



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.

Who are 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.

In these regards, the direct responsibility of the state is in question.

How are they 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 ... and other similar methods.

Why are they protected?

Political reasons such as:

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

Role of the media?

The media has a great role and responsibility in the legitimization 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.

How is impunity practiced in Turkey?

The basic dynamics beneath the impunity against the human rights violations in Turkey emerges from the fact that those who practice the law feel that it is their duty to protect themselves, the state and thus the perpetrators who are often civil servants. This situation is intricately related with the spirit of the constitution known as 1982 Constitution, brought after the 1980 military coup. The present constitution defines the state and the nation as an inseparable whole and subjugates the basic human rights under the superior interests of the state.

The policy of impunity has a great range in Turkey: From the state related assassinations against the dissidents and minorities such as Hrant Dink, Priest Santoro, Zirve Publishing House murders to the murders of the civilians during assemblies and demonstration marches, from the disproportionate use of violence by the law enforcement to corruption, from the hate murders and murders of women to crimes against the children, to soldier deaths, to workplace murders and to Roboski and Suruç massacres...



Major Examples of Impunity Recorded over the Last Year

We thought we would introduce an example of each type of impunity in this section. Yet unfortunately this is impossible. There are so many cases and impunity has become such an “ordinary practice” that it is very difficult to choose an example. We shall, nevertheless, start from where the fish stinks, the top cadres of the state.



President R.T. Erdoğan continues to do what he feels like, saying “I will not be an ordinary President”. Before the general elections he has deliberately asked for 400 seats in the parliament. (Obviously not for HDP) He openly stated that he does not recognize nor respect the decision of the Constitutional Court regarding Can Dündar. Yet the Article 101 of Constitution states:

If the President-elect is a member of a party, his/her relationship with his party shall be severed and his/her membership of the Grand National Assembly of Turkey shall cease.

However, Article 105 of the same constitution states something else:

The President of the Republic may be impeached for **high treason on the proposal of at least one-third of the total number of members of the Turkish Grand National Assembly, and by the decision of at least three-fourths of the total number of members.**

This is where the tie is knotted. No law defines the crime of **high treason**... There used to be such definition, but now there is none. Since there is no crime, there can not be a punishment. Conclusion: President can do whatever he wishes.

He says: *“There is a de facto situation. The regime in Turkey has changed de facto. What the judiciary should do is to make the laws fit with the de facto situation.”*

MHP has opened the doors for a practice that will make the Constitution fit the current situation based on the same premises.

Let us think for a moment:

An ex-husband who stabbed his ex-wife countless times says:

"I warned everyone that I might eventually act on my temper. No one cared, what happened has happened. What can be done now is to make the laws fit the de facto situation. Let's ask our people with a referendum: "Shall the honor killings be decriminalized?"

What would you say?



Examples from last year

Cizre's Unidentified Murderer

06.11.2015

The case regarding 21 unidentified murders during the time of duty of Gendarmerie District Commander Cemal Temizöz in Cizre district of Şırnak was concluded. In the hearing held at Eskişehir 2nd High Criminal Court, Temizöz and all other defendants were acquitted. The known murderer of 21 people, similar to many other examples of the 90's, is still unidentified.

Roboski families gave up hope on domestic law and appealed to ECHR

28.12.2015

Four years have passed since 34 citizens were killed with bombings from aircrafts in Roboski, Şırnak. While the responsible of the incident could not be identified during this time, decisions of non-prosecution were given in the investigation conducted by military institutions as well as the prosecutor's offices.

Most recently, regarding the massacre where 34 people were killed on a bombardment made by fighter jets, after the appeal to Constitutional Court was rejected on February 27, 218 people appealed to ECHR on August 22.

Non-prosecution for Kemal Ördek's complaint

18.04.2016

The criminal complaint made by LGBTI activist Kemal Ördek, who has been sexually attacked, on the same day of the attack has remained inconclusive. Ördek has stated, in the interview he gave to Bianet after the incident, that the police has made him sit together with the attackers and tried convincing him away from making a criminal complaint by taking him outside of the police

station. However, the Prosecutor's Office has given a verdict of non-prosecution in the criminal complaint filed against the police officers on duty at the police station.

It was decided that there is no need for prosecution of the civil servants in neglect during Suruç massacre

02.05.2016

Şanlıurfa Chief Public Prosecutor's Office has decided for nol pros for public officials, who had neglect in Suruç Massacre. Families who lost their lives in Suruç had made a criminal complaint against the members of the Turkish National Intelligence Organization, Urfa Governor, Suruç District Governor, the Security, the riot police as well as the crime scene investigation director. The Prosecutor's Office has indicated that necessary investigation has been conducted by Urfa Governorate, permission has been given for an investigation only against Suruç Security Director Mehmet Yapalı due to "misuse of duty" and that further investigation has started on the matter.

Expert report on the murder of Tahir Elçi

04.05.2016

The expert report on the crime scene investigation made at the place where Diyarbakır Bar Association Chairman Tahir Elçi has been shot, has been completed. In the report, it has been indicated that the obtained information "does not reveal from where the shooting has been made, from which gun, with which angle and with which body position."

