

Management of the Health Crisis Caused by COVID-19 in Turkey

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Abstract

In order to manage the health crisis caused by COVID-19 quickly and effectively, states resorted to the available legal mechanisms, taking into account implications for human rights. In Turkey, a member of the Council of Europe since 1950 and a candidate for the European Union since 1999, the Constitution allows for the declaration of a state of emergency in the event of an epidemic. However, authorities did not declare such an exceptional state, even though measures were taken to manage the crisis that restricted the exercise of certain human rights. This study forms part of a broader research concerning legal order during the exceptional states and it aims to present how the state of emergency is regulated in Turkey, to describe the way the pandemic was addressed, particularly from the perspective of human rights, and to assess the implications and limits of restricting the exercise of these rights. To achieve these objectives, historical, analytical, and comparative research methods were used. The results of the study highlight that Turkey chose to manage the crisis by implementing measures specific to a state of emergency, without formally declaring one, even though a state of emergency is not an uncommon phenomenon for this country.

Keywords: health crisis, COVID-19, emergency measures in Turkey, human rights.

JEL Classification: K10, K33, K38

1. Introduction

In 2020, given the health crisis caused by the SARS-CoV-2 virus and the declaration of the COVID-19 pandemic by the World Health Organization, countries around the world were compelled to identify the most effective solutions to respond to this crisis situation.

Thus, in order to manage the health crisis rapidly and efficiently, it became necessary for the authorities of each state to adopt a series of measures aimed at limiting the spread of the virus, some of which involved restricting the exercise of certain fundamental human rights and freedoms.

To justify the adoption of such restrictive but deemed necessary measures in the given crisis context, some states chose to establish exceptional states that allow, under certain conditions, derogations in the field of human rights.

One of these exceptional states was the state of emergency, provided for either in national constitutions, as is the case of Romania: “The President of Romania shall, according to the law, institute the state of siege or the state of emergency throughout the country or in certain administrative-territorial units and shall request the approval of the Parliament for the adopted measure, within no more than five days from its adoption” - Romanian Constitution, Article 93 (1)², or in specific laws, as in the case of France: “The

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² *Romanian Constitution*, adopted in 1991, in its 2003 revised version, published in the Romanian Official Gazette, Part I, no. 767 of 31 October 2003, C.H. Beck Publishing House. 2011.

state of emergency may be declared either in case of imminent danger resulting from serious attacks on public order, or in case of events which, by their nature and gravity, present the character of a public calamity” - Law no. 55-385/1955, Article 1³.

The authorities of other states, such as Austria, took the necessary measures to manage the health crisis based on specific ”pre-existing legislation regarding epidemic control, namely the Epidemics Act”⁴, since neither the Constitution nor other laws provided for the possibility of declaring a state of emergency.

There were also countries, Turkey being one of them, whose constitutional provisions would have allowed the declaration of a state of emergency in the event of an epidemic, yet whose authorities decided not to resort to such a mechanism, even though they adopted a series of measures that restricted the exercise of certain fundamental rights and freedoms.

The present study aims, on the one hand, to present the way in which the state of emergency is regulated in Turkey, and, on the other hand, to describe how the authorities of this state managed the health crisis caused by COVID-19, especially from the perspective of respecting human rights, while also evaluating the implications and limits of restricting certain fundamental human rights and freedoms in the context of not declaring a state of emergency.

At the same time, the paper will describe several comparative situations in which a state of emergency was declared in Turkey, noting that the declaration of such an exceptional state is by no means an uncommon phenomenon for this country, unlike the case of Romania, where the state of emergency was declared in 2020 for the first time since the adoption of the 1991 Constitution.

Given that the topic addressed in this study concerns recent events, the specialized literature, especially that published in internationally circulated languages, is not yet very extensive. Thus, although some of the analyzed articles address the issue of human rights in Turkey during the COVID-19 pandemic, the subject is only marginally treated in relation to the constitutional provisions regarding the state of emergency. Furthermore, no studies (in the sense of scientific articles) have been identified that present examples of events during which the Turkish authorities declared a state of emergency, for the purpose of comparison or of offering possible scientifically or legally grounded explanations, or at least political-administrative considerations, for the decisions taken.

