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THE RULE OF LAW IN TURKEY

AND

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

A STAFF STUDY

by

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Preface

The Staff of the International Commission of Jurists has undertaken a short study of the Rule of Law and administration of justice in Turkey since the events of March 1971. This has been done with particular reference to Turkey's obligations as a party to the European Convention on Human Rights.

The study is in three parts:

- Part I - Introduction, in which the events leading up to and following the introduction of martial law are briefly summarised.
- Part II - The Turkish Constitution, in which the principal provisions relating to human rights and the recent amendments to them are examined.
- Part III - Turkey and the European Convention, in which the proclamation of martial law, the measures taken under it, and the amendments and additions to the permanent law which have been made since its proclamation, are considered.

Finally, certain conclusions are stated.

The study does not pretend to be exhaustive. There are many other laws and judicial decisions which merit consideration in relation to the European Convention. The study has been confined to those provisions which appear to raise most sharply possible conflicts with Turkey's obligations under the Convention.

Geneva, May 1973

Niall MacDermot  
Secretary-General

Part I - INTRODUCTION

On March 12, 1971, a memorandum by the heads of the Armed Forces in Turkey demanding a "strong and credible government" to "neutralise the current anarchic situation", and threatening an army take-over if this were not quickly done, was delivered to President Sunay and to the presidents of the Senate and National Assembly. The memorandum was signed by General Menduh Tagmaç (chief of the General Staff), General Faruk Gürler (Army Commander), Admiral Celâl Eyiceglu (Navy Commander) and General Batur (Air Force Commander).

The memorandum alleged that "Parliament and the Government, through their sustained policies, views and actions, have driven our country into anarchy, fratricidal strife, and social and economic unrest; made the public lose all hope of reaching a level of contemporary civilization, a goal set by Atatürk; failed to realize the reforms stipulated by the Constitution; and placed the future of the Turkish Republic in grave danger". Parliament, "in a spirit above all partisan considerations", should now assess the solutions needed to eliminate the "concern and disillusionment felt by the Turkish nation and the armed forces". The memorandum went on to say that it was "essential, within the context of democratic principles, that a strong and credible Government should be formed which would neutralize the current anarchical situation and take up, in a manner conforming with Atatürk's views, the reforms envisaged by the Constitution". If this were not done quickly, "the armed forces are determined to take over the administration of the State in accordance with the powers vested in them by the laws to protect and preserve the Turkish Republic".

The suggestion in the last sentence that powers were vested in the armed forces under the Constitution, entitling them to take over the administration of the state in the manner suggested, is without foundation. The four commanders are the military members of the National Security Council. This is an advisory body, set up under Article 111 of the Constitution, which is presided over by the President of the Republic and included civilian Ministers. Its duty is to "communicate the requisite fundamental recommendations with the purpose of assisting the Council of Ministers in reaching decisions relating to national security and coordination". The memorandum of March 12, 1971, did not come from the National Security Council but, even if it had, it would have been for the Council of Ministers to decide what action, if any, to take on it. The threat by the Armed Forces to take over the administration of the state was unconstitutional and had no legal foundation. The fact that the government accepted the threat and resigned and that a new government headed by Dr Nihat Erim met with the approval of the military authorities and of the National Assembly, does not render the action of the military leaders lawful. Rather does it call in question the independence of Parliament.

Indeed, when Mr Demirel's government resigned, Mr Demirel declared in a speech to the Justice Party senators and deputies on the following day, "no-one can find any fault with your Government except that we adhered to the rule of law and the Constitution". He explained that they resigned "to keep alive whatever chance there is of binding up the wound democracy has received", referring of course to the action of the armed forces.

Neither in the ultimatum from the armed forces nor in the programme submitted by Dr Erim was there any suggestion that it was necessary to amend

the Constitution<sup>(1)</sup>. The greater part of the government's programme which received the approval of Parliament on April 7, was a programme for reforms on matters such as land tenure, education, the tax system and the living standards of public employees which had given rise to much of the unrest. The government declared that the "destructive activities directed against the State and social system set up under the Constitution - activities in some cases known to be assisted from outside the borders of the country - will not be allowed or tolerated". If necessary, parliamentary approval would be sought for legislation giving new power to the executive and judiciary for more effective sanctions against armed assaults, kidnapping or terrorism.

A useful summary of the unrest and violence between early 1968 and March 1971 will be found in Keesing's Contemporary Archives for June 5-12, 1971, pp. 24637-24640. It will be seen that most of the violence was the result of fierce opposition between extremist groups of left wing and right wing students, and of widespread opposition to the American presence in Turkey, and of student strikes and "sit-ins", of a kind to be found in many countries at that time, aimed principally at university reforms. Some disorders also resulted from militant trade union activities.

In January 1971, an Ankara bank was successfully raided, reportedly the work of the "Revolutionary Youth Movement" or Dev-Genç, a loose grouping of several left wing factions. In February the police at Erzurum claimed to have broken up a left-wing youth organisation planning action in support of Kurdish separatism. In March, four US servicemen were kidnapped in Ankara by left wing extremists calling themselves the "Turkish People's Liberation Army", who claimed responsibility for the bank raid. The US servicemen were released after four days when the kidnappers' demand for ransom was refused. A number of the kidnappers were arrested, including one of the Dev-Genç leaders, Deniz Gezmiş.

Widespread though the acts of violence had been, there was nothing in them to suggest that any organisation was planning an armed insurrection or uprising such as would appear to justify a proclamation of martial law under Article 124 of the Constitution. The violence did, however, continue after the formation of the new government. In Istanbul, bomb attacks were made against the US Consulate-General, a Turkish-American bank and two newspaper offices, and there was also another armed bank robbery. Student clashes continued and the university was closed on March 25. In April, two members of a wealthy family and a doctor's son were kidnapped and ransomed. On April 6, bombs were thrown at the CENTO headquarters in Ankara but failed to explode, and on the following days bombs exploded in Ankara, Istanbul, Izmir and elsewhere. On April 11, a general's house in Ankara was attacked. Two suspects, one a former secretary of Dev-Genç, were arrested.

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(1) It is clear, however, that the pressure for amendments to the Constitution came from the military commanders. In a covering letter to their March 1971 memorandum sent to the President of the Republic, they demanded amendments to the articles of the Constitution dealing with fundamental rights and freedoms (Yeni Gazete, March 14, 1971); and in an interview with a French television reporter in June, 1972, Prime Minister Erim said "If it is a question of pressure on me from the High Command, this related only to the amendment of the Constitution as rapidly as possible, and the promulgation of new laws", (Cumhuriyet newspaper, June 7, 1972).

On April 26, martial law was proclaimed in 11 provinces including Ankara, Istanbul, the main industrial centres and the mainly Kurdish areas in the South-East and two provinces near or bordering Syria. The government stated that the emergency measures had been made necessary not only by student<sup>(2)</sup> violence and terrorism but by the threat of Kurdish separatist activity. The declaration of martial law was approved in Parliament by a show of hands, the only opposition coming from a deputy and a senator of the Turkish Labour Party.

Acts of violence continued despite the proclamation of martial law. There was another bank robbery in Istanbul on May 3. On May 17 the Israeli Consul-General in Istanbul was kidnapped, and when the demand for the release of all "revolutionaries" in detention was rejected, he was murdered. The authorities claimed this was the work of members of the Dev-Genç "Revolutionary Youth Movement", from which the self-styled "Turkish People's Liberation Army" had sprung. On May 30, two young "Liberation Army" terrorists broke into an apartment while escaping from the police and seized a 14-year old girl as a hostage. After a two day siege the girl was rescued, one of the terrorists was killed and the other arrested.

About this time, the authorities made hundreds of arrests, including of many leading writers, journalists, professors and other intellectuals.

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- (2) There are believed to be at least 2 million and possibly as many as 4 million Kurds in South East Turkey. An ancient people, having their own national characteristics, language, customs and culture, Kurds are also to be found in north-western Iran (about 1½ million), in northern Iraq (about 1¼ million) and in small numbers in Syria and the Soviet Union. A prolonged struggle for recognition in Iraq led to the agreement in 1970 under which Iraq agreed to recognise the Kurds as one of the two peoples constituting the Iraqi nation, to recognise their language and other minority rights, and to grant them a substantial degree of local self-government in the Kurdish areas.

Successive Turkish governments have refused to recognise the existence of this minority, referring to them officially as "mountain Turks". The teaching of Kurdish in schools is forbidden. No publications in Kurdish are allowed. Attempts to bring out Kurdish publications have been suppressed and the editors imprisoned. Discrimination against Kurdish students has been alleged. This treatment of the Kurds appears to be an infringement of Articles 38 and 39 of the Treaty of Lausanne, by which Turkey agreed to respect the rights of minorities. The official Turkish attitude towards the Kurds has led to sporadic revolts and to a separatist movement which have been ruthlessly suppressed. The frequent references in the Turkish Constitution, and in particular in the 1971 amendments to the Constitution, to "safeguarding the integrity (or indivisibility) of the state with its territory and people" is directed (inter alia) against movements asserting the minority rights of the Kurds, even when they are not separatist in character. It was partly on this ground that the Turkish Labour Party was dissolved and its leaders imprisoned in 1971.

In July 1971 the Constitutional Court ordered the dissolution of the Turkish Labour Party (see below).

In April 1972, Dr Nihat Erim resigned as Prime Minister and his place was taken by Senator Ferit Melen.

On March 26, 1972, three foreign radar technicians were kidnapped on the Black Sea coast and the kidnappers demanded the reprieve of three "Liberation Army" members under sentence of death, including Deniz Gezmiş. On March 30, the kidnappers were surrounded. In the shooting which ensued ten guerillas were killed and one captured. These included leaders of the Dev-Genç movement. The three radar technicians were also found to have been shot.

