

A VERDICT IN THE BOĞAZIÇI UNIVERSITY 'TURKISH DELIGHTS' TRIAL

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*Ils répétèrent plusieurs fois, comme pour se guider à tâtons :
« Faut tuer la guerre. La guerre, elle ! »*

Henri Barbusse, Le Feu

ABSTRACT

On 31 January 2020, we observed the sixth and last hearing in the trial of thirty students from Boğaziçi University, among them two Turkish mathematics students, who were charged with terrorist propaganda after an on-campus demonstration in March 2018.

The 32nd Court in Istanbul sentenced one of the two students in question to a suspended, 10 month imprisonment term (a verdict applied to 20 of the 30 students charged); and the other to a 10 month imprisonment term converted to a fine of 6,000 Turkish lira (a verdict applied to 7 students in total, with the remaining 3 acquitted).

Views expressed here are those of the observers, and do not represent positions taken by the societies to whom they will report.

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1. Trial overview and background

In this section we present the trial, and its outcome, as a whole. The final hearing on 31 January is discussed in detail in § 2.

1.1. *Overview* The trial of 30 students for participation in a peace demonstration as undergraduates at Boğaziçi University (19 March 2018),* among them the mathematics students Deniz YILMAZ and Eray KARABIYIK, ended on 31 January 2020 in Istanbul Courthouse, Central Court 32, with 3 acquittals, 20 suspended sentences (10 months),[†] and 7 firm sentences (10 months) converted to fines.

As the trial raised substantial questions concerning freedom of speech, respect of judicial procedures, and similar matters which are the subject of recent decisions by the European Court of Human Rights as well as the Turkish Constitutional Court, and touches notably on the right to education of talented students from one of Turkey's leading universities, several professional societies based in America and Europe (AMS, CCS, EMS, LMS) sent observers to the proceedings.[‡]

Both of the mathematics students charged are well known to the second named author from

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*See § 1.3

[†]HAGB: see § 3.5

[‡]American Mathematical Society. Committee of Concerned Scientists. European Mathematical Society. London Mathematical Society.

contact at the Nesin Mathematics Village in Turkey, and are exceptionally promising. Neither of them can expect, as a practical matter, to pursue graduate education in Turkey, as the State is unlikely to approve their appointment to teaching assistantships even if they are accepted by advanced academic programs.

Karabıyık has accepted the suspended sentence (as provided under Turkish law) with the intention of turning the page and pursuing his studies abroad. Yılmaz has chosen France to complete his undergraduate degree. He has not accepted a suspended sentence, and retains the right to appeal the decision.

1.2. *Political context* The following recent developments in Turkey are relevant to the trial in question.

- (1) Renewal of tensions based on ethnicity.

After a quieter period (2009-2015, known as the ‘Kurdish Opening’) during which the ruling party AKP pursued a solution to the Kurdish problem through secret negotiations, effectively leading to a cease-fire with the terrorist organisation PKK and a proposed roadmap toward peace, an abrupt change came about in July 2015.^{*}† The cease-fire and peace process abruptly came to an end, and special forces were sent again to the southeast.[‡]

- (2) A series of internal and external military operations.

Civil war in Syria and special operations in southeast Turkey led to active involvement of the Turkish forces in Syria. The Turkish operation codenamed ‘Olive Branch’ was officially aimed at establishing a security zone beyond the Turkish border, on Syrian territory. Demographic engineering has been feared, expected or alleged by various organisations.[§] The city of Afrin, then held by the Kurdish YPG militia, was a strategic node and a particular focus of attention. ‘The newspaper “Hürriyet” quotes an undisclosed government source as saying that the aim of “Operation Olive Branch” is to enable self-rule for the people of Afrin so that they can build democratic institutions once the YPG has been driven out of the region. Whether the democratic institutions in Afrin are to follow the model established in recent years in Turkey under Tayyip Erdoğan remains an open question.’¶,||

- (3) A new cycle in judicial activity, rapidly expanded in conjunction with extensive governmental purges following on the abortive coup attempt of July 2016.**

The academic world has contributed its share to the national purgatory effort. We quote paragraph 64 from a report by Commissioner for Human Rights of the Council of Europe Nils Muižnieks.^{††}

The aftermath of the 15 July failed coup attempt also had a severe impact on academic freedoms: close to 4 500 academics were dismissed through appended lists in emergency decrees, without any due process and with no judicial remedy. All deans in Turkey were summarily dismissed, with some subsequently reappointed, and academics were automatically deprived from the right to travel abroad without authorisation. The autonomy of universities was also severely curtailed, abolishing elections within universities and replacing them with direct appointments by the President of the Republic. The Commissioner considers that these developments were a severe blow to another pillar of freedom of expression, namely academic freedom which, as

^{*}Chronology (French) https://www.ifea-istanbul.net/images/stories/OVIPOT/memoiresovipot/2014_11_Chronologie_Theotime.pdf

