**Engaging minorities under emergency: Turkish modular emergency and the Kurdish case revisited**

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**Abstract**

Minorities are particularly vulnerable during times of emergency, particularly those that challenge the state. However, it is not understood how minorities can be targeted through emergency decrees despite the government agreeing they had nothing to do with the reasons for declaring the state of emergency. The Turkish emergency in 2016 highlights this little-understood tendency where the government constructed an emergency around a threat from coup plotters but then much of the subsequent extraordinary legislation targeted the Kurdish minority. We argue that this was possible because the Turkish government engaged in the modular emergency rule. Modular emergency rule combines modes of ordinary rule with emergency powers, thus blurring the boundaries between the two. Emergency measures were laid on top of already existing policies that sought to restrict Kurdish politics in public life. In this way, the modular emergency rule became more than just a transient form of government.

**Keywords**: state of emergency, exceptional powers, minorities, Turkey, Kurds

# Introduction

On 20 July 2016, Recep Tayyip Erdoğan, President of Turkey and head of the ruling Justice and Development Party (*Adalet ve Kalkınma Partisi* - AKP), announced a state of emergency (SoE) in response to a failed coup five days earlier. He blamed the coup attempt on supporters of his Islamist former ally, Fethullah Gülen, with whom relations had badly soured. The coup attempt was portrayed by the government as the culmination of a long-term plan by Gülenists to penetrate all aspects of the state and seize control from within, including the military, judiciary, police, civil service, education, and public services. The government labelled this network the ‘Fethullahist Terrorist Organization’ (FETÖ) and embarked upon exorcising it from public life using extraordinary legislation. The government declared that emergency rule had one clear goal: ‘to remove swiftly all the elements of the terrorist organization involved in the coup attempt’ and reassured citizens that it would not entail any compromise on democracy (AFP 2016).

However, it soon became clear that the government’s justification for emergency rule and who the government actually targeted with emergency powers did not always align. Although many of those targeted were part of the Gülen network, large swathes had nothing to do with Gülen or the coup attempt. The SoE was extended seven times and lasted almost two years, despite the AKP initially announcing it would end in 45 days. Thirty-seven emergency decrees were issued, all bypassing the usual legislative checks. Using this emergency legislation, a huge purge was undertaken of the Turkish political system: more than 150,000 people were dismissed from public sector jobs, 6,000 academics and 4,500 members of the judiciary lost their jobs, and more than 300 journalists were arrested (Turkey Purge 2022). These decrees were not solely used to purge those allegedly responsible for the coup; they were used extensively to target Kurdish political activists challenging the governing party. For example, one decree that enabled the removal from office of local mayors accused of terrorism and replacement of them with state appointees was used to remove three mayors affiliated with Gülen. At the same time, the degree was used to replace almost 200 mayors affiliated with Kurdish politics (Whiting and Kaya 2021).

We know that minorities are often the target of emergency rule, particularly those that challenge the state, and we know that the rights of minorities are particularly vulnerable during an emergency (International Commission of Jurists 1983). The impacts of exceptionalist practices, such as surveillance, oppression and marginalization, are more destructive for groups that are deprived of social and political support existing for the majority (Darcy 2002). Governments construct an emergency around a threat posed by a minority opposition group, securitize the group, and then use extraordinary powers to suppress this ‘threat’ (Wright 2015; Huysmans 2006).

However, the Turkish emergency in 2016 highlights a little-understood variation on this theme where the government constructed an emergency around a threat from FETÖ but then used the subsequent extraordinary legislation against Kurdish politics. The securitizing discourse justifying the emergency and the minority group targeted were not actually related. While the use of emergency measures and exceptional legal regimes targeting Kurdish-populated regions have been examined (see Kurban 2020; Beşikçi 1990, among others), the 2016 instance is particularly interesting in that it was a nationwide state of emergency not initially related to Kurdish radicalism. How can a state of emergency be turned against vulnerable minorities even though they had nothing to do with the reasons for declaring the emergency in the first place? Can we assume that all citizens or social groups have similar insurances vis-à-vis expanding executive powers and any accompanying illiberal practices during a state of emergency? How do emergency declarations dovetail with wider backsliding in minority rights, even when the emergency is unrelated to that minority?

To answer these questions, this article begins by conceptualizing the nature of emergency rule today. We argue that hybrid and established democracies are increasingly characterized not by the permanency of the exception but rather by the ‘co-mingling’ of normalcy and emergency (Mehozay 2014), and this is certainly the case for Turkey. The co-mingling of the norm and the exception created a grey space of ‘modular emergency rule,’ where the AKP government responded to Kurdish activism through the simultaneous use of executive decrees and ordinary legislation. Next, we trace how the use of modular emergency enabled and disguised the extension of emergency rule to Kurdish politics. Throughout the article, we show the disproportionate impact of emergency rule upon the Kurdish minority despite having nothing to do with the original reason for declaring an SoE. We argue that this was possible because targeting Kurdish politics with emergency decrees was not a new policy in Turkey – the AKP was already using ordinary legislation to roll back minority rights, especially since 2011 (Civil Rights Defenders 2018; Human Rights Watch 2019), and it had been restricting Kurdish activism since the failure of nascent peace talks in 2015. In targeting the Kurdish minority with emergency legislation, the AKP was repeating a common theme in Turkish politics pursued by other ruling parties, especially since the 1980s. We conclude by considering the implications of this case for broader debates on emergency rule and minority rights.

