



## **The Science Academy Report on ACADEMIC FREEDOMS: 2017-18**

### **Introduction**

Published for the fourth time this year, the aim of the Report on Academic Freedoms prepared by the Science Academy is to draw attention to the developments in the universities and research institutions in the country, especially highlighting the practices that do not comply with the freedom of science and the autonomy of higher education institutions. The Academy also hopes to contribute to the formation of a collective memory on the issue. Sadly, the 2017-18 Report has been yet another register highlighting adverse events. The European Commission's 2018 Report on Turkey<sup>1</sup> summarizes the present situation in a concise manner. Under the heading "Judiciary and fundamental rights" (Chapter 23), the report states the following findings on freedom of speech:

*"Turkey is at an early stage in this area and the serious backsliding continued. The scope of restrictive measures adopted under the emergency decrees has extended over time to many opposition voices in the media and in academia, contrary to the principle of proportionality. Freedom of expression has come under serious strain. Legislation and practice do not comply with European Court of Human Rights case-law. Criminal cases against journalists, human rights defenders, writers, or social media users, the withdrawal of press cards, and the closure of numerous media outlets or the appointment by the government of trustees to administer them, are of serious concern. These are mostly based on selective and arbitrary application of the law, especially provisions on national security and the fight against terrorism. The high number of arrests of journalists -over 150 journalists remain in prison- is of very serious concern. The Internet Law and the general legal framework continue to enable the executive to block online content without a court order on an inappropriately wide range of grounds."*<sup>2</sup>

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2018 Communication on EU Enlargement Policy, [Turkey 2018 Report](#), SWD(2018) 153 final.

<sup>2</sup> EU Turkey Report 2018, p. 35.

The Science Academy's latest statement on freedom of speech and freedom of science<sup>3</sup> of February 2018 had made a specific emphasis on these problems, underlining the negative impacts of such restrictions<sup>4</sup> on the development of science in Turkey:

*"The expression of any opinion critical of the government's present policies is now met with the charge of supporting terrorism, and this allegation itself is considered enough for the related persons to be detained or dismissed from their offices. It poses another serious problem that claims about faculty members being dismissed unjustly or because of their political view have not been subject to an efficient process of examination and evaluation so far.*

*Can we talk about any freedom of science where the freedom of speech is under such tremendous pressure? As it has been emphasized many times on previous announcements of the Science Academy, the freedom of speech is the foundation of the freedom of science; and it is the basic constituent of a tolerant and pluralistic society. This foundation is indispensable for all branches of science to freely form and teach scholarly views and knowledge, and to disseminate these through academic publications and by publicly expressing opinions. It is our responsibility to remember and remind that practices incompatible with a democratic society, limiting rights in an excessive or fundamental way, are violating both the Constitution of the Republic of Turkey and international conventions that we are a party to, including the European Convention on Human Rights."*

Indeed, the data of a research<sup>5</sup> conducted by *Freedom for Academia* indicates that our concerns have been right. The research compares the number of publications from Turkey in foreign journals in 2016 and 2017, in various disciplines<sup>6</sup>. It is found that there is an overall decrease by 28% in all fields, while the sharpest falls are for social sciences with a decrease of 44% and medicine with a decrease of 36%. According to the report, when the same review is conducted for the period 2012 to 2015 it is observed that there was an annual increase in academic output of approximately 5%. The report states that this situation may be attributed to various factors: there are many scientists who have been dismissed from universities;<sup>7</sup> the negative impact on productivity of the psychological stress felt by those academics who remain in the university; refraining from making publications on controversial subjects, especially in social sciences; the decrease in funds

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<sup>3</sup> The Science Academy [Statement on the Freedom of Speech and Freedom of Science, February 2018](#).

<sup>4</sup> See, for example, detailed [news](#) on Turkey by Human Rights Watch.

<sup>5</sup> <http://www.freedomforacademia.org/the-short-term-effects-of-the-large-scale-purges-carried-out-by-the-akp-government-on-the-research-output-of-turkey-based-academics-2/>

<sup>6</sup> The disciplines that have been surveyed are medicine; engineering; physics and astronomy; biochemistry, genetics and molecular biology; materials science; mathematics; social sciences; pharmacology, toxicology and pharmaceuticals; computer sciences; agriculture and biosciences; earth and planetary sciences; economy, econometrics and finance; chemistry; and all disciplines.

