



## Impunity in Turkey 2018

The notion of **IMPUNITY** can be defined plainly as the impossibility of investigation, prosecution and penalization of rights violations in legal, administrative and factual methods. This notion sometimes stems from the legislation itself and sometimes from the lack of effective application.

This mechanism encompasses all stages of the judiciary and execution, starting from the action itself and the perpetrator, and is **a dominant and widespread administrative and judicial practice in Turkey**. Violations continue with the government itself as the perpetrator or neglector; with the action either not being prosecuted or the investigation and prosecution not conducted properly. The perpetrator of the violation is made to be sentenced with less penalty or exempted from prosecution either directly by the execution, jurisdiction and conduct or through legislative amendments.

This **policy of IMPUNITY** is affecting a wide range of criminal acts including unresolved cases against Kurds, political oppositions, ethnic and religious minorities, human rights advocates, refugees, women, LGBTI persons and peaceful protesters; as well as other acts including village evacuations, murders, torture, targetings, threats, physical attacks, massacres, discrimination, corruption and other unlawful procedures of the judiciary and administration. These crimes are being "*legitimised(!)*" with political and social reasons such as anti-terrorism, security, "*high interests of the government(!)*", hatred, political and social polarisations, marginalizations, foreign conspiracy theories, male dominance, homophobia and transphobia while criminals are being protected and even rewarded.

### Who is protected, how?

With the reflex of legislation, execution and conduct to protect the government, violations are being ignored and judicial members do not fulfill their duty. Crimes are therefore being legitimized through concepts like the high interests of state, anti-terrorism, public order and security.

Authorities "*do not give permission for prosecution?!*" The law is already prepared to give the green light to **IMPUNITY**. If a prosecutor sees a crime committed in a country having an independent and unbiased judiciary, he is

obliged to investigate and provide its prosecution and it is by no means necessary for him to receive permission for it.

However, defendant security officers can not be found and summoned to the court despite clear information on their identity and location.

Paramilitary groups are either officially or furtively supported.

Corruption is being covered up, fake reports are being accepted and even produced.

With media blackouts brought on the procedures of investigation and prosecution, evidence is being covered up and thus the judicial process is concluded with either non-prosecution or verdicts of acquittal.

Crimes referred to the judiciary through great efforts face no legal procedure for years and the file is left to be abated on "*time limitation.*"

Extenuating circumstances in prosecutable incidents are being used until the end and penalties are abated especially in crimes committed against women due to reasons like "*honour*" or "*insulting manhood*" and others due to good conduct just through defendants wearing suits.

The list continues... There are two more important issues, however:

What if the President commits a crime, including "*the violation of the Constitution*"? According to the Article 105 of the Constitution, the President can only be prosecuted by the "*High Council*" due to the crime of "*treason.*" However, the charge of "*treason*" is not defined in the law. Therefore, if there is no crime, there can be no penalty...

Please don't say, "*It can not happen;*" what things happened that shouldn't have!

Erdoğan has previously stated that he "*will not be a usual President*" and he did what he said. Erdoğan must have been unbiased the moment he was elected as President, according to the Constitution effective at the time of election; whereas he demanded 400 seats in the general elections and always acted as a party member. When asked, he replied, "*I have previously stated that I will not be a usual President.*"

It's very similar to the behaviour of a driver taking it granted to change lanes the moment he gives the signal for it... ?! Is violation of the Constitution as simple as a violation of rules of traffic?

### **The language of numbers;**

When we look at decrees of the European Court of Human Rights (ECtHR) and the Constitutional Court (AYM), the number of applications and issued verdicts of violation directly related to our issue, such as violations on the right to freedom and security, right to life, right to active investigation, right to effective application, inhumane mistreatment ban, discrimination ban take place in the statistics launched every year.

Another example on the data is the results of the study conducted by Truth Justice Memory Center on the legal files of 344 forced disappearances within the last twenty years. 63 percent of those files were left at the investigation stage, 7 percent concluded with abatement due to time limitation and 5 percent concluded with non prosecution. A total of 15 lawsuits were filed on the forced disappearances of 84 people; eight verdicts of acquittal were issued. Convictions were issued only in two lawsuits.

Numbers on the lawsuits tracked by the We Will Stop Femicides Platform are conspicuous as well; penalty abatements or release verdicts are quite widespread. Also in circumstances where victims are encouraged to reach a consensus and make peace with the perpetrator, it is made impossible for the victim to file criminal complaints against the perpetrator and to actively participate in the prosecution with determination on the conduction of this process. This situation therefore leads to an increase in factual impunity.