A Turkish Airlines plane was hijacked on May 3 and taken to Sofia airport. The demand for the reprieve of the condemned terrorists was refused and the hijackers, on being granted political asylum, surrendered the plane.

The three men under sentence of death were hanged on May 6. On the following day several bomb explosions took place.

The ruthless methods adopted by the military and police authorities including, it is believed, the extensive torture of prisoners, has led to the rounding up of virtually all the members of the "liberation Army", and terrorist activities have been brought effectively under control.

Martial Law continues, however, in nine of the eleven provinces, and a number of mass trials before military tribunals have been held or are still taking place. Although the special powers of the military authorities are confined to the provinces subject to martial law, it is widely reported that persons have been arrested by the military authorities outside these areas and brought to and held in military prisons within the martial law areas.

When martial law is eventually lifted, it will not mean a return to the democracy which formerly prevailed under the Constitution of 1961. Apart from the dissolution of the opposition Labour Party, numerous amendments to the Constitution, which have significantly qualified the protection of civil rights, came into force in September, 1971, and four further restrictive amendments to the Constitution were adopted in March 1973. (Two of these were to validate laws which had been held unconstitutional).

The nature of the 1961 Constitution and the amendments to it will now be considered.

## Part II - THE TURKISH CONSTITUTION

The Turkish Constitution of 1961 has been generally considered to be one of the most liberal constitutions to be found anywhere. As stated in the preamble, the framers of the Constitution were "guided by the desire to establish a democratic rule of law based on juridical and social foundations which will ensure and guarantee human rights and liberties, national solidarity, social justice and the welfare and prosperity of the individual in society".

Article 2 of the Constitution states: "The Turkish Republic is a national, democratic, secular and social state governed by the Rule of Law, based on human rights and the fundamental tenets set forth in the Preamble".

Article 11, a general provision of great importance, since it laid down the principles to be applied in construing those articles of the Constitution dealing with civil and political rights, was, in its original form, entitled "The essence of basic rights" and read as follows:

"Article 11 - The fundamental rights and freedoms shall be restricted only by law in conformity with the letter and spirit of the Constitution,

The law shall not infringe upon the essence of any right or liberty, not even when it is applied for the purpose of upholding public interest, morals and order, social justice, or national security".

Among the articles which established these basic rights are Articles 14 (personal immunities, including freedom from ill-treatment or torture), 15 (right of privacy and freedom from search), 16 (immunity of domicile), 17 (freedom of communication), 18 (freedom of travel and residence), 19 (freedom of conscience and faith), 20 (freedom of thought and expression), 21 (freedom of science and arts), 22 (freedom of the press), 23 (right to publish newspapers and periodicals), 24 (right to publish books and pamphlets), 28 (freedom of assembly), 29 (freedom of association), 30 (personal security, i.e. restrictions on arrest and detention), 32 (right to trial by ordinary courts), 46 (right to establish trade unions), 47 (right to collective bargaining and right to strike), 56 (right to found political parties), 57 (principles to which political parties must conform), 120 (autonomy of universities) and 121 (autonomy of broadcasting and television). Other provisions of the Constitution established the independence of the Judiciary and subjected the Executive to parliamentary control by a freely elected parliament known as the Grand National Assembly and comprising a National Assembly and Senate.

Article 124 prescribed the circumstances and manner in which martial law could be proclaimed in one or more regions of the country, and the manner in which freedoms could then be suspended or curtailed.

The amendments to the Constitution adopted on September 20, 1971, are generally restrictive in effect, and it is hardly an exaggeration to say that the spirit of the Constitution has been substantially altered by them. The Preamble and Article 2 have been left unamended, and no doubt the Parliament in passing the amendments, did so in the belief that they would help to safeguard "the national, democratic, secular and social State governed by the rule of law". It is as yet too early to assess the practical effect on the principles of the Constitution of all these amendments, since the main centres of population have remained subject to much severer restrictions resulting from the proclamation of martial law. It is, however, possible to form an impression of their likely effect from an examination of the amendments themselves, and from some recent decisions of the Constitutional Court.

Article 11, which is the key article on civil rights, has been radically altered. Its title has significantly been changed from "The essence of fundamental rights" to "Essence and restriction of fundamental rights, and their protection". The text of the new Article now reads (with the new wording in italics):

"The fundamental rights and freedoms shall be restricted only by law in conformity with the letter and spirit of the Constitution with a view to safeguarding the integrity of the state with its territory and

people, of the Republic, of national security, of public order, or for special reasons designated in the other articles of the Constitution.

The Law shall not infringe upon the essence of rights and liberties.

None of the rights and freedoms embodied in this Constitution can be exercised with the intention of destroying human rights and liberties, or the indivisible integrity of the Turkish state with its territory and people, or the Republic, the characteristics of which are prescribed in the Constitution, through recourse to differences of language, race, class, religion or sect.

Penalties for action and behaviour contrary to these provisions are designated by law".

As will be seen, the whole tenor of the Article has been altered. The original text expressly safeguarded fundamental rights and freedoms, even against restrictions purporting to uphold the public interest, morals and order, social justice or national security. The safeguarding of these rights and freedoms was to be the overriding interest. The purport of the article has now been inverted. Not only has this express protection been removed, but its opposite is now expressly stated. Restrictions are to be permissible with a view to safeguarding the integrity of the state with its territory or people, of the Republic, of national security, of public order, or for special reasons designated in other articles. It is sad to reflect that it is by very general language of this kind that rights and freedoms have been severely eroded if not stifled in many parts of the world.

Moreover, none of the rights and freedoms can be exercised with the intentions stated in the third paragraph "through recourse to differences of language, race, class, religion or sect", and penal sanctions may be imposed against actions or behaviour of this kind. It is not difficult to foresee how these provisions can be applied to repress any activities or any organisation designed to promote the interests of a particular linguistic or racial minority, or of a particular class, such as the working class.

The framers of the amendments argue that these amendments are necessary and justified in order to prevent the abuse of fundamental rights and freedoms in such a way as to imperil their continued existence. Thus in May, 1971, Prime Minister Erim said "The 1961 Constitution is a luxury for Turkey" (Daily Milliyet, May 2, 1971), and when the amendments were introduced he sought to justify them in the following terms:

"The 1961 Constitution has many loop-holes. In this Constitution there is not one single decree or statement which would prevent exercising fundamental rights and freedoms against a free and democratic society. Therefore, such unlimited conditions of freedom create considerably large operational fields for the extremists as well as a constant state of anarchy".

This accusation is hardly supported by an examination of some of the provisions of the 1961 Constitution and of the laws which were held valid under it.

Not only was the Communist Party always prohibited, but on July 20, 1971, the Constitutional Court ordered the dissolution of the Turkish Labour Party.

This was a non-marxist party (though there were some marxists among its members), devoted to change by peaceful means. Proceedings against it were brought by the Ankara public prosecutor under Article 57 of the Constitution, the first paragraph of which read as follows:

"The statutes, programmes and activities of political parties shall conform to the principles of a democratic and secular republic, based on human rights and liberties, and to the fundamental principle of the state's territorial and national integrity. Parties failing to conform to these provisions shall be permanently dissolved".

As far back as 1967, the Constitutional Court had upheld Article 142 of the Penal Code which made illegal all dissemination of Marxist ideas, and Article 141 which prohibited the formation of associations seeking to modify the political, economic and social "established order", even by peaceful means. In view of the guarantee of the right of freedom of thought and expression in Article 20 and of freedom of association in Article 29, it is not surprising that this decision had been strongly criticised by constitutional lawyers in Turkey.

In the proceedings against the Turkish Labour Party the Ankara public prosecutor based his case on charges of Communist propaganda and separatist activity. As stated, the Party was not a marxist party, and the principal attack was based on the fact that in its 1968 election programme the party had referred to the mounting problem of the Kurdish people in eastern Turkey (a minority of perhaps 4 million out of a total population of 36 million), and advocated the cultural rights of this minority, including the right to be educated and to have publications in their own language. The Labour Party denied that it encouraged Kurdish separatism, claiming that its aim was to end the repressive policies towards the Kurds and to achieve equal rights for them within the framework "of the working class's struggle for socialism". In spite of the fact that the rights which the Labour Party advocated for the Kurdish minority had for long been enjoyed by the much smaller Armenian, Greek, Jewish and Bulgarian minorities, the Constitutional Court upheld the complaint and ordered the dissolution of the Party on the grounds that it had sought to perpetuate "national, linguistic, cultural and religious differences among the various ethnic minorities of the Turkish state". If this decision could be reached under the original Constitution, it is difficult to see why the many restrictive amendments to fundamental rights and freedoms were thought to be necessary. It is also difficult not to be apprehensive about the possibilities for repressive legislation which may now be introduced under the amended Constitution.

Against this background, some of the amendments to the particular articles establishing the fundamental rights and freedoms may now be examined. It should be remembered that apart from the additional restrictions written into particular articles, all the articles relating to fundamental rights and freedoms are now subject to the very wide restrictions in the amended Article 11, which has already been considered. This is of particular importance in the case of those articles which are formulated without any restrictive wording in the articles themselves. An example is :

Article 20 ~ Freedom of thought

This article reads: "Every individual is entitled to have his own opinions and to think freely. He is free to express his thoughts and

opinions singly or collectively, through word of mouth, in writing, through pictures or through other media. No individual shall be coerced to disclose his thoughts and opinions". As will be seen, there are in fact severe limitations on freedom of expression.

The following is a brief summary of the effect of some of the more important amendments to particular articles of the Constitution:

Article 15 - Right of privacy and freedom from search

Search of the person or of property by executive action, with the authority of a court order, may now be permitted "where delay is deemed prejudicial from the point of view of national security" and not only, as before, "from the point of view of public order".

