

MIDDLE EAST

IMPACTS OF THE COVID-19 PANDAMIC ON THE CONSTITUTIONAL RIGHTS IN TURKEY

Selin ESEN*

SUMMARY: I. *Introduction.* II. *State of emergency in times of pandemic.*
III. *Measures adopted to fight the Covid-19 pandemic and the question about
their constitutionality.* IV. *Conclusion.*

I. INTRODUCTION

The Covid-19 outbreak has multidimensional effects on individuals, communities and states. Therefore, this global pandemic not only directly affects basic constitutional rights and freedoms, such as life, health, movement, expression, worship, association, assembly, privacy, property, and access to justice, but also it has visible impacts on economy, politics and culture. Some measures taken due to eliminate the pandemic are so drastic that raised the question of their compability with the Constitution, democratic norms and rule of law in many countries. The Covid-19 pandemic has profoundly affected Turkey, as it has adverse impacts on almost every country around the globe. Below, I will discuss some of the constitutional questions on countering Covid-19 in Turkey.

II. STATE OF EMERGENCY IN TIMES OF PANDEMIC

Many countries respond to the outbreak by declaring a state of emergency. Indeed, according to the data of the International Center for not-for-Profit Law 87 countries have declared a state of emergency due to Covid-19 pandemic.¹ As many constitutions contain provisions on emergency situations,

* Professor of Constitutional Law, Faculty of Law, University of Ankara.

¹ <https://www.icnl.org/covid19tracker/> (accessed on 25 June 2020).

the 1982 Turkish Constitution provides for the executive to declare a state of emergency on grounds of public health. Certainly, Article 119 empowers the President to declare a state of emergency due to a “hazardous pandemic”. The President’s decision on the declaration of the state of emergency is published in the Official Gazette and submitted to the Parliament for its approval on the same day. The President may issue decrees on matters required by the state of emergency. Emergency decrees are the force of law and may restrict rights and freedoms more than ordinary times or suspend them during the state of emergency. They are subject to the Parliament’s approval. If the Parliament does not approve them within three months, decrees are automatically repealed.

Even though the Constitution provides the fundamental rights and freedoms to be restricted in broader terms than usual, and their exercise to be partially or entirely suspended, it does not vest the executive an unlimited power. Article 15 of the Constitution stipulates three criteria to protect the rights and freedoms in a state of emergency. Firstly, measures taken under a state of emergency will not violate Turkey’s obligations under international law. Secondly, fundamental rights and freedoms may be suspended “to the extent required by the exigencies of the situation”, i.e. the principle of proportionality is applied. Thirdly, measures can not touch the rights and guarantees enumerated in paragraph 2, i.e. the ‘right to life’, and ‘physical and spiritual integrity’ of the person except in respect of deaths resulting from lawful acts of war, freedom of religion and conscience, freedom of thought, prohibition of retrospective offences and penalties and presumption of innocence. Note that Article 15 of the 1982 Constitution is almost identical with Article 15 of the European Convention on Human Rights. However, guarantees provided in Article 15 serve no useful purpose because Article 148.1 of the 1982 Constitution disallows judicial review of emergency decrees issued during the state of emergency.

Clearly, lack of judicial review of emergency decrees gives rise to the President to exercise his powers arbitrarily, thus a substantial infringement of rule of law guaranteed in Article 2 of the Constitution as one of the characteristics of the Republic. In fact, Turkey was under the state of emergency between July 2016 and July 2018 after the coup d’etat attempt. During this period of time, the executive abused its powers with emergency decrees by regulating many matters that were not relevant to the emergency situation and limiting the rights beyond the exigencies of the situation.² We may argue

² Esen, Selin, “Judicial Control of Decree-Laws in Emergency Regimes- A Self-Destruction Attempt by the Turkish Constitutional Court?”, *IACL Blog*, 2016, <https://blog-iacl-aidc>.

that the Constitutional Court had a share in government's actions beyond its constitutional limits during the state of emergency. The Constitutional Court had partly eliminated adverse consequences of the constitutional prohibition on judicial control of the emergency decrees with its case-law starting from 1991. However, the Court overturned its previous decisions after the coup d'état attempt in 2016, that paved the way the government not to be legally accountable.³

Law No. 2935 on State of Emergency enumerates the measures that administrative authorities may take in case of declaration of a state of emergency due to a "natural disaster" or a "hazardous pandemic". According to Article 9, among others, the administrative authorities may prohibit to be resided in certain places, restrict enter and exit to a residential area, evacuate a residential area; suspend education and training in all public and private educational institutions and closing dorms; inspect places such as restaurants, taverns, bars, clubs, movie theatres, and touristic places such as hotels and motels and limit their opening and closing hours and close them if necessary; restrict or suspend annual leave of public personnel in the emergency area; use all communication facilities in the emergency area and temporarily confiscate them if necessary; regulate the distribution of necessary articles; limit or prohibit entrance and exit of means of transportation to the emergency area.

