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State of Emergency in Turkey (July 2016-July 2018): A Case of Utilization of Law as a Political Instrument

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***Abstract*—**In this study, we will aim to analyze how the period of the state of emergency in Turkey lead to gaps of law and the formation of areas in which there was a complete lack of supervision. The state of emergency that was proclaimed following the coup attempt of July 15, 2016, continued until July 18, 2018, that is to say, 2 years, without taking into account whether the initial circumstances persisted. As part of this work, we claim that the state of emergency provided the executive power with important tools for governing, which it took constant use. We can highlight how the concern for security at the center of the basic considerations of the people in a city was exploited as a foundation by the military power in Turkey to interfere in the political, legal and social spheres. The constitutions of 1924, 1961 and 1982 entrusted the army with the role of protector of the integrity of the state. This became an instrument at the hands of the military to legitimize their interventions in the name of public security. Its interventions in the political field are indeed politically motivated. The constitution, the legislative and regulatory systems are modified and monopolized by the military power that dominates the legislative, regulatory and judicial power, leading to a state of exception. With the political convulsions over a decade, the government was able to usurp the instrument called the state of exception. In particular, the decree-laws of the state of emergency, which the executive makes frequent and generally abusive use, became instruments in the hands of the government to take measures that it wishes to escape from the rules and the pre-established control mechanisms. Thus the struggle against the political opposition becomes more unbalanced and destructive. To this must also be added the ineffectiveness of ex-post controls and domestic remedies. This research allows us to stress how a legal concept such as "the state of emergency" can be politically exploited to make it a legal weapon that continues to produce victims.

***Keywords*—**State of emergency, emergency decree-laws, constitutional law, instrumentalization of law, human rights.

I. Introduction

ETYMOLOGICALLY, the term "urgency" comes from the Latin *urgens* which means pressing, urgent, the present participle of *urgere*, making hurry. The state of emergency designates an exceptional regime, set up by a government, in the event of a severe breach of public order, serious disturbances or national calamities. It results in a strengthening of the powers of the administrative authority, in particular, the police powers, restrictions on public or individual freedoms for people considered to be dangerous. Even if it is stipulated by law, the state of emergency is a parenthesis of the rule of law, for the benefit of the maintenance of public order.

In the Turkish Constitution of 1982, the state of emergency is addressed in article 120 which states that *« In the event of the emergence of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairmanship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months.*"

When we compare the period in which the 1961 Constitution was in force and that following the entry into force of the 1982 Constitution (the Constitution in effect) it is possible to note a decline starting from 1982 concerning its function of protection of fundamental rights and freedoms. The fundamental reason for this decline is, according to Yokuş [1], a reflection of the logic of the emergency regime at the Constitutional Court during the period of drafting the Constitution [2].

The 1982 Constitution provides a system of limitation of rights and freedoms during the state of emergency which does not give the possibility of constitutional control. These obstacles to control, such as the impossibility of an action for annulment against decrees, void the guarantee of control. However, there are criteria and principles laid down in article 15 of the Constitution regarding the limitation of rights and freedoms during the state of emergency. The Constitutional Court uses Article 15 of the European Convention on Human Rights (hereafter *Convention*) as a source and draws a parallel with Article 15 of the Constitution by stating that there are also limitations that must be taken into account when it limits a right or freedom. However, the proportionality test must be respected, the restriction must not affect the obligations arising from international law and the core of the rights mentioned in the second paragraph of Article 15 [3].

In order to understand the advent of the permanent state of emergency regime, we need to focus on the army in Turkey which has a preponderant role in the political field, social life, justice with its privileges and whose place is rooted in society in a country with constant military interventions.

However, we should not ignore the fact that this situation did not happen overnight, that it is based on a gradual path. Since the 1960s, military interventions that have taken place almost every decade, and most recently the coup attempt of July 15, 2016, have led first to the proclamation of the state of emergency, which however transformed into a permanent state of emergency which has been established for an indefinite period.

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The Turkish armed forces considered that it was not necessary to rely on politics or the people when it came to the management of crises concerning the state, giving as an example the experience lived before September 12, 1980. This is why the army considered itself for a long time to be the protector of democracy and the republic.