Article 22 - Freedom of the Press

Under the original article, freedom of the press and the gathering of information could be restricted by law only in order to safeguard national security, or public morality, or to prevent attacks on the dignity, honour and rights of individuals, to prevent incitements to crime and to assure proper implementation of judicial functions.

As amended, restrictions may also be permitted to safeguard "the integrity of the State with its territory and people", "public order", and "the secrecy demanded by national security". These will plainly permit wide extensions of restrictions on press freedom.

Secondly, under the original article, newspapers and periodicals could be confiscated only on a court order following proof of specific offences in the pertinent law. Now, they may also be confiscated "by decision of the competent authority clearly empowered by law in cases where delay is deemed prejudicial for the protection of the integrity of the State with its territory and people, national security, public order or public morality. The competent authority making the decision for confiscation shall inform the court of its decision within 24 hours at the latest. If such a decision is not ratified by the court within a maximum of three days, the decision for confiscation shall become null and void".

*no censorship*

This gives wide power to the executive to confiscate newspapers and periodicals. The requirement for ratification by the court within three days gives dubious protection, since no offence has to be proved before the courts, and courts in most countries tend to accept the judgment of the executive as to whether action is necessary "for the protection of the integrity of the State ... national security, public order or public morality".

The wide scope given to such terms in Turkey is illustrated by the periodic lists of censored books published in the Official Gazette whose importation is forbidden by Article 31 of the Law on the Press (No. 5685 of July 24, 1950). This article empowers the Council of Ministers to forbid the importation and distribution of any literature. No criterion is laid down as to the categories which may be banned, but in presenting the draft law to Parliament the Government said that its object was to prevent the importation of "harmful and subversive" literature. The books which have been banned under this law are mostly left wing literature, but also include all publications in Kurdish and extremist religious literature opposing the secular state.

The Constitutional Court, by a decision of July 5, 1963 (gazetted on November 4, 1963), rejected an application to annul this law, on the grounds that the right to read books published abroad was not part of the rights guaranteed under the Constitution, and every democratic state must have the right to ban harmful and subversive literature. It also supported the order of the Council of Ministers in the case in question on the grounds that it applied to a list of specific books and not to a general category of books. Nevertheless, two months later the Council of Ministers banned the importation of all literature written in the Kurdish language, and this is still in force.

Moreover, by Article 142 of the Turkish Penal Code any form of communist, anarchist or separatist propaganda is made an offence, as is propaganda aimed at "suppressing or weakening national sentiments", or propaganda "in order to ensure the domination of one social class over another or to eliminate a social class". This latter phrase goes even further than Article 272 of the Penal Code of Fascist Italy which made it an offence to make propaganda "with the aim of introducing by force the dictatorship of one social class over another".

The Court of Cassation has recently upheld sentences totalling 22½ years imprisonment for communist propaganda on Mr Suleyman Ege, director of a publishing house entitled "Science and Socialism", for publishing official documents of the Chinese Communist Party under the title "Workers of the World Unite" and two other translations of communist literature. It is emphasised that this conviction was not under emergency legislation but under the ordinary law.

The publication of a Kurdish Dictionary has been held to be "separatist propaganda" and the dictionary is now banned. Equally, a History of the Kurds written in the 16th century is banned.

#### Article 29 - The right to form associations

The original article read as follows:

"Every individual is entitled to form associations without prior permission. This right can be restricted only by law for purposes of maintaining public order or morality".

The revised article introduces four additions, one liberal and three restrictive. The liberal one reads "No individual can be coerced into becoming a member of an association or into retaining his membership". The restrictive ones are:

- (1) legal restrictions may now be imposed for purposes of "safeguarding the integrity of the State with its territory and people, and national security".
- (2) the forms and procedures to be applied in the exercise of this right "are regulated by law". In this way a requirement for official approval may be imposed before the right of association can be exercised.
- (3) associations can be closed down by court order and "in instances where the delay is deemed prejudicial for the purpose of safeguarding the integrity of the state with its territory and people, national security

public order or public morality, such associations may be prevented by law, until such time as a court judgment is made". In this way wide powers are given to the executive to ban associations of which they disapprove.

Article 30 - Personal Security

Under the original article persons arrested or held in custody had to be brought before a court within 24 hours (excluding the time required to take him to the nearest court). This period was extended by the 1971 amendments to 48 hours or, for collective offences, 7 days. However, the emergency legislation purported to extend the period of preventive detention under martial law to 30 days. In its decision of February 15, 1972, the Constitutional Court held that this provision was unconstitutional. By a further Constitutional amendment which came into force on March 20, 1973, the period has now been extended to 15 days.

It is widely reported that even these extended periods of detention are being illegally exceeded.

Article 32 - Legal channels of justice

The original article read:

"No person shall be made to appear before a court other than his natural judge.

No court vested with extraordinary powers to pass judgment can be created which may entail the appearance of a person before a court other than his natural judge".

A person's "natural judge" is the ordinary court having jurisdiction to deal with his alleged offence at the place where and at the time when it is alleged to have been committed.

In the amended version of the article, the phrase "his natural judge" has been replaced by the phrase "the one to which he is legally subject".

The Constitutional Court has already expressed the view that the new phrase has the same meaning as the old one. It may be asked, why then was the change made? The answer would seem to be that it was hoped that the new phrase would render valid legislation which had been introduced to give military tribunals under martial law the right to try certain crimes committed before the proclamation of martial law. The phrase "natural judge" is a more liberal concept derived from the school of "natural law". Its replacement has a more positivist flavour, and illustrates the alteration in the spirit of the Constitution effected by the amendments.

Article 46 - The right to establish trade unions

The original article gave all employees the right to establish trade unions without prior authorisation.

The amended article, by substituting the word "workers" for "employees", removes the right to form or belong to unions from all civil servants and state

employees, including persons employed in nationalised industries.

For other workers, although the text still says that the right to establish unions exists "without prior authorisation", it is now stated that "forms and procedures to be implemented in the exercise of those rights shall be regulated by law", which implies at least supervision if not control.

In addition it is now provided that "The law may impose restrictions for the purpose of safeguarding the integrity of the state with its territory and its people, national security, public order, and public morality". A law to give effect to this provision is understood to be in preparation, but has not yet been published. The revised wording obviously opens the door to substantial restrictions on trade union freedom.

Of the two big trade union confederations, the pro-government TURKIS and the opposition DISK, which was affiliated to the Labour Party, DISK is now under the sword of Damocles. It has severely restricted its comments upon current events in order to avoid providing the authorities with an excuse to take action against it. It has not even protested against these restrictions upon trade union rights.

#### Article 60 - The right and duty of national defence

This article provided for universal compulsory military service. The title of the article has been changed to "Patriotic service" and the article now establishes a right and duty to patriotic service, which may be in the armed forces or "in public services". This would, no doubt, admit of conscientious objection to military service, but the amendment was not made for this purpose. Conscientious objection is not recognised in Turkey, and the amendment was passed to enable the compulsory service to be part military and part civilian.

#### Article 120 - Universities

This article formerly stated that "the Universities are public corporate bodies enjoying academic and administrative autonomy". The words "academic and administrative" have now been omitted and a sentence has been added stating: "The autonomy of the universities is exercised within the provisions designated in this article".

Among the new provisions are the following:-

- (1) The police may now investigate offences and pursue and arrest suspected offenders within university buildings (which they could previously do only at the request of the Rector).
- (2) Universities shall now be governed "under the supervision and control of the State".
- (3) The law will now regulate "the manner in which the state shall exercise its right of supervision and control over the universities, the responsibilities of the organs of the university, the measures to prevent all acts directed towards impeding learning and teaching, the assignment when need be of the members of the teaching staff and their assistants attached to one university to duties in other universities, and the rules for the execution of learning and instruction in freedom and under guarantee and

in conformity with the exigencies of modern science and technology, and principles of the development plan".

- (4) The Council of Ministers "shall take charge of the management of the Universities, or of the faculties, organisations and establishments attached to such universities, if the freedom of learning and teaching in these universities and their faculties, organisations and establishments is endangered, and if such danger is not averted by the university organs". If the Council of Ministers exercise this power, they must submit their decision without delay for the approval of the Turkish Grand National Assembly.
- (5) The right of the teaching staff and their assistants to join political parties, which was expressly safeguarded in the original article, has now been removed.

It will readily be seen that the autonomy of the universities now exists in name only. Quite apart from the special power given to the Council of Ministers to take over the universities, the universities are no longer independent either academically or in their administration. The supervision and control by the state extends to the removal of teaching staff or their transfer to other universities, to the control of the curriculum, and to police interference within the precincts of the university.

#### Article 121 - Broadcasting and television

The amended version of this article no longer describes the broadcasting and television corporations as "autonomous". Whereas previously all broadcasts had to be made "within" the principles of impartiality, all that is now required is that they be made "with due regard to" the principle of impartiality. And an ominous paragraph is now added reading:

"Conformity to the requisites of the integrity of the state with its territory and people, to the national, democratic, secular and social Republic based on human rights, and to the national security and public morale in the selection of news and programmes, in their elaboration and presentation, and in the performance of their function to assist culture and education, as well as in the principles of ensuring the authenticity of news and in the selection of the organs, their powers, their duties and their responsibilities, shall be regulated by law".

As in the case of the universities, it is clear that the broadcasting and television corporations are no longer autonomous.

#### Article 124 - Martial Law

The amendments to this article are of considerable significance.

The original article authorised the Council of Ministers to proclaim (subject to the approval of the Grand National Assembly) martial law in any part of the country in four situations, namely in the event of

- (1) war,
- (2) a situation likely to lead to war,
- (3) an armed insurrection,
- (4) the emergence of definite indications of a serious and active uprising

against the fatherland and the Republic.

