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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

TURKEY

EMERGENCY DECREE LAW No KHK/685¹
ON THE CREATION OF THE INQUIRY COMMISSION

¹ Translation provided by the authorities

9- Decree Law no. KHK/685

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Formation of the Commission

ARTICLE 1- (1) The Commission on Examination of the State of Emergency Procedures has been established in order to carry out an assessment of, and render a decision on, applications related to acts established directly through the decree-laws, without any other administrative acts being carried out, within the scope of the state of emergency declared under Article 120 of the Turkish Constitution and approved by the Resolution (no. 1116, dated 21 July 2016) issued by the Turkish Grand National Assembly, on the ground of membership of, or have relation, connection or contact with terrorist organizations, or structures/entities, or groups established by the National Security Council as engaging in activities against the national security of the State.

(2) The Commission shall be composed of seven members. Three members shall be assigned by the Prime Minister from among public officials; one member shall be assigned by the Minister of Justice from among judges and prosecutors who hold office in central organization of the Ministry of Justice and in related and affiliated institutions; one member shall be assigned by the Minister of Interior from among personnel held the class of civil administration; and two members shall be assigned by the High Council of Judges and Prosecutors from among rapporteur judges who hold office in the Court of Cassation or in the Council of State. The Commission shall elect a Head and a deputy Head from among its members through an election to be held.

(3) The quorum for meetings and decisions of the Commission shall be four members. Members cannot abstain from voting.

Tasks of the Commission

ARTICLE 2- (1) The Commission shall carry out an assessment of and render a decision on the following acts established directly through the decree-laws under the state of emergency:

a) Dismissal or discharge from the public service, profession or organization being held office.

b) Dismissal from studentship

c) Closure of associations, foundations, trade unions, federations, confederations, private medical institutions, private schools, foundation higher education institutions, private radio and television institutions, newspapers and periodicals, news agencies, publishing houses and distribution channels.

ç) Annulment of ranks of retired personnel.

(2) The scope of duty of the Commission shall also contain acts that do not fall within the scope of paragraph 1 and that are directly regulated with respect to the legal status of

natural or legal persons by the decree-laws that are brought into force under the state of emergency.

(3) In relation to the acts mentioned this article, no separate application shall be lodged for the additional measures introduced by decree-laws put into force under the state of emergency and for the acts subject to judicial review.

Term of Office of the Commission

ARTICLE 3- (1) The Commission shall exercise its functions for a period of two years from the date of the entry into force of this Decree-Law. The Council of Ministers may extend this period for a period of one year per each extension, if deems necessary.

(2) First appointed members of the Commission shall hold office until the expiry of two years. If it is decided that the period should be extended, new members shall be determined in accordance with the procedure set out in paragraph 2 of Article 1. Members who have previously held office may be reassigned.

Guarantees and rights of members

ARTICLE 4- (1) Members cannot be dismissed on any account before their terms of office expire. However, a member shall be dismissed by the Commission, if it is found that;

a) the member have failed to attend a total of five Commission meetings within one calendar year, without any reason that could be accepted by the Commission,

b) it is documented by a medical board report that the member is unfit to work due to a serious disease or disability,

c) the conviction pronounced in respect of the member due to offences he/she has committed related to his/her duties becomes final,

ç) the total duration of the member's temporary unfitness for work lasts more than three months,

d) an investigation or prosecution is initiated against the member for offences listed in Articles 302, 309, 310, 311, 312, 313, 314 and 315 of the Turkish Criminal Code (Law no. 5237, dated 26 September 2004),

e) an administrative investigation against the member is initiated by the Prime Ministry or a permit for prosecution against the member is issued on the ground that the member concerned is a member of, or have relation, connection or contact with terrorist organizations, or structures/entities, or groups established by the National Security Council as engaging in activities against the national security of the State.

New members shall be assigned, in accordance with the procedure set out in paragraph 2 of Article 1, within two months at the latest for membership that becomes vacant due to death, resignation or any other reasons.

(2) Members shall continue to obtain their financial and social rights from their institutions. The Prime Ministry shall separately pay to members each month, as an additional payment,

the difference between the total amounts that are paid to members by their institutions in a month pursuant to their financial rights and the amounts to be calculated by multiplying the indicator number of 142,000 by the civil servants' salary coefficient, without being subject to any tax and deduction, except for the stamp tax, and in proportion to their terms of office.

(3) Conduct of an investigation against the members of the Commission shall be subject to the permission of the Prime Minister or a Minister assigned by the Prime Minister pursuant to the Law no. 4483 on Prosecution of Civil Servants and Other Public Officials (dated 2 December 1999). The Council of State shall decide on objections filed against a decision granting or not granting permission for investigation.

Power to request information and document

ARTICLE 5- (1) The Commission may request all kinds of information and documents related to its scope of duty from the relevant bodies.

(2) Without prejudice to the provisions of the legislation related to the confidentiality of investigation and the State secrets, public institutions and organizations as well as judicial organs are obliged to submit to the Commission all kinds of information and documents it needs within the scope of its duties, without delay, or to enable them for an on-site examination.

Confidentiality

ARTICLE 6- (1) Members and those, who are assigned with respect to the Commission works, may not disclose to anyone, except for organs that are legally granted authority on the subject, any confidential information, personal data, trade secrets and the related documents, belonging to the public, to those concerned or to third parties, that they obtain during their performance of their duties, and they may not use them for their own interests or for the interests of third parties. This obligation shall continue to exist after the expiry of their terms of office.