Foremost, the proclamation of a state of emergency did not only mean the implementation of a provision of the Constitution. According to Mithat Sancar [4], this exceptional situation became permanent due to the vision of the political scene within the framework of a distinction "ally and enemy", thus the country remained continuously in the period of the state of emergency.

At the Security Council meeting of July 26, 2000, it was evident that the military was supporting negotiations for membership of the European Union [5]. From the Helsinki meeting in which Turkey's application for European Union membership was accepted, the military withdrew from certain areas of civil policy intervention by its wish. For example, among the members of the Security Council, a majority of civilians have been established. Furthermore, the decisions of the Council lost some of their influence by being downgraded to a consultative status, which was to be evaluated by the Council of Ministers [6]. On the other hand, the state of emergency became less and less resorted but the Security Council continued to be the operational organ of state policy as being part of the centre for the coordination of periods of crisis.

We cannot, however, defend the argument that the civilian government obtained all the control of the political field with the change in the composition of the Security Council or the end of the state of emergency. On the contrary, it would be fairer to say that the army by its own wish, has withdrawn from specific fields. Because it is still evident that the decision to end the state of emergency was not only taken by the civilian government itself but was the result of a process guided by the Armed Forces.

A state of emergency is not always an exceptional practice in modern states. States can make it an integral part of "normal" law in cases where the crisis is linked to the concern for security. Furthermore, it is possible that in several situations, the practices of the state of emergency are implemented without the proclamation of the state of emergency. We can give as an example the periods in which the law is suspended to thwart a popular protest on the grounds of guaranteeing public security. This situation has been repeated several times in Turkey, for example, in 2002, the state of emergency ended but was included in the ordinary system and law so could be used in times of crisis when a threat appeared. Before the period of July 15, 2016, we can give the example of the government's reaction to the Gezi events. Fundamental rights and freedoms have been suspended, competence allowing discretionary and violent acts have been entrusted to the police, which reminds us of the periods of the state of emergency, even if it was not officially declared.

This point of view, which considers as a threat not only armed groups and states but also individuals and collective civil demonstrations, broadens the concept of "national security". Thus, application of the state of emergency becomes the new normal. In a perspective where the categorization of enemy or threat becomes vague and uncertain, the applications presented as preventive help to normalize the regime of the state of emergency.

Among these applications, in particular, the emergency decree-laws, which the executive makes frequent and generally abusive use, became instruments in the hands of the government to take measures that it wishes to escape from the rules and the pre-established control mechanisms.

The competence to adopt decree laws rests on the idea of strengthening the executive body [7]. In the period of the Constitution Act of 1876 [8] when there was strong executive power, it was necessary to give the government the power to adopt acts that had the force of law. During the period of parliamentary government between the years 1921-1924, it was not possible to give the government the power to adopt decree-laws. On the other hand, following the economic crisis of the 1930s, which had devastating effects all over the world, it was necessary to grant the government exceptional powers. After all, the abuse of this competence during the constitutional monarchy led the drafters of the constitution not to give way to the institution of decree-laws. However, following the finding of the weakness of the executive body during the period of the 1961 Constitution, the concept of decree-law entered the Constitution with the modification which was made in 1971. Still, this modification also failed to improve the weak executive position.

As a result of the efforts made to fill this gap, in the 1982 Constitution the concept of the legislative decree has a more prominent place and is governed in great detail. The most remarkable feature of this Constitution is that it overturns the balance between the executive and the legislature to the detriment of the latter and that between fundamental rights and freedoms and authority, to the detriment of freedoms [9]. This Constitution continues to strengthen the place of the executive, like that of 1961, by recognizing the executive's competence to adopt emergency decree-laws.

The most substantial reform of the 1982 Constitution concerns the exceptional periods. It considerably multiplies the bases for declaring a state of emergency or a state of siege. During this period, the Council of Ministers, which meets under the chairmanship of the President of the Republic, has the power to regulate all matters relating to the state of emergency or the state of siege, with the decree-laws that it will adopt. Besides, the limitation of matters which may be the subject of an ordinary legislative decree does not apply to decree-laws for exceptional periods. In that case, the executive body, with the emergency decree-laws or the state of siege, will be able to regulate all the matters which it considers necessary, even will be able to limit totally or partially the enjoyment of the fundamental rights and freedoms by contradicting the guarantees presented by the Constitution. We can even put forward the idea that the 1982 Constitution contains two disparate Constitutions within it, that which governs regular periods and that which governs extraordinary periods [10].

