



PLATFORM
PEACE & JUSTICE

The Erosion of Property Rights in Turkey

In the Pretext of the State of Emergency
and Counter-Terrorism Measures

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1. FOREWORD

Property rights within a strong institutional environment have been presented as one of the conditions for a country's development¹. This means that the definition and protection of each person's property is inextricably linked to economic growth, in essence, confirming the theories of Adam Smith, according to which economic progress does not result from human generosity or solidarity, but from the pursuit of individual interest².

Accordingly, in order to guarantee individual interest, it must be ensured that the profits, goods and income obtained by a person remain on his/her property and are not appropriated by others. It is in this simple reasoning that rests the economic justification for protecting property and the need to avoid undue confiscation of what belongs to each one. History proved this argument. The British Industrial Revolution that marked the beginning of the sudden accelerated economic development of humanity, described by the famous hockey stick curve³, has origins in the enclosures of agricultural land defining what belonged to each tenant⁴. Therefore, it is notorious why property and sustainable economic development must be seen together. Only the accumulation of capital and subsequent productive re-investment allows for growth, and the way to accomplish this task efficiently is through a clarified ownership of the means of production and of posterior rewards.

This is the fundamental economic argument for defending property. And although ideologically there has always been a discussion about the role of capital and the state, what has been verified is that models in which property rights are not defined tend to create societies with lesser or slower economic development⁵. Even if one doubts about these findings, the truth is that the fundamental growth economic models (Solow or Romer, for instance) are based in the premise that there are fully-enforced property rights

¹ Alain de Janvry and Elisabeth Sadoulet, *Development Economics. Theory and Practice*, (London and New York: Routledge) 5.

² The traditional quote: "It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest." Adam Smith, *The Wealth of Nations*, Book I, Chapter II, pp. 26-7, para 12.

³ Walter Scheidel, *Escape from Rome. The failure of empire and the road to prosperity* (Princeton and Oxford: Princeton University Press, 2019)2.

⁴ Exposing this classic view: Lord Ernle, *English Farm. Past and Present* (London: Longman, 1927). For a revisionist perspective: Robert Allen, Tracking the Agricultural Revolution in England, *The Economic History Review. New Series*, Vol. 52, No. 2 (May 1999), pp. 209-235 (27 pages)

⁵ Douglass North, *Institutions, Institutional Change, and Economic Performance* (New York: Cambridge University Press, 1991),.

in place⁶. Substantially there is a broad economic policy agreement regarding the necessity of the protection of property rights as a condition for growth.

The development economics argument for the protection of property rights is, thus, very intense and creates the counter-image that if a country does not respect property rights it is bound, soon or latter, to be a laggard in economic terms.

The institutionalization of property rights and protections obliges to the intervention of law to extend the mantle of coercion to guarantee property. The law must be clear and allow as few as possible exceptions. From the conditions necessary for economic development, we are driven towards legislative production and its determinability.

The law to protect property must be robust, and its exceptions must be reduced to the appropriate minimum and drafted perceptibly with determinability and without vagueness⁷. We must admit that there are several restrictions to an absolute concept of property, some of which result from the public interest, non-abuse of rights or sanction for criminal practices. However, these restrictions and exceptions should not grant administrative or judicial discretion. They must not contain terms that refer to subjectivity and discretion. Recently, in the context of a US Supreme Court trial⁸, Justice Neil Gorsuch wrote that:

“In our constitutional order, a vague law is no law at all. Only the people’s elected representatives in Congress have the power to write new federal criminal laws. And when Congress exercises that power, it has to write statutes that give ordinary people fair warning about what the law demands of them. Vague laws transgress both of those constitutional requirements.”⁹”

That is the essential point that we defend. The importance for the economic development of property rights is so great that its legal restrictions must be clear and unambiguous. Naturally, vagueness is a menace to the rule of law as it allows that human decision substitutes pre-arranged standards equal to everyone. The mainstream allegation does not follow such assertion defending that:

⁶ Johan Torstesson, Property Rights and Economic Growth: An Empirical Study, *Kyklos. International Review for Social Sciences*, Volume47, Issue2, May 1994, Pages 231-247, p.231.

⁷ Also not fully agreeing with the conclusions see Timothy Endicott, *Vagueness in Law*, (Oxford: Oxford University Press, 2000).

⁸ United States v. Davis et Al. 588 U. S. ____ (2019)

⁹ Idem, p.1.

“the idea that, although legal interpretation has to create law in cases of vagueness, the conditions under which law is created in adjudication distance it from politics, economics, and morality in a way that gives it a specifically legal, that is doctrinal, character. Doctrinally developed law—as it developed historically for the first time through the work of the pre-classical Roman jurists—creates a specifically legal sphere of meaning with its own content and structures¹⁰”.

The question is not when “good faith” judges decide cases, using the words of Dworkin¹¹, even though such qualification is always full of subjectivism; the problem arises due to the teleological decisionist¹² nature of this adjudicating process. In the end, it is invariably a human decision that completes the meaning of the vague law, consequently, an “Empire of men” and not of laws will be in place¹³. And that is precisely what the rule of law wishes to avoid.

Ultimately, there is a very straightforward syllogism: Property rights are a basic condition for economic development. To defend property, law should be clear and admit just clear-cut exceptions. Vagueness in the legal protection of property offends the rule of law and opens the way for decisionism and arbitrary behaviours.

It is in this context that the following text should be read.

Dr. Rui S. Verde¹⁴

¹⁰ Ralf Poscher, Ambiguity and Vagueness in Legal Interpretation, *The Oxford Handbook of Language and Law* Edited by Lawrence M. Solan and Peter M. Tiersma (Oxford: Oxford University Press, 2012) 142.

¹¹ Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution*, (Oxford: Oxford University Press, 2003) Introduction.

¹² The doctrine exposed by Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, (Chicago: Chicago University Press, 2005).

¹³ Using the words of John Harrington, *The Commonwealth of Oceana and A System of Politics* (Cambridge: Cambridge University Press, 1999).

¹⁴ Visiting Fellow, Oxford School of Global and Area Studies, University of Oxford. PhD Law/ Doctor of Letters (HC).

2. INTRODUCTION

The right to property is enshrined as a human right in international law – both conventional and customary – and in national constitutions.¹⁵ The right to property is essential for the protection of human life and the dignity of the right holder, as it contributes to the realization of economic and social rights, including the right to housing, to food and to social security.¹⁶ The obligation to respect the right to property requires that States refrain from arbitrarily interfering with the enjoyment of the right. Expropriation without a legal basis, or that is not in the public interest is an example of a violation of the obligation to respect the right to property. The obligation to protect this right requires States to take all necessary measures, including legislative, administrative and judicial, to prevent encroachment by third parties. The obligation to fulfil the right to property requires States to undertake positive steps, legislative and otherwise, to create an enabling environment.¹⁷

Since 2014, the Turkish Government has been notorious for its disregard to the rule of law and fundamental rights and freedoms.^{18 19 20} As Human Rights Watch put it, Turkey has experienced a “dramatic erosion of its rule of law and democracy framework” with political influence seeing “courts systematically accepting bogus indictments”. In this report, we describe what the right to property entails including limitations to this right, document the Turkish Government’s intervention into the right to property, and then analyze its legality under international and national law. We conclude with recommendations to the victims of intervention, to the Turkish Government, and to international organisations.

¹⁵ Golay, Christophe and Cismas, Ioana, Legal Opinion: The Right to Property from a Human Rights Perspective (2010). SSRN: <https://ssrn.com/abstract=1635359>

¹⁶ Ibid.

¹⁷ Ibid

¹⁸ See, Human Rights Watch’s 2018 report: <https://www.hrw.org/world-report/2018/country-chapters/turkey>

Human Rights Watch’s 2019 report: <https://www.hrw.org/world-report/2019/country-chapters/turkey>

Human Rights Watch’s 2020: report: <https://www.hrw.org/world-report/2020/country-chapters/turkey>

¹⁹ See, the US State Department Country Reports on Human Rights Practices for 2016, 2017, 2018

<https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/turkey/>

<https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/turkey/>

<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/turkey/>

²⁰ European Commission. ‘Commission staff working document; Turkey 2016 report, http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf.

European Commission. ‘Commission staff working document; Turkey 2018 report, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf>.

European Commission. ‘Commission staff working document; Turkey 2019 report, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

3. THE RIGHT TO PROPERTY IN INTERNATIONAL LAW

The protection of property is included in Article 17 of the Universal Declaration of Human Rights:

‘No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.’

The regional Human Rights Conventions in Europe, the Americas and Africa all contain property clauses. The European Convention on Human Rights (ECHR), to which Turkey is party to, includes the right to property in its First Protocol (1952): ‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions’ (Article 1). The European Court of Human Rights (ECtHR) considered Article 1 of Protocol No. 1 for the first time in the 1979 *Marckx v. Belgium* case regarding the inheritance rights of unmarried woman Marckx’s daughter. In that judgment the Court said the following:

‘By recognising that everyone has the right to the peaceful enjoyment of his possessions, Article 1 is in substance guaranteeing the right of property. This is the clear impression left by the words “possessions” and “use of property”; the “travaux préparatoires”, for their part, confirm this unequivocally: the drafters continually spoke of “right of property” or “right to property” to describe the subject-matter of the successive drafts which were the forerunners of the present Article 1. Indeed, the right to dispose of one’s property constitutes a traditional and fundamental aspect of the right of property.’²¹

The European Charter of Fundamental Rights (ECFR) too envisaged the right to property. Article 17 ECFR, which is based on Article 1 of the Protocol to the ECHR states: ‘Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions.’ In the CSCE/OSCE framework, the right to the peaceful enjoyment of property is stipulated in the 1990 Copenhagen document.²²

²¹ *Marckx v. Belgium*, 6833/74, para.63, <http://hudoc.echr.coe.int/eng?i=001-57534>

²² Para. (9.6) — everyone has the right peacefully to enjoy his property, either on his own or in common with others. No one may be deprived of his property except in the public interest and subject to the conditions provided for by law and consistent with international commitments and obligations.

