

Academics for Peace: Report on the Current Situation

Human Rights Foundation of Turkey

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More than a year ago, on 26 July, 2019, the Constitutional Court of Turkey (Anayasa Mahkemesi-AYM) ruled that the “Peace Petition”, signed by 2210 academics from Turkey, was within the scope of freedom of expression. Thus, it was legally acknowledged that academics, who were subjected to unfounded accusations for signing the declaration, were subjected to injustice at the hands of the state organs, and that their rights were violated.

Following this final and binding decision by the highest judicial body in the country, it was expected that certain steps would be taken urgently to end the rights violations against Academics for Peace (AfP) and to compensate the damages arising from these violations. And as a matter of course, this was required by the rule of law. However, and sadly, this is not the case, despite the fact that more than a year has passed since the AYM decision. Violations targeting Academics for Peace continue.

- A large number of academics who were dismissed from the university with the decree-laws issued during the State of Emergency (SoE) for signing the Peace Petition have not been reinstated. Multifaceted consequences of dismissals continue in exactly the same way.
- The judicial process of some signatory academics, though in small numbers, has not still been completed. This situation paves the way for new grievances that may result from the non-finalization of the acquittal decision, as well as the violation of the right not to be defamed.
- Among the signatories of the Peace Petition, there are those whose passport applications are currently turned down. The amendment to the Passport Law at the end of 2019 did not remove the arbitrary restriction on freedom of travel.

Below is the current situation of Academics for Peace and the evaluation of the Human Rights Foundation of Turkey regarding the case.

1. Background

The declaration titled “We will not be a party to this crime! Em ê nebin hevparên vî sûcî!” was made public by Academics for Peace on January 11, 2016. The declaration criticized the severe human rights violations committed by the state during the curfews and demanded negotiation conditions for permanent peace in the Kurdish issue. Remaining open for signature for 10 days and signed by 2210 Turkish academics, the report was submitted to Parliament on January 21, 2016.

Following the announcement of the declaration, a long-term process of oppression was launched aiming to silence, intimidate, discredit and dismiss Academics for Peace, accompanied by the guidance of the President and the government, the cooperation of university administrators, the vigilance of prosecutors and law enforcement, black propaganda in the press and social media, and finally the threats and harassment of racist / aggressive groups.¹ In this process:

- 70 academics were detained and 4 academics were arrested,
- 406 signatory academics were dismissed from public service with the decree laws issued under the state of emergency,
- 89 academics were dismissed by means of other methods, 72 academics were forced to resign and 27 were forced to retire,
- With the amendment made in article 7/2 of the Anti-Terror Law, a lawsuit was filed at the High Criminal Courts against 822 academics on the charge of “making propaganda for a terrorist organization.”²

In all 204 cases that were concluded prior to the AYM decision, signatory academics were sentenced to prison terms ranging from 15 months to 36 months. The conviction of Prof. Füsün Üstel was finalized on February 25, 2019, and she went to prison on May 8, 2019. On July 26, 2019, the General Assembly of the Constitutional Court concluded in the application of “Zübeyde Füsün Üstel and Others” that the freedom of expression was violated.³

2. On-going cases

The course of criminal cases against Academics for Peace changed with the decision of the Constitutional Court and the trials in first instance courts started to end in acquittal decisions. At least 622 of the 822 cases filed in 57 separate courts were concluded gradually

¹ See Human Rights Foundation of Turkey, *Academics for Peace: A Brief History*, 2019, <https://www.tihvakademi.org/wp-content/uploads/2019/03/AcademicsforPeace-ABriefHistory.pdf>; *Üniversitenin Olağanüstü Hali: Akademik Ortamın Tahribatı Üzerine Bir İnceleme* (State of Emergency at the University: A Study on the Destruction of Academic Environment), 2019, <https://tihvakademi.org/wp-content/uploads/2020/02/universiteninolanaganustuhaliy.pdf>.

² Rights Violations against Academics for Peace, <https://barisicinakademisyenler.net/node/314>.

³ Application of Zübeyde Füsün Üstel and Others [GK], B. No: 2018/17635, July 26, 2019. For the reasoned decision of the Constitutional Court, see <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/17635>.

within a year following the Constitutional Court's decision and acquittal was given in all of the resulted cases.⁴ This is undoubtedly a positive development.

On the other hand, the interviews we held with the lawyers following the AfP (Academics for Peace) cases support the impression that in some of the on-going cases the local courts tend to prolong the proceedings and delay the acquittal decisions intentionally. **In particular, there is no reasonable explanation as to why the cases pending before first instance courts have not been concluded despite the Constitutional Court's decision.** For example, in a pending trial in Van, the district court could return an acquittal following the AYM decision, but it did not and instead decided that it was mandatory that the academic who lives abroad come to Turkey in person to testify and finally issued the decision of arrest for the academic in question.⁵ This and similar practices, although few in number, indicate that at least some district courts tend to extend the lawsuit process.

