



Ankara, 31 October 2016

**OBSERVATIONS OF THE MINISTRY OF JUSTICE OF THE REPUBLIC OF
TURKEY CONCERNING THE MEMORANDUM OF 7 OCTOBER 2016 BY THE
COUNCIL OF EUROPE'S COMMISSIONER FOR HUMAN RIGHTS**

1- INTRODUCTION

1. The present assessment has been made with a view to informing the addressees about the statements made by Mr. Nils Muiznieks, Council of Europe's Commissioner for Human Rights ("the Commissioner"), in his memorandum dated 7 October 2016. The Commissioner's statements, which condemned the coup attempt of July 15th, were welcomed.

2. In his memorandum, the Commissioner expressed his firmest condemnation of the coup attempt and mentioned that it was necessary to act swiftly and decisively against the crimes committed by the coup plotters, which amount to massive human right violations.

3. On the other hand, Mr. Muiznieks provided his opinions and recommendations with respect to the measures taken under the state of emergency. As a matter of fact, during his visit, he drew the attention of our authorities to these points, and our opinions on them were shared with him.

4. Within this framework, as it was also reiterated to him during his visit, the measures taken by our country in the aftermath of the terrorist coup attempt comply with our Constitution, the relevant domestic legislation, the principles of the rule of law and our international obligations. Our present cooperation based on constructive dialogue with the Council of Europe of which Turkey is a founding member still continues in this process.

5. On the other hand, we are aware of the fact that the disinformation regarding the incidents of 15 July taken place in our country has also affected international actors. For this reason, it is considered useful to share information about the incidents occurred during the armed coup attempt and the subsequent developments.

2-WHAT HAPPENED IN THE 15 JULY COUP ATTEMPT

2.1- At the night of 15 July the Republic of Turkey faced an armed coup attempt.

6. At the night of 15 July, upon the instruction of the founder and leader of the Fetullahist Terrorist Organization / the Parallel State Structure (“FETÖ/PDY”), Fetullah Gülen, and in line with the plan approved by him, “terrorists in uniforms” within the Turkish Armed Forces (“the TAF”) attempted an armed coup against the democracy for the purpose of overthrowing the elected president, the Parliament and the Government by undermining the Constitutional order. The Presidential Compound, the hotel where Mr. President was staying at, the Turkish Grand National Assembly (“TGNA”), the Police Special Operations Centre and the security units, the premises of the National Intelligence Organization (“the MİT”) and various military units were attacked with bombs and arms. The Bosphorus bridges connecting Asia and Europe were closed to traffic due to the tanks used by the terrorists.

7. Mr. President survived the assassination attempt by leaving the hotel only 15 minutes before the raid on that hotel. The coup plotters opened fire on the convoy of Mr. Prime Minister.

8. The Turkish Parliament building, reflecting the public’s will and the heart of the democracy, was bombed for the first time in the history of the Republic of Turkey. The bomb attack was made in the course of the extraordinary meeting of the Plenary Session against the coup attempt. During the attack, Parliament officials, some civilians and many police officers were injured, and extensive damage was caused to the Parliament building.

9. At the night of 15 July, tanks were driven towards people, and some of them died and were injured as a result of being trapped under the tanks, fighter aircrafts made low altitude flights over the cities by breaking through the sound barrier and in a manner which would lead to fear and panic in public, the TGNA and people were shot randomly by the coup plotters, sharp-shooters directly targeted people from strategic points, the crowd was bombed and shot from aircrafts and the civilians, who defended the democratic regime at the cost of their lives, were murdered.

10. The terrorists seized the state-run television (“TRT”) and forced a newsreader to read “a pirated declaration of coup”. Raids were made to the private media organizations, and the media, which is the news source for the public, was tried to be made to act with a single-voice. The coup plotters also attacked the satellite control station and wanted to cut off the internet and all television broadcastings, except for the state-run TV channel.

11. **In the course of the coup attempt, 246 persons among whom there were also Mr. President's very close workmates were killed and 2194 people were injured.**

2.2- The attempt against the will of the public was suppressed by the public itself.