At the Inter-American level, the right to property is set out in Article 21 of the American Convention on Human Rights. At the African level, it is protected under Article 14 of the African Charter on Human and Peoples' Rights. Thus, the right to property is one that is recognized world-wide.

4. THE RIGHT TO PROPERTY IN TURKISH LAW

Article 35 of the Turkish Constitution envisages the right to property. The Article reads as follows: '(i) Everyone has the right to own and inherit property. (ii) These rights may be limited by law only in view of public interest. (iii) The exercise of the right to property shall not contravene public interest.'

The Constitution also proscribes the general confiscation punishment (Art.38)²³ and the confiscation or seizure of 'printing houses and their annexes, and press equipment' (Art.30).²⁴ According to the Constitution, where the public interest requires, the expropriation of privately-owned real estate (Art. 46)²⁵ and the nationalization of private enterprises performing services of a public nature (Art. 47)²⁶ may be carried out on the condition of paying actual compensation or compensation on the basis of the enterprise's real value in cash and in advance.

Article 683 of the Turkish Civil Code stipulates the content of property rights. According to the Article, the owner of a property is entitled to use, benefit and dispose of such property in whichever way he wishes - albeit within the boundaries of the order of laws.

Under Article 54 of the Turkish Penal Code (5237), on the condition that the property does not belong to any third party who is acting in good faith,

²³ **ARTICLE 38-** Neither death penalty nor general confiscation shall be imposed as punishment.

²⁴ **Protection of printing facilities**

ARTICLE 30- (As amended on May 7, 2004; Act No. 5170)

A printing house and its annexes, duly established as a press enterprise under law, and press equipment shall not be seized, confiscated, or barred from operation on the grounds of having been used in a crime.

²⁵**Expropriation**

ARTICLE 46- (As amended on October 3, 2001; Act No. 4709)

The State and public corporations shall be entitled, where the public interest requires, to expropriate privately owned real estate wholly or in part and impose administrative servitude on it, in accordance with the principles and procedures prescribed by law, provided that the actual compensation is paid in advance.

The compensation for expropriation and the amount regarding its increase rendered by a final judgment shall be paid in cash and in advance.

²⁶**E. Nationalization and privatization**

ARTICLE 47- Private enterprises performing services of a public nature may be nationalized in line with the exigencies of the public interest. Nationalization shall be carried out on the basis of the enterprise's real value.

- a) property that is used for committing an intentional offence or is allocated for the purpose of committing an offence, or property that has emerged as a result of an offence, shall be confiscated,
- b) any property where, the production, possession, usage, transportation, buying and selling of which has constituted an offence, shall be confiscated.

According to Turkish Case Law, an order for the confiscation of a property may only be issued by a Court upon an indictment by a public prosecutor, and after a trial in compliance with a due process. Such an order is subject to an appeal.

4.1. DEFINITION AND SCOPE OF THE RIGHT TO PROPERTY

In general, the right to property is a right which generates power for the property holder to use the property, to benefit from its outcomes, and to sell or transfer it. The right to property recognizes everyone's right to peacefully enjoy their property, be it comprised of existing possessions or assets that are acquired by law or claims which raise a legitimate expectation of obtaining effective enjoyment.²⁷

The concept of property, or "possessions", is broadly interpreted by the ECtHR. It covers a range of economic interests. The following have been held to fall within the protection of Article 1: movable or immovable property, tangible or intangible interests, such as shares, patents, an arbitration award, the entitlement to a pension, a landlord's entitlement to rent, the economic interests connected with the running of a business, the right to exercise a profession, a legitimate expectation that a certain state of affairs will apply, a legal claim, and the clientele of a cinema.²⁸

The concept of "possessions" in the first part of Article 1 of Protocol No. 1 is an autonomous one, covering both "existing possessions" and assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation". "Possessions" include rights "in rem" and "in personam".²⁹

The term encompasses immovable and movable property and other proprietary interests. The concept of "possessions" has an autonomous meaning which is independent from the formal classification in domestic law and is not limited to the ownership of physical

²⁷ Golay & Cisman, Legal Opinion: The Right to Property from a Human Rights Perspective.

²⁸ Monica Carss-Frisk, The Right to Property, (The COE's Human rights handbooks, No. 4) Para. 6, <https://rm.coe.int/168007ff4a>

²⁹ Council of Europe, Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights Protection of Property, Para. 4, https://www.echr.coe.int/Documents/Guide_Art_1_Protocol_1_ENG.pdf

goods. On the contrary, certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions”, for the purposes of this provision.³⁰

According to the Turkish Constitutional Court, the right to property, which is guaranteed under Article 35 of the Constitution as a fundamental right, is a right that grants the individual the opportunity of utilizing the item of which s/he is the owner, benefiting from and enjoying its products (transferring it to another person, changing its shape, spending, consuming, and even destroying it) as s/he wishes, on the condition that the owner does not infringe on the rights of others and abides by the restrictions introduced with codes (M.1988/34, D.1989/26, D.D. 21/6/1989; M.2011/58, D.2012/70, D.D. 17/5/2012).³¹

4.2. CONDITIONS FOR A LAWFUL INTERVENTION INTO THE RIGHT TO PROPERTY

The right to property is not an absolute right. Both the Turkish Constitution and the ECHR permit intervention in the right to property under certain conditions. Limitations of the right are permissible, provided they respect the principles of legality and proportionality and that they are directed towards assuring or advancing the public interest. The payment of compensation in cases of deprivation is a requirement of customary international law³², international treaties and the Constitution of Turkey. The customary standard of compensation ought to be coherent with the functions fulfilled by the right to property with respect to the individual and to society at large.³³

Article 1 of Protocol No.1 to the ECHR lays conditions for intervention in the right to property as follows:

‘No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties’.

³⁰ Ibid, Para. 5

³¹ <http://www.constitutionalcourt.gov.tr/inlinepages/leadingjudgements/IndividualApplication/judgment/2012-1035.pdf> (Para. 42)

³² Golay & Cisman, Legal Opinion: The Right to Property from a Human Rights Perspective.

³³ Ibid

According to this article, and to the ECHR's case law, the deprivation of the right to property is only permitted if it is: (i) lawful; (ii) in the public interest; (iii) in accordance with the general principles of international law; (iv) reasonably proportionate ("fair balance").³⁴ The Court observed that:

'Any interference with property rights must strike a fair balance between the demands of the public or the general interest of the community, and the right to property. In particular, there must be a reasonable relationship of proportionality between the means employed to interfere with the property rights and the aim that it is sought to realize. Compensation terms under the relevant legislation are, on the other hand, material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicant.'³⁵

Article 35 of the Turkish Constitution, with the side heading 'Right of Ownership', reads as follows: "Everyone has the right to property and inheritance. These rights may be restricted by law only for the purposes of public interest. The exercise of the right to property cannot be contrary to public interest."

Article 13 of the Constitution, with the side heading 'Restriction of fundamental rights and freedoms', reads as follows:

'Fundamental rights and freedoms may only be restricted on the basis of the reasons mentioned in the relevant articles of the Constitution and by law without prejudice to their essence. These restrictions cannot be contrary to the letter and spirit of the Constitution, the requirements of the democratic social order and of the secular Republic and the principle of proportionality.'

The following principles can thus be deduced from the Constitution: (i) the right to property is not an absolute right, (ii) restrictions/interventions into the right to property can only be introduced for public benefit, (iii) any restriction or intervention shall be laid down by the law, and (iv) restrictions/interventions shall be proportional and not prejudice the essence of the right to property. (App. No: 2013/817, 19/12/2013, §§ 28, 32).³⁶

³⁴ Council of Europe, Protocol No. 1 to the Convention <<https://www.coe.int/en/web/echr-toolkit/protocole-1>> accessed 11 April, 2019.

³⁵ *Back v. Finland* no. 37598/97 (ECHR, 20 July 2004), Para. 55.

³⁶ <http://www.constitutionalcourt.gov.tr/inlinepages/leadingjudgements/IndividualApplication/judgment/2012-1035.pdf> (Para. 29)

“In the Turkish Constitution it is clearly indicated and ordered that restrictions against the right to property should only be made within the law. This provision is being violated by the AKP government to eliminate members of the Gülen Movement and other oppositions. Especially during the state of emergency of 2016-2018, the AKP government confiscated the assets of NGOs, Foundations, Companies, Unions etc. that belonged to those considered as opposition.” ³⁷

- Oguzhan Albayrak, Director at Human Rights Defenders

5. THE TURKISH GOVERNMENT’S INTERVENTIONS INTO THE RIGHT TO PROPERTY SINCE 2015

In Turkey, legal conflicts that arise out of the State’s intervention in the right to property are hardly a new problem. Between 1959 and 2018, the ECtHR rendered 3128 judgments against Turkey, establishing that there had been a rights violation. Of those judgements, 660 (21%) established a breach of the right to property. Statistics on the Turkish Constitutional Court’s (TCC) judgments relating to the right to property are more alarming; 31% (2454 of 8036 judgments) of all judgments rendered within individual application procedure established a breach of the right to property. These judgments mainly arose from expropriation, confiscation without applying the expropriating procedure, and zoning procedures. The TCC and the ECtHR were providing appropriate remedies, such as compensation for pecuniary and non-pecuniary damages, or restitution of the property right, for these violations. However, such judgments were often too late.

