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A Test for Associations in Turkey

PEN Norway's Turkey Indictment Project

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At PEN Norway, we are studying journalist and civil society-related cases from the last six years in Turkey by examining the foundation document of the case: the indictment.

Since January 2020, with an international team of judges, lawyers and scholars we have been examining indictments in prominent media and civil society cases, including Cumhuriyet, Büyükada and the Gezi Park trials.

Each report focuses on one indictment. A group of legal and human rights experts from six different countries will have assessed 22 indictments' compliance with local regulations and international standards by the end of 2021.

Our objective is to provide a tangible ground for discussions concerning the crisis of rule of law in Turkey and support dialogues that aim to improve the standards and put in place training in indictment-writing for Turkey's prosecutors and judges. You can find all published reports and articles (including our final report of 2020) on our website: norskpen.no.

Caroline Stockford, PEN Norway's Turkey Adviser, leads the project and lawyer Şerife Ceren Uysal is the Indictment Reports Supervisor.

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About the author

Seyhan Avşar is a journalist working for Turkey's Cumhuriyet newspaper. To date, her articles have won awards from the Journalists' Association of Turkey, Istanbul Journalists' Association, and the Association of Progressive Journalists. She has also won the Metin Göktepe prize for journalism.

A Test for Associations in Turkey

On 21 July 2016, a state of emergency was declared across Turkey, following the attempted coup a few days earlier on 15 July 2016. However, while the coup threat subsided, the state of emergency was extended seven times, on every occasion for a period of three months. The state of emergency lasted for two years, finally ending on 17 July 2018.

Repercussions for democracy and human rights

For those engaged in the struggle for democracy and human rights in Turkey, the state of emergency came at a high price. Over the two-year period, the cabinet issued thirty-six statutory decrees, tens of thousands of people were subject to judicial and administrative proceedings and thousands of civil servants were sacked.

Opposition groups tarred with the Fetullah Gülen brush

Numerous organisations and institutions were closed by statutory decree during the state of emergency period, including five news agencies, 17 TV channels, 22 radio stations, 46 newspapers, and 1,748 associations and charitable foundations.

Proclaiming that they were in a “Fight against the Fetullah Gülen Terrorist Organization (FETÖ),” the government tarred opposition groups whose stance they disliked with the same brush, branding associations and foundations defending democracy, human rights and LGBTI+ equality with the same iron.

Organisations accused of “being in contact and affiliated with terror groups ...” were closed down, their assets were confiscated and their doors were sealed off in police raids.

First Women's news agency also closed

Among the organisations closed in this period were: JINHA, the world’s first proactive women’s news agency; the Tigris News Agency (DİHA), which had long been targeted by the government, Zarok TV, a children’s channel broadcasting in Kurdish, and Özgür Radyo (Freedom Radio), an alternative radio station.

Equipment belonging to the organisations was confiscated by police, including vital journalistic apparatus like cameras and recording devices. None of the organisations were able to broadcast under the same name again. The women at JINHA later

regrouped to establish another news site, JINNEWS, and continued to published their work.

"Intimidation won't stop us reporting"

Ayşe Güney, the editor of JINNEWS, emphasised that the government's fear of the women's struggle was the main reason for the closure of organisations that covered women's news, saying, "The women's struggle is growing and JINHA was part of that struggle. JINNEWS is another part of the struggle. It is an organisation that gives visibility to the women's fight.

The state doesn't want people to know about the harassment, violence and rape endured by women, especially in the region (east and southeast Anatolia). But, despite all their policies of repression and intimidation, we will carry on reporting the news. We will be here for as long as women continue to resist. We are growing with them. Stopping or going backwards is absolutely not an option."

Legal bodies also in the firing line

The government didn't miss the opportunity to harness the state of emergency as a means of shutting down legal associations pursuing justice. As a result, the Progressive Lawyers Association (ÇHD), founded in 1974 to prevent attacks on fundamental rights and human dignity, especially the right to life, was closed down, along with the Lawyers for Freedom Association, founded in the 2000s to fight against violations of the rights of Kurdish people.

While the closure proceedings were in progress, the Lawyers for Freedom Association continued its work under the name of the Lawyers for Freedom Platform.

When the state of emergency ended, the group was re-established under another name, the Lawyers Towards Freedom Association. However, events unfolded somewhat differently for the Progressive Lawyers Association. Following the decision to shut them down, the Progressive Lawyers Association issued a statement declaring that associations could only be closed by a judicial decree and that, therefore, they did not recognise the closure ruling. Furthermore, they announced that an office was not necessary for them to continue with their work, vowing to carry on their struggle for justice and law in every corner of life.

"A de facto embargo"

Following the end of the state of emergency, the Progressive Lawyers Association re-registered with the Central Bureau of Associations under the same name. The Ankara Chief Public Prosecutor's Office objected that they were prohibited from doing so and filed for legal action. In the words of Nergiz Tuba Aslan, General Secretary of the Progressive Lawyers Association: "We registered at the Central Bureau of Associations. We even held our general assembly. But the Ankara Chief Public Prosecutor filed an annulment action, claiming that we could not re-establish our association with the same name. The court that heard the case decided in our favour, arguing that the Progressive Lawyers Association had been closed, not by a court decision, but by a government one. This time the prosecution appealed the decision. We are subject to a de facto embargo.

But we won't surrender the name we have had since the times of Halit Çelenk (the lawyer who represented the Turkish revolutionary leader Deniz Gezmiş and his friends, Yusuf Aslan and Hüseyin İnan) and his associates."