# From emergency rule to modular rule

The theory of the state of exception was first introduced by the controversial German legal and political thinker Carl Schmitt (2014) in order to theorize and justify the extraordinary powers accorded to the sovereign in cases of emergency. Drawing on Schmitt’s legal theory and criticizing its authoritarian orientation, Giorgio Agamben argued that the state of exception was ‘the dominant paradigm of government in contemporary politics’ (Agamben 2005, 2). Emergency powers that are supposed to be temporary tend ‘to become entrenched over time and thus normalized and made routine’ (Gross 2003, 1090). Governments increasingly choose to declare states of emergency to grapple with a host of issues, from terrorism and internal disorder to wildfires, financial crises, and pandemics. States of emergency are often exploited by governments to justify a range of illiberal, disciplinary, and in some cases, violent practices, including restricting fundamental rights and freedoms, imposing long-lasting pre-trial detentions, extraordinary renditions, criminalizing political activism, prosecuting political activists, and derogating from international human rights law (Neal 2010; Feldman 2010; White 2015). As such, it has become almost ‘the standard position on the left’ (Neocleous 2006, 193) to argue that the exception has become the permanent norm (see, among others, Hardt and Negri 2004; Michael-Matsas 2005).

Nevertheless, this study begs to differ from such arguments that imply that the norm and the exception, or the rule of law and emergency, exist as discrete, clearly distinguishable, and mutually exclusive categories of law and politics. Emergency rule and the everyday rule of law are increasingly intertwined modes of governance. There is a growing recognition in the literature that when legal and constitutional consequences are considered, ‘the logic of emergency is not just a transient mode of political decision making, but also generates lasting institutional effects’ (Hanrieder and Kreuder-Sonnen 2014, 335). These co-mingling modes of governance can ‘compensate for each other’s weaknesses and together construct a stable political regime’ (Mehozay 2014, 9). Governments in both established and hybrid democracies easily swing between normal and emergency modes, and they may opt for the latter even in cases which are manageable through existing norms. Thus, current emergencies are best defined as ‘modular’ emergencies structured around the interchangeable and simultaneous use of exceptional executive decrees and ordinary legislative regulations.

Executive authorities today adopt modular emergencies where the norm and the exception are co-mingled and intertwined in legal/constitutional systems and in practice. Exceptionalist practices and emergency powers are not only regulated by constitutional or legal clauses distinctly dedicated to emergency rule. Emergency clauses are often deeply embedded or hidden in laws, regulations, different types of decrees, institutions and policies. For example, several hybrid and new democracies from Venezuela and Ethiopia to the Philippines are governed today under some kind of long-term emergency (whether formally declared or undeclared) where ‘normal legislation’ and exceptional rule are increasingly indistinguishable. We then see such modular rule become permanent, as in the case of the Hungarian parliament, which granted sweeping powers to the government on 30 March 2020 to rule the country by decree. These powers were further extended by the parliament in May 2022 due to the Russian invasion of Ukraine.[[3]](#endnote-1)

The integration of new and expanded emergency powers into the ordinary legal order has often been achieved through draconian counter-terrorism laws. In the post-9/11 era, many governments in both established and weak democracies successively enacted counter-terrorism laws or amended already existing ones to strengthen the state. Since then, political discourse has mainly been dominated by a security paradigm ‘that is replete with references to the immediate terrorist attacks in urban areas’ (Jabri 2006, 136). These laws, which used to be thought of and possibly designed as temporary responses to specific terrorist actions, eventually became institutionalized and normalized, thus creating a regime of legalized exceptionality. They became the very tool of ‘modular’ emergency regimes through which new and expanded emergency powers are granted to the executive while powers and autonomy of the legislator and the judiciary are diminished without seemingly suspending the norm.

# Minorities under modular emergency rule

Governments are more likely to violate fundamental human rights during states of emergency (Richards and Clay 2012). States may want to take advantage of emergency rule to practice repressive measures against minority groups that would not otherwise be legitimate under the rule of law. States often act in a more unrestrained manner in curtailing the rights of their citizens as they deal with alleged threats to the survival of the nation (Hafner-Burton et al. 2011). Declarations of emergency are often accompanied by the suspension of at least some articles of international human rights treaties and temporary derogation from minority protections (Ferejohn and Pasquino 2004; Hadden 1999, 114).

Emergencies are socially constructed by those in power (Loveman 1993), and, as we shall show in the Turkish case, emergencies can also be reconstructed in the course of the emergency to expand their scope and target new groups in line with the incumbent’s interests. If a minority is highly securitized and constructed as a threat, then it becomes possible for a government to link them to an SoE, even if no such immediate connection actually exists. In an excessively securitized political environment where citizens are constantly warned against internal and external enemies, minorities are easily targeted by governments (Kaliber 2019). This is especially possible through modular emergency rule, where emergency legislation can be laid on top of existing ordinary legislation that already securitizes what a government sees as disruptive minorities. In this way, an incumbent can present the targeting of minorities as a consistent and continuous policy based on past experience, even if that group had nothing to do with the emergency.

