

ACADEMICS FOR HUMAN RIGHTS

"SUPPORTING ACADEMICS AS A HUMAN RIGHTS ACTOR IN
A CHALLENGING CONTEXT"

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**Information Note on the Judicial Proceedings against
TURKEY'S ACADEMICS FOR PEACE**



Information Note on the Judicial Proceedings against Turkey's Academics for Peace

Foreword

Universities and academics in Turkey have been facing severe political pressure for about three years now, giving way to a variety of human rights violations against members of the academic community, including imprisonment, prosecutions, undue treatment, dismissals and travel bans. The Human Rights Foundation of Turkey's (HRFT) EC-funded project, "Supporting academics as a human rights actor in a challenging context", aims to support and empower academics, who have been facing political, judicial and administrative pressures due to their work and statements as human rights defenders¹.

The Project's newsletter "Academics for Human Rights" aims to provide updated information on human rights violations against academics in Turkey and disseminate project outcomes, raising awareness on both national and international scales to help strengthen solidarity for taking an effective stance against human rights violations in Turkey's academia.

The first issue of Academics for Human Rights published in April 2018 focused particularly on the "Peace Petition Affair", the threats to Turkey's Academics for Peace and the resulting human rights violations. Since January 2016, when first 1128 then 2212 academics signed the 'Peace Petition', these academics have been criminalised and been going through various judicial pressures. The current issue of Academics for Human Rights aims at depicting judicial proceedings of the current government against Turkey's Academics for Peace in light, for highlighting the pressed need for providing HRFT and its partners with a foundation from which to evaluate the extent of the attacks on Academics for Peace and take effective stance against it.

¹ European Commission, European Instrument for Democracy and Human Rights (EIDHR) Country Based Support Scheme (CBSS) Turkey Programme, 2017-2019, Reference: EuropeAid/154567/DD/ACT/TRP. More information on the Project is available at: <http://www.tihvakademi.org>.

Introduction

Defending human rights has never been an easy task in Turkey. Human rights defenders have always been subjected to state intervention and pressures, the degree of which differed parallel to the political atmosphere in the country. In the recent period, the political tensions have risen in the gross/serious human rights violations and threats and pressures against the human rights defenders in the country have increased tremendously. The Academics for Peace, calling for the immediate termination of the gross/serious human rights violations in the regions affected by the curfews and military operations, has been particularly targeted as a symbol of human rights struggle carried out within the Turkish academia.

As detailed in earlier issues of the Academics for Human Rights, several practices employed by authorities have violated academics' human rights. These involve being listed as persons affiliated to terrorist organisations in the decree laws, which dismissed them from their academic positions, banned them from public service for life, and hence deprived them from their right to work and social security rights. They have also had their passports cancelled indefinitely, resulting in the confiscation of their right to freedom of movement. With the regulations enforced under the state of emergency, which were turned into a permanent reality through various legislations that reflect elements of the state of emergency despite its termination in July 2018, appeal mechanisms and judicial remedies have become inaccessible and ineffective to these purged academics².

The Academics for Peace have also faced criminal investigations and judicial proceedings as symbols of the human rights struggle carried out within the Turkish academia. Soon after sharing the declaration with the public on January 11, 2016, they were denounced as "traitors" and labelled as "supporters of terrorism" by the public authorities' discourses, which altogether paved the way for criminal investigations and prosecution cases, resulting in politically motivated trials immune from judicial

² The judicial remedy for academics affected by the emergency decrees is not effective at the national level. The administrative courts, appeal courts and the Constitutional Court delivered identical decisions, according to which the courts in Turkey cannot make any rulings over the state of emergency decrees. Thousands of academics applied to the State of Emergency Appeal Commission established in 2017 to review the state of emergency measures. The independence and effectiveness of the Turkish Ad Hoc Commission has been widely debated (see for example Y. Akdeniz and K. Altıparmak, Türkiye'de Can Çekişen İfade Özgürlüğü: OHAL'de Yazarlar, Yayıncılar ve Akademisyenlerle İlgili Hak İhlalleri, English PEN (London), March 2018, https://www.englishpen.org/wpcontent/uploads/2018/03/Turkey_Freedom_of_Expression_in_Jeopardy_TUR.pdf). Given the situation, the Academics for Peace affected by the state of emergency measures have filed applications against Turkey at the European Court of Human Rights, which rejected the applications on the grounds that the applicants had failed to exhaust domestic judicial procedures.

proceedings implemented with fair trial and penal investigations resulting with their imprisonment.