<sup>7</sup> According to Bianet [data](#) dated July 9, 2018, 6,081 academicians have been dismissed from 122 universities since September 1, 2016. For the current situation of the Academicians for Peace, please [click here](#).

and promotions; and the fact that many academics with a high potential of making publications have emigrated.<sup>8</sup>

Again, the remarks in the EU Turkey 2018 Report regarding education and science-research policies are noteworthy:

*“Regarding research and innovation policy, the proportion of overall GDP provided by R&D expenditure remained at 1%. Turkey’s overall research capacity is still limited in terms of the number of researchers per million inhabitants reaching only one third of the European average. Participation in framework programmes as an associated country, notably in the EU research and innovation programme Horizon 2020, is a key element of Turkey’s work towards aligning its national research area (TARAL) with the European Research Area. A positive development has been achieved in the area of e-infrastructure, where Turkey implemented country-wide tools for accessing scientific information, supporting the Horizon 2020 Open Access schemes. However, despite the ongoing work by the Scientific and Technological Research Council (TÜBİTAK), participation by Turkish researchers and other R&D actors in the Horizon 2020 programme has not increased. Measures taken under the state of emergency (such as dismissals, closures of institutions and travel restrictions) have also affected cooperation between European and Turkish researchers. Turkey is still below the EU average in almost all indicators of the European Innovation Scoreboard.”<sup>9</sup>*

*“In the area of education, training and youth, Turkey continues to successfully participate in the Erasmus+ programme. However, Turkey’s commitment to implement the Bologna process has not been sustained in practice. Although the Turkish qualifications framework (TQF) is now referenced to the European qualifications framework, Turkey will have to ensure that principles and procedures relating to quality assurance, credit systems, inclusion of qualifications, and validation of non-formal and informal learning are fully in place. In the formal vocational education and training sector, the implementation of modular curricula and a credited module system, instead of the current class passing system, remains an important issue for the effective implementation of the TQF. Significant quality differences also persist among Turkey’s higher education institutions. Turkey set up a Higher Education Quality Board in charge of quality assessment and assurance. Turkey is however not yet a member of the European Association for Quality Assurance in Higher Education. Following the measures taken under the state of emergency, over 33 600 public and 22 400 private school teachers and managers have been dismissed, as well as 8 800 higher education staff. Thousands of institutions (private schools, universities, associations, student dormitories, etc.) have been closed. Education remains at high risk for inappropriate political influence, especially*

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<sup>8</sup> In our [Academic Freedoms Report for 2016-17](#) we felt the need to emphasize the risk of brain drain from Turkey. According to Turkish Statistical Institute (TÜİK) [data](#), dated September 5, 2018, ‘The number of people emigrating from Turkey in 2017 has been 253,640, with a rise by 42.5% in comparison to the previous year. 54% of this population is male, and 46% is female. When examined per age groups, the biggest group of those who have left Turkey are those aged 25-29 (15,5%), followed by 20-24 year-olds (14,4%), and 30-34 year-olds (12,3%).’ It is dreary for Turkey that 42,4% of those who have left the country are young people under 35 years of age, in their most productive period of their life.

<sup>9</sup> EU Turkey Report 2018, p. 90.

*in higher education. (...) Based on the latest PISA results, Turkey appears at the bottom of the ranking table, suggesting serious issues with the overall quality of education.”<sup>10</sup>*

As emphasized in all statements and reports by the Science Academy to date, science only flourishes in an environment of freedom and through autonomous institutions, and education may only succeed as long as it is based on scientific evidence.<sup>11</sup> Unfortunately, in the previous years there have been repeated interventions to the freedom to produce scientific knowledge within autonomous institutions in Turkey. We have provided a detailed evaluation in our 2016-17 Report, on the fact that academicians are being dismissed upon terrorism-related charges without any disciplinary proceedings or trials.<sup>12</sup> The legal actions against signatories of the Academicians for Peace Petition have not been consolidated in the trials that have continued this year, thus depriving them of their right to a collective defence. In dozens of cases where the prosecutors repeat the same allegations with the same indictment, some of these academicians have been sentenced to 15 months of imprisonment. Most of the academicians have not been reinstated; through the ongoing bans of international travel they have been prevented from participating in science conferences abroad; and the pressure has reached the point of having their contributions removed from publications they made in the past with others.<sup>13</sup>

Furthermore, some other important developments have taken over the past year that have prejudiced university autonomy. These will be summarized below.