Such developments are more likely in hybrid regimes where non-democratic institutions exist alongside democratic ones, thus weakening levels of accountability throughout the system (Lührmann and Rooney 2021). Even when oversight mechanisms are built into emergency rule, such as sunset clauses or requiring parliamentary approval to renew an SoE, these can prove meaningless. If a majority controls the legislature or if the executive can co-opt independent institutions, such legal protections have little oversight effectiveness (Laebens and Lührmann 2021). International constraints may also be powerless to stop the misuse of emergency rule. Domestic factors such as the quality of democracy, the existence of an independent judiciary and political culture all mediate the impacts of international treaties and supranational courts on the protection of minorities (Anagnostou 2013). Despite the expansion of supranational adjudication on human rights, ‘governments’ formal commitments under international human rights law do not deter their violations thereof’ (Kurban 2020, 9).

To reiterate our key point, exceptional measures are used disproportionately against minority groups, even if the minority had nothing to do with the reasons for declaring an emergency. We argue that this is made possible by the modular emergency rule, which muddies the waters between ordinary legislation and emergency legislation and becomes a permanent grey area. As the Kurdish case illustrates, the modular emergency rule may be used by governments when particular minority groups are securitized after demanding the recognition of their collective identities. Once adopted, it often becomes difficult to repeal such legislation and the ‘temporary’ emergency executive powers that it entails, and it has an immediate and far-reaching effect on civil liberties (Turkut 2019; Arslanalp and Erkman 2020). In fact, ‘the temporary provisions become a baseline on which future measures are built, and laws are steadily ratcheted up that promise to ensure more security but at the expense of civil liberties’ (Donohue 2008, 15).

# Case background

The AKP’s use of emergency rule to target Kurdish politics after the failed coup can be thought of as a pathway case (Gerring 2007). A pathway case is a case that is particularly useful where a relationship is already known (namely, minority rights being more vulnerable during times of emergency), but the precise causal pathways underpinning that relationship are under-theorized (namely, how was an emergency in response to FETÖ extended to the Kurds). This is the level at which we conceptualize the specific context and use it to engage in general, theoretical conclusions about how emergency rule is extended to minorities during times of modular emergency (Lund 2014). To do so, we draw on a comprehensive review of parliamentary debates in the Turkish Grand National Assembly from July 2016 onwards surrounding the introduction and renewal of the SoE and extensive use of secondary data and grey literature to document the impact of emergency rule.

On the night of 15 July 2016, a faction of the Turkish Armed Forces attempted a coup against the government. When armed clashes ended, the death toll had reached 240, while 1,535 people were injured.[[4]](#endnote-2) The government declared that the coup plotters were affiliated with the movement of Fethullah Gülen. Gülen was an exiled Islamic cleric living in the US, a former ally of the AKP, but since 2014 an intra-Islamist rivalry had broken out between them for political supremacy. All this took place against the backdrop of the AKP government having already embarked upon a well-documented programme of electoral authoritarianism that entailed the concentration of executive power and the erosion of rights and liberties, especially since 2011 (Esen and Gümüşçü 2016).

Emergency rule bestowed Erdoğan with unchecked executive power to an even greater extent than he had already achieved. Emergency powers allowed the Council of Ministers, chaired by Erdoğan, to pass executive decrees without legislative checks. Given the parliament was controlled by the AKP with a comfortable majority, the provision that emergency rule should be overseen by the Grand National Assembly did not produce any genuine oversight (Göztepe 2018). Emergency rule excluded any judicial control by the Constitutional Court and enabled the Executive to suspend partially fundamental rights and freedoms (Venice Commission 2016). Despite promises of the AKP, the SoE was soon to violate every norm of good practice related to emergency rule – it was repeatedly extended, its focus expanded beyond its original justification, and in key aspects, it became *de facto* permanent. By the time it ended, Turkey had changed from a parliamentary system to an executive-presidential one, and the referendum to endorse this was held under conditions of emergency in April 2017. This presidential regime, endowing the president with similar executive powers to those he enjoyed during the SoE, enabled him to swing easily between applying existing laws or issuing executive presidential decrees.

It is also important to acknowledge the wider context to account for the reasons why the AKP turned its attention towards using emergency rule to target Kurdish politics, even though Kurds were not connected to the coup attempt. When the AKP came to power in 2002, the party was highly critical of the national security paradigm that had dominated Turkey to date. The AKP saw this security paradigm as rooted in the foundation of the Turkish state, where a Kemalist vision of a European, secular nation-state defined the new Republic – a vision that led to the erasure of political Islam from public life. Here was where the AKP and Gülenists initially found common ground and a basis for their early alliance. They both represented segments of society that had been excluded from political representation in the name of secularism. Furthermore, from this Islamist perspective, it was the same Kemalist vision that led to the political suppression of minority groups like the Kurds (Yavuz 2018). Drawing on this interpretation, the AKP initially sought a pathway out of armed conflict with Kurdish nationalism on the basis of Islamic brotherhood (Bayır 2013, 118) and as part of wider EU accession negotiations (Gürses and Öztürk 2020), labelled the ‘Kurdish opening.’