'The gains accrued over many years can't be erased by one official seal

Women's and LGBTI+ associations were also among those closed by the statutory decrees, including, Adıyaman Women's Life Association, Anka Women's Research Association, Bursa Panayır Women's Solidarity Association, Ceren Women's Association, the Rainbow Women's Association, the Kurdish Women's Congress, Muş Women's Framework, Muş Women's Association, Selis Women's Association and Van Women's Association. The doors to their premises were closed off with an official seal and none of the groups were re-established under the same name. In reaction to these closures, women declared that the gains, experience and dreams that had been accumulated over so many years could not be erased by one official seal.

Fatma Aslan, who has been involved in the struggle for women's and LGBTI+ rights for many years, said that women and the LGBTI+ community entered a long, difficult period after their associations were closed, "Using the excuse of the state of emergency, the government took aim at associations who were opposed to violence against women and LGBTI+ individuals, who offered legal, economic, psychological and social solidarity to women, delivered literacy courses, organised educational seminars for girls and women, published scores of materials on women's rights, held panels and symposiums and gave educational bursaries to girls. Their entire assets were also seized in an attempt to undermine the women's struggle. But we came out of this fight even stronger. It might be true that we can't operate under the names of

our closed associations, but we don't need a name or premises for our work. Our women are continuing their work and are stronger than ever.”

Associations still under fire as the state of emergency ends

The declaration of a state of emergency in 2016 was accompanied by a systematic dismantling of the right to organise and to freedom of expression. Changes to the Law of Associations made it compulsory to handover membership identity details to the Ministry of the Interior. Then, in December 2020, organisations were faced with a new danger.

The ‘Bill on the Prevention of Financing the Proliferation of Weapons of Mass Destruction’, presented by the Justice and Development Party with the support of the Nationalist Movement Party, contained controversial provisions relating to civil society. It was claimed that the bill’s purpose was to set out procedures and principles for implementation of the United Nations Security Council (UNSC) decision to impose sanctions in support of their resolution, ‘Prevention of the Financing of Weapons of Mass Destruction’; but the opposition objected to provisions in the proposed law that authorised the Ministry of the Interior to impose sanctions on associations without any judicial ruling.

On 27 December 2020, the law was ratified by the Turkish Grand National Assembly, with 254 votes in favour and 113 votes against.

Associations threatened with regulatory supervision

According to this law, those convicted of collecting funds to directly or indirectly fund terrorism, of manufacturing and trading in drugs or stimulants, or of money laundering, will not be able to take up positions in the bodies of associations other than in the general assembly.

Additionally, if persons serving in bodies of the association other than the general assembly, or any other relevant staff, are investigated in connection to these three crimes, the bodies may be suspended by the Minister of the Interior as a temporary measure. In cases where this measure is insufficient and delays are considered to be problematic, the Minister of Interior may temporarily suspend the entire association from its activities and apply immediately for a court order.

The court will rule on the temporary suspension from activity within 48 hours. The district governor will apply to the magistrates' court in the location of the headquarters of the association, requesting the appointment of a state administrator

to take over from the suspended bodies and their members. The administrator will continue with this duty until the verdict of the legal action has been finalised.

Freedom to organise under threat

Opposition parties have pointed out that the accusation of “directly or indirectly serving terrorism” in Turkey is open to interpretation and used to repress civil society organisations, also highlighting the large numbers of lawsuits filed on unfounded accusations, especially against those opposed to the government. They have also objected that every year 300,000 people, including journalists, NGO workers and members of professional bodies are investigated for membership of an illegal organisation alone, and that the appropriation of an entire organisation due to an investigation into one person poses an out-and-out threat to organisation.

Opposition parties have also complained that the law envisages large numbers of administrative fines for contravening the fundraising terms, which will severely hamper the ability of associations to provide support funded by charitable donations. As the work of women's and LGBTI+ organisations is largely funded by charity, they will be particularly affected by the severe restrictions.

"Unconstitutional"

The main opposition party and numerous NGOs have applied to the Constitutional Court on the grounds that the law's provisions on associations are unconstitutional. MP Zeynel Emre, the Republican People's Party spokesperson on the Parliamentary Justice Commission, declared that it is not possible to say that civil organisations can operate freely in Turkey all the while the clauses relating to associations are enshrined in law.

Emre said, “According to this ruling, if a lawsuit in relation to certain crimes is filed against any person in the management of an association, the Ministry of the Interior will appoint an administrator to take over the association. There are currently 850,000 criminal cases in progress across Turkey. Many people are already on trial. Most of the lawsuits that are filed result in acquittals. There are 16 board members in an association. It's unacceptable to force an administrator on them just because one of them is subject to legal action. There is no rhyme or reason for it. The ultimate aim is to control the associations. We have taken the articles on associations in this law to the Constitutional Court. Our Constitution guarantees freedom of association.”

Also, 620 NGOs published a declaration, entitled, “The Bill is Contrary to the Constitution and the Freedom to Organise”, which was part of a social media

campaign against the proposals, using the hashtag #CivilSocietyCannotBeSilenced. The declaration stated that the law would affect almost 120,000 associations in Turkey, at least 1.5 million adults who are members of these associations, which if you add their families to the equation makes a total of at least 10 million people. The declaration warned, "If this bill in its current state becomes law, one signature will be all it takes to close down any charitable foundation or association, especially those working for human rights, but also those engaged in work for the rights of women, refugees, LGBTI+'s, disabled persons, children and young people, various legal associations, associations fighting for social change, groups that rely on fundraising to deliver social support, citizens' groups, sports clubs and the associations and charitable arms of different faith groups. As such administrative procedures would normally last many years, in practice a 'rapid closure' process will have been created." Unfortunately, these warnings have not been heeded.