12. The Turkish public, upon the call of Mr. President, defended their democratic values and their own will against tanks, helicopters and aircrafts with only their flags and without any weapon. The coup attempt was suppressed by our President, Parliament, Government, political parties, written and visual media, non-governmental organizations, and above all by the esteemed 79 millions of Turkish Nation, who put all of the political and ideological differences aside and protected to death their elected President, Prime Ministry, Government, the Turkish democracy, willpower, Constitution, the rule of law, freedom, dignity, independence and future.

13. **At that night the Turkish public came together under the democratic values without making any discrimination as regards political parties or worldviews and resisted the coup attempt altogether.** All segments of the public acted with the consciousness that it was not merely a coup attempt planned against the ruling party, but that the Turkish democracy was targeted. In all public squares in Turkey, the public was on democracy watch for approximately one month. With this stand, the Turkish nation has declared its loyalty to the democracy.

2.3- All the political parties acted in unison against the coup attempt.

14. The unity and solidarity among the nation at the night of 15 July continued among the political parties as well. The statement prepared at the Parliament against the coup was signed by all the political parties. The participation of the leaders of the ruling party and the opposition parties in the Yenikapı Democracy and Martyrs rally of 7 August which was organized under the auspices of the Presidency of the Republic of Turkey is an indication of this unity and solidarity. Approximately 5 million people from every segment of the society and with different world perspectives convened and protected democracy and the national will.

2.4- The armed coup attempt was carried out by the FETÖ/PDY.

15. The coup attempt of 15 July was performed in accordance with Fetullah Gülen's orders and instructions, by the members of the FETÖ/PDY, who had infiltrated into the TAF, public officials and civilians who are the organization head¹, members of the FETÖ/PDY infiltrated into the security forces and the gendarmerie and police officers who had previously been dismissed from profession. The evidence obtained so far also explicitly reveals this truth. The fact that the coup attempt had been made in line with Fetullah Gülen's orders and instructions is also included in the statements of the organization members who had been questioned within the scope of the investigations conducted. Those who were heard as a witness, notably the Chief of General Staff, gave statements in that vein.

16. Within the scope of the investigations conducted into the coup attempt, many coup plotters, who had participated in the coup attempt, were taken into custody, and a great deal of evidence was obtained at the end of searches performed. The truth has become evident in all aspects as a result of the deciphering, analysis, classification and assessment of the evidence (camera footages, computer data, information, documents and data obtained as a result of the body searches performed on the suspects, searches carried out in the suspects' homes, vehicles and in other places, records of the city surveillance cameras, mobile phone conversations, SMS and mail contents, statements involving confession, witnesses' statements and etc.).

17. The FETÖ/PDY is an armed terrorist organisation established by Fetullah Gülen which aims to suppress, debilitate and direct all the Constitutional institutions and to overthrow the Government of the Republic of Turkey and establish an oppressive and totalitarian system through resorting to force, violence, threat, blackmailing and other unlawful means.

18. **With a view to realizing such aims, a parallel structure was established by the FETÖ/PDY within all public institutions and organisations of the State, notably the judiciary, security directorates, civil administration and armed forces.** To attain its goals, the FETÖ/PDY used the methods of unlawfully obtaining the exam questions of important exams such as the Public Personnel Selection Exam and the University Student Placement Exam, thus making its members gain success in these exams, placing them in public

¹ Within the organizational structure of FETÖ/PDY, the heads are called as "imam". It has been revealed that the imam of the FETÖ/PDY members taking office in the Turkish Air Force is Adil Öksüz, who is an academician and still a fugitive.

institutions and effective schools, causing the persons who are not its members to be dismissed from profession through ensuring that judicial and administrative investigations be initiated by false documents and evidence that are fabricated and placing its members in these cadres.

19. They formed structures in the public institutions as cells the number of members of which is not over five and which are affiliated to an organisation brother². No cell is aware of the other. The reason why this organisation model has been developed is to ensure that even if a cell is revealed, the other cells continuing their activities must not be deciphered. A strict military/hierarchical discipline prevails in the organisation. The FETÖ/PDY established the intra-organizational communication among its members through confidential and encrypted means. It has been established at the current stage of the investigations that encrypted applications such as “Bylock” was used for the intra-organizational communication.