Supreme Electoral Council's (YSK) Decision on Recep Tayyip Erdoğan's University Diploma

08.06.2016

YSK convened about the application HDP and former Judges and Prosecutors Association (YARSAV) President Ömer Faruk Eminağaoğlu made about the examination of the diploma Erdoğan presented to the board during the Presidential elections. According to the information Council rejected the application unanimously. It was reported that the council decided that it was not in YSK's jurisdiction to reexamine the university diploma as Erdoğan has submitted the notarized diploma during the presidential election.

Police officers penalized for show after dragging Hacı Birlik's funeral on the ground

15.06.2016

Hacı Lokman Birlik had been killed during operations in Şırnak, and police officers have tied his funeral behind an armored vehicle and dragged him on the floor. The police officers have been sentenced to a pause of professional ranking progress, for periods varying between 4 months and 16 months.

4 police officers, against whom an administrative investigation has been started about the incident, have been charged with "behaving in a way that corrupts the dignity and the trustworthiness required for their official titles" and with "hiding information which were supposed to be reported to their commanders."



State of Emergency (OHAL) After 15.07.2016

The coup attempt provided a unique opportunity. A man hunt was started instead of establishing the identities of the coup attempters and punishing them, and it continues with increasing intensity. The President has enhanced the scope of the “be an informant” campaign from the prime minister to the neighborhood chiefs has been giving expected results. Many people denounce those they resent as FETÖ members.

Impunity against mob lynchings: Youngsters, mostly members of Osmanlı Hearths who got out on the streets upon Erdoğan’s call, has inactivated the tanks in different parts of the city. Yet some of the soldiers, who did not know what was going on and had to abide by the commands they received, were lynched and murdered. These murders which can be clearly seen on videos were not investigated.

Journalists: 107 journalists and 10 distributors were imprisoned October 2016. 71 of the arrested journalists are from the Gülen Community media, and 29 of the arrested journalists, together with the entire arrested distributors are from the Kurdish media. These people are in jail with relations to “illegal organizations” within the Anti-Terror Law and the Turkish Criminal Code. During the state of emergency, between July-September 2016 775 press cards and 49 passports have been rendered invalid. 5 journalists’ passports were demanded to be confiscated.

Media outlets that were shut down: In these three months, 155 media organs (TV; radio, newspaper, publishing house) were closed, 3 (temporary) media blackouts were imposed, 18 websites were closed and 4 websites were censored. There were 7 cases of intervention on media broadcast/publications, 2 journalists were deported and 1 newspaper was pulled off.

With the statutory decree, 131 publishing outlets were closed based on the premises that they had connections or contact with “FETÖ/PDY” and on the charges of threatening the national security.

Prisons after state of emergency: Bans on books and visitation, torture, restrictions on lawyer visits
16.08.2016

Şule Recepoğlu, a lawyer from Convict and Inmate Families Legal Solidarity Associations Federation (TUHAD-FED) stated that the lives of all of the political prisoners including the sick inmates have become a matter of “bargain” after the deterioration of the solution process and the following year.

In the speech he made during the Board Meeting of Ankara Barr Association, Progressive Lawyers Association Chair Selçuk Kozağaçlı talked about the allegations of torture and rape in the prisons. Kozağaçlı said “The policemen, prosecutors, judges and soldiers that are deemed parallel state members are systematically tortured. Those who prayed together at the courthouse praying room, rape these people at the prisons. They rip their nails off at the security directorate. I have seen people who went through bowel operations because of the things that penetrated their anus.” Kozağaçlı stated that Ankara Barr Association remained desperate regarding the torture, and criticized the Barr administration saying “we can’t disregard this by saying they are fighting among each other” regarding the torture allegations around the country.

Saturday Mothers

24.09.2016

Saturday Mothers have reached the 600th week of their meetings.

The trial of assault against Can Dündar

28.09.2016

Istanbul 1. Assize Court issued an order to bring Can Dündar by force to get his testimony about the case of May 6 when he was assaulted by a gunned man in front of Çağlayan Courthouse. The court examined the file sent by the non-jurisdiction decision of İstanbul 28. Court of First Instance and ruled that the defendants Murat Şahin, Sabri Boyacı and Habip Ergün Celep were not “attempting to murder Dündar on purpose”.

Acquittal without trial for Ensar Foundation and KAİMDER

05.10.2016

Karaman Chief Public Prosecutor’s Office has decided for the non-prosecution of Ensar Foundation and KAİMDER in the investigation on sexual abuse of children. The Chief Public Prosecutor’s Office has also decided that no lawsuit is needed to be filed against Mayor Murat Koca and Provincial Director of National Education Asım Sultanoğlu.

Karaman Chief Public Prosecutor’s Office has based the decision on the statements of the childrens’ parents, and that they have not been complainants in the case. Thus, the Office has neglected the complaint of one family who were complainants.

With these decisions, the Ensar Foundation, KAİMDER, the Mayor, the Provincial Director of National Education and public officials have been acquitted of the charges of “misuse of duty, not informing authorities on a crime of major abuse of children, violation of the law of foundations, violation of the law of associations, violation of the civil code.”