



Academics for Peace:

Violations of Rights Experienced by Dismissed Academics Living Abroad

Human Rights Foundation of Turkey

November 27, 2020

Since January 10, 2016 when the declaration entitled *We will not be a party to this crime!* was released to the public, the signatories of the declaration, who were academics working at universities in Turkey, have been subjected to severe and multiple human rights violations¹. During five years that followed the announcement of the declaration, many academics who lost their jobs and were banned from working in the public sector had to leave the country in order to continue their profession and / or earn their living.

Severe and multiple human rights violations in Turkey inflicted upon dismissed public employees since September 2016 have acquired a cross-border dimension and affected severely academics living abroad. Signatory academics, who have been dismissed and who have been living abroad, are compelled to uncertainty through a wide range of channels such as consulates, courts, institutions / practices of second states and their migration and asylum policies.

The rights and responsibilities of all nationals of the Republic of Turkey are valid also during the period in which they live and work abroad. However, it appears that the process of criminalization, stigmatization and violations of rights targeting the dismissed Academics for Peace that began in January 2016 has also spread abroad. The use of the rights arising from being a citizen before the consulates has been

¹ For violations of rights that Academics for Peace have been subjected to and their effects, see TIHV, 2020. *Akademisyon İhraçları: Hak İhlalleri, Kayıplar ve Güçlenme Süreçleri*. Türkiye İnsan Hakları Vakfı Yayınları. İzmir. <https://tihvakademi.org/wp-content/uploads/2020/02/akademisyenihraclariy.pdf>
For the extended summary see https://tihvakademi.org/wp-content/uploads/2020/02/Academic_Purge_in_Turkey_Executive_Summary.pdf

prevented, court decisions have been ignored and a severe and arbitrary practice of disregarding has emerged so as to put into effect the “civil death” meted out to the dismissed individuals.

This report focuses on rights violations that dismissed Academics for Peace living abroad have been facing for nearly five years. The violations in question are addressed under the headings of the unlawful and arbitrary practices of the consulates, violations that arise from the practices of the second countries, academic violations, and criminalization and stigmatization. The report is based upon interviews held with nine academics who are holding different legal statuses and living in different cities in Germany and France. Although the report does not claim that violations are widespread it is based on the principle that even a single instance of the violations listed below is unacceptable. On the other hand, as can be seen below, it is necessary to carry out more comprehensive studies on the subject due to the wide range of violations.

Below is the evaluation of Human Rights Foundation of Turkey (HRTF) on the violations experienced by signatories of the Peace Petition who have been living abroad and their family members since their dismissal.

1. Precluded transactions at consulates

Consulates are designed as organizations subordinate to embassies affiliated to Ministry of Foreign Affairs and are responsible for *carrying out consular services for the citizens of the Republic of Turkey and legal entities with Turkish nationality, providing consular protection and performing other duties as specified in the Vienna Convention on Consular Relations dated 1963*². In accordance with Article 5 Paragraph d of this Convention which defines consular duties, *issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State*; likewise citizens of the Republic of Turkey should be able to handle such relevant transactions through consulates. However, some consulates refuse to process or retard the procedures of Turkish citizens who have been dismissed from civil service with decree laws, resulting in rights violations. Given the

² Law No. 6004 Regarding Establishment and Duty Principles of Ministry of Foreign Affairs. 7/7/2010 <https://www.tbmm.gov.tr/kanunlar/k6004.html>

importance of passport documents for all kinds of official transactions, including residence and work permits for people living abroad in their country of residence, the failure to issue passports which serve as valid identity and travel documents abroad has led to multiple losses.

Passport cancellations and violations that they incur

a) Some of the academics who did not have a valid passport and whose consulates refused to issue a passport due to their dismissal could not apply for a residence permit in their country of residence and became undocumented. Persons who were unable to submit a valid passport document to the relevant authorities of their country of residence in order to obtain a residence permit were obliged to prove that the consulates did not issue a passport for them. Keeping a written report before the witnesses is one of the ways to prove that the consulates refuse to take the relevant action. Some academics have not been able to travel outside of their city limits for more than four years, due to the differing practices regarding residence permits in their countries and / or states. Their right to travel has been violated as long as their passports have been cancelled.

b) People whose passports have been cancelled were informed verbally at consulates that they could be provided with only a one-way travel document which is valid for one time and must be used within one week of the date of issue for only travel to Turkey when they wish to go to Turkey. In addition, it was also stated that the consulate would provide information to the competent authorities in Turkey about the impending arrival of the person concerned. Thus, these people who started their own life and mostly have an employment contract abroad has to take the risk that they may not be able to return to their country of residence once they arrive in Turkey.

c) "Confidential" investigations carried out by Turkish courts and cancellation of passports on grounds of such investigations without notification led some of the academics who have been currently living abroad to become undocumented. In such cases, academics ended up having to explain the process to the authorities of the countries they live in, while struggling to exercise their right to obtain information about the "confidentiality" of the cases brought against them. While people with no valid passports were forced to request asylum, an academic in a similar case managed to obtain a six-month temporary residence permit with an inscription "has no

passport" when her lawyer in Turkey wrote a petition to the German authorities informing that his client has been awaiting the outcome of investigations launched against her. The academic in question stated that if she cannot obtain a passport by the end of this period, she would have to apply for asylum.

