

TURKISH GOVERNMENT'S ABUSE OF COUNTER - TERRORISM LAWS



Policy Brief



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Policy Brief

Turkish Government's Abuse of Counter-Terrorism Laws

I. Introduction

1. Over the past several years, Turkey is facing complex security challenges, dealing with a number of serious terrorist attacks targeting the Turkish people.

2. The Syrian refugee crisis and violent extremism, followed by the creation of ISIS in Syria and Iraq, as well as the attempted coup in Turkey – have all contributed to political, economic and social distress. The Iraqi and Syrian conflicts spillover into Turkey have only exacerbated the fragile security environment. There were no terrorist attacks in 2014 - 4 attacks (149 victims) in 2015 and 22 attacks (more than 317 victims) in 2016. Among other very serious attacks, on May 11, 2013, two car bombs exploded in Reyhanlı (Hatay province), killing 51 Turkish nationals. In the early hours of January 1, 2017, a terrorist attack claimed the lives of 39 innocent people from fifteen nationalities at the Reina nightclub in Istanbul. At least 70 others were wounded.

3. Since at least 2014, the government of Turkey, however, has shifted its primary focus to the Hizmet/Gülen Movement¹, accusing it of being a terrorist organization and detaining or arresting anyone with the slightest perceived link or connection with the group.

4. In Turkey, hundreds of people are detained or arrested every week since July 2016, for allegedly being members or sympathizers of the Movement. According to recent official data from the Ministry of Justice, at least 612,347 individuals (155,014 in 2016 and 457,423 during 2017) faced investigations on accusations of “founding, leading or being a member of terror groups,” as defined by Turkish Criminal Code (TCK) Article 314. Many of those arrested have been charged with membership of the Hizmet Movement, while a few have been accused of links to the outlawed Kurdistan Workers’ Party (PKK). According to recent data compiled by the Stockholm Center for Freedom (SCF), since the attempted coup the government has arrested around 88,000 alleged members/sympathizers of the Hizmet Movement².

5. Since December 11, 2015, the Hizmet Movement is classified by the Turkish government as a terrorist organization under the assigned names Gülenist Terror Organization (Fethullahçı Terör Örgütü FETÖ) or Parallel State Organization (Paralel Devlet Yapılanması, PDY). In the declaration of the state of emergency, absent any investigation or legal proceedings, the Turkish Government stated that “Fethullah Terrorist Organization (FETÖ) has staged a coup attempt in

¹ - Gülen Movement is also referred to as Hizmet (the Service) Movement. This Policy Brief uses the term Hizmet Movement or the Movement.

² - <https://stockholmcf.org/turkish-courts-arrest-88000-people-over-alleged-links-to-gulen-movement-since-2016-coup-bid/>

Turkey on 15 July 2016³. ” Mr. Fethullah Gülen denied the accusation of staging a coup and called for an international commission to investigate Turkish government’s claim⁴.

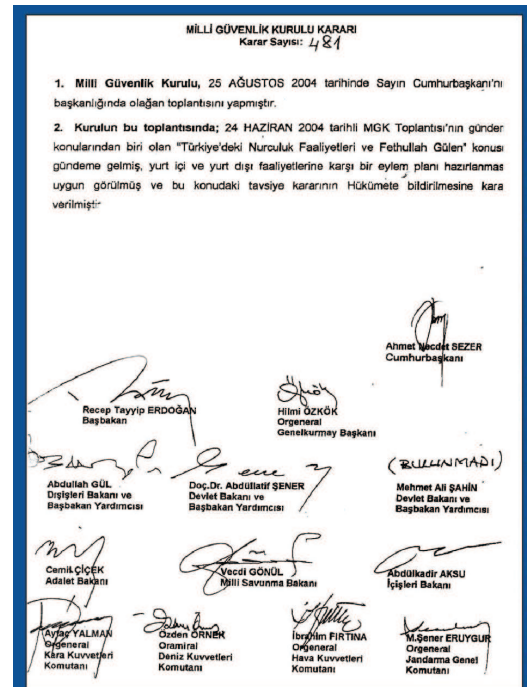
6. Internationally, the government of Turkey has repeatedly called on other governments to take measures against the group. Only recently, from the UN General Assembly podium as he addressed the UNGA on September 27, 2018⁵, President Erdogan made a call “to swiftly take the necessary measures against the Gülenist terrorist organization for their own safety and the future of their nations.”

7. The present Policy Brief aims to shed light on the rationale behind the wholesale attack against the Hizmet Movement, including its classification as a terrorist organization by the government of Turkey and the international law implications of these actions, in particular international human rights law.

