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Introduction

This report analyzes victimization of more than 138.000 students and parents of the private schools shut down after the state of emergency decree laws that Republic of Turkey introduced after the July 15, 2016. The violation of education rights of more than 138.000 students and parents, finding them inconvenient by blacklisting, exposing them to allegations of membership in a terrorist organization, violation of working and other rights, detention, arresting, torture.

This report analyzes the violations of rights, social, economic and social grievances of the Turkish public and judicial authorities as a result of unlawful transactions against the Hizmet movement and the students and parents of the educational institution in particular.

Right to Education in National and International Regulations

The right to education is defined in documents adopted by organizations such as the United Nations Organization, the United Nations Educational, Scientific and Cultural Organization, the Council of Europe and the Organization for Security and Cooperation in Europe, and is assured by many international and regional declarations, agreements, advice, decisions, norms

The right to education is guaranteed in Article 42 of the Constitution - national legal regulation.

- In the Annex 1 to the European Convention on Human Rights the right to education under Article 2 of the Protocol (20.03.1952, Paris), it is stated that "The state respects the right of parents to request that their children be given education and training in accordance with their religious and philosophical beliefs in the performance of their duties in the field of education and training."

- UN Civil and Political Rights Convention (1966); Law of Approval 21.07.2003, Official Gazette No. 25175.

- UN International Covenant on Economic, Social and Cultural Rights (1966); Law of Approval 11.08.2003, Official Gazette No. 25196.

- UN Convention on the Rights of the Child (1989), Law of Approval 11.12.1994, Official Gazette No. 22138.

- UN International Convention on the Elimination of All Forms of Racial Discrimination (1965), Law of Approval 16.06.2002, Official Gazette No. 24787.

-European Convention on the Protection of Fundamental Rights and Freedoms (1950), Law of Approval 18.05.1954, Official Gazette No. 8662

The Status of Private Educational Institutions affiliated with Hizmet Movement

There were about 2300 education institutions such as university preparations courses, colleges, dormitories, and universities affiliated with the Hizmet movement. The demand for these institutions was very high and these institutions had very high success rates throughout the

country. These institutions always won the first place in the entrance exams to high schools and universities in the country and achieved high success rates. They had high demand by the public, politics and bureaucracy to send their children to these institutions for education. They have achieved high success in national and international science olympics. High dedication and experiences of the school teachers were behind the high success of both students and parents.

Closure of Special Educational Institutions with Extraordinary State Decrees Issued after July 15, 2016 Coup

After the 17/25 corruption operations to Ak Party government in 2014, the government oppressed and restricted the Hizmet members and its institutions especially private educational institutions in particular. After the coup attempt on July 15, 2016, the government showed the Hizmet movement as responsible for the coup to both the public authorities and the public and announced the Hizmet movement as terrorist organization and all the movable goods, buildings and facilities and all kinds of assets their properties were transferred to the state by confiscating without any judicial decision. The determination of institutions to be shut down were determined with the illegal fictitious conducts of intelligence units. Following the July 15 coup attempt, a total of 2,274 institutions were closed, including 1065 private schools, 361 other private education institutions and 848 private dormitories.¹

¹ Decree Law No. 667 ARTICLE 2 - It is determined that being a member to the Fethullah Terrorist Organization (FETÖ / PDY) which is determined to constitute a threat to national security;

Private education institutions and organizations and private student dormitories and hostels listed in the attached list (II),

Higher education institutions in the list (IV) attached,

All kinds of movable and immovable properties of the closed foundations and all kinds of assets, receivables and rights, documents and documents are deemed to be transferred to the General Directorate of Foundations free of charge.

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

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Following the closure of special education institutions operating with the permission provided by the Ministry of National Education General Directorate of Private Education Institutions, the working licenses of these institutions (kindergarten, elementary school, secondary school and high school, courses and student dormitories) have been revoked by a circular letter, and the licenses of these workers were canceled and their working in another educational institutions is forbidden. The number of people affected by this arrangement is approximately 22 thousand 474.

Following the closure of special education institutions operating with the permission provided by the General Directorate of Private Education Institutions, the education of students studying in these institutions (kindergarten, primary, secondary and high school, courses and student dormitories) was terminated. The number of students affected by this arrangement is 138 thousands.²

Violation of The Principle of Rule of Law / Rule of Law State in Accordance with Article 15 of the European Convention on Human Rights and the Suspension of Obligations in Extraordinary Situations by Decree-Laws Regarding the Closure of Schools

Following the 15 July coup attempt, the education rights of the students in these institutions was violated by the state of emergency declared on 21 July 2016 by the Council of Ministers convened under the chairmanship of the President without any judicial decision and without any criminal charge against them. During the declared emergency; According to Article 15 of the Constitution "Stopping the exercise of fundamental rights and freedoms with the Article 15" Suspending obligations in extraordinary situations in of the European Convention on Human

Mandates of the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association REFERENCE: AL TUR 4/2017

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23015>

² Ministry of National Education Undersecretary Yusuf Tekin press release

<http://www.hurriyet.com.tr/gundem/mebden-flas-aciklama-kapatilan-okullardaki-ogrenciler-40159029>

Rights, the principle of law state / rule of law ” cannot be suspended and the measures taken will not cause any victimization.