Also, certain limitations made to these exceptional decree-laws such as "matters related to the state of emergency" or "insofar as circumstances require", lose their effectiveness due to their judicial uncontrollability, because these decree-laws are exempt from control by the Constitutional Court, but also by other existing channels. Even if the political control of the Parliament is planned, in practice, it is only a formality because in the existing political system the party in government holds the majority in the Parliament. We can criticize this point by defending that the quest to make the executive organ stronger, at the same time contradicts the rule of law, by depriving these decree-laws of judicial control during a period when rights and freedoms are limited or suspended.

For a more in-depth analysis, it would be useful to study in two separate titles the adoption and the control of these emergency decree-laws because there are essential points to underline in the two stages.

II. The Adoption of Emergency Decree-Laws

The adoption of emergency decree-laws poses two significant problems. First, it contradicts the Constitution and the Convention on several aspects, then what is worrying is the fact that no mechanism for monitoring these decree-laws is operational during the period of the state of emergency.

A. The Adoption of the Emergency Decree-Laws Contradicting the Constitution and the European Convention on Human Rights

On the one hand, the constitutionality of most decree-laws is questioned for their form and, on the other hand, the measures taken by most decree-laws are neither compatible with the Constitution nor with the Convention having regard to the restrictions which have gone as far as the destruction of human rights [11].

Concerning the form of these decree-laws, this is a question of violation of the regulatory nature of legislative decrees. The meeting of the Council of Ministers under the presidency of the President of the Republic is a condition. Regarding decisions to purge civil servants or the closure of institutions, the provisions of the Civil Servants Code have not been applied. As for the closure of associations, radio and television channels, neither the Code of Associations nor the Code of Institution and Publication of Radios and Televisions was respected.

Furthermore, the rule which is the foundation of the measure on which the purge is based is an unpredictable rule. In the legislative decree, it is specified that appeals are made against measures taken within the framework of a legislative decree concerning persons on whom there are reasonable doubts that they have an affiliation, a link, a membership or contact with terrorist networks or groups or entities that operate to the detriment of national security. On the other hand, in none of the decree-laws is it explained what is to be understood by "groups or entities which behave to the detriment of national security".

These people who are accused of having a connection with groups or entities cannot have any idea on the origin of the charges because these groups or entities are not specified. This situation contradicts article 38 of the Constitution which provides that "*No one shall be compelled to make a statement that would incriminate himself or his legal next of kin, or to present such incriminating evidence.*" It also contradicts, even if it is not specified in the Convention, the right to remain silent and the impossibility of being forced to defend oneself.

However, the form of these decree-laws is not the only problem that must be underlined. First, in article 120 of the Constitution, it is stated that the measures required by the situation must be sought with the aim of proclaiming a state of emergency, "*acts of violence aimed at the destruction of the free democratic order established by the Constitution…* " Then, another constraint is to respect the obligations deriving from international law; these obligations must be sought first of all in the Convention, especially in its article 15. On the other hand, most measures are far from respecting these criteria because they are massive and generalized sanctions [12].

The restrictions and limitations introduced regarding the rights of the defense infringe the right to a fair trial and the hardcore of human rights guaranteed by article 15 of the Constitution and the Convention.

Another critical point to mention is that the measures must remain within the scope of the proclamation of a state of emergency. On the other hand, we can see that the measures have extended to political opponents who have no connection with the attempted coup.

As for the duration of the measures taken within the framework of the state of emergency, according to the last sentence of article 15/3 of the Convention, there is a time limit; these measures are provisional and limited by the duration of the regime of the emergency state. On the other hand, we note that most of the measures are intended to have their effects in the long term; they will continue to have their effects beyond the end of the state of emergency.

B. The Complete Lack of Control of the Emergency Decree-Laws

This non-limitation of power is also formed in the context of emergency decree-laws which are not subject to any control because they give unlimited discretionary power to the authority which adopts them.

