioner observes that the law on the state of emergency adopted by the French Parliament gave no powers whatsoever to the French government to rule by legislative decrees, all the emergency administrative measures having been exhaustively defined by the Parliament at the moment of adoption and extension. In addition, the French emergency law itself provides for a permanent monitoring of any measure by both houses of the French Parliament, as well as the Ombudsman and the National Human Rights Institution. In the opinion of the Commissioner, this monitoring has closely scrutinised emergency measures by formulating serious criticisms in practice, and established a strong checks and balances system with a view to avoiding the worst forms of arbitrariness. Turkey has yet to prove that such effective monitoring will take place. Neither can the measures taken so far in France be compared to those taken under the state of emergency in Turkey, in terms of their scope, the number of persons they directly or indirectly affected, the number of human rights interfered with and the severity of this interference. If the Commissioner's concerns with regard to Turkey appear more urgent and serious, it is precisely because they are based on such objective considerations.

### Conclusions

48. The Commissioner believes that it is time for the Turkish authorities to curb certain excesses of the state of emergency. The Commissioner would like to stress once more that he is not selectively concerned for the human rights of the coup plotters or members of FETÖ/PDY. He recognises that very serious crimes, which even amount to massive human rights violations, have been committed and must be punished. His concern is rather for the system of human rights protection and promotion in Turkey.
49. Deviations from the rule of law and human rights principles may expedite the punishment of the guilty, and the Commissioner understands the temptation for doing so. But such an approach will leave indelible scars and be immensely detrimental in the long run. The best antidote against terrorism is human rights and the rule of law, including the use of due process and a reasoned, rational approach. In the same vein, transparency is the best weapon against a secret organisation which will most probably seek to harness and exploit any sense of injustice or victimhood caused by haste.

50. **This is why the Commissioner insists on the urgency of reverting to ordinary procedures and safeguards, by ending the state of emergency as soon as possible. Until then, the authorities should start rolling back the deviations from such procedures and safeguards as quickly as possible, through a nuanced, sector-by-sector and case-by-case approach. The Commissioner also urges the Turkish authorities to make the widest use possible of the experience and guidance of Council of Europe bodies in this process.**
51. The Commissioner would once more like to express his appreciation for the co-operation for his visit. He hopes that these warnings and recommendations will be taken in the spirit that they were given, namely out of a profound concern for the protection of human rights in Turkey which the Commissioner shares with the Turkish authorities. The Commissioner repeats his readiness to pursue his dialogue with the authorities and provide any clarification or assistance that they may request.
52. The Commissioner intends to complement this memorandum by additional memoranda dealing with the human rights issues he examined during his April visit, namely human rights implications of counter-terrorism operations in South-Eastern Turkey and freedom of expression and freedom of the media, as updated through information received during his September visit. He expects to publish these memoranda before the end of 2016 and hopes that, together with this memorandum, they will serve as a concrete basis for further dialogue with the Turkish authorities in order to improve human rights protection in Turkey.