Failure to finalize the verdicts of acquittal of academics on trial is a practice that may prevent or delay the reinstatement of dismissed signatory academics and the lifting of passport restrictions. Every delay in acquittal orders paves the way for further violations and grievances.

3. The situation of dismissed Academics for Peace

During the State of Emergency (SoE) 406 of the Academics for Peace were dismissed from public service with decree laws. The majority (392) of the dismissals were carried out by state universities, while the rest by foundation universities (7) and by ministries (7).

Following the official end of the SoE on July 20, 2018, some of the dismissed Academics for Peace applied to the administrative courts and filed a stay of execution lawsuit regarding the dismissal procedures. **The main argument put forward in these cases is that it is not legally possible to implement the procedures established with decree laws even after the SoE has been lifted.** As a matter of fact, the case law of both the Council of State and the Constitutional Court supports this argument.

According to the relevant decision of the Council of State Unification of Case Law:

*"Civil servants, other public officials and public service workers, who were dismissed upon the demand of the martial law commanders, must be reinstated to their former duties by their institutions after the termination of martial law in the region where they were dismissed on the condition that they do not lose the qualifications stipulated in the laws and regulations for the duty concerned at the time they entered the public service for the first time."*⁶

⁴ According to the statistics of the cases held by Academics for Peace, as of 27 July 2020, a total of 622 academics reported that their trial resulted in acquittal. As this number reflects the self-reports of the persons prosecuted, it can be estimated that the number of cases resulting in acquittal is higher. For AfP case statistics, see <https://barisicinakademisyenler.net/node/431>.

⁵ Interview with Lawyer Meriç Eyübođlu on August 15, 2020.

⁶ Danıştay İçtihadı Birleştirme Genel Kurulu (General Assembly of the Council of State Unification of Case Law), E.1988/6, K.1989/4, December 7, 1989.

Likewise, according to the case law of the Constitutional Court:

“Decrees issued on matters necessitated by the SoE or martial law may be enforced in the regions where state of emergency is declared and only during its continuation. It is impossible to continue to implement the rules in the emergency decree despite the end of the state of emergency.”⁷

However, despite the aforementioned case laws, the lawsuits filed by the Academics for Peace after the abolition of the state of emergency for the suspension of execution of the dismissal procedure were rejected. Under the current circumstances, whether the Academics for Peace will be reinstated or not depends on the decision of the SoE Inquiry Commission.

4. Is the SoE Inquiry Commission aware of the Constitutional Court decision?

According to the announcement of the SoE Inquiry Commission on July 3, 2020, a total of 126,300 applications were made to the Commission, especially the objections to the dismissal procedures with the decree law, and the Commission decided on 108,200 of these applications as of the date of the announcement. The acceptance rate in the decisions made is 11.3% and the rejection rate is 88.7%.⁸

The Commission’s 2019 Annual Report draws attention to the importance of “acquittal and non-prosecution” decisions under the title of “Evaluation Method”: “The decisions made by the judicial authorities are followed by the Commission through the UYAP (National Judiciary Informatics System), and the applications for which a decision of non-prosecution and acquittal are given are examined with priority.”⁹

Despite this statement made by the Commission itself, there has been no change in the situation of Academics for Peace, who were acquitted after the AYM decision. **In other words, the SoE Inquiry Commission continues to ignore the Constitutional Court’s ruling and the numerous acquittals delivered by first instance courts.**

As it is understood from the information shared with the public through the press about how the Commission works and a parliamentary question, the Commission put some files on hold intentionally, and the applications of the dismissed Academics for Peace are among these files.¹⁰

⁷ Anayasa Mahkemesi (Constitutional Court), E.1990/25, K.1991/1, January 10, 1991.

⁸ Olağanüstü Hal İşlemleri İnceleme Komisyonu Kararları Hakkında Duyuru (Announcement on the Decisions of the State of Emergency Inquiry Commission), July 3, 2020, <https://ohalkomisyonu.tccb.gov.tr/>.