[†]<https://www.hurriyetdailynews.com/erdogans-denial-of-dolmabahce-agreement-sparks-row-85656>, <https://www.dailysabah.com/politics/2015/07/17/erdogan-renounces-dolmabahce-declaration-says-hdp-should-try-its-best-for-pkks-disarmament>

[‡]<https://stockholmcf.org/kurdish-political-movement-under-crackdown-in-turkey-the-case-of-the-hdp/>, pp. 9–12

[§]For instance https://reliefweb.int/sites/reliefweb.int/files/resources/ohchr_-_syria_monthly_human_rights_digest_-_june_2018.pdf, or <https://www.genocidewatch.com/single-post/2019/01/17/Genocide-Warning-Turkey-Is-Planning-Genocide-in-Northeast-Syria>

[¶]Quote from <https://en.qantara.de/content/turkish-offensive-in-syria-the-poisoned-olive-branch>

^{||}For Turkey’s current Foreign Secretary and cofounder of AKP Mevlüt Çavuşoğlu’s views, we refer to <https://foreignpolicy.com/2018/04/05/the-meaning-of-operation-olive-branch/>

^{**}<https://turkeypurge.com/>. The authors have not retrieved governmental figures.

^{††}Dated 15 February 2017. Source: [https://rm.coe.int/ref/CommDH\(2017\)5](https://rm.coe.int/ref/CommDH(2017)5).

underlined by the ECtHR and the Parliamentary Assembly of the Council of Europe, ‘should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction’.

Worth mentioning is the emblematic case of the ‘Academics for Peace’ (Turkish: BAK), a group of more than 2,000 academics based in Turkey who signed a petition protesting alleged violations of human rights during special operations in the southeast provinces in the winter of 2015–2016. Many cases were opened against them, mostly under the charge of ‘propaganda for a terrorist organisation’ (TMK 7/2, see § 3.6) and only the 26 July 2019 ruling by the Turkish Constitutional Court brought the wave of convictions and the filing of new cases to a halt, after almost 800 cases were filed.

According to Turkey’s Ministry of Justice, some 70,000 Turkish students were behind bars, after or awaiting sentence, as of January 2018.*

The trial under scrutiny involves these three elements: freedom of speech, criticism of military operations, an ethnically charged topic.

1.3. *On Boğaziçi University* As we will discuss in this section, Boğaziçi University plays a prominent role in Turkey’s academic sphere and scientific development, giving the present trial a particular symbolic significance. The evolution of this institution reflects recent trends in the country.

Boğaziçi University (formerly Roberts College) is the leading, and one of the oldest, universities in Turkey. According to Wikipedia, Boğaziçi University was the only Turkish university ranked among the top 100 universities worldwide in the Times Higher Education World University Rankings of 2013–2014.

We first quote from Boğaziçi University’s Mission.†

‘Boğaziçi University’s mission is to educate individuals who embrace its institutional values, who are able to think both creatively and critically, who are independent and egalitarian, who appreciate ethical values, who respect nature and are aware of environmental issues, who are rooted in the local and open to the global, and who can, with their self-confidence and scholarly, social and cultural foundations, successfully take on leadership positions anywhere in the world.’

According to Gülay Barbarosoğlu who was rector in 2015,‡

‘In order to conduct original research, universities must have a free thinking, questioning and criticism environment.’

In the first half of July 2016, Ms. Barbarosoğlu was re-elected as rector of Boğaziçi University with a large majority. However, new regulations decreed in the aftermath of the attempted coup canceled such elections and gave the President of the Republic of Turkey direct authority to nominate university rectors (see § 1.2 (3.)). As a consequence, in November 2016 R.T. Erdoğan appointed Mehmed Özkan, a decision which provoked some controversy.§

At the first general assembly held under his auspices as rector, in November 2016, Mr. Özkan still expressed the following view.¶

‘The most valuable asset of the university is its thought. It is obvious that it is not possible for the university to produce knowledge without free thought.’

On the other hand, after the events of 19 March 2018 Rector Özkan harshly criticised the protesting students, and reportedly expressed pride in having called the police himself. The official announcement can no longer be located on Boğaziçi University website.∥

*<https://turkey.theglobepost.com/students-turkey-jail/>

†http://www.boun.edu.tr/en_US/Content/About_BU/Vision_Mission.

‡<https://haberler.boun.edu.tr/tr/haber/arastirma-icin-temel-gereklilik-akademik-ozerklik-ozgur-ve-elestirel-dusunme-ortami>

§<https://www.hurriyetdailynews.com/students-protest-appointed-rector-at-graduation-ceremony-in-istanbul-bogazici-university--114641>

¶<http://www.pervinkaplan.com/detay/bogazici-akademik-kurul-universitede-ozgur-dusunce-gerek/1863>.