Once the AKP consolidated its power, tensions rose between the party and Gülenists, leading to a split in the Islamist alliance. The AKP subsequently turned towards the ultra-nationalist Nationalist Action Party (*Milliyetçi Hareket Partisi -* MHP) in an informal electoral alliance and, in the process, reoriented its stance towards the Kurds to appeal to their new nationalist partners. Now the Kurds were seen as a threat to Turkish nationalism, and Islamic brotherhood faded into the background. The war in Syria and the collapsing peace process also fed into the ‘re-securitization of the Kurdish question’ that is ‘marked by a campaign of counter-insurgency, the declaration of open-ended curfews and “temporary security zones,” and anti-terrorism operations’ (Turkut and Philips 2021, 115). The rise of Syrian Kurdish groups enabled the government to present the Kurdish issue as a threat to the Turkish state (Al 2018). The main pro-Kurdish party, the Peoples’ Democratic Party (*Halkların Demokratik Partisi* - HDP), had an ambiguous relationship with the designated terrorist group PKK, which in turn created a grey area that the state was able to securitize. In this way, both contingent events and a change in AKP strategy led to an increased securitization of the Kurdish issue.

# How modular emergency rule enabled Kurdish suppression

If the modular rule is characterized by combining elements of the ordinary rule of law with emergency rule, which then becomes institutionalized as a permanent form of governance, this is precisely what we see playing out in the case of emergency rule in Turkey between 2016-2018 and beyond. Here emergency rule was laid on top of an existing trend towards the concentration of executive power and a state history of intolerance towards Kurdish political activism. This allowed emergency decrees to be extended to target the Kurdish minority, which was already being securitized and treated with suspicion through the ordinary rule of law following the failure of the Kurdish opening. Even though emergency rule officially ended in 2018, this approach has become more than just a transient mode of government; it has been institutionalized with lasting political consequences. Exceptionalist practices were in place in Kurdish-majority regions before and after the SoE, while the norm was seemingly in force in the other parts of Turkey, typically characterizing a regime of modular emergency.

To demonstrate this, we begin by showing how the extension of emergency rule in 2016 was justified to target the Kurds. We then look at how this played out in two key areas: the targeting of elected Kurdish representatives and security policy in Southeastern Turkey. The emphasis is on the lack of clear boundaries between ordinary rule and emergency rule and how these eventually combined to create a grey area of modular rule that still exists today.

## How emergency rule became a modular emergency

Initial discussions by the government justifying the need for a state of emergency focused exclusively on the threat posed by FETÖ; however, with hindsight, the early framing of the threat allowed for its subsequent expansion. Emergency decrees were justified by the government as ‘measures that must necessarily be taken (…) to safeguard democracy, fundamental rights and freedoms and public order against the threats posed by terrorist organizations or structures, organizations or groups which are identified by the National Security Council as engaging in activities against the national security of the State’ (Emergency Decree 667, Official Gazette 23 July 2016). Hence, the scope and remit of the emergency decrees were potentially able to include all organizations and activities deemed as ‘terrorist’ or as threats to national security.

From this basis, the focus of the SoE was gradually expanded during its two years. This was evident in parliamentary debates around the renewal of emergency rule, especially in how the ruling AKP converged with the ultra-nationalist MHP and began to lump together all terrorist organizations rather than just focusing on FETÖ. From the outset, the leader of the MHP described the coup as a ‘bloody terrorist attack’ (TBMM 16 July 2016), laying the ground for their later claim that the SoE should be focused on combating all terrorism. Another senior MHP deputy, Erkan Akçay, argued that ‘one parallel structure in Turkey today is [FETÖ], but this is not the only danger. In the eastern and southeastern regions, KCK and the PKK are other dangerous structures. Therefore, the fight against the PKK terrorist organization and all other terrorist organizations must be included in the state of emergency’ (TBMM 21 July 2016). The AKP Deputy Prime Minister, Numan Kurtulmuş, agreed and now began to argue that the SoE should be about protecting Turkey from terrorism by FETÖ, the PKK, ISIS, and leftists (TBMM 3 January 2017).

Soon, requests to extend emergency rule were being justified by the government as necessary ‘to fight the Fethullah Terror Organisation, the separatist terror organization PKK, as well as all other terrorists in a speedy, efficient and decisive manner’ (TBMM 18 April 2017; TBMM 17 July 2017). The expansion was tenuously justified as necessary because although FETÖ led the coup, other terrorist groups were now trying to take advantage of the chaos in the aftermath of the failed coup attempt. In further rounds of parliamentary talks on the renewal of the SoE, Kurdish activism in Syria and border security issues were added to the repertoire of imminent threats. As one deputy argued, ‘we have to acknowledge that these all pose exceptional national security threats against our country. That is why we must avail ourselves of the opportunities presented by the state of emergency to fight the terror organizations spilling over into Turkey’ (TBMM 18 April 2017).