Moreover, after 2015, the Government’s purge against the Gülen Movement saw new types of unlawful and unprecedented interventions into the right to property. These are: a) suspending the owner’s property right and overtaking the control of property through appointment of a trustee board; b) closure of legal entities with an Emergency Decree and transferring its assets to the Treasury or to other relevant public entities without any compensation; and c) taking control of a financial institution and having it bankrupted.

³⁷ As told to PPJ.

5.1. CRIMINAL PEACE JUDGESHIPS AND INTERVENTION INTO THE RIGHT TO PROPERTY THROUGH APPOINTING TRUSTEES

The Criminal Peace Judgeship (CPJ) system, which was defined as a ‘Project’ by the then Prime Minister, Erdogan, was created to purge and prosecute members of the Gülen Movement, which was labelled as a ‘parallel structure’ by the AKP Government.³⁸

CPJs which were established by Law no. 6545 (entered into force on 28 June 2014) function under the authority of the Turkish Council of Judges and Prosecutors (HSK). They have been given the power to: order pre-trial detention; decide on the continuation of detention; accept or reject requests on release; decide on searches, seizures, appointments of trustees, and disclaimer trials; and examine objections lodged against the decisions given in these proceedings.

On 22 June 2014, upon a journalists’ question as to “whether an operation would be directed against a parallel structure”, the then Prime Minister, Erdogan, reacted as follows: “Steps taken by the executive body are being blocked by a parallel judiciary. Some of our legislative acts are before Mr. President (Abdullah Gül). After his approval, rapid actions will be taken” In the same speech, specifically referring to the operations to be initiated against police officers, he said “We are designing a project. We are preparing the basis of this job.”³⁹ This was in reference to the CPJs.

The Venice Commission⁴⁰ and the Commissioner for Human Rights of the Council of Europe⁴¹, the UN High Commissioner for Human Rights⁴², and the International Commission of Jurists⁴³ have criticized Turkey’s CPJs because they lack due process. The CPJs are, moreover, not independent of the ruling regime.⁴⁴ As the Venice Commission stated, with the CPJs “leaving almost all investigations in the hands of the political power, one cannot assume that individuals’ right to a fair trial is guaranteed”.⁴⁵

³⁸ See the comprehensive report on CPJs; Platform Peace and Justice, Turkish Criminal Peace Judgeships, <http://www.platformpj.org/wp-content/uploads/CPJreport.pdf>

See also, The Arrested Lawyers Initiative, Factsheet on Turkey’s Criminal Peace Judgeships <https://arrestedlawyers.files.wordpress.com/2019/08/factsheet-criminal-peace-judgeships.pdf>

³⁹ Platform Peace and Justice, Turkish Criminal Peace Judgeships, 2018, Para. 18

⁴⁰ Venice Commission: Turkey, Opinion on the duties, competences and functioning of the criminal peace judgeships, adopted by the Venice Commission at its 110th Plenary Session, Venice, 10-11 March, 2017, Paras. 71-72 and 106

⁴¹ Council of Europe’s Commissioner for Human Rights. Memorandum on freedom of expression and media freedom in Turkey, February, 2017

⁴² OHCHR, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, March, 2018, Para. 52

⁴³ International Commission of Jurists, The Turkish Criminal Peace Judgeships and International Law

⁴⁴ Verfassungsblog, Should the ECtHR Consider Turkey’s Criminal Peace Judgeships a Viable Domestic Avenue?

<https://verfassungsblog.de/should-the-ecthr-consider-turkeys-criminal-peace-judgeships-a-viable-domestic-avenue/>

⁴⁵ Venice Commission: Turkey, Opinion on the Duties, Competences and Functioning of the Criminal Judgeships of Peace, Strasbourg, 13 March 2017, concluding remarks.

This is all the more concerning as Erdogan specifically called the CPJs a ‘project’ intended to remove the ‘parallel structure’ being the Gülen Movement.

Since 2015, the Turkish Government has been using the CPJs and Turkey’s notorious Anti-Terrorism provision (Art. 314, Turkish Penal Code) to take over properties belonging to dissidents. Appointing a trustee for the administration of a firm during a criminal investigation or prosecution is stipulated in Article 133 of the Criminal Procedure Code (Law no: 5271):

Article 133 - (1) In cases where there are strong grounds for suspicion that the crime is being committed within the activities of a firm and it is necessary for revealing the factual truth, the judge or the court is entitled to appoint a trustee for the administration of the firm with the aim of running the business of the firm, for the duration of an investigation or prosecution. The decision of appointment shall clearly indicate that the validity of the decisions and interactions conducted by the organ of the administration depends upon the approval of the trustee, or that the powers of the organ of the administration has been transferred to the trustee.

(2) Fees for the trustee estimated by the judge or the court, shall be compensated by the budget of the firm. However, in cases where there is a decision on no ground for prosecution has been rendered about the investigated crime, or if there is a judgment of acquittal, the total sum of money paid as the fee of the trustee shall be compensated by the state treasury, with interest.

The fourth paragraph of the article allows CPJs to appoint a board of trustees to a company if one of its shareholders, or the company itself, is being investigated under Articles 314 or 315 of the Turkish Penal Code.

The first victim of this seizure practice was Koza-Ipek Holding: a conglomerate of 22 companies, including a media group with two TV channels and two daily newspapers.⁴⁶ The holding was seized by the Erdogan Regime on the 26th October, 2015, and the management of all of its enterprises was given over to a pro-government board of trustees. According to a survey by the Arrested Lawyers Initiative, between October, 2015, and 15th July, 2016, in the 37 provinces of Turkey, 412 enterprises, run by 273 separate companies, were seized through decisions of CPJs that appointed a trustee board to these companies.⁴⁷

⁴⁶ <https://www.bbc.com/news/world-europe-34656901>

⁴⁷ <https://arrestedlawyers.org/2019/09/09/the-right-to-property-has-been-eroded-under-emergency-rule/>

“This is best understood against the wider context of increasing authoritarianism in Turkey. These illegal seizures well predate the 2016 coup attempt, emerging as a vital tool in the crackdown on the Gülen Movement around 2014. They rather picked up pace after the attempted coup and eventually became a policy of the Turkish government providing another link in the long chain of its far reaching, arbitrary and disproportionate attacks on Turkish society.”⁴⁸

- Emre Turkut, Doctoral Researcher Ghent University

Under Emergency Decree no. 674 (dated 10 November, 2016), the Turkish Government’s policy of seizing the assets of dissidents entered a new phase. With Arts. 19 and 20 of the Decree, the company and asset seizure policy were centralized with the governmental body Savings Deposit Insurance Fund (SDIF / TMSF) tasked to run and to liquidate the companies and assets seized under Article 133 of the Criminal Procedure Code through the decisions of the CPJs.⁴⁹

As of January, 2020, four years after the attempted coup, 998 separate companies which were seized under Article 133 of Criminal Procedure Code are still under the control of the SDIF. These companies run thousands of branches. For instance:

- Suvari Giyim Co (a clothing company), which was seized following the decision of the Adana Peace Criminal Judge, has 148 branches in 14 different countries.
- Boydak Holdings, seized following the decision of the Kayseri Peace Criminal Judge, runs 34 separate companies; just 2 of its 34 companies, Bellona and Istikbal, have 1240 furniture (franchise) stores across the world. Boydak Holdings employs 13,000 workers, and (indirectly) creates 110,000 jobs.
- Other large companies, among the 500 largest in Turkey, e.g., Koza, Dumankaya, Akfa, Orkide, Sesli, Naksan, were also seized and transferred to the SDIF.

⁴⁸ As told to PPJ.

⁴⁹ Ibid

TMSF tarafından yürütülmekte olan kayımlık faaliyetlerine ilişkin genel bilgiler aşağıda yer almaktadır:

TMSF KAYYIMLIK VERİLERİ	
<i>(05.09.2019 Tarihi İtibarıyla)</i>	
Statüsü	Adet / Kişi
1 Tam Kayımlık <i>(%50 ve üzerinde Ortaklık Hissesine Kayımlık Olunan Şirketler)</i>	875
Anonim Şirket	474
Limited Şirket	312
Şahıs İşletmesi	39
Diğer	50
2 Kısmi Kayımlık (Pay/Hisse Kayımlığı) <i>(%50'nin Altında Ortaklık Hissesine Kayımlık Olunan Şirketler)</i>	123
3 Şahsi Mal Varlığı Kayımlığı (Gerçek Kişiler)	113

KAYYIM OLUNAN ŞİRKETLERE İLİŞKİN MAKRO VERİLER	
<i>(31.03.2019 Tarihi İtibarıyla)</i>	
Toplam Aktif Büyüklüğü	58,94 Milyar TL
Öz Kaynak Büyüklüğü	22,56 Milyar TL
Ciro Toplamı	7,93 Milyar TL
Çalışan Sayısı	44.515-Adet

Besides the 998 seized companies⁵⁰, the SDIF also controls and manages the assets of 113 real persons whose assets were taken over with same procedure. As announced on the web site of the SDIF, the total worth of the seized companies is 58.94 billion Turkish liras (USD20,465 million, as of 23 July 2016).