The control of the state of emergency regime is carried out in two main stages. Firstly, it is the declaration of the state of emergency and the control carried out by the Parliament on this decision. Then there is the review of the legality of the measures taken during the state of emergency and that of the decisions of civil servants when they govern the period of the state of emergency. We will focus in particular on the control of emergency decree-laws.

Law decrees of the state of emergency cannot be subjected to a review of constitutionality according to the provision of the Constitution contrary to the ordinary decree-laws. The prohibition of judicial review of emergency decree-laws by article 148 [13] of the Constitution renders the constitutional limits ineffective and insignificant concerning these decree-laws. Above all, it will not be possible to control whether the decree-law exceeds the limits established by article 15 of the Constitution, and the guarantees posed by these articles will

have no practical and valuable effect. Supposing that these decree-laws are exempt from any judicial control, the executive body will be able to implement regulations which are undoubtedly contrary to the Constitution without taking into account the limitations of the Constitution, under the denomination of "decree-law of state of emergency" [14].

Additionally, in the first paragraph of article 125 of the Constitution, it is specified that "*Recourse to judicial review shall be open against all actions and acts of the administration.* "In paragraph six of the same article, it is provided that "*The law may restrict the issuing of stay of execution orders in cases of state of emergency, martial law, mobilization, and state of war, and for reasons of national security, public order, and public health*." In contrast, we can deduce from this provision that during periods of a state of emergency, the remedies cannot be excluded, but that only the law can bring limitations in matters of stay of execution. From this point of view, emergency decree-laws containing regulations blocking the remedies against the measures of the state of emergency are manifestly contrary to article 125/6 of the Constitution.

First, the decree-law may go beyond regulating fundamental rights and freedoms, but it may be made possible that fundamental rights are limited by the executive. Second, all areas that are supposed to be regulated by law can be regulated by decree-law. Thirdly, due to the impossibility of monitoring emergency decree-laws, several modifications can be made in the legislative field, and the immunities of judges can be waived. Finally, the effectiveness of the entire Constitution can be weakened or destroyed.

We can criticize the interpretation of the Court which supports the uncontrollability of decree-laws based on article 148 and hope for a new reversal in the name of the effectiveness of the letter of the Constitution and the protection of fundamental rights and freedoms. In the same way, the prevailing doctrine in Turkey supports the possibility of the control of these decree-laws at least in the case where they would endanger the hardcore of the fundamental rights which it is forbidden to infringe even in case of war according to the Article 15 of the Constitution. This must be considered as an essential condition for the applicability of Article 148.

III. The Control of Emergency Decree-Laws

We will examine this control by analyzing the ineffectiveness of domestic remedies. This absence of effective domestic remedies is manifested not only by the ineffectiveness of existing instances but also by that of the Commission for the review of measures taken during the state of emergency which was created in 2016 precisely to offer a new effective avenue to victims who cannot find satisfaction by other internal legal remedies.

A. The Neutralization of Domestic Remedies against Emergency Decree-Laws

According to Professor Kaboğlu [15], the government has blocked remedies against the measures taken under the state of emergency. He explains that the Constitutional Court refuses to exercise control over the decree-law of the state of emergency by complaining of being engorged by the vast amount of appeals, so it does not rule on individual appeals [16]. The Council of State, for its part, refers the applicants to the administrative courts concerning appeals against measures of the state of emergency, which paradoxically are deprived of deciding on the measures taken within the framework of the state emergency. We can agree with Kaboğlu's argument on this point, that there is no reliable remedy which guarantees the rights of the victims.

The controlling authority is determined with respect to the body, which adopted the act [17]. The approach which defends that the control of the authority of the act is made by the Council of State [18] is valid for the ordinary decree-laws, but not for the emergency decree-laws, because during the state of emergency it is the Constitutional Court which grants the authority to adopt the decree-law. These types of decree-laws do not require compliance with the rule of act authority as a precondition. Therefore, there is no problem with controlling the authority of the act. Consequently, the review of constitutionality is the only review that can be made regarding the emergency decree-laws. In Turkey, the Council of State has no jurisdiction to review the constitutionality of a legislative decree. If we take into account the fact that the Council of State even refuses to monitor ordinary legislative decrees considering that it is not competent [19], it is obvious that it will refuse to recognize itself as competent with regard to appealing against emergency decree-laws.

