

ACADEMICS FOR PEACE

What happened?

Armed clashes started once again after the “Resolution Process,” started by Erdoğan in order to resolve the Kurdish Question with peaceful methods, was ended once again personally by Erdoğan in 2015. In the operations conducted following the curfews declared in Diyarbakır, Sur, Lice, Nusaybin, Cizre, Şırnak and many other places, the regions were taken into blockade; not even journalists but even MPs could not enter such regions. In the attacks against neighborhoods, heavy weapons like tanks and cannons were used. Calls for help, made via phones, by people who were stuck locked inside basements of buildings, were left unanswered. One of the most prominent reactions against this situation has been the petition published on January 11, 2016 with the signatures of 1128 academics, entitled, “We Will Not Partake In This Crime! *Em ê nebin hevparên vî sûcî.*”

The petition received lots of reactions, initially by the President and later by many other authorities. Erdoğan called the signatory academics “fake academics,” “tyrants,” “cowards” and called the judiciary and rectors to action. Following the call, Prosecutor’s Offices and university administrations started administrative and criminal investigations against the academics signing the petition. The academics started to be detained and dismissed from universities. However, the reaction against these acts against the academics came immediately as well - the number of signatures increased to 2022 and the petition was presented to the GNAT. Some of the signatories were detained; four academics were arrested, hundreds were dismissed from universities and banned from public service, their passports were seized, they were prevented from finding jobs elsewhere and criminal lawsuits were filed against them at separate courts.

Rights violations faced by the academics due to their signatures (20.07.2019)

Dismissals from public service with Statutory Decrees	406
Dismissals from universities	89
Resignations/forced resignations	72
Retirements/forced retirements	27
TOTAL:	594
Disciplinary investigations	505
Files sent to YÖK for “Dismissal from Profession or Public Service”	112
Suspension from work	101
Dismissals from administrative positions	7
Lawsuits filed	706
TOTAL:	1431

Civil disobedience acts to support academics

12 people in Ankara, 17 in Istanbul and 82 in Izmir restated the petition with a press statement in front of courthouses on January 18, 2016. They further distributed the petition in written form and made criminal complaints against themselves at the Prosecutor's Office. A verdict of non-prosecution was issued in Ankara; whereas lawsuits filed three and a half years later in Istanbul and Izmir (again at different courts) are ongoing.

46 people, most of whom were lawyers, faced a lynching attempt at the courthouse they went in order to make criminal complaints against themselves in Kuşadası on January 20, 2016. The defendants were acquitted three years later in the lawsuit filed at Söke Assize Court.

139 scientists from different countries, including Prof. Noam Chomsky, sent an email to Ankara Chief Public Prosecutor's Office on July 7, 2019 and made criminal complaints against themselves. Indicating that it is "absurd and ridiculous" to charge a call for peace with supporting terrorism, the academics stated that they sign the petition as well and requested themselves to be involved in the lawsuits as defendants.

Investigations:

Investigations were conducted against 706 academics in total with allegations of violating Article 7/2 of the Anti-Terror Law No. 3713 as well as making propaganda of a terrorist organisation via press and media.

Even though there was only one petition in question and that all academics have signed the same petition, separate lawsuits were filed against individuals in separate courts instead of a mass lawsuit. A copy of the same indictment was used in all lawsuits filed.

There was no clear indication of what act exactly constituted the charge imposed in the indictment. It further made no connections between the evidence and the acts of defendants; ignored rules of scientific referencing and was based completely on abstract assumptions and subjective evaluations. However, it was accepted by all assize courts it was sent to.

Prosecutions:

In the first hearings of lawsuits started to be tried at the assize courts in Istanbul Courthouse, the academics and their attorneys claimed immediate acquittal verdicts due to the "*charges imposed not having been defined as a crime in the law*" in accordance with Article 193, Clause 2 and Article 223, Clause 2, Subclause (a) of the Code of Criminal Procedure (CMK) prior to making any defense statements.

A step further, all separate files were claimed to be consolidated within Articles 8 and 10 of the Code of Criminal Procedure (CMK) due to having judicial and de facto connections between them. Some courts consolidated similar files at their own courts after receiving the initial defense statements; whereas they remained in the minority. Most of the courts denied claims of consolidation.

Some courts restricted the rights to defense of some defendants during hearings. Some defendants were asked to defend themselves even though their attorneys were not readily present at the hearing. The audience and press were prevented from witnessing the hearings; in some cases due to physical conditions (like small courtrooms etc.) and in some cases without showing any reason at all - which violated the principle of publicity.

All claims on widening the investigation as well as on subpoena wills of related reports by national and international human rights organisations, especially reports prepared by the United Nations and the Council of Europe with Turkey as a party, were denied without showing any reason.

Detailed defense statements were presented by the defendant academics and their attorneys; claiming acquittal verdicts due to a violation of the right to freedom of expression that is guaranteed and protected by the Constitution. Nevertheless, despite verdicts by the Constitutional Court, European Court of Human Rights, Court of Cassation and some Regional Courts in favour of the claims, all assize courts issued penalties against the academics, without exception.