#### **A. Establishment, Closure, Division, and Restructuring of Universities**

A new law<sup>14</sup> adopted by the Turkish Grand National Assembly on May 9, 2018, decrees that thirteen new state universities and two foundation universities would be founded. Although the law presents detailed justifications for various amendments, it only slightly mentions that these new state universities shall be founded through it mentions only in passing the fact that the new state universities to be founded would be established by dividing certain existing universities and decoupling certain departments, faculties, or colleges therefrom. No other justification than simply stating that “it would make higher education institutions in the country better equipped” is provided for banding together departments from certain state universities, most of which are existent to this day, under the umbrella of a new university with a new name. Capacity development, however, is only possible by producing a hitherto non-existent value, or by increasing the quality of education and the capacity of research. It is quite impossible to increase capacity solely by uniting existing institutions with other existing institutions to form a new social

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<sup>10</sup> EU Turkey Report 2018, p. 91.

<sup>11</sup> For the file on the new curriculum, published by the Science Academy on October 2017, please [click here](#).

<sup>12</sup> The Science Academy, [Academic Freedoms Report 2016-17](#).

<sup>13</sup> See, for example, <http://www.diken.com.tr/baris-akademisyeninin-makalesi-kitaptan-cikarildi/>

<sup>14</sup> Law on the Amendment of the Higher Education Law and Some Laws and Statutory Decrees, Official Gazette, 18.05.2018, n. 30425.

structure under a different name. The only thing ‘produced’ here might be a disruption to education and research, due to the fact that the time and efforts to adopt to the new situation will cause additional expenses. In an age when scientific research is conducted in an ever more interdisciplinary manner, dividing universities in half is highly likely to result in undermining education and research capacities.

However, what is more important is the damage caused to the autonomy of universities through this centrally taken decision, and the extraordinarily bad performance of the government in good governance. The basic tenet of good governance is to discuss any legislation to be enacted (law, regulation, bylaw) with the with the stakeholders, meaning the persons and institutions upon which the decision to be taken will bear an effect, to inform them about the steps to be taken, to discuss the positive and negative aspects thereof, and finally enact the amendments upon the consent of the stakeholders.

Autonomy, in its most general sense, can be defined as “the ability to translate one’s own preferences into authoritative actions, without external constraints”.<sup>15</sup> It is assumed that scientifically, financially, and institutionally universities can have this ability.<sup>16</sup> Since 2010, the European University Association has been gathering data and publishing reports on this issue. Turkey has unfortunately decided not to participate in the final annual report (2017) and has been left out of the scope of evaluation.<sup>17</sup> However, considering that we have been in the 27<sup>th</sup> place among 28 countries regarding organizational autonomy according to the data in 2011<sup>18</sup>, it is highly likely that we have regressed to the lowest rank with the recent developments. The aforementioned law openly disregards the principle of autonomy by making an external intervention on a choice the institutions should make by themselves.

It might be suggested to restructure universities; it might even be proposed to divide universities if they have grown to a degree that they have become unmanageable. However, for such a decision to be taken and for the best solutions to be developed against the accompanying risks, the university administration, higher education upper bodies, and other stakeholders must participate in a joint process based upon the principles of good governance. Detailed justification of such decisions is an essential prerequisite for the public to understand and support the decision. As the Science Academy, through our statement on May 2, 2018, we had expressed our concerns that dividing universities with a decision that presents no explanation and disregards all the stakeholders would lead to irrecoverable loses.<sup>19</sup>

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<sup>15</sup> Maassen, P.; Ase, G ve Fumasoli, T. (2017), “University reform and institutional autonomy: A framework for analysing the living autonomy,” Higher Education Quarterly, 71: 239 (DOI: 10.1111/hequ.12129).

<sup>16</sup> Pruvot, E. B. and Estermann, T. (2017), University Autonomy in Europe III: The Scorecard 2017, (Brussels, Belgium: European University Association), s. 7 – 9.

<sup>17</sup> Ibid, p. 9.

<sup>18</sup> Estermann T.; Nokkala, T and Steinel, M. (2011) [University Autonomy in Europe II - The Scorecard](#).

<sup>19</sup> [Üniversite Üretirken Yükseköğretimi ve İyi Yönetişimi Örsellemek](#) (In Turkish).