II. Events Prior to the Attempted Coup of July 15, 2016

8. Accusations against Mr. Fethullah Gülen are not a novelty. In chronological order, right after the February 28, 1997, post-modern military coup, a lawsuit asking for capital punishment was filed against Mr. Gülen with the charge of “an unarmed terrorist organization consisting of one person.” In 1999, Mr. Fethullah Gülen had to leave Turkey and move to the United States, following advice from then-Prime Minister Bulent Ecevit on reasonable belief regarding active preparations by the military and judiciary to arrest him on alleged terrorism charges for plotting to overthrow the government. The charges against Gülen were found to be baseless and eventually dismissed in 2008.

The Hizmet Movement and its alleged members were then targeted during a National Security Council meeting on August 25, 2004. The minutes of the meeting attended by then President Ahmet Necdet Sezer, Prime Minister Recep Tayyip Erdoğan, Chief of General Staff Hilmi Özkök and Foreign Minister Abdullah Gül reveal that a decision⁶ was taken to prepare an action plan against the activities [institutions] belonging to “Nurculuk and the Fethullah Gülen Group.” The decision also provided for making “legal arrangements which bring heavy sanctions and a preparation of an action plan.” In implementing the decision by the National Security Council, it was agreed that “the Gülen group's domestic and international activities should have been followed closely by the Ministry of Interior, the Ministry of



³-OHCHR, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East (January – December 2017), March 2018, footnote 3, page 3.

⁴-See e.g.: <https://www.reuters.com/article/us-turkey-security-gulen/turkish-cleric-calls-for-international-body-to-examine-coup-charges-idUSKCN11T280>

⁵-<https://www.turkishminute.com/2016/09/20/erdogan-expands-witch-hunt-gulen-movement-un-general-assembly/>

⁶-The document was also signed by NSC members Abdülkadir Şener, Cemil Çiçek, Veçdi Gönül, Abdulkadir Aksu, Aytaç Yalman, Özden Örnek, İbrahim Fırtına and Şener Eruygur

Foreign Affairs, the Turkish Intelligence Service and other related institutions, under the coordination of Prime Ministry Implementation Monitoring and Coordination Board (BUTKK).”

10. On December 17, 2013, one of the major “landmark” corruption scandals unfolded when police officers raided several homes and confiscated around \$17.5 million in cash, money allegedly used for bribery. All of the 52 individuals detained on December 17, 2013 in Turkey were connected in various ways with the ruling Justice and Development Party (AKP).

11. Following the December 2013 scandal, widespread public indignation forced four cabinet ministers to resign, while then-Prime Minister Erdoğan dismissed the whole graft investigation as an attempted “judicial coup” targeting his government⁷. He then proceeded to dismiss thousands of police officers, prosecutors, and judges. The government continued to tighten its grip on the media and the judiciary. Prosecutors, judges, and other officials involved in the investigations on the 2013 corruption scandal (many of whom now in jail or exile) deny having any connection to the Hizmet Movement. The Hizmet Movement also denied any involvement or knowledge of the investigations.

12. The government, however, accused Fethullah Gülen and members of the Hizmet Movement of treason and started referring to them as “parallel structure and terrorists”, as well as “blood-sucking vampires, perverts, leeches,” etc. in public rallies. A research⁸ by the Stockholm Center for Free-dom (SCF) has documented over 240 different pejorative terms used as “hate speech” about the Hizmet Movement⁹. The government of Turkey called the corruption scandal a “judicial coup” aimed at overthrowing it.

13. The simplistic approach of the enormous government propaganda machinery to label the Hizmet Movement a “terrorist organization” does not stand any reasonable scrutiny. The government classified the Movement as a terrorist organization, even though it had long acknowledged the Movement as a non-governmental organization, calling it ‘the Gülen Community’, ‘the Community’ or ‘the Hizmet Movement’, contributing to educational, health, financial and other institutions. Government officials supported and would normally participate in all activities of educational and other institutions allegedly linked to the Movement, in the country and abroad. They encouraged the activities, applauding them at home and abroad, and expressed open support.

⁷ -See e.g.

<https://www.reuters.com/article/us-turkey-corruption/turkish-judicial-purge-brings-corruption-investigation-to-halt-idUSBREA0L1G220140122>

⁸ -Available at: http://stockholmcf.org/wp-content/uploads/2017/06/Erdogans-Vile-Campaign-Of-Hate-Speech-Case-Study-Targeting-Of-The-Gulen-Movement_2017.pdf

⁹ - See also: <https://www.youtube.com/watch?v=TIQcj1v9xG4>



14. Fethullah Gülen has pioneered “interfaith dialogue” by meeting with respected religious leaders in Turkey and abroad, including the Head of the Greek Orthodox Church, the Pope of the Catholic Church, and the Chief Rabbi of Israel. Mr. Gülen had a personal audience with the late Pope John Paul II. Gülen met with Chief Rabbi of Turkey’s Jewish community David Aseo, Greek Orthodox Patriarch Bartholomew, and also with Israel’s Sephardic Chief Rabbi Eliyahu Bakshi Doron in 1999.