It is open to argument whether the student disturbances and acts of extreme violence which had occurred in Turkey from 1968 to 1971 fell within any of these four categories. The legality of the proclamation of martial law in 11 provinces on April 25, 1971, even though approved by Parliament, has been called into question by constitutional lawyers, as was the imposition of martial law in Istanbul and neighbouring industrial areas from June to September 1970. That proclamation followed violent disorders arising from opposition to proposed changes in trade union legislation, which would have severely weakened the left-wing DISK trade union confederation.

In addition to the four situations previously itemised, the amended article now permits a declaration of martial law in the event of

- (5) "The emergence of definite indications of widespread acts of violence endangering the indivisibility of the territory and the nation, from within or without, or tending to suppress the free democratic order or the basic rights and freedoms recognised by the Constitution".

This provision clearly extends very considerably the circumstances in which martial law may lawfully be proclaimed. It will be noted that there is no requirement that the proclamation of martial law shall be "necessary" for the safeguard of "the free democratic order or the basic rights and freedoms recognised by the Constitution". Nor does it have to be shown that this order or these rights or freedoms are in fact endangered. All that is needed is "definite indications of widespread acts of violence ... tending to suppress" them. This wording, if it had been in force at the time of the proclamation of martial law in April 1971, would no doubt have been apt to describe the situation then prevailing. It falls a long way short, however, of the wording of Article 15 of the European Convention on Human Rights (on which the Turkish authorities rely to justify their proclamation), namely a "public emergency threatening the life of the nation".

#### Article 136 - Organisation of the Courts

Chapter 3 of the Constitution contains detailed provisions laying down the constitution and jurisdiction of the Higher Courts, the High Council of Judges and the Constitutional Court.

By an amendment coming into force on March 15, 1973, courts of a new kind, known as "Courts of State Security", are now authorised to try political offences. This has been done rather surprisingly by an amendment to Article 136, which merely said "The organisation of courts, their functions and jurisdiction, operations and trial procedures shall be regulated by law".

The amendment provides that "Without prejudice to the provisions concerning martial law or a state of war, Courts of State Security can be set up with power to try cases concerning offences relating to the integrity of the State with its territory and nation, as well as offences relating to the liberal democratic order or against the Republic, the characteristics of which are prescribed in the Constitution, and those relating to the security of the State". Two out of the five judges of these courts must be military judges.

This amendment illustrates the way in which under the present "emergency", the permanent law is being amended so as to introduce into it features of a kind found normally only under emergency legislation. In this case special tribunals are being authorised to try political offences with the permanent participation of the military in the normal processes of law.

#### Article 138 - Military jurisdictions

The original article dealing with military courts provided that a majority of the members should "possess the qualifications of judgeship", i.e. have a professional legal training.

By a constitutional amendment of March 1973, this provision has been amended to read "the majority of judges of military courts must be professional judges, but in time of war this provision does not apply".

Since, under Article 18 of the Law relating to Martial Law, the procedures applicable in a state of war have been made to apply to the martial law courts, the effect of this amendment to the Constitution is that the abolition of legally trained members of military courts applies to the present martial law courts, even though there is no state of war. As there is no suggestion that there is a lack of professionally qualified judges, it is difficult to understand why such an elementary safeguard of legality should have been abandoned.

#### Provisional Article 21

By a decision of February 16, 1972 (published in the Official Gazette October 14, 1972), the Constitutional Court held unconstitutional the provision in Article 15 of the Law on Martial Law (No. 1402), which purported to give to the Martial Law Courts the power to continue to try, after the lifting of martial law, cases already begun before the lifting of martial law. By an amendment to the Constitution of March, 1973, in Provisional Article 21 this decision is in effect reversed, and the martial law courts are now empowered to continue trying cases after the lifting of martial law. In other words, emergency measures are continued even after the emergency which occasioned them is recognised to have passed<sup>(3)</sup>.

- (3) By the same decision of February 16, 1972, the Constitutional Court held unconstitutional Article 15 of the Law on Martial Law, which purported to give the Martial Law Courts jurisdiction to try a large number of specified offences, mostly of a political nature. The grounds of this decision were that Article 15 gave the Martial Law Commander a discretion to decide whether any particular case should be tried before a civil or military court, whereas Article 138 of the Constitution required that the jurisdiction of the courts be prescribed by law. This decision took effect on April 12, 1973. As there has been no amending legislation, confusion prevails at the time of writing (May 1973) as to whether these courts have jurisdiction to continue to try the cases before them. The Izmir Martial Law Court has sought the advice of the Ministry of Defence; an Istanbul court has decided to proceed with its trial; another court has adjourned its case, and the court at Ankara has accepted (it is suggested rightly) the defence argument that it is incompetent to try the case before it and that the case should be transferred to a civilian court.

The Turkish Martial Law Courts, which have been declared unconstitutional, have tried and convicted 1,584 individuals, most of them in mass trials, and have dissolved 404 associations (Yeni Ortam, April 13, 1973). It is believed that over 2,000 other suspects are still being tried or are awaiting trial.

Article 149

This article originally provided that any political party which had obtained at least 10% of the total valid votes cast in the last election, or any political party represented in the Senate or National Assembly, could initiate proceedings before the Constitutional Court to have any law declared unconstitutional.

Under the amended article this right is now confined to parties having obtained 10% of the votes or one sixth of all the members of either the Senate or National Assembly. This amendment would appear to infringe the principle of equality in the administration of justice. It would for example, have deprived the Turkish Labour Party of the right to appeal to the Constitutional Court, if that Party had not itself been dissolved by an order of the Constitutional Court in July 1971. (The Turkish Labour Party had successfully exercised their right in the proceedings which led to the decision by the Constitutional Court that the military courts set up under the Law Relating to Martial Law were unconstitutional).

Part III - TURKEY AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The application of the European Convention on Human Rights falls to be considered under four aspects:

- (1) whether the general law in Turkey is consistent with the Convention;
- (2) whether the emergency measures introduced under martial law derogate from the obligations under the Convention; if so,
- (3) whether these emergency measures are consistent with Article 15 of the Convention;
- (4) whether any illegal practices are occurring in Turkey which constitute violations of the European Convention.

(1) The General Law and the Convention

Many amendments and additions to the general law in matters affecting human rights have been made since March 1971. Some of these will now be considered in relation to the relevant articles of the European Convention on Human Rights.

Independence of the Judiciary and Right to a Fair Trial

Under Article 6 of the European Convention "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

As has been seen, by an amendment to Article 138 of the Constitution, Military Courts are no longer required to have any professionally qualified judges. In addition, the independence of the military judges has been eroded by amendments to the Law relating to the Status of Military Judges (No. 357, published October 26, 1963). This was confirmed in a remarkable article by no less a person than the Chief of the Military Court of Cassation, General Rafet Tüzün, published in Milliyet on February 12, 1972, when the new law was before the Parliament. In his article he said,

"With the recent amendments to the law relating to the Status of Military Judges, the judges of military tribunals are made subject to the strict hierarchy of the /military/ administration. They are strictly under the orders of the Commander under which the Courts are constituted. ... Even the Military Court of Cassation is integrated under the hierarchic system of the Ministry of Defence."

The most important of these amendments (in Law 1611 of July 17, 1972) provide that all military judges will henceforward be subject to the disciplines of the normal military hierarchy under Law No. 926 relating to Military Personnel of the Armed Forces, and that all military judges "who have not received promotion /within 3 years/ can be retired". This means that the

military judges will, in their work as judges, be subject to the orders of their military commanders, who are also responsible for their promotion, and consequently their continuance as judges.

General Tüzün's article spells out the consequences of the amendments as follows:

"(1) The Superior Officer /i.e. the Martial Law Commander/ can give his subordinates any kind of orders, instructions, can send them circulars, and make recommendations and suggestions to them. (5) What is most serious is that the Superior Officer, as head of a service, can even give orders and demand their strict application, and according to the Constitution it is he who has the prerogative to interpret the law. The subordinate is obliged to execute the order of his superior instead of deciding according to his conception of law and his moral conscience. (6)

(2) The superior officer /i.e. the Martial Law Commander/ can always control his subordinate.

(3) The superior officer always has the power to decide on the promotion of his subordinate.

(4) The superior officer can always impose disciplinary penalties on his subordinate.

After all these amendments can one pretend that the status of military judges is guaranteed in conformity with the Constitution and the principles of the independence of the judiciary?"

Later in the article he criticised the introduction of Provisional Article 21 into the Constitution, removing the need for professionally qualified military judges, and concluded his article by stating:

"All this is contrary to the Charter of the United Nations, the Universal Declaration of Human Rights, the European Convention on Human Rights, and the Geneva Conventions, of which we are signatories."

It is important to stress that this is a part of the general law relating to military courts and is not part of the emergency legislation.

The degree of independence of the judiciary under martial law is illustrated by the circumstances attending the dissolution of the First Military Court of Istanbul. This court, in two important cases in April and May 1972, refused to convict 19 members of the Popular Liberation Army of Turkey and 84 young naval officers of "trying to change the Constitution by force" under Article 146 of the Penal Code, an offence which carries a mandatory death sentence. They did so because they were not satisfied that the criminal acts proved against the accused (kidnapping for political reasons, attacks on

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(5) This wording is taken from Article 132 of the Constitution, which states that judges shall be free from any such interference.

(6) This refers to Article 125 of the Constitution which says that if a subordinate challenges the legality of an order "should the superior insist on the performance of his order and reiterate it in writing, such order shall be carried out".

banks and use of explosives and firearms) were appropriate or sufficient acts to amount to the offence of trying to overthrow the Constitution. The military prosecutor entered an appeal against this decision and a few days later, on May 16, 1972, it was announced that the court had been dissolved and the judges returned to their regiments.