On the other hand, this year we have also witnessed such unjustified decisions, which are not based on any scientific reason, being made about faculties, departments, and institutes – most importantly, without asking for the opinions of the stakeholders. For example, in May the Council of Higher Education (YÖK) explained in an announcement that it had decided that no student shall be placed in French Language and Literature and French Language Teaching departments within higher education institutions which did not yet have any students until further notice. As far as can be made out from the press, establishing ‘reciprocity’ with France had as much weight in the taking of this decision vis-à-vis 16 French Language and Literature and French Language Teaching departments as ‘graduate-employment relationship’.<sup>20</sup> YÖK’s statement declares that the decision was taken because ‘French universities do not offer undergraduate-level courses in Turkish Language and Literature and do not have Turkology departments.’ The decision on whether an institution in the field of science is needed or not should certainly not be based on reciprocity. Moreover, the information about Turkology education in France is not based on tangible data, which suggest that political concerns come to the fore in the making of this decision.

With the statutory decree dated July 2, 2018<sup>21</sup>, the Institute for Public Administration for Turkey and the Middle East (TODAİE) that had been training many administrators for the state for many years, has been shut down with no explanation, its website deleted, and the institution handed over to YÖK with all its students and academic staff. According to other online sources, *“TODAİE was founded in 1952, upon an agreement of technical support between the Republic of Turkey and United Nations, within the Faculty of Political Science in Ankara University. Having functioned separately within this academic institution until 1958, TODAİE has acquired legal personality with the law n. 7163, the Law on the Establishment of the Institute for Public Administration for Turkey and the Middle East, dated June 25, 1958, thus having scientific, administrative and financial autonomy. TODAİE runs training programs on public administration with the aim of developing the qualified labour force.”* It is inexplicable to shut down a long-established institution such as TODAİE, which has proven to work very productively for a time, both in terms of the labour force it has trained and its academic outcomes, when it was possible to invigorate the institution by re-linking it with a university. YÖK’s statement on the issue decrees that the academic staff and students of the institute shall be ‘handed over’ within three months to a higher education institution determined by YÖK. As of July 9, 2018, YÖK has decided that the students of TODAİE shall continue their education in Ankara Hacı Bayram Veli University, while academic members and instructors shall be assigned to other higher education institutions in a maximum of three persons per institution, each academic member and instructor submitting ten choices to YÖK on where they would like to work.

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<sup>20</sup> <https://www.aa.com.tr/en/todays-headlines/turkey-limits-enrolment-in-french-courses-at-university/1141181>

<sup>21</sup> Statutory Decree n. 703 on Amendments to Some Laws and Statutory Decrees for Compliance with the Amendments on the Constitution, Official Gazette 09.07.2018, n. 30473/version 3.

## B. The Assignment of Administrators and Especially the Rectors in Universities

The Science Academy has often emphasized the importance of the ability of a university to elect its own administrative cadres, and especially its rector, as an indicator of university autonomy.<sup>22</sup> The regulation made during the state of emergency through the Statutory Decree n. 676<sup>23</sup>, declaring that university rectors are to be assigned by the President of the Republic upon the suggestions of YÖK, has unfortunately been revised once again through an amendment dated July 2, 2018, on article 13 of the Law n. 2547 on Higher Education. The regulation that we had criticized was made by the end of 2016 and it abandoned the method of determining the candidates for university presidency through elections within universities, bringing instead the method that three candidates are suggested by YÖK among lecturers who have worked as professors for a minimum of three years, one of them to be selected by the President and appointed as the university rector. The latest amendments, however, render the President of the Republic the sole authority.<sup>24</sup>

With the new amendments made in July, the wording stating that nominees for rector would be selected from among “persons holding the academic title of professor” was removed, which was purported for some time in the press to mean that a nominee for rector would not have to be a professor. However, this shortcoming was rectified by an amendment with the Presidential Decree (PD) no. 3<sup>25</sup> and the sentence reading *‘(5) the rectors are assigned from among candidates who have been holding the title of professorship for at least three years’* was added to article n. 3 that regulates the conditions for appointment. However, during writing this very report, another amendment was made with PD n. 17<sup>26</sup>, this time stating that *‘(5) the rectors are assigned from among those who hold the title of professorship,’* withdrawing the condition of having three years of experience in professorship.<sup>27</sup> *“In the event that the posts and positions indicated in schedule no. (1) annexed to this Presidential Decree become vacant, such posts and positions may be filled, in respect of rectors, by the President of the Higher Education Council, and, in respect of others, by the relevant Vice President of the Republic or Minister. These*

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<sup>22</sup> The Science Academy [Academic Freedoms Report – 2015-2016](#), pp. 7-8; [Statement](#) dated October 31, 2016, on the statutory decree n. 676 about the re-organization of the assignment of university presidents; The Science Academy [Academic Freedoms Report – 2016-2017](#), p. 7.

