

**THE UN  
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**TURKEY REPORT FOR**

**“VICTIMIZATIONS OF EMPLOYEES  
IN INSTITUTIONS SHUT DOWN BY  
STATE OF EMERGENCY  
STATUTORY DECREES”**

**In cooperation with:**

**Mürüvvet Initiative Göttingen**

**Interkulturelles Dialogzentrum e.V. - IDIZEM**

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### **Introduction and Summary of the Report**

**In the report, the victimization that the teachers and other staff, who were working in private educational institutions which were shut down with state of emergency statutory**

**decrees announced by the Turkish Republic after July 15th, 2016, faced has been analyzed**

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Cancellation of work permits of a total of 22,474 private educational institution employees, to be blacklisted, to face accusation of being terrorist organizations, violation of rights of labor and other rights, arrest, torture have been analyzed.

Violation of rights occurred as a result of illegal actions of Turkish public and judicial authorities towards the Hizmet Movement, more specifically towards private educational institution employees, to be exposed to social and economical situations, have been analyzed with reports about the victimization.

### **1-The status of the private educational institutions affiliated by the Hizmet Movement**

**There were approximately 2,300 educational institutions affiliated with the by Hizmet Movement such as prep Schools, private high schools, student dormitories which were giving service in Turkey wide. These educational institutions, which had long waiting lists, were using the most successful instructional methods. The students of these institutions were holding the having highest places in nationwide high school and college entrance exams and they also had the highest student achievement rates. Regular citizens , high rank politicians and bureaucrats were willing to have their children attend these schools.**

They have won high ranked placements in national and international science Olympiads. The students as well as the parents believed that these successes are rooted with the educators' experiences and devotions.

### **2- Shutting down private schools and learning centers with the state of emergency laws after July 15th coup attempt.**

AKP administration had restricted and restrained the people who are linked with the Hizmet movement, especially for those who work at the private schools or learning centers in 2014 after 17/25 December corruption operations. Following the July 15 2016 coup attempt, the Hizmet Movement were being presented as the guilty party of the coup attempt and the movement has been declared as a "terrorist organization".<sup>1</sup>All the assets, buildings, establishments and

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<sup>1</sup> 667 Numbered KHK(Statutory Decree)

Article 2 – (1) Those which belong to, connect to, or contact with the Fetullahist Terrorist Organization (FETÖ/PDY), established posing a threat to the national security:

- a) Private health institutions and organizations listed in the Annex I,
- b) Private education institutions and organizations as well as private dormitories and lodgings for students listed in the Annex II,
- c) Foundations and associations and their commercial enterprises listed in the Annex III,

properties of the private schools and the learning centers which linked to Hizmet Movement were being seized by the government without ruling from the court.<sup>2</sup>

### **3- The effects of shutting down private educational institutions on their workers and violation of rights.**

#### **3.1.- Suspending the educators' licenses and work permits**

The certifications and work permits of all the educators in these institutions (early childhood education centers, elementary schools, middle schools, high schools, learning centers and student dormitories) were suspended and they were not being allowed to work any other education institutions. Even though these institutions had all the necessary permits from the Department of Education before being shut down.

Total of 22,474 people being affected by this execution, 19,962 of them were teachers.

#### **3.2. Legal problems about the memorandum regarding the cancellation of work permits and impossibility of the cancellation of work permits according to national legal arrangements**

The legal requirement process which is the base of cancellation of work permit is the 07/21/2016 dated 7783529 numbered memorandum of Ministry of Education Private Educational Institutions General Directorate. The process base is that 19,962 teachers worked in the schools shut down with state of emergency statutory decrees.

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ç) Foundation-run higher education institutions listed in the Article IV,

d) Unions, federations and confederations listed in the Article V, which belong to, connect to, or contact with the Fetullahist Terrorist Organization (FETÖ/PDY), established posing a threat to the national security, have been found to exist, have been closed down.

<sup>2</sup> All movables and real estate as well as all assets, receivables and rights, and all documents and papers of foundations closed down shall be deemed to have been transferred to the General Directorate of Foundations without cost.