15. As recently as June 2012, then-Prime Minister Erdogan praised the activity of the Hizmet Movement, also calling on Fethullah Gülen to return and contribute in Turkey. In addition, leaders from all over the world and all continents^[10] have praised Hizmet-related schools and their contribution to quality education and prevention of radicalization.

16. According to The Economist, Fethullah Gülen is the country’s most influential Muslim scholar¹¹ and Foreign Policy describes Fethullah Gülen as the world’s most influential Muslim cleric¹², in addition to being among the world’s Top 100 Public Intellectuals¹³ in 2008. In 2015, the Jordan Royal Strategic Research Centre listed Fethullah Gülen among the 500 Most Influential Muslims in 2009, 2011, 2013, 2014 and 2015. Mr. Gülen has also received numerous recognitions and awards including the Gandhi King Ikeda Peace Award (USA, 2015), the Manhae Foundation Peace Prize (South Korea, 2013), EastWest Institute’s Peacebuilding Award (USA, 2011), and the UNESCO’s Romania Commission Award (Romania, 2005).

17. With the above in mind, the question presented is why the Hizmet Movement turned overnight in the view of the government of Turkey a terrorist organization, and why one man blamed for allegedly masterminding the July 2016 coup attempt: Fethullah Gülen, hundreds of thousands of individuals in Turkey and all around the world are persecuted, detained and arrested?

Why did the Turkish government label the Hizmet Movement as a terrorist organization?

Why did the Turkish government blame Fethullah Gülen for masterminding the attempted coup?

Why hundreds of thousands of individuals in Turkey and all around the world were persecuted, abducted, detained, and arrested?

¹⁰ -For example, William Jefferson Clinton, Kofi Annan, Madeline Albright, former-President Karzai of Afghanistan, Malian President Amadou Toumani Touré etc.

¹¹ - <https://www.economist.com/europe/2013/12/14/erdogan-v-gulen>

¹² - <https://foreignpolicy.com/2008/08/04/meet-fethullah-gulen-the-worlds-top-public-intellectual/>

¹³ - Ibid

18. In recent years, the authorities in Turkey have established a disturbing track-record of suppressing dissent and gradually restricting human rights and fundamental freedoms. Faced with a political threat to its long rule, mainly because of its constant wrongdoings, the government has constantly exploited and amplified the existing tensions between different political and other groups in the country – in the hope that the growing and relentless repression against individuals from all walks of life will turn the attention away from the many corruption scandals and the dire social and economic situation in the country.

19. The Hizmet Movement was the primary target as it presented one of the strongest and most influential advocates of democracy, rule of law and fundamental human rights in the country. The chronology of events explains how and why the universally-appreciated Hizmet Movement working for peace, tolerance, and dialogue in every possible way, especially in education and culture, has been stigmatized and labelled a terrorist organization in Turkey, through political denigration and government propaganda.

III. Aftermath of the Attempted Coup of July 15, 2016

20. Approximately one-hour after the Istanbul Bosphorus bridge was closed by a group of soldiers in the context of the attempted coup, Ulusal Kanal, a television channel affiliated with the ultra-nationalists^[14] in Turkey claimed that the coup was orchestrated by the Hizmet Movement.

21. With the coup attempt still ongoing, President Erdoğan claimed on national TV that Fethullah Gülen, a vocal critic of Erdoğan's divisive rhetoric, was the coup's mastermind. Alleged members and sympathizers of the Hizmet Movement were immediately accused of participating in the attempted coup through association with the group, in what has been described as the biggest purge of the 21st century.



22. According to the Turkish government, “The purpose of the State of Emergency is to take required measures in the most speedy and effective manner in the fight against FETÖ/PDY¹⁵ terrorist organization¹⁶.” Thirty-two (32) arbitrary emergency decrees with a sweeping nature were issued during the two-year period of the state of emergency, targeting members of the Hizmet Movement and severely curtailing human rights and liberties.

¹⁴ - See for more: <https://twitter.com/turanfelek/status/1048932172730515456>

¹⁵ - FETÖ is a derogatory term used by President Recep Tayyip Erdoğan and his political associates to refer to the Hizmet Movement.

¹⁶ - Committee against Torture, Concluding observations on the fourth periodic report of Turkey, Addendum Information received from Turkey on follow-up to the concluding observations (CAT/C/TUR/CO/4/Add.1), November 8, 2016, para 70.