<sup>23</sup> Statutory Decree on the Making of Some Regulations Under the State of Emergency, Official Gazette 29.10.2016, n. 29872.

<sup>24</sup> Law no 2547, the Higher Education Law, article 13(a): ‘The rectors of public and private universities are assigned by the President. In universities established by foundations the rector is assigned upon the proposal by the Board of Trustees. The rector represents the legal entity of the university or the institute of higher education.’

<sup>25</sup> Presidential Decree no. 3 on the Procedures of Appointment of High-level Public Administrators and Appointments to Public Institutions and Organizations, Official Gazette 10.07.2018, no. 30474.

<sup>26</sup> Presidential Decree on Making Amendments on Some Presidential Decrees, Official Gazette 13.09.2018, n. 30534.

<sup>27</sup> Very soon after this amendment, a person who had received the title of professorship two months before was assigned as the Rector of Ankara Hacı Bayram Veli University. This unfortunately strengthens the impression that a special arrangement was made for this person.

*assignments shall be notified to the Office of the Presidency on the same day.” It is unclear how this explanation about the distribution of tasks between YÖK and the President would be interpreted.*

However, should one take the Presidential Decree no. 141<sup>28</sup> published on 2 October 2018 as the basis, the following is how the rector appointment procedure should proceed: YÖK advertises for the rector nominee for a 5- or 30-day period, as the case may be. The relevant candidates will apply to YÖK directly for posts in state universities and to the board of trustees for those in foundation universities. Then, YÖK “*shall check whether the nominees meet the necessary conditions and send a report to the Office of the Presidency including information on the undergraduate and graduate alma mater, academic titles and the dates of receipt of such titles, appointments, administrative duties and experiences, record and disciplinary files*” of the candidates that have directly applied to YÖK or that have been put forward by the board of trustees of the foundation university. The President shall appoint one of the rector nominees forwarded by YÖK to the Office of the Presidency or appoint the rector nominee or one of the rector nominees proposed by the board of trustees of the foundation university. In the event that the President deems said nominees unsuitable, the President can ask for the application process to be renewed

This to and fro experienced in the last two years is sufficient on its own to indicate that seeking a central arrangement for the appointment of rectors is wrong. Universities must be able to elect their own rectors in accordance with procedures that they decide upon. University autonomy means that each university should decide upon its own research and education policies and the contributions it wishes to make to society within the framework of their own traditions and possibilities. On this issue, we feel the need to reiterate what we stated in our 2016 announcement<sup>29</sup>:

*‘Clearly, the issue is not whether the president should be elected by the faculty members or by the board of trustees. The real issue is whether each university will have a say in designating its own president. Universities are not autonomous if they cannot choose their president by means of their own organs, through an assessment process based on their own traditions and methods, but if instead the president is appointed by a central government, in a hierarchical manner, upon the decision of a single individual.*

*Merit, freedom and integrity are the basic principles which ensure that research and education at universities are carried out in a creative atmosphere conducive to new ideas. A country’s best-educated, expert work force must be trained to do their job well, and to employ their mind and will in an honest manner. For this, universities must have an institutional culture that upholds scientific values. Each university must be able to decide on how and by whom it will be managed, according to its own traditions and methods based on its research and education priorities.*

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<sup>28</sup> Principles and Procedures regarding the Application of Those Wishing to Stand As Rector Candidates, Official Gazette 02.10.2018, no. 30553.

<sup>29</sup> [The Latest Intervention Against University Autonomy in Turkey](#)



*Universities lacking robust traditions may tend to elect the candidates of a clique, faction or sect, instead of the best educators or researchers. Nonetheless, such cases do not signify that universities should not elect their managers, but instead that elections not based on merit yield poor results. Universities with robust traditions have designated their managers with success, and continue to prosper as prestigious and prolific institutions.*

*Appointments made by a central authority, from outside the university, and in the final instance, upon the decision of a single individual, are certain to wreak havoc on all universities. This will inflict the greatest damage on the country's most advanced universities, their capacity to educate individuals, and naturally, the country itself. That is because a central authority is not in a position to accurately assess institutions and individuals, does not have sufficient information about them, or tends to elect individuals who will comply. History has shown that such choices have never been the right ones for academic life.*