When coming under criticism for this expansion and the erosion of liberties that emergency rule entailed, it was defended using the notion of security first and rights later. As one MHP deputy stated, ‘as a constitutional practice, [emergency rule] is legal and legitimate (…). Our priority is to build security. If we cannot provide security, we cannot establish justice, build the rule of law, we cannot progress, we cannot eliminate the problems in our democracy. If we cannot ensure our security, it is not possible to establish human rights and freedoms’ (TBMM 17 October 2017).

The framing of the SoE as a response to generalized terrorist threats enabled the AKP to use emergency rule to build on existing ordinary legislation they had introduced over the previous few years that already targeted rights, liberties, and Kurdish political activism. Since coming to power, the AKP’s commitment to rights and liberties has been in doubt (Turam 2012). The AKP had also been engaged in a long-standing and steady process of concentrating executive power and eroding checks and balances (Esen and Gümüşçü 2016). Through ordinary law, it had already passed legislation that attempted to regulate moral issues in public life, restricted the media, and limited judicial independence. This was often done in the name of empowering elected representatives over appointed officials and therefore sold as bolstering democracy. But, in reality, it empowered the AKP to pursue its illiberal agenda whilst weakening the power of traditional Kemalist elites. A full overview of this trend is beyond the scope of this article, but what matters for our argument is that when it came to emergency rule in 2016, this was laid on top of existing ordinary legislation that had already been used to limit rights and freedoms. This is the very essence of modular emergency regimes, where emergency decrees are used to fill outstanding gaps left by ordinary legislation.

The role of the opposition is important here. Historically the main opposition of the Republican People’s Party (*Cumhuriyet Halk Partisi* - CHP) has pursued an exclusionary form of Turkish nationalism that sought to marginalize collective Kurdish identities that the party saw as threatening the state’s territorial integrity. This put the CHP in an interesting position regarding the AKP’s suppression of Kurdish politics. The CHP robustly criticized emergency rule and its extension beyond its original purpose, but these criticisms focused on how the AKP eroded Turkish democracy and rarely mentioned the Kurds specifically. Kemal Kılıçdaroğlu, leader of the CHP, feared that the SoE would be used by the AKP to concentrate power even further in its own hands (TBMM, 16 July 2016). As the SoE’s justification was expanded by the AKP and MHP to include all terrorism and instability, senior members of the CHP criticized this. Again, however, their criticisms were focused on the dangers of bypassing Parliament and democratic erosion, not from the perspective of minority rights (TBMM 17 July 2017). However, the political context meant that the AKP could largely ignore opposition criticisms, and the opposition had little influence over the process due to the AKP’s majority in the Assembly and its alliance with the MHP, as the AKP easily bypassed constitutional oversight mechanisms like requiring parliamentary approval for the SoE.

The AKP’s instrumental approach to democracy was nothing new and replicated the approach adopted by many parties throughout the history of the Turkish state (Çınar and Sayın 2014; Somer 2016). Nor was using the state’s apparatus to target Kurdish activism. There were established precedents of parties laying emergency rules on top of ordinary legislation to create a more powerful autocratizing dynamic, most notably with the Democrat Party in the 1950s (Ahmad 1977). Indeed, Bayır (2013) has shown how the founding philosophy of Turkish nationalism, institutionalized in the constitutional and legal system at the foundation of the state, has hindered minority protections. There was also the precedent of the state using emergency rule to target the southeast, especially through the OHAL (*olağanüstü hal -* state of emergency rule) period following the 1980 coup (Jacoby 2005). Indeed, the 1982 constitution empowered the government relative to the citizens and prioritized protecting ruling powers over rights and liberties. Given this political tradition, it became much easier for the AKP and MHP to argue for the expansion of the 2016 emergency rule to target Kurdish activism and to claim this was in line with Turkish democratic principles.

We now turn to show how the use of emergency rule to target rights and liberties disproportionately impacted the Kurdish population by looking at the Kurdish elected politics and the Turkish state’s securitizing policies on the Kurdish issue.

***Elected Representatives of Kurdish Politics***

Emergency decree 674 enabled the government to replace elected mayors, deputy mayors or members of municipal councils accused of terrorism-related charges with executive trustees appointed by the Ministry of Interior (Official Gazette, 1 September 2016). This decree was disproportionately used against Kurdish elected officials; it was used to remove almost 200 Kurdish elected officials but only three with alleged links to FETÖ (Whiting and Kaya 2021). Under this decree, almost all elected mayors and other local officials of the HDP were stripped of their office.