∥<https://bianet.org/english/human-rights/195444-students-detained-in-bogazici-university-campus-released>

We conclude with words from ‘Academic for Peace’ Noémi Levy-Aksu, who was fired from Boğaziçi University in 2017.

‘To come back to Turkey and freedom of speech, the aim of the purges in the universities is clearly to punish critical voices, to silence them. University is not just any institution. It plays a major role in shaping the present and the future of democracy. Therefore, what is going on in Turkey is not only sad and harmful for those who are discharged and for the students. It also does great damage to the scientific and cultural production and, beyond this, to the future of Turkey.’*

According to official sources, President R.T. Erdoğan is an alumnus of Marmara University. The claim has been disputed.[†]

1.4. *Timeline*

2018-01-20: The battle for the city of Afrin begins: the Turkish regular army and the Free Syrian Army (FSA) fight the Kurdish YPG, who have held the city since 2012.

2018-03-18: Turkish Regulars and the FSA win the battle for Afrin.

2018-03-19: ‘Sweets for Afrin’: Student supporters of the Afrin operation and members of the Boğaziçi University Society of Islamic Studies distribute Turkish delights on Boğaziçi campus in celebration of the military victory. A spontaneous counter-demonstration leads to a confrontation between the two groups. (To the observers’ knowledge, no student from the supporting party was arrested.)

2018-03-20: At a press conference, a YÖK (Council of Higher Education) official mentions the 19 March events.

2018-03-21: On-campus rally by AKP Youth to support pro-sweet party.[‡] A press release from Boğaziçi University argues that the 19 March *counter*-demonstration was an attack on freedom of speech.[§] The word ‘terrorism’ is used.

2018-03-22: Around 5 AM, the police storm into university dormitories; 5 students taken into custody. Later that day a protest takes place on campus; 7 more in custody. Targeted students were identified from videos posted on social media by members of the Boğaziçi University Society of Islamic Studies. Reported misconduct by the police forces.[¶]

2018-03-23 and 24: President R. T. Erdoğan on two different occasions evokes ‘communist, traitor youth’, announces an investigation and elaborates ‘we won’t give these terrorist youth the right to study at these universities’.^{||}

2018-03-25: Another police raid in University dormitories. 3 more students taken into custody.

2018-03-26: 3 more students in custody.

2018-03-29: There are 11 students in custody. Detention time extended by another week.

2018-04-02: A total of 15 students is in custody.

2018-04-03: 9 of the 15 students in custody are remanded (sent to pre-trial detention); on 4 April a tenth follows; three more on 14 April; hence 14 students are then under arrest.

2018-06-06: First hearing. There are 30 defendants; 22 of them, physically present, give their statements (8 more are absent and counted as fugitives). Outcome: the 14 arrested are released from pre-trial detention; passports are confiscated.**

2018-10-03: Second hearing. The prosecutor has changed from Ergün GÜÇLÜ (see § 1.5) to İkrâm COŞKUN, who would remain prosecutor to the end. 5 students from the missing 8

*<https://devhist.hypotheses.org/files/2017/03/10-March-talk.pdf>

†<https://www.tccb.gov.tr/en/receptayyip Erdogan/>, <https://turkey.theglobepost.com/erdogan-college-degree-controversy/>

‡<https://www.aa.com.tr/tr/turkiye/bogazici-universitesi-ogrencilerinden-afrin-aciklamasi/1094366>

§<https://haberler.boun.edu.tr/tr/haber/bogazici-universitesi-rektorlugunden-aciklama-2>

¶<https://www.amnesty.org/en/documents/eur44/8565/2018/en/>, <https://gazeteyolculuk.net/tutuklanan-bogazicililere-hem-okulda-hem-vatan-emniyette-agir-iskence>

||<https://tr.sputniknews.com/turkiye/201803231032762527-erdogan-beyoglu-konusuyor-gezi/>, <https://www.evrensel.net/haber/348522/erdogan-o-komunist-vatan-haini-genclere-okuma-hakki-vermeyecegiz>, <https://www.hurriyetdailynews.com/erdogan-calls-bosporus-university-students-involved-in-afrin-protests-terrorists-129241>

**<http://www.hurriyetdailynews.com/istanbul-court-orders-release-of-bogazici-university-students-in-terror-propaganda-trial-132927>

give their statements (3 never appeared before the Court). Outcome: ban on travel lifted, passports returned. Third author attends as an observer.^{††}

2019-03-19: Third hearing. The court refuses to hear Dean for Student Affairs Zeynep Uysal as a witness for the defence. Outcome: more time is needed to investigate digital material.

2019-07-16: Fourth hearing. Digital material has been investigated. The prosecutor reads his opinion. The defence asks for more time.

2019-10-15: Fifth hearing. The defence asks for more time. Second author attends as an observer.*

2020-01-31: Sixth hearing and verdict. 3 acquittals, 7 sentences to 10 months’ imprisonment, converted to fines of 6,000 Turkish lira (see § 3.3, art. 63), 20 suspended sentences of 10 months imprisonment. Appeals expected.