Consequently, the main element of originality of this study lies in the analysis of the implications and limits of restricting the exercise of fundamental human rights and freedoms in Turkey during the health crisis caused by COVID-19, in the context of the non-declaration of the state of emergency.

In addition to the introduction and conclusions, the research is structured into three sections, namely: a presentation of the constitutional regulation concerning the state of emergency in Turkey; a description of how the authorities of this state managed the pandemic crisis (with particular emphasis on the legislative acts underlying the adopted measures and on the fundamental rights and freedoms whose exercise was

³ Légifrance. ”Law no 55-385 of 3 April 1955 on the State of Emergency”, accessed 1.11.2025, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000695350/>.

⁴ Council of Europe – Venice Commission. ”Observatory on emergency situations”. 2020. https://www.venice.coe.int/files/EmergencyPowersObservatory/By_country-E.htm.

restricted through measures to limit the spread of the virus), accompanied by an analysis and evaluation of the implications of such restrictions; and a presentation of several situations in which Turkey declared a state of emergency.

In order to achieve the above-mentioned objectives, the study employed historical research methods (for presenting the topic of the state of emergency and the various contexts in which Turkish authorities resorted to this exceptional measure), analytical methods (for examining the aspects related to crisis management, particularly those concerning restrictive measures and their implications for human rights), and comparative methods (for examining the situations in which Turkey declared a state of emergency, so that, by observing similarities and differences, a set of conclusions could be drawn regarding the management of the COVID-19 health crisis in Turkey).

The proposed research solutions refer to the analysis of the legal framework governing the state of emergency in Turkey, a brief overview of the situations that led to the declaration of the state of emergency in this country, and the evaluation of the Turkish authorities' response to the health crisis in the absence of such a declaration, focusing on the measures that restricted the exercise of fundamental human rights and freedoms.

2. Regulation of the “state of emergency” in Turkey

The current Constitution of the Republic of Turkey was adopted in 1982. It provides, under Article 119, for the possibility of declaring a state of emergency by the President of the Republic: “In the event of war, the emergence of a situation necessitating war, mobilization, an uprising, strong rebellious actions against the motherland and the Republic, widespread acts of violence of internal or external origin threatening the indivisibility of the country and the nation, emergence of widespread acts of violence aimed at the destruction of the Constitutional order or of fundamental rights and freedoms, serious deterioration of public order because of acts of violence, occurrence of natural disasters, outbreak of dangerous epidemic diseases or emergence of a serious economic crisis; the President of the Republic may declare state of emergency in one region or nationwide for a period not exceeding six months.”⁵

The same article also stipulates that, during the state of emergency, the President may issue presidential decrees concerning matters required by the state of emergency; such decrees “which have the force of law shall be published in the Official Gazette, and shall be submitted for approval to the Grand National Assembly of Turkey.”⁶

Articles 12, 13, and 15 of the Turkish Constitution are particularly relevant to the issue of fundamental human rights. Article 12 enshrines the inalienability and inviolability of fundamental rights and freedoms, while Article 13 refers to the possibility of restricting them: “Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic

⁵ Turkish Constitutional Court, “Turkish Constitution” (official English translation) 1982, accessed 1.11. 2025, https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf.

⁶ Ibid, article 19.

order of the society and the secular republic and the principle of proportionality.”⁷

The possibility of suspending the exercise of fundamental rights and freedoms is provided under Article 15, which states: “In times of war, mobilization, a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.”⁸

Regarding possible derogations in the field of human rights, it is important to note that Turkey is a member of the Council of Europe and signed, in 1950, the European Convention on Human Rights. According to the Convention, signatory states may take derogatory measures under certain conditions, as stated in: Article 15 (1): “In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”⁹

Given that Turkey did not declare a state of emergency during the COVID-19 pandemic, the authorities did not notify the Secretary General of the Council of Europe of any derogation from the provisions of the Convention, as required by the above-mentioned Article 15, even though, in practice, the Turkish administration adopted a series of restrictive measures limiting the exercise of certain fundamental human rights and freedoms without the justification of an officially declared exceptional state.

