

TURKEY’S STATE OF “IMPUNITY”

- 2022-



In the Human Rights literature, **impunity** is the impossibility to investigate serious human rights violations, or to find, prosecute and punish their perpetrators.

Although the act committed constitutes a crime in all its lines and nature, it is ensured that the perpetrator is exempted from trial by the legislative, executive or direct judicial units directly or by using the

provision of law, or they receive less punishment than they should. So impunity does not deal with crime, yet protects the criminal. This mechanism, which covers every level from the act and the perpetrator to all the organs of the state, **is an extremely common administrative and judicial practice in Turkey.**

November 2 was declared by the United Nations as the “*International Day to End Impunity for Crimes Against Journalists*”. Before that, within IFEX, November 23 was considered the International Day to End Impunity. The last of our "Turkey's State of Impunity" newsletters, which we started to publish in 2016, covers **only some** of the "impunity practices" that were reflected on the agenda between November 2021 and November 2022 - only the information **we could reach**. However, we did not limit the scope to “Journalists”, we considered it as a whole, with examples of impunity related to other crimes.

Impunity is a continuous problem in Turkey, and we underline in the 2022 newsletter: Minister of Interior Süleyman Soylu, to whom the most protected law enforcement officers are bound, openly encourages, with an unprecedented publicity in Turkey's history, the law enforcement to cross Constitutional limits, especially the prohibition of torture and ill-treatment. In his public statements, Süleyman Soylu can say, “***You demolish it, the court decree will follow***” - pointing to the neighborhoods that oppose the demolition of urban transformation. The same Minister of Interior can call on law enforcement officials - “***Wherever you catch a drug dealer, break their legs, break them, break them***” - as Turkey's name is mentioned more often than ever in the international drug trade and pictures of drug dealers are published with Turkish authorities. Unfortunately, this word is kept!

We can list the most common types of impunity and examples in Turkey as following:

State officials and ruling circles avoiding prosecution

Public officials not being prosecuted as suspects or accused also erodes the obligation of the Turkish bureaucracy to act in accordance with the principles of the rule of law. When citizens express their thoughts, the police end up in front of their door in the morning. However, the situation is the opposite for bureaucracy and ruling party

politicians. The outcome of the judicial applications of those who were targeted by politicians and bureaucrats and whom they publicly insulted and slandered did not change this year as well: always a verdict of non-prosecution.

Case example:

Emine Şenyaşar, whose husband and two sons were murdered by the bodyguards and relatives of Justice and Development Party (AKP) MP İbrahim Halil Yıldız and demanded "justice" by standing vigil in front of the Urfa Courthouse for months, is prosecuted within the lawsuit filed against her on the charge of insulting Interior Minister Süleyman Soylu and AKP MP İbrahim Halil Yıldız. In the meantime, no progress was made in the investigation launched into the murder of two members of the Şenyaşar family in the hospital.

Impunity for law enforcement violence, torture and faults of duty

The attitude of the judiciary towards police officers involved in the crime continues to spread trust to the police officers and fear to citizens. The general opinion of law enforcement officers that their crimes will go unpunished brings with it an increase in cases of unregistered detainments, kidnapping, disproportionate use of force and torture.

Case example:

The Istanbul Governorate did not give "permission to investigate" against Istanbul Police Department Security Branch Manager Hanifi Zengin, who battered and threatened women and LGBTQI+s during the Pride Parade in Istanbul. Ignoring the police violence recorded by the cameras, the governorate claimed that 373 people were detained using "gradual and proportional force". The violence committed by Zengin, who had AFP photojournalist Bülent Kılıç detained during the Pride Parade, was also reflected in the cameras on the same day against many women and LGBTQI+ activists. Zengin was also on the agenda with his attitudes and threats against journalists who followed the protest of health workers on July 7, and the Governorate did not give permission for an investigation for this incident either.

Case example:

On the 9th anniversary of the Gezi Park protests, upon the call of Taksim Solidarity, the Istanbul Governorate prevented an investigation into the police officers who battered and detained journalists in the protest on May 31. In the letter sent to the Prosecutor's Office, the Governorate claimed that the police officers could not be identified; decided that there was no need to initiate a disciplinary investigation or issue a permission to investigate the police, and that the file should be abated from legal process.

Avoiding investigation by statute of limitations or secret witness statements

Although the expression "Justice delayed is justice denied" is generally accepted, "delay often does not result in justice" in Turkey. Even though the prosecution investigation could be opened late -usually with public pressure- in crimes involving public officials, there are cases in which the investigation and prosecution phase is spread over such a long period of time. "Time limitation" of the investigation with the duration of the trial is a method that has been used frequently from the past to the present. Secret witness statements, which became the "essential element" of the trial

in the 2000s, are also seen as one of the practical ways of making criminals escape penalty without trial.