Article 148 is strongly criticized by the doctrine. It considers that this provision contradicts the principle of administrative law according to which these regimes of the state of emergency, even if freedoms are further restricted and the powers of the authorities are increased, must remain within the framework of a regime of law.

According to the approach that criticizes this exception, the latter brought to judicial control during the state of emergency forms incentives for other clandestine exceptions. This is a testament to the danger of the existence of an uncontrollable area that is likely to spread and of the ability of the constitutional system to reproduce new prohibitions and uncontrollable areas [20].

B. The Establishment of the Commission for the Review of Measures Taken during the State of Emergency [21] and Its Questionable Effectiveness

As it stands, it is essential to note whether the Commission established is a type of Commission which was envisaged by the organs of the European Council and whether it could be considered as an effective remedy in the light of the case-law of the European Court of Human Rights.

The Commission is far from the standards and criteria laid down by the case-law of the ECHR and by the Venice Commission. It is evident, according to Altıparmak [22] that the objective of this reform is to save time and delay the path of the ECHR.

There are two types of major problems concerning the work of the Commission; we can start with those which relate to its functioning.

According to article 1 paragraph 2 of the decree-law establishing the Commission, it consists of seven members, three of whom are appointed by the Prime Minister, one by the Minister of Justice, one by the Minister of Internal Affairs and one by the Council of Judges and Prosecutors. The authorities appointing the members take these decisions themselves, which are in particular the subject of challenges, highlighting that the principle of independence and impartiality are ignored from the start.

On the other hand, administrative and judicial bodies continue to direct appeals to the "imaginary" [23] Commission, which is struck by inertia. The Commission began to exercise its functions one year after the first closures and ten months after the purges. If we crunch the numbers, the Commission would be able to complete its work in 2 years if it could give the result of 250 files in a single day, which is impossible. It is therefore apparent that specific files would have their decision in at least 3 or 4 years. Concerning those who have been refused their file by the Commission, they will have to initiate appeals in administrative jurisdictions and therefore add 2 or 3 years to this 4-year procedure before the Commission.

There is another aspect of the procedure that has to do with the deadline. The Commission, which is made up of seven people, is expected to study roughly 100,000 files. For each decision, the vote of the four members is imperative; each member must be the rapporteur for the 35 files and must participate in the deliberation and the vote of at least 100 files. As this is not realistic in practice, it is not hard to imagine that the Commission will more often than not render its decision automatically according to the investigation report presented.

According to article 12 of the legislative decree, the staff who will work as rapporteur, then will prepare and study in the first place the files to present them to the Commission are composed of civil servants who are hierarchically dependent on the Prime Minister [24]. However, it is not difficult to understand that this staff has no assurance; the fate of their functions and their decision-making skills depends not on the Commission but the Prime Minister. This picture, in which an institution so dependent on the executive branch examines files that are very political and renders fair and just decisions, is unfortunately not realistic.

The other criticized point concerns the nature of the Commission's decisions, which we will see now. First, the decision is not an annulment. Even if the first measure is declared illegal, it is not deemed to be annulled. This is why we cannot speak of a restoration of the *status quo ante* concerning natural or legal persons.

Secondly, the measure which causes harm to the person is not the decision of the Commission, but the measure referred to by the legislative decree. Jurisdictional procedures are not open concerning measures emanating from a decree-law of the state of emergency. The jurisdictional remedy, which is envisaged by the decree-law is the action for annulment against the decisions of the Commission according to article 12.

This is to say; victims will not be able to have their considerable material damage, resulting from illegal measures, compensated through the Commission. Given these elements, it is quite clear that the decision cannot be considered as an effective remedy.

There is only one remedy available against the Commission's decision. According to Article 11 of the Legislative Decree, an action for annulment may be brought against the decisions of the Commission within the administrative courts of Ankara determined by the Council of Judges and Prosecutors. As can be seen, the appeal can be brought against the Commission's refusal decision, not against the legislative decree which causes the damage in the first place. The legal authority has no jurisdiction to make a decision on the first administrative measure taken. This is why it does not make any sense and has no function to appeal against the Commission's decision.