*Allowing a central authority, albeit elected by a majority, to decide on how every institution -especially universities where specialization is at the highest level- should conduct its affairs means to entrust the entire country to the supposed infallibility of a single individual in a world where economy and technology advance at an immense pace. This goes against democracy and rationality. As confirmed by all historical examples, such devastation of institutions will eventually harm the entire country.'*

### **C. Dismissal and Reinstatement of University Administrators and Members of Faculty**

It is useful to remind that universities do not have a say in the dismissal of university administrators either, in the same way they are not authorized in their appointment, and that the central authority alone has the mandate on this issue.<sup>30</sup> A provision incorporated into the Law on Higher Education in 1982 is still in force and used today: "Additional article: date 14.04.1982 no. 2653 to Article 6 of the Law: *University rectors, deans of faculties, directors of institutes and schools of higher education, their deputies, and heads of department may, when necessary, be dismissed from their posts before the exhaustion of their terms as set out under this Law in accordance with their appointment procedures.*" As can be seen, by using the term "when necessary" the lawmaker leaves the issue completely to the discretion of the administrative authority.

Furthermore, the below additions have been made as provisional articles to Article 26 of the Law no. 7145 Amending Certain Laws and Decrees Having the Force of Law<sup>31</sup> published on 31 July 2018 and to the Decree no. 375:

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<sup>30</sup> As an example to the latest news on this issue, see <https://bianet.org/bianet/egitim/197498-cerrahpasa-tip-fakultesi-dekani-gorevden-alindi>, and <https://bianet.org/bianet/egitim/197510-erdogan-uc-universiteye-rektor-atadi-bir-rektoru-gorevden-aldi>.

<sup>31</sup> Official Gazette 31.07.2018, no. 30495.

*“B) for a period of three years following the entry into force of this article; if deemed to be members, affiliated with, or related with, or in connection with terrorist organizations or structures, formations, or groups deemed by the National Security Council to be acting against national security; (...)*

*(7) personnel subject to the Law on Higher Education Personnel of 11/10/1983 no. 2914, upon the proposal of the President of the Higher Education Council and upon the decision of the Higher Education Council; and personnel subject to the Law no. 657 in higher education institutions and higher education upper bodies, upon the proposal of the highest-level administrator of the higher education institutions and higher education upper bodies, may be dismissed from their civil service posts, based upon the decision of the university executive board in higher education institutions and the decision of the Higher Education Council in higher education upper bodies.”*

Following this regulation, YÖK has made an announcement declaring that *“the principles and procedures governing the proposals for dismissals from civil service posts to be conveyed by universities in accordance with the Law no. 7145 published in the Official Gazette of 31.07.2018 no. 30495 have been set and notified to universities”*.<sup>32,33</sup> It is obviously pathetic that the supreme higher education organization of a country has had to determine ‘rules and procedures’ on the dismissal of academic staff from universities. Furthermore, the fact that this regulation does not require seeking any judicial decision for dismissals and paves the way for the dismissal of members of faculty *“deemed”* to have engaged in such acts is an indication that the state of emergency will virtually last a further three years in this area.

Another calamitous regulation introduced by this Law dated 31 July 2018 is regarding the persons who were dismissed from their posts without any judicial decision or even a disciplinary investigation during the state of emergency but whose objections have been deemed justified by the Commission on the Examination of Proceedings under the State of Emergency and who should actually be reinstated. According to the provisions<sup>34</sup> introduced by Article 22 of the Law no. 7145,

*“(1) Upon the approval of the application regarding dismissal from civil service, a profession, or from the institution of employment, the relevant decisions shall be notified to the institution where the person held the post or the position, or to the Higher Education Council for members of faculty dismissed from their posts at higher education institutions. It is imperative that those who have been decided to be reinstated shall be appointed to their former post or position. [...] Proposals for the appointment of those notified to the Presidency of the Higher Education Council shall be made in fifteen days in accordance with their previous cadre titles to higher*

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<sup>32</sup> <http://www.yok.gov.tr/web/guest/yok-ten-akademik-ihraclara-hukuki-duzenleme>.

<sup>33</sup> <http://bit.ly/2z4mSGP>

<sup>34</sup> Article 22 of the Law no. 7145 and Article 10 paragraph 1 of the Law of 1.2.2018 no. 7075 on Amending and Adopting the Decree Having the Force of Law on the Establishment of the Commission on the Examination of the Proceedings under the State of Emergency were amended.