Many of them, including Selçuk Mızraklı, the elected mayor of Diyarbakır Metropolitan Municipality, were subject to long pre-trial detention and imprisonment as they allegedly committed terrorist offences. The courts’ decisions on pre-trial detentions often ‘relied on vague and generalized allegations by witnesses, some secret, and on details of their political activities and social media postings, which fail to establish reasonable suspicion of criminal activity that would justify detention’ (Human Rights Watch 2020b). Human Rights Watch argued that ‘removing, detaining, and putting on trial local Kurdish politicians as armed militants with no compelling evidence of criminal activity seems to be the Turkish government’s preferred way to wipe out political opposition’ (Human Rights Watch 2020b). Indeed, this was ‘the second time the authorities have systematically suspended local democracy for Kurdish voters in that region’ (Human Rights Watch 2020b). The first wave of removals of HDP mayors occurred just after the declaration of the SoE when the AKP government amended articles 45 and 57 of the Law on Municipalities through an emergency decree and ‘took direct control of 94 HDP municipalities and removed mayors and councils who had won at the polls in 2014 local elections’ (Human Rights Watch 2020b).

Furthermore, twelve HDP deputies, including its two co-chairs, Selahattin Demirtaş and Figen Yüksekdağ, were detained on anti-terror grounds and have been imprisoned for six years as of November 2022.[[5]](#endnote-3) Analyzing indictments against HDP deputies, Human Rights Watch concluded that ‘the bulk of the prosecution’s evidence consists of the defendants’ public speeches and activities as politicians and in no case is there evidence of material connection with violent acts’ (Human Rights Watch 2020a). The European Court of Human Rights ruled that Turkey violated article 18 of the European Convention on Human Rights for the first time since ‘the extensions of Mr Demirtaş’s detention, especially during two crucial campaigns, namely the referendum and the presidential election, had pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate’ (European Court of Human Rights 2018).

The extension of emergency decrees to Kurdish elected officials was built upon existing policies pursued by the AKP in power. As noted earlier, this interaction of pre-existing policies and emergency decrees is a hallmark of the modular emergency rule. For example, on 20 May 2016, two months before the SoE was declared, 40 HDP deputies’ parliamentary immunity from prosecution was removed through a controversial temporary constitutional amendment (Human Rights Watch 2020a). This amendment was also supported by the main opposition CHP, even though Kılıçdaroğlu admitted that this measure ‘is against the constitution’ (Reuters 2016). As such, the application of an emergency decree to remove local and national HDP representatives was easier, given that they were already a government target with no objection from the opposition parties other than the HDP itself. The emergency decree simply made an existing policy easier to pursue rather than being a brand-new policy. This approach was also building on an established history throughout the 1990s of using the constitutional court to shut down Kurdish political parties and ban Kurdish elective representatives from political life. Again, this made the extension of exceptional measures to Kurdish representatives more acceptable as it was not a new beginning but it was rather an already established practice within Turkish political life.

## Security Policy in the Kurdish Populated Region

The use of emergency measures accompanied by securitizing discourses has been the main instrument of the Turkish state to govern the Kurdish minority and their demands for recognition of their separate identities and collective rights. When Kurdish groups have demanded greater political autonomy either through peaceful or armed resistance, throughout its history, the Turkish state has typically responded with exceptional practices, such as special criminal tribunals, special regional administrations, forced displacement and resettlement (Kurban 2020, 79-132). These practices had particularly intensified when demands for recognition of the Kurdish identity were voiced both in the early decades of the Turkish Republic and in the 1980s.

The same pattern is evident under the AKP. The extension of harsh security policies to Southeastern Turkey using emergency rule was possible because the Kurds have been a core target of anti-terror and security legislation since the 1970s, along with Islamists and leftists (Jenkins 2019). Under this long-standing security paradigm, the southeast has been treated differently and experienced a different security response than the rest of the country, especially throughout the 1980s and 1990s. For example, following the 1980 coup, the state’s response to Kurdish terrorism was to securitize the southeast and adopt a scorched earth policy that included razing whole villages, combined with using a mixture of police and military in the region. Initially, it appeared the AKP was set to change this paradigm in an effort to build support within Kurdish-populated regions based on a shared conservative Islamist vision. From 2009 onwards, in particular, the AKP brought home thousands of Kurds who had left Turkey for Iraq due to the conflict with the PKK, restored the Kurdish names of villages and cities, established Kurdish teaching programmes at schools and universities, liberalized media laws to allow for Kurdish broadcasting and allowed the purchasing of Kurdish books in public libraries.

However, after the failure of this Kurdish opening and amidst the rising influence of Kurdish groups in Syria, the Turkish government returned to the old paradigm in 2015. Alongside this, the PKK pursued urban trench warfare in their strongholds in the southeast, with some towns making unilateral declarations of autonomy and no-go zones. The government’s response was heavily militarized to remove the PKK from its strongholds, including the destruction of much of the historical district of Sur in Diyarbakır. The government also reversed many liberalizing policies around Kurdish culture and language. Thus, clamping down on the Kurds using security policies was already in place by 2015 (Al and Byrd 2018), and this return to the old security paradigm was embedded even further under the SoE. This was possible because the southeast had always been treated as an exceptional region that required exceptional measures (Watts 2009), and extending the SoE was actually business as usual.