Violation of the Right to Defence

Academics who have ongoing criminal proceedings in Turkey have been subjected to multiple violations concerning especially the right to defence owing to the arbitrary attitudes of consulates, the courts of Turkey, and the countries where they reside.

a) Consulates are obliged to *transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State*, as stated in Article 5 paragraph j of the *Vienna Convention on Consular Relations of 1963*. Although the residence notifications of the academics in the relevant country were made to the consulate and were recorded in the e-government and MERNIS (Central Civil Registration System), it was observed that the necessary notifications were almost never made to their addresses abroad in ongoing trials. Therefore, many dismissed signatories of the Peace Petition have been deprived of their right to objection and defence since they cannot get information about the judicial proceedings about them in Turkey.

b) The letters rogatory is practiced when a specific court in a place other than the place where the court is located performs the judicial work and proceedings on its behalf. The letters rogatory is essential in terms of the principle of absolute protection of the right to a fair trial and defence. Rogatory demands in the ongoing criminal proceedings of Academics for Peace living outside Turkey have been rejected by the domestic courts in Turkey on various grounds, overlooked by the consulates or have been rejected by the courts abroad.

In the example of an ongoing criminal case in Mersin, Turkey against a signatory academic living abroad, the president of the court refused to give an acquittal verdict without taking the statement of the person on trial, despite the

decision of the Constitutional Court³ and other courts' acquittal on the file. The court's insistence on continuing the trial despite the Constitutional Court's decision constitutes a violation of the right against self-incrimination, but the refusal of the consulate in the city where the person lives to take any action due to the fact that the person was dismissed with a decree law leads to the violation of the right to a fair trial and defence. Since the person in question could not be acquitted from the ongoing case, the cancellation of her/his passport has not been revoked. If the person's grievance is not remedied, s/he will soon become undocumented.

The person in question has submitted a request to the court in Turkey for rogatory process via the consulate in his/her city of residence where s/he has been living for two years. Although it seems that the letter that was written by the court requesting letter rogatory reached the consulate according to the National Judicial Network Information System (UYAP), the consulate reported that the document has not been received and that no action would be taken in this regard. However, despite the court has been notified of this situation, it insisted on writing to the consulate and requesting that the statement of the person be taken.

In another case, the court in Turkey has rejected the letter rogatory, stating "request of rogatory will be returned untreated on grounds that Germany does not accept letters rogatory in criminal cases involving terrorist organization propaganda."⁴

Violations involving spouse and children

a) Consulates are organizations that issue documents such as identity cards and birth certificates as well as passports. It has been observed that not only the academics themselves, but also their children and their spouses have been refused to have these documents. In cases where these documents are compulsory for employment and school registration, a violation of the right to work and education emerges.

b) Although there is no finalized verdict even for those who have been tried with the attributed crime, the refusal of to issue passports to spouses and children, cancelling them and / or not extending their duration is a punishment imposed on

³ On July 26, 2019, the General Assembly of the Constitutional Court ruled that the penalization of Academics for Peace is violation of freedom of expression as the conclusion in the application of "Zübeyde Füsün Üstel and Others". 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>

⁴ <https://barisicinakademisyenler.net/node/1298>

spouses and children; it is also a violation of both the presumption of innocence and the principle of the individuality of criminal responsibility. In addition, considering that passport cancellations are implemented without a judicial decision, those who have been subjected to some kind of "extrajudicial" punishment are hurled into an excruciating spiral of guilt due to the punishment of their relatives. In one case, the cancellation of passports for spouses and children was practiced on grounds that "if the person's spouse is dismissed and is living abroad, s/he will unite with the spouse abroad and will never return". This justification, which is totally contrary to the principles of individuality of criminal responsibility and the protection of family unity, is also an indication of how a violation of rights can turn into multiple violations of rights.