1.5. *Indictment* The observers had access to an authorised translation of the indictment of 21 of the defendants. It is a fairly short document (7 pages in translation; 9 in the larger-print original); the first pages are dedicated to listing the accused. Said list explicitly mentions ‘detention’ for nearly two weeks for some of them. Following a standard format, the text of the indictment then runs as quoted below.

Applicable articles: Articles 53/1, 58/9, 63 of the Turkish Criminal Code numbered 5237; Article 7/2 of Anti-Terror Law numbered 3713[†]

Evidence: Statements of suspects, official reports of interrogation, reports of search and seizure, reports of detention in and out, criminal records and identity register records of suspects, image examination and investigation reports, scope of all investigation

The text proceeds to an explanation of the case: ‘physical violence via assaulting, on peaceful event organizing students [sic]’. There flows a paragraph recalling the purpose of Operation Olive Branch and arguing that the counter-demonstration students were acting in accordance with the strategies of several organisations:

Turkish Armed Forces carried out Operation Olive Branch in Afrin region of Syria, on 20 January 2018, in order to neutralize the terrorists from terrorist organizations PKK/KCK/PYD/YPG and ISIS in the border of our country,[‡] in accordance with the right of self defence and anti-terrorism arising from the International Law, and with UNSC’s decisions towards anti-terrorism and right of self defence located in Article 51 of UN Charter. . .

. . . The mentioned incident carried out in this way by the suspects, cannot be considered within freedom of speech or right to assembly and demonstration, whose boundaries are indicated in the constitution. It has been determined that the suspects made propaganda of terrorist organizations both by portraying the State of the Turkish Republic using its rights in the frame of its authority, established by International Law, as an illegitimate, occupant, violent power; and by legitimizing

^{††}http://education.lms.ac.uk/wp-content/uploads/2019/01/DMG_11_no_1_2019_Karhumaki_E.pdf

*http://education.lms.ac.uk/wp-content/uploads/2019/11/DMG_11_no_2_2019_DeLoro.pdf

[†]Added by the authors of the report: See §§ 3.3 and 3.6

[‡]Added by the authors of the report:

- The PKK (Kurdistan Workers’ Party, in Kurdish *Partiya Karkerên Kurdistan*) is a terrorist organisation according to Turkey, the EU, the USA—but not according to the Russian Federation.
- The KCK (Kurdistan Communities Union, *Koma Civakên Kurdistan*) is an umbrella organisation, regarded as terrorist by Turkey, with many branches including the PKK and the PYD.
- The PYD (Democratic Union Party, *Partiya Yekîtiya Demokrat*) is the Syrian-based branch of the PKK. It used to control a part of Northern Syria, the so-called autonomous Rojava region.
- The YPG (People’s Protection Units, *Yekîneyên Parastina Gel*) are one of the armed branches of the PYD. Allies of the Coalition against ISIS, at least until the Fall of 2019. A terrorist organisation according to Turkey. The question of organic links between the PKK and the YPG is often raised in Turkey.
- ISIS (whose Arabic acronym transliterates into DAESH) was considered the main threat in the region by many countries, including the EU, the USA, and the Russian Federation. The observers could not find Turkey’s list of terror groups. Former links or early *de facto* common interests between the Turkish Republic and the ISIS have been alleged; see <https://docs.house.gov/meetings/FA/FA14/20170405/105842/HHRG-115-FA14-Wstate-PhillipsD-20170405-SD001.pdf>; if so, things clearly changed after 2015–2016.

Position of the EU is available at <https://eur-lex.europa.eu/legal-content/en/TXT/HTML/?uri=CELEX:32019D0025&from=EN>. For an example of recent Turkish communication, see <https://www.trtworld.com/middle-east/four-myths-about-the-pkk-ypg-terrorist-group-that-need-refuting-30457>.

PKK/KCK/YPG terrorist organizations, whose methods include force, violence and threat.

The indictment then moves to the specifics of each case, at times achieving a laconic elegance:

As a result of examining image investigation report, it has been determined that the suspect moved with the group.*

As a conclusion,

As a result of the investigation carried out by the Chief Public Prosecutor's Office, it was concluded that the suspects made the PKK/KCK Armed Terrorist Organization propaganda as described above, and it is claimed and requested in the name of public, that the suspects are put on trial and punished individually according to the above mentioned applicable articles and that the time they spent in custody and detention, is deducted from the punishment.†

Dated 4 May 2018 and signed: Ergün GÜÇLÜ, public prosecutor (the prosecutor changed shortly after, see § 1.4).