23. Following the attempted coup of July 15, 2016, the Hizmet Movement stands accused for everything gone wrong in Turkey. The Movement is accused for orchestrating Ergenekon¹⁷ and Sledgehammer¹⁸ trials, where hundreds of defendants - a mixture of military officials and civil leaders - were blamed for secret plots to overthrow the government. The Movement is further blamed for the downing of the Russian jet in November 2015¹⁹ - for the appalling murder of the Russian Ambassador to Turkey in December 2016, match-fixing conspiracies²⁰ or ruining the economy, changing the perception [about the economy], discouraging foreign investors and changing their perception about Turkey. Finally, the Movement is accused for even “plotting earthquakes, with the help of foreign powers, to damage the Turkish economy²¹.”

24. The Hizmet Movement stands now accused for all the above, even though e.g. then-Prime Minister Erdogan publicly supported Ergenekon and Sledgehammer cases, repeatedly praising the prosecutors working on the case, or Prime Minister Davutoğlu publicly stated that he personally ordered the downing of the Russian fighter jet in 2015.

25. Government officials and pro-government media have also publicly accused the Hizmet Movement as the perpetrator behind hundreds of recent, both solved and unsolved murders, including the murder of the Catholic Priest Andrea Santoro from the Santa Maria Church in Trabzon (2006), the murder of Hrant Dink, the editor-in-chief of the Agos newspaper (2007), the accident of the Grand Unity Party (BBP) leader Muhsin Yazıcıoğlu (2009) and the murder of Tahir Elçi, a renowned human rights lawyer and president of the Diyarbakır Bar Association (2015)²².

26. Depending on the “occasion” and the politics, other states and organizations have been blamed publicly by Erdogan and the AKP for the attempted coup, including the United States, CIA, Israel, Mossad, European Union, Amnesty International etc.

27. Other governments and observers have not accepted the narrative of the Turkish government on any wrongdoing of the Hizmet Movement related to the July 15, 2016 attempted coup. In particular:



- Former U.S. Secretary of State John Kerry stated that the Turkish government, as part of the extradition process, must link Gülen to the incident with evidence that withstands

¹⁷ - https://en.wikipedia.org/wiki/Ergenekon_trials.

¹⁸ - [https://en.wikipedia.org/wiki/Sledgehammer_\(coup_plan\)](https://en.wikipedia.org/wiki/Sledgehammer_(coup_plan)).

¹⁹ - https://en.wikipedia.org/wiki/2015_Russian_Sukhoi_Su-24_shootdown.

²⁰ - <https://www.turkishminute.com/2016/12/02/islamic-scholar-gulen-cited-number-one-suspect-match-fixing-conspiracy-indictment/>.

²¹ - <http://uk.reuters.com/article/uk-turkey-economy-quake-idUKKBN15M1K6>

²² - Source: Today's Zaman, December 11, 2015

scrutiny in an American court. As of this writing, more than two years after the incident, the Turkish government has not submitted evidence that meets this criterion.

- James Clapper, former director of U.S. National Intelligence, stated that Gülen's involvement in the coup didn't pass the "smell test" of credibility.
- The United State House Intelligence Committee Chairman Devin Nunes told Fox News that it was "hard to believe" that the U.S.-based Turkish cleric was behind the attempt.
- Bruno Kahl, Head of Germany's BDN Foreign Intelligence Agency stated that, "Turkey has tried to convince us of that [F. Gülen involvement] at every level but so far it has not succeeded."
- The European Union Intelligence Center INTCEN's report on the incident contradicted the Turkish government's claim that Fethullah Gülen was behind the plot. The report concluded that the coup was mounted by a range of Erdoğan's opponents. The Service found it unlikely that Gülen himself played a role in the attempt. It also determined the purges were that took place right in its aftermath were planned well before the incident.
- German Focus magazine reported in their July 2016 issue that British signals intelligence agency GCHQ intercepted communication between top Erdoğan brass about half an hour after shooting started that the coup would be blamed on Gülen and purges would start the next day.
- A report by the Foreign Affairs Committee of the British Parliament on UK-Turkish relations stated that the "UK government does not have any evidence that U.S.-based cleric Fethullah Gülen organized Turkey's July coup attempt.

28. The above stance seems to not have changed. In the end of September 2018, Chancellor Merkel of Germany stated that, "We are not at the point of treating the Gülen (Hizmet) Movement as we treat the [outlawed Kurdistan Workers' Party] PKK because we need more information²³."