For a detailed regulation of the state of emergency, including the actions that may be undertaken when it is declared, the Constitution provides that such regulation shall be made by law: “The financial, material and labour obligations to be imposed on citizens, the manner of restriction and temporary suspension of fundamental rights and freedoms in line with the principles of the Article 15, and the provisions to be applied and actions to be carried out in the event of state of emergency shall be regulated by law.”¹⁰

In this regard, Law No. 2935 of 1983 on the State of Emergency was adopted, which provides, among other things: “Details regarding the declaration of state of emergency; financial, material and labour obligations to be imposed on citizens where state of emergency declared in cases of natural disasters, dangerous epidemic diseases or serious economic crisis; the manner of restriction and temporary suspension of fundamental rights and freedoms to be valid separately for each type of emergency situations; how and in what manner the measures required by the situation will be taken; what competences the public service officers will be given; what changes will be made in the positions of the officers, and administration of state of emergency.”¹¹

Considering the provisions of the Constitution and of the above-mentioned Law

⁷ Turkish Constitutional Court, “Turkish Constitution” (official English translation) 1982, accessed 1.11.2025, https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf.

⁸ Ibid.

⁹ European Court of Human Rights. “European Convention on Human Rights (1950)”, accessed 1.11.2025, https://www.echr.coe.int/documents/d/echr/convention_ENG.

¹⁰ Turkish Constitutional Court, “Turkish Constitution” (official English translation) 1982, accessed 1.11.2025, https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf.

¹¹ Council of Europe – Venice Commission. “Observatory on emergency situations”. 2020. https://www.venice.coe.int/files/EmergencyPowersObservatory/By_country-E.htm.

on the State of Emergency, it can be concluded that Turkey possesses the legislative framework necessary for declaring a state of emergency, including in particular circumstances such as the outbreak of a pandemic like that caused by the SARS-CoV-2 virus.

It is also important to note that the declaration of a state of emergency in such a case could have provided the legal framework to justify the fact that Turkish authorities adopted measures that restricted the exercise of certain fundamental human rights and freedoms.

3. Management of the COVID-19 crisis in Turkey

As presented in the previous section, the Constitution of Turkey contains provisions regarding the possibility for the President of the Republic to declare a state of emergency as an exceptional state. Furthermore, as stipulated by the Constitution, the state of emergency is regulated, with all necessary details for its implementation, by Law No. 2935/1983 on the State of Emergency.

However, no state of emergency was declared in Turkey during the COVID-19 pandemic. Instead, the authorities made use of the powers granted under ordinary legislation, and the health crisis was managed on the basis of the provisions of two laws: the Public Health Protection Law No. 1593 of 1930 and the Provincial Administration Law No. 5442 of 1949.

According to several constitutional law experts, the restriction of the exercise of certain rights and freedoms imposed during the COVID-19 pandemic could not legally be based on these laws. On the one hand, considering the period in which they were drafted (prior to the adoption of the 1982 Constitution), both laws are outdated and contain provisions that were clearly inadequate for the situation and for the time when it occurred: "It was obvious that this Law [No. 1593/1930] was too outdated to be able to support the measures against a modern pandemic threatening the entire globe. The public was at a loss to understand why direct legal regulations regarding the Covid-19 pandemic, which threatened to disrupt daily life all over the world, were not made."¹² On the other hand, as discussed in the previous section, "The Turkish Constitution strictly requires the fundamental rights and freedoms to be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. Neither the Law on Provincial Administration nor the Law on the Protection of Public Health was designed to enable the administration to limit rights and freedoms in a general sense; measures regulated by these laws can only be applied to individuals under certain conditions for example if they have been infected by one the illnesses listed in the Law."¹³

Nevertheless, restrictive measures affecting rights and freedoms were also applied preventively, in order to limit the spread of the virus, without any clear legal

¹² Sevtap Yokuş, "Opportunities for a Democratic Legal Order Based on Peace in Turkey Following the Covid-19 Pandemic". *Democratic Progress Institute*. September 2020: 30. https://www.democraticprogress.org/wp-content/uploads/2022/01/Opportunities-for-a-Democratic_sevtap-yokus-19.12.pdf, accessed 1.11.2025.