5.2. THE SDIF'S ABUSE OF ITS AUTHORITY

Although companies, or the assets of real persons, are taken over within the scope of an ongoing criminal investigation or prosecution, the SDIF was entrusted with the authority by Emergency Decree Law no. 674 to liquidate them without awaiting the result of the prosecution. The liquidation procedure of the SDIF is not transparent and does not include any safeguards to protect the interests of the owners of the assets concerned.

In April, 2018, the SDIF sold 780 automobiles owned by companies controlled by trustee boards. It was reported that the SDIF sold those automobiles at least 30% percent below their actual values.⁵¹ It was also reported by the Turkish media that the SDIF sold all of the rights and equipment of Samanyolu TV, Kanaltürk TV, Burç FM, Kanaltürk Radio, Radio Mehtap and Radio Cihan which were closed under Decree Laws to the pro-government Turkuvaz Media Group. Likewise, the SDIF sold MILSOFT, which was a defence industry company, to a public-owned company named SSTEK.⁵²

Finally, it was reported that a German construction company, Dress & Sommer, and its subsidiaries Eurabau ve CPB, signed an agreement with the SDIF to acquire an island and estates in Istanbul-Fikirtepe that was owned by FI Yapi A.S in return for completing

⁵⁰ List of 998 companies which were seized under Art 133 of CPC, <https://www.tmsf.org.tr/tr/Sirket/Kayyim>

⁵¹ <http://www.abchaber.com/ekonomi/feto-nun-luks-araclari-sudan-ucuza-a8-ler-q7-ler-h26966.html>

⁵² <https://www.sabah.com.tr/ekonomi/2019/09/17/tmsf-milsoftu-ssteke-satti>

FI Yapi AS's incomplete construction projects. This agreement was funded by the Hungarian Eximbank, with a credit worth €450,000,000.

The SDIF manages 998 companies through 289⁵³ trustees, who receive salaries ranging from TL4,000 to TL15,000 per month.⁵⁴ These salaries are funded by the companies taken over, which means that SDIF places a burden that is worth a minimum of TL1,156,000 a month to a maximum of TL4,335,000 a month on these companies.

Considering that these companies have been under the control of SDIF since July 2016, the total sum of the salaries paid to trustees by the companies that have been taken over amounts to a minimum of TL46.24 million to a maximum of TL173.40 million.

5.3. STATE OF EMERGENCY AND INTERVENTION INTO THE RIGHT TO PROPERTY WITH EMERGENCY DECREES

Ten Emergency Decrees closed down 145 foundations, 1,419 associations, 15 foundation-owned universities, and 19 trade unions.⁵⁵ Moreover, 39 private health institutions, 2,271 private educational institutions and 151 media outlets, which belonged to private corporations, were closed down.⁵⁶ The reasons for these measures were presented as their having affiliation, connection, or relation to, or having belonged to either the Fetullahist Terrorist Organization (FETÖ/PDY)^{57 58} or to other terrorist organizations that were determined by the National Security Council to have carried out activities that were considered to be against the national security.⁵⁹ The assets of these dissolved legal persons were transferred to the Treasury, or to other relevant public entities, without cost, compensation or any obligation or restriction.^{60 61}

Apart from an alleged general connection to terrorist organizations, the Emergency Decrees present neither an individualized justification nor a definition of ‘membership,

⁵³ <https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.veri>

⁵⁴ <https://www.tmsf.org.tr/tr/Basin/List/350>

⁵⁵ Report of the Parliamentary Commission tasked to investigate the coup attempt of 15 July, 2016

⁵⁶ Ibid

⁵⁷ See, Art. 2 of Emergency Decrees Nos. 667-668.

⁵⁸ FETO is the acronym of “Fethullahçı Terör Örgütü”, which is a derogatory name formulated for the Gülen Movement by the Turkish Government. The Gülen Movement/Network was founded, and is led by, Fethullah Gülen, a sunni muslim cleric who lives in the US, and who was once the ally of the Turkey’s ruling AKP party. The Turkish government accuses Fethullah Gülen and his followers of carrying out the corruption probe of 2013, and of masterminding the coup of 2016.

⁵⁹ See, Art. 3 of Emergency Decrees Nos. 677, 683, 689; Art. 4 of Emergency Decrees Nos. 693, 697; Art. 5 of Emergency Decrees Nos. 675, 679; Art. 7 of Emergency Decree No. 701.

⁶⁰ See, Art. 2 of Emergency Decrees Nos. 667-668; Arts. 5 and 10 of Emergency Decree No. 670; Art. 3 of Emergency Decrees Nos. 677 and 683.

⁶¹ Ali Yildiz, the VUB – LLM thesis, Turkey’s Recent Emergency Rule and Its Legality Under the ICCPR and the ECHR, (2019).

relation, connection, contact, affiliation, link' to terrorist organizations, nor do they include the assessment criteria used to determine the legal persons to be closed down.⁶²

5.3.1. FOUNDATIONS

The Turkish Government has permanently shut down 145 foundations⁶³ and transferred all their assets to the General Directorate of Foundations with Emergency Decrees.



[Report: Updated Situation Report- State of Emergency in Turkey – IHOP/Human Rights Joint Platform](#)

According to a report published by the Turkish Parliament in May 2017, a total of 2,214 real estates were transferred to the General Directorate of Foundations from the foundations that were closed down under Emergency Decrees.⁶⁴ According to the same report, 123 foundations which were shut down under the very first Emergency Decree had 1,531 real estates.⁶⁵

Assets of 123 foundations shut down by Emergency Decree No. 667⁶⁶	
The number of real estates transferred to the General Directorate of Foundations	1,531
Tax base of 1,531 real estates (TL)	64,820,867,649

⁶² Ibid.

⁶³ <https://cdn.vgm.gov.tr/vakiflar/khklar-ile-kapatilan-vakiflar.PDF>

⁶⁴ Report of the Parliamentary Commission tasked to investigate the coup attempt of 15 July, 2016, pp.191-192

⁶⁵ Ibid.

⁶⁶ Ibid.

Est. real market value of 1,531 real estates (TL)	2,314,104,973.32
Value of chattel goods (TL)	36,821.429.65
Value of claims and rights (TL)	20,084,120.09
Assets in cash (TL)	10,604.663.32

According to academic research, in Turkey, the actual market value of any real estate is, on average, 3.57 times higher than its declared real estate tax value.⁶⁷ It can therefore be assumed that actual market value of the 1,531 real estates transferred to the General Directorate of Foundations from the 123 foundations is at least TL 2,314,104,973.32. This consequently means that the total value of the assets of 123 foundations were worth TL2,381,615,186.38 (USD 826,949,717, as of 23 July 2016). However, there is no credible report on the assets of the twenty-two foundations which were shut down under subsequent decrees.

5.3.2. UNIVERSITIES

The Turkish Government shut down fifteen universities and seven hospitals belonging to these universities on the grounds of their alleged affiliation to the terrorist organisations with an Emergency Decree dated 21 July 2016. Under the Turkish Constitution, universities, including private ones, are established by law. In order to establish a private university:

- a non-profit foundation must apply to the Government,
- if the Foundation has satisfied all the legal requirements, the Government submits a Bill to the Parliament on the establishment of the private university in the name that the Foundation has requested or suggested,
- as the Parliament passes the Bill, the university is established.

All fifteen universities which were shut down on the grounds of their alleged affiliation to terrorist organisations had been founded by the Parliament through separate laws. As of the date of closure, there were 64,533 students and 2,808 academics studying at these universities.

⁶⁷ Associate Professor Naci Buyukkaracigan, Gayrimenkullerde Emlak Vergisi Matrah Değeri İle Piyasa Değeri Arasındaki Farklılıkların Araştırılması.

The Government had already targeted three of these universities before the coup attempt of 2016. Istanbul and Ankara Peace Judgeships, at the request of the General Directorate of Foundations, appointed trustees for the Fatih University, the Ipek University and the Turgut Ozal University, respectively, on 9 June 2016⁶⁸, 30 June 2016⁶⁹ and 1 July 2016⁷⁰.

Universities Closed by Emergency Decree no. 667	Province	Establishment Year	The Number of Students	The Number of Academics
Fatih University	Istanbul	1996	14,219	514
Gediz University	Izmir	2008	7,965	287
Turgut Ozal University	Ankara	2008	7,738	356
Meliksah University	Kayseri	2008	4,500	164
Mevlana University	Konya	2009	3,986	175
Izmir University	Izmir	2009	5,964	343
Zirve University	Gaziantep	2009	8,699	302
Süleyman Şah University	Istanbul	2010	2,068	84
Sifa University	Izmir	2010	2,625	180
Bursa Orhan Gazi University	Bursa	2011	2,138	131
Ipek University	Ankara	2011	870	128
Canik Başarı University	Samsun	2012	2,220	70
Kanuni University	Adana	2013	-	3
S. Eyyubi University	Diyarbakir	2013	1,283	54
Total⁷¹			64,533	2,808

Considering that the total number of students studying in private universities is 569,000⁷², the closed universities formed 11% of the private university market.