29. On July 15, 2016, Mr. Fethullah Gülen condemned the attempted coup²⁴ in Turkey, and openly called on the Turkish government to allow for an international commission to investigate the coup attempt in the aftermath of the coup and promised his full cooperation in this matter²⁵. Depending on the findings of the investigation, Mr. Gülen expressed readiness to also return to Turkey to face the charges. The Turkish government has yet to reply to that call.

²³ - Please also see <https://www.turkishminute.com/2018/09/28/merkel-says-germany-needs-more-evidence-on-gulen-movement-to-call-it-terrorist-organization/>

²⁴ - https://www.lemonde.fr/idees/article/2016/08/11/fethullah-gulen-si-les-accusations-dirigees-contre-moi-sont-etablies-je-m-engage-a-retourner-en-turquie_4981128_3232.html

²⁵ - https://www.newvision.co.ug/new_vision/news/1433830/fethullah-g-len-calls-international-investigation-failed-putsch-turkey

July 15, 2016



Alliance *for*
Shared Values

Fethullah Gulen²⁶ issued the following statement on recent developments in Turkey

I condemn, in the strongest terms, the attempted military coup in Turkey. Government should be won through a process of free and fair elections, not force. I pray to God for Turkey, for Turkish citizens, and for all those currently in Turkey that this situation is resolved peacefully and quickly.

As someone who suffered under multiple military coups during the past five decades, it is especially insulting to be accused of having any link to such an attempt. I categorically deny such accusations.

30. The night of July 15th represents a distinct moment in the Turkish democratic history. Unlike the military coups in the past, hundreds of thousands - if not millions of citizens took to the streets to defy the coup attempt. In its aftermath, the Turkish government had the right and further, the responsibility to investigate the violent events surrounding the coup attempt and bring all those responsible for the violence, the dead and wounded - and all material and other damage to justice.

31. The Turkish people are entitled to know the truth - all the facts and circumstances surrounding the dramatic events of July 15, 2016. With 249 people killed and 2,194 injured the government was normally expected to minimally conduct lengthy and exhaustive investigations, which have not taken place. On the contrary, authorities did not even allow for the bodies of the victims to be subject to autopsy and investigation, presumably because of fear that the bullets used for the killings would in many cases not match weapons currently used by the military. The Army Chief and the Head of Intelligence Service, key individuals in the events surrounding the attempted coup were not even called to testify to the Parliamentary Commission.

32. A sine qua non component of the definition of “terrorism” is the readiness of any “armed group” to use violence. Hizmet Movement inspired institutions are present in more than a hundred countries for many years and it is extremely unlikely that any member or sympathizer has been ever accused of any wrongdoing in more than 20-years; including in Turkey until the December 2013 government corruption scandal.

²⁶ - http://afsv.org/fethullah-gulen-issued-the-following-statement-on-recent-developments-in-turkey/#.XB_Gzy2ZM6U

33. Participants in the Hizmet Movement have been overseen by hundreds of governments, intelligence agencies, researchers or independent civil society organizations for 25-years and have never been found to be involved in illegal activity. For anyone who has a minimal knowledge of the Movement and its strong emphasis on peace and dialogue, Erdoğan's charge that Hizmet is a "terrorist organization" is simply irrational. Hizmet Movement does not engage in terrorist activities, neither it supports political violence or any attempted or even successful coup.



There is a consistent and firm position from both, Mr. Fethullah Gülen and the Hizmet Movement against terrorism and violent extremism. Mr. Gülen was among the first Muslim scholars who vehemently condemned the 9/11 terrorist attacks in the United States. Mr. Gülen's iconic quote "A true Muslim cannot be a terrorist, and a terrorist cannot be a true Muslim" demonstrates his and his followers' view on terrorism in the aftermath of 9/11 terrorist attacks against the United States²⁷. It is undisputable that Fethullah Gülen has timely condemned all terrorist attacks, in particular those perpetrated in the name of religion²⁸. Global events organized by the institutions close to the Movement, such as the international conference entitled "A Decade after 9/11: Incitement to Hatred and Violence on the Basis of Religion or Belief"²⁹ in 2011 in New York, clearly demonstrates the Movement's stance that there is no justification for violence, extremism, and terrorism.

34. According to the Venice Commission's Opinion of December 9, 2016, "In a state under the rule of law, allegations of serious crimes must be documented and argued before an independent and impartial court of law, with due respect of the principles of fair trial and rights of the defense. Therefore, in normal conditions, it is for a court to examine activities of the Gülenist network and condemn it (or not) as a criminal or a terrorist organization that was the instigator of the coup attempt and/or other criminal actions, and to determine the criminal involvement of any particular individual with that organization³⁰."