¹³ Serdar Ünver, "Fighting COVID-19 – Legal Powers, Risks and the Rule of Law: Turkey". *Verfassungsblog on matters constitutional*. March 2020: 4. <https://verfassungsblog.de/fighting-covid-19-legal-powers-risks-and-the-rule-of-law-turkey/>, accessed 1.11.2025.

basis for such restrictions, since the provisions of the Public Health Protection Law could only be applied to individuals already infected, and not generally to the entire population. The Constitution of Turkey enshrines the principle of the separation of powers in the state, namely: “the legislative power (vested in the Grand National Assembly of Turkey, composed of 600 deputies elected by universal suffrage), the executive power (entrusted to the President of the Republic), and the judicial power (exercised by independent and impartial courts).”¹⁴

In accordance with constitutional provisions, public administration in Turkey is divided into two main components: central administration and local (provincial) administration.

The central public administration consists primarily of „the President, the Presidency Institution (organized into four offices - Finance, Human Resources, Digital Transformation, and Investments and nine policy boards in charge of formulating policies in key sectors), as well as ministries and additional structures that support the central government.”¹⁵

With regard to local public administration, the Constitution provides that: “In terms of central administrative structure, Turkey is divided into provinces on the basis of geographical situation, economic conditions, and public service requirements; provinces are further divided into lower levels of administrative districts. The administration of the provinces is based on the principle of devolution of powers.”¹⁶

Each province is administered by a provincial governor; similarly, each district is headed by a district governor. Governors are appointed by the President and “act as the representative and executive administrators of the State and the President in the province.”¹⁷

The Republic of Turkey is divided into “81 provinces and 922 districts, whose governors are responsible for crisis management in cases of disasters and emergencies, carrying out functions of implementation, coordination, and supervision in the fight against the spread of the virus.”¹⁸

Beyond this provincial organization, Turkey is, according to its Constitution, a unitary state, meaning that “the 81 provinces do not have any autonomy and exercise no sovereign powers.”¹⁹

On the other hand, it should be noted that municipalities are administered at the executive level by mayors, who are elected by vote and “who have rights, duties, and responsibilities relating to the management of their municipalities. Nonetheless, they remain under the administrative tutelage of the governor of the province appointed by

¹⁴ Turkish Constitutional Court, “Turkish Constitution” (official English translation) 1982, articles 7-9, accessed 2.11.2025, https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf.

¹⁵ Selim Çapar, “The Fight Against the Covid-19 Pandemic in Turkey”. *International Journal of Economics, Politics, Humanities & Social Sciences*. Vol: 4 Issue 3, 2021: 153-163, 155. <https://dergipark.org.tr/tr/download/article-file/1753237>.

¹⁶ Turkish Constitutional Court, “Turkish Constitution” (official English translation) 1982, article 126, accessed 2.11.2025, https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf.

¹⁷ Selim Çapar, *op. cit.*, p. 161.

¹⁸ *Ibid*, p. 154.

¹⁹ Serkan Koybasi, Volkan Aslan, Naciye Betül Haliloğlu. “Turkey: Legal Response to Covid-19”. *The Oxford Compendium of National Legal Responses to Covid-19*. OUP 2021: 3. Doi: 10.1093/law-occ19/e3.3.013.33.

the central Government.”²⁰

With regard to the regulation of measures aimed at limiting the spread of the virus, this was carried out by the executive power, “primarily through centralized executive acts, in the form of presidential circulars, ministerial circulars, and public announcements, alongside decisions adopted by provincial public health boards and provincial pandemic boards.”²¹

Therefore, in Turkey, decisions concerning the management of the health crisis caused by COVID-19 were made by the central public administration. The role of certain ministries, such as the Ministry of Health and the Ministry of the Interior, was particularly significant in the fight against the pandemic. Thus, the Minister of Health coordinated the activity of the COVID-19 Scientific Advisory Board (composed of specialists with expertise in various medical fields), supervised the work related to the preparation of the health infrastructure, and provided recommendations regarding the measures to be adopted at different stages of the crisis. It has often been observed that the Minister of Health “served as a bridge between knowledge and politics, in turn strengthening the relationship between society and politics.”²² The Minister of the Interior, on the other hand, was responsible for implementing the anti-pandemic measures and for ensuring the maintenance of public order.