III. MEASURES ADOPTED TO FIGHT THE COVID-19 PANDEMIC AND THE QUESTION ABOUT THEIR CONSTITUTIONALITY

Unlike many countries, the Turkish government has fought the pandemic without declaring a state of emergency. The question here is whether this preference of the government makes the Turkish case more democratic than other countries that have declared a state of emergency. As in almost every country, the Turkish government has imposed very stringent measures aimed at controlling the spread of Covid-19 and its economic effects. Among others, these measures included a curfew and quarantine; mandatory use of face masks in public spheres; suspension of air travel; ban on intercity travel without permission issued by provincial governors; closure of restaurants, shops and shopping malls, movie theatres etc; suspension of formal education at all

org/2016-posts/2018/5/18/analysis-judicial-control-of-decree-laws-in-emergency-regimes-a-self-destruction-attempt-by-the-turkish-constitutional-court.

³ *Ibid.*

levels and starting online teaching; suspension of the right to annual leave of health personnel. Note that, as mentioned above, many of these measures are enumerated in Law on State of Emergency.

So, the question here is whether measures imposed fighting the Covid-19 outbreak are constitutional. In order to answer this question we should discuss Article 13 of the Constitution as a limitation clause of fundamental rights and freedoms. Article 13 stipulates conditions in order to restrict a fundamental right or freedom. Firstly, rights may be *limited only by law*. Thereby, decree-laws, presidential decrees, by-laws or any other administrative regulations may not impose restrictions on rights and freedoms. Article 104.17 of the Constitution makes an exception to this provision, stipulating that social and economic rights can be regulated by presidential decrees. Secondly, fundamental rights can be restricted *in accordance with the reasons mentioned in the relevant articles* of the Constitution. Thirdly, limitations on rights and freedoms should be *in conformity with the wording and spirit of the Constitution*. Namely, limitations should be compliant with the constitutional guaranties and prohibitions. In addition, the Parliament should take the whole of the Constitution into consideration when restricting the rights and freedoms. Fourthly, restrictions must be in conformity with the *“requirements of the democratic social order”*. Fifthly, limitations must be in accordance with the *principle of proportionality* and the *requirements of the secular Republic*. Finally, Article 13 envisages a guarantee of the *“essence of the right”* as the limit upon the limitations.

Many measures imposed by the government arguably fulfills all requirements of Article 13 of the Constitution. As stated above, restrictions on the rights and freedoms must be in accordance with the specific reasons mentioned in the relevant articles of the Constitution. Many measures do not meet this requirement. As an example, consider measures concerning freedom of movement, such as curfew, quarantine, the requirement of permission for intercity travel, prevention of entrance and exit to a city. Article 23 of the Constitution guarantees freedom of movement and stipulates that this freedom may be restricted by law for the purpose of “investigation and prosecution of an offence”, and “prevention of offences”. Therefore, Article 23 does not allow in ordinary times freedom movement to be restricted for a purpose of public health or pandemic diseases. Worship services were prohibited in mosques as another measure to halt the spread of the virus. Article 24.2 of the Constitution establishes freedom of worship. This provision refers to Article 14 of the Constitution as the only constitutional limit on this freedom. Note that, Article 14 prohibits the abuse of rights and freedoms, which has no relation with the public health.

Besides, the government has implemented several measures affecting the labor relations such as suspension of non-essential economic and commercial activities and layoffs. Closure of workplaces restricts the right to property, freedom to work and conclude contracts guaranteed in Article 35 and Article 48 of the Constitution respectively. Also suspension of layoffs limits freedom to work and conclude contracts. However, while the Constitution allows the Parliament to restrict the right of property only with the aim of “public interest”, it does not provide any limitations for freedom of work.