2. *Final hearing: 31st January 2020, 32nd Central Court*

2.1. *Before the hearing—The scene, and the actors* The hearing was scheduled for 10:30 AM. From 10:00 AM a crowd of more than seventy people was on hand, waiting to enter the room. Among these, 19 of the 30 defendants were in attendance. All 30 defendants were represented by some 15 lawyers; there were family members as well. In addition to the authors, acting as international observers, the following were also among the attendees:

- 4 Turkish MPs‡: Züleyha Gülüm (HDP), Hüda Kaya (HDP), Ahmet Şık (HDP), Sezgin Tanrıkulu (CHP);
- some press members, mostly Turkish but also one from a foreign journal;
- an observer with Amnesty International;
- a representative of the Istanbul Bar Association.

Not everyone could enter the room, which has a nominal capacity of 30–40. However the presiding judge allowed extra benches be added to the public seating area, and the door was left open throughout the hearing. In particular the presiding judge had to intervene on two occasions, in a firm but courteous manner, to silence conversations among audience members standing near the threshold.

The head of the panel of three judges, Ömer GÜNAYDIN, reportedly has Kurdish ethnical background; also the reputation of being harsh in such cases. The two other judges were Onur SERT and Ahmet Selçuk ÖZKAN. The Prosecutor was Ikram COŞKUN. The 32nd Court had been among the first to give sentences in the ‘Academics for Peace’ trials. In the audience were some Academics for Peace who had previously made the acquaintance of Judge Günaydın.

2.2. *The students* Shortly after 11:00 AM the defendants were called to the room; the audience was let in from 11:15 in small groups; the four MPs in attendance from opposition parties were privileged with seating among the accused. By 11:30 AM there was still no evidence of the prosecutor or judges, and a joke started circulating: ‘They are waiting for a phone call to decide the outcome’, reflecting the audience’s view of judicial independence in R. T. Erdoğan’s Turkey. A number of lawyers and defendants finally left for a cigarette. When they returned at noon the panel had arrived.

The contrast between the diversity of the lawyers (genders, ages ranging from below 30 to above 60) and the uniformity of the judges and prosecutor (all four, men in their fifties-sixties) could not escape the audience’s attention. The hearing began.

Since the prosecutor when asked had nothing to add to the indictment, the defendants were

*Added by the authors of the report: This evidence sufficed for a conviction in the case in question.

†Added by the authors of the report: One should compare the final sentence with the time spent in jail.

‡Since President R. T. Erdoğan publicly expressed views on the case (see timeline, § 1.4), it has received considerable attention. Said MPs had the topic added to the House’s agenda, although there was no legal obligation to discuss it, and no discussion of this specific matter.

given the floor. The first one (a geology student) took a different line from the remainder: he explained at length that he had been amongst the crowd by mere chance, and described how harmful the procedure had been to his academic opportunities. This student was among those acquitted that day.

Then the other 18 accused in attendance spoke briefly and along very similar lines to one another, first requesting their acquittal, added nothing to their defence statements. Some mentioned their request for restitution of useful digital materials which had been seized during the investigation, a point to which the lawyers would return. A number now retracted earlier statements of willingness to accept suspended sentences, (HAGB, § 3.5) thereby preserving their rights of appeal.

In addition, one of them added a political observation: comparing the situation of Afrin with that of Palestine, he inquired why criticism was permissible in the latter case, but not in the former.

2.3. *The lawyers* At 12:15 PM the lawyers were given the floor; their speeches would last some three hours, with a one hour break.

As the defence was based on a common strategy, some of them started by saying they represented all the accused; others would simply agree with, and build on, the prior discussion. From this long series of speeches the observers found several noteworthy aspects.

- The suggestion that the trial was of a political nature.
More precisely, that the trial resulted from, and after, an implicit request by the government; that the public intervention of President Erdoğan on 24 March 2018 and the political tone of the prosecutor’s bill of indictment were of such a nature as to cast doubt on the independence of the judiciary.
- Review of decisions, opinions and comments of the ECtHR regarding freedom of speech, the European Convention on Human Rights being a superior norm.* This may also prepare the way for arguments on appeal.
During the hearing various political slogans were cited, some arguably harsher than those present in the indictment, among which, quote, ‘Kurdistan will be the grave of Fascism’. (One of the observers first understood the converse.)
- Various procedural aspects.
According to the lawyers: search warrants had not been properly filled out and lacked crucial information (in particular the time and the object of the search, the name of the approving authority), house searches have been performed at night, electronic material has been seized and not returned, interception of communications was not legitimate, no technical team was present during the searches, violence was perpetrated on the accused during the searches and while they were in custody.
They argued that evidence obtained in this manner cannot be used in court. One asked that digital material be simply removed from the body of evidence (which already seemingly contains a paper copy of a left-wing journal, and a web search history on ‘Afrin’). Another concluded that *with the use of such procedures, anyone could be sent behind bars*.† The name of Deniz Yücel was brought up, a German-Turkish journalist whose arrest under terrorism charges has been found a violation of rights by Turkey’s Constitutional Court.‡
- The Constitutional Court (Turkey’s highest jurisdiction, immediately below the ECtHR) has in the recent past repeatedly ruled in favour of freedom of speech. The defence mentioned three particular cases relating to use of the charge of ‘propaganda for a terrorist organisation’ (see § 3.6):

* Ayşe Çelik (9 May 2019 decision), a schoolteacher who served time in jail for saying on TV, ‘There are children dying’;§

*See notably judgments *Selahattin Demirtaş v. Turkey*, <http://hudoc.echr.coe.int/eng?i=001-187961> and *Kavala v. Turkey*, <http://hudoc.echr.coe.int/eng?i=001-199515>

†More on the Turkish Code of Criminal Procedure in § 3.4, notably Art. 119.

