

Turkey Issues Nationwide State of Emergency for Three Months

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After the failed coup attempt, Turkey's Council of Ministers has introduced a nationwide State of Emergency, under Article 120 of the Constitution. The State of Emergency will extend for three months from 1 AM on 21 July 2016. Given the type and scope of measures introduced under the State of Emergency so far, the situation should have a limited impact on business in Turkey, except obviously for entities which have been deemed to have acted against national interests and shut down.

The following outlines the legal framework for the State of Emergency and scope of the applicable laws to date.

Legal Framework and Definition

The State of Emergency decision no. 2016/9064 was given by the Council of Ministers, meeting under the chairmanship of Turkey's President on 20 July 2016 and published in Official Gazette no. 29777 on 21 July 2016. An approval decision by Turkey's Grand National Assembly was published in Official Gazette no. 29778 on 22 July 2016.

State of Emergency is regulated under Article 119, 120 and 121 of the Turkish Constitution ("**Constitution**") and State of Emergency Law no. 2935 ("**Law no. 2935**").

The phrase "*State of Emergency*" is not specifically defined in the legislation. However, in legal doctrine, it is defined as "*the extraordinary administrative procedure announced within the context of the definite reasons which enables the temporary suspension of the fundamental rights and freedoms partially or completely or imposition of financial, property based or working obligations for citizens*".

A State of Emergency can be initiated for up to six months. If the basis for the State of Emergency continues, the Council of Ministers can request the Grand National Assembly to extend the duration for periods of four months.

Measures which can be taken during the State of Emergency

Suspend Fundamental Rights and Freedoms

According to Articles 9 and 11 of Law no. 2935, the following measures can be taken during a state of emergency which is initiated due to widespread acts of violence (as the current State of Emergency is):

- Prohibit residence in certain areas, restrict entry and exit from such areas, as well as evacuate these areas or transfer people to other areas;
- Suspend training at all levels of official and private education institutions, as well as close student dormitories (temporarily or permanently);
- Control and determine the opening times of places such as night clubs, restaurants, bars, pubs, taverns, discotheques, cinemas, theatres and similar entertainment clubs and gambling saloons, hotels, motels, camping areas, holiday camps and similar accommodation, to restrict them, as well as to close such places if required, or use them in a manner required by the State of Emergency;

- Restrict or remove annual leave of staff authorized to carry out services within the State of Emergency's area;
- Benefit from communication and media instruments in the State of Emergency's region and temporarily seize them, if required;
- Demolish unsafe buildings, as well as destroy real estate, personal property and food products which threaten health;
- Control or prohibit delivery or removal of certain food products, animals or animal fodder from the state of emergency's region;
- Regulate the distribution of essential needs;
- Take necessary measures, to obtain and control necessary:
 - food products, goods, oils used in cooking, heating, cleaning and lighting;
 - medicine, chemical materials, tools and other items used in protection of health, treatment and medical science;
 - goods and materials used in construction, industry, transportation and agriculture;
 - production, sale, distribution, storing and commerce of other goods, materials, instruments necessary for public.
- Close workplaces which are not of vital importance to the State of Emergency's region, which slow down and stop production, or sell goods in excessive prices, confiscate, hide or refrain from selling such goods;
- Take measures in relation to land, sea and air traffic to record or prohibit entry and departure of transportation vehicles;
- Impose a full or partial curfew;
- Prohibit any kind of assembly, procession or movement of vehicles in certain places, or within certain times;
- Empower officials to search people, their vehicles or their wares, or to seize those which may be deemed as an object or evidence of crime;
- Require residents to carry identification cards, or individuals entering the State of Emergency's region;
- Prohibit or impose permission obligations on publications, issuing of reprints and editions, and distribution of newspapers, magazines, brochures, books etc., as well as prohibiting import and distribution of publications published and reprinted outside the state of emergency region for all kinds of banned publications;
- Control, restrict or prohibit all types of broadcasting, writing, movies, records, sound and image clips;
- Determine or take special security measures for internal security of banks, as well as sensitive public or private entities;
- Control, suspend or prohibit projection of all types of plays and movies;
- Prohibit carrying or transporting weapons and projectiles, even if they are licensed;
- Prohibit or impose permission obligation for keeping, preparing, manufacturing or transporting ammunition, bombs, destructive materials, explosive materials, radioactive materials or corrosive, caustic, ulcerating chemicals, poisons, choking gas and other similar materials, as well as demand collection or collect these instruments and materials forming such instruments;
- Forbid persons and groups who are believed to disrupt public order or public security from entering the State of Emergency region, as well as expel such persons from the region or force them to reside or enter specified places within the State of Emergency's region;
- Prohibit, restrict and regulate entry and departure from establishments or institutions which are deemed necessary for security in the State of Emergency's region;
- Prohibit, postpone or impose permission obligation for assemblies and demonstrations in closed and open areas, as well as to determine, publicize, supervise and disperse areas of assemblies and demonstrations;
- Impose permission obligation or postpone dismissal of employees for a period not exceeding three months (excluding resignations, ordinary employee retirement, expiry of the employment agreement, and terminations due to behavior contrary to an employee's moral or good faith);
- Suspend the activities of associations for up to three months;
- Perform cross-border operations to capture and incapacitate persons within the framework of mutual agreements between Turkey and neighboring countries, if the events which caused the state of emergency lie beyond the State of Emergency's region and the persons who caused these reasons have taken refuge in neighboring countries. Permission is required from the relevant government.