20. **The fact that the FETÖ/PDY is an armed terrorist organization had been established with the decision rendered by the Erzincan Assize Court prior to 15 July.** Furthermore, numerous cases brought against the organization in question and its members are still pending. By the decision of the National Security Council (“the NSC”)³, the FETÖ/PDY has been included in the list of terrorist organisations; and this decision was presented to the public and appeared in various media bodies. Moreover, all the public institutions along with the public have been informed of this issue as the Recommendations of the NSC have been submitted to the Council of Ministers.

3- MEASURES TAKEN IN THE AFTERMATH OF THE COUP ATTEMPT

3.1- Declaration of State of Emergency and Derogation from the European Convention on Human Rights

21. Within the scope of the State’s positive obligations, it must be ensured that those who attempted to make an armed coup are brought before justice in order to account

² The brother (“*Abi*”) is a medium level head of the FETÖ/PDY organization who is appointed by the top class of the organization. The members are obliged to abide by the instructions of the brother.

³ The National Security Council is established by the Prime Minister, the Chief of the General Staff, the Deputy Prime Ministers, The Minister of Justice, the Minister of National Defence, the Minister of Internal Affairs, the Minister of Foreign Affairs, the Commanders of the Land, Naval and Air Forces Command and the Commander of the Turkish Gendarmerie Forces under the chairmanship of the President of the Republic. The NSC conveys the recommendations rendered as to the determination, designation and implementation of the national security policy of the State and its opinions on establishment of the required coordination to the Council of Ministers.

judicially, and the continuing coup threat must be eliminated. Within this context, it is imperative to identify the public officials having a connection with the FETÖ/PDY who have infiltrated into the State and to immediately perform the required procedures in respect of them. Furthermore, it is under the responsibility of the State to take measures to prevent an attack against the will of the nation through undemocratic means from taking place again.

22. With a view to eliminating the risk of armed coup aimed at overthrowing the democratic order established by the constitution and materializing structural arrangements for Turkey where it is impossible to stage a coup, state of emergency with effect from 21 July 2016 at 1.00 a.m. was announced for a period of 90 (ninety) days by the Decree of the Council of Ministers under Article 120 of the Constitution. The state of emergency that was planned to be ceased on 19 October 2016 was extended for 90 days by the decision of the Council of Ministers. Turkey witnessed severe terrorist attacks which cannot be compared with those taking place in the European countries, the terrorist actions performed cooperatively by several terrorist organizations and more importantly a coup attempt. It has been therefore aimed, with the extension of the state of emergency, that the actions initiated for ensuring sound and right decisions to be taken more swiftly and effectively could be completed given the type and gravity of security threat and problem which were faced with.

23. **The measures taken during the state of emergency have not caused any changes in the daily life. Any restriction which would have an influence on daily life has not been imposed on fundamental rights and freedoms. The measures taken have been restricted to the issues required by the state of emergency.** The decision on declaring the state of emergency was rendered not for limiting individual rights and freedoms but for the purpose of enabling the State to act more swiftly within the scope of the effective fight against the FETÖ/PDY and the other terrorist organisations. It is the State's most natural right to use the legal power in order to protect democracy and public will.

24. In this respect, by the derogation statement, on 21 July 2016 the Secretary General was informed that in accordance with Article 15 of the European Convention on Human Rights ("the Convention" or "the ECHR"), the obligations under the Convention regarding the rights and freedoms have been derogated from.

25. Similar to Article 15 of the Convention, Article 15 of the Turkish Constitution clearly regulates how the administration must act in such situations. Pursuant to the regulations in question, the principles of "absolute necessity" and "proportionality" have been

sensitively complied with as regards the measures taken under the state of emergency in the aftermath of the coup attempt.