Within this framework, the fact that students and parents who do not have any connection with any terrorist organization, were victimized because of the closure of the schools shows that the Decree Laws are contrary to international legal regulations.

The Effects of Closure of Private Education Institutions on Students through State of Emergency Decree Laws and Violations of Rights

After the closure of educational institutions, around 138,000 students experienced uncertainty during the new education semester.

It decided by the Ministry of National Education that the enrollment of around 138,000 students be made to public schools. This situation has brought many problems. According to the data of the Ministry of National Education, the number of students benefiting from formal education is 17 million 559 thousand 989 from 17 million 588 thousand 958.³ The shortage of teachers in the Public (Government) Schools was 144 thousand 643 teachers when the report was written in 2019.

33,128 teachers; 5,328 academics and 1194 administrative staff working under the Ministry of National Education (MoH) were expelled from their works with the Emergency State Decree Laws. In the same period, 24 thousand 490 teachers were again suspended unlawfully.³

³ The number of students benefiting from formal education rose from 17 million 559 thousand 989 to 17 million 588 thousand 958.

<http://www.meb.gov.tr/ogrenci-sayisi-17-milyon-588-bine-yukseldi/haber/10675/tr%20adresinden%2031.01.2017>

Eğitim-Bir-Sen announced Education Overview: 2018 Monitoring and Evaluation Report. According to the report, Turkey's teacher needs 144 thousand 643.

Considering that the education system is supported not only by teachers but also by administrative staff, around 1200 administrative staff have been exported and administrative structure has become dysfunctional in the education system.

33 thousand teachers and 1194 administrative personnel were purged from the education system and 138 thousand students were included in the same system.

In this case, expelling of 33 thousand teachers and 1194 administrative personnel without judicial decision from the education system where there are a shortage of 144 thousand teachers and the inclusion of around 138 thousand students has created irreparable problems in education.

Thus, 138 thousand students directly, and 17 million students indirectly suffered in education with the increase in the quota school-class capacities. Since the current shortage of teachers in national education is 144 thousand, the number of teachers purged is 33 thousand and the number of teachers whose work permits have been revoked is about 22 thousand, the current

<https://www.ebs.org.tr/manset/4783/-egitime-bakis-2018-izleme-ve-degerlendirme-raporu-muzu-acikladik>

Eğitim-Sen 2016-2017 Education Report

<http://egitimsen.org.tr/wp-content/uploads/2017/06/E%C4%9Fitimin-Durumu-Raporu-8-Haziran-2017.pdf>

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Mandates of the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association REFERENCE: AL TUR 4/2017

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23015>

education system continues with a deficit of 199 thousand teachers. the teacher has become unfunctional where there is a shortage of administrative staff and 9% increase in the number students and basic education rights of students was violated. The government has not yet made any legal arrangements for the solution of the problem.

Violation of Protection, Development and Protection of the Right under the United Nations Convention on the Rights of the Child

The schools were shut down with the Extraordinary State Decree for alleged liaison with terrorist organization. Following the July 15 coup attempt, public authorities held the Hizmet movement responsible for the coup attempt without a judicial decision and, in particular, without a final judicial decision, and the coup attempt had a heavy impact on the public by means of media. Hizmet members were treated as terrorist organization members by the public, judiciary and community. The closed private school students were also psychologically affected by the sudden closure of their schools on the allegations of terrorist organization. With this attitude of the government, children were affected the most. Hundreds of thousands of children tried to continue their education life with negative emotions such as helplessness, shame, guilt, timidity-cowardice, anxiety, anger, fragility, insecurity, worthlessness, meaninglessness. Children's innocence was not taken into account by education experts and no studies were conducted to express the innocence of children. On the contrary, the booklet called 15 July Coup Attempt which shows the Hizmet Movement as terrorist Organization was distributed to students aged 5-6-7-8 year-old children and high school students. The students whose school shut down and came to government school had severe traumas like guilt.

Especially for children whose parents were expelled from the public offices and included in formal education, school administrations and guidance services did not do any work and caused the psychological damage to be increased.