⁹ Olağanüstü Hal İşlemleri İnceleme Komisyonu Faaliyet Raporu (State of Emergency Inquiry Commission Activity Report), 2019, s. 19, https://ohalkomisyonu.tccb.gov.tr/docs/OHAL_FaaliyetRaporu_2019.pdf

¹⁰ “OHAL Komisyonu nasıl çalışıyor?” (“How does the State of Emergency Inquiry Commission Work?”), December 26, 2019, <https://www.haber7.com/guncel/haber/2928400-ohal-komisyonu-nasil-calisiyor>; “OHAL Komisyonu bazı dosyaların incelemesini bekletiyor” (The Inquiry Commission Delays Examining Certain Files), May 20, 2020, <https://www.chp.org.tr/haberler/chp-genel-baskan-yardimcisi-kaya-ohal-komisyonu-bazi-dosyalarin-incelemesini-bekletiyor>.

This situation not only confirms the criticism that the Commission does not serve as an effective domestic remedy,¹¹ but also leads to the continuation of the multi-layered violations and injustice suffered by the dismissed signatory academics owing to their dismissal from public offices.

The field research conducted by the Human Rights Foundation of Turkey revealed how extensive and devastating outcomes the dismissal process has caused both in terms of social, economic and professional / scientific losses and in terms of the mental and physical health of academics.¹² Our findings show that the frequency of medical diagnoses among Academics for Peace is much higher than similar diagnoses in the same age group in Turkey and measures up to the frequency among those with massive trauma experience and victims of torture and cruel treatment. The violations in question continue today in the “waiting room” of the SoE Inquiry Commission.

5. Restrictions on passports

Another violation faced by dismissed Academics for Peace is passport restrictions. While some dismissed signatory academics managed to obtain their passports, there are still those whose passport applications are turned down.

Although the amendment to the Passport Law on October 24, 2019, allowed those who were dismissed from public office during the SoE to obtain passports, it is not possible to say that the arbitrary restriction on freedom of travel has come to an end owing to both the logic of the regulation and the implementation procedure.

According to the regulation made in the Passport Law:

*“Of those whose passports have been cancelled due to dismissal from public office or whose rank has been invalidated in accordance with the laws accepted under the state of emergency due to their membership or affiliation with or contact with structures, formations or groups or terrorist organizations that are found to pose a threat to national security, (...) those who do not have any on-going administrative or judicial investigation or prosecution for the same reasons, those who have decisions of non-prosecution, acquittal, no need for imposing conviction, rejection or dismissal of the case; of those who have been convicted, those whose penalty has been executed or postponed in full, those with deferment of the announcement of the verdict, can be granted passports upon their request by the Ministry of Internal Affairs **according to the results of the investigation to be made by law enforcement units.**”¹³*

¹¹ Kerem Altıparmak, “OHAL Komisyonu Etkili Bir Hukuk Yolu mu?” (“Is the State of Emergency Inquiry Commission an Effective Legal Remedy?”), January 31, 2017, <https://m.bianet.org/bianet/toplum/183186-ohal-komisyonu-etkili-bir-hukuk-yolu-mu>; Amnesty International, *Purged beyond Return?*, 2018, <https://www.amnesty.org/download/Documents/EUR4492102018ENGLISH.PDF>.

¹² Human Rights Foundation of Turkey, *Academic Purge in Turkey*, 2019, https://tihvakademi.org/wp-content/uploads/2020/02/Academic_Purge_in_Turkey_Executive_Summary.pdf.

¹³ 5682 sayılı Pasaport Kanunu Ek 7. Madde (Passport Law No. 5682 Additional Article 7), <https://www.mevzuat.gov.tr/MevzuatMetin/1.3.5682.pdf> (emphasis ours).

The regulation made, as clearly stated in the last sentence, stipulates not that the persons carrying the conditions written in the law should be given, but that they **“can be given”** a passport. In other words, it is left to the discretion of the administration **depending on the result of the investigation to be carried out by law enforcement units** whether to give a passport or not to a person who has been dismissed from public service, even if he / she meets the criteria written in the law.

As a matter of fact, in accordance with the Circular No. 2019/14 prepared by the Ministry of Interior in order to determine the application procedure it was stipulated, following the passport application, that Provincial Security Directorate would evaluate “the issue of whether there is a pending judicial investigation or prosecution against the persons concerned and **whether there is an inconvenience in terms of general security in the removal of administrative decision records.**”¹⁴ In other words, the main factor determining whether a citizen can obtain a passport in practice is dependent on the opinion of law enforcement units.

The rationale and application of the regulation shows that it is an explicit violation of the freedom of travel, which has been guaranteed by the Constitution and international conventions. According to Article 23 of the Constitution: “Citizens’ freedom to go abroad can only be restricted depending on the decision of the judge due to a criminal investigation or prosecution.” On the other hand, the relevant regulation has been designed in a way that, at the discretion of law enforcement units, it can prevent citizens who have not had any investigation or prosecution and who have not been banned from travelling abroad from obtaining passports.