‡<https://bianet.org/english/law/209881-constitutional-court-arrest-of-journalist-deniz-yucel-is-violation-of-rights>

§<https://www.turkeylitigationssupport.com/blog/2019/5/20/the-turkish-constitutional-court-issues-a-judgment-in-the-case-of-aye-elik-application-no-201736722>

- * Academics for Peace (26 July 2019 decision), who signed a petition (see § 1.2);[¶]
- * Sirri Süreyya Önder (3 October 2019 decision), a former HDP representative.*

One of the lawyers noted that *should judges from the ECtHR come to Turkey, they might be charged with propaganda for a terrorist organisation* (TMK 7/2, § 3.6).

- Right to education in Turkey, as asserted by the EU Convention on HR, the Constitution of the Republic of Turkey, and commented on by President Erdoğan.[†]
- Absence of an imminent threat, a necessary condition of terrorism, as seen from videosurveillance.

According to Turkish Law, violence constitutes a necessary condition of terrorism (see TMK 7/1, § 3.6); while the only trace of violence in the case is, after one of the lawyer's words, 'in R. T. Erdoğan's speech and the way the searches were conducted'. As a matter of fact a *pacifist* demonstration is arguably a *criticism* of violence.

2.4. *Outcome* After a 30 minute break the panel returned.

20 students who had accepted HAGB were given a *suspended* 10 month term in jail. 7, who had rejected the option, were given the same sentence converted to a fine of 6,000 Turkish lira (see 'Deductions' in § 3.3). 3 were acquitted.

There are three higher jurisdictions: the 'Regional Court' (for immediate appeal), the Constitutional Court, then the European Court of Human Rights (ECtHR). The repeated reference to Turkey's Constitutional Court by the lawyers suggests that students willing to appeal may push the case further.

3. *Appendix—Legal references*

This section is for reference only and provides legal material relevant to the trial under report.

3.1. *Excerpts from European Convention on Human Rights, and its Protocol*
The 4 November 1950 European Convention on Human Rights was signed by Turkey, then ratified on 18 May 1954, together with the 20 March 1952 Protocol.[‡] (One should observe that following the declaration of state of emergency in July 2016, a number of communications were made by Turkey's representation regarding various executive decrees with force of law issued during the state of emergency.)

Prohibition of torture

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Freedom of expression

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information

[¶]<https://www.amnesty.org/en/latest/news/2019/07/turkey-constitutional-court-clears-academics-from-spurious-terrorism-propaganda-charges/>, <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7588&lang=2&cat=3>, <https://www.turkeylitigationssupport.com/blog/2019/9/27/constitutional-court-finds-violations-in-the-academics-for-peace-case-application-no-201817635>

*<https://bianet.org/english/politics/213926-constitutional-court-freedom-of-expression-of-sirri-sureyya-onder-violated>

[†]See §§ 3.1 and 3.2 for right of education in Turkey, and § 1.4 for President Erdoğan's interpretation.

[‡]Source: https://www.echr.coe.int/Documents/Convention_ENG.pdf

received in confidence, or for maintaining the authority and impartiality of the judiciary.

Freedom of assembly and association

Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Protocol (1952)

Right to education

Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

We quote again the 15 February 2017 report by Commissioner for Human Rights of the Council of Europe Nils Muižnieks.*

According to the statistics published by the ECtHR on violations found by the Court between 1959 and 2015, out of 619 judgments ever rendered by the Court finding a violation of Article 10, 258 concerned Turkey, thereby putting it ahead of all other member states by a very wide margin (the member state with the next highest number of violations has 34).

3.2. *Excerpts from Turkish Constitution* The 1982 Constitution (with revisions through 2017) defines a number of fundamental rights. Part two, 'Fundamental rights and duties', contains a chapter two on 'Rights and duties of the individual'—notably VII. Freedom of thought and opinion, XI. Rights and freedoms of assembly—and a chapter three on 'Social and economic rights and duties' elaborating on 'Right and duty of education'.[†]

Freedom of thought and opinion

Article 25

Everyone has the freedom of thought and opinion.

No one shall be compelled to reveal his/her thoughts and opinions for any reason or purpose; nor shall anyone be blamed or accused because of his/her thoughts and opinions.