²⁷ - See also: https://www.huffingtonpost.com/sevda-zeynalova/gulen-moderate-cleric-vil_b_10304390.html

²⁸ - See e.g. his condemnation of the Bombing in Manchester (UK) available here:

<http://afsv.org/wp-content/uploads/2017/05/Fethullah-Gülen's-Statement-of-Condemnation-on-the-Bombing-in-Manchester-UK.pdf>

²⁹ - 9/11 Conference, available here:

http://idcnj.org/index.php?option=com_content&view=article&id=484:a-decade-after-911-incitement-to-hatred-and-violence-on-the-basis-of-religion-or-belief&catid=94:conferences-a-lectures&Itemid=368

³⁰ - Venice Commission, Opinion on emergency decree laws Nos 667-676 adopted following the failed coup of 15 July 2016, 109th Plenary Session (December 9-10, 2016), para 122. Available at

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)

IV. Principle of Legality in defining “membership” of Terrorist Organizations

35. The General Assembly of the United Nations has repeatedly underlined the importance of ensuring that national legislation criminalizing acts of terrorism is accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including international human rights law (resolution 70/148, para. 6 (o))³¹.

36. Defining “acts of terrorism” in domestic criminal legislation in line with the principle of “legality” is recognized as one critical step towards prevention and towards ensuring that those responsible are brought to justice. Ensuring that counter-terrorism legislation and policy comply with international legal standards helps to promote the prosecution and conviction of individuals engaged in acts of terrorism. When States take steps to ensure that national counter-terrorism legislation is specific, necessary, effective and proportionate, this facilitates international cooperation and ultimately leads to more successful criminal justice outcomes. It also helps to prevent the abusive enforcement of the law and ensure accountability of the State authorities that are responsible for law enforcement³².

37. National legislation that fails to define “membership” or to require a link between the membership and the prohibited status or activity would be contrary to the principle of legality, in particular where such membership leads to targeted sanctions or criminal penalties, such as imprisonment. Any sanctions imposed by proscription should be a result of a clear indication, based on reasonable grounds, that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act³³.

38. Article 4 (1) of Decree Law No. 667 (July 23, 2016) orders the dismissal of public servants “who are considered to be a member of, or have relation, connection or contact with terrorist organizations or structure/entities, organizations or groups, established by the National Security Council as engaging in activities against the national security of the State”. They are dismissed by decision of the relevant administrative entities and officials. Judges are dismissed on the same grounds by virtue of Article 3 (1) by decisions of the relevant judicial bodies (top courts and the High Council for Judges and Prosecutors-HCJP).

39. On September 3, 2016, the Daily Milliyet newspaper published³⁴ a non-exhaustive “list of sixteen criteria” used to “guide” the dismissals from state functions and prosecutions. People “fitting” the criteria below in varying degrees are subjected to official processes and labeled as ‘terrorists’ – followed many times by their detention or arrest. According to the government the aim of preparing such a list was to “discern the guilty from the innocent.”

³¹ - The General Assembly, urges States, while countering terrorism: To ensure that their laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including human rights law.

³² - See A/HRC/28/28. See also Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism, “Basic human rights reference guide: conformity of national counter-terrorism legislation with international human rights law”.

³³ - See for example A/HRC/16/50 and 51.

³⁴ - The article is available at: <http://www.milliyet.com.tr/16-kritere-gore-ihrac-gundem-2305561/>

The criteria listed in the article are the following:

- Investing money in Bank Asya (a legally operating bank until was closed down by the government in 2016), and in other financial institutions of the so-called “parallel structure”.
- Being a member of Hizmet-related trade unions or associations.
- Using encrypted communication applications such as the ByLock application.
- Donating to Kimse Yok Mu, once largest Turkish aid organization, in a general consultative status at the United Nations.
- Being mentioned in reports produced by the police, MIT (The National Intelligence Organization of Turkey) and MASAK (The Financial Crimes Investigation Board of Turkey).
- Giving support to Hizmet Movement on social media.
- Attending lectures and meetings of the organization “under the guise of non-governmental organizations.”
- Being promoted in a short span of time or being assigned to prominent offices exceptionally.
- Transferring money to the organization under the guise of himmet (alms).
- Being subject to reliable denunciations, testimonies and confessions.
- Visiting Hizmet-linked Internet sites regularly.
- Undertaking the “back-door businesses” of Hizmet-linked corporations and protecting them.
- Accompanying the people in the judiciary and the police, who are determined to act in favor of the organization.
- Supporting Hizmet in the last years after having resided in houses of the organization.
- Being mentioned in the information given by colleagues and friends as Hizmet supporter.
- Continuing to enroll their children in the organization’s schools and maintaining the organization’s newspaper and magazine subscriptions.