Under the provisions of the Provincial Administration Law, the decisions adopted by the central public administration were subsequently implemented by provincial governors in all provinces and districts, thereby ensuring their application throughout the entire country. The governors acted „under the authority granted by law, which empowers them to take the necessary measures to ensure peace, security, and public well-being, which may include measures prohibiting certain people from entering or exiting certain places.”²³

Additionally, certain measures were also adopted by the Provincial Public Health Boards, established in all provinces and authorized under the Public Health Protection Law “to take the necessary measures against a pandemic, including the establishment of quarantine regimes, medical checks, the closure of public places, and similar actions.”²⁴

Alongside these Provincial Public Health Boards, created under the Public Health Protection Law, the Provincial Pandemic Boards also played a significant role in managing the pandemic, having, in certain provinces, adopted measures that restricted individual rights and freedoms.

The concern raised by some authors regarding the Provincial Pandemic Councils is that they were created by presidential directive, and “from the perspective of the rule

²⁰ Ibid.

²¹ Başak Çalı, Emre Turkut. “Year One: Reflections on Turkey’s Legal Responses to the COVID-19 Pandemic”. *VerfBlog*. 2021/3/16: 1. <https://verfassungsblog.de/year-one-reflections-on-turkeys-legal-responses-to-the-covid-19-pandemic/>, accessed 1. 11.2025.

²² Ali Bayramoğlu. “The Impact of the Covid -19 Pandemic on the Political, Military, and Social Spheres and the Relevance to the Ongoing Conflict in Turkey”. *Democratic Progress Institute*. May 2020: 10. <https://www.democraticprogress.org/wp-content/uploads/2022/01/Turkey-and-Covid-Ali-Bayramoglu-11.01.pdf>, accessed 1. 11.2025.

²³ Council of Europe – Venice Commission. “Observatory on emergency situations”. 2020. https://www.venice.coe.int/files/EmergencyPowersObservatory/By_country-E.htm.

²⁴ Ibid.

of law, the issue is that the legal duties and competences of these boards are unknown, as they are not mentioned in any law or presidential decree.”²⁵

As for the role played by mayors of large cities in combating the pandemic, it generally consisted in implementing the measures adopted at the level of the central and provincial public administrations. The attempts made by some mayors to take independent initiatives, such as launching fundraising campaigns, were not well received by the central administration, being described by its representatives as “an attempt to become a state within the state, intolerable to the government”²⁶ and therefore viewed as contrary to the national strategy for limiting the spread of the virus.

As happened in many other countries around the world, in Turkey as well the rights and freedoms whose exercise was restricted during the health crisis included the following:

- freedom of movement (through the implementation of measures such as the prohibition or limitation of travel between provinces, during weekends or certain hours);
- the right to private, family, and personal life (through restrictions on movement, home isolation, and the introduction of a digital surveillance system for individuals and the collection of personal data);
- the right to education (temporary closure of educational institutions and transition to online learning);
- freedom of assembly (the prohibition of public gatherings, including peaceful ones);
- freedom of expression (sanctioning journalists or other individuals active in the media for spreading misinformation about the pandemic);
- freedom of religion (through the temporary closure of places of worship and the suspension of collective prayers for a limited period);
- economic freedom (closure of certain business sectors, especially in hospitality and tourism - restaurants, hotels, tourist attractions);
- right to a fair trial and access to justice (by postponing the hearing of non-urgent cases).

Considering the implications of the measures adopted by Turkey’s central public administration on fundamental rights and freedoms in order to limit the spread of the virus, it is important to highlight several of those that had a particularly significant impact and differed, at least in certain respects, from measures implemented in other European states.