As another measure, Law No. 7226 on the Amendment of Certain Laws adopted on 25 March 2020 in the Parliament suspended judicial time limitations due to the Covid-19. Resting on Law No. 7226, the Council of Judges and Prosecutors postponed all hearings, negotiations and on-site examinations except pressing matters, criminal investigations and proceedings on persons on remand.⁴ Suspension of limitation periods can be considered as an appropriate measure because of prevention of negative impacts of Covid-19 on claiming rights. However, postponement of hearings in all courts have led to a severe number of grievances especially for the persons on remand. Indeed, detainees, who were likely to be released, had to remain in custody, because the hearings could not be held. Moreover, it was issued a ban on visits between persons on remand and convicted prisoners and their relatives and attorneys. Clearly, persons on remand and prisoners’ right to see their attorneys is the integral part of the right to a fair trial which is guaranteed under Article 36 of the Constitution. Note that, the Constitution does not mention any reason to limit the right to a fair trial. Yet, this measure is not only unconstitutional, but also contradicts with the European human rights standards. Indeed, the statement of the Commissioner for Human Rights of Council of Europe on Covid-19 pandemic stresses that inmates should continue to have access to information, legal assistance and independent complaint mechanisms.⁵

One may claim that in addition to the expressly mentioned restrictions or in the absence of an express reference in the Constitution, the scope of the right can be subject to inherent or implied limitations, other than rights and freedoms with an absolute character, such as freedom from torture and

⁴ Decision of the Council of Judges and Prosecutors No. 2020/51 adopted on 30 March 2020.

⁵ Statement of the Commissioner for Human Rights of Council of Europe on “COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe”, 6 April 2020, <https://www.coe.int/en/web/commissioner/-/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe>.

freedom from slavery. Unlike the express limitations, implied restrictions are inherent in respective right itself. As long as express and inherent limitations of the right are respected, there will be no breach and the question as to possible limitations did not arise.⁶ Note that, the Turkish Constitutional Court adopts this interpretation in its recent rulings.⁷ However, the European Court of Human Rights rejects this doctrine, embracing the view that the enumeration given in a clause is exhaustive.⁸

The other question concerning the constitutionality of the measures is whether they can be adopted by an administrative act. The answer of the Constitution to this issue is clear. As mentioned above, Article 13 of the Constitution stipulates the rights and freedoms to be restricted by law, that is, only by a statute adopted by the Parliament, not by an administrative act. However, many measures have taken by administrative decrees issued by the administrative authorities, such as the Presidency, Ministry of the Interior, Ministry of Health or provincial governors. Only a small part of the measures taken due to the Covid-19 is based on a specific law.⁹

Accordingly, it is highly doubtful that many administrative measures that restrict the rights and freedoms meet the principle of legality which is one of the cornerstones of rule of law established in the Constitution and by the European Court of Human Rights. According to the Strasbourg Court's case-law there are four requirements of the principle of legality: the measure should have a basis in domestic law; the law must be adequately accessible; the relevant domestic law must be formulated with sufficient precision to enable those concerned to foresee; there must be a measure of legal

⁶ P. van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, 3rd Edition, Kluwer Law International, The Netherlands, 1998, p. 761; Selin Esen, *Anayasa Hukuku Açısından Dolaşım Özgürlüğü* [Freedom of Movement in Constitutional Law], Yetkin Editorial, Ankara, 2014, pp.159-160.

⁷ E.g. see E. 2014/87, K.2015/112, 8 December 2015, Official Gazette 28 January 2016, No. 29607 [Constitutional review]; E.2016/37, K.2016/135, 14 July 2016, Official Gazette 23 September 2016, No. 29836 [Constitutional review]; case of *Resul Kocatiürk*, App. 2016/8080, 26 December 2019 § 48; 2017/21973, 11.12.2019, § 35 [Constitutional complaint].

⁸ E.g. see Case of *Sidiropoulos and others v. Greece*, App. 26695/95, 10 July 1998. Bernatte Rainey, Elizabeth Wicks, and Clare Ovey, *The European Convention on Human Rights*, 6th Edition, Oxford, 2014, pp. 308-309.