Another question occurs relating to the legitimacy of the existence of the Commission. According to the Convention, the domestic remedy which must be exhausted is that which exists at the time of the violation. On the other hand, on the date when the purges and closures took place, there was no effective internal remedy. The Commission which is created is in this sense exceptional. It should be noted, however, that the rule of the existence of a remedy at the time of the violation may be qualified and that there may be exceptions depending on the circumstances [25]. This internal remedy established in this case with the legislative decree differs from the remedies which have developed in the case-law of the Court.

First, the internal remedies which have been established and are subsequently accepted by the European Court relate rather to the length of the trial, the non-application of the decisions rendered and the restoration of the right to property [26]. This is why in these cases, either in matters of the establishment of Commissions or in the matter of rendering decisions, we did not come across the problems encountered in the Commission.

This is why in the Venice Commission, it was stressed that the ad hoc mechanism which was to be set up should individualize the files of each applicant. To achieve this objective, the mechanism must be able to comply with the principles of a fair trial, analyze specific evidence and make reasoned decisions [27]. In the present case, however, neither the Commission nor the possible means of appeal against the decisions of the Commission is capable of satisfying these criteria.

If we take a look at the actual situation, with the decree-laws issued under the state of emergency, among which there were 125.678 dismissals from the public office, a total of 131.922 measures were applied. As of December 25, 2019, the Commission, which has started the decision-making process since December 22, 2017 [28], has 88.700 rejection decisions out of a total of 98.300 decisions.

IV. Conclusion

We have seen that decree-laws constitute a fundamental tool for the executive during the state of emergency to govern. Nevertheless, we have tried to demonstrate that the adoption of these decree-laws goes beyond the legal framework, thereby destroying the control mechanisms. This highlights a discretionary government decree-law. We can even say that the presence of the state of emergency and its constant prolongation

are strongly linked to decree-laws. Because, contrary to what is authorized by the law, the government of Erdoğan bypassed all the legal procedures and blocked all the remedies as a means to be freer and more authoritarian without being obliged to follow the law. This study must be understood in this sense: all violations are made voluntarily and expressly so that the practice of an authoritarian regime is put in place without any counterweight mechanism. There is, therefore, indeed a political intention in what we observe with the suspension of the law.

REFERENCES

[1] Yokuş, S., *Avrupa İnsan Hakları Sözleşmesi'nin Türkiye'de Olağanüstü Hal Rejimi Pratiği ve Anayasa Şikayetine Etkisi*. (*The Effect of the European Convention on Human Rights on the Practice of the State of Emergency Regime and the Individual Appeal to the Constitutional Court*) Seçkin, 2017, p:137

[2] The Constitution was prepared by the Advisory Council on the order of military administration after the coup of September 12 1980.

[3] AYM (Constitutional Court). E. 1990/25, K:1991/1, KT (date of the decision): 10.01.1991, AYMKD S: 28. C1, p.97, AYM. E: 1991/6, K: 1991/20, KT (date of the decision): 03.07.1991, AYMKD S: 27, C: 1, p.395.

[4] Sancar, M. *"Devlet aklı" kıskacında hukuk devleti (The Rule of Law Stuck in "Reason of State")*. İletişim Yayınları, 2000, p.95

[5] Press release of the Security Council meeting of July 26, 2000

[6] Özcan G., « National Security Council », *Democratic Oversight and Reform of Security Sector in Turkey: 2005/2006*. Zurich: Lit Verlag Gmbh, 2007, 41-58. p.43

[7] Yavuzdugan S., *1982 Anayasası'nda Olağanüstü Hal ve Sıkıyönetim Kanun Hükmünde Kararnameleri (The State of Emergency in the 1928 Constitution and the Emergency decree-laws),* Thesis of Istanbul University, İstanbul, 2003

[8] Kanun-i Esasi (Ottoman Constitution of 1876)

[9] Yavuzdugan S., *1982 Anayasası'nda Olağanüstü Hal ve Sıkıyönetim Kanun Hükmünde Kararnameleri (The State of Emergency in the 1928 Constitution and the Emergency decree-laws),* Thesis of Istanbul University, İstanbul, 2003

[10] Yavuzdugan S., *1982 Anayasası'nda Olağanüstü Hal ve Sıkıyönetim Kanun Hükmünde Kararnameleri (The State of Emergency in the 1928 Constitution and the Emergency decree-laws),* Thesis of Istanbul Universit, İstanbul, 2003