In both international conventions and the Constitution, Laws, Regulations and circulars especially in the United Nations Convention on the Rights of the Child provisions for the best

interests of the child” are stated. During the expulsions in the public sector, no work has been carried out on the children, students of the education laborers whose parents or teachers have been expelled from the profession or arrested for various reasons, and hundreds of thousands of children and young people have been formally punished, even though they have no responsibility in the events.⁶

Thus, the right to life, the right to development and the right to protection have been violated in the context of the principle that children's physical and mental integrity cannot be touched.

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The students who graduated from the closed universities could not get a graduation certificate due to the closure of the university and were discriminated at their new universities where they were transferred. Only 11 out of a hundred graduates of Melikşah University students which was closed down with the Decree Law were accepted for graduation, the rest of the others' graduation was not accepted without justification.⁴

Effects of Closure of the Schools by means of Emergency State Decree Laws on Parents

The fact that more than 138 thousand students are deprived of the right to education is a violation of the right to education for parents. Annex 1 in the European Convention on Human Rights the right to education under Article 2 of the Protocol (20.03.1952, Paris); no one shall be deprived of the right of education. The state respects the right of parents to request that their children be given education and training in accordance with their religious and philosophical beliefs in the fulfillment of their duties in education and training. The rights of parents who are not subject to any investigation have also been violated in accordance with their religious and philosophical beliefs.

⁴ <http://egitimsen.org.tr/2016-2017-egitim-ogretim-yili-sonunda-egitimin-durumu/>
<http://egitimsen.org.tr/wp-content/uploads/2017/07/OHAL-ve-KHKlar%C4%B1n-E%C4%9Fitim-ve-Bilim-Emek%C3%A7ilerine-Etkileri-Raporu-son.pdf>

Melikşah's students were graduated by looking at investigation reports.

<http://www.tr724.com/meliksahin-ogrencileri-fisleme-belgesine-bakilarak-mezun-edildi/>

As a matter of fact, the schools were shut down by the Decree Laws not by the judgment. According to The United Nations Human Rights Universal Declaration (art. 11), and the Constitution of Turkey (art 38), "No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed."

Parents had sent their children to these schools as the schools had license and inspected by the government and within the scope of right to school. Despite the fact that parenting relationship with the school, whose activity has not been discontinued, does not give rise to the responsibility of criminal law and never constitutes the basis of the accusation with membership of a terrorist organization, the principle of unlawful crime and non-criminality and the presumption of innocence are violated.

Recommendations

- 1- Abolition of emergency conditions¹³ and making the necessary legal arrangements¹⁴
- 2- Making legal arrangements to ensure the independence of the legislative and judicial forces ¹⁵
- 3-The government should stop targeting a particular religious group and treat everyone equally.¹⁶
- 4- Concrete arrangements should be made urgently for the education system, which becomes dysfunctional by the shortage of teachers and the closure of schools.
- 5- Covering pecuniary loss and intangible damages of those who cannot work.¹⁷
- 6- Arrangements should be made to ensure the survival and protection and development of children and to ensure that they are not subjected to any discrimination.
- 7-States under the Convention should take necessary measures for the child's physical, mental, spiritual, moral, psychological and social development in accordance with the dignity of the human being, and the child as a free individual in society.
- 8- Decommisioning the law to be criminal for being a student or being a parent at the institutions closed by the Decree Law.
- 9- Since the Anti-Terror Law is open to arbitrary practices, it should be brought into line with international conventions and European Union laws. ¹⁸
- 10- Closed 1,065 private schools, more than 800 university preparation courses, 848 dormitories and 361 other educational institutions should be returned back or their damages should be compensated, their educational activities should be resumed and necessary legal arrangements should be made.
- 11- Pecuniary loss and intangible damages of the parents who send their children to school in accordance with the law should be covered.

Additional References

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http://www.un.org.tr/humanrights/images/OHCHR_Turkiye_Rapor_2018_TR.pdf

2. Report on the impact of the state of emergency on human rights in Turkey and update on the situation in southeastern Turkey from January to December 2017

http://www.un.org.tr/humanrights/images/OHCHR_Turkiye_Rapor_2018_TR.pdf

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

3. Report on the impact of the state of emergency on human rights in Turkey and update on the situation in southeastern Turkey: "Abolition of the prohibition on civil service to the purged officers; examining of the cases of persons - who have been expelled from the public and private sectors or who have lost their jobs due to the closure of private organizations - by an independent judicial and administrative body in accordance with international standards and the recognition of the rights to compensation for the pecuniary and non-pecuniary damages caused by arbitrary expulsions.

http://www.un.org.tr/humanrights/images/OHCHR_Turkiye_Rapor_2018_TR.pdf

4. Memorandum about freedom of expression and media freedom in Turkey, Strasbourg February 15, 2017 CommDH (2017)

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

5. <http://www.resmigazete.gov.tr/eskiler/2016/08/20160817-17.htm>

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