One such measure was the introduction of the “Life Fits Home” (HES) mobile application, developed by the Ministry of Health in March 2020.

The application could be downloaded and used by any mobile phone user, its initial purpose being to inform users about the risk of virus transmission in certain areas, thus helping to prevent the spread of COVID-19. Users could generate “codes containing information on their risk status for Covid-19 infection. The HES codes were designed as singular codes which could be deleted and repeatedly created by the user, with safeguards to prevent the disclosure of official identification data. Understandably, these

²⁵ Serdar Ünver, *op. cit.* March 2020: 5.

²⁶ Senem Aydın-Düzgit, Mustafa Kutlay, E. Fuat Keyman. “Politics of Pandemic Management in Turkey”. *IPC Policy Brief*. October 2021: 5. <https://ipc.sabanciuniv.edu/Content/Images/CKeditorImages/20220321-13030189.pdf>.

personal codes were and are used to track people.”²⁷

Subsequently, the authorities decided to expand the functionality of HES codes so that individuals without such a code were not allowed to use public transportation, enter various public spaces, or access certain services, including medical and educational ones.

The main issues raised by the introduction and use of the HES mobile application included, on the one hand, the lack of a legal framework regulating the storage and use of the data collected through this application, and on the other hand, concerns about the feeling of constant surveillance by authorities, as well as technical difficulties faced by certain population groups (for example, elderly people or those without compatible smartphones) in accessing the app and obtaining the required code.

Another controversial measure was the prohibition of resignations among public sector healthcare employees, with certain exceptions. The measure was adopted through a circular issued by the Ministry of Health, with the stated aim of “securing continuance in health services.”²⁸ The possibility of adopting such a measure “was provided for in the Public Servants Law, but only in situations where a state of emergency had been declared.”²⁹

Undoubtedly, the role of doctors and other healthcare workers was crucial in the fight against the pandemic, which could justify, from this perspective, the temporary ban on resignations in this sector by the central public administration.

However, the measure should also be viewed from the standpoint of the medical staff, many of whom were exhausted and demotivated. It was also discriminatory, not only compared to employees in other fields but also to private sector healthcare personnel, who were not subject to the same restriction.

In this case, the imbalance between the public interest and individual professional freedom was evident, leading, among medical professionals, to a further decline in morale and trust in the authorities, and, at the societal level, to a rise in public criticism directed at the central administration.

From the perspective of how restrictive measures affecting rights and freedoms were regulated, several issues should be taken into account. Firstly, these measures were adopted without declaring a state of emergency, which could have at least formally justified, from a regulatory standpoint, the need for their adoption and implementation. Secondly, the two laws on which the authorities relied to manage the COVID-19 health crisis, namely the Public Health Protection Law No. 1593/1930 and the Provincial Administration Law No. 5442/1949 contained outdated provisions, in some instances inapplicable to the crisis situation in 2020, and thus insufficient to constitute a solid legal foundation in that context.

A third issue concerned the fact that a number of measures were not adopted through law (as required by the Turkish Constitution) but rather through administrative acts such as presidential or ministerial circulars. Furthermore, since these circulars were not published in the Official Gazette, they were “lacking in clarity and predictability, creating confusion regarding their content and the obligations they imposed.”³⁰

²⁷ Serkan Koybasi, Volkan Aslan, Naciye Betül Haliloğlu, *op.cit*, 2021: 23-24.

²⁸ Serdar Ünver, *op. cit.*, March 2020:5.

²⁹ Ibid, March 2020: 5.

³⁰ Serkan Koybasi, Volkan Aslan, Naciye Betül Haliloğlu. *op.cit*, 2021: 15.