The lawyer Hasan Ölçer, who was the government-appointed trustee for Fatih University, appraised its value as USD400 million.⁷³ The lawyer Abdulkadir Özel⁷⁴, who was the government-appointed trustee for the Turgut Özal University, said that Turgut

⁶⁸ <https://www.turkishminute.com/2016/06/09/trustees-appointed-fatih-university-govt-initiated-move/>

⁶⁹ <https://www.turkishminute.com/2016/06/30/ipek-university-becomes-latest-private-entity-seized-government/>

⁷⁰ <https://www.turkishminute.com/2016/07/01/trustees-appointed-turgut-ozal-universitys-foundation-govt-led-move/>

⁷¹ <http://bianet.org/bianet/egitim/177442-savilarla-kapatilan-universiteler>

According to the High Education Board this number is 65216.

https://www.yok.gov.tr/Documents/Yayinlar/Yayinlarimiz/15_Temmuz_kitabi_.pdf

⁷² <https://www.aa.com.tr/tr/egitim/universite-ogrencisi-savisi-7-milyonu-asti/821130>

⁷³ "Closed institutions worth at least USD 100 billion," *Hürriyet* newspaper, 26 July, 2016,

<http://www.hurriyet.com.tr/kapatilan-kurumlarin-de-geri-en-az-100-milyar-dolar-40170575>,

⁷⁴ He is also the ruling party, the AKP's. Deputy for the Province of Hatay.

Özal University had been valued at one-billion Turkish Lira (USD347 million, as of 23 July 2016) by real estate experts.⁷⁵

As reported and published in *Hürriyet Daily*, the Ministry of the Environment and Urban Planning appraised the lands of some of the closed universities as follows:

- land of Fatih University: TL1.2 billion (USD410 million, as of 23 July, 2016),
- land of Zirve University: TL600 million (USD205 million, as of 23 July, 2016),
- land of the Mevlana University's hospital: TL100 million (USD33 million, as of 23 July, 2016),
- land of Meliksah University: TL100 million (USD33 million, as of 23 July, 2016).⁷⁶

Further to those mentioned above, Gediz University's estate in the Izmir-Cigli Province was worth at-least TL80 million (USD27.77 million).⁷⁷ The total value of Gediz University was appraised at USD150 million.⁷⁸

Moreover, Canik Basari University had 75,000 m² gross floor area.⁷⁹ According the Ministry of Environment and Urban Planning's 2016 circular on minimum construction costs, the minimum cost for university buildings (IV. A of the Circular)⁸⁰ is 1,320 TL per m². This means that the minimum construction cost for Canik Basari University was TL99,000,000 (USD34.37 million, as of 23 July 2016).

Their own reports show that the total assets of Sifa University and Suleyman Sah University were worth TL164.4 million (USD57,083,333, as of 23 July, 2016) and USD155 million, respectively.

Finally, at-least TL198,000,000 were also invested in Ipek University between 2011-2015.⁸¹ When these amounts were converted to USD in the respective years, this means USD92,982,157 were invested in Ipek University by its founders.

⁷⁵ (n 73)

⁷⁶ <http://www.hurriyet.com.tr/ekonomi/5-bin-401-tapu-devlete-gecti-40244204>

⁷⁷ <https://www.aksam.com.tr/guncel/kapatilan-gediz-universitesine-arsa-bagisi-iddianamede/haber-599869>

⁷⁸ <https://www.venisafak.com/verel/gediz-universitesi-hedef-buyuttu-251861>

⁷⁹ <https://www.saglikaktuel.com/haber/gediz-universitesi-izmire-150-milyon-dolarlik-saglik-kampusu-32541.htm>

⁸⁰ <https://www.haberler.com/canik-basari-universitesi-yatirimlari-bolgeye-2658993-haberi/>

⁸¹ <https://www.resmigazete.gov.tr/eskiler/2016/04/20160409-22.htm>

⁸¹ Ankara Chief Public Prosecutor's Office, 2017/3386, p.280

Year	Turkish Lira	Average USD / TL	USD equivalent
2011	36,000,000	1.67	21,556,886
2012	19,965,837	1.80	11,092,131
2013	31,110,192	1.90	16,322,241
2014	35,904,974	2.19	16,394,965
2015	75,574,245	2.75	27,481,543
Total	198,555,248	-	92,847,766

In conclusion, although there is no credible report on the values of all closed universities, one can say that the total value of Turgut Ozal University, Fatih University, Zirve University, Mevlana University, Meliksah University, Gediz University, Suleyman Sah University and Ipek University was at least USD 1,517,000,000, as of 23 July 2016.

5.3.3. ASSOCIATIONS

1,419 associations were permanently shut down under Emergency Decrees. 1,326⁸² of those associations, which had at least 69,926⁸³ members, were shut down on the grounds of their affiliation with the Gülen Movement. The rest were shut down on the grounds of their affiliation with different Kurdish or leftist political groups also designated as threats to national security.



[The Associations closed with Emergency Decrees: Report: Updated Situation Report- State of Emergency in Turkey – IHOP/Human Rights Joint Platform \(Closed Associations by 20 March, 2018\)](#)

⁸² Report of the Parliamentary Commission tasked to investigate the coup attempt of 15 July, 2016, p.427

⁸³ Ibid, p.190

According to the Turkish Parliament’s report, associations which were shut down on the grounds of their affiliation with the Gülen Movement had 81 automobiles and 178 real estates, and all of those were transferred to the Treasury. However, there is no report on their value.

5.3.4. COMPANIES

According to the Ministry of Customs and Trade’s written submission addressed to the Turkish Parliament, besides some 1,000 companies which were put under the control of the SDIF, another 1,075 companies were shut down and confiscated through Emergency Decrees.⁸⁴ These closed companies were running private schools, prep schools, student dormitories, media outlets, publishing houses and private health institutions. Although there is no credible report on their actual economic values, we will analyse their minimum investment worth below.

5.3.5. PRIVATE HEALTH INSTITUTIONS

The Turkish Government, through Emergency Decree Law nos. 667 and 689, shut down hospitals, medical centers and polyclinics and confiscated all of their assets. Seven of these health institutions belonged to the aforementioned private universities. The remainder, forty health institutions, were completely private enterprises.

Name of the Medical Institution	Province	Name of the Medical Institution	Province
Fatih University Sema Hospital	Istanbul	Inci Dental Clinic	Düzce
Fatih University Maltepe Hospital	Istanbul	Akpol Medical Center	Ankara
Mevlana University Hospital	Konya	Batıfız Medical Center	Ankara
Mevlana University Dialysis Center	Konya	Doğa Medical Center	Sanliurfa
Sifa University Bornova Hospital	Izmir	Ufuk Medical Center	Sanliurfa
Sifa University Dialysis Centers (Izmir & Bornova)	Izmir	Sincan Bilgi Medical Center	Ankara
Nurlu Eye Hospital	Ankara	Nörobilim Medical Center	Denizli
The Altinova Hospital	Sakarya	Nörobilim Neuropsychiatry Medical Center	Denizli
The Bahar Hospital	Bursa	Uzmanlar Medical Center	Sanliurfa
Erzurum Sifa Hospital	Erzurum	Baban Medical Center	Sanliurfa
Kayseri Eye Hospital	Kayseri	Ailemiz Medical Center	Sanliurfa

⁸⁴ Ibid, p.432

Kutahya City Hospital	Kutahya	Kurtuluş Internal Diseases Center	Sanliurfa
Turgut Ozal University Hospital	Ankara	Harranmed Women's Diseases & Delivery Center	Sanliurfa
Primer Hospital	Gaziantep	Anadolu Eye Diseases Center	Sanliurfa
Turgut Ozal University Dialysis Center	Ankara	Çebi Medical Center	Kirklareli
Gümüşişğne Physical Therapy & Rehabilitation Center	Ankara	Urfa Physical Therapy & Rehabilitation Center	Sanliurfa
RenTip Hospital	Bursa	The Gözaydın Eye Center	Istanbul
Hacettepe Physical Therapy & Rehabilitation Center	Kayseri	Istanbul Women's Health & Fertilization Center	Istanbul
OSM Middle-East Hospital	Sanliurfa	The Hayat Polyclinic	Balikesir
Istanbul Maternity & Surgery Hospital	Van	The Emirdağ Polyclinic	Afyon
Mavi Dünya Oral & Dental Health Center	Bursa	Nazilli Eye Diseases & Surgery Center	Aydin
Turkuaz Oral and Dental Health Center	Istanbul	Burç Genetic Diseases Diagnosis Center	Istanbul
Ozgün Bahar Oral & Dental Health Center	Bursa	Donegen Genetic Diseases Diagnosis Center	Istanbul
Sinanoğlu Oral & Dental Health Center	Antalya		

The in-patient capacity of some of the confiscated hospitals are as follows:

- Fatih University Hospital: 218⁸⁵,
- Mevlana University Hospital: 415⁸⁶
- Sifa University Hospital: 600⁸⁷
- Sifa Erzurum Hospital: 110⁸⁸
- Turgut Ozal University Hospital: 110⁸⁹
- Bursa Bahar Hospital: 50⁹⁰
- Gaziantep Primer Hospital: 69⁹¹
- OSM Middle-East Hospital: 240⁹²

⁸⁵ <http://www.haber7.com/saglik/haber/410447-sema-hastanesi-universite-hastanesi-oluyor>

⁸⁶ <https://emlakkulisi.com/mevlana-universitesi-hastanesi-insaatinin-vuzde-95i-tamam/348925>

⁸⁷ <http://www.egeninnesi.com/haber/18349-sifa-universitesinden-izmire-45-milyon-dolarlik-yatirim>

⁸⁸ <https://www.saglikaktuel.com/haber/erzurum-ozel-sifa-hastanesi-halkin-hizmetine-sunuldu-52507.htm>

⁸⁹ <https://www.medimagazin.com.tr/hekim/kamu-hast/tr-fetoden-alinan-turgut-ozal-universitesi-hastanesi-turkiyenin-cocuk-kalp-ve-cerrahi-merkezi-ankara-olacak-2-16-71828.html>

⁹⁰ <http://wowturkey.com/forum/viewtopic.php?t=25098>

⁹¹ <http://wowturkey.com/forum/viewtopic.php?t=54124&start=5>

⁹² <http://www.haber7.com/saglik/haber/346815-erdogan-3-en-buyuk-ozel-hastaneyi-acti>

- Istanbul Maternity & Surgery Hospital: 240⁹³

The Koc University Hospital, which has a 477⁹⁴ in-patient capacity, required a USD 300 million⁹⁵ investment cost. This means hospitals with a total of a 2,052 in-patient capacity, based in Istanbul, Ankara, Izmir, Erzurum, Gaziantep and Bursa, had at-least a USD1,291,000,000 investment cost. This is the value of only nine of the forty-seven health institutions that were closed and confiscated. There is no credible information for the remaining 38 institutions.