The verdicts were usually based on Article 7/2 of the Anti-Terror Law on “*terrorist organisation propaganda*.” However, Istanbul 25th Assize Court issued imprisonment sentences varying from 25 months up to 30 months due to “*willfully aiding and abetting PKK/KCK terrorist organisation*” regulated by Article 220/7 of the Turkish Penal Code (TCK), which was transferred from Article 314/2 of the Turkish Penal Code (TCK).

As a result, all academics faced exactly the same verdicts.

Announcements of 153 verdicts with imprisonment sentences varying from 15 to 22 months were deferred.

Two sentences of imprisonment, one for 15 months and the other for 18 months, were deferred.

A total of 34 sentences of imprisonment, varying from 15 to 36 months, were not deferred.

Application of appeal against all verdicts were denied without showing any reason. These new courts were established with an amendment that blocked the way to the Court of Cassation for sentences shorter than five years, with judges assigned by the Council of Judges and Prosecutors (*whose entire 13 members were all either assigned personally or approved by the President himself*).

After their applications of appeal against the verdicts were denied, the academics made individual applications at the Constitutional Court. Individual applications of 10 academics, including Prof. Dr. Füsün Üsteli, will be negotiated at the Constitutional Court’s General Assembly on July 26, 2019.

JUDGING THE JUDICIARY

The “**Shadow Court**” examined this topic on lawsuit files and news reflected on the media, reaching to the following conclusion:

SUMMARY OF VERDICT

22.07.2019

Ordered & Adjudged;

1. Even opening an investigation against the academics, signing the petition, “We Will Not Partake In This Crime! Em ê nebin hevparên vî sûcî” is against conventions protecting freedom of expression, especially the Turkish Constitution as well as international conventions of human rights we are a party of. Basic rights and freedoms were heavily violated.
2. Statements and reactions by official authorities and political figures prior to and after the petition was shared with the government must be evaluated within the charge to attempt influencing fair trial, regulated with Article 288 of the Turkish Penal Code (TCK). However, no investigation was conducted by Public Prosecutors Offices against the perpetrators of this act, hence constituting the additional charge of misuse of duty.
3. Investigations were started after political figures, especially President Recep Tayyip Erdoğan, targeted the content of the petition as well as signatories. The judges didn't follow a prosecution process that is independent of political authorities; with statements of politicians preceding moral opinions of judges and majorly contributing to the results of the lawsuits. Political statements carried the quality of an order for the judges. That is why, Article 138/2 of the Turkish Constitution, regulating that orders can not be given to judges, was violated.
4. The standardised indictments, prepared against the Academics for Peace, were composed entirely of assumptive evaluations, were not based on any concrete evidence and were prepared against related provisions of the Law of Criminal Procedure (CMK); therefore are against the law. The Prosecutor, who prepared the indictment, has acted under political pressure and hence misused his duty. This situation constitutes the charge of “**misuse of duty.**”
5. In spite of the fact that all defendants faced the same charges, the same indictments and received the same verdicts; as all individual lawsuits had one and the same in regards to topics and acts, filing separate lawsuits aimed at making it difficult for the public eye to track prosecutions. This application made it harder for the defendants, lawyers and the press to track all related prosecutions and indicates to the courts having prejudgments. For this reason, Article 138/1 of the Turkish Constitution, predicting that the judge must adjudicate independently with his own conscience, was violated.
6. Through not denying indictments prepared in violation to the Code of Criminal Procedure (CMK), Assize Courts announced that they were not unbiased. As there was a situation that put the impartiality of the judge in question, there was a possibility for the defendants and their attorneys to claim recusation. However, claims of recusation were denied. Hence,

Article 24 of the Code of Criminal Procedure (CMK), regulating the claim of recusation, was violated.

7. Rights to defense of academics were restricted in the hearings, their right to receive legal aid was attempted to be prevented and their requests to widen the scope of the investigation, as well as other requests were denied without reason; arbitrarily violating their rights to a fair trial.
8. Impartiality of courts was violated with all verdicts subsequent to the initial prosecution by the courts denying claims of consolidation of files.
9. In courts where files were consolidated, academics facing the same charges were issued different sentences, without presenting any concrete reason on these differences. Hence, their right to a fair trial was violated.
10. Courts of appeal made no evaluation in accordance with legal regulations regarding convictions issued by first degree courts. Claims of retrial were ignored, claims of reversal and abatement were denied without showing any reason. Hence, rights to fair trialing of the academics were violated by inspecting authorities as well.

REASONED DECISION

Convictions against the Academics for Peace due to signing the petition shared with the public on January 11, 2016, entitled, “We Will Not Partake In This Crime! Em ê nebin hevparên vî sûcî” violate the right to freedom of expression, that is guaranteed by Article 26 of the Constitution.