3.2- Decree Laws Issued During the State of Emergency

3.2.1- Overview

26. By the decree laws issued within the scope of the state of emergency, measures have been taken in proportion to the present crisis that the administrative authorities face with and to the extent absolutely necessitated by the situation, as required by Article 15 § 1 of the Convention. Turkey has fought against the FETÖ/PDY, which is an atypical armed terrorist organisation and which is scarcely encountered in the world, unlike PKK or DAESH. All measures are required to be taken with a view to averting the organisation's strength within the state. **Therefore, the scope of the Decree Laws issued in this respect has been limited to the terrorist organisations in order not to interfere with the rights and freedoms of others.**

3.2.2- Decree Laws' Application Area and "Predictability" Issue

27. The notions of connection, relation and membership have been mentioned with regard to the administrative responsibility in the Decree Laws and do not include any new factor concerning criminal liability. In this respect, in identifying the membership to the FETÖ/PDY in terms of criminal liability, independent courts are examining whether the factors set out in Article 314 of the Turkish Criminal Code exist; and no regulation has been made in this area by the Decree Laws. In other words, **no different way is followed from what was followed before 15 July in terms of evidence required for imposition of penalty.**

28. The FETÖ/PDY infiltrated into the levels of the Government in an extremely insidious way and constituted a parallel structure through infiltrating into the bureaucracy and all segments of the society in a manner which would support the illegal structure. Therefore, it is quite difficult to detect the members of the organization. However, each case is being meticulously examined and the people and institutions that have a connection, relation with or are a members of the organization are tried to be identified. The Republic of Turkey has been putting up a serious fight against the FETÖ/PDY, especially after 2012. Our country went through the 17-25 December process. As a matter of fact, the 17-25 December process was

not different from the one experienced on 15 July 2016. While one of them was a coup attempt against the Government especially through the members of the terrorist organization who infiltrated into the security forces and judiciary by using the means of judiciary, the other one was a coup attempt staged in order to abolish the constitutional order and the Government through the members of the terrorist organization, who infiltrated into the army, by using guns, rifles, tanks and aircrafts in a bloody manner. The aim of both was to make an attempt on the nation's will and ultimately to overthrow the constitutional order and the elected Government. In this regard, the dates of 17-25 December 2013 play a very crucial role in detecting the connection, relation and membership and in conducting judicial and administrative investigations.

3.2.3- Suspension/Dismissal of Public Officials who had connection with the FETÖ/PDY ("Lustration Process") and Background of this Process

29. **The structuring of the FETÖ/PDY especially in armed forces, security directorates, civil administration and judicial institutions has continued for decades.** This terrorist organization launched in the past a purge operation against the persons in the army, who were not members of the organization, by way of fabricating false evidence and initiating investigations such as Ergenekon, Sledgehammer and Military Espionage. **It was also proven by the judgments of the Court of Cassation that false evidence was fabricated in these investigations.** The influence gained by the FETÖ/PDY in judiciary as a result of the said operations reached a peak with the newly formed structure of the High Council of Judges and Prosecutors ("the HCJP") in 2010, and the members of the organization were entrusted with all critical tasks.

30. On 7 February 2012, the judges and prosecutors, who were members of the FETÖ/PDY, issued an illegal arrest warrant against the Undersecretary of the MİT by taking advantage of the planned surgical operation of the esteemed President. The judges and prosecutors, who launched investigations against the Government on 17-25 December 2013 and ensured illegal stopping of MİT trucks in Adana and Hatay provinces, were also members of this organization.

31. In a number of meetings held by National Security Council during the period between 26 February 2014 and 26 May 2016, it was stated that the FETÖ/PDY threatened national security and that this structure was a terrorist organization, and the Government was

recommended to take several measures against this parallel state structure. There are currently criminal proceedings filed against the members of the FETÖ/PDY in Istanbul, Bursa and Ankara. Within the scope of the investigation launched against the irregularities following the operation conducted against the group called Tahşiye, an indictment was drawn up by the Istanbul Chief Public Prosecutor's Office on 17 September 2015. In the indictment of 6 June 2016 drawn up by the Ankara Chief Public Prosecutor's Office shortly before the coup attempt, it was stated that the FETÖ/PDY made military coup and civil war threats, relying on its effectiveness in the Turkish Armed Forces. After then, the coup attempt took place. **In the indictments drawn up, the FETÖ/PDY was qualified as an armed terrorist organization before 15 July.**