Judicial Proceedings against Academics for Peace

One of the earliest judicial proceedings against Academics for Peace was against the four signatories who read a second press statement of the Peace Petition on March 10, 2016³, charging them for “degrading the Turkish Nation, the State of the Republic of Turkey and the organs and institutions of the State” under Article 301 of the Penal Code⁴. While their case is pending, judicial proceedings have commenced against other signatories of the petition, who are charged for “making terrorist propaganda for a terrorist organisation under Article 7/2 of the Anti-Terror Act.

As of 30 November 2018, 500 of the 2212 signatories have seen judicial proceedings commenced against them. Until mid-November, file cases were opened primarily to academics who are the first signatories of the Petition and are/were employed in the 15 universities in Istanbul. Since mid-November, signatories in other cities have also seen judicial proceedings commenced against them.

An investigation of data provided by the Academics for Peace (AfP) reveals that of the 500 signatories who have seen prosecution cases opened against them, 27% were either dismissed by emergency decrees, forced to resign or had seen their contracts dissolved, revealing the fact that the “sued signatories” and the “dismissed signatories” hardly overlapped. Yet, with the prosecution cases opened against signatories in other cities, the share of “sued” and “dismissed” signatories are likely to increase.

Politically motivated trials immune from judicial processes implemented with fair trial

It has been widely acknowledged that the act of signing the Peace Petition-nonviolent expression of an opinion on a matter of legitimate academic and public concern-cannot be qualified for “making propaganda for a terrorist organisation” nor for “degrading the Turkish Nation, the State of the Republic of Turkey and the organs and institutions of

³ This statement condemned the persecution of signatory academics and affirmed signatories’ commitment to the wording of the Peace Petition, upon which the four signatories were arrested and kept on remand for 40 days. Since March 2016, the judicial proceedings against them are pending.

⁴ They were initially charged for “making terrorist propaganda for a terrorist organisation” under Article 7/2 of the Anti-Terror Act, and held in pre-trial detention for several weeks, until being released upon their first court hearing. This charge was changed upon permission from the Minister of Justice for “degrading the Turkish Nation, the State of the Republic of Turkey and the organs and institutions of the State” under Article 301 of the Penal Code.

the State". Hence, the investigations and prosecutions against Academics for Peace have been widely criticised for violating the freedom of expression of the signatory academics and Turkey's commitments under international human rights law⁵.

Concerns and controversies also prevail around the independence and fairness of Turkish judiciary in conducting the judicial proceedings⁶. Critics highlight that judicial proceedings against Academics for Peace are politically motivated and immune from being implemented with fair trial⁷, indicative of the significant role of the judiciary system for systematic human rights violations against those academics involved in the human rights struggle in Turkey with their call for peace. There are a number of reasons why:

Multiple prosecutions for an allegedly "organised" single act

First of all, Academics for Peace are charged for an allegedly "organised" act of signing the Peace Petition. Controversially, authorities have brought indictments against academics on an individual basis and distributed the court hearings over several months, violating Article 8 of the Code of Criminal Procedure, which requires one trial for Academics for Peace for an alleged crime of "signing the Peace Declaration".

The cases are viewed in different courts in Istanbul and other provinces. As of 30 November 2018, cases of 500 academics are viewed in 22 different courts in Istanbul. With judicial proceedings commenced against signatories from other cities-including Adana, Antalya, Bolu, Diyarbakır, Eskişehir, İzmir, Kocaeli, Mardin, Mersin, Tunceli, Van and Yalova-cases have also been opened in courts in cities other than Istanbul, indicative of the variation in the prosecution process regarding a single act, and hence of the attempts of the authorities to preempt a united resistance⁸. As an indication of

⁵ See among others:

Altıparmak, K. and Akdeniz, Y. (2017) Barış İçin Akademisyenler, İstanbul: İletişim

Akdeniz, Y. and Altıparmak, K. (2018) Türkiye'de Can Çekişen İfade Özgürlüğü: OHAL'de Yazarlar, Yayıncılar ve Akademisyenlerle İlgili Hak İhlalleri, English PEN (London), https://www.englishpen.org/wpcontent/uploads/2018/03/Turkey_Freedom_of_Expression_in_Jeopardy_TUR.pdf.