⁹ For instance, Provisional Article 1 and Provisional Article 2 de of Law No. 7226 adopted by the Parliament on 25 March 2020 y Law No. 7244 adopted by the Parliament on 16 April 2020. (Kemal Gözler, "Korona Virüs Salgınıyla Mücadele için Alman Tedbirler Hukuka Uygun mu? (2)" [Are the measures taken for fighting Corona virus pandemic lawful?], <http://www.anayasa.gen.tr/korona-2.htm> (accessed on 8 June 2020).

protection in domestic law against arbitrary interferences by public authorities with protected rights.¹⁰

Administrative authorities in Turkey claim that legality of their decrees basically rest upon two legislation, namely Law No. 5442 on Provincial Administration adopted on 10 June 1949 and Law No.1593 on Protection of Public Health adopted on 24 April 1930. Public authorities generally refer Article 11/C of Law No. 5442. Paragraph 1 of Article 11/C of Law on Provincial Administration enumerates powers and duties of provincial governors. Accordingly, powers and duties of a governor include providing peace and security, personal liberty, safety, public well-being and preventive law enforcement within the province. In order to implement them, governor will take “necessary decisions and measures”. Under this provision, there is no right or freedom that a governor cannot intervene. Paragraph 2 of Article 11/C stipulates a specific provision in relation to freedom of movement. Accordingly, when public order or security has been impaired or there are severe indications that it will be impaired to stop or interrupt the ordinary life, the governor may restrict the entry and exit of people who are suspected of disrupting public order or public safety, to certain places for up to 15 days. Governor may regulate or restrict roaming and gathering of people, and navigating of vehicles in certain places or for certain hours. Clearly, this provision has no concerns with public health or pandemic. Still, it implies a high level of ambiguity by not providing any criterion to specify what actions of a person will be deemed “suspected” to intervene freedom of movement.¹¹ As a result, Article 11/C is too general and ambiguous in order to meet the principle of legality. This contradicts with the European standards on human rights. According to the well established case-law of the European Court of Human Rights, “it would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference”.¹²

¹⁰ Jayawickrama, Nihal, *Judicial Application of Human Rights Law*, Cambridge University Press, 2002, p.189.

¹¹ Özgenç, İzzet “Toplantı ve Gösteri Yürüyüşü Hürriyeti İle Seyahat Hürriyeti Bağlamında Özgürlük ve Güvenlik İlişkisi” [Relationship between freedom and security within the context of freedom of assembly and freedom of movement], *Anayasa Yargısı* 35, 2018, p. 189.

¹² E.g. see case of *Malone v. United Kingdom*, App. 8691/79, 2 August 1984, § 68.

Second legislation that the administrative measures are generally based upon is Law No. 1593. Many administrative decrees related to Covid-19 refer articles 27 and 72 of this law. Article 27 provides that “Public Health Protection Councils take measures in order to improve the health of the city, towns and villages and eliminate existing disadvantages. Councils help to organize the information collected on infectious and pandemic diseases, protect people from infectious and social diseases, and inform people about the benefits of healthy life and eliminate infectious disease when it breaks out”. The same article enumerates some public health related diseases and vests the Ministry of Health power to take action. However, the list does not include epidemic or pandemic diseases. Article 72 also recites the measures to be taken, including quarantine, in case one of the diaseses named in article 57 breaks out. Article 57 enumerates diseases, such as cholera, plague, diphtheria, dysentery, scarlet fever, measles etc. Because Article 57 does not consist of a viral disease Article 72 cannot be applied to the Covid-19 cases.

Also sanctions imposed on individuals who violate the Covid-19 measures are arguably unconstitutional. For example, although curfew as a measure is not prescribed by Law No.1593, administrative authorities impose administrative fines and other sanctions on individuals who violate curfews citing Article 282 of this law.¹³ Article 282 envisages administrative fines for those who act contrary to bans and obligations stipulated in this law. Article 282 cannot be deemed as a legal basis of such measures, because Law No. 1593 does not stipulate a nationwide curfew. Beside Article 282, administrative sanctions rest upon Law No. 5326 on Misdemeanors adopted by the Parliament on 30 March 2005. According to Article 32 of Law No. 5326, an administrative fine is imposed on those who act contrary to the lawful administrative orders that aim at protecting public health. As Professor Gözler points out accurately, this provision cannot be applied to the unlawful measures on Covid 19.¹⁴

Another matter concerning legality is that many decrees are not published in the Official Gazette or made public properly. This makes interventions to the rights and freedoms unpredictable and inaccessible. Sometimes citizens are acquainted with new measures on social media or TV news. This practice is clearly contrary to the principle of legality and the rule of law established in Article 2 of the Constitution and the European

¹³ Turhan, Engin, “Salgın Dönemlerinde Ortaya Çıkabilecek Ceza Sorumlulukları-Korona Tecrübesi” [Criminal liabilities in times of epidemic- Corona experience], *Suç ve Ceza Hukuku Dergisi*, V. 13 No.1, March 2020, p. 216.