*education institutions. In choosing places of appointment, higher education institutions established outside the provinces of Ankara, İstanbul, and İzmir and after 2006 should be prioritized and the person shall be appointed to a higher education institution other than the higher education institution from which they had been dismissed by the Higher Education Council. Institutions shall complete the appointment procedures in thirty days following the date of the notification or the appointment proposal. [...] The persons reinstated in this scope shall be paid the financial and social rights that have accumulated from the beginning of the month following the date of their dismissal until the date of their reinstatement. Such persons cannot ask for any compensation on account of having been dismissed from their public service posts.”*

Completely disregarding the rule of law, this regulation blocks the way for reinstatement to previous workplaces for the academic staff whose appeals for having been unjustly dismissed have been sustained by the Commission for the Examination of Proceedings Under the State of Emergency, in a way that differentiates them from all other civil servants. They do not even have any guarantee that their re-appointments will be made in the same city that they had been working in. YÖK especially prescribes that they shall not be remitted to the universities they had been working before, and not appointed to universities in Ankara, İstanbul and İzmir [the biggest cities in Turkey], but to a newly-found university. This regulation is clearly against the freedom of labor and freedom of contract stated in article 48 of the Constitution. Moreover, it results in the punishment of persons who are confirmed to be innocent of the charges against them. Considering that banishment has no place in the Turkish Penal Code since 1965, it is unacceptable in a constitutional state to arbitrarily change the places of duty of innocent persons who have already suffered to a great extent.

#### **D. The Restructuring of the Turkish Academy of Sciences and the Scientific and Technological Research Council of Turkey**

The 2017 amendments to the Constitution of the Republic of Turkey effected a transition from the parliamentary to the presidential system, which inevitably led to a restructuring of the administrative organization of Turkey. Hence, the Presidential Decree no. 4 brought under authority of the Presidency, for the most part, the institutions and organizations affiliated, related, or connected with, primarily, ministries, and other decentralized institutions.<sup>35</sup> The Scientific and Technological Research Council of Turkey (*Türkiye Bilimsel ve Teknolojik Araştırma Kurumu*, TÜBİTAK) and the Turkish Academy of Sciences (*Türkiye Bilimler Akademisi*, TÜBA) are among these institutions. Rather than discussing whether such a restructuring was necessary or not, we would like to highlight certain issues as regards the way such restructuring took place and the loss of autonomy.

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<sup>35</sup> Presidential Decree on the Organization of Institutions and Bodies Affiliated, Related, or Connected with Ministries and the Organization of Other Institutions and Bodies, Official Gazette 15.07.2018, no. 30479.

First of all, for all the institutions covered in the PD no. 4, a “reestablishment” has taken place. According to Article 97 of the Decree no. 703<sup>36</sup>, “*Decree no. 497 on the Establishment of the Turkish Academy of Sciences shall be abolished*”. However, it is stated in provisional article 1 of the Presidential Decree no. 1 on the Organization of the Presidency published on 10 July 2018, just one day later, that “*...for the public institutions and organizations, the laws and decrees about the organization of which have been abolished, apart from those whose transfer and transition provisions have exclusively been set out, the abolished provisions shall continue to be applied until new provisions are set out by a Presidential Decree [...]*”, which was then followed by a provision in Article 566 of the Presidential Decree no. 4 stating that the Turkish Academy of Sciences had been “founded”. Likewise, the Law of 17.7.1963 no. 278 on the Establishment of the Scientific and Technological Research Council of Turkey, which forms the foundation for TÜBİTAK, was renamed and transformed into a law named the Law on Certain Regulations regarding the Scientific and Technological Research Council of Turkey which governs secondary issues. The primary provisions regarding the organization of TÜBİTAK were set out in Article 582, among others, of the PD no. 4 and the first clause here also expressed that the Scientific and Technological Research Council of Turkey had been “founded”.

From a legal perspective it is expected to have a specific regulation clearly stating that these public institutions that have been shut down and re-founded are actually a continuation of the previous ones. Presidential Decree n. 4, however, is in complete disregard of this fact. Thus, legally it is debatable whether the administrators of TÜBA are still in office after this closing and re-opening, or whether TÜBA’s members are still its members. As far as it is seen through their websites, these institutions themselves have no comments on the situation.

