

Stay Away from Using your Constitutional Rights

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The [Academics for Peace Petition](#) is a petition signed by over 2,200 academics in and outside Turkey in 2016. It became, however, more than a simple petition. This collection of signatures put in motion mass criminal proceedings, job dismissals and many other forms of administrative and social sanctions against hundreds of academics in Turkey. This reaction is unprecedented in terms of scale and effects in contemporary times.

On 26 July 2019 — three years after the publication of the petition— the Turkish Constitutional Court (TCC) delivered a landmark judgment in the case of [Zübeyde Füsun Üstel and Others](#). In this judgment, the TCC found that the criminal prosecutions and imprisonments of signatory academics violated their constitutional right to freedom of expression under the Turkish Constitution.

In this post, on the first anniversary of the TCC's judgment, we survey the legal effects it has had on the reinstatement of the academics' rights. We find, that whilst the judgment was capable of putting an end to the mass criminal trials of academics, that it has, until now, had no discernible effect on the full reinstatement of their civil rights.

The judgment

When the TCC announced its judgment in the summer of 2019, criminal prosecutions against hundreds of academics were ongoing. [In 204 out of 822 cases](#), several Assize Courts had already found academics guilty of terrorist propaganda under Article 7(2) of the Anti-Terror Law, or of 'aiding and abetting a terrorist organisation' under Article 314 of the Turkish Criminal Penal Code for signing the petition. In these criminal trials, signatories were [sentenced to](#) imprisonment ranging from 15 months to 36 months (in most cases the sentences or the execution of the sentences were suspended). Dozens of signatories had lodged individual applications with the TCC soon after the verdicts against them had become final. Among them was the application by Prof. [Dr. Füsun Üstel](#), a political scientist, who had been the first (and the last) of the petitioners to serve a 15-month prison sentence. She had been [released](#) on 22 July 2019 after serving two and a half months of her sentence.

The TCC selected nine of the unknown number of pending applications before it, including that of Üstel. They were [referred](#) to the General Assembly of the TCC. On 26 July 2019, with a split vote of eight to eight the General Assembly of the TCC found a violation of Article 26 (freedom of expression) of the Turkish

Constitution. The split was decided by the president's vote — [counted twice](#) in the case of a tie.

The General Assembly of the TCC debunked all the assumptions that formed the basis for the criminal prosecutions and convictions against the signatories of the petition. There was an emphasis on the lack of evidence for the claim that the petition was initiated in response to 'a call [...] made by a senior member of the PKK terrorist organization' (para 89-92). It underlined the call of the petition to the public authorities to end the conflict and to act in accordance with the law as counter-evidence to the claim of the lower courts that it constituted 'terrorist propaganda' (para 98). It noted that 'one-sided' criticism directed against state authorities did not suffice as a justification for intervention in the freedom of expression of the petitioners (para 96, 128). The judgment further stressed the link between the petition and academic freedom, and 'the vital importance' of the participation of academics in the public debate on 'sensitive political matters', even if their interventions fall outside of their academic expertise (para 110-113).

Despite these important findings, the TCC did not deem it necessary to examine one core argument — namely that the criminal prosecutions pursued 'ulterior motives' to punish dissent in the country (para 141). The TCC thus avoided addressing the issue of whether the criminal prosecutions and convictions of signatories constituted a misuse of the restrictions permitted by the Turkish Constitution. The judgment also contains several opinions noting the majority's disagreement with the petition's tone.

The two dissenting opinions annexed to the [judgment](#) took radically different views from the majority. The first dissenting opinion, signed by four judges, found that the act of signing of the petition was against 'the indivisible unity and integrity of the state and the nation'; therefore the petition did not even fall under the scope of the constitutional protection provided by the freedom of expression (para 2). The second opinion by the four other dissenting judges acknowledged that the petition did not *literally* legitimize or praise the coercive, violent and threatening actions of terrorist organizations or encourage the employment of such methods, which are the necessary elements of the crime of 'terrorist propaganda' under Turkish law. Nevertheless, this was not enough, for the dissenters to exclude the possibility that the petition actually incited 'the members or sympathizers of terrorist organization' to violence against the state and its security forces because it was published at a time when the security forces were carrying out a large-scale anti-terror operation of 'high public importance' under 'severe circumstances' (para 36-40).

