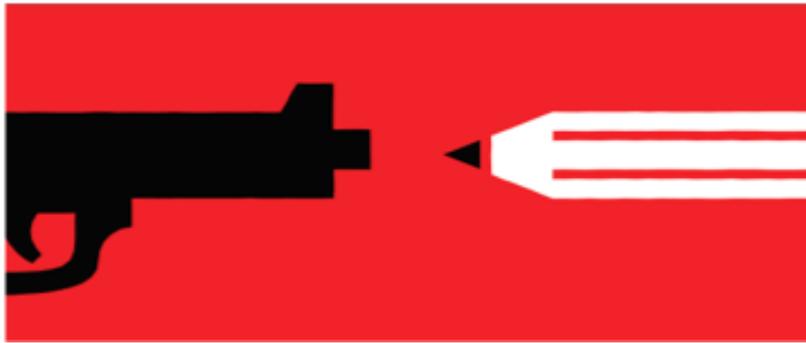


[OBJ:OBJ]



International Day to End Impunity

United Nations proclaimed 2 November as [OBJ:OBJ] 'International Day to End Impunity'. We, as the member of the umbrella organization called IFEX (International Freedom of Expression Exchange) introduce the information we have prepared in order to create awareness on this issue.

We expect your contribution in spreading this document to the public and thank in advance to everyone who give support.

Initiative for Freedom of Expression

What is Impunity?

Impunity, in the literature of human rights, is the state in which the investigation, prosecution, detecting the perpetrator, judgment and punishment of the serious human rights breaches are not possible.

Although the act constitutes a crime with all its character and quality, the perpetrator is being directly or with the use of the legal provisions, exempted or convicted to less penalty due to the legislative, executive or directly the legal bodies. So impunity is not interested in the offence but protects the accused.

[OBJ:OBJ] Who is being protected?

- The government officials who are not let by their chief to be prosecuted,
- Although their location is clearly known, the soldiers or police that cannot be found and brought to the court, -The paramilitary groups or militants that are accepted and being supported formally or secretly by the government,
- People who commit crimes such as murder, theft or rape in a way that is in harmony with the political values of the government,
- The ones who make or contribute to defraudation, give support to gloze defraudation, prepare fake reports.

How are they being protected?

- By ending the cases that continue for long years due to "prescription";
- Due to the way of thinking of the prosecutors and judges, the law enforcement staff do not consider the attacks against some people or identities, do not fulfill their

investigation duty and do not provide the related evidence to be held which, in the end, cause 'nonsuit' decisions to be held;

- The use of extenuating circumstances in the cases that can be put on trial;
- Creating an impression in favour of the accused,

... in such ways

Why are they being protected?

- Fight against terror,
 - Public order, security;
 - Conspiracy theories that target the country and originate from the foreign sources;
 - Political polarization...
- ... such 'political' reasons, or...
- Machismo (Patriarchal culture):
 - Homophobia (Hate against homosexuals);
 - Culture of obedience;
 - Discrimination against some ethnic or religious groups as a result of social polarization..

... such social reasons

the offenders are being protected and in the circumstances which they cannot be fully exempted from the penalty, they receive the least severe sentence.

The role of the media?

The media has a great role and responsibility in the legitimation of impunity. Avoiding the "offending" news and using the language of the government (to compose the news in an identical way with the information provided by official bodies, police or military forces without making further research) are the examples that are encountered the most in this area.

N.C Case

An example of Machismo

In 2002, N.C., was raped by 26 people including civil servants at Mardin. The case was filed under the old Turkish Criminal Code against 2 women who were working as the agents to arrange the 'customers' and 26 men who had sexual intercourse with N.C.,. They received the minimum punishment, which was even decreased due to good conduct of the defendants. Under the international law standards everyone under 18 years old is accepted as a child and therefore it is not possible to argue about the existence of consent. However, the judges had a consensus on N.C.'s consent and put this forward in order to illustrate that the act was not unlawful.

Murder of Transsexual B.U:

An example of Homophobia

In 2013, transsexual B.U was found battered in the street and passed away after two days treatment in the hospital. The defendant Ramazan Soybozkurt provided in his statement that he offered sexual intercourse and when he was rejected, he battered B.U but that he did not have an intention to kill. The case ended in February 2014 and the punishment was decreased from life sentence to 18 years due to provocation defense and later, even decreased to 15 years for 'good conduct' of the defendant. The fact that the deceased was a travesty was shown as a reason for provocation defense.

Murder of Hrant Dink

An example for 'Obedience to the State'

The general director of Agos Newspaper Hrant Dink loss his life in an armed attack at the exit of Agos Newspaper. The young murderer Oguin Samast was detected with the help of the security cameras that recorded the attack and was arrested after 3 days. Later, Yasin Hayal, Zeynel Abidin Yavuz, Ersin Yolcu and Ahmet Iskender was arrested as accomplices. Prosecution process was decided to be unnecessary for Erhan Tuncel who was found to have telephone conversations with one of the arrested defendants Muhittin Zenit. The written statement about Erhan Tuncel was send from the Police Forces to the court but destroyed by the prosecutor, as it was a 'state secret'.