.<http://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm>

After the July 15 coup attempt, 1,065 private schools ,361 learning centers, and 848 private dormitories had been shut down.

These institutions were being operated by the permit from the Department of Education, and they were shut down with just a memorandum. The certifications of all the educators in these institutions (early childhood education centers, elementary schools, middle schools, high schools, learning centers and student dormitories) were suspended and they were not being allowed to work at any other educational institutions. Total of 22,474 people are being affected by this execution.

When the people whose work permits were cancelled during the memorandum was announced;

-There is no court decision which leads to cancellation of work permits and there is no crime investigation<sup>3</sup>

-There is no ongoing administrative investigation made by the Ministry of Education.<sup>4</sup>

-The only justification to cancel the work permits is to have worked in the schools shut down.

Because the employees, whose work permits were cancelled , were private educational institution staff, issuing or cancelling their work permits are processed by 9th and 10th articles of Private Education Law. <sup>5</sup>According to the law, it is possible for personnel, who works according to 657 numbered State Civil Servants law, to lose work permits or to be dismissed from job in case of being considered unsuccessful with inspector reports. It states that the cancellation of the work permit should be communicated to related teacher. However, if there is no dismissal from job penalty or investigation for someone, it is not legal to dismiss by a memorandum according to national laws. As a matter of fact, not only it is not possible to deprive someone from basic rights by a norm lower than a law, it is also illegal to issue a memorandum to bypass laws and deprive those people from basic rights.

When looking from this point, the memorandum which cancels work permits is against the law. Thus, approximately 20,000 people are considered potential criminals illegally.

### **3.3. The Unavailability of Judicial Remedy for Cancellation of Work Permit and Attitude of Judicial Bodies**

Having announced the Hizmet Movement as a “terrorist organization” and responsible for the military coup by the government, especially after the July 15th, 2016 coup attempt, the

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<sup>3</sup> In the response letter sent from the Ministry of Education Strategy Development Office to HDP deputy Gergerlioglu “As of September 5th, 2018 work permits of 19,962 staff, who worked in institutions shut down by statutory decrees, have been cancelled and the work permits have been activated for the ones who are acquitted with a court decision.”

<sup>4</sup> Ministry of Education Private Educational Institutions General Office 7/21/2016 dated 7783529 numbered memorandum “The work permits of the private educational institutions which are issued investigations and the work permits of the administrators, educators, teachers, teacher assistants, and the other staff members who work in private student dorms which are appointed trustees and student dorms which are not appointed trustees will be determined through MEBBIS, cancelled by governorship, these people will not be allowed to work in other private institutions and their information will be recorded in MEBBIS.”

[https://lookgm.meb.gov.tr/meb\\_iys\\_dosyalar/2016\\_07/21051151\\_fetopdy.pdf](https://lookgm.meb.gov.tr/meb_iys_dosyalar/2016_07/21051151_fetopdy.pdf)

<sup>5</sup> (6)Please check out the related memorandum

<http://www.mevzuat.gov.tr/Metin1.Aspx?MevzuatKod=1.5.5580&MevzuatIliski=0&sourceXmlSearch=&Tur=1&Tertip=5&No=5580>

government and judicial bodies began to treat the people linked to the Hizmet Movement unfairly particularly as the structure of the supreme board of judges and prosecutors changed.<sup>6</sup>

Approximately 20,000 people who suffered from the cancellation of work permits, resorted to the jurisdiction. An application made by a person to the constitutional court was denied by the constitutional court.<sup>7</sup>

Likewise, the Supreme Court made a very important decision after the July 15th coup attempt and stated that the people, who had been working in the institutions shut down with statutory decrees, would not be able to resort to the jurisdiction for returning to jobs, being paid for extra hours and experience payment.<sup>8</sup>

Therefore, it became impossible for almost 20,000 teachers to resort to the jurisdiction

### **3.4. Attitude of Public and Political Bodies Towards The Cancellation of Work Permits**

Approximately 20,000 teachers made calls and requests to public authorities for the mentioned situation. There is a tendency that about only the leader of the governing party will decide and announce whether there will be a judicial remedy about any topic or not. President Erdogan

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<sup>6</sup> Please check out for the evaluation regarding to the independence of the supreme board of judges and prosecutors in Turkey: Uluslararası Hukukçular Birliği, Türkiye: Yargı Sistemi Tehlike Altında, Haziran 2016 ve Avrupa Komisyonu Komisyon Çalışma Belgesi: 2018 Türkiye Raporu, 17 Nisan 2018.