#### Right to a Fair Trial

By Law No. 1696 of March 5, 1973, which amends certain articles of the Criminal Procedure Code, preliminary proceedings before an examining magistrate have been abolished for certain classes of political offences, namely those "committed with the object of destroying (1) the fundamental rights and freedoms prescribed in the Constitution, (2) the indivisible integrity of the State with its territory and its Nations, (3) the Republic, of which the characteristics are prescribed in the Constitution, through recourse to differences of language, race, class, religion, or sect, as well as offences committed in connection with such offences". The very wide construction given to these terms has already been considered, in particular in relation to the amendments to Article 11 of the Constitution from which they appear to have been taken.

The effect of this amendment is that political suspects may now be committed for trial on the authority only of the civil or military police and public prosecutor, without any preliminary judicial examination. This severe limitation of defence rights for one class of accused persons appears to amount to an unjustified discrimination conflicting with the principle of equality in the administration of justice, and, it is submitted, with the obligations imposed by Articles 6 and 14 of the European Convention.

#### Presumption of Innocence

Under the same law (No. 1696 of March 5, 1973), persons who have acted in various specified ways in the name of, or on behalf of, or in connection with an illegal association, or an association subsequently declared illegal, are presumed to be members of that association, unless they prove the contrary. This would, for example, apply to membership of the Turkish Labour Party, which has now been declared illegal. It is submitted that this provision conflicts with the presumption of innocence required under Article 6 (2) of the European Convention.

#### Freedom of Expression

Under Article 10 of the Convention "everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

The wording of Article 20 of the Turkish Constitution (see pp 8/9 above) would appear to ensure protection of this right. However, the cases decided under the general law by military tribunals show that there are very severe limitations on freedom of expression, which it is submitted cannot be

reconciled with the terms of the Convention. The following is a sample of the cases, relating to statements and publications before the proclamation of martial law.

On August 19, 1971, twenty leaders of the recently dissolved Turkish Labour Party were accused before the Third Military Court at Ankara under Article 141 of the Turkish Penal Code with "trying to establish the domination of one class over other classes and to follow a separatist policy". The main evidence submitted by the military prosecutor was the programme of the Party (which had been in force since 1964 and which advocated the achievement of a socialist society by peaceful means), and a resolution on the democratic rights of the Kurdish people adopted by the Party Convention in 1970 (which did not advocate separatism). All the accused were convicted and sentenced to between 8 and 12 years' imprisonment. The Military Court of Cassation has recently upheld the decision (April 26, 1973).

In April 1972, Cetin Altan, a former deputy of the National Assembly, and Irfan Derman, editor of the daily Aksam, were charged before the Second Military Court at Istanbul with insulting the head of state in a speech by Altan in the Assembly in 1967, published subsequently as an article in Aksam, in which he said that the President's election was the result of a political manoeuvre. Both were convicted. Cetin Altan was sentenced to one year's imprisonment.

Alpay Kabacali, editor of a weekly paper, was imprisoned for an article written in 1968 by the publisher of the paper, who had since gone abroad.

Dogan Kologlu was sentenced to one year and one month for insulting the President in an article written 3 years before the institution of martial law.

Professor Mümtaz Soysal, Professor of constitutional law, was accused in 1971 under Article 142 of the Penal Code of "making propaganda for communism" in his Introduction to the Constitution, published by the University of Ankara with the approval of the University Senate, and used as a legal textbook in the University for two years. It was alleged that the book, which contained references to the writings of Karl Marx, was written "with the purpose of diverting the minds of students to dangerous ideologies". On three occasions he has been tried and convicted by military courts and sentenced to six years and eight months imprisonment, followed by two years banishment and a life-long ban from public service. On each occasion the judgment has been set aside by the Military Court of Cassation on procedural grounds. He is now awaiting his fourth trial on the same charge.

Dr. Ismail Besikçi, assistant at the Faculty of Political Sciences in Ankara, was charged before the Military Court of Diyarbarkir in July 1971 under Article 142 of the Penal Code for "making propaganda for communism and separatism" in his articles in the monthly Review ANT and in his university lectures delivered before the proclamation of martial law. The thesis he had sought to establish in his writings and lectures was that there exists a Kurdish people as a separate historical, social and ethnic entity from the Turkish people. He was found guilty and condemned to 13 years' imprisonment. This verdict and sentence were confirmed by the Military Court of Cassation in 1973.

Although these and many similar cases have been tried before military courts under martial law, the offences with which the accused have been charged are offences under the ordinary law and not offences against martial law regulations. They cannot, therefore, be justified under Article 15 of the European Convention. Their justification, if any, must be found in paragraph 2 of Article 10 as being "restrictions ... prescribed by law and ... necessary in a democratic society, in the interests of national security, territorial integrity or public safety /or/ for the prevention of disorder". It is submitted that, on the face of them, cases of the kind referred to cannot be justified under this provision.

### Freedom of Association

Under Article 11 of the European Convention "Everyone has the right ... to freedom of association with others including the right to form and to join trade unions for the protection of his interests". Paragraph 2 of the Article reads:

"No restriction shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

As has been seen above, Article 29 of the Constitution appears to establish the right of association. It will be remembered, however, that this Article did not prevent the Constitutional Court ordering the dissolution of the social democratic Turkish Labour Party in July 1971 under the unamended 1961 Constitution. Since then the amendments to Articles 29 and 46 of the Constitution have laid the basis for wider restrictions on freedom of association, in particular in trade unions. Civil servants, who were previously denied the right to strike, are now not even allowed to belong to trade unions, nor are employees in nationalised industries. Even the teachers' union has been dissolved.

Following the amendments to Article 29, a new Law of Associations, No. 1630, was passed on November 22, 1972.

Article 4 of this law stipulates that associations are prohibited which have one or more of twelve specified aims. The first six of these aims are:

- "(a) to destroy the indivisible integrity of the Turkish state with its territory and people;
- (b) to abolish the Republic, the characteristics of which are prescribed in the Constitution, through recourse to differences of language, race, class, religion or sect;
- (c) to suppress human rights and freedoms;

- (d) to engage in activities contrary to the laws, public order or public morals;
- (e) to provide for the supremacy or privilege of any region, or race or class or members of any religion or sect over others, on the basis or in the name of any region, race, class, religion or sect;
- (f) to establish the domination of one social class over other social classes, or to eliminate a social class, or to overthrow the established basic economic or social order of the society or to abolish completely the political and legal institutions of the society;"

These prohibitions appear to be intended for the prohibition of any association having as its object the promotion of ideas of the class **struggle**, of marxism, communism, or anarchism, or of the rights of the Kurdish minority. It is immaterial whether the realisation of these objects is intended to be achieved by peaceful means or otherwise.

All existing student organisations are dissolved by Provisional Article 3, as from the date of publication of the law. Article 4 provides that in their place "no more than one student association can be formed at universities, faculties, academies and institutes, or high schools associated with these, and other official or private institutions of education and learning". Under Article 15, "students who are registered members of one of the political parties cannot be members of student associations". Moreover, under Article 35 (II),

"(b) Student associations, in whatever form, cannot be established with political aims.

Student associations can only be formed by the students of the educational or training institution where they are established, and for the purpose of meeting the social or educational and training needs of the students, such as the maintenance of their bodily and spiritual health and caring for their nutrition, work, rest and recreation, and for the purpose of representing the students before the administration of their institution and other establishments.

Student associations can in no way or form engage in political activities and activities not related to being a student."

International activities by any association are severely restricted. Under Article 6, except by permission of the Council of Ministers, no association can be formed with the aim of engaging in international activities, no Turkish association can affiliate with international or foreign associations, and no association with headquarters abroad can have branches in Turkey. Under Article 38, invitations to members of foreign associations by Turkish associations, or sending members abroad in response to invitations from foreign associations, is subject to permission of the Ministry of the Interior, given after consultation with the Foreign Ministry.

Strict controls are imposed by Article 39 on public declarations or statements by political associations other than political parties. A decision of the "authorised organ" of the association is required; the names and signatures of the persons responsible must appear; a copy of the document

must be submitted to the local office of the prosecutor and a receipt obtained; another copy must be submitted to the local administrative authority; the press, radio and television cannot publish such a declaration or statement before receiving a copy of the receipt from the prosecutor's office.

These are but some of the restrictions imposed by this law. It is emphasised that it is not an emergency provision related to the state of martial law. It is part of the permanent law concerning freedom of association. It is submitted that this degree of restriction cannot be reconciled with Article 11 of the European Convention.

A Bill now before parliament entitled "Law on Professional Associations of Engineers and Architects" will, if passed into law, further restrict the freedom of such associations. These two professions appear to have been singled out since they had, before 1971, been particularly outspoken on political issues. The proposed law would limit their activities so that they would be unable to undertake any political activity whatever, or pass any resolutions or make any statements on any political subject.

#### Freedom of Assembly

Another Bill before parliament will, if passed, give local authorities the power to postpone any demonstration for up to thirty days. Such a power would, of course, enable the authorities to prevent timely demonstrations on any issue calling for urgent action. This is, it is submitted, in conflict with the right of freedom of assembly under Article 11 of the European Convention.

#### The Kurdish Minority

The numerous provisions in the Constitution and in various laws referred to throughout this study, whereby all rights of the Kurdish minority are suppressed is, it is submitted, a clear breach of Article 14 of the European Convention which provides:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

#### (2) Emergency Measures introduced under Martial Law

It is unlikely to be challenged that the emergency powers granted under martial law to the Martial Law Commanders derogate extensively from the obligations under the European Convention.