Article 19 (2017) Turkey: Academics for Peace trials violate free expression, <https://www.article19.org/resources/turkey-academics-peace-trials-violate-free-expression/>.

Demir-Gürsel, E. (2017) A brief note on the "crime" allegedly committed by the Academics for Peace: Propaganda for a terrorist organisation or degrading the State of the Turkish Republic?, <https://afp.hypotheses.org/236>.

Human Rights Watch (2017) Turkey: Academics on trial for signing petition, <https://www.hrw.org/news/2017/12/05/turkey-academics-trial-signing-petition>.

⁶ see for example the Memorandum on freedom of expression and media freedom in Turkey and government's reply, <http://ihd.org.tr/en/index.php/2017/02/20/memorandum-on-freedom-of-expression-and-media-freedom-in-turkey-and-governments-reply/>.

⁷ For a detailed account see Altıparmak, K. and Akdeniz, Y. (2018) Otomatikçe Bağlanmış Barış için Akademisyen Kararları ve Kendi Kuyusunu Kazan İstanbul Yargısı, <http://privacy.cyber-rights.org.tr/?p=1708>.

⁸ For an evaluation of a voluntary lawyer on this issue, see <https://barisicinakademisyenler.net/node/460>.

this, three academics have seen court decisions of rejection of venue on the grounds that “they have allegedly committed the crime elsewhere”, with their cases to be seen in courts in Ankara, Mersin and Tunceli.

A nearly uniform bill of indictment against individual cases, same conclusions

Secondly, despite the fact that the signatory academics are indicted individually before different courts, authorities have brought a uniform bill of indictment against these academics⁹. As such, the charges on which the prosecution proceeds, the opinions of public prosecutors as to the allegations and the conclusions drawn by different courts are the same.

Inconsistent allegations which distort the facts of the petition

Thirdly, the indictments lack substantiation of the charges by factual evidences and the allegations distort the facts of the petition¹⁰. Examples of such distortions and lack of factual evidences include accusing the signatories of taking sides with the Kurds for calling for the cessation of violence against them, of allying with terrorism for taking sides with Kurds, of making terrorist propaganda for a terrorist organisation for calling for negotiation for a peaceful solution. Another good example of such distortion is that the indictment builds its allegations on the word of “Kurdistan” that does not exist in the original English version of the Academics for Peace’s statement.

Differences between the qualifications of the “crime” for an identical act

Fourth, there are differences between the qualifications of the “crime” allegedly committed by signatory academics and hence inconsistencies regarding the charges. While the four signatories who read a second press statement of Peace Petition are charged for “degrading the Turkish Nation and the State of the Republic of Turkey and the organs and institutions of the State”, the other signatories are accused of “carrying out terrorist propaganda” for an identical act. Hence, the qualifications of the “crime” committed by the signatories in relation to an identical act are different and there is inconsistency surrounding the definition of the charges on which the prosecutions proceed, demonstrating the arbitrariness of the judicial proceedings.

⁹ The English translation of the bill of Indictment is accessible at <https://afp.hypotheses.org/documentation/bill-of-indictment>. For a commentary on the bill of Indictment see <https://afp.hypotheses.org/documentation/a-commentary-on-the-indictment>.

¹⁰ For a detailed account see: Butler, J. and Ertür, B. (2017) Trials begin in Turkey for Academics for Peace, Critical Legal Thinking: Law and the Political. <http://criticallegalthinking.com/2017/12/11/trials-begin-turkey-academics-peace/>.

Against this backdrop, along with the requests for immediate acquittal, defense lawyers of some signatories requested courts to stop proceedings under Article 7/2, and launch an investigation under Article 301 of the Penal Code. Defense lawyers also requested courts to merge the cases of all academics, including the one against the group case of the four signatories. These requests have been rejected by all courts, though five courts merged the files within their own bodies.

Inconsistencies in the conclusions reached by different courts

Last, but not least, the response of the different courts to these requests have been different. As of November 2018, 4 courts requested permission from the Minister of Justice for an investigation on charges under Article 301, pending approval. Controversially, 2 courts requested additional defense from Article 314/2 of the Penal Code, accusing these academics of “deliberately and willfully supporting a terrorist organisation”.