According to the Ministry of Labour and Social Security, 21 of these 47 health institutions, namely, Turgut Ozal University Hospitals, OSM Middle-East Hospital, the Bahar Hospital, Mevlana University Hospital, Fatih University Hospitals, Erzurum Sifa Hospital, Sifa University Hospitals, Istanbul Maternity & Surgery Hospital, RenTip Hospital, Primer Hospital, had a TL400 million annual turnover as of 2016.⁹⁶

5.3.6. SCHOOLS

The Turkish Government closed down 1,060 schools⁹⁷ where 138,000⁹⁸ students were studying.⁹⁹ According to tender notices published by the Government, the cost of a 24-classroom school (a standard school) ranges between TL6 and TL9 million (average TL7.5 millions).¹⁰⁰ When the average of TL7.5 million is taken as a base, the total value of the 1,060 schools (with a capacity of some 400,000 students) is about TL7.95 billion. (USD2,760,000,000, as of 23 July 2016)

5.3.7. STUDENT DORMITORIES

The Turkish Government closed down 841¹⁰¹ student dormitories, which had an 86,397 accommodation capacity.¹⁰² According to a tender notice published by the Government,

⁹³ <https://vaneah.saglik.gov.tr/TR,57443/tarihcemiz.html>

⁹⁴ <https://kuh.ku.edu.tr/tr/page/corporate/corporate-information/about-us>

⁹⁵ <https://kuh.ku.edu.tr/tr/pressroom/kuh-in-press/D%C3%BCnva>

⁹⁶ <https://www.sgkrehberi.com/haber/76381/feto-ye-hastane-soku.html>

⁹⁷ Report of the Parliamentary Commission tasked to investigate the coup attempt of 15 July, 2016, p.152

⁹⁸ <http://www.hurriyet.com.tr/gundem/138-bin-ogrenciye-ne-olacak-40165086>

⁹⁹ Since the crackdown had been continuing since 2013, the number of students was at about %30 of the actual capacity.

<http://www.yenimeram.com.tr/paralel-yapi-egitimde-de-coktu-166467.htm>

<https://www.memurlar.net/haber/543222/paralel-okullarda-ogrenci-kalmadi.html>

¹⁰⁰ <http://ihalenet.com/Proje/diyarbakir-ili-cinar-ilcesi-135-ada-21-nolu-parselde-24-derslikli-imam-h--220831>

https://webdosya.csb.gov.tr/db/tokat/menu/proje-ve-yapim-sube_20190227100131.pdf

¹⁰¹ Report of the Parliamentary Commission tasked to investigate the coup attempt of 15 July, 2016, p.150

¹⁰² <http://www.hurriyet.com.tr/gundem/138-bin-ogrenciye-ne-olacak-40165086>

https://www.kamugundemi.com/images/upload/kapafYlan_ozel_vurt.pdf

the minimum cost of a student dormitory with accommodation for 1,000 capacity is TL27,000,000¹⁰³. This consequently means that the total value of the 841 student dormitories which were confiscated, and which had an 86,397 accommodation capacity, was TL2,322,000,000. (USD806 million, as of 23 July 2016).

5.3.8. PREP-SCHOOLS

According to the General Directorate of the National Estate, 743 prep schools were closed and confiscated by Emergency Decree.¹⁰⁴ The Turkish media reported that one of these estates, the building of the FEM Prep Schools in Uskudar, Istanbul, was appraised at TL125 million (USD43,402,777, as of 23 July 2016) by the public authorities.¹⁰⁵



Fem Prep School in Altunizade, Uskudar (USD 43.402.777, as of 23 July, 2016)

According to a report by the Turkish Union of Chambers and Exchange Commodities, in 2011 average investment cost for a prep school was TL250,000.¹⁰⁶ This corresponds to TL351,730 TL (USD122,128) as of July 2016, and means that the total value of investments made in regard of confiscated prep schools is at least USD90,741,454. There is no credible report indicating the number of estates and their values, other than that of FEM Prep Schools' Uskudar Campus.¹⁰⁷

The Government assigned the confiscated prep schools to be used by public institutions.

https://stockholmcf.org/wp-content/uploads/2018/07/The-Crackdown-On-Education-in-Turkey_june_2018.pdf

¹⁰³ <http://www.yapiprojeleri.com/Proje/kocaeli-950-kisilik-ogrenci-yurdu-yapim-isi--220274>

¹⁰⁴ <https://webdosya.csb.gov.tr/db/milliemlak/icerikler/m-le-faal-vet-raporu-03.10.2019kapaklib-20191007151452.pdf>

¹⁰⁵ <https://www.takvim.com.tr/galeri/turkiye/5-bin-401-tapu-devlete-gecti/6>

¹⁰⁶ <http://www.milliyet.com.tr/egitim/dershane-savisi-vuzde-134-ogrenci-savisi-vuzde-153-artti-1598304>

Prep schools thus started to be used as local police headquarters, a courthouse, bankruptcy and execution service buildings, the Provincial Directorate of National Education and School.¹⁰⁸

5.3.9. MEDIA OUTLETS

The Turkish Government, having made use of the state of emergency, shut down 151 media outlets that were critical of the regime and confiscated all their assets. These 151 media outlets consist of 34 tv stations, 38 radio stations, 73 dailies and magazines, and six news agencies.¹⁰⁹ The assets of these media outlets were given up to the control of the SDIF for the purpose of liquidation.¹¹⁰ However, there is no credible report on the actual value of the media outlets concerned. The SDIF announced that it has so far liquidated some of those media outlets' assets with a return of TL40.70 million. However, these liquidations were not carried out transparently; who bought them and whether the liquidations were carried out at the real value of these companies is unknown.

“The human rights situation in Turkey is further deteriorating. Press freedom, in particular, is gradually eroded through an intricate system of repression and censure. Terrorism charges are frequently used to detain human rights defenders, including hundreds of journalists. Terrorism charges and decree laws enacted under the state of emergency have also been devised to confiscate media outlets, hospitals, private schools and universities without due process.”¹¹¹

- Irina Van Wiese, British MEP

The Ipek Media Group, which was running two TV channels, two dailies and one radio station, is amongst the confiscated media outlets. According to a 2015 report, between 2010 and 2014 USD110 million in direct capital payments were made for the Ipek Media Group, and its actual market value was USD250 million as of December 2015. There is no credible report on the value of the rest of the closed media outlets. Yet 34 TV stations, 38 radio stations, six news agencies, and 73 dailies and magazines, cannot under any circumstances be valued at less than USD1 billion. This takes into consideration that in March 2018, Dogan Media Company which owned three newspapers, a news website, two TV channels and a news agency was sold for USD1.1 billion.

¹⁰⁸ <https://www.takvim.com.tr/galeri/turkiye/5-bin-401-tapu-devlete-gecti/6>

¹⁰⁹ <https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.medya>

¹¹⁰ <https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.medya>

¹¹¹ As told to PPJ.

5.3.10. THE TOTAL AMOUNT OF CONFISCATED LIQUID ASSETS

In 2016, Mr. Naci Agbal who was then the Minister of Finance stated that the total amount of cash money and Bills of Exchange seized from the confiscated entities was TL472 million (USD163.5 million).¹¹²

5.3.11. TOTAL SIZE OF THE BUILDINGS TRANSFERRED TO THE TREASURY

Besides the 2,214 estates which were confiscated and transferred to the General Directorate of Foundations, 4,351 estates were confiscated and transferred to the Treasury.¹¹³ Mr. Naci Agbal, then Minister of Finance, stated that 3,361 of those 4,351 estates were buildings.¹¹⁴ According to the Ministry of Finance's written submission to the Parliament, these 3,361 buildings' gross floor area was 7.2 million m².¹¹⁵ Under the Ministry of Environment and Urban Planning's 2016 circular on construction costs, the minimum cost for the buildings in question (IV. A, B, C of the Circular)¹¹⁶ was TL915 per m². This means that the minimum construction cost for the 3,361 buildings with this floor area would have been TL6,732,000,000 (USD 2,337,000,000 as of 23 July 2016).

 SONUÇTA;			
Devredilen Kurum:	İli	Taşınmaz Adedi:	Değeri
	TRABZON	4	75.000.000,-
	GİRESUN	15	42.500.000,-
MALİYE HAZİNESİ	RİZE	8	29.500.000,-
	ARTVİN	5	32.500.000,-
	GÜMÜŞHANE	1	7.000.000,-
	BAYBURT	2	5.500.000,-
	TOPLAM	35	192.000.000,-

However, the actual value of these estates is likely to be much higher than the appraisal above, since, for instance, according to a report by the General Directorate of Land Registry and Cadaster, the thirty-five estates transferred to the Treasury

¹¹² <https://www.memurlar.net/haber/619451/feto-kasasindan-servet-cikti.html>

¹¹³ Report of the Parliamentary Commission tasked to investigate the coup attempt of 15 July, 2016, p. 431

¹¹⁴ <https://www.memurlar.net/haber/619451/feto-kasasindan-servet-cikti.html>

¹¹⁵ Report of the Parliamentary Commission tasked to investigate the coup attempt of 15 July, 2016, p. 427.