32. In the decision dated 16 June 2016 of the Erzincan Assize Court, it was pointed out that this organization was generally organized in all departments of the State, and especially in the judicial and security agencies as well as in the Armed Forces, and it was emphasized that this organization created a separate structure outside the State's hierarchical structure. It was also stated in the decision that in some speeches of the leader of the FETÖ/PDY, Fetullah Gülen, it was indicated that the organization infiltrated into the cadres directing the social, economic, military and administrative mechanisms or acquired those taking office in these bodies and thereby aimed to acquire these units and make them ineffective. In the same decision, the FETÖ/PDY was accepted as a terrorist organization and the accused persons were punished with different penalties.

33. Moreover, within the scope of the criminal actions brought within the scope of the investigations initiated throughout the country prior to the attempted coup of 15 July, proceedings are still pending against both Gülen, the leader of the FETÖ/PDY, and the organization members for various offences, notably establishing and leading an armed terrorist organization.

34. As is inferred from the foregoing explanations, **both judicial and administrative investigations against the public officials who are members of the FETÖ/PDY are being conducted for a long time.**

35. It is known to all that the FETÖ/PDY members have insidiously infiltrated into all public institutions and formed a parallel structure. The FETÖ/PDY members undertook significant duties within the public bureaucracy and acted together through the cell-type groups they established among themselves and conducted public acts and actions in line with

the aims of the terrorist organization. These officials conveyed confidential information to the FETÖ/PDY and breached their duty of loyalty to the State. For these reasons, **taking office of the FETÖ/PDY members within the public institutions poses a great threat for rule of law, democracy, human rights and the State's security and public order.**

36. In a democratic society, public officials employed in the public institutions are liable to display loyalty to the constitutional principles that are foundation of a State. In this respect, in public, the States seek for the criterion of displaying high loyalty to the constitutional principles during both the process of being accepted for the office and the process of performance of the office. In case where 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.

37. As a matter of fact, both in the Eastern Europe countries after the disintegration of the Soviet Union and in Germany during the integration process, (lustration) policies were applied with a view to successfully completing the democratisation process, becoming a country respecting for the fundamental human rights and being able to eliminate the possible risks. It is specified in both the decisions of the European Court of Human Rights and the recommendations of the Venice Commission that the State has discretionary power on the matter of the lustration. The primary goal of these policies is to discharge the public officials acting contrary to the duty of loyalty and to eliminate possible threat against the democratic constitutional state.

38. **Unlike the lustration processes that took place in some other European countries, the fact that FETÖ/PDY members infiltrating State organs attempted to stage a coup attempt demonstrated that they constitute not only a potential threat, but in fact a huge real threat to the democratic state based on rule of law.** Therefore, following the coup attempt, the Decree-Law no. 667 was issued in order for rapid removal of the public officials taking office in the public institutions and considered to have connection or contact with or be a member of the FETÖ/PDY.

39. Those considered to have connection, contact with and be a member of the FETÖ/PDY and the other terrorist organizations were suspended from office, and investigations were initiated in respect of such persons. At the end of the investigations, public officials who were proven to have connection with the terrorist organizations were dismissed from their offices by virtue of the Decree Laws.

40. In the process of dismissals within the scope of Decree Laws, the decisions are rendered for each officer against whom an action was conducted, by taking into account the statements in the judicial investigation files, digital evidences, witness statements, statements including confession as well as other evidences. If the Committee constituted under Decree Law concludes that there is no sufficient information, documentation or evidence for dismissal of the said officers, the related person is given back to duty. In this regard, the decisions on dismissals are individually rendered for each officer as a result of comprehensive researches and evaluations. In addition, the relevant authorities accept the requests for re-examination in order to avoid the potential errors with regards to the public officials, who were relieved of their duties or dismissed from the profession, and give new decisions as a result of the necessary examination, research and evaluations. As a matter of fact, some of public officials who appeared to have no connection or contact or membership with the FETÖ/PDY, were given back to duty with the Decree-Law published on 29 October 2016.