In addition to these shortcomings regarding the absence of an adequate legal framework for restricting the exercise of fundamental human rights and freedoms, there were also instances of arbitrary decision-making. One example was the situation in which a weekend lockdown, imposed in certain provinces by decisions of the Ministers of Interior and Health, was later lifted by presidential decision, announced through social media: "By the recommendation of our Ministry of Health and the notice of our Ministry of the Interior, a weekend curfew for fifteen provinces was announced last night. However, individual considerations of our citizens made us reconsider the decision. It became clear that this measure, whose only purpose was to prevent the spread of the disease and to protect our citizens, would result in a number of social and economic outcomes. We couldn't assent to causing distress to our citizens who have just begun to put their daily lives into order after 2,5 months."³¹

As for the Parliament, it continued its work during the COVID-19 pandemic, albeit with limitations imposed by isolation and social distancing measures. However, the continuity of parliamentary activity did not guarantee the legality of the acts issued to manage the health crisis, since presidential and ministerial circulars are administrative instruments not subject to parliamentary approval or oversight.

The judicial authorities also continued to operate, but restricted their activity to urgent cases, postponing non-urgent ones in order to comply with social distancing measures aimed at limiting the spread of the virus.

The Constitutional Court of Turkey functioned under the same conditions as other judicial bodies. According to some authors, the Court "demonstrated judicial restraint, both in protecting fundamental rights and reviewing pandemic policies of the executive."³²

An example cited by the author in support of this view is the case concerning lawyer Senih Ozay, aged 69 at the time of his application, who challenged the quarantine measure imposed on individuals over 65 years of age through a circular of the Minister of Interior. The applicant's main arguments referred to the lack of a legal basis for the measure and its disproportionate nature.

The judges of the Constitutional Court of Turkey "declared all three of the applicant's claims inadmissible without proceeding to the merit stage noting the applicant had not exhausted all available remedies. In particular, the TCC highlighted that curfew in its nature is an administrative measure and that the applicant should first take this case before an administrative court."³³

4. Situations when the Turkish authorities declared a state of emergency

In support of the statement made in the introductory section, that declaring a state of emergency is not an uncommon phenomenon for Turkish authorities, it is worth mentioning two situations in which Turkey resorted to this constitutional mechanism.

However, before presenting these examples, it should be noted that they will not

³¹ Sevtap Yokuş, *op. cit.*, September 2020: 30.

³² Emre Turkut. "Emergency Powers, Constitutional (Self-)Restraint and Judicial Politics: the Turkish Constitutional Court During the COVID-19 Pandemic". *Jus Cogens*, vol. 4, 2022: 263–284, 263. <https://doi.org/10.1007/s42439-022-00064-7>.

³³ *Ibid*, p. 275.

be examined exhaustively in terms of legality or opportunity; rather, they are discussed solely for the purpose of illustrating that in Turkey, the state of emergency has been, and continues to be, declared whenever the authorities deem it necessary.

The first situation occurred in July 2016, when Turkey faced an attempted military coup d'état. With the declared purpose of suppressing this coup, the authorities instituted a nationwide state of emergency, initially for a period of three months, which was then extended seven consecutive times, lasting a total of two years.

During the state of emergency, and in accordance with the relevant constitutional provisions, a series of presidential decrees were issued through which the exercise of certain fundamental human rights and freedoms was restricted, without prior approval from Parliament.

Following the declaration of the state of emergency, Turkey promptly notified the Secretary General of the Council of Europe of its derogation from the provisions of the European Convention on Human Rights, pursuant to Article 15 of the Convention.

The establishment of the state of emergency in response to the 2016 coup attempt, its two-year extension, the rights-restricting measures imposed through presidential decrees not subject to prior parliamentary approval or review, as well as the significant reforms implemented by Turkish authorities during this period, triggered substantial domestic and international criticism.

Thus, some constitutional law experts argued that: "Emergency legislation and practices, unchecked by any judicial control, greatly damaged the already weak principles of the rule of law and democracy. At the same time, the political earthquake and its aftershock, created by the attempted coup, caused social upheaval, polarisation, tensions and even the victimisation of some social groups."³⁴

In April 2017, the Parliamentary Assembly of the Council of Europe highlighted the following regarding the situation in Turkey: "The state of emergency should remain an exceptional regime. Eight months after the failed coup, while the trials of the coup plotters are ongoing, the state of emergency still allows the authorities to pursue large-scale purges, which, in our understanding, go well beyond the reasonable goal of punishing those who attempted to overthrow the democratic institutions. As time passes, the necessity to maintain such an exceptional regime raises serious questions."³⁵

The second situation in which a state of emergency was declared in Turkey occurred in February 2023, following two massive earthquakes that severely affected several provinces.