These powers are contained in Article 4 of the Law on Martial Law (No. 1402 of May 13, 1971), which provides that the Martial Law Commander is authorised to:

- (a) search without warrant any dwelling-house, office of an association, political party, trade union, club etc; censor letters and communications; search persons and documents; and confiscate any property;
  - (b) control the radio and television;
  - (c) control the press and any kind of publication <sup>(7)</sup> and close printing presses;
  - (d) expel suspected persons from the area of martial law;
  - (e) ban the transport of arms, explosives etc.;
  - (f) ban strikes and lock-outs;
  - (g) ban any meetings, demonstrations, marches etc; suspend the activities of any kind of association or organisation; regulate the formation of new associations;
  - (h) control commercial or industrial undertakings which produce or transport essential goods;
  - (i) supervise casinos, cafés, restaurants, theatres, cinemas, bars, discotheques, inns, dance-halls, clubs or sports-halls and, where he considers it necessary, close them;
  - (j) regulate all forms of transport and traffic.
- (3) Whether the Emergency Measures are Consistent with Article 15 of the Convention

This raises two questions, namely whether there was, and still is, a "public emergency threatening the life of the nation", and if so, whether the emergency measures were and are "strictly required by the exigencies of the situation".

It will be remembered that under Article 124 of the Constitution as it stood at the time of the proclamation of martial law on April 26, 1971, the Council of Ministers could declare martial law in case of internal disorder only "in the event of ... an armed insurrection, /or/ the emergence of definite indications of a serious and active uprising against the fatherland and the Republic".

It has already been indicated in the Introduction that, although there had been widespread acts of violence, there was nothing in them to suggest that any organisation was planning an armed insurrection or uprising. Support for this view is to be found from two important sources.

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(7) A list of 138 books banned by the Martial Law Commander in Istanbul includes for some reason Einstein's Theory of Relativity. Under martial law 39 newspapers and periodicals have been banned, either indefinitely or for fixed periods, including 31 daily papers.

On May 1, 1971, i.e. five days after the proclamation of martial law, Prime Minister Erim gave an interview to the foreign press on the occasion of a CENTO meeting. The following are extracts from his statements as reported the following day in Milliyet newspaper:

"I should emphasise that in Turkey there is no important separatist movement. Nevertheless, some organisations formed abroad have succeeded in achieving some results, but I can guarantee that none of these separatist activities constitute an immediate danger to the indivisibility of Turkey. (8)

We also have information about some attempts at sabotage. That is why we have proclaimed martial law. For example, we declared martial law at Zonguldak because one of the most important steel works for our economy is situated there. To protect this factory against sabotage we had to declare martial law in this region. Similarly, in other regions where there are oil refineries we have had to declare martial law, again for the same reason. We also declared martial law in areas where there were extremist activities undertaken by certain associations and organisations. But I should emphasise that in none of these areas was martial law declared to meet an immediate danger of internal disorder. ...

The number of wanted and arrested persons since the declaration of martial law does not exceed 200. But this number may rise to over 300. (9) 200 terrorists out of 100,000 students in Turkey cannot be considered a large number. ...

In reply to a question 'Do you think that the existence of 200 extremists could necessitate the proclamation of martial law?', he replied, 'Certainly, yes. I have just explained that martial law has not been declared in all parts of the country. In each province where it was declared there were different reasons for it. It is common knowledge that even one single saboteur can cause the most serious damage. To cause severe damage it is not necessary for there to be a large number of people.' "

It is submitted that Mr. Erim was clearly stating that the declaration of martial law was imposed to help to protect vital installations from sabotage and to control certain extremist activities, and not in order to meet

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- (8) The Turkish authorities use the term "separatist" to describe any movement tending to threaten "the integrity of the state with its territory and people" (cf. Article 11 of the Constitution). Therefore it includes any revolutionary movement as well as a separatist movement in the ordinary sense of the term (e.g. Kurdish separatism). In the present context it is clear that Mr. Erim was using this term in the wider sense.
- (9) It was reported officially on June 9, 1971, that 454 persons were still under arrest or detention in Ankara and Istanbul out of nearly 2,000 who had been detained in those two provinces alone since the declaration of martial law. The number of persons arrested and imprisoned since then far exceeds the numbers supposedly threatening the Constitution in 1971. An official communique published on April 13, 1973, declared that 1,584 persons had been convicted and 404 associations dissolved by Martial Law Courts. Over 2,000 others are still being tried or awaiting trial. A summary of the principal mass trials is contained in the Appendix.

an immediate danger of internal disorder. It is difficult to see how, in these circumstances, the declaration can be justified under the terms of Article 124 of the Constitution and, still less, under Article 15 of the Convention. (It was not, of course, necessary to proclaim martial law in order to place military guards on vital installations.)

The second confirmation comes from the decision of the First Military Court of Istanbul Martial Law Headquarters in April and May 1972 in the cases of 19 members of the Popular Liberation Army of Turkey (THKO) and of 84 young naval officers. These cases have already been referred to on pages 18 and 19 above. It will be remembered that in both cases, the defendants were charged under Article 146 of the Turkish Penal Code with "trying to change the Constitution by force". This offence, which carries with it a mandatory death sentence, implies acts which fall within Article 124 of the Constitution as being an armed insurrection or uprising. The Court held that the acts of violence committed by the accused, which included kidnapping for political reasons, attacks on banks, and use of explosives and firearms, were not of such a nature as to constitute the offence of "seeking to overthrow the Constitution by force" under Article 146.

As these acts were typical of the violence which led to the proclamation of martial law, it is submitted that this decision provides corroboration of the thesis that the proclamation was not occasioned by an armed insurrection or uprising or by an emergency "threatening the life of the nation".

As was seen above, the Court which gave this decision was immediately dissolved. The military prosecutor's appeal has since succeeded, and the case is to be re-tried before another military court, but the fact remains that the original military court was not persuaded by the prosecutor's argument and had the courage to say so.

As has been seen, Article 124 of the Constitution has now been amended so as to permit of a declaration of martial law upon "the emergence of definite indications of widespread acts of violence ... tending to suppress the free democratic order or the basic rights and freedoms recognised by the Constitution". This provision cannot, of course, be prayed in aid to justify the original declaration of martial law. Nor is it easy to follow how it can justify its continuance when, on the admission and claims of the Turkish authority, hundreds of persons said to belong to dangerous organisations have been arrested and either have been or are being tried in mass trials. For approximately a year there have been little or no acts of violence of the kind relied upon to justify martial law, and one is driven to conclude that the reason for its continuance is that the military commanders are not yet willing to hand back power to the civilians and that they wish the mass trials to continue before military courts instead of the ordinary civilian courts. A list of mass trials is given in the Appendix. It will be seen that a large proportion of them relate to acts committed before the declaration of martial law.

Apologists for the Turkish Government argue that the continuance of martial law has been approved at two-monthly intervals by the freely elected Parliament and that there is not military rule but democracy prevailing in Turkey (cf. for example, Ambassador Suat Bilge replying to an intervention in the U.N. Commission on Human Rights, April 1973). This raises the question

of the true power relationship between the military and civil authorities. It will be remembered that the change of government which preceded the proclamation of martial law took place as a result of an unconstitutional ultimatum from the military commanders, threatening that the armed forces would take over the government if their demands were not complied with. Equally, the amendments to the Constitution were in response to a demand from the armed forces commanders. It is hardly credible in these circumstances that the declaration of martial law was not the result of pressure from the same source. Even under martial law, the military authorities continue to issue demands and threats to the politicians.

On December 11, 1972, the Secretary of the Office of the Chief of General Staff issued the following statement concerning a meeting of the self-styled Military High Command (10) the previous day:

"The subject of political amnesty, which is largely a political and emotional problem, has been raised and intensive activity undertaken on the subject ... The armed forces consider such political and emotional activities as contrary to the spirit of the March 12 (1971) memorandum."

(Yeni Ortam Daily, December 12, 1972)

On February 12, 1973, the same Secretary issued another statement on behalf of the Military High Command stating:

1. It is noted with regret that misplaced statements are being made at an increasing rate in recent months by some irresponsible politicians and politicians unable to grasp the extent of their responsibilities, and by representatives of different ideologies and interest groups, paying no regard to the supreme interests of the country and taking advantage of the dignified silence of the armed forces.
2. The Military High Command, by virtue of the responsibility attributed to the armed forces by the memorandum of 12 March, and in order to save the country and the Turkish people from the threat of destruction to which they are exposed and to lead them to a secure future, demands that:
  - (a) the disputes and provocative or disparaging declarations relating directly or indirectly to the armed forces and to the memorandum of 12 March are brought to an end;
  - (b) peace and stability be achieved and maintained following the directions in the memorandum;
  - (c) the reforms be realised as soon as possible and in an adequate manner;
  - (d) the political parties and the electoral law be modified with a view to a representation which reflects fairly and fully the national will and loyal elections;

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(10) There is no such body as the "Military High Command" under the Turkish Constitution. The term is used to refer to the Chief of General Staff, and the Army, Navy and Air Force Commanders. It was this group of officers who issued the March 1971 ultimatum.

- (e) the leaders of the political parties, of the Kontenjan group /15 Senators appointed by the President/, of the group of National Unity /the leaders of the 1960 coup d'état who are now senators for life/, and of the independent groups, get in touch with each other and meet for the purpose of exchanging views and measures to be taken for providing the means to end the present abnormal crisis and situation as soon as possible ..."

(Cumhuriyet daily, February 22, 1973)

During the constitutional crisis in March 1973 over the election of a new President to succeed President Sunay, according to a report in the Tribune de Genève of March 19, 1973, the new Chief of the General Staff "lost his patience with the leaders of the parliamentary groups" in face of repeated inconclusive balloting for the presidency and told them either to amend the Constitution so as to extend the term of President Sunay or "the armed forces themselves would take charge of the government in accordance with the March 12 memorandum". According to the same newspaper of March 29, four Turkish airforce jets flew low over the Turkish Parliament on March 28, the day of the expiry of President Sunay's term, and disrupted all conversation with their noise for two hours during the eleventh balloting for the presidency.