Another dimension of the legitimisation of impunity is the responsibility of the media on the matter. Covering up news on the incidents and the use of official government language during the news coverage are situations observed most frequently. On the other hand, media blackouts are being applied against almost all social incidents, from train accidents to young people being beaten and shot dead by police officers. These media blackouts have become one of the newest tools of covering up incidents and hiding judicial processes from the public. The situation is even clearer when we add access bans brought on tens of news articles each week, *which are no longer even be able to be measured for statistics.*

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The unity of approach in this matter, from the lowest levels of governmental institutions to the highest, multiplied with the arbitrary applications within the State of Emergency - remaining effective in 2018 as well with new examples. A legislative amendment was made in the last days of the previous year with a Statutory Decree, predicting a state of impunity under the name of “***the fight against coup and terrorism.***” This matter was heavily debated and was an issue that would mean it would pave the way for a lack of any legal, administrative, financial and criminal liability. Below are compiled examples of IMPUNITY experienced in Turkey in 2018:

\*\*\* The Constitutional Court (AYM) issued a decree of non prosecution on the investigation opened against İlhan Erdost, who was tortured and killed at Mamak Military Prison during the September 12 period, due to “*time limitation.*” “*It is impossible to hold the government responsible,*” the court stated. Thus, **the legal interpretation that torture can not face time limitation due to being a crime against humanity has become dysfunctional in the Turkish legal system with a Constitutional Court decree.**

\*\*\* The curtain of mystery on the death of journalist **Hrant Dink** could not be lifted in 2018 as well. Questions concerning the discrediting of Dink in the public eye, people planning the assassination process and reasons for the weakness on security organizations remain unanswered. Public officers instigating the assassination or having neglect in its prevention were included in the case file; whereas the assassination process could not be illuminated due to the devious legal struggle, lack of effective investigation and other unresolved points. The charge imposed against the defendants in the case file was previously related to “*Ergenekon*” in accordance with the political conjuncture and lately it has become related to “*FETÖ*”.

\*\*\* The Constitutional Court (AYM) decided that the file on the death of a 2-year-old baby due to the explosion of the ammunition thrown from the gendarmerie station in Batman in 1998 can not be put on retrial. The court stated that the **“authorities responsible of the investigation did not show necessary sensitivity and the investigation was not conducted in reasonable pace and care;”** whereas the file can not be put on retrial due to the file being abated due to *“time limitation.”* Thus, **despite the judicial acknowledgement on the impunity of the file, the judiciary did not do anything to change the result;** leading to another example of impunity.

\*\*\* **148 weeks have passed** after the assassination of Diyarbakır Bar Association Chairman Tahir Elçi. **No progress was made in the investigation and the perpetrators could still not be identified.**

\*\*\* The penalty sentenced against police officer Ahmet Şahbaz, who killed Ethem Sarısülük during the Gezi Park protests, was **“increased” to 5000 TL judicial fine after retrial.** Sarısülük family’s lawyer Kazım Bayraktar interpreted the decree as **“a verdict that mocks human life.”**

\*\*\* The Constitutional Court issued 35 thousand TL compensation to be paid to the family of the child, whose skull was broken by a police officer with a buttstroke on April 23, 2009 in Hakkari. The Constitutional Court interpreted the 6-month 7-day imprisonment sentence issued against the police officer and the deferral of the verdict as **“impunity.”**

\*\*\* European Court of Human Rights (ECtHR) found the application on Constitutional Court’s denial of the application **“unacceptable”** on the Roboski Massacre due to **“two-day delay in the arrival of documents.”** Thus, **the European Court of Human Rights (ECtHR) approved the settled policy of impunity in Turkey with this case file.**

\*\*\* A **verdict of acquittal** was issued for special operation officers, who were on trial due to the deaths of 8-year-old Enes Ata and 14-year-old Mahsum Mızrak, due to **“insufficient evidence.”** The children died after being hit by the tear gas shells shot by the police in Diyarbakır in 2006. It was later revealed that some evidence in the case file, which was ongoing for 12 years, were changed, some disappeared and some were annihilated without a court decree.

\*\*\* Yavuz Ertürk, who was the only defendant in the case on 11 forced disappearances in Kulp district of Diyarbakır in 1993 at Ankara 7th Assize Court, was **acquitted due to “insufficient evidence.”** The charge of **“establishing a criminal organization”** imposed against Ertürk was abated as well due to time limitation. The European Court of Human Rights (ECtHR) issued a decree on the matter in 2001 and convicted Turkey of being responsible on the deaths and not conducting effective investigation.