The state of emergency was established for a three-month period, with the aim of ensuring the proper conduct of people search, rescue, and post-earthquake reconstruction operations, and included, among other things, the adoption, through presidential decrees, of restrictive measures affecting certain rights and freedoms, such as freedom of movement, the right to work, the right to education, the right to property, and access to justice.

³⁴ Sevtap Yokuş. "Elections and the Presidential System in Turkey. Is a Return to Democratisation Possible in this new period?". *Democratic Progress Institute*. August 2018: 9-10. <https://www.democraticprogress.org/wp-content/uploads/2018/09/Sevtap-Yoku%C5%9F-August-Assessment-2018-WEB.pdf>, accessed 1. 11.2025.

³⁵ Council of Europe – General Assembly. "Report no 14282/ 2017": 22, accessed 6.11.2025, <https://pae.ce.int/pdf/434fde86f0cab7fc10e0cdb9c8cebe6344e40032f4818d08e9b68e5299e791c8/doc.%2014282.pdf>.

In this case, no notification was identified from the Turkish authorities to the Council of Europe regarding a derogation from human rights obligations, even though restrictive measures concerning rights and freedoms were in fact implemented.

5. Conclusions

In Turkey, the authorities decided to manage the health crisis caused by COVID-19 based on certain laws (the Public Health Protection Law No. 1593/1930 and the Provincial Administration Law No. 5442/1949) without declaring a state of emergency, even though the Constitution of the Republic of Turkey contained provisions that would have allowed for the establishment of such an exceptional state in the event of dangerous epidemic diseases.

To limit the spread of the virus, administrative acts were issued, primarily in the form of presidential and ministerial circulars, through which measures were adopted that restricted the exercise of certain fundamental rights and freedoms.

These restrictions “raised serious questions regarding constitutionality”³⁶, while also prompting the issue of why a state of emergency was not declared in Turkey, despite the fact that the institution of such an exceptional state had been practiced in the past.

Given that during the state of emergency in 2016–2018, following the attempted coup, the Constitution of Turkey was amended and Turkey transitioned from a parliamentary to a presidential republic, it is possible that it was considered that the expanded powers granted to the president would allow him to adopt the necessary measures without resorting to the mechanism of a state of emergency.

Moreover, had the authorities declared a state of emergency, it would have been necessary, according to constitutional provisions, for any presidential decrees issued during the exceptional state to be subject to parliamentary oversight. In the absence of a declared state of emergency, approval or control by Parliament was not required for administrative acts issued by the authorities.

On the other hand, another explanation for not declaring a state of emergency could relate to the economic implications it would have entailed. Considering Turkey’s economy, “already unstable long before the outbreak of the pandemic, the Turkish government preferred not to opt for a full lockdown, as occurred in certain European countries, but for an enhanced partial lockdown, during which production was not suspended.”³⁷

This study highlighted aspects concerning the regulation of the state of emergency in Turkey, both from the perspective of its provision as an exceptional state within the Constitution of the Republic and the existence of a specific law outlining the details regarding adoption, powers, and categories of measures. At the same time, it analyzed the management of the health crisis by Turkish authorities in the context of the non-declaration of a state of emergency, which could have justified, under certain conditions, the restriction of the exercise of fundamental rights and freedoms, as well as the implications of these restrictions.

The results obtained through this study will be applied within the research on

³⁶ Volkan Aslan. “Constitutionality of COVID-19 Related Curfews in Turkey”. *İstanbul Hukuk Mecmuası*. vol. 78, issue 2, 2020: 809-835. <https://doi.org/10.26650/mecmua.2020.78.2.0018>.

³⁷ Senem Aydın-Düzgit, Mustafa Kutlay, E. Fuat Keyman, *op. cit.*, October 2021: 5.

maintaining the legal order during exceptional states, most likely through the integration of case studies on the management of the health crisis caused by COVID-19.

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