Procedure and Time-limit for Applications

ARTICLE 7- (1) The applications to the Commission shall be lodged through the Governor's Office. Those, who are dismissed or discharged from public service, profession or organization in which they hold office, may also submit to the last institution in which they hold office. The date on which an application is lodged with the Governor's Office or the institutions concerned shall be deemed as the date of the application. The Governorships and the institutions concerned shall communicate the applications lodged with them to the Commission without any delay. Repeated applications shall not be put into process.

(2) Provisions of paragraph 2 of Article 10 of the Code of Administrative Procedure (Law no. 2577, dated 6 January 1982) shall not apply to the applications lodged within the scope of this Decree-Law.

(3) The applications which are not lodged within sixty days as from the date of receiving of

applications with regard to the decree-laws which entered into force before the date when the Commission starts to receive applications shall not be put into process. For the applications with regard to the decree-laws which enter into force after the date when the Commission starts to receive applications, those which are not lodged within sixty days as from the date of publication on the Official Gazette of a decree law shall not be put into process, either.

Preliminary examination

ARTICLE 8- (1) The applications lodged with the Commission shall be subject to preliminary examination in terms of compatibility with the requirements sought. Following the preliminary examination, the applications which were not lodged within the prescribed period, in which the applicant has no legal interest in respect of the issue, which do not fall within the scope of this Decree-Law and which do not bear the other procedural requirements shall be dismissed. The procedures and principles concerning the application of this Article shall be determined by the Commission.

Examination and decision

ARTICLE 9- (1) The Commission shall perform its examinations on the basis of the documents in the file. The Commission may, following the examination, dismiss or accept the application.

Execution of the decisions

ARTICLE 10- (1) In case of acceptance of the application concerning those who were dismissed from public service, the decision shall be notified to the State Personnel Administration. The appointment proposals of the personnel notified in this manner shall be made, within fifteen days, by the State Personnel Administration, having regard to province they reside in, for the positions appropriate to their former status and titles in the public institutions and organizations apart from the institutions in which they were employed; except for those whose assignments in other institutions are not possible due to their status, titles and the duties they performed. Among those who have been reinstated in the public office under this paragraph, with respect to the appointments of the persons who were dismissed from the public service when they were serving as an administrator, the former cadre and position titles held by them before serving as administrator shall be taken into account. The cadres and positions regarding the personnel under this head shall be considered as having been established, allocated and endorsed, regardless of the provisions of other laws and without the need for any other action, as from the date of receiving of approvals for appointments concerning the relevant persons by the public institutions and organizations to which appointment proposals were made. The cadres and positions considered as having been established, allocated and endorsed shall be regarded as having been included in the relevant part of the tables annexed to the Decree-Law no. 190 on General Cadre and its

Procedure, dated 13 December 1983.

(2) In cases of acceptance of the applications concerning the closed institutions and organizations, the relevant provisions of the decree-law shall be deemed to revoke along with all effects and consequences in respect of the institution and organization in question, as from the publication of the decree-law at issue. The actions thereof shall be performed by the Ministry of Interior, the Ministry of Finance, the Ministry of Health or the Directorate General for Foundations, where relevant.

Judicial Review

ARTICLE 11- (1) The action for annulment against the decisions of the Commission may be filed with the Ankara administrative courts which are determined by the High Council of Judges and Prosecutors.

(2) Those who were considered to be inappropriate to perform their duties and who were dismissed from their duties under Paragraph 1 of Article 3 of the Decree-Law no. 667 of 22 July 2016 on the Measures Taken within the Scope of the State of Emergency and Paragraph 1 of Article 3 of the Law no. 6749 of 18 October 2016 on Amendment and Acknowledgement of the Decree-Law on the Measures ; Taken within the Scope of the State of Emergency, may file an action with the Council of State as the first-instance court, within sixty days as from the date on which the decision becomes final.

Secretariat

ARTICLE 12- (1) The secretariat services of the Commission shall be carried out by the Prime Ministry. A sufficient number of personnel shall be allocated to the Commission for performance of these services.

(2) The Prime Ministry shall make an additional monthly payment to those assigned for the secretariat within the scope of the Commission works, provided that it does not exceed the amount to be calculated by multiplication of (11,000) indicator with monthly coefficient regarding the public officer. Additional payment shall not be subjected to any tax or deduction, except for the stamp tax. The additional payments shall be made in line with the procedures and principles to be set forth by the Head of the Commission, regard being had to criteria in payment such as the class, cadre title, manner of appointment of the assigned personnel, the importance and difficulty of their duty and their term of office. No further payment for overtime work shall be disbursed to these personnel under any head.

Procedures and principles

ARTICLE 13- (1) The procedures and principles concerning the applications and the functioning of the Commission shall be set out and announced by the Prime Ministry upon the proposal of the Commission.

Transitional Provisions

PROVISIONAL ARTICLE 1- (1) The first members to be assigned to the Commission shall

be selected within a month as from publication of this Article.

(2) Within the scope of this Decree-Law, the date on which the Commission will start to receive the applications shall be announced by the Prime Ministry, not later than six months as from the date of publication of this Article.

(3) With respect to those who previously lodged an application with a judicial authority or filed an action for the matters which fall within the scope of duty of the Commission, the procedure and periods of time set out in Article 7 shall be applied.

(4) Those who were considered to be inappropriate to perform their duties and who were dismissed from their duties pursuant to Paragraph 1 of Article 3 of the Decree-Law no. 667 and Paragraph 1 of Article 3 of the Law no. 6749 prior to entry into force of this Decree-Law, may file an action within sixty days as from the date of entry into force of this Decree-Law, on the basis of the provisions set out in Paragraph 2 of Article 11. In this regard, the cases pending before the administrative courts shall be transferred to the Council of State. The provisions of this paragraph shall apply to the cases which were filed and concluded before the date of entry into force of this Decree-Law.