\*\*\* The weekly protests started by the **“Saturday Mothers”** on May 27, 1995 with the demand, **“We want answers on the disappearances,”** left 23 years behind. Inspired by the protests started by the mothers in Plaza de Mayo for the forced disappearances during the junta period in Argentina, protests of the **“Saturday Mothers”** were recorded as the longest protest in Turkish history. The protests were attacked many times by the police and people were detained; whereas **neither the demands of the mothers were changed, nor the attitude of the government against them.** The 700th protest meeting in August 2018 was banned upon order from the Ministry of the Interior. The police attacked the protest with tear gas and rubber bullets, beat MPs and press members and detained victim relatives. Ordering

the police attack, the Interior Minister accused the mothers searching for their children of serving terrorism while defending police violence. **Since that date, the Galatasaray Square is banned to protests, just like in the 1990s...**

**\*\*\*** Diyarbakır Governorate did not give permission for investigation on the death of university student Kemal Kurkut, who was shot dead by the police at the entrance area during the Newroz celebrations in 2017 in Diyarbakır. The investigation was to be opened against 72 police officers on duty at the location due to *“neglect of duty”* and *“spoliation of evidence.”* However, the case file included that the police officers deleted camera visuals recorded by the journalists in the crime scene during the murder. The police officer killing Kurkut was on trial at Diyarbakır 7th Assize Court, whereas he **is still not arrested despite all evidence and is still active on duty.**

**\*\*\*** The lawsuit on the bomb attack organized by ISIS against the Peace Rally in Ankara on October 10, 2015 was concluded. 19 arrested and 17 fugitive defendants were on trial within the case file. The court sentenced nine defendants to 101 times heavy life imprisonment and a total of imprisonment sentence for 10,557 years each. The defendant lawyers made a statement following the announcement of the verdict and pointed out that **no public officer with fault and responsibility on the massacre were involved in the prosecution and that the responsibility of the government was covered up.**

**\*\*\*** **Verdicts of “non-prosecution” were issued in 72 investigations** conducted by Cizre Chief Public Prosecutor’s Office on the deaths in Cizre district of Şırnak during the curfews; **seven files have turned into factual cases of impunity with “permanent search warrants” issued.** At least 183 people, including children, died during curfews in Cizre between September 4 and 12, 2015 as well as December 14, 2015 and March 2, 2016.

**\*\*\*** Ministry of Justice replied to the Parliamentary question presented on the torture and mistreatment applications in police stations and claimed that *“information and documents on institutional applications do not concern the public.”*

**\*\*\*** Police officers gave statements as witnesses within the judicial process on the killing of 14-year-old Berkin Elvan by the police during the Gezi Park protests. Similar to their statements during the investigation process, the officers answered the questions with statements like, *“I don’t know, I don’t recall, I haven’t seen.”* The claim for the defendant police officer to be arrested was denied in each hearing, despite all evidence.

**\*\*\*** The lawsuit of compensation filed by teacher Murat Köyden in 2015 after his nose was broken due to police violence during the May 1st celebrations organized in Ankara in 2014 was concluded after three years. Ankara 13th Administrative Court denied the claim of compensation due to **lack of evidence on “the incident happening during the intervention of security officers”** despite the identification of the officers’ helmet numbers and eyewitness statements.

**\*\*\*** The final decree was issued in the lawsuit on the armed attack against former Cumhuriyet Daily Editor-In-Chief Can Dündar in front of Istanbul Courthouse during the prosecution of Turkish National Intelligence (MIT) Trucks Case on May 6, 2016. Istanbul 28th Criminal Court of First Instance **issued the acquittal of Murat Şahin**, who opened fire against Dündar and wounded NTV reporter Yağız Şenkal, of the charge of armed threat and indicated that the charge of armed injury remained in the stage of attempt. Issuing a judicial

fine of 4500 TL, the court further sentenced Şahin to 10 months of imprisonment and 500 TL of additional judicial fine due to the charge of unlicensed arm possession **with an abatement of “good conduct.”**

\*\*\* The investigation opened on the shooting of Dilan Alp with a tear gas shell during the May 1st demonstrations organized in Istanbul in 2013 was **concluded with non prosecution due to the unidentification of involved police officers.** The Prosecutor’s Office stated that the *“suspect could not be identified”* despite all visuals in the case file; issuing non prosecution for 19 police officers due to insufficient evidence. Alp was 17 years old when she was injured while participating in the May 1st celebrations and she was targeted by former Governor Hüseyin Avni Mutlu with the expressions, *“marginal, illegal organization member.”*

\*\*\* LGBTI activist Kıvılcım Arat was attacked with a gun by the neighbor in their house garden. **The attacker was released pending trial and continued his assaults.** *“I am constantly facing insults through my gender identity,”* Arat said.

\*\*\* Two separate cases filed on the dorm fire in Adana with 12 people dead, including 11 children, and 22 students injured, went back and forth between two courts. The case file at Kozan Assize Court was decided to be merged with the case in Adana filed against the former district governor. However, this verdict was later reversed by the Court of Appeals. *“A verdict does not seem possible in a court with all perpetrators of the incident on trial,”* lawyer Ömer Çelik stated. Çelik further stated that they have experienced a process **with perpetrators being excluded from prosecution and often cleared of all accusations by the “authorities.”**