¹⁴ Gözler, Kemal, “Korona Virüs Salgınıyla Mücadele için Alınan Tedbirler Hukuka Uygun mu? (2)” [Are the measures taken for fighting Corona virus pandemic lawful? 2], <http://www.anayasa.gen.tr/korona-2.htm> (accessed on 8 June 2020).

Court of Human Rights case-law. As the Strasbourg Court underlines, accessibility is the formal or objective requirement that the law actually exists and is publicly available to its subjects with a sufficient level of precision, in case anyone intends to consult it.¹⁵

Another problematic issue is government's use of the extraordinary circumstance resulting from the pandemic as an opportunity for its supporters and for suppressing the opposition. Law No. 7242 amending Law on the Enforcement of Judgments and Security Measures adopted on 14 April 2020 is a clear example. This legislation provided to release thousands of convicted prisoners from certain crimes in an effort to reduce the spread of the Covid-19 virus in prisons. However, Law excludes various categories of crimes and prisoners, namely persons on remand and convicted prisoners serving a sentence for crimes against state intelligence services; violation of the National Intelligence Agency Act; Anti-Terrorism Act; espionage; deliberate manslaughter; intentional injury; injury to a child, an elderly person, or a spouse; sexual violence crimes; drug production and trade. Note that anti-terrorism legislation in Turkey has been heavily criticized, as the concepts of terrorism and terrorist act are defined broadly and vaguely.¹⁶ Note that, a considerable portion of imprisoned journalists, lawyers, political and human rights activists are prosecuted for violating anti-terrorism legislation. Regardless of crime and punishment, execution and enforcement in criminal law must be based on the principle of equality. All convicted prisoners and persons on remand are among those most vulnerable to viral contagion as they are held in a high-risk environment. In fact, Law's discriminatory provisions among inmates in the same situation is contrary to the principle of equality enshrined in article 10 of the 1982 Constitution. Likewise, this discriminatory law contradicts with the European human rights standards. As underlined in the statements of human rights institutions of the Council of Europe, the resort to alternatives to deprivation of liberty is imperative in situations of overcrowding and even more so in cases of emergency. Particular consideration should be given to those detainees with underlying health conditions; older persons who do not pose a threat to society; and those who have been charged or convicted for minor or non-violent offences. Clearly, in this context, it is also all the more

¹⁵ E.g. see case of *Vasiliauskas v Lithuania*, App. 35343/05, 20 October 2015, § § 167–168; *Kononov v Latvia*, App. 36376/04, 17 May 2010 [GC], § 187; *Sunday Times v United Kingdom*, App. 6538/74, 26 April 1979, § 49.

¹⁶ Esen, Selin, "Constitutional perspective on fighting terrorism in ordinary times in Turkey and the Turkish Constitutional Court", in *Der Rechtsstaat in Zeiten von Notstand und Terrorabwehr* (eds. Otto Depenheuer and Arno Scherzberg), Lit Verlag, Münster, 2019, pp. 29–44.

imperative that those persons, including human rights defenders, activists and journalists, who are detained in violation of human rights standards be immediately and unconditionally released.¹⁷

Another case of the government abusing the pandemic situation is the prohibition of the donation campaigns launched by opposition municipalities. Mayors of the two largest cities of the country, both are from the Republican People's Party (CHP), second largest party in the Parliament, had started donation campaigns in order to provide support to low-income citizens facing with economic hardship following lockdown measures. Even though Law No. 5393 on Municipalities vests municipalities the authority to accept and collect donations unconditionally, the Ministry of Interior blocked the donation accounts. Following the campaign of the municipalities, President Erdoğan launched a "solidarity campaign".¹⁸

In addition, the government has used the Covid-19 pandemic situation especially to restrict freedom of assembly to inhibit the opposition. For instance, pro-Kurdish Peoples' Democracy Party, the third largest party in the Parliament, took a decision to march from the east of the country to the west to protest a Parliament resolution that lifted the parliamentary immunity of its two deputies.¹⁹ The governors of 10 provinces, which were expected to pass the march, prohibited entry and exit to their provinces on grounds of the Covid-19. Besides, the bar associations were forbidden for the same reason to rally to protest a bill proposed by the ruling Justice and Development Party that would establish multiple bar associations in big cities.²⁰ These examples suggest that the administrative authorities deliberately choose a ban that impaires the very essence of the right to peaceful assembly that will constitute a disproportionate and unnecessary interference in a democratic society, instead of taking the necessary measures to provide both enjoying the right and maintain social distance among the protesters to prevent the spread of the Covid 19.