[11] Kaboğlu İ. Ö., « Suppression du régime parlementaire sous l'état d'urgence : Remarques sur la modification constitutionnelle "approuvée" par le référendum du 16 avril 2017 » (Abolition of the parliamentary system under the state of emergency: Comments on the constitutional amendment "approved" by the referendum of April 16, 2017), *La Revue des droits de l'homme,* 2017

[12] Kaboğlu İ. Ö., « Suppression du régime parlementaire sous l'état d'urgence : Remarques sur la modification constitutionnelle "approuvée" par le référendum du 16 avril 2017 » (Abolition of the parliamentary system under the state of emergency: Comments on the constitutional amendment "approved" by the referendum of April 16, 2017), *La Revue des droits de l'homme*, 2017

[13] "*The Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly. Constitutional amendments shall be examined and verified only concerning their form. However, no action shall be brought before the Constitutional Court alleging unconstitutionality as to the form or substance of decrees having the force of law issued during a state of emergency, martial law or in time of war.*"

[14] Kayhan, F. & Kayhan, N., "Olağanüstü Hal Kanun Hükmünde Kararnameleriyle Kişilerin Meslekten veya Kamu Görevinden Çıkartılması İşlemine Karşı Yargı Yolu." (The Judicial Way Against the Purges with the Emergency decree-laws), *fahrettinkayhan.com*, 2017

[15] Kaboğlu, İ. Ö., « Suppression du régime parlementaire sous l'état d'urgence : Remarques sur la modification constitutionnelle "approuvée" par le référendum du 16 avril 2017 » (Abolition of the parliamentary system under the state of emergency: Comments on the constitutional amendment "approved" by the referendum of April 16, 2017), *La Revue des droits de l'homme,* 2017

[16] The decision of the Constitutional Court, abandoning its case law developed in 1991 and 2003, refused to exercise control over decree-laws no. 668 and 669 (Official Journal of November 4, 2016).

[17] Kuzu, B., *Olağanüstü Hal Kavramı ve Türk Anayasa Hukukunda Olağanüstü Hal Rejimi (The Concept of the State of Emergency and the Regime of the State of Emergency in Turkish Constitutional Law),*Kazancı, 1993, p. 406

[18] Kuzu, B., *Olağanüstü Hal Kavramı ve Türk Anayasa Hukukunda Olağanüstü Hal Rejimi (The Concept of the State of Emergency and the Regime of the State of Emergency in Turkish Constitutional Law),*Kazancı, 1993, p. 411

[19] AYM (Constitutional Court)., E. 1974/201, K.1974/525, Kt (date of the decision) 31.5.1974

[20] Tanör, B., *Türkiye'nin İnsan Hakları Sorunu (Human Rights Issue in Turkey),* BDS, 1990, p.226

[21] "*Olağanüstü Hal İşlemleri İnceleme Komisyonu*" in Turkish, evaluates and decides the applications related to the dismissal of public office established by the provisions of the decree-law.

[22] Altıparmak, K., « Is the Commission for the review for the measures taken during the State of Emergency an Effective Remedy?», *Bianet*, 2017, https://m.bianet.org/bianet/toplum/183186-ohal-komisyonu-etkili-bir-hukuk-yolu-mu

[23] Kaboğlu, İ. Ö., « Suppression du régime parlementaire sous l'état d'urgence : Remarques sur la modification constitutionnelle "approuvée" par le référendum du 16 avril 2017 » (Abolition of the parliamentary system under the state of emergency: Comments on the constitutional amendment "approved" by the referendum of April 16, 2017), *La Revue des droits de l'homme,* 2017

[24] In the presidential government system passed in 2017, the chief executive is no more the Prime Minister but the President of the Republic.

[25] ECHR, Baumann v. France, no. 33592/96, 22.5.2001, para. 47 ; Brusco v. Italy, no. 69789/01, 06.09.2001.

[26] ECHR, Anastasov and Others v. Slovenia, no. 65020/13, 18.10.2016.

[27] Report of the Venice Commission on decree-laws in Turkey, number: 667-676, para: 222, December 12 2016, Strasbourg.

[28] The charge of the Commission established for two years was extended by the President for another year.