¹¹⁶ <https://www.resmigazete.gov.tr/eskiler/2016/04/20160409-22.htm>

in the provinces of Trabzon, Giresun, Riza, Artvin, Gumushane and Bayburt, were worth TL192 million.¹¹⁷

5.3.12. THE FROZEN ESTATES OF REAL OR LEGAL PERSONS

Finally, besides the assets confiscated under these Emergency Decrees, a total of 213,696 estates have been frozen at the request of the Executive or of the Judiciary.¹¹⁸ Such freezing means that owners cannot exercise their right of disposition over these estates. There is no report on their values.

5.3.13. THE TOTAL SUM OF THE VALUE OF CONFISCATED, TAKEN OVER OR FROZEN ASSETS

Category	Number	Turkish Lira (million)	USD (million)	Additional explanation
Assets controlled by the SDIF	1,111 real or legal person	58,940	20,465	Assets of 998 companies + 113 real persons
Associations	1,419	No credible report or data		178 estates and 81 automobiles
Foundations	145	2,381	826.9	Assets of 123 foundations, no credible report about remaining 22 foundations
Universities	15	N/A	1,517	Universities of T.Ozal, Fatih, Zirve, Mevlana, Meliksah , Gediz, Canik and Ipek. No credible report about rest.
Dormitories	841	2,322	806	86,397 accommodation capacity.
Schools	1,060	7,950	2,670	138,000 actual students. Max. student capacity is 400,000.
Prep Schools	743	261.3	90.74	minimum investment cost.

¹¹⁷https://www.tkgm.gov.tr/sites/default/files/icerik/ekleri/ohal_uygulamalari_ve_diger_guncel_mevzuat_uygulamalari_0.pdf

¹¹⁸ Report of the Parliamentary Commission tasked to investigate the coup attempt of 15 July, 2016, p. 432.

Buildings transferred to the treasury	3,361	6,372	2,337	7,2 million m2 gross floor area minimum construction cost, not their actual value.
Hospitals	47	N/A	1,291	2,052 in-patient capacity
Media Outlets	151	N/A	1,000	34 tv stations, 38 radio stations, 6 news agencies and 73 dailies and magazines
Liquid Assets	N/A	472	163.5	
Bankasya ¹¹⁹	shareholders' equity	2,511	1,077	As of 31.12.2014.
Frozen estates	213,696	No credible report or data		Frozen not confiscated.
Total Values	-		32,244.14	Not the actual market values, but the minimum estimated investment cost.

“These assets were taken from their owners and registered to the Turkish State Treasury. While the net worth of the confiscated assets is unclear, it is estimated at more than 20 billion dollars. Yet it is almost impossible for a legal entity whose assets are confiscated for the allegation of being a member of the Gülen Movement or other opposition to get justice for this violation of the right to property. The lack of international intervention makes the AKP government more ruthless and unlawful.”

- Oguzhan Albayrak, Director at Human Rights Defenders

6. ANALYSIS OF TURKEY’S ‘EMERGENCY’ INTERVENTION IN THE RIGHT TO PROPERTY UNDER NATIONAL / INTERNATIONAL LAW

6.1. ANALYSIS UNDER NATIONAL LAW

The Turkish Government made use of the state of emergency to confiscate all these assets. Neither the Constitution of Turkey, the Act on the State of Emergency, nor the international treaties to which Turkey is a party warrant such confiscation.

¹¹⁹ Bankasya case was not included in this report in detail.

Articles 121§3 and 15§1 of the Constitution and the Act on the State of Emergency (2935) stipulate the state of emergency and the measures that would be taken over the course of it in detail. Articles 121§3 and 15§1 of the Constitution require, respectively, that an emergency measure shall be legislated on matters that are necessitated by the state of emergency, and that are compatible with the principle of moderation, which consists of the principles of suitability, necessity and proportionality.^{120 121}

Enactment of the Act on the State of Emergency (2935) was directly enjoined by Article 121§2 of the Constitution¹²², thus, Law No. 2935 has a normative monopoly on the emergency measures.¹²³ Articles 9 and 11 of the Act on the State of Emergency (Law No. 2935), provide ‘a closed list’¹²⁴ that consists of measures to be taken by the Government in the case of the declaration of the State of emergency due to widespread acts of violence or a serious deterioration in public order. Rather than closure and confiscation, adopting a temporary measure, such as suspension, the freezing of assets, is, in fact, what is required by Law no.2935.¹²⁵ Article 11 of Law no. 2935 allows only for the suspension of the activities of associations, and this suspension must not exceed three months in length.^{126 127} In addition, it does not envisage adopting measures *en masse*, but, rather, on a case-by-case basis—nor does it envisage the confiscation and transfer of the assets of a dissolved legal entity to the state authorities as being a legitimate measure.^{128 129}

Moreover, the Constitution of Turkey:

- a) proscribes the general confiscation punishment (Art. 38)¹³⁰ and the confiscation or seizure of “printing houses and their annexes, and press equipment (Art. 30)¹³¹,

¹²⁰ Kemal Gözler, ‘Olağanüstü Hal Rejimlerinde Özgürlüklerin Sınırlandırılması Sistemi ve Olağanüstü Hal Kanun Hükmünde Kararnamelerinin Hukukî Rejimi’ (1990) 4 Ankara Barosu Dergisi 561.

¹²¹ Ali Yildiz (n 61)

¹²² Article 121§2 of the Constitution: ‘The financial, material and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119 and the manner in which fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15, how and by what means the measures necessitated by the situation shall be taken, what sorts of powers shall be conferred on public servants, what kinds of changes shall be made in the status of officials as long as they are applicable to each kind of states of emergency separately, and the extraordinary administration procedures, shall be regulated by the Act on the State of Emergency.’

¹²³ Ali Yildiz (n 61)

¹²⁴ Council of Europe, European Commission for Democracy through Law (Venice Commission), Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July, 2016, Venice, 9-10 December, 2016. CDL-AD(2016)037 Para. 72.

¹²⁵ Ali Yildiz (n 61)

¹²⁶ Ibid

¹²⁷ Ibid.

¹²⁸ Conference of INGOs of the Council of Europe, Opinion on the Impact of the State of Emergency on Freedom of Association in Turkey (30 November, 2017) Para. 41.

¹²⁹ Ali Yildiz (n 61)

¹³⁰ **ARTICLE 38-** Neither the death penalty nor general confiscation shall be imposed as a punishment.

¹³¹ **Protection of printing facilities**

ARTICLE 30- (As amended on May 7, 2004; Act No. 5170)

- b) warrants expropriation or nationalization only if the public interest requires it and an actual compensation, or compensation on the basis of the real value is paid in advance cash (Arts. 35,46,47).

Under Art. 13 of the Constitution, a restriction on a fundamental right cannot be contrary to the letter and spirit of the Constitution, the requirements of the democratic social order and of the secular Republic and the principle of proportionality.” According to the Turkish Constitutional Court, a restriction or an intervention into a fundamental right shall be proportional and shall not prejudice the essence of the right to property. (App. No: 2013/817, 19/12/2013, §§ 28, 32).¹³² Finally, under Art. 54 of the Turkish Penal Code (5237), the confiscation of a property may be ordered by a Court upon an indictment by a public prosecutor and after a trial that is in compliance with due process.

Thus:

- a) confiscation of private properties with Decree Laws but without due process is unlawful under Art. 38. of the Constitution, the Act on the State of Emergency and Art. 54 of the Penal Code,
- b) confiscating the assets of legal and real persons without providing compensation is a breach of Arts. 13, 35, 46, 47 of the Constitution, and of the case law of the Turkish Constitutional Court (App. No: 2013/817, 19/12/2013, §§ 28, 32).¹³³

By this, up to USD32,244.14million (or USD32.24 billion) worth of assets have been confiscated, frozen, or closed down without legal basis under Turkey’s domestic laws. These media outlets, schools, universities, hospitals, banks, associations, foundations and other estates are now in the hands of the government or pro-government bodies.

A printing house and its annexes, duly established as a press enterprise under law, and press equipment, shall not be seized, confiscated, or barred from operation on the grounds of having been used in a crime.

¹³² <http://www.constitutionalcourt.gov.tr/inlinepages/leadingjudgements/IndividualApplication/judgment/2012-1035.pdf> (Para. 29)

¹³³ <http://www.constitutionalcourt.gov.tr/inlinepages/leadingjudgements/IndividualApplication/judgment/2012-1035.pdf> (Para. 29).

