



## TURKEY'S STATE OF IMPUNITY - 2020

**Impunity** is the impossibility of investigation, prosecution and penalisation of serious human rights violations, in the literature of Human Rights. Through impunity, a person who commits the crime is, directly or indirectly through legal provisions, exempted from prosecution or is penalised with a much smaller sentence than required. So impunity is not interested in the crime itself, but protects the criminal. This mechanism involves all stages of prosecution, starting from the criminal act itself until the judicial bodies of the government. It is an **extremely widespread practice in the administration and judiciary.**

November 2nd was announced by the United Nations as the International Day to End Impunity. The latest “*Turkey’s State of Impunity*” bulletin, which we started to publish in 2016, include only a part of the “impunity practices” that reflected in the media between November 2019 - November 2020.

The practice of impunity in Turkey, which unfortunately strengthened and ordinarised, weakens the dependence to the state of law and to the principles of fair trial - which were already faulty. Confidence in Turkey’s judiciary continues to lose strength and mechanisms of separation of powers continue to lose importance...

### **Government authorities and pro-government circles avoiding trial**

*Public officers can not be put on trial as suspects or defendants, which corrodes Turkish bureaucracy’s obligation to act in accordance with the principles of the state of law. When citizens express their opinions, the police comes to get them the next morning. However, the opposite can be said for the bureaucracy and pro-government politicians. This year was the same in terms of judicial applications made by those targeted and insulted by politicians and bureaucrats; there was no prosecution against the defendants...*

### **Case example**

#### **Judiciary calls minister’s insults freedom of expression**

25th Civil Chamber of Ankara Regional Court claimed that the expressions, “low” and “servant” used by Interior Minister Süleyman Soylu against Prof. Dr. Baskın Oran due to his article, “Some tragicomic experiments on Kurds,” published in 2017 remain within freedom of expression and issued a verdict of non-prosecution. Thus, the appeal court has approved the local court decree, which denied the moral compensation case of Baskın Oran.

### **Case example**

#### **Hate is freedom of expression, according to Prosecutor**

A verdict of non-prosecution was issued for Yeni Akit Daily, which targeted the Young LGBTI+ Association events with expressions like, “dishonourable faggots,” “grandchildren of the people of

Lut,” “deviant homosexuals.” Küçükçekmece Chief Public Prosecutor’s Office evaluated the expressions within “criticism.”

### **Case example**

#### **Constitutional Court: Non-investigation of politicians and administrative authorities on police violence not a right violation**

The Constitutional Court (AYM) decided that it is not a right violation to not conduct an investigation against the Prime Minister, Interior Minister, Governor and Provincial Security Director after the complaints of four citizens, who were injured after the police intervention against the Gezi Park protests. The Constitutional Court decree claimed that there is no evidence suggesting a connection between the injury, intervention and the Governor and Security Director, who weren’t allowed to be investigated by the Ministry of the Interior. The investigations to be opened against the Prime Minister and other ministers, on the other hand, were indicated to be under the authority of the Grand National Assembly of Turkey (GNAT).

### **Case example**

#### **Constitutional Court: Non-prosecution of public officers in Soma is violation of right to life**

The Constitutional Court (AYM) revoked the lack of permission against an investigation for the prosecution of public officers related to the Soma Massacre in 2014, leaving 301 miners dead. The high court decided that it is a violation of the right to life to not investigate public officers regarding the neglect identified with expert reports.

#### **Impunity of police violence, torture and misconduct**

*The attitude adopted by the judiciary against the police force involved in crimes, continues to spread fear to the citizens and confidence to the police. The general opinion that the crimes committed by the police force will remain under impunity brings together unrecorded detainments, kidnappings, disproportionate use of force and an increase in the incidents of torture...*

### **Case example**

#### **No permission issued to investigate police officer over killing of 12-year-old**

Diyarbakır 1st Assize Court issued for a stay of prosecution due to the lack of permission issued to investigate the defendant police officer in the lawsuit filed on the death of 12-year-old Helin Şen in Sur district of Diyarbakır in the fire opened against her during a curfew.