(Opinion No. 875/2017) (According to the commission, “The constitutional remedy which has the potential risk of leading to an authoritarian, one man presidential system is against democratic regime according to separation of powers principle. In the view of the concerns existing for a long time about Turkish jurisdiction is not independent, with the new supreme board of judges and prosecutors, where almost half of the members (6/13) are delegated by the President, the control power of jurisdiction on execution, which is already impotent, will even weaken more.”)

(Europe Council Human Rights commissioner Nils Muiznieks stated in 06/07/2017 “New Council of Judges and Prosecutors does not offer adequate safeguards for the independence of the judiciary”

<sup>7</sup> Constitutional Court

decision [https://drive.google.com/file/d/0BxCYXmeNe\\_fV1pESzNacnUwYm8/view](https://drive.google.com/file/d/0BxCYXmeNe_fV1pESzNacnUwYm8/view)

<sup>8</sup> Very Important Decision from the Court of Cassation? on Employees in Institutions Closed with Decree Laws

responded to these calls from the people regarding to the situation by stating “Teachers can work in other areas but education and there is nothing to do about this matter”.<sup>9</sup>

Deputy Gergerlioglu sent a letter about the teachers, whose work permits were cancelled, to the Ministry of Education. The Ministry of Education responded in their letter “As of September 5th, 2018, the work permits of 19,962 personnels, who worked in the institutions shut down, have been cancelled, the work permits of the ones, who were acquitted with court decisions, have been activated”.<sup>10</sup>

Even though there was no criminal investigation against them, 19,000 people were accused of being members of a terrorist organization by authorities. These public authorities considered employment in a closed institution as a terror act.

Various platforms have been established in order to publicize the grievances throughout the country. Although awareness has been raised tried to create, as a result of the attitude of the judiciary and public authorities, grievances have not been resolved.<sup>11</sup>

Deputy Director Kemal Kaş, whose work permit was canceled, was still unable to receive a salary and unemployment benefits. In a sense, when the bread was taken from their hands, they were left hungry with their children.

In his speech at the Human Rights Panel on 15 July, he said “They ask these many people are unemployed, what will happen to them? Why should we care? Let them work for the private sector. Will the government feed them?”

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<sup>9</sup> <http://www.diken.com.tr/erdogandan-atanamayan-ogretmenlere-kendinizi-sadece-ogretmenlige-kitlemeyin/>

<sup>10</sup> <https://www.internethaber.com/fetoden-beraat-eden-ogretmenlerle-ilgili-mebden-aciklama-1908876h.htm> (14) AGGRIEVED TEACHERS of the CLOSED SCHOOLS

<https://www.change.org/p/milli-e%C4%9Fitim-bakanli%C4%9Fikapatilan-okullarin-ma%C4%9Fdur-%C3%B6%C4%9Fretmenleri>

Karar <https://www.kamupersoneli.net/kamu-personelleri/yargitay-dan-khk-larla-kapatilan-kurumlarda-calisanlar-h21094.html>

<sup>11</sup> (After losing their jobs) Many teachers’ houses were being taken due to debts, credit cards debts, consumer credit debts got higher and higher, and creditors showed up on their doorstep; many friends entered the psychological crisis. Our concerns are that suicides, divorces and other family disasters will occur. Many teachers have great difficulties in sending their children to school and paying for their expenses. However, we have no fault, no sin. Why work permissions are not granted. As stated by our President, the horse trail should be separated from the dog trail.” said Kemal Kas and explained how they were victimized. For the related post <https://www.sozcu.com.tr/2016/gundem/son-dakika-haberi/kapatilan-okulun-ogretmenleriekmegimiz-elimizden-alindi-1425462/>

### **3.5. Being Unemployed**

22.474 people lost their jobs after the closure of private education institutions with the Decree Law no. 667. As they became unemployed, their salaries were cut, and they were left financially unable to recover. Due to the minimum wage of the teachers working in the country compulsory living expenses have become unbearable.