c) One of the multiple violations arising due to the refusal of the consulates to issue passports, identity cards, birth certificates and to carry out power of attorney is arguably a violation of Article 8 (respect for private life and family life) of the European Court of Human Rights. The *de facto* prevention of the rights arising from citizenship of dismissed academics living abroad and the resulting violation of their equal citizenship status led the academics to remain without an identity card, to be deprived of the right to education, work and travel, and most importantly, prevented parents from fulfilling their duties and responsibilities for their children⁵. Likewise, considering the fact that the majority of academics who have to live abroad with restricted travel rights cannot visit their families in Turkey as long as they do not have a passport, the dimensions of the violation of the principle of private life and family to respect can be seen clearly.

d) Consulates are also authorized to carry out marriage procedures of their citizens. An application for a marriage contract recognized in the Republic of Turkey was rejected by the consulate simply because one of the applicants was dismissed with a decree law. On the other hand, there are also cases in which the consulate raises difficulties in performing transactions after the passport cancellation is lifted since the computer system still contains previous details on passport cancellation and dismissal.

⁵ Violation of parents' duties and responsibilities has been asserted in the case *Kıvılcım vs. Turkey* (Application no. 15891/18). The case has not yet been concluded. <https://afp.hypotheses.org/1417>

Other violations

a) There were examples of denial of access to the National Judicial Network Information System (UYAP), which is integrated with the e-government system and which enables the citizens of Republic of Turkey to perform their official procedures; when the consular administration refuses to provide the keyword for access to the e-government system persons are prevented from reaching the information and documents pertaining to them and the UYAP system through which they can follow the cases against them.

b) Even after the cancellation of the passports of dismissed Academics for Peace living abroad has been lifted, the consulates have taken information from both the civil registration offices and the police, so the procedures of dismissed academics living abroad are impeded on the pretext of a long "review" process. Despite the fact that passport transactions are executed by the civil registration offices and no restriction exists in this system, months-long delays have been experienced in the receipt of passports since that there are still notices of restriction in the systems of the police departments.

c) The right to vote and to be elected is a constitutional right. The Republic of Turkey citizens living abroad who wish to use this right can exercise their right by applying to consulates where they live. While the consulates arbitrarily and unlawfully refuse to fulfil many of their duties, it is understood that they make the necessary arrangements for voting in elections. In just one instance, the consulate also rejected the person's residence permit and his/her request to vote in the election. Consequently, a constitutional right of this person has been violated.

The fact that the refusal of the rights, which are granted to the Republic of Turkey citizens, through the agency of consulates on unlawful grounds means that dismissed academics are not treated as legal persons; therefore, this must be seen directly as a violation of the principles that define the status of citizens in the constitution. This condition of illegality, which causes even the application of academics not to be accepted, is put into practice with utter arbitrariness in varying degrees in each country, state and city; it thus creates great unpredictability and uncertainty for dismissed academics living abroad.

2. Violations arising from the practice of receiving states

a) When the dismissed academics could not complete their procedures or obtain the necessary documents at the consulates, they applied to use their rights recognized in the laws of the receiving state or those arising from international conventions. One of these involves the application for a residence permit of a person who does not have a valid passport. Varying practices have been observed concerning this problem between countries and / or between states within the countries. It has been observed that people are directed/ forced to apply for asylum in some countries / states by the relevant authorities instead of granting this permission. In cases where people did not want to seek asylum and requested the residence permit in question, the proceedings could be delayed. Due to such delays, these people remained in the status of unregistered for a long time, they were forced constantly to resort to different means within the legal and bureaucratic structure of the two countries and, in a sense, to struggle with both states.

b) The rejection of the above-mentioned letter rogatory by the courts of the academics' country of residence has likewise led to the violation of the academics' right to defence. In two separate cases, the courts of Germany and the United States of America refused to take the statements of the individuals stating that it was not a crime to sign the petition *We will not be a party to this crime!*⁶ The courts of the relevant countries refused to take the statement of the signatories commenting that taking this statement would mean participating in the judicial process; this has obliged the signatory academics to go to Turkey to give statement, and in the opposite case arrest warrants have been issued. Thus, academics have been forced to adopt one of the two negative options, which led to the aggravation the uncertainty in which they lived.

3. Abuse at the consular office

Dismissed Academics for Peace were subjected to verbal abuse at consulates for being dismissed. The academics interviewed remarked that when it was found out that they were dismissed the officials told them openly and loudly in the application office

⁶ For news concerning the case in the USA, see <https://barisicinakademisyenler.net/node/1298>

that they were dismissed and their applications would not be processed and that they should not come to the consulate again, in addition to the unofficial and unlawful rejection of their applications, petitions and demands. The officials made such loud remarks to their colleagues: "Good God! He does not seem to be a dismissed person, indeed!"; "You have a restriction, we will not perform your procedure"; "I cannot put my signature under your transaction!"; and "We are fed up with you! You are being too much! Go away from here so that we can do the transactions of other citizens!" Dismissed academics were also subjected from time to time to the remarks of other citizens waiting in the same place such as, "Get out, I'm a citizen, my transaction will be done." In addition, despite acquittal of signatory academics and lifting of their passport cancellations, the words of a consular officer saying that "problems will continue to arise every time you take action" reveal that the dismissal with decree laws will continue to be treated as an excuse for the violation of citizenship rights.