Case example:

The final hearing of the trial, whose file combined the JITEM Main Case regarding the murder of journalist Musa Anter on September 20, 1992 in Diyarbakır, and the case of Ayten Öztürk, who was killed by Mahmut Yıldırım, codenamed “Yeşil” in 1993, was held at the Ankara 6th Assize Court. The court did not accept the lawyers' request that this case be handled within the scope of "crime against humanity" in the Turkish Criminal Code, and decided that the file be abated due to the **statute of limitations**. Thus, despite the existence of the Turkish National Intelligence Agency (MIT) and Susurluk Reports, confessions, the conviction decree issued by the European Court of Human Rights and the existence of serious evidence showing that it was committed with the knowledge of state officials, another murder committed by the state in the 1990s resulted in impunity.

Case example:

In the Dargeçit district of Mardin, between October 29, 1995 and March 8, 1996, seven civilians, including two high school students, three children and Specialist Sergeant Bilal Batır disappeared in custody. The trial against 18 people, including Central Gendarmerie Station Commander Mahmut Yılmaz, the Mardin Gendarmerie Commando Battalion Commander Hurşit İmren, Dargeçit District Gendarmerie Commander Mehmet Tire, was also concluded with impunity. Adıyaman 1st Assize Court acquitted the defendants on the grounds that "no evidence could be found".

Non-fulfillment of Supreme Court decrees

In the face of crimes that result in impunity, that are not investigated effectively and that the state is a party to, the Human Rights Court has been one of the application bodies for Turkish citizens. With the implementation of individual applications to the Constitutional Court as of September 2012, the way for judicial review was opened against violations of rights caused by individuals and institutions using public power. On the other hand, with the open declarations of President Erdoğan, the period of Constitutional Court decrees being ignored by the administrative or local courts has begun.

Case example:

Businessperson and civil society activist Osman Kavala and Peoples' Democratic Party (HDP)'s former Co-Chair Selahattin Demirtaş left five years behind by spending 2022 in prison, despite the European Court of Human Rights decrees stating "that their rights are violated and they should be released".

Impunity for crimes against prisoners

There is no doubt that prisons are one of the most brutal application areas of state authority. Cases of ill-treatment, suspicious death and torture in prisons also increase with the strengthening of impunity policies. The conditions of detainees and convicts in Turkish prisons continue to deteriorate tragically.

Case example:

Mehmet Bozan, a prisoner in Sincan Prison, died suspiciously. In the letters he sent to the Civil Society Association in the Penal Execution System before his death, Bozan stated that he was “constantly exposed to discrimination, violence and torture because he was a Romanian”. All applications requested by the association to the Ministry of Justice, the Human Rights Equality Institution and other relevant authorities were left unanswered.

Impunity of male violence

Male violence against women and children is on the rise. In the first phase of the fight against the COVID-19 pandemic, "staying at home" is considered to be effective in the increase of male violence. However, the dominant factor in the increase of male violence in Turkey is the continued support of the administrative authorities and the judiciary. A fair trial and even a trial of increasing male violence is often only possible if the incident is prominent on social media. “Unjust provocation abatements and good behavior abatements ” unfortunately continue to be the reason(!) for the judiciary to watch male violence and leave it unpunished.

Case example:

Cemal Metin Avcı, who murdered university student Pınar Gültekin in Muğla in July 2020, was first sentenced to aggravated life imprisonment, and then the court ruled that the sentence be reduced to 23 years by applying a penalty reduction of "unjust provocation".

Case example:

17-year-old Gizem Canbulut was stabbed to death by Eren Yıldız in a park in the Bucak district of Burdur on March 17, 2021. The court sentenced Eren Yıldız, who faced aggravated life imprisonment, to 20 years in prison by applying reductions for "good behavior" and "unjust provocation". The decree was announced on March 8, International Women's Day.

Impunity as a consistent state policy

Some events past the years and a series of political upheavals are one of the quickest ways to remember that impunity is a state policy. It seems that during the periods of different ruling powers or the periods when the same governments have different(!) political motivations, impunity policies continue in 2020 in cases where minority groups, Kurds, dissidents, etc. are victimized by the state.

Case example:

A lawsuit was filed against Çetin Doğan, who was subjected to racist attacks for defending Kurdish education in the barracks in Edirne in 2021, where he served as a compulsory military officer. While Uğur Can Yaman, one of the attackers, was sentenced to 5 years in prison for "deliberate injury" in the trial in which he was tried at the Edirne 3rd Criminal Court of First Instance, the court reduced his sentence to 1 year and 3 months by reducing the sentence due to "unjust provocation" and deferred the announcement of the verdict.

Case example:

The police officer on trial for the death of 20-year-old waste worker Recep Hantaş, who died as a result of the fire opened by the police as he was sitting in a park in Diyarbakır in 2019, was acquitted. Lawyers of the Hantaş family said that "*the only fault of our clients was that they were there that day*" and drew attention to the policy of impunity in the trial of public officials, while Diyarbakır 4th Assize Court ruled that there was "no evidence" against the defendant police officer K.B.

CONCLUSION

Impunity in Turkey continues as a systematic state policy on the one hand; with the patriarchal and discriminatory attitude of the judiciary on the other.