It is clear from these statements that the threat by the military commanders contained in the March 1971 memorandum still continues in force. In these circumstances it cannot be accepted that the Parliament is free to terminate martial law without the consent of the Military High Command. Equally, the fact that Parliament continues to give its consent to martial law does not provide any proof that there is a real emergency situation "threatening the life of the nation".

(4) Illegal Practices Violating the European Convention

(a) The military intervention

As has been seen, the leaders of the armed forces delivered an illegal ultimatum to the government and parliament on March 12, 1971, threatening to take over the government of the country if their demands were not satisfied. The threat in that memorandum has by implication been repeated on numerous occasions since then. It is submitted that this interference with democratic rights and freedoms falls to be considered as an "activity or ... act aimed at the destruction of ... the rights and freedoms set forth" in the Convention, contrary to Article 17 of the Convention.

(b) Torture and ill-treatment of political suspects

Massive evidence is available of the torture and ill-treatment of political suspects, detainees and prisoners. A detailed report on this subject is being prepared by Amnesty International. These activities constitute, of course, a violation of Article 3 of the European Convention, from which there can be no derogation in time of public emergency under Article 15.

(c) Illegal detention of suspects

There have been frequent reports of persons being arrested and detained by military and police authorities beyond the period permitted by law without being brought before a court. This is a violation of Article 5 of the European Convention.

C O N C L U S I O N S

The principal conclusions drawn from this study are:

- (1) It is doubtful whether at the time of the original proclamation of martial law in Turkey on April 26, 1971, there was any "public emergency threatening the life of the nation" as required under Article 15 of the European Convention on Human Rights;
- (2) Whatever the position in April 1971, there is no such emergency at the present time and it is difficult to see how the continuance of the state of martial law can be justified under the Convention;
- (3) The emergency measures taken under martial law seriously derogate from the obligations under the Convention;
- (4) Apart from the emergency measures, the changes which have been made to the Constitution and to the permanent laws in the last two years conflict with the obligations contained in the Convention in numerous respects, and in particular in relation to freedom of expression, freedom of association and the right to a fair trial. Being alterations to the permanent legislation, these cannot be justified as "emergency measures" under Article 15 of the Convention.
- (5) Illegal practices are occurring in Turkey in violation of the Convention, in particular the torture and ill-treatment of political suspects, and the illegal detention of suspects.



MASS TRIALS BEFORE MILITARY COURTSA. Cases relating to acts committed before martial law

1. POPULAR LIBERATION ARMY OF TURKEY (THKO): 24 defendants were tried under Article 146 of the Turkish Penal Code for alleged offences - between December 29, 1970, and March 16, 1971. Three were acquitted. Of the remainder, despite the fact that they had never killed anyone, the First Military Court of Ankara Martial Law Headquarters condemned 18 defendants to death. The Military Court of Cassation approved three death sentences and Deniz Gezmiş, Yusuf Arslan and Hüseyin İnan were executed on May 6, 1972, in Ankara. 18 defendants were condemned to imprisonment for up to 15 years.
2. YOUNG NAVAL OFFICERS: 84 defendants brought before the First Military Court of Istanbul MLH under Article 146. The court refused to apply this Article and condemned 14 defendants to various prison terms up to 36 years. 70 defendants were acquitted. The military prosecutor who had demanded death sentences for 41 defendants, has appealed successfully and the case is to be reheard before another Military Court, as the First Military Court was dissolved following its decision in this case.
3. TURKISH LABOUR PARTY (TIP): 20 leaders of the Party, including Chairman Behice Boran, were condemned to 15 years imprisonment by the Third Military Court of Ankara under Article 141 for the Party programme adopted in 1964 and for a resolution on the democratic rights of Kurdish people passed by the 1970 Party convention.
4. "TURKISH COMMUNIST PARTY" : 33 intellectuals were brought before the Third Military Court of Istanbul on a charge of "having been affiliated to the clandestine Turkish Communist Party". Although the court could not find any evidence to prove their affiliation, they punished 16 defendants with prison terms up to 8 years on December 15, 1972, for their speeches or articles prior to martial law.
5. TEACHERS UNION OF TURKEY (TÖS): 51 out of 143 defendants were condemned to up to 10 years' imprisonment on February 23, 1972, by the Second Military Court of Ankara MLH, under Article 141. President Fakir Baykurt and Vice-President Dursun Akçam, who are also well-known novelists in Turkey, were condemned to 8 years 11 months imprisonment.
6. TÖS ADANA SECTION: 8 out of 17 teachers were condemned to imprisonment for up to 8 years on February 23, 1972, by the Military Court of Adana MLH under Article 141.
7. PROGRESSIVE YOUTH FEDERATION OF TURKEY (Dev Genç): 242 defendants are still being tried before the First Military Court of Ankara MLH under Articles 146 and 141. The military prosecutor has demanded 19 death sentences.

8. PROGRESSIVE CULTURAL ORGANISATION OF EASTERN ANATOLIA (DDKO): 66 out of 86 Kurdish intellectuals were condemned to imprisonment for up to 16 years by the Military Court of Diyarbakir-Siirt Martial Law Headquarters under Article 141 on December 12, 1972.
9. STUDENTS OF THE POLITICAL SCIENCES FACULTY: 48 defendants are being tried before the First Military Court of Ankara MLH on a charge of "attacking the police forces" prior to martial law.
10. STUDENTS OF HACETTEPE UNIVERSITY: 60 out of 65 defendants were condemned to imprisonments up to 4 years 2 months on July 16, 1972, by the First Military Court of Ankara MLH on the charge of "attacking the police forces" prior to martial law.
11. PROGRESSIVE TRADE UNIONS CONFEDERATION (DISK): 29 trade union leaders were brought before the Second Military Court of Istanbul MLH on December 6, 1971, on a charge of "inciting the people to rise against the government" during the workers movement of 1970.
12. WORKERS OF OTOSAN AUTOMOTIVE FACTORY: 85 defendants were brought before the Second Military Court of Istanbul MLH on December 8, 1971, on a charge of holding an illegal demonstration in June 1970.
13. DEV GENÇ - ISTANBUL SECTION: 154 defendants are being tried before the Second Military Court of Istanbul Martial Law Headquarters since July 31, 1972, under Article 146 and 141 for acts prior to martial law.
14. DEMOCRATIC PARTY OF KURDISTAN: 24 out of 36 defendants were condemned to jail terms up to 7 years on February 27, 1973, by the Second Military Court of Diyarbakir - Siirt MLH under Article 141.
15. KOCAELI WORKERS-PEASANTS ASSOCIATION: 7 out of 16 members were condemned to imprisonments up to 8 years on December 28, 1972, by the Second Military Court of Istanbul MLH under Article 141 for their activities prior to martial law.
16. KADIRLI CULTURAL CLUB: 5 defendants were condemned to imprisonments up to 8 years by the Adana Military Court of MLH under Article 141 for their activities prior to martial law.
17. 11 STUDENTS were brought before the First Military Court of Ankara MLH on October 11, 1972 on a charge of killing another student from an opposing ideological group prior to martial law and the military prosecutor demanded death sentences for two defendants under Article 146.
18. DEV GENÇ - ERZURUM AND KARS SECTION: 27 out of 32 defendants were condemned to jail terms up to 10 years on November 23, 1972, by the First Military Court of Diyarbakir - Siirt MLH under Article 141 for their activities prior to martial law.
19. STUDENTS OF THE MIDDLE EAST TECHNICAL UNIVERSITY: 19 students were brought before the First Military Court of Ankara MLH on December 21, 1972, for student movements prior to martial law.

20. GROUP OF AYDINLIK: Vahap Erdogdu, Editor of the monthly review Aydinlik, and his 39 friends were brought before the Third Military Court of Ankara MLH on January 25, 1973, under Article 141 for their publications and activities prior to martial law.
21. MADANOGLU CASE: 32 defendants including two Senators and four journalists were brought before the Second Military Court of Istanbul MLH on February 6, 1973, for their activities prior to martial law. The military prosecutor considers their activities fall within Article 146 and has demanded imprisonment for up to 12 years.
22. FIVE INTELLECTUALS FROM KARADENIZ EREGLI: the writer Sina Çiladir and his friends were brought before the Third Military Court of Istanbul MLH on January 18, 1972, under Article 142, even though they had been subjected to legal proceedings by the civil prosecutor prior to martial law.
23. TURKISH RADIO AND TELEVISION CASE: Two board members and five programme producers of the Turkish Radio and Television Broadcasting Corporation were charged before the Second Military Court of Ankara MLH under Articles 155 and 311 for some of their programmes.
24. TURKISH LABOUR PARTY - ZONGULDAK SECTION: Seven leaders of this section were brought before the Third Military Court of Istanbul MLH on July 16, 1971, on a charge of "attempting to annihilate national feelings".