Exceptionalist practices in Turkey’s southeast before, during and after the nationwide SoE took the form of declaring round-the-clock curfews and security zones. In February 2017, nine round-the-clock curfews were imposed in different districts of Mardin province (Office of the United Nations High Commissioner for Human Rights 2017, 25). Emergency decree 690 (Official Gazette 29 April 2017), amending the law on domestic security, among others, facilitated the declaration of certain areas as military forbidden zones and special security zones considerably. The decree determined that places such as ‘guard posts, service buildings etc. where the contingents of the gendarmerie general command and coast guard command are positioned will be automatically deemed special security zones, and the limits of these zones will be determined by the Ministry of Interior’ (Akça et al. 2018, 47). Similarly, it has become a common practice in recent years to declare ‘temporary special security zones’ (TSSZ) in Turkey’s southeast, where the entrance to and exit from the region are strictly controlled by the military. The president, and in urgent cases, governors, have the authority to declare TSSZs for a specified period under the framework of anti-terror operations (Emergency Decree 700, Official Gazette 7 July 2018). For example, the governorship of Tunceli declared 30 different areas in the city as TSSZs between 1 November 2017 and 1 September 2018 (Tunceli Governorship 2017) and 29 areas between 1 January and 16 January 2021 (Tunceli Governorship 2020). Similarly, 17 regions in Şırnak were declared TSSZs for 15 days in September 2017 (Cumhuriyet 2017), while high grounds in Bitlis and its four districts became TSSZs throughout 2021 (Bitlis Governorship 2021). This policy, peculiar to the Kurdish-majority cities in Turkey, is seen by some observers as indicative of the fact that ‘a de-facto state of emergency has continued to exist in a legally dubious form and substance’ (Turkut and Philips 2021, 115) in the region.

Another disproportionate impact of the SoE on the Kurdish minority may be found in the legal amendments made by the Turkish government introducing important changes to the status of the temporary village guards. While these guards used to operate only in suburban areas, emergency decree 674 made their temporary secondment possible in provincial areas ‘for a limited time period’ upon the approval of the district or provincial governor (Official Gazette 1 September 2016). Village guards were first recruited from different Kurdish tribes as ‘local militia forces’ (Aslan 2015, 138) in the service of the state in 1985 in its armed conflict with the PKK. This exceptionalist measure has been sustained by successive governments since then during both nationwide and regional emergencies and under the rule of law. Turning a blind eye to human rights violations by these guards throughout the 1980s and the 1990s has been a common practice, further blurring the distinctions between civilian and military rule and between normalcy and emergency in Turkey’s southeast.

Turning to the recent SoE, emergency decree 676, replacing ‘temporary village guard’ with ‘security guard,’ consolidated their status as permanent staff within the Turkish security apparatus (Official Gazette 29 October 2016). Even if the nationwide SoE virtually ended in July 2018, ‘the post-coup measures reached an unprecedented level, targeting economic, social and cultural rights, and civil and political rights, through excessive detentions, massive dismissals, broad institutional closures and measures exclusively affecting the Kurdish minority in Turkey’ (Turkut 2019). Amendments made to different laws through emergency decrees turned to permanent legislation, which ensured that the exceptional measures remained in force in Turkey’s southeast. This further testifies to our observation that the Kurdish minority is still subject to everyday emergency measures and that ‘the most flagrant human rights abuses’ against them ‘have occurred in the context of states of emergency’ (Turkut 2019), despite having nothing to do with the basis for the original emergency in 2016.

In terms of its heavy influence on the Kurdish minority, Turkey’s recent nationwide SoE may be compared to the period of emergency rule declared in the wake of the military coup in 1980. In the immediate aftermath of the coup, the junta declared martial law throughout the country on 12 September 1980 under the pretext of ending political violence and restoring public security and order. Starting on 19 March 1984 and continuing until 19 July 1987, martial law was gradually lifted across Turkey. Nevertheless, it became an enduring traumatic experience for all politicized sectors of society, most notably for Kurdish and human rights activists. Throughout this nationwide emergency rule, the Turkish state’s curtailment of rights and freedoms intensified, as illustrated by the highly restrictive nature of the 1982 constitution (Kaliber and Tocci 2010). The new constitutional system restricted the public use of the Kurdish language and prohibited the expression of opinion (article 26), broadcasting (article 28) and education (article 42) in languages other than Turkish (Kurban 2020, 93). Law 2932, adopted by the junta in 1983, consolidated the ban on the Kurdish language, prohibiting its use both in public and private communications. The military junta also adopted a law reintroducing the State Security Courts in June 1983, with exceptional adjudication procedures, civilian and military judges, and prosecutors with exceptional powers. Throughout the 1980s and 1990s, these courts were particularly active in the trial of Kurdish political activists, who were often charged under anti-terrorism legislation (Joseph R. Crowley Program 1998).