Assignments of all the teachers in Turkey are done by the Ministry of Education because the educational institutions, including the private sector, are under the Ministry of Education. For those teachers of whom work permits were cancelled, their information was entered into the institutions system which made the possibility of working for any other institutions practically impossible. It was also impossible for teachers who graduated from teaching universities, those with work experience, teaching certifications and those who were teachers but had no degrees in other professions to find work.

### **3.6. Considering to Work in a Shut Down Institution as a Crime**

According to the Government, especially after the July 15, 2016 attempted coup, the activities of the Hizmet Movement pointed to them being responsible for the coup and labeling them a “terrorist group”. Being an educational institution employee of any of the closed institutions was considered to be an important clue for being a member of a terrorist organization by political and members of the judiciary.

The fact that only members of the Hizmet Movement could not be established in the ties of further organizational Networks, that their organizational action could not be established, and the fact that they had only been employed by the closed institution was used as a causal link against some 20,000 innocents and was taken as a criterion to lynch people who were apart of the closed institution.<sup>12</sup>

(Prime minister Binali Yildirim said regarding to the detentions and reasonable doubt and crime investigations after the July 15th, 2016 coup attempt in a live program of CNN Turk TV channel in August 2nd, 2016 “We’ll catch them and they will prove that they are innocent”.

Even though to work in the private educational institutions before they were shut down is not banned, the employees who had been working there while there was no ban has been blacklisted as criminals. Thousands of people have been exposed to unfair treatment and right violations

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<sup>12</sup> 04/25/1996 / 22621 Resmi Gazete - 96/8041 Numbered Decision



such as being blacklisted, accused of being member of terrorist organizations, detention, their bank balances being seized, torture with the accusation of working in those schools.<sup>13</sup>

### **3.7. Evaluation of Considering to Work in a Shut Down Institution as a Crime According to National and International Laws**

According to the content of statutory decrees made after July 15<sup>th</sup> coup attempt by Ministers Committee, it was banned to carry on activities of the institutions "...which were considered by the National Security Agency as related and connected to ones carrying on activities against the national security of the state"

To change the context determined by upper norms or to create new rules by making additions to these norms by statutory decrees and memorandums, predicting new conditions, to assign a new fundamental function such as determining the context will be against the state of law principle for not being complied with determination with legal security principle, necessity of arbitrary treatment not being implemented by administration and obligation of complying with upper norms.

A state of law is responsible to set legal security policy, which is to predict legal norms, for people to trust to their government with all their acts and issues, and it's the shared values that government does not damage that trust with its actions. Many basic human rights have been violated with an accusation of 'have done work at companies/businesses which were shut down with statutory decrees' on indictments. By According to the Turkish constitution, everyone has contract freedom alongside work and business freedom. Tens of thousands of people have worked at those shut down companies which are about 2,500. It is a conflict of state of law that working at the business which started with collaborating codes and laws, have worked with all legal requirements and were not forbidden while doing business and audited by related state departments, to be considered a crime. It is against a common law principle of 'privacy of contract' when commenting the accusations of shut-down business' can be at their workers.

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<sup>13</sup> A teacher who worked at a private school which was shut down by a statutory decree during the investigation of Fetullahist Terrorist Organization/ Parallel State Structure (FETO/PDY), was arrested and sent to prison in the city of Gaziantep.

With an investigation of Fetullahist Terrorist Organization/ Parallel State Structure (FETO/PDY), a person who taught at a private school which was shut down by statutory decree, was taken into custody. That person, later, was arrested and sent to prison by Criminal Court of Peace on Duty.