### **Case example**

#### **Governorate makes “torture” statement: Dog showed reflex**

Diyarbakır Governorate made a statement on the torture against Şeyhmus Yılmaz and his wife, Menice Yılmaz being tortured with dogs during the house raids in Bağlar district on May 30 after a police officer had died. The Governorate claimed that Şeyhmus Yılmaz had kicked the dog and it showed “reflex.”

### **Case example**

#### **Protection shield for police officers breaking arm of Berkin Elvan’s mother**

Istanbul Anatolian 8th Criminal Judicature of Peace declined the objection made against the verdict of non-prosecution issued for the police officers, who broke the arm of Berkin Elvan’s mother, Gülsüm Elvan. Berkin Elvan was killed during the Gezi Park protests and mother Gülsüm Elvan’s arm was broken during detainment due to a demonstration to support Nuriye Gülmen and Semih Özakça in Kadıköy on August 11, 2017.

### Case example

#### **Prosecutor finds it ‘lawful’ for police officer to break MP’s arm**

Batman Chief Public Prosecutor’s Office issued a verdict of non-prosecution on the criminal complaint of People’s Democratic Party (HDP) MP Feleknaş Uca, whose arm was broken during the police attack against a press statement. The Prosecutor’s Office called the intervention “lawful” and the objection made against the verdict was denied by Batman 2nd Criminal Court of Peace.

### Case example

#### **No penalty against police officer after killing 16-year-old**

1st Criminal Chamber (Appeal) of Diyarbakır Regional Court reversed the 10-year imprisonment sentence issued against police officer Süleyman Eşenboğa, who killed 16-year-old Mazlum Turan in Kızıltepe, Mardin. The court decided that there is no reason for penalisation.

### Case example

#### **Nol-pros for torture file**

Gaziosmanpaşa Chief Public Prosecutor’s Office issued a verdict of non-prosecution in the investigation opened against police officers, who claimed to have tortured Naci Çelik at Sultangazi police office. The Prosecutor’s Office claimed that the Law of Police Powers authorizes the police with the use of arms and force, and that the torture victim was injured in a way that could be compensated with a simple medical procedure.

#### **Avoiding investigation through time limitation or secret witness statements**

*Even though the expression, “Justice delayed is justice denied” is commonly-accepted, in Turkey, “justice isn’t even delayed.” In crimes where public officers are defendants, the stage of investigation and prosecution have such a wide span even if the lawsuits are opened (late, usually with public pressure)... The “time limitations” on investigations with long periods of prosecutions as well as cases disappearing from the public agenda with steps “seemingly” taken, are frequent methods used from the past until now. Secret witness statements are made a “primary element” since the 2000s and it is now considered one of the most practical ways to make criminals avoid prosecution.*

### Case example

#### **Time-limitation shield for torturer police officers sentenced to life imprisonment**

Istanbul Security Directorate claimed that a disciplinary penalty can’t be given to four police officers, who received sentences of life imprisonment after killing a citizen with torture in Eşenyurt ten years ago. It was indicated that a disciplinary investigation was conducted on the incident in 2011 and that the investigation concluded with non-prosecution. It was further claimed that the incident is now under time limitation, therefore a new investigation can’t be opened.

### Case example

#### **Prosecutor considers 13-year-old “illegal organisation member,” deciding for non-investigation**

13-year-old Fatma Elarşlan, whose dead body was found 20 days after nothing could be heard from her since the curfew declared in Şırnak in 2016, was considered an “illegal organisation member” through “secret witness” statements. At the end of the investigation started on her death, Şırnak Chief Public Prosecutor’s Office issued a verdict of non-prosecution.