In addition to TÜBA and TÜBİTAK’s change of location within the administrative organization, there are important changes related to the determining of institutional organs in both organizations, and in the election of TÜBA members:

- In accordance with Article 2<sup>37</sup> of the PD no. 3, the president of TÜBİTAK shall be appointed upon a Presidential decision (schedule no. 1). TÜBİTAK Executive Board Members and Vice Presidents shall be appointed upon Presidential approval (schedule II). As can be made out from this wording, the institution shall nominate these members and present them for approval to the President. However, no scientific qualification is sought for the president, executive board members, and

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<sup>36</sup> Footnote 21 above.

<sup>37</sup> Article 2 paragraph 2 of PD no. 3: “*Appointments shall be made for the posts and positions in schedule (I) annexed to this Presidential Decree upon a Presidential decision and for the posts and positions in schedule (II) upon Presidential approval. Appointments shall be made for the posts and positions not listed in these schedules by the relevant Vice President, minister or officers authorized for appointment. Vice Presidents and ministers can delegate this power to their subordinates.*”

vice presidents of TÜBİTAK.<sup>38</sup> The 17-strong TÜBİTAK Board of Science does not exist as a body anymore. It has been replaced by a 7-member Executive Board. Considering the details of the previous legislation regarding the scientific qualifications and the diversity of the backgrounds (from the public/private sectors and different areas of activity/institutions)<sup>39</sup>, the new provision is a serious backslide.

- For TÜBA, schedule II procedures are still in force, meaning that the President does not directly appoint but approve a nominee presented. In accordance with Article 576 of the PD no. 4, the president of TÜBA “shall be appointed from among regular members for three years”. Considering these two PDs which are in conflict with one another and are ambiguous, one might think that a nominee identified by regular members should be appointed upon approval by the President. However, it is still unclear.
- In accordance with Article 570 of the PD no. 4, more authority has been provided to the institution in election TÜBA members. In the previous legislation it was stipulated that “one third of the regular and associated members shall be selected by the Board of Science of TÜBİTAK, one third by the Higher Education Council, and one

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<sup>38</sup> Article 3 of PD no. 3: “(1) The following conditions shall be sought for those to be appointed to the posts and positions in schedule (I) annexed to this Presidential Decree: a) the general conditions stipulated in Article 48 of the Law no. 657. b) having graduated from a higher education of institution with a degree of studies of at least four years. c) having at least five years of experience in the public sector and/or in international organizations, the private sector, or as self-employed, on condition of being subject to social security institutions.

(2) The following conditions shall be sought for those to be appointed to the posts and positions in schedule (II) annexed to this Presidential Decree: a) the general conditions stipulated in Article 48 of the Law no. 657 on Civil Servants. b) having graduated from a higher education of institution with a degree of studies of at least four years. c) having at least five years of experience in the public sector. ç) for those to be appointed to posts of provincial or regional director, having at least five years of experience in the public sector and/or in international organizations, the private sector, or as self-employed, on condition of being subject to social security institutions and having had considerable achievements. [...] (7) For the appointments to TÜBİTAK Executive Board, sub-paragraph (c) of paragraph two shall not be applicable.”

<sup>39</sup> Article 4 of the TÜBİTAK Law no. 278: “1) Eight members of the Board of Science shall be elected from among persons who have had considerable achievements with their work in scientific or technological areas, with their research and inventions and/or who are competent in research and technology management and have established and/or managed scientific and technological systems, institutions, and units with success. Of these members, three -one from the field of engineering and technical sciences, one from physical sciences or health sciences, and one from social sciences and humanities- shall be elected by the General Assembly of the Higher Education Council, three -one from the field of engineering and technical sciences, one from physical sciences or health sciences, and one from social sciences and humanities- shall be elected by the Board of Science, and two --one from the field of engineering and technical sciences and one from physical sciences or health sciences- shall be selected by the Prime Minister, upon the proposal by the Minister, from among the nominees presented by TÜBA, TÜBA presenting twice the number of nominees for each vacant position.

2) Six members of the Board of Science shall be selected from among persons having an experience of at least ten years in public institutions and bodies and/or in the private sector following their undergraduate studies, who have achieved considerable success in their profession, and who are well-known for their outstanding services. Nominations shall be made for two of these members by the Union of Chambers and Commodity Exchanges of Turkey and for four by the Ministry, with nominees twice the number of nominees for each vacant position. These members