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Is Academic Freedom Possible without Basic Human Rights?

Introduction

Many new universities have been opened in the last few decades in the world and university education has become widespread in societies. In the meantime, many academic institutions have been created in Turkey as well to rectify the country's education deficit. The foundation universities and privately owned universities are among those institutions. They turned to be better educational facilities over time with the formerly existed similar institutions. In parallel with this diversification, more academic freedom can be expected to exist. These new academic institutions have partially made a social awareness. However, the intense pressure by the governmental authorities commenced to be exerted on institutions which are not directly funded from the public budget, compared to universities run by public budget. It is proved that, being a private and/or foundation university and being not funded by the public budget have not been a guarantee to be exempted from the governmental pressure and have not been a proper base for academic freedom regarding the Turkish example. The Turkish example may prove that, in the countries where there is no separation of powers or it is simply on paper, academic freedoms can possibly be restricted and even academic life can completely be taken under control. The basic allegations may be that these institutions are supporting "terrorism", violating "state secret" and deteriorating "community's security".^{1,2}

The academy and the society interact much faster than before thanks to the developments in the field of communication, the mushrooming of the number of universities and the rapid circulation of information. However, academic freedoms are directly correlated with the general freedom levels of countries, and these freedoms may fall within the limits allowed by politics. Seemingly a serious tendency towards authoritarianism is observed in recent years all over the world. Despite the regular and free elections; academic freedoms, freedom of the press and other basic prerequisites of democracy face threats and more serious repressions in fragile democracies. New communication technologies are progressively used by such regimes, kind of control mechanisms over the entire society.

Turkey Case

Turkey, during the Cold War had positioned itself on the side of the Western democracies. With the contribution of this, academic rights and freedoms developed in a remarkable way since the 1940s. However, with the changes in recent years, all the gains in academic freedoms to date have been lost. Albeit the Turkish government made excessive efforts

¹ <https://unesdoc.unesco.org/ark:/48223/pf0000116345>

² <http://www.leeds.ac.uk/educol/documents/00003857.htm>

to give a healthy democracy image, it restricted the freedoms in the academic field, as in all fields.³ As can be clearly seen in the reports published by Reporters without Borders, Turkey declined continuously in the field of press freedom in the last decade and dropped to 154th place among 180 countries.⁴ However Turkey is a country which has accepted freedom of the press since 1908 by the constitution, and legal restrictions in this regard are also quite exceptional. Similarly, the Constitution of the Republic of Turkey and the related laws guarantee academic freedom with strong and binding provisions. Academic freedoms, despite partly being interrupted during four military interventions' time, had its own tradition formed after the Second World War. In particular, academicians' job security was protected by the constitution, and academics could not be dismissed without any court order. In fact, although these law articles were supposedly still valid, many contradictory applications were made and then these law articles were eliminated. Although there were serious interventions in freedoms during the periods of military interventions, the decline in academic rights in the last five years has never experienced before.

Global Public Policy Institute and Scholars at Risk Network prepared an Academic Freedom Index, which evaluates the academic freedoms of countries. According to this index Turkey is placed among the countries in which academic freedoms are mostly restricted. The highest score in the index is 1, Turkey is among the countries with the most restricted academic freedom scoring 0.097. As indicated in the same index, Turkey in the post-2013 period, has a remarkable rapid deterioration in every area.⁵

The crucial question is how Turkey lost the altitude in the field of academic rights and liberties? The Constitution was actually suspended after "Corruption Operations" in December 2013. Sure, not all the powers in the law were granted to Erdogan himself and his party, but practically they fell into the hands of the executive, and therefore in the hands of Erdogan himself and his party which controlled the majority of the parliament. Erdogan used the Corruption Operations of 17-25 December 2013 as an 'opportunity' to suspend the constitution as de facto. All authority, even if it is not given by law, is in the hands of the executive. Thus, the independence of the courts and the partial autonomy of the universities disappeared. According to the current Constitution, the Council of Higher Education (Yüksek Öğretim Kurulu in Turkish and its Turkish abbreviation, YÖK is going to be used hereafter) is authorized to foster, especially, the physical facilities of the universities. However right after the Constitution's de facto annihilation, the Council