### **Case example**

#### **Nol-pros for JITEM murders in Dargeçit**

A verdict of non-prosecution was issued in the investigation started seven years ago, on the killing of seven people and Çelik village of Dargeçit, Mardin being set on fire in 1993. Dargeçit Chief Public Prosecutor's Office described those murdered as "PKK militia" and claimed that their relatives' statements are arbitrary.

#### **Supreme Court decrees not executed**

*Against the crimes resulting in impunity, not effectively investigated, where the government takes a side, the Turkish citizens attempt to find the remedy in applications at the European Court of Human Rights. With the transition into individual applications at the Constitutional Court, judicial monitoring against rights violations caused by individuals and institutions using their public power was allowed. There were also frequent examples that the Constitutional Court decrees were not applied by administrative or local courts.*

### **Case example**

#### **Torture remains under impunity despite Constitutional Court decree**

The lawsuit filed on the beating of a citizen, who was detained after the Gezi Park protests in Izmir, in a prison in accordance with a Constitutional Court decree was concluded with impunity. The verdict of non-prosecution issued within the investigation was reversed after the Constitutional Court decided in 2016 that "the government's procedural responsibility for an effective investigation was violated." After the retrial, Izmir 5th Criminal Court of First Instance found police officer Y.U. guilty but sentenced him to only 3 thousand TL judicial fine due to "simple injury". The court further deferred the announcement of the verdict due to the defendant police officer "having no criminal record" and they have an opinion that the defendant police officer will not commit any other crimes. Thus, a criminal police officer didn't receive a sentence after a seven-year legal battle.

#### **Impunity of crimes against prisoners**

*There is no doubt that prisons are one of the areas where government authority is applied most brutally. Mistreatment, suspicious death and cases of torture in prisons continue to increase with the strengthening of policies of impunity. Conditions of those arrested and convicted in Turkish prisons continue to worsen tragically.*

### **Case example**

#### **Visuals of mistreatment previously denied by Prosecutor's Office revealed**

Video records were revealed on the mistreatment and inhumane applications faced by OdaTV Editor-In-Chief Barış Pehlivan, who was arrested with the allegation of "violating the Turkish National Intelligence Law," at Silivri Prison. The Prosecutor's Office had refused the allegations after the complaint of Pehlivan's lawyers and stated that there was no need for prosecution.

### **Case example**

#### **Prison defends 'torture': We opened just recently, such issues may happen**

Lawyers from the Libertarian Lawyers Association visited convicts at Afyon Type-T Closed Prison No.1, which recently faced torture allegations. The report the lawyers prepared pointed out the applications of beatings with a birch rod, insult and rough beating in the prison. The prison administration, however, defended the institution by relating the torture and rights violations to their ‘recent opening.’

### **Reasoned decree on ‘Back to Life Operation’: Soldier statements more valid than convict statements**

The reasoned decree was announced in the lawsuit filed against 267 soldiers on the “Back to Life Operation” conducted at Ümraniye Prison on December 19, 2000. Istanbul Anatolian 8th Assize Court based the decree of acquittal on the statements of soldiers, who said, “We didn’t do it.” The responsible for the operation to be conducted “this way” was decided to be the convicts on hunger strikes. Thus, with the decree of acquittal, the perpetrators of those killed in the operation remained unidentified.

#### **Impunity of male violence**

*Male violence increases against women and children. There is a strong conviction that the “lockdown” applied in the first stage of the fight against the COVID-19 outbreak has led to the increase in male violence. However, the main element for the increase in male violence in Turkey is the judiciary and administrative authorities continuing to protect the men. The fair trial, even the trial of the increasing male violence is only possible with the incidents being publicised by the public on social media. “Unjust provocation and good-conduct abatement” unfortunately continue to be how male violence is being protected by the judiciary and left without penalty.*

#### **Case example**

##### **İpek Er dragged to suicide**

Gendarmerie sergeant Musa Orhan, who caused the death of 18-year-old İpek Er through sexual assault as she ended her life in Batman, used his right of silence in the first hearing of the lawsuit he was on trial at Siirt 1st Assize Court. In the first hearing of the lawsuit, the court decided for the defendant to be released pending trial. The court decided, in the reasoned decree, that the defendant sergeant “created no suspicion of escaping.” Interior Minister Süleyman Soylu targeted those organizing a campaign on social media for the arrest of Musa Orhan and accused the campaign with “speaking on behalf of a terrorist organisation.”