In the trial held in 25 October 2010, the court held that there was 'lack of jurisdiction' as Oguin Samast was under 18. Therefore, Samast case was separated from Yasin Hayal and Erhan Tuncel and send to Children's Court. The trial was held in 25 October 2011 in the Children's Court and Samast was convicted to life sentence for committing murder. However, as he was under 18 years old when he committed the crime, the sentence was decreased to 21 years and 6 moths.

The case ended after 5 years, in 17 March 2012. The court, that could usually detect the organizational crimes easily, failed to find an organization behind the Dink case. Even the triggermen was acquitted. The decision stated that there was a suspect about the existence of an organization but there is no sufficient evidence that can prove this.

Yasin Hayal convicted to life sentence as the accomplice whereas Erhan Tuncel was acquitted.

Ramazan Akyurek, who was seen responsible from the crime, was suspended from his position with the allegation that he 'destroyed the operation information belonging to the past years'. It was detected that Ramazan Akyurek destroyed the information unlawfully in the period when he was the head of the department.

It was claimed that the information deleted by Ramazan Akturek was belonging to the operations made at the period of Hrant Dink's murder. Apart from this, the inspectors made an important assignation about the illegal wiretapping.

The court decision, which stated that there was no organization in the crime, was later brought to Court of Appeal. The Court of Appeal sent the case back to the Criminal Court. The defendants are now being put in trial once again for 'being member of an organization which was established for committing crime' . Ramazan Akyurek was called to the Prosecution as the suspect and provided his statement.

Baran Tursun Case

Protection instinct of the State

Baran Tursun was killed in Izmir in 25 November 2007 while he was passing near the control point of the police with the bullet that hit upon his head as a result of police firing his gun. Police defended themselves by stating that they were suspicious of the deceased, as he did not obey their call by firing their gun into the air for him to stop. It was later emerged that the warning was made with the dimmer switch in the car 185 meters away from the deceased. However, the court held that the warning was made for Baran Tursun. After seeing Baran in blood, police tried to hide the fact that the gun was fired as they were panicked. They tried to illustrate the incident as a car accident. They prepared fake traffic accident report and did not notice the prosecutor about the accident. They called the ambulance with the notice that there was a car accident. Baran's heart stopped in the ambulance but began to work again after the first treatment. In the hospital, Baran's brain tomography was taken and the bullet in his head was realized. This changed the direction of investigation but as the prosecutor did not go to the area of the incident, the preliminary investigation could not being carried out.

Baran Tursun lost his life in his fifth day in the hospital (30 November). It was emerged one by one during the investigation that the police made many frauds in order to illustrate the incident as a car accident; they put in Baran's hands one of the files that they found in the baggage of the car in order to state that the accident was due to carelessness. Moreover, they tried to display a bullet mark in the seat next to the driver in order to prove that the bullet did not hit on Baran. They took statements from their other police friends, prepared fake statements, falsify the camera recordings and directed the witness statements.

It was proved that police shoot Baran 'standing, his hand parallel to the ground, straight and linear' from behind. The case trials had excessive infraction of rules. Baran's family objected to this and after witnessing the cases brought against Baran's family with the allegations of 'Influencing the court, insulting the legal bodies, soldiers, police openly', Baran's murderer received only 2 years imprisonment. However, Baran's family did not stop to follow the case and brought it to European Court of Human Rights (ECHR).

17 December Defraudation Investigation

(Revealing the sovereign)

Unexpected issues arose in 17 December 2013, when Police Financial Branch in Istanbul began an investigation with the allegations of "bribe, malpractice, conspire to rig the bid and against businessman, bureaucrats, head of the banks, civil servants in variety of positions and four ministers who are the members of the government with three minister sons. The tapes that were claimed to be the telephone conversations between Erdoğan and his son were published. Erdoğan alleged that the tapes are montage. The experts explained that the recordings are not montage from the television by illustrating the sound graphics. On the other hand, TÜBİTAK (The Scientific and Technological Research Council of Turkey) after 4 months of silence, stated in its report that the recordings are montage (TÜBİTAK experienced liquidation in this period, 230 people were fired, the ex vice president Hasan Palaz announced that he was pressured and exposed to threat in order to make alterations

in the report). The civil servants who obeyed the order of the prosecution for custody and the search warrant decision of the court were mostly dismissed or exported from their job due to accusation of 'Parallel State'. The interior tension between Fethullah Gülen was brought to National Security Council and defined as a threat to the nation. The cases brought about the issue were resulted with nonsuit decisions. However, this was not enough to calm the public.

The issue about how and why the wiretappings were done constitutes a crime by itself but should not veil another crime (defraudation). The fact that the statements taken under torture or degrading treatment cannot be used in order to dissemble this kind of crimes. So long as this incident is not investigated, it will stay in the public conscience as the most explicit and dire example of impunity.