Right to hold meetings and demonstration marches

Article 34

Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission.

The right to hold meetings and demonstration marches shall be restricted only by law on the grounds of national security, public order, prevention of commission of crime, protection of public health and public morals or the rights and freedoms of others.

The formalities, conditions, and procedures to be applied in the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.

Right and duty of education

Article 42

*Source: [https://rm.coe.int/ref/CommDH\(2017\)5](https://rm.coe.int/ref/CommDH(2017)5); paragraph 7.

[†]Source: https://www.constituteproject.org/constitution/Turkey_2017.pdf?lang=en

No one shall be deprived of the right of education.
 The scope of the right to education shall be defined and regulated by law.
 Education shall be conducted along the lines of the principles and reforms of Atatürk, based on contemporary scientific and educational principles, under the supervision and control of the State. Educational institutions contravening these principles shall not be established.
 The freedom of education does not relieve the individual from loyalty to the Constitution.

⋮

3.3. *Excerpts from Turkish Criminal Code* We quote the three articles of the Turkish Criminal Code (53/1, 58/9, 63) the indictment mentions.* (The law ‘On the fight against terror’ is evoked in § 3.6.)

Depriving of exercising certain rights

Article 53

- (1) Where a person is sentenced to a penalty of imprisonment for an intentional offence the legal consequence of such shall be his prohibition from:
 - (a) becoming a member of the Turkish Grand National Assembly or undertaking employment as, or in the service of, an appointed or elected public officer permanently, temporarily or for a fixed period of time within the administration of the state, a province, municipality or village, or institution or entity under their control or supervision;
 - (b) voting or being elected and exercising other political rights;
 - (c) acting as a guardian or being appointed in the role of guardianship and trustee;
 - (d) being the administrator or inspector of a legal entity namely, foundation, association, labor union, company, cooperative or political party;
 - (e) conducting any profession or trade, which is subject to the permission of a professional organization (which is in the nature of a public institution or organization), under his own responsibility as a professional or a tradesman.

Repeat Offending and Especially Dangerous Offenders

Article 58

- (9) The Enforcement Code pertaining to repeat offenders and the probationary measure following the completion of the sentence of imprisonment shall also apply to: an habitual offender, a career offender or a member of a criminal organization.

Deductions

Article 63

- (1) Any period of custody served in any of the circumstances occurring prior to final judgement shall be deducted from the sentence. Where a judicial fine is to be imposed, a reduction shall be made with the assumption that one day corresponds to one hundred Turkish Liras.

An elementary computation shows that YTL 6,000 correspond to two months in jail; see § 1.4.

3.4. *Excerpts from the Turkish Code of Criminal Procedure* The defence repeatedly returned to procedural aspects relating to searches and digital material, which are the object of part four, chapter four of the Code of Criminal Procedure of the Republic of Turkey.†

Search during the night hours

Article 118

- (1) Private dwellings or business places, as well as other property closed to the public, shall not be searched at the night hours.

*Translation from https://www.legislationline.org/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf

†English translation from bilingual online reference https://www.legislationline.org/download/id/4257/file/Turkey_CPC_2009_en.pdf

- (2) The provision of the first subparagraph shall not apply to the searches conducted for the purpose of re-apprehending the individual or the unconvicted or convicted prisoner, who escaped after he had been arrested without a warrant, or put into the police custody, under the conditions where he was detected in the act, or where there was peril in delay.

Search warrant

Article 119

- (2) The search warrant or order shall clearly include:
- (a) The conduct that constitutes the ground for the search,
 - (b) The person with respect to whom the search shall be conducted, the address of the dwelling or the place to be searched, or the material that is to be searched,
 - (c) The time limitation of the validity of the warrant or order.

Search of computers, computer programs and transcripts, copying and provisional seizure

Article 134

- (1) Upon the motion of the public prosecutor during an investigation with respect to a crime, the judge shall issue a decision on the search of computers and computer programs and records used by the suspect, the copying, analyzing, and textualization of those records, if it is not possible to obtain the evidence by other means.
- (2) If computers, computer programs and computer records are inaccessible, as the passwords are not known, or if the hidden information is unreachable, then the computer and equipment that are deemed necessary may be provisionally seized in order to retrieve and to make the necessary copies. Seized devices shall be returned without delay in cases where the password has been solved and the necessary copies are produced.
- (3) While enforcing the seizure of computers or computer records, all data included in the system shall be copied.
- (4) In cases where the suspect or his representative makes a request, a copy of this copied data shall be produced and given to him or to his representative and this exchange shall be recorded and signed.
- (5) It is also permissible to produce a copy of the entire data or some of the data included in the system, without seizing the computer or the computer records. Copied data shall be printed on paper and this situation shall be recorded and signed by the related persons.

Also of interest is part five, on 'Interception of correspondence through telecommunications'. Moreover article 91 limitates custody to 24 hours, with a possible extention of three more days.