41. On the other hand, it is envisaged in the Decree-Law no. 667 that the High Council of Judges and Prosecutors shall determine as to whether the judges and prosecutors considered to be a member of, have connection or relation with the terrorist organizations would continue performing their profession or not and decide on their dismissals. Within the scope of investigation initiated *ex officio* by Ankara Chief Public Prosecutor's Office under Article 161/6 of the Code of Criminal Procedure and also the decisions of custody, the judges and prosecutors who were determined (upon the investigation being conducted for a long time) to be members of the FETÖ/PDY, and the relevant judges and prosecutors were suspended (pursuant to Article 77 of the Law no. 2802 on Judges and Public Prosecutors) in order not to harm the reputation, reliability and persuasiveness of the judiciary. Following the entry into force of the Decree Law no. 667, the judges and prosecutors whose connection or contact with or membership of the FETÖ/PDY had been determined, were dismissed from the profession by the Plenary Assembly of the HCJP.

42. **As is known, the HCJP is a constitutional institution which holds duty depending on the independence of courts and tenure of judges.** What constitutes the background of the process concerning the judicial members against whom actions were taken is an investigation initiated in 2014. In this investigation, the cases such as the Ergenekon, the Sledgehammer, illegal wiretapping, the Zirve Publishing House, Military Espionage, the 17-25 December, Oda TV, Fenerbahçe Match Fixing, Unlawful Release, Cosmic Room and the

MIT Trucks were examined, and as a result of the investigations performed, it has been revealed that there was a gang-type structure within the judiciary. In the course of the investigations, all statements given by the judges and prosecutors against whom actions had been taken were reviewed by the HCJP, and concrete evidence as to the manner how the organization had infiltrated into the judiciary; the communication means of the organization; hierarchical statuses within the organizational structure; and the fact that the instructions received from the organization have been certainly implemented were thereby obtained.

43. One of the most stunning examples indicating that the FETÖ/PDY structure has used the judiciary in line with its organizational aim has been revealed in the case of illegal wiretappings where decisions on illegal wiretappings were rendered in respect of politicians, eminent persons, high level bureaucrats and artists. Moreover, it has been found out in the investigation of military spying that evidence was fabricated against those who were likely to be appointed to high positions within the military and serious penalties were imposed on them with a view to enabling the military officers involved in the attempted coup d'état of 15 July to be entrusted with these positions. In the investigations conducted by the HCJP, those who had been in contact with this structure were identified and the procedures of dismissal were evaluated and decisions on dismissals were rendered by the Plenary Assembly of the HCJP as a result of all evidence obtained pursuant to the preliminary reports drawn up as well as information and documents obtained from the Ankara Chief Public Prosecutor's Office.

44. However, **198 judges and prosecutors were reinstated as a result of the examinations made after the procedures of suspension.** On the other hand, the members of judiciary, who were dismissed from the profession, will be able to request re-examination before the General Assembly of the High Council of Judges and Prosecutors.

45. It is a must to dismiss the judges and prosecutors from the profession, whose connection and contact with and membership of the FETÖ/PDY have been determined in order to ensure the independence and impartiality of the judiciary. The HCJP which is a guarantee for continuation of the judiciary basing upon the principle of "the rule of law", acted within the meaning of this must.

3.2.4- “The right to access to a court” subsequent to the procedures of suspension / dismissal

46. In Article 148 of the Constitution, it is pointed out that no action can be brought before the Constitutional Court with the allegation that the decree-laws issued in cases of state of emergency are unconstitutional in form and substance. In pursuance of this provision, the decree laws issued under the state of emergency are excluded from judicial review. Pursuant to Article 121 of the Constitution, the Decree-Laws shall be submitted to the TGNA for approval on the same day they are published in the Official Gazette.

47. Besides, the actions performed by the public institutions on the basis of the procedure introduced by the Decree Laws issued are subject to judicial remedies.