40. Using one or a combination of two or more of the ‘criteria’ above, according to the latest report of the OHCHR³⁵ since the attempted coup until the end of December 2017 - 159,506, individuals had been arrested in connection with the coup, including around 300 journalists, 1,719 organizations were permanently closed, and some 166 media outlets were liquidated, including publishing houses, newspapers and magazines, news agencies, television stations and radios.

V. Abuse of Counter-terrorism Laws and Other Measures

41. Even before the attempted coup of July 15, 2016, ill-defined or vague legislation adopted in Turkey aimed at arbitrary banning organizations and curbing otherwise legitimate activities and to target journalists, human rights defenders, members of minority groups, members of the political opposition or other individuals.

³⁵- OHCHR, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East (January – December 2017), March 2018.

42. The Republic of Turkey is a party to several core international human rights treaties as well as anti-terrorism conventions, which reinforce and complement each other when properly read together. In particular, the principle of legality, that is, sufficient clarity and certainty of law, is a non-derogable human rights principle and has been interpreted by the Human Rights Committee from article 15 of the International Covenant on Civil and Political Rights (ICCPR). It states that “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”

43. Pursuant to Article 15 (1) of the International Covenant on Civil and Political Rights (ICCPR), the prohibition of terrorist conduct must be framed in such a way that: (a) the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and (b) the law is formulated with sufficient precision so that the individual can regulate his or her conduct³⁶. Laws must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and must be made accessible to the public. Laws must not confer unfettered discretion but rather provide sufficient guidance to those charged with their application to enable them to ascertain the sort of conduct that falls within their scope.

44. In particular as regards measures during the state of emergency, amendments to key pieces of legislation have aimed at solely banning political dissent or otherwise peaceful means of expression, political and social opposition, with those accused of links with the Hizmet Movement bearing the brunt of state oppression.

45. Those measures have retroactively equated what have otherwise been legitimate and normal activities with terrorism, thereby effectively criminalizing freedom of expression, association and other important rights. This has increased the risk and the practice that individuals are prosecuted for legitimate, non violent exercise of rights enshrined in both, domestic and international law.

As noted by the Council of Europe Commissioner for Human Rights:

“Despite deep suspicions about its motivations and modus operandi from various segments of the Turkish society, the Fethullah Gülen movement appears to have developed over decades and enjoyed, until fairly recently, considerable freedom to establish a pervasive and respectable presence in all sectors of Turkish society, including religious institutions, education, civil society and trade unions, media, finance and business. It is also beyond doubt that many organizations affiliated to this movement, which were closed after 15 July, were open and legally operating until that date. There seems to be general agreement that it would be rare for a Turkish citizen never to have had any contact or dealings with this movement in one way or another³⁷.”

³⁶ - See E/CN.4/2006/98, para. 46.

³⁷ - Council of Europe Commissioner for Human Rights, “Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey” (7 October 2016), para. 20. Available from <https://rm.coe.int/16806db6f1>

VI. Conclusions and Recommendations

46. The Hizmet Movement is not a terrorist organization. There is no single evidence provided by the government of Turkey, or any other government that the Movement or its members are either armed or have any time engaged in violence.

47. The highly abusive anti-terrorism laws in Turkey have arbitrarily deprived hundreds of thousands of law-abiding individuals of their liberty and placed many more in serious legal jeopardy on a range of serious “terrorism”-related charges.