#### **Case example**

##### **Fatma Şengül murder**

Zeynel Akbaş, who murdered his co-worker Fatma Şengül in front of her house in the early hours of March 30, 2019 in Maltepe district of İstanbul was unanimously sentenced to 18 years of imprisonment due to “homicide under unjust provocation.”

#### **Impunity as a stable government policy**

*Some incidents, which left years and a series of political turmoil behind, is one of the shortest ways to remember that impunity is indeed a government policy. It seems that policies of impunity continue in 2020 in cases where especially minorities, Kurds, members of the opposition etc.*

*are being victimised through the hand of the government - either in periods of different rulings, or in periods where the same ruling body has different (!) political motivations.*

### **Tahir Elçi investigation: Three police officers suspected after four years**

Even though four years have passed after the Tahir Elçi murder, no progress has happened in the investigation on the incident that will clear out the facts. In the four-year investigation, the evidence weren't collected in accordance with the procedure. 4 Chief Public Prosecutors and 5 Prosecutors responsible of the file were changed; and not one person has testified as a suspect or perpetrator. Three police officers, who are visibly seen in the recordings to be shooting in the same direction where Elçi was, took place in the file as "witnesses" and then as "suspects" only four years later. No criminal examinations were made on the guns used by more than 30 police officers present at the crime scene and the gun, killing Elçi, couldn't be identified. Despite all calls and public pressure for the illumination of the assassination, the investigation continues to not be effectively conducted. The defendant police officers didn't attend the first hearing held in October; and all claims of the Elçi Family's lawyers and Tahir Elçi's wife, Türkan Elçi were denied by the court.

### **Dink Assassination: True perpetrators missing for 13 years**

On the 13th anniversary of his assassination, Agos Daily's Editor-In-Chief Hrant dink was commemorated with events organised in various provinces, especially in front of the Agos Daily building. Despite the fact that gunmen of the assassination were identified, whoever was truly responsible of the assassination behind the curtains could not be revealed in the 13 years after Dink's death. The ruling party attempted to connect the case depending on the current political climate at the time, first to Ergenekon, later to the religious sect the party was closely working with for long years. Following public pressure and determined work by the Dink Family and lawyers, public officers at the time stood trial. Nevertheless, especially the incidents preceding the assassination and how the assassination was decided are still yet to be uncovered... The true perpetrators of the assassination remain a question mark.

### **"JITEM" case concludes with impunity**

The "Ankara JITEM Case" on the disappearance of 19 people between the years 1993 and 1996 was concluded with impunity. The case investigation had started in 2011 and in the lawsuit filed afterwards, Ankara 1st Assize Court issued the acquittal of defendants including former Interior Minister Mehmet Ağar and separated the file of Mahmut Yıldırım with codename Green.

### **15-year impunity in Uğur Kaymaz file**

15 years have passed since 12-year-old Uğur Kaymaz was killed together with his father in front of their house in Kızıltepe district of Mardin on November 21, 2004 due to a fusillade by the police. Immediately after the incident, Mardin Governorate had announced that the father and son were "terrorists in preparation of action." The lawsuit filed against four police officers was moved to Eskişehir for "security reasons" and was eventually concluded with acquittal. The file was carried to the European Court of Human Rights (ECHR) after the approval of acquittal by the Court of Cassation. The ECHR convicted Turkey of "violating the right to life." However, the re-trial process in accordance with the ECHR decree was declined without showing any reasons. The application made at the Constitutional Court (AYM) was replied to years later, claiming that the ECHR decree was at their discretion but a re-trial will not be made. The file, after 15 years of impunity, is again at the ECHR now.