<https://www.memurlar.net/haber/725795/feto-okulunda-ogretmenlik-yapan-bir-kisi-tutuklandi.html>

The people who work at these businesses got their contract to start and they go to work with guidelines while they pay their social security premiums. Working at a company does not constitute to support or to have the same opinions about owner/s or director/s of the company.

There is no definite conclusion of a jurisdiction about the Hizmet Gulen Movement of being a terrorist organization, however, even if it is considered as a terrorist organization, it cannot be a terrorist organization membership accusation for people who gets benefit from or through these businesses. It just would not be enough to indict people who benefited from these businesses even if there is a verdict, it needs to have the accused individual needs to have knowledge of these businesses' doing terror actions and be involved into these organizations intentionally, with simplest terms he/she needs to have a willpower of participation under TCK 39. (Turkish Penal Code). If there is no evidence or verdict, the accusation of a member of a terror organization because of working at a shut down business, it is a clear justice violation.

#### **4. Recommendations**

- 1- Cancellation of state of emergency conditions and making necessary judicial remedies<sup>34</sup>
- 2-Making necessary judicial remedies which guarantees independence of legislative and judicial power<sup>35</sup>
- 3-Government's fair treatment towards all people by giving up targeting a religious group. <sup>36</sup>
- 4-Giving work permits by cancelling the cancellation of work permits
- 5-Compensating financial and moral damages for the ones who cannot work<sup>37</sup>
- 6- Making Judicial Remedy Available for Cancellation of Work Permit Cases
- 7-To consider to work in an institution shut down by a statutory decree is not a crime

8-Because the anti terror law is permissive to arbitrary treatment, it should be modified aligned with international agreements and Europe Union laws. \*

9- To stop tortures and to provide prosecution for the civil servants who torture.

10-The seized assets of the shut down 1065 private schools, over 800 prep schools, 848 student dorms and 361 other educational institutions have to be given back or their damages have to be legally compensated .

## **ADDITIONAL REFERENCES**

1. Memorandum Regarding to Effects of Precautions Taken As Part of Turkey State of Emergency Conditions on Human Rights

[http://www.un.org.tr/humanrights/images/OHCHR\\_Turkiye\\_Rapor\\_2018\\_TR.pdf](http://www.un.org.tr/humanrights/images/OHCHR_Turkiye_Rapor_2018_TR.pdf)

2. Report on the Effects of the Turkey State of Emergency on Human Rights and Update about the Conditions of Southeast of Turkey(December-January 2017)

[https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2016/10/26/AK\\_Insan\\_Haklari\\_Komiseri\\_Memorandum\\_TR.pdf](https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2016/10/26/AK_Insan_Haklari_Komiseri_Memorandum_TR.pdf)

[http://www.un.org.tr/humanrights/images/OHCHR\\_Turkiye\\_Rapor\\_2018\\_TR.pdf](http://www.un.org.tr/humanrights/images/OHCHR_Turkiye_Rapor_2018_TR.pdf)

3. Council of Human Rights 36th Session

Opening statement, Zeid Ra'ad Al Hussein, Upper Level Chief of United Nations Human Rights Council

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID>

4. Report on Effects of State of Emergency on Human Rights in Turkey and Update about the Conditions of Southeast of Turkey: “Cancelling the public employment ban against the dismissed civil servants, inspecting the cases about the people who lost their jobs from being dismissed from private sector and from the private institutions’ being shut down by judicial and executive parties in accordance with international standards and recognizing the rights for the damages they are exposed by arbitrary treatment to be financially and morally compensated”

[http://www.un.org.tr/humanrights/images/OHCHR\\_Turkiye\\_Rapor\\_2018\\_TR.pdf](http://www.un.org.tr/humanrights/images/OHCHR_Turkiye_Rapor_2018_TR.pdf)

5. Memorandum about Freedom of Speech and Independence of Media in Turkey, Strazburg, February 15th, 2017

CommDH(2017)5

<https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=58c68af74>