During the pandemic, freedom of expression was also inproportionally restricted. For example, in one month, 303 people sharing false and provoca-

¹⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, "Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic", CPT/Inf(2020)13, 20 March 2020; Council of Europe Commissioner of Human Rights, "Statement on COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe", 6 April 2020.

¹⁸ *www.bianet.org*, 1 April 2020.

¹⁹ *Gazeteduvar.com.tr*, 6 June 2020.

²⁰ *Birgün* (daily), 3 July 2020.

tive information on social media about the Covid-19 were arrested.²¹ According to the Ministry of Interior, between March 11th and May 21st, 510 individuals were arrested due to the same reason.²² Besides, several critical media outlets were fined and sanctioned by the Radio and Television Supreme Council, the Turkey's regulatory agency, on grounds of their reports on corona virus.²³

Another issue to be discussed is possible violation of the right to privacy by the Covid-19 measures. As done in many countries, the Ministry of Health in Turkey launched the "Pandemic Isolation Tracking Project" to monitor quarantine and curfew violators. Accordingly, individuals who violate quarantine or curfew will take a warning message. If they continue to violate these measures, then the administrative action may be taken.²⁴ Obviously, this application is a convenient tool to violate privacy. It is not clear yet, whether the government has used this application with any other objective.

Also note that lack of transparency on Covid-19 measures is a noteworthy practice. Administrative authorities create confusion, uncertainty, and mistrust by providing insufficient and unreliable information. For instance, the government has not provided a satisfactory information about money spent collected in the National Solidarity Donation Campaign. The Turkish Medical Association, the largest organization of medical doctors in the country has been raising concerns about the accuracy of the data about the Covid-19 cases provided by the Ministry of Health.²⁵

Meanwhile, the judiciary has done a little to ensure that the government acts within its constitutional limits. So far, two cases concerning measures against the pandemic have been brought to the Constitutional Court. Republican People's Party applied to the Constitutional Court claiming unconstitutionality of the Law No. 7242 amending Law on the Execution of Sentences and Security Measures. This case is pending. The Court has not yet delivered its judgment. The other case was brought before the Constitutional Court through a constitutional complaint. The applicant alleged that the administrative decree issued by the Ministry of the Interior imposing a

²¹ www.diken.com.tr, 17 April 2020.

²² https://twitter.com/TC_icsleri/status/1263498305125978112/photo/1; <https://www.gazeteduvar.com.tr/gundem/2020/05/21/icsleri-bakanligi-asilsiz-korona-paylasimlari-yapan-510-kisi-ya-kalandi/> (accessed on 21 May 2020).

²³ Türmen, Rıza, "Korona ve İnsan Hakları" [Corona and Human Rights], *t24.com.tr* (21 June 2020)

²⁴ *Daily Sabah*, 8 April 2020.

²⁵ www.bianet.org, 12 May 2020.

total confinement measure that lasted for more than two months for persons over 65 years of age violated certain constitutional rights. The Court ruled that the application was inadmissible as the applicant did not exhaust all administrative and judicial remedies.

IV. CONCLUSION

The Covid-19 pandemic has globally contradictory effects on the fundamental rights. On the one hand, human rights increase in importance, on the other hand, violations on the rights have become very clear and obvious for everyone to see. The pandemic has especially strengthened the hands of authoritarian regimes to restrain fundamental rights and freedoms. In fact, this is the case in Turkey. Measures taken by the Turkish government are mainly similar to other countries. However, unlike many other countries, Turkey has taken action without a declaration of emergency. Nature of many of these measures is exceptional. In other words, it is not possible to take such measures in accordance with the Constitution without declaring a state of emergency. Thus, while fighting the pandemic, the Turkish government has obviously ignored the Constitution. Moreover, it has taken advantage of the extraordinary situation to suppress the opposition. The Covid-19 pandemic has accelerated and deepened “authoritarianism” and process of “deconstitutionalization” in Turkey.