

STUDENTS IN PRISON



[STUDENTS IMPRISONED, JUSTICE DETAINED, DIPLOMAS UNDER CUSTODY]

“Those youth are terrorists. We are doing whatever necessary to deal with them. We will deprive them of the right to study at university.”

President Recep Tayyip Erdogan, March 24th 2018

We do not know exactly how many detainee and prisoner students are behind bars in Turkey. The relevant information suffers inconsistency and inaccuracy. The newest statistical data released on the website of the Directorate General of Prison and Penal Institutions, where you are supposed to find the most up-to-date information, is two years old. Responses to the parliamentary questions asked by MPs Gamze Akkus Ilgezdi and Sezgin Tanrikulu about the number of students in prison, give us the chance to at least grasp how horrendous the current situation is, regardless of being a huge gap between the numbers mentioned in each response. One is 33.000 higher than the other!

The response to the parliamentary question asked by Gamze Akkus Ilgezdi states that there are 70.000 students in prisons. Let's see how striking it is by making a historical comparison. The number of detainees and prisoners combined was approximately 60.000 in Turkey in 2002. It means that the current number of students in prison is more than that of detainees and prisoners in total in 2002!

Yet another comparison: The Marmara University has about 78.000 students in total in 2018. There is, so to speak, a university “behind the bars”, of which size is comparable to that of the Marmara University in terms of number of the students.

DETENTION BECOMING PUNISHMENT

Detention is explained in the Law on Criminal Procedures as follows: *“A suspect or defendant may be detained in the case that there are substantial evidence and tangible reasons convincingly indicating that the person might have committed the crime. The most important point is that detention warrant may not be issued if it is not proportionate to the possible sentence length or security measures to be ordered.”* That is to say that while **“jailed pending trial”** is an exception, **“remaining free pending trial”** is the rule. The latter is one of the basics of “presumption of innocence”.

In Turkey, students who still stand trial and are yet to be found guilty or otherwise and should therefore be presumed to be “innocent” face months-long detention periods. The case of Ilhan Comak reminds us that detention might persist for years or even decades.

In 1994, when he was 21 years old, Ilhan Comak was sentenced first to death penalty for “being involved in separatist activities within the Turkish sovereign territory”. His sentence was later converted into aggravated life imprisonment. The ECHR ruled in 2007 that Turkey violated his right to a fair trial. His retrial has begun in 2013. And he is still in prison. Ilhan Comak, an innocent person who is yet to be found guilty, has been kept under detention for 24 years on the ground that he might tamper with the evidence against him!

What if he is found not guilty at the end of the trial? Can the State restore those years that he has spent in prison? No. Detention should therefore be only a precaution, not a means to punish beforehand.

WHAT HAS HAPPENED TO THE RIGHT TO EDUCATION? A BRIEF LOOK AT EMERGENCY DECREES...

Before talking about how the detainee students’ right to education is violated, let’s look briefly at emergency decrees.

Emergency decrees should have been supposed to be issued in accordance with both the reason for declaration of the state of emergency and its duration. The former requirement has de facto been abolished as the latter de jure. Emergency decrees have been issued also against the dissidents who were not involved directly or indirectly in the failed coup attempt. The referendum held on April 16th 2017 empowered the AKP and Erdogan to legally extend the validity of decrees beyond the duration of the state of emergency.

Let’s give an example unrelated to daily political conflicts to demonstrate to what degree emergency decrees have exceeded the boundaries set by the Constitution. The decree No. 687 stipulates that drivers of cars without snow tires will be fined 625 Turkish Liras. What was the reason to declare the state of emergency? What did it have to do with winter tires?

The right to education is protected both by the Constitution and by the European Convention on Human Rights. What the decree No. 677, which “restricts” the right to education, stipulates is as follows:

“Detainees and convicts confined in penal institutions for being member of a terrorist organization or involved in their criminal activities shall not be allowed to take any exam held within or outside penal institutions by any educational institution or public establishment and body during the continuation of the state of emergency and their prison terms.”

That “de facto punishment” was brought by an emergency decree, by which students who are jailed pending trial are punished beforehand. However, the state of emergency ended “spontaneously” on July 19th 2018, meaning that those students’ rights to education should have been restored. Unfortunately, the effect of the decree on those students is beyond the duration of the state of emergency.

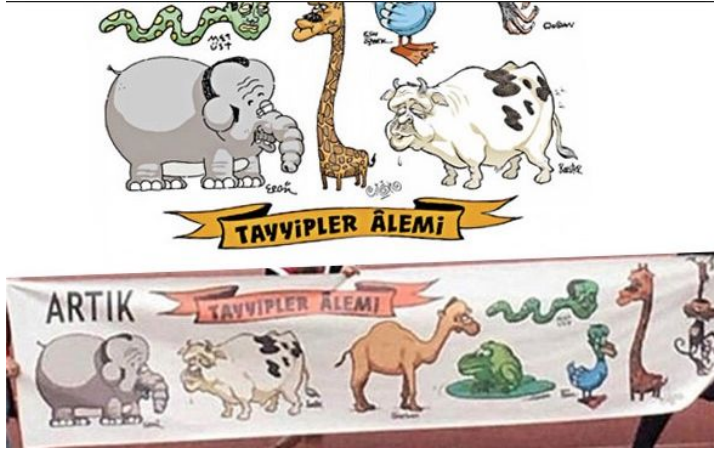
WHAT ARE THEY ACCUSED OF?

Those students are accused of insulting the President, attending a commemoration, dancing the Halay, chanting slogans, spraying slogans on walls, sharing news on social media, being present in a press release, attending the May Day... It is no surprise that such a judiciary that completely ignores the presumption of innocence considers “dancing the Halay and sharing news on social media” to be crime.

Why does the state not allow the “terrorist” students to take the exams? Is it believed that they may use it as a means to topple the government?

FROM BOGAZICI TO ODTU

Bogazici University students were arrested for releasing a press statement that condemned their schoolmates being taken into custody for having unfurled a banner saying “massacre is not something to be proud of”. Those students, who are known to have also been tortured, did not take their exams during the detention period. That caused prolonged study periods for some of those students. They were later released. But, who can say that those students have not been “punished”?



Some ODTU students were arrested and accused of ‘insulting the President’ for carrying a banner at the graduation ceremony that featured a cartoon (see the above) mocking Erdogan.

We need to say more about the cartoon. Musa Kart, a cartoonist for the newspaper Cumhuriyet, was filed a claim for compensation for drawing Erdogan as a cat. The now-defunct humor magazine Penguen featured a cover with the cartoon (“Tayyip Kingdom”, alluding to “Animal Kingdom”) above in order to show solidarity with Musa Kart. Then they also faced a compensation case. But at the end neither Musa Kart nor the Penguen cartoonists were found liable for compensation for the reasons based on freedom of thought and expression.



WHAT IS TO BE DONE?

“Remaining free pending trial” should be the rule. Detention should be used as a precautionary measure, not as a means to punish beforehand.

It should not be forgotten that everyone is innocent until proven guilty. Detention terms should be proportional. Detainee and prisoner students’ right to education should be restored. They should not be treated differently.

Criticisms against the President should not be taken as insults. 'Insulting the President' and 'insulting the State' accusations should therefore not be used as a means to intimidate. The latter should be abolished completely.

Chanting slogans, dancing the Halay, sharing news on social media and attending the May Day or peaceful meetings are not crimes but democratic rights. The crime is to regard those rights, which are defined and protected both by international and national laws, as crimes and to prevent people from exercising them.