Similar to the case of the recent SoE, in the 1980s, ‘while all political groups were adversely affected by the [this time successful] military takeover,’ the accompanying emergency rule ‘hit the Kurdish activists, along with the Kurdish masses in the East, the hardest’ (Aslan 2015, 130). Whereas in the recent SoE, emergency rule was formally lifted in the whole country, in the 1980s, the end of nationwide emergency rule was immediately followed by a regional state of exception imposed in some Kurdish-majority provinces on 19 July 1987. Characterized by a mingling of civilian and military rule and severe human rights violations, this emergency rule was first declared in eight provinces, including Diyarbakır, Hakkari, Mardin and Siirt, then extended to five other provinces. Renewed every four months for a total of forty-six times, the regional state of exception targeting the Kurdish minority continued for fifteen years, while in other parts of Turkey, the norm remained in force, which provides another example of governing the Kurdish minority through the modular emergency. This heavy legacy of exceptionalism rendered it easier for the AKP government to extend emergency decrees beyond the focus of FETÖ and to further its goals of reining in Kurdish politics.

**Conclusion**

The recent case of emergency rule following Turkey’s failed coup raises an under-studied puzzle in the literature on extraordinary rule and minorities. According to the government’s own account, the failed military coup was the violent manifestation of a long-term and insidious effort by FETÖ to penetrate all aspects of the state’s apparatus and seize power from within. And yet the puzzle is, if responding to FETÖ was the main reason and official justification for declaring emergency rule, how and why was this expanded to target Kurdish political activism where oftentimes the Kurdish minority were pursued more robustly than FETÖ? It is well-established that minorities are vulnerable during times of emergency, but it is not yet understood how minorities can be targeted through emergency decrees despite the government and all major opposition groups agreeing they had nothing to do with the reasons for declaring the SoE.

We argued that this was made possible because the government engaged in a modular emergency that combined ordinary rule with emergency powers, thus blurring the boundaries between the two. We sought to show that the extension of Turkey’s 2016 period of emergency rule to focus on the Kurds reinforced pre-existing ordinary legislation and pre-existing security policies. When it came to targeting Kurdish political activism, emergency decrees were laid on top of already existing policies that securitized and restricted Kurdish culture and politics in public life. This combination allowed for hitherto efforts by the AKP to restrict Kurdish politics from going into overdrive, while the AKP were able to portray it as continuous with previous policies. The Kurdish-populated southeast had long been established as a place of exception and managed differently from the rest of Turkey. This approach was true not just for the AKP period but was also a recurring theme of Turkish political life in the 1980s and 1990s.

The Kurdish case has important lessons also for understanding the contexts in which minorities are vulnerable under emergency rule. It demonstrates that not all social groups have equal protections when it comes to the encroachment of rights and restrictions of civil liberties inherent in emergency rules. Even if a minority had nothing to do with the reasons for declaring SoE in the first place, the emergency could be reconstructed and redefined by incumbents after it is declared. If the incumbents have the incentive to target a minority group through emergency decrees, and if there are weak levels of accountability, then this leaves incumbents in a very powerful position and minorities in a very disempowered one.

Clearly, such processes are much more likely in hybrid democracies than in consolidated ones. The weaker accountability mechanisms that characterize hybrid democracies enabled the outcomes observable in Turkey. In the absence of meaningful oversight mechanisms, the AKP was able to introduce a modular emergency regime. Such institutions as an independent judiciary or the opposition in parliament were largely ignored or bypassed by a party that was already engaged in increasing executive power and marginalizing horizontal accountability mechanisms. The mainstream opposition party’s implicit and, at times, explicit consent on the suppression of Kurds’ collective and individual rights also helped the AKP government justify and sustain securitizing emergency policies. The dominant political culture that sees the Kurds as an exceptional social group and potentially subversive one that requires exceptional measures enabled this process.

In many cases today, governments are responding to crises such as natural disasters, migration and political protests with declarations of regional or national emergencies without a total suspension of the norm and its institutions. They create modular emergency regimes limited in terms of space (namely to regions densely populated by minorities), scope or segment of the population. Even if these exceptional regimes are allegedly temporary and confined to crises, as post-coup Turkey illustrates, once adopted, it often becomes difficult to repeal emergency legislation and powers. Moreover, the rise of modular emergencies has coincided with the global upsurge of authoritarian populism (Levitsky and Way 2020; Moffitt 2016) and hybrid regimes that provide aspiring autocrats with opportunities to consolidate power ‘under the veneer of constitutional legitimacy’ (Lührman and Rooney 2021, 618). Turkey’s modular emergency rule of the Kurdish issue is not an exception to this trend.

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**Endnotes**

1. Email: alper.kaliber@altinbas.edu.tr [↑](#footnote-ref-1)
2. Email: matthew.whiting@york.ac.uk [↑](#footnote-ref-2)
3. EUobserver, “Are Orban's Covid powers now the 'new normal' in Hungary?” 23 May 2022. <https://euobserver.com/opinion/155023>. [↑](#endnote-ref-1)
4. . *Milliyet* (Turkish daily), July 19, 2016, <https://www.milliyet.com.tr/gundem/feto-darbe-girisiminin-aci-tablosu-240-sehit-2280468>. [↑](#endnote-ref-2)
5. Abdullah Zeydan, a former HDP deputy, was relased from prison on 6 January 2022 after 6 years of imprisonment.

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