Considering the situation of Academics for Peace who were dismissed from the university and whose passports were restricted during the SoE, it is clearly seen that the regulation has very different consequences for academics in similar situations:

- Some of the Academics for Peace, whose passports were previously restricted, were able to obtain their passports and go abroad.
- On the other hand, among the Academics for Peace, who applied for a passport, there were those who received no positive or negative response within the legal period. An academic in this situation had to file a motion for stay of execution claiming that his application was “tacitly rejected” and his passport application was only answered after the case was filed.
- In some other reported examples, passport applications have been negatively concluded, even though there is no criminal prosecution and investigation against the academics concerned. The academics in this situation are obliged to apply to the Passport Administrative Decision Commission, also established within the Ministry of

¹⁴ İçişleri Bakanlığı Nüfus ve Vatandaşlık Genel Müdürlüğünün 2019/14 sayılı genelgesi (Circular of the Ministry of Interior General Directorate of Population and Citizenship, No: 2019/14), https://www.nvi.gov.tr/kurumlar/nvi.gov.tr/mevzuat/nufusmevzuat/genelge/idari_Karar_islemleri.pdf (emphasis ours).

Internal Affairs, in order to find out the reason (if any) for the rejection decision and to challenge the decision.

As a result, it is unfortunately not possible to say that the amendment to the Passport Law has produced a permanent, predictable and rights-based solution for citizens whose freedom of travel is arbitrarily restricted with injunctions. The regulation made is clearly contrary to the Constitution and international conventions in that it makes the removal of arbitrary restrictions on citizens' freedom of travel subject to **the discretion of the administration** and more specifically to **the evaluation of law enforcement units**. For this reason, Annex 7 of the Passport Law should be revised as soon as possible and it should be ensured that everyone who has the conditions written in the law can get a passport without asking the opinion of the law enforcement units.

6. Reinstatement of rights and compensation of losses

Academics for Peace is a group that has been subjected to numerous rights violations by state organs.¹⁵ The oppression inflicted upon Academics for Peace since January 11, 2016, damaged freedom of expression which is of fundamental importance in terms of democratic society, and more specifically, devastated academic freedom and Turkey's university environment, as well as leading to violation of the rights of individual persons.¹⁶

The decision of the Constitutional Court, which ruled that the declaration titled "We will not be a party to this crime!" is within the scope of freedom of expression, constitutes an extremely important first step in order to end the violations against Academics for Peace and to eradicate all their consequences. However, although more than a year has passed since the decision of the Constitutional Court, the requirements of the decision have not been executed properly by the public authorities. On the basis its claim to respect the "**rule of law**", the Republic of Turkey should do the following without further delay as a minimum:

- An acquittal decision must be given immediately on the file without holding a new hearing in the cases still going on in the local courts.
- A total of 406 signatory academics who were dismissed from public service with decree laws during the SoE should be reinstated by **securing all their rights retrospectively** and without any discrimination. It should be ensured that these academics start to work in their old institutions, and those who do not want to return to the same institution due to the events experienced during the dismissal process should be given the opportunity by the Council of Higher Education (YÖK) to make a choice.
- Arrangements should be made to prevent loss of rights in the reinstatement of research assistants who were within the scope of the Academic Staff Training Program

¹⁵ Human Rights Foundation of Turkey, *Academic Purge in Turkey*, 2019, https://tihvakademi.org/wp-content/uploads/2020/02/Academic_Purge_in_Turkey_Executive_Summary.pdf.

¹⁶ Human Rights Foundation of Turkey, *Üniversitenin Olağanüstü Hali: Akademik Ortamın Tahribatı Üzerine Bir İnceleme* (State of Emergency at the University: A Study on the Destruction of Academic Environment), 2019, <https://tihvakademi.org/wp-content/uploads/2020/02/universiteninolanagustuhaliy.pdf>.

(ÖYP) at the time of dismissal or who were employed temporarily in accordance with Article 50/d of the Higher Education Law.

- The passport restrictions of signatory academics should be lifted immediately and unconditionally.
- The Council of Higher Education should immediately provide the necessary conditions for the reinstatement of signatory academics who were dismissed by means other than the Decree Law, and who had to resign or retire due to the pressure they faced.
- **“Blacklisting”** practiced under the name of **“security investigation”**, which targets academics who were attending their graduate programmes without being employed at an institution or academics with graduate degree when they signed the Academics for Peace declaration, must be terminated.

Steps to be taken to eliminate the violations against Academics for Peace along with their results are vital not only in terms of compensation for persons exposed to violations, but also in terms of freedom of expression in Turkey and more specifically the restoration of academic freedom.

Reminding that the Human Rights Foundation of Turkey will continue to monitor the process, we call upon the authorities to act responsibly by taking the steps in question immediately.

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