The inconsistency in the conclusions reached by the different courts become more apparent given the judgements delivered by the different courts for 40 academics, finding them guilty for “carrying out terrorist propaganda” under article 7/2 of the Anti-Terror Act. While 38 of these academics were sentenced to 15 months of imprisonment, one academic was sentenced to 18 months of imprisonment on the grounds of “the defendant’s post-crime behaviour and his/her behaviour in judicial proceedings”¹¹, and one to 18 months 22 days of imprisonment, on the grounds that “he/she performed the act successively”. Most sentences were suspended, while two academics have had their sentences upheld on the grounds that they failed to express remorse and that they refused the application of the mechanism of the “deferment of the announcement of the verdict”¹². Although these two academics are released, for now, they face the risk of imprisonment depending on the higher courts’ judgement. One academic, who had also refused the application of the mechanism of the “deferment of the announcement of the verdict”, has had his/her sentence postponed subject to probation on the grounds that “he/she has no criminal record in the past” and of “conscientious opinion, in view of the defendant’s past state, that he/she will not commit a crime again”.

¹¹ This academic, who had not declared the application of the mechanism of the “deferment of the announcement of the verdict”, has had his/her sentence postponed subject to probation on the grounds of “conscientious opinion that he/she will not commit a crime again”.

¹² Suspended sentences relate to the acceptance of the accused academics to resort to the mechanism of the “deferment of the announcement of the verdict” according to which the court rejected the suspension of the punishment on the grounds that the defendant will not be found guilty for another crime in a certain period, giving way to the foreclosure of the case. However, when the accused accepts this mechanism to be applied, then the qualification of the action as a crime is officialised and the accused is deprived of any rights on appealing the case at a higher court.

These evidences indicate the prevailing arbitrariness of the ongoing prosecution process and the lack of an independent and fair judiciary system, violating Turkey's obligations under the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and related instruments and standards. These actions result in grave violation of signatories' human rights and their rights to academic freedom and freedom of expression.

Legal guidelines for academics who have been subjected to judicial proceedings

Given variations in the ongoing prosecution of signatory academics, informing the affected Academics for Peace about their rights and possible legal channels and acts they can take, and providing them with other relevant information they need is crucial. Despite the existence of a number of solidarity networks, access of these academics to legal assistance and psycho-social support remains limited, both due to the high number of academics affected, and to the wideness of the geographical area these are based in, including small towns in the remote regions of the country¹³. Within the scope of the Project, Academics for Human Rights has prepared an open-ended and updated online guideline for academics, accessible throughout the Action. This guideline, to be prepared in collaboration with professionals including legal professionals, from local civil society organisations that have been providing assistance to Academics for Peace, aims to provide the necessary information regarding judicial and administrative investigations, including relevant legal information, and steps to be taken in terms of economic and social rights (social security, passport, personal benefits, etc.). It will also include different types of sample petitions that can be used in filing claims at the level of different courts. The guideline will be continuously updated throughout the Action period, to respond to the target group's needs.

¹³ For a detailed account of the geographical distribution of dismissals see <http://www.tihvakademi.org/english-2/>.

Human rights violations against academics have reached an unprecedented scale in Turkey. In the face of the recent developments and growing authoritarianism both in Turkey and all around the world, there is shared consideration among academics, civil society organisations, professionals, and activists that there is an urgent need to develop novel strategies and forms of action to effectively and collaboratively carry out the struggle for human rights.

Formed as part of HRFT's "Supporting Academics as a Human Rights Actor in a Challenging Context" Project, the Academics for Human Rights Network aims to establish and strengthen a formal civil society network on both national and international scales to carry out human rights advocacy effectively in a challenging context.

Academics, human rights and civil society organisations, professionals, and activists, and other institutions and individuals are invited to be part of the Academics for Human Rights Network. By joining the network, you or your institution will receive our newsletter that will inform you or your institution of the recent developments related to Turkey's academics and the violation of multiple rights. You will also be communicated about the ways in which we might collaborate with you or your institution to support and empower academics as human rights actors in a challenging context. To express your interest in joining the network, please send an email to: tihvakademi@gmail.com

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