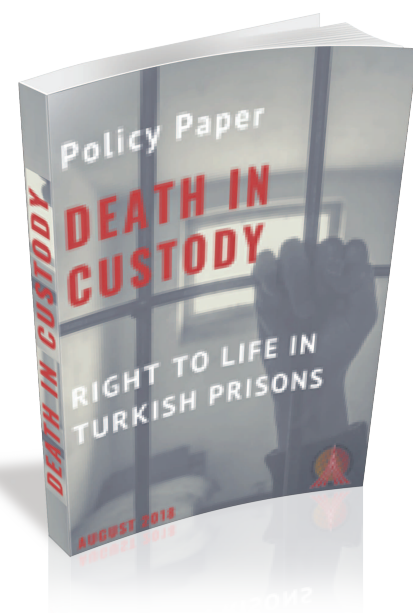
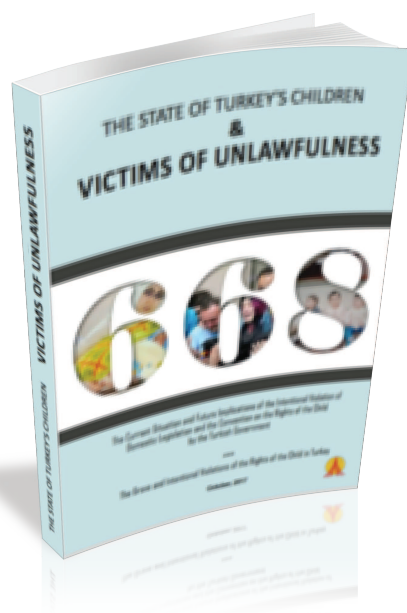
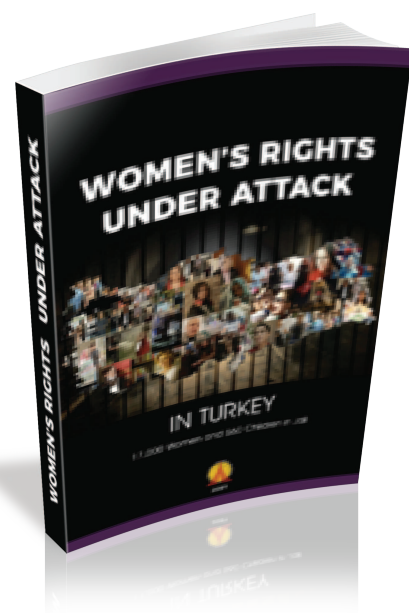
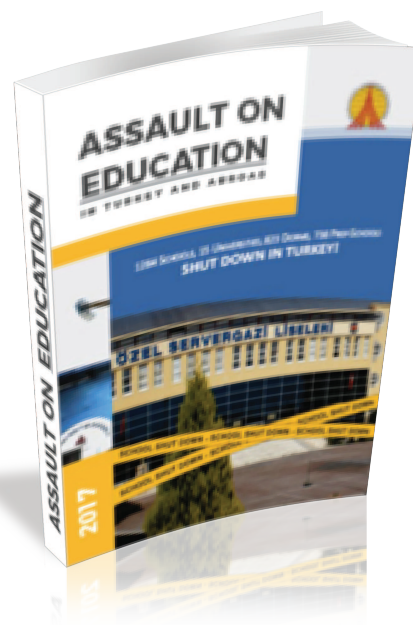
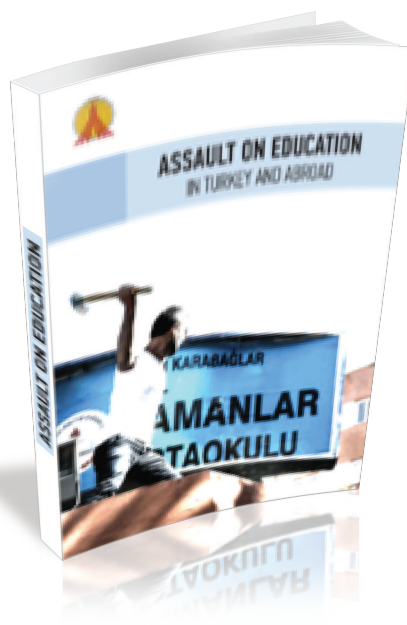
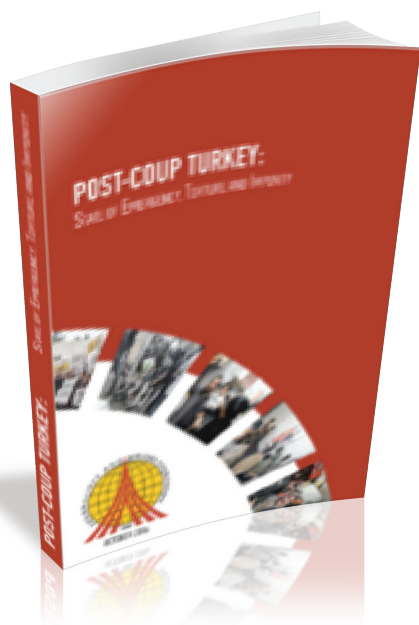
48. Counter-terrorism laws of Turkey are not consistent with human rights standards and go contrary to the principle of legality.

49. This situation is simply unacceptable. The Journalists and Writers Foundation therefore encourages the international community, including the relevant and appropriate United Nations, Council of Europe, European Union and other international and regional mechanisms to urge the government of Turkey:

- To review and immediately repeal all counter-terrorism provisions in domestic legislation, which are inconsistent with relevant standards and the principle of legality.
- To ensure that national counter-terrorism legislation is limited to the countering of terrorism as properly and precisely defined on the basis of the provisions reflected in the international counter-terrorism instruments, with strict adherence to the principle of legality.
- To observe the principle of legality when drafting anti-terrorism laws and/or amending existing legislations.
- To immediately release tens of thousands of victims arbitrarily deprived of their liberty because of perceived links to the Hizmet Movement.
- To provide for enforceable right of the victims arbitrarily deprived of their liberty, to compensation and other reparations, including for the impact on their physical and psychological integrity.

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