3.2.5- Alleged Tortures and Issuance of the Report of the European Committee for the Prevention of Torture

48. It must be primarily emphasized that a large part of the persons, who were taken into custody on the first day of the incident, had been arrested at the end of the clashes while some of them had been arrested by the citizens. It is natural that persons arrested at the end of the clashes have certain wounds, which falls within the scope of the use of legitimate power. As a matter of fact, such wounds are indicated in the custody reports.

49. In our country, there is a requirement of issuing a medical report for all custody procedures with a view to preventing the allegations of torture. Likewise, the report is also received when the duration of custody ends. Although it is not compulsory within the Decree law to receive medical report during the period of custody, the reports of status during custody and reports of admission and release from the custody of the suspects taken into custody for a period of 1 to 3 days are drawn up without any reserve. Besides, the custody centres are regularly controlled by the Public prosecutors.

50. Turkey is one of the countries, which has abolished the practice of statutory limitation for the offences of torture as a result of the policy of zero tolerance for torture. If there is a torture as alleged, it is without doubt that these allegations will be effectively investigated.

51. Furthermore, when maintaining these kinds of allegations it should be taken into consideration that three applications with requests for interim measures lodged by those detained after 15th July before the European Court of Human Rights alleging that they were

subjected to ill treatment and their rights to life are under threat were rejected. With regard to the mentioned requests for interim measures, the Court did not take into consideration the applicants' allegations, relying on information and documents submitted by the Government.

52. The Republic of Turkey is a party to the European Committee for the Prevention of Torture ("CPT" or "Committee"), and it is in cooperation with the CPT. It is always possible for the mentioned committee to pay visits to penitentiary institutions in our country as it was before. Although CPT Convention provides that the authorities of the State Parties may make representations to the Committee against a visit at the time or to a particular place, on grounds of national defence, public safety, serious disorder, Turkish authorities have not resorted to this procedure and it has been enabled for the CPT to perform visits. Indeed, the visit made on 6 September 2016 is a manifestation of this will, and upon the notification of the visit report to the Government, necessary actions will be taken in accordance with the obligations arising from the Convention.

3.2.6- Assessment of the Amendments made concerning Criminal Proceedings

53. The provisions introduced with the Decree laws do not change all procedural acts in the Code of Criminal Procedure. For example, although a maximum period of 30 days is provided for custody under the Decree-law no. 667, there has been no limitation as regards the regulation envisaging that those taken into custody may request for release in line with the procedure under the Code of Criminal Procedure. Regard being had to the large number of members of the terrorist organization who took part in the terrorist coup attempt, the period of custody has been increased to a maximum period of thirty (30) days by the Decree law, which is limited to the period of state of emergency. The purpose of this is to duly take the statements of the large number of persons taken into custody, to collect the evidences in favour of and against the suspects and thus to carry out the obligation of effective investigation of the State. Furthermore, this period applies only to offences committed against the security of the State, constitutional order, State secrets, national defence and terrorist offences as well as offences committed collectively. The period of custody of 30 days which is specified in the memorandum was not applied and most of those taken into custody were held for 4 and 5 days. In addition, during this period:

- filing an objection to the custody order is possible.

- a request for release may always be lodged during custody. In case of a request, Magistrate's Judge shall render a decision.
- legal assistance is available during custody.
- a medical report is always drawn up during placement into custody and release.

54. Furthermore, during the state of emergency, right to communication of the suspect with his counsel during the custody may be restricted, but the statements of the suspect cannot be taken during this period. The reason for introduction of the mentioned provision is to prevent terrorist organizations from applying pressures via their counsels and from transmitting information through their counsels to other members of the organization who were identified on the basis of the evidence obtained but who have not yet been arrested. Moreover, the communication of detained suspects with their counsels may be restricted by the order of a judge, in the event of a possibility of a threat against society and penitentiary institution, directing the terrorist organization or other criminal organizations, giving orders and instructions to them or transmitting secret, open or crypto messages to them. However, in this case, detained suspects may benefit from the assistance of a counsel to be appointed by the Bar.