6.2. ANALYSIS UNDER INTERNATIONAL LAW

Art. 4 ICCPR and Art. 15 ECHR stipulate the state of emergency. As was said by the United Nations Human Rights Committee, the limitation which is strictly required by the exigencies of the situation relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation that are resorted to because of the emergency.¹³⁴ In the Venice Commission's view, the most important characteristic of any emergency regime is its temporary character.¹³⁵ Article 15§3 ECtHR requires the permanent review of the need for emergency measures, alongside the notion of proportionality¹³⁶. The ultimate goal of any emergency regime should therefore be for the State to return to a situation of normalcy.¹³⁷

According to the Paris Minimum Standards for Human Rights Norms in the State of Emergency, which was adopted by the International Law Association, upon the termination of an emergency there shall be automatic restoration of all of the rights and freedoms which were suspended or restricted during the emergency, and no emergency measures shall be maintained thereafter.¹³⁸ According to the United Nations Human Rights Committee, measures derogating from the provisions of the ICCPR must be of an exceptional and temporary nature¹³⁹. A derogation may only last for as long as is "strictly required by the exigencies of the situation".¹⁴⁰

Adopting permanent measures, without justifying why the temporary ones would not be suitable to achieve the proclaimed purpose of the state of emergency, infringes the principle of proportionality.¹⁴¹ The declaration of the state of emergency does not therefore legitimize such general and permanent confiscation, and confiscation without offering compensation.

According to a legal opinion from Golay and Cisman, Article 17 of the Universal Declaration of Human Rights (UDHR) is the pronouncing of a customary international law principle. They argue as follows:

¹³⁴ Ali Yildiz (n 61)

¹³⁵ Venice Commission, Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July, 2016, Para. 78. | Ali Yildiz (n 61)

¹³⁶ *Brannigan and McBride v. The United Kingdom* (n 116) Para. 54. | Ali Yildiz (n 61)

¹³⁷ Venice Commission, Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July, 2016, Para. 79.

¹³⁸ International Law Association, Paris Minimum Standards of Human Rights Norms in the State of Emergency (Paris, 1984), Para. 6(b) of Section A. | Ali Yildiz (n 61).

¹³⁹ HRC 'CCPR General Comment No. 29: Article 4: Derogations during the State of Emergency' (31 August 2001) UN Doc CCPR/C/21/Rev.1/Add.11 Para. 2. | Ali Yildiz (n 61).

¹⁴⁰ Council of Europe, European Commission for Democracy through Law (Venice Commission), Opinion on the Protection of Human Rights in Emergency Situations, Venice, 17-18 March, 2006. CDL-AD(2006)015, Para. 12.

¹⁴¹ Ali Yildiz (n 61)

The review of provisions of international instruments, regional treaties and national constitutions reveal the universal recognition of the human right to property. It appears that generalized and consistent State practice and *opinio juris* reflect the customary nature of the first paragraph of UDHR Article 17 “everyone has the right to own property alone as well as in association with others”.¹⁴²

Under international law, the right to property is not an absolute right. Interference with property, while allowed, must satisfy certain conditions cumulatively: the principle of legality, a general or public interest character and a proportionality test. The principle of legality includes the notion that interference must be prescribed by law, but the law must also be published and accessible, and must gather certain qualitative characteristics to be “compatible with the rule of law”.¹⁴³ It has been shown that the post-coup persecution of alleged members or affiliates of the Gülen Movement, termed FETO by the Turkish authorities, goes against the principle of legality.¹⁴⁴ The lawful interference with the individual’s property rights must also pass the test of legitimacy, in other words, it needs to be pursued in the general or public interest. No such legitimacy has been shown for the extent of the interventions into the right to property by the Turkish government.

Article 1 of Protocol No.1 to the ECHR envisages the right to property. According to this, and to ECHR case law, the deprivation of the right to property is only permitted if it is: (i) lawful; (ii) in the public interest; (iii) in accordance with the general principles of international law; and (iv) reasonably proportionate.¹⁴⁵ The ECtHR observed that “any interference with property rights must strike a fair balance between the demands of the public or the general interest of the community, and the right to property.”¹⁴⁶

According to Golay and Cisman, the payment of compensation in cases of intervention into the right to property is also a requirement of customary international law.¹⁴⁷ The

¹⁴² Golay & Cisman, Legal Opinion: The Right to Property from a Human Rights Perspective

¹⁴³ James and others v. The United Kingdom, Application no. 8793/79, Judgment of 21 February, 1986, Para 67.

¹⁴⁴ Verfassungsblog, The Turkish Judiciary’s Violations of Human Rights Guarantees <https://verfassungsblog.de/the-turkish-judiciarys-violations-of-human-rights-guarantees/>

¹⁴⁵ Council of Europe, Protocol No. 1 to the Convention <<https://www.coe.int/en/web/echr-toolkit/protocole-1>> accessed 11 April, 2019. | Ali Yildiz (n 61).

¹⁴⁶ Ali Yildiz (n 61)

¹⁴⁷ Golay & Cisman, Legal Opinion: The Right to Property from a Human Rights Perspective. It can be said that stipulations of international and regional instruments, as well as the interpretation attributed to these by the supervisory bodies, in addition to the convergent juridical opinion of scholars and the evidence provided by consensually adopted resolutions of the UN General Assembly suggest that the payment of compensation in cases of unlawful and lawful deprivation of property has become a requirement of customary international law.

ECtHR noted that protection offered by property rights would be “largely illusory and ineffective” in the absence of compensation.¹⁴⁸ In the jurisprudence of the ECtHR since the 1980s, it has therefore become generally accepted that, in cases of deprivation, compensation is implicitly required.¹⁴⁹

Thus:

- a) confiscation of private properties with Decree Laws without due process is unlawful under Art. 4. ICCPR and Art. 15 ECHR,
- b) confiscating the assets of legal and real persons without providing compensation is a breach of customary international law, Art. 17 of the UDHR, Article 1 of Protocol No.1 to the ECHR.

Although the right to property is not an absolute right, and the measures against property undertaken under Turkey’s state of emergency, the measures do not meet the required international standards. The closures, seizures and freezing of assets do not uphold the principle of legality nor the principle of proportionality, and have not been shown to be in the public’s best interest. The use of non-independent CPJs to decide on seizures and appointments of trustees has engendered an unlawful abandonment of due process. Furthermore, the restoration of the right to property following the end of the state of emergency has yet to be seen, nor has compensation for many billions of dollars-worth of assets. The measures are, in sum, an abrogation of domestic and international law.

¹⁴⁸ James and others v. The United Kingdom, Para. 54.

¹⁴⁹ Golay & Cisman, Legal Opinion: The Right to Property from a Human Rights Perspective

7. RECOMMENDATIONS TO:

7.1. THE VICTIMS

We advise the victims:

- a) to collect all of the necessary documents that prove or indicate their pecuniary or non-pecuniary damages,
- b) to seek all domestic and international legal remedies,
- c) to report their victimization to international institutions and human rights organisations.

7.2. THE TURKISH GOVERNMENT

We urge the Turkish Government:

- a) to repeal all decree laws and those laws approving the decree laws,
- b) to return all of the assets confiscated and transferred to the Treasury, or to other public authorities, to their owners,
- c) to return the companies and assets controlled by the SDIF to their owners,
- d) to compensate for all of the damages caused the confiscation or by the actions of the the boards of trustees and the SDIF,
- e) to revoke all of the interim injunctions concerning the 213,696 estates of real and legal persons,
- f) to adopt the legislation ensuring that the rule of law and the right to property are effectively protected.

7.3. THE UNITED NATIONS

Considering that associations, foundations, private educational institutions, private health institutions and dormitories are the main victims of the unlawful confiscation practices of the Turkish Government, we urge:

- a) the UN High Commissioner for Human Rights,
- b) the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association,
- c) Special Rapporteur on the Right to Education,
- d) Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living,

- e) Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism,

to pay a visit to Turkey and to adopt a report on the situation in Turkey with regard to the right to property, alongside the freedom of peaceful assembly and of association, the right to education, of the right to an adequate standard of living, and of Turkey's vague and draconian anti-terror laws.

7.4. THE COUNCIL OF EUROPE

We urge the Commissioner for Human Rights of the Council of Europe to adopt a memorandum on:

- a) The Emergency Decree Laws' adverse impact on the right to property and human dignity, and
- b) The Criminal Procedure Code's trustee appointment provisions' compatibility with the fundamental rights and freedoms envisaged in ECHR.

We urge the Parliamentary Assembly of the Council Europe to commission the Venice Commission to adopt a report on:

- a) The Emergency Decree Laws' adverse impact on the right to property and human dignity, and
- b) The Criminal Procedure Code's trustee appointment provisions' compatibility with the fundamental rights and freedoms envisaged in ECHR.

7.5. THE EUROPEAN PARLIAMENT

We urge the European Parliament, its Committee on Foreign Affairs, and the reporter for Turkey to adopt:

- a) a report on the Emergency Decree Laws' adverse impact on the right to property and human dignity,
- b) a resolution calling European companies to avoid purchasing the assets that are unlawfully confiscated under the Emergency Decree Laws,

- c) a resolution calling the European Investment Bank and others in the Union-based financial institutions not to involve any transaction or investment regarding the assets unlawfully confiscated under the Emergency Decree Laws.

7.6. MULTINATIONAL ENTERPRISES,

We urge multinational enterprises, in compliance with the OECD Guidelines for Multinational Enterprises¹⁵⁰:

- a) to avoid purchasing those assets that are unlawfully confiscated under the Emergency Decree Laws,
- b) not to involve any transaction or investment relating to those assets unlawfully confiscated under the Emergency Decree Laws.

7.7. INTERNATIONAL HUMAN RIGHTS ORGANISATIONS

We urge international human rights organisations:

- a) to continue monitoring the situation in Turkey,
- b) to monitor those real and legal persons who/which make use of the assets unlawfully confiscated under the Emergency Decree Laws, and to name and shame them,
- c) to produce reports to be used in legal proceedings initiated by the victims,
- d) to launch an awareness-raising campaign.

¹⁵⁰ <http://www.oecd.org/daf/inv/mne/48004323.pdf>