Article 26, Clause 1 of the Turkish Constitution states: *“Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively.”* Freedom of expression, as a basic human right, may only be restricted in accordance with Article 13 of the Turkish Constitution. However, any restriction to be brought by the Constitutional Court against this right was stated to have the requirements that they shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of society and the secular republic and the principle of proportionality. In many verdicts of the Constitutional Court, it was indicated that freedom of expression is not only valid for the “information” and “ideas” that are in favour of a part of society and deemed harmless or insignificant but for those that are against or disturbs a part of society as well; further stating that such expressions are under the protection of this right. Besides, expression of such opinions are obviously a necessity for plurality, tolerance and open-mindedness as a prerequisite for a democratic society. In this context, restriction of freedom of expression of the Academics for Peace through imprisonment sentences is a violation of Article 26 of the Turkish Constitution due to not fulfilling the prerequisites indicated within Article 13 of the Turkish Constitution as well as not having been based on one or more reasons indicated in the second clause of Article 26.

In the meantime, interventions against freedom of expression that is protected by Article 26 further violates the ban on restrictions being used outside of purpose. For verdicts of conviction do not carry the legitimate purposes indicated in Article 26; whereas aims to silence and penalise academics expressing their opinions on the rights violations experienced in a certain region of the country through a petition document, while deterring other academics and public officers from bringing such topics to public agenda. Therefore, in connection with Articles 20 and 26 of the Turkish Constitution, the provision, “*These restrictions shall not be contrary to the letter and spirit of the Constitution...*” stated in Article 13 was further violated.

The entire prosecution process was conducted and concluded in violation to human rights conventions we are a party of, as well as our domestic law. In accordance with Article 170 of the Law of Criminal Procedure (CMK), a public lawsuit must only be filed in case there is sufficient suspect of crime with the evidence collected in the preparation stage. According to this regulation, no lawsuit may be filed with an indictment that does not properly relate incidents and evidence, nor discussing the elements of crime. Article 170, Clause 4 states once again that the indictment must especially relate incidents constituting the crime with present evidence. However, the indictment prepared against the Academics for Peace does not relate the evidence with the incident; yet involves arbitrary assumptions and subjective evaluations. In this way, the indictment is openly against the law. First degree courts accepting these indictments is against the law in the same way. Conduction of a prosecution that is not based on an indictment prepared in accordance with the procedure, as well as the conclusion of this prosecution, are both against Article 225 of the Code of Criminal Procedure (CMK), Article 36 of the Turkish Constitution as well as Article 6 of the European Convention of Human Rights (ECHR), regulating fair trial. Rights to fair trial of all academics were hence violated.

Claims of the academics and their attorneys to widen the scope of the investigation were completely arbitrarily denied by all courts and thus, the principle of equality of arms as a basic foundation of the right to fair trial, was openly violated by the courts themselves.

Many signatory academics were prosecuted consecutively in courts not issuing consolidation, with many files with ongoing prosecutions in the same way. In these courts, eventual verdicts against the academics are almost exactly the same. As a result, it is not possible for a court that issued conviction once for the same charge against an academic to issue different verdicts for other academics. Thus, there is no longer such prosecution by an impartial court. This situation, without a doubt, is a violation of impartiality and lead to a violation of the right to fair trial.

Some academics faced discretionary extenuation at courts issuing consolidation, whereas some didn't; even though all were imposed the same charges due to having signed the same petition. Therefore, different academics faced different penalties. Reasonable bases could not be shown by courts regarding such differences, leading to a violation of the principle of equality. The mere fact that persons on trial within the same file, imposed to the same charges through signing the same petition text were sentenced to penalties differing from one another based on duration and quality is an indicator that penalisation in itself was not determined in accordance with the laws of justice and fairness.

In accordance with Article 230 of the Code of Criminal Procedure (CMK), it is mandatory to present the act leading to the crime, to describe the act and indicate the basis of the verdict in the reasons section of the decree. The reason is an explanation on the basis of the decree according to common logic, law as well as the content of the case file. Therefore, the reason section of the decree must indicate information and documents having taken as basis or ignored/denied while reaching to the concluding verdict, as well as other reasons for the verdict. Furthermore, these bases must be relevant, valid, sufficient and legal. A decree issued without being based on a legal, sufficient or valid reason will not be in accordance with the purpose of the lawmaker, leading to arbitrariness in application. There is therefore an obligation in the decree including a reasons section, in order to prevent arbitrariness, satisfy both parties and to make a healthy monitoring/inspection possible. A decree not involving a reason is a situation of “certain contrariety against the law.”

None of the objections made against the bases, expressed during prosecutions, were examined in the criminal decrees issued against the signatory academics; it was not explained with what reasons freedom of expression did not precede the content and why a conviction was issued. Decrees issued on the applications of objection and appeal against the convictions similarly lack real reason. Thus, these decrees are a heavy and unrightful intervention against freedom of expression of the academics, being certainly against the law and violating the rights to free trial of signatory academics.