3.2.7- Permanent Regulations made by the Decree laws

55. The aim of amendments made by the Decree laws, which have been issued during the state of emergency, **is to remove the members of the FETÖ/PDY terrorist organizations from the State institutions and to protect rule of law, democracy and human rights.** In this regard, the Constitution allows the Decree laws to make any kind of arrangement requiring by the state of emergency. The regulations concerning the structure and functioning of state institutions, investigations and public officials comply with the aim and requirements of state of emergency and necessary for the state to maintain its existence.

56. A number of the amendments made with the Decree laws are permanent while a number of them will be implemented during the state of emergency. For example, the period of custody for maximum 30 days will only be applied during the state of emergency, and upon the ending of the state of emergency, the procedures will be performed on the basis of the provisions under the Code of Criminal Procedure.

57. With the permanent regulations made by the Decree laws, higher military education institutions have been affiliated to civilian will, and military high schools have been closed

down. In this way, it has been ensured that the individuals who took part within the civilian education and who have the understanding of civilian democracy will be admitted to higher military education institutions. Following the affiliation of the military organizations and institutions to the civilian authority, it has been ensured that institutional democracy will dominate over the military mechanisms as it has been in other fields. Revolutionary steps have been taken on the road to democratization with the important changes for civilianization. The Gendarmerie General Command and the Coast Guard Command were affiliated to the Ministry of Internal Affairs, and thereby these institutions have come under the control of civil authority. It should be particularly noted that the Decree-Laws issued under the state of emergency began to be discussed in the Grand National Assembly of Turkey. After one of these Decree-Laws, Decree-Law no. 667, was adopted by the Grand National Assembly of Turkey, and approved by the President, it became law after it was published in the Official Gazette.

3.2.8- Closing of Private Institutions that belonged to the FETÖ/PDY

58. Private institutions and enterprises such as health institutions, schools, dormitories, foundations, associations, universities and unions, which were found to belong to the FETÖ/PDY, posing a threat against the national security and which had a particular importance in financing the organization and recruiting members for the organization and where organizational activities are carried out, were closed by Decree law no. 667 issued under the state of emergency.

59. It has been revealed through judicial and administrative investigations that members were recruited to the organization by means of making propaganda of the organization in the private educational institutions and private student dormitories belonging to the FETÖ/PDY; and that such kinds of institutions have a significant function in the financing of the organization. The private educational institutions and the student dormitories, which were seized, started to provide education and training services under the State's responsibility. All kinds of measures are being taken in order to hold the students harmless.

60. The properties of the closed private institutions and enterprises have been transferred to the Treasury or the General Directorate for Foundations where relevant. In addition, necessary regulations were made with a view to protecting the rights of right owners in good faith. In this regard, the opportunity for application to the Treasury within 60 days has been

introduced in order to prevent the victimization of third persons in good faith. Moreover, as a result of the re-examination carried out upon objection, 53 private schools and one private student dormitory, which had been closed by virtue of the Decree law no. 673, and 42 private educational institutions and private student dormitories, which had been closed upon the Minister's approval by virtue of the authorization granted in Article 2/III of the Decree-law no. 667, were re-opened, and all of the rights previously vested in such institutions were reinstated.

61. The properties of the real persons were not confiscated by way of decree laws. Within the scope of the investigations performed, the judges rendered decisions on confiscation of properties in line with the procedure under Articles 128 and 133 of the Code of Criminal Procedure. In addition, if it is revealed that a person finances the terrorist organization, the confiscation of his/her properties will be decided following the criminal proceedings to be performed.

CONCLUSION

62. Finally, it should be known that rule of law, democracy and human rights are the fundamental principles of the State of the Republic of Turkey. The Turkish Government fights against the coup attempt in accordance with these principles and its international obligations. In this regard, the main goal is the transition to ordinary period by way of fulfilling the requirements of the state of emergency in the course of this period. All of the regulations have been obligatory, urgent and proportionate measures, which have been taken within the scope of the positive obligations of the State with a view to preventing a further coup attempt.