Authority of the Council of Ministers to Issue Statutory Decrees

During the State of Emergency, the Council of Ministers, chaired by the President of the Republic, receives the power to issue statutory decrees which carry the force of law, regarding matters considered necessary due to the state of emergency.

While issuing statutory decrees, the Council of Ministers can also issue regulations regarding fundamental rights, individual rights, duties and political rights provided under the Constitution.

The first statutory decree was issued on 23 July 2016 and is discussed below (Statutory Decree No. 667 published in Official Gazette number 29779).

Implementing the State of Emergency

Regional governors will implement the measures required by the State of Emergency decisions (Article 14 of Law no. 2935).

Announcements and performance of the obligations imposed by the State of Emergency can be made through all kinds of media instruments. Law no. 2935 also enables oral announcements in case of emergency, provided these are later confirmed by a written statement.

Special provisions

Law no. 2935 outlines several special provisions which restrict ordinary rules of law, including:

- Authority to use arms - Security forces and special security forces on duty are entitled to shoot directly and without hesitation if:
 - An order to surrender is not obeyed,
 - There is an attempt of armed resistance, or
 - The security forces are in in situation of legitimate defense.
- *Non-application of suspension of execution decisions* - No suspension of execution decisions can be initiated against administrative transactions performed for the benefit of the Minister of Internal Affairs, or the Regional and provincial governor of the State of Emergency's location.
- Sanctions

Individuals can be liable for imprisonment for up to six months during the State of Emergency if they:

- Disobey orders,
- Cannot carry out requirements,
- Intentionally provide false proof of identity, or
- Fail to provide proof of identity.

The first Statutory Decree by the Council of Ministers

The Council of Ministers' first statutory decree during the State of Emergency is Statutory Decree no. SD/667, which outlines a framework of restrictions as follows.

Closure of institutions and organizations

Many institutions and organizations have been shut down on the basis of being a threat to national security. These include:

- Private health institutions,

- Private educational institutions and student dormitories and pensions,
- Foundation and associations,
- Universities,
- Unions, federations and confederations.

All assets, receivables, rights, documents and information belonging to closed entities are transferred to the Turkish Treasury.

Judicial and public officials dismissed

Sanctions are introduced for judicial and public officials who are deemed to have acted against Turkey's national security. Specified judicial and public officials have been dismissed by the relevant authorities. Impacted individuals include members of the Supreme Court, Constitutional Court, and Council of State, as well as Turkish Armed Forces members, police officers, and university academics.

During investigation and prosecution proceedings, special passports and gun licenses for these individuals are cancelled.

Investigation and prosecution proceedings

Procedural regulations are introduced for several crimes committed within the scope of the Turkish Criminal Code no. 5237 and Antiterrorism Law no. 3713.

Special provisions extend the detention period for suspects to 30 days after arrest, as well as change interrogation conditions, along with detainee rights and obligations.

Other Regulations

Principles are introduced for calculating the pensions to be paid for civilians who died or were injured during the attempted coup.

Lease agreements, easement rights and real estate property rights will be cancelled if these relate to public authorities, public economic enterprises or companies which are deemed to be a member of groups acting against national security.

Please see this [link](#) for the full text of the State of Emergency Decision (only available in Turkish).