³ <https://www.insidehighered.com/news/2020/03/30/new-index-rates-countries-degree-freedom-scholars>

⁴ <https://rsf.org/en/ranking>

⁵ https://www.gppi.net/media/KinzelbachEtAl_2020_Free_Universities.pdf

of Higher Education is being used by Erdogan himself as a mere tool to subjugate all the universities.^{6,7 8, 9}

Erdogan dismissed the President of YÖK in November 2014, three months after becoming President, and appointed someone from his circle. This was a practice never before done. Immediately after the coup attempt in July 2016, the President of the Higher Education Council was dismissed. The systematic pressure which was exerted on universities between 2014-2016 had a new elevation right after the military intervention attempt of July 15, 2016. The result was an intense liquidation and closure of foundation universities which were deemed as an opposition after July 15 2016. Until July 15 military intervention attempt, the government (Erdogan himself) could not dare to expel the academics directly from their professions. It is understood that the liquidation lists were prepared for the political opponents during this period of 2014-2016. With the new regulation prepared by YÖK for Foundation Universities in November 2015, it made it easier to close these universities. From that date until July 2016, the pressure in the country has increased steadily. A Romanian social scientist forced to leave Turkey in this period likened the situation in Turkish Universities to the Ceausescu's Romania.^{10,11}

Actual situations can make laws meaningless and dysfunctional. A typical example was that Turkey experienced. After December 2013, intense pressures were exerted and obstacles started to be fabricated for 15 foundation universities, which are associated with the Gülen Movement. Government and the partisan media have targeted directly these universities and asked students to leave these universities. During this period, faculty members of some state and foundation universities were detained and arrested as well for being allegedly close to Gülen circle. The allegations were “establishing a parallel state structure” and “being a member of a terrorist organization”. Actually, even a tiny proof for those people couldn't be brought into the court as being part of terrorist organization and terrorist act. Investigations were not carried out according to regular-

⁶ <https://www.hrw.org/news/2018/05/14/turkey-government-targeting-academics>

⁷ <https://www.eurasiareview.com/07082018-turkey-academic-freedom-under-threat/>

⁸ <https://www.hrw.org/news/2018/05/14/turkey-government-targeting-academics>

⁹ <https://www.eurasiareview.com/07082018-turkey-academic-freedom-under-threat/>

¹⁰ <https://www.timeturk.com/rektor-gorevden-alindi/haber-90158>

¹¹ <http://bianet.org/english/human-rights/171584-situation-of-academia-in-turkey-reminds-me-of-ceausescu-s-romania>

legal procedures. The people who were arrested were already public officials and were performing their jobs using the legal entitlements.^{12,13,14,15}

The foundation universities have faced a number of obstacles: Stopping the public bus services to their campuses, cancellation of building licenses, seizing plots previously hired from the treasury, not allowing new building constructions on their own plots, demolishing previously licensed buildings and so on. The partisan media threatened YÖK explicitly and made campaigns for the closure of these universities. In June 2016, attacks began on 13 foundation universities with local court decisions. Simultaneously, the courts dismissed the administration of the founding foundations of these universities and appointed custodians (kayyım in Turkish) in their place. They changed the administration of these universities through the custodians.^{16,17,18,19}

In January 2016, a group of academics, who called them “Academics for Peace Initiative” signed a declaration (with total of 2,212 signatures home and abroad) expressing that the use excessive military force by state in the Southeast to suppress violence results in destruction of cities and civilian casualties. The government and the partisan media accused the academics, who signed this declaration, with treason. Soon after, the processes of detention, dismissal and trial of the above-mentioned academics began. After July 2016, 549 of these academics were dismissed from public office, resigned or retired. A total of 822 people was sued, four were arrested, and a total of 206 people were sentenced to prison terms ranging from 15 months to 36 months. The appeal process for the cases is ongoing.^{20, 21}

The Total Destruction of the Academic Life: Post July 15th Process

In a July 15, 2016 in Turkey encountered a military intervention attempt. According to the evidence, Erdogan evaluated this coup attempt, which is highly likely to be a fiction, as “a

¹² <https://www.haberler.com/paralel-yapi-operasyonu-prof-dr-bahattin-adam-ve-7338596-haberi/>