4. Transnational stigmatization, criminalization and targeting

It is seen that the stigmatization of civil servants dismissed in the wake of the 2016 coup as terrorists and / or as individuals connected or related to terrorism was widespread not only in Turkey but also among people from Turkey living abroad. Among the dismissed Academics for Peace interviewed, there were those who stated that they were forced to make an effort to conceal their dismissal in their country of residence. Some of these people were subjected to threats by various people, for instance their neighbours and shopkeepers in the places where they live, by means of such remarks "We do not want traitors here!"

On the other hand, academics lecturing at universities expressed their concern that they were afraid of being targeted in classes which in particular have a lot of students from Turkey. In addition, there are also academics who had to refrain from lecturing because students placed complaints / made notices to the consulates owing to the course content or discussions in the lectures and claimed that "they are making terrorist propaganda."

5. Violations regarding postgraduate education abroad

The equivalence procedure and certificate for PhD degree obtained from higher education institutions abroad are established by the Inter-university Board (UAK).

In one case, the application of an academic who completed his/her doctorate in the sociology department of a university in the USA in December 2017 and consulted the UAK in September 2018 for equivalence was rejected in 2020 after waiting for two years. The request for equivalence to the thesis was rejected in the notified decision of the UAK, claiming that it may constitute a terrorist propaganda crime defined in Article 7/2 of the Anti-Terror Law, some expressions in the thesis served as terrorist propaganda and some other expressions may constitute a crime in accordance with Article 301 of the Turkish Penal Code, assuming that the expressions in question were outside the limits of "freedom of thought and expression through science and art" regulated in the Constitution, that these expressions could not be considered as having the purpose of criticizing and expressing one's thoughts, and ultimately they were not objective and had a provocative nature. It is apparent that UAK has made certain decisions that could only be taken by the authorized courts after the necessary investigations have been made and the trial process has been completed. Likewise, even if the court decided that the thesis harboured criminal elements, bearing in mind that the evaluation and enforcement power of the UAK is limited to academic and ethical issues, it follows that the UAK has committed an offense by going beyond its duty.

That UAK has made a legal and political assessment rather than an academic one is not only an example of violation of authority but also a violation of academic freedom in Turkey.

6. The confluence of immigration and neo-liberal academia: Multiple crises

Academics who have travelled abroad in unconventional ways and / or become undocumented due to the cancellation of their passports and have to apply for asylum are also heavily affected by the consequences of the asylum crisis. It is difficult for these academics to obtain refugee status and / or residence permits due to the fact that the evaluation period of asylum applications exceeds one year and that there are stricter practices in some countries and / or states in the application of a residence permit made by the undocumented and asylum applicants compared to others.

Residence permit is directly associated with the employment status especially in Germany. Therefore, academics are constantly living under pressure to find scholarships / jobs in order to renew their residence permit. While the heavy pressure

of neo-liberal policies in the academy is felt all over the world and finding a relatively long, one-two-year period position is very challenging, establishing a predictable life has become almost impossible. The impact of multiple crises and violations has become far more distressing with the disrupting repercussions of the Covid-19 pandemic on all economies and sectors in general as well as on academic activities. Academics are caught in a cycle of uncertainty due to the difficulty of obtaining residence permits based on employment in their country of residence. The precariousness and deprivation, which is experienced by dismissed academics and their relatives living in Turkey, has also affected severely those living abroad.

Violations against Academics for Peace have been continuing across borders for nearly five years. The restoration of rights and justice is critical to academics living in other countries as much as it is for academics living in Turkey, following the Constitutional Court decision that ruled that signing the petition *We will not be a party to this crime!* dated July 2019 was within the scope of freedom of expression.

Steps to be taken for the termination of abuses against Academics for Peace along with their effects is of critical importance not only in terms of compensation for persons exposed to violations but also for freedom of expression and, more specifically, for the restoration of academic freedom in Turkey.

As the Human Rights Foundation of Turkey we would like to remind our determination to continue to monitor this process and urge officials to act responsibly to end violations against academics who have been living abroad as well as in Turkey and to take necessary steps immediately for the restoration of rights.

This report has been prepared within the scope of the project “Defending freedoms of expression, media, association and assembly for reconstruction of the human rights environment supported” by the European Union. Human Rights Foundation of Turkey is responsible for the content of the report, which does not necessarily reflect the views of the European Union.