Given the strong criticism of the judgment by eight minority judges resonating not only with the views adopted by the lower courts but also with the government's discourse, the narrow majority decision came as a welcome surprise. It perhaps also explains why the TCC avoided other applications brought before it. Some academics applied to the TCC for different violations of their rights. For their pretrial detentions, for instance, or for unlawful dismissals from their jobs based on state of emergency decrees. To date, TCC has not concluded any of these individual applications, including one dating back to April 2016 against the pretrial detentions of four academics. It also declared the applications of those dismissed by state of emergency decrees inadmissible and left their examination to [the State of](#)

[Emergency Inquiry Commission](#), an *ad hoc* body established after the attempted coup of 2016 to review measure taken during the state of emergency, including the dismissals of public servants. This is despite the fact that the academics for peace petitioners have no connection with the failed coup attempt and the Commission has no authority to examine their complaints concerning the violations of freedom of expression and is thus incapable of restoring rights.

The legal effects of the judgment beyond the criminal proceedings

Following on from the TCC judgment, on 6 September 2019 an Assize Court for the [first time](#) acquitted a signatory of the petition, referring to the binding nature of the judgment of the TCC. Other Assize Courts followed suit, albeit with express [reluctance](#) in some cases. In cases where the verdict was already final, the acquittal orders were made after re-trials. Now, a year after the judgment, this process is still ongoing. There are still cases waiting before courts of appeal for the reversal of the conviction orders. It seems, however, that it is now just a matter of time before criminal proceedings against the signatories of the petition that were launched before dozens of courts across the country will finally come to an end.

Punishments, however, were not only meted out at the end of criminal proceedings: After the government [labelled](#) signatories as ‘traitors’ and ‘supporters of terrorism’, several academics were [arrested](#) from their homes by the police and released after having testified before the prosecutor. [Four academics](#) were placed in pretrial detention in March 2016. They had read out a press statement condemning the governmental attacks against the signatories. Others were [confronted](#) with more direct threats, intimidation, and mobbing in their workplaces or in the towns they lived. [Several universities](#) instigated disciplinary proceedings and dismissed signatory academics or forced them to resign or retire, while other institutions suspended impending promotions. Research funding was [cut](#) or fellowships were cancelled. More significantly, following the failed coup attempt in July 2016, [406 signatories](#) of the academics for peace petition were removed from public service by state of emergency decrees, alongside over 130,000 civil servants. They were accused of alleged ‘membership, association, connection or contact with terrorist organizations or bodies, entities or groups that are deemed to have acted against the national security of the State’ even though the petition was released long before the attempted coup and was unrelated to it.

These sanctions affected academics unevenly. Depending on their university or positions, form and intensity of the sanctions varied. In response, affected signatory academics brought scores of legal actions and complaints, before relevant administrative bodies or courts, including the TCC. Most of these remain pending to this day. Although it has been a year since the TCC found that signing the Peace Petition was an exercise of freedom of expression that was protected under the Turkish Constitution, the judgment has had no effect on such pending administrative cases and applications concerning other forms of sanctions.

The academics' pending cases before the State of Emergency Inquiry Commission is a striking example of the non-effect of the TCC's judgment beyond criminal prosecutions. According to the information on its [website](#), the Commission has received 126,300 applications in total. Having started operations on 22 December 2017, it has delivered 108,200 decisions. Not one of those decisions is on an application made by a signatory of the academics for peace petition.

The silence of the Commission is particularly worrying. Not only is it almost three years since the signatories made their applications, but the delays amount to the continuation of punishment based on terror-related accusations made by the executive organ whose state of emergency decrees were put in place primarily to address the failed coup. Considering the TCC's judgment, how one single act can simultaneously be considered an exercise of freedom of expression by one body, and continue to be sanctioned as an act linked to 'terrorism' by another within the same legal order begs many questions.

Where to go from here?

On the first year anniversary of the TCC judgment in the case of *Zübeyde Füsün Üstel and Others*, the wide-ranging administrative, social and economic sanctions endured by a significant number of academics, be they sociologists, constitutional law scholars, international lawyers, anthropologists, historians, mathematicians, physicians or engineers persist. The TCC judgment is likely to put an end to all criminal trials of academics for signing the petition, but it has not addressed the wider issue of ongoing sanctions that these individuals continue to endure for years on. Nor do we see clearly which judges' views will prevail and mark the outcomes of the ongoing legal struggles of the academics for the full reinstatement of their constitutional rights – those of the majority or those of the dissenting judges. The message sent is as loud and clear as it is daunting: stay away from putting your signature to petitions critical of government policies, even if doing so is your constitutional right.