¹³ <http://www.hurriyet.com.tr/gundem/suleyman-demirel-universitesi-eski-rektoru-hasan-ibicioglu-tutuklandi-40071200>

¹⁴ <https://www.haberler.com/sutcu-imam-universitesi-eski-rektoru-tutuklandi-8431585-haberi/>

¹⁵ <http://www.aljazeera.com.tr/haber/sifa-universitesi-rektoru-tutuklandi>

¹⁶ <https://www.yeniasir.com.tr/gundem/2016/01/02/21-hastane-sgk-kapsamindan-cikarildi>

¹⁷ <https://www.ntv.com.tr/turkiye/fatih-universitesine-kayyum-atandi,KfhO-ABUE0KHbzKBrB3lnw>

¹⁸ <https://www.sabah.com.tr/gundem/2016/07/04/8-universite-400-okula-kayyum-atandi>

¹⁹ <https://www.cnnturk.com/turkiye/mevlana-universitesinin-bagli-oldugu-vakfa-kayyum-atandi>

²⁰ <https://barisicinakademisyenler.net>

²¹ <https://www.timeturk.com/21-akademisyen-gozaltina-alindi/haber-112260>

favor from God”. Immediately, a three-month the State of Emergency (in Turkish it is Olağanüstü Hal and its Turkish abbreviation, OHAL is going to be used hereafter) was declared and the Government was given the authority to issue an OHAL decree. However, with extensions, OHAL continued for two years. In this process, many 'Decrees Having Force of Law' (Kanun Hükmünde Kararname in Turkish and its infamous Turkish abbreviation is KHK, and KHK is going to be used hereafter), which are totally contrary to the Constitution and the laws, were issued. Fifteen (15) foundation universities were closed and all their assets were confiscated with the KHKs, as if foundation universities had planned and orchestrated the coup attempt. In the following days, the rectors and other administrators of these universities and many academic and administrative staff were detained and arrested. About 2,500 academics working at foundation universities lost their jobs. ^{22,23,24,25}

With the KHKs published in the 2016-2018 State of Emergency period, the total number of 6,081 academic staff and 1,559 administrative staff were dismissed from state universities. Names these personnel were also announced in nationwide-circulating newspapers. The majority of these people were investigated for the alleged “membership of a terrorist organization”, many were detained and some were arrested. Currently, these academics (including those who have not been sued or acquitted) are prohibited from working in public institutions. They and their spouses cannot get a passport and cannot leave the country. Even though the State of Emergency was lifted legally it is still in force. For instance, universities were given the authority to terminate the academic staff's contracts without any legal cause. Every extraordinariness have turned to ordinariness in Turkey. ^{26,27,28,29,30,31,32,33}

²² <http://bianet.org/bianet/ifade-ozgurlugu/198990-akademide-ihraclar-6-bin-81-e-yukseldi>

²³ <http://bianet.org/english/law/180165-university-chancellor-elections-lifted-erdogan-will-appoint-chancellors>

²⁴ <https://www.sabah.com.tr/gundem/2016/08/06/meliksah-universitesinde-buyuk-operasyon>

²⁵ <https://bianet.org/bianet/hukuk/192792-kapatilan-fatih-universitesi-calisanlari-icin-gozalti-karari>

²⁶ <https://www.dw.com/tr/istanbul-ve-konyada-akademisyenlere-g%C3%B6zalt%C4%B1/a-19488257>

²⁷ https://www.ntv.com.tr/turkiye/yildiz-teknik-universitesinde-feto-operasyonu-70-akademisyen-gozaltinda,DXr4Q_7UxUWGU30PG4n2bQ

²⁸ <http://www.sonangazetesi.com/haber/3533/5-ilde-31-akademisyen-gozaltina-alindi/>

²⁹ <https://www.gzt.com/haber/istanbul-universitesinde-feto-operasyonu-44-akademisyen-gozaltinda-2513986>

³⁰ <https://www.haberler.com/eski-rektor-prof-dr-savas-in-da-aralarinda-8670314-haberi/>

³¹ <https://www.memurlar.net/haber/604340/izmir-katip-celebi-universitesi-nde-36-kisi-gozaltina-alindi.html>

³² <https://www.aksam.com.tr/guncel/erciyes-universitesinde-100-personele-yakalama-karari/haber-542204>

³³ <https://www.yenicaggazetesi.com.tr/dicle-universitesine-buyuk-operasyon-77-gozalti-143645h.htm>

Violations and restrictions on academic freedom have affected and continue to affect not only academics but also thousands of local and foreign students. The students of the universities that were closed suffered serious grievances and some of them ended their education completely, some of them had to study in other departments. Many domestic and foreign students have lost their scholarships since foundation universities and foundations are closed down. Some foreign students were deported. The scholarships of thousands of students, who have previously received scholarships from state institutions and went abroad for graduate and doctoral education, have been canceled with KHKs.

All those extrajudicial practices turned into a complete genocide for the academics in Turkey. People were treated as “terrorists” only because of their thoughts, many were detained, some were arrested, lost their jobs. Applying to the court to return to their jobs was also prevented by the governmental decrees. There is no longer any “independent court” in the country.^{34,35,36,37}

Interestingly, Erdogan government's usurping of dissident academic institutions and firing and imprisoning dissident academics were considered uncontested by different opposition groups in the country. The atmosphere of fear caused by the punishment of any objection has an impact on this, but the fragmentation of the opposition and contradictory attitudes towards fundamental rights are also influential bringing that result. The Constitutional Court, which is tasked with protecting the law, also bowed to pressures and refused to examine OHAL decrees' and KHKs' compliance with the law. Turkey, like many other authoritarian regimes, strives pretty much to give the message to the democratic world that everything is in accordance with the laws. Interestingly, the European Court of Human Rights has also relieved the Erdogan regime's hand by rejecting legal cases of unlawful dismissals, property violations and freedom violations on the grounds that "domestic legal process have not exhausted yet".^{38,39,40} Frankly

³⁴ <http://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm>

³⁵ <https://stockholmcf.org/crackdown-on-education-sector-in-turkey-victimized-nearly-100000-teachers-and-academics/>

³⁶ <https://www.resetdoc.org/story/blow-blow-assault-academic-freedom-turkey/>

³⁷ <https://iamcr.org/news/travel-ban>

³⁸ <http://www.agos.com.tr/tr/yazi/19961/aihm-turkiyeyi-kurtaramaz>

³⁹ <http://www.hukukotesi.com/aihm-basvurulari-isiginda-baris-icin-akademisyenler-ve-ohal-komisyonu/>

⁴⁰ <https://www.birikimdergisi.com/guncel/9948/olaganustu-hal-sabit-bir-hale-getirilmistir-riza-turmen-ile-soylesi>

speaking, the domestic legal process is in an impasse in Turkey and domestic legal processes may take tens of years, if the current situation regarded.

Improvement and betterment expectations after the OHAL process in academic freedom in Turkey brought a serious disappointment. Illegal practices, which are difficult to be applied by OHAL decrees and KHKs, are now made by regulations, Presidential decrees or court decisions. The latest example of this was the decision taken to close the Istanbul Şehir University, whose founding and patronage was ex-Prime Minister Ahmet Davutoğlu. After Ahmet Davutoğlu's decision to establish an opposing party, the administration of the university was seized by citing the previous loans borrowed from the public banks. Afterwards, the liquidation process of the university was started by confiscating the founding foundation.^{41,42}

Unfortunately, this whole-long process completely destroys academic freedom in Turkey, and it continues to be institutionalized. The efforts of academics, who can reach democratic countries and hold on to life, to announce this process to the free world have not been successful enough. Some academic circles, which are dominating opposition and in close cooperation with the government, have serious contribution to this failure and hammering the last nail in the coffin of the academic freedom. The efforts are very weak and inadequate to depict the entire picture of the demise of the academic freedom to the world public opinion.

As can even be seen in a material knowledge mentioned in this short report, academic freedom is always under question in dictatorships and countries where democracy is not established. Academic freedoms in such countries are prone to the danger of curtailments by the governments' allegations of idiosyncratic conditions of the countries.

⁴¹ <https://tr.euronews.com/2019/12/19/davutoglu-erdogan-gerilimi-mi-istanbul-sehir-universitesinde-ne-oluyor>

⁴² <https://www.sozcu.com.tr/2019/gundem/son-dakika-sehir-universitesi-marmara-universitesine-devredildi-5519645/>