B. Other mass trials

1. POPULAR LIBERATION FRONT OF TURKEY (THKC): 23 defendants were brought before the Third Military Court of Istanbul MLH on August 16, 1971, under Article 146. Two of them, Mahir Çayan and Ulas Bardakçi, were shot dead after they had escaped from the military prison. One defendant, Ziya Yilmaz, was condemned to death on March 15, 1972, and the verdict was approved by the Court of Cassation. The sentence is still awaiting the approval of the Parliament. 5 other defendants were condemned to life-terms and 15 defendants to imprisonments up to 15 years.
2. POPULAR LIBERATION ARMY - ISTANBUL SECTION: 19 defendants were brought before the First Military Court of Istanbul MLH on October 6, 1971, under Article 146. Two of them, Cihan Alptekin and Ömer Ayna, were shot dead after they had escaped from the military prison. The court refused to apply Article 146 to the case and condemned the defendants to imprisonments on April 22, 1972. The Military Court of Cassation overruled the decision and ordered a new trial before another court under Article 146 with the demand of death sentences for 4 defendants and imprisonments for 13 defendants.
3. POPULAR LIBERATION ARMY - IZMIR SECTION: 10 defendants are being tried before the Military Court of Izmir MLH under Article 146 and 141 since November 3, 1971.
4. LAWYERS OF THKO DEFENDANTS: 10 lawyers were condemned to imprisonment for up to six months on June 30, 1972, by the Third Military Court of Ankara MLH on a charge of insulting the armed forces and the government during the trial of Deniz Gezmiş and others.

5. LAWYERS OF THKO - ISTANBUL SECTION: Three out of 5 lawyers were condemned to 6 months imprisonment on June 19, 1972, by the Second Military Court of Istanbul MLH on a charge of "insulting military judges and prosecutors".
6. KIZILDERE DEFENDANTS: The military prosecutors brought a case against 34 persons under Article 146 and demanded death sentences for all of them on a charge of "helping the members of the THKC and the THKO to kidnap three foreign technicians in Kizildere".
7. MILITARY PERSONNEL OF MALTEPE MILITARY PRISON: 19 officers, NCOs and private soldiers are being tried before the Third Military Court of Istanbul MLH since July 17, 1972, on the charge of "helping the members of the THKO and the THKC to escape from the military prison".
8. POPULAR LIBERATION ARMY OF TURKEY - ANKARA SECTION: Two defendants, Fevzi Bal and Safa Asim Yildiz, were condemned to death on February 2, 1973, under Article 146 by the First Military Court of Ankara MLH, one defendant was condemned to life-term and 26 defendants to imprisonments up to 15 years.
9. ROBBERING ZIRAAT BANKASI (AGRICULTURE BANK): 30 defendants were condemned to imprisonments up to 26 years on September 15, 1972, by the Military Court of Izmir MLH.
10. RISING AT THE MILITARY PRISON: 27 defendants were condemned to imprisonment for up to 4 years by the Second Military Court of Ankara MLH on February 2, 1972, on a charge of "rising against the authorities of the military prison".
11. SAMANDAG GUERILLA OPERATION: 14 defendants were condemned to imprisonment for up to 20 years on October 5, 1972, by the Adana Military Court of MLH for having attempted to start a guerilla operation in the Samandag district of Hatay Province.
12. HIJACKING CASE: 9 defendants are being tried since October 22, 1972, before the Third Military Court of Ankara MLH on a charge of helping the urban guerillas hijacking a Turkish plane to Sofia in April 1972. The prosecutor demanded imprisonments up to 15 years under Article 141.
13. "PRAISING DENIZ GEZMIS": Eight defendants were brought before the First Military Court of Ankara MLH on December 7, 1972, on a charge of "praising Deniz Gezmis and other urban guerillas".
14. "KURTULUS": Publisher of periodical Kurtulus and 6 others were brought before the Third Military Court of Ankara MLH on December 7, 1972, under Article 141.
15. REVOLUTIONARY WORKERS-PEASANTS PARTY OF TURKEY (TIKP): 267 defendants are being tried before the Third Military Court of Ankara MLH since January 10, 1973, under Article 141 on a charge of forming a clandestine organisation.

16. "SAFAK": 34 defendants were brought before the Third Military Court of Ankara Martial Law Headquarters on January 31, 1973, under Article 141 on a charge of "forming a clandestine organization and making clandestine publications under the name of Safak".
17. "PAPATYA": 9 defendants are being tried before the Second Military Court of Ankara MLH since January 31, 1973 under Article 141 on a charge of "forming a clandestine organization under the name of Papatya (Daisy)".
18. RISING AT THE MILITARY PRISON: 25 female defendants were brought before the First Military Court of Ankar MLH on February 5, 1973, on a charge of rising at the military prison and of insulting the authorities.
19. 18 DEFENDANTS were brought before the First Military Court of Ankara MLH on February 26, 1973, under Article 146 for taking part in various sabotage and subversive activities against the state. The military prosecutor demanded death sentences for 6 defendants.
20. "ESCAPE FROM PRISON": The military prosecutors initiated legal proceedings against 456 persons on a charge of "helping Mahir Çayan and other urban guerilla to escape from military prison and to attempt the Kizildere Kidnapping". The majority of the defendants were detained one year ago. Despite official communiques stating the trial was to start in February 1973, the defendants have not yet been brought before the military court. It is understood that many defendants will be charged under Article 146 with a demand for the death sentence.
21. POPULAR LIBERATION PARTY OF TURKEY (THKP) AND POPULAR LIBERATION FRONT OF TURKEY (THKC): 256 defendants were brought before the Third Military Court of Istanbul MLH on April 16, 1973. The military prosecutor has demanded death sentences for 10 defendants and imprisonment up to 24 years for 246 defendants. The defendants are being tried on charges of "robbing three banks, kidnapping of Mete Hos, murder of Mr. Elrom, the Consul of Isreal, helping Mahir Çayan and others to escape from the military prison in Kartal, planning to kidnap Mr. Demirel, the leader of the Justice Party, and several other members of the Parliament, kidnapping two British and one Canadian technicians from the radar base in Unye, murdering these technicians at Kirildere".
22. 53 PERSONS were brought before the Third Military Court of Istanbul MLH on May 4, 1973. The military prosecutor has asked for death sentences for 12 defendants and imprisonments of 5 to 15 years for the rest. They are being tried on charges of causing bomb-explosions at various places in Istanbul and planning to blow up the new bridge over the Bosphorus.
23. 5 UNIVERSITY PROFESSORS AND ASSISTANT PROFESSOR AND A SECRETARY, all from the University of Ankara, were brought before the First Military Court of Ankara MLH, under Article 146/3, on a charge of inciting students to anarchic activities.
24. 13 DEFENDANTS were brought before the Second Military Court of Istanbul MLH on April 12, 1973. This case concerns a murder within a revolutionary group. The military prosecutor has demanded death sentence for one defendant, imprisonment up to 41 years for another, up to 12 years for ten defendants.

25. 51 PERSONS were recently brought before one of the Military Courts of Ankara MLH. The military prosecutor has demanded 2 to 20 years of imprisonment for the defendants.
26. 22 DEFENDANTS were brought before the Second Military Court of Istanbul MLH on March 5, 1973. They are accused of starting a fire at the Istanbul Opera House and committing sabotage against three ships and damaging them. The military prosecutor has asked for death sentences for 17 of the defendants, imprisonments up to 15 years for 3 defendants and up to 12 years for 2 defendants.

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/NOTE: Articles 141 and 146 of the Turkish Penal Code, under which most of the above defendants were charged, read as follows:

- Art. 141: 1. Whoever attempts to establish or establishes, or arranges or conducts and administers the activities of societies in any way and under any name, or furnishes guidance in these respects, with the purpose of establishing domination of a social class over other social classes or exterminating a certain social class or overthrowing any of the established basic economic or social orders of the country, shall be punished by heavy imprisonment for eight to fifteen years.
- Whoever conducts and administers some or all of such societies shall be punished by death;
2. whoever attempts to establish or establishes or arranges or conducts and administers the activities of societies in any way and under any name, or furnishes guidance in these respects, with the purpose of totally exterminating the political and legal orders of the State, shall be punished by heavy imprisonment for eight to fifteen years;
3. whoever attempts to establish or establishes or arranges or conducts and administers the activities of societies, or furnishes guidance in these respects, with the purpose, contrary to the principles of republicanism or democracy, of governing the State by one person or by a group of persons, shall be punished by heavy imprisonment for eight to fifteen years;
4. whoever attempts to establish or establishes or arranges or conducts and administers the activities of societies, or furnishes guidance in these respects, the purpose of which societies is to abolish partially or entirely because of race, the civil rights provided by the constitution, or to exterminate or weaken nationalist feelings, shall be punished by heavy imprisonment for one to three years;
5. whoever joins the societies indicated in paragraphs 1, 2 and 3 shall be punished by heavy imprisonment for five to twelve years; and whoever joins the societies indicated in paragraph 4, shall be punished by imprisonment for six months to two years;

6. the punishment to be imposed on persons who commit the foregoing acts within government offices, municipalities, or within syndicates, schools, or among the officials, employees or members of such organisations, shall be increased by one third;

7. if any of the perpetrators of the crimes prescribed in this Article informs the respective authorities of the crime and identity of other perpetrators prior to the initiation of the final investigation and if his information is true, heavy imprisonment for not less than ten years instead of death shall be adjudged; and heavy imprisonment and imprisonment punishments shall be reduced by one fourth;

8. the societies mentioned in this Article are defined as two or more persons uniting for the same purpose.

- Art. 146:
1. Whoever attempts by force to alter, modify or abolish in whole or in part, the Constitution of the Turkish Republic or to overthrow the Grand National Assembly organised by the said law or to prevent the Grand National Assembly from accomplishing its mission, shall be sentenced to death.
  2. Whoever, in the manner or forms specified in Article 65, either solely or together with other persons incites people to commit these crimes, either by words or by writing or by actual conspiracy or by delivering speeches or putting up posters in public squares or streets or by making publications, even if these efforts do not go beyond the degree of attempts, shall be sentenced to death.
  3. Accomplices to the crime specified in paragraph one, other than those specified in paragraph two, shall be punished by heavy imprisonment for not less than fifteen years and be disqualified from holding public office for life. /

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