3.5. *Excerpts from Article 231 of the Turkish Code of Criminal Procedure* HAGB, suspension of the pronouncement of the judgment, is a judicial device which can serve to silence opponents for five years. We quote again the Code of Criminal Procedure of the Republic of Turkey.*

Pronouncement of the judgment and delaying the pronouncement of the judgment

Article 231

- (5) In cases where at the end of the adjudication conducted related to the crime charged to the accused, if he shall be punished with imprisonment of two years or less or a judicial fine, the court may decide to delay the pronouncement of the judgment. The provisions related to mediation are preserved. Delaying the pronouncement of the judgment means that the judgment that has been produced shall not have legal effect for the accused.
- (6) In order to be able to render 'the decision on delaying the pronouncement of the judgment', the following requirements must have been fulfilled:

*https://www.legislationline.org/download/id/4257/file/Turkey_CPC_2009_en.pdf

- (a) The accused must not have been convicted for an intended crime priorly,
 - (b) Considering the characteristics of the personality of the accused and his behavior during the main trial, the court has to reach the belief that the accused shall not commit further crimes,
 - (c) The damage to the victim or the public, due to the committed crime has been recovered to the full extent by giving back the same object, by restoring the circumstances as they were before the crime had been committed, or by paying the damages.
- (7) In the judgment, of which the pronouncement has been delayed, the inflicted imprisonment term shall not be postponed, and in cases where the punishment is a short term imprisonment, it shall not be converted into the alternative sanctions.
- (8) In cases where a decision on delaying the pronouncement of the judgment has been rendered, the accused shall be subject to a probation term for five years. The court may decide that the accused shall be subject to an obligation of probation, not exceeding one year:
- (a) In cases where he has no profession or skill, the court may decide that he shall take part in an education program in order for him to obtain a profession or a skill,
 - (b) In cases where he has a profession or a skill, the court may decide that he shall work for a fee in a public institution or in a private place, under the supervision of another person who performs the same profession or skill,
 - (c) The court may decide that he shall be prohibited from going to certain places, that he shall be obliged to visit certain places, or to fulfill another obligation which shall be determined by the discretion of the court.

During the period of probation, the time limit prescription of prosecution shall lapse.

- (10) In cases where there has been no intentional crime committed during the period of probation and the obligations related to the measures of controlled liberty, the judgment, of which the pronouncement had been delayed, shall be annulled, and the court shall render the decision on dismissing the case.
- (11) In cases where the accused has committed a new intentional crime during the period of controlled liberty, or has violated the obligations related to the controlled liberty, the court shall pronounce the judgment. However, the court may evaluate the circumstances related to the accused who was not able to fulfill the obligations inflicted on him, and may decide that the portion of the punishment which may be determined up to the half of the original one shall not be executed, or if the requirements are present, to suspend the imprisonment, or to convert the punishments in the judgment into alternative sanctions, thus forming a new judgment.

3.6. *Excerpts from the law ‘On the fight against terror’ in Turkey* Article 7/2 of Law 3713 ‘On the fight against terror’ is well-known (both in Turkey and at the European Court of Human Rights) and versatile. We cite Article 7 in full.*

Terrorist organisations

Article 7

Those who establish, lead, or are a member of a terrorist organisation in order to commit crimes in furtherance of aims specified under article 1 through use of force and violence, by means of coercion, intimidation, suppression or threat, shall be punished according to the provisions of article 314 of the Turkish Penal Code. Persons who organise the activities of the organisation shall be punished as leaders of the organisation.

Any person making propaganda for a terrorist organisation shall be punished with imprisonment from one to five years. If this crime is committed through means of

*Source: https://www.legislationline.org/download/id/3727/file/Turkey_anti_terr_1991_am2010_en.pdf

mass media, the penalty shall be aggravated by one half. In addition, editors-in-chief who have not participated in the perpetration of the crime shall be punished with a judicial fine from one thousand to fifteen thousand days’ rates. However, the upper limit of this sentence for editors-in-chief is five thousand days’ rates. The following actions and behaviours shall also be punished according to the provisions of this paragraph:

- (a) Covering the face in part or in whole, with the intention of concealing identities, during public meetings and demonstrations that have been turned into a propaganda for a terrorist organisation
- (b) As to imply being a member or follower of a terrorist organisation, carrying insignia and signs belonging to the organization, shouting slogans or making announcements using audio equipment or wearing a uniform of the terrorist organization imprinted with its insignia.

If the crimes indicated under paragraph 2 were committed within the buildings, locales, offices or their annexes belonging to associations, foundations, political parties, trade unions or professional organisations or their subsidiaries, within educational institutions, students’ dormitories or their annexes, the penalty under this paragraph shall be doubled.

Disclaimer

The authors write in their private capacities; their views expressed in this paper are their own and do not necessarily represent position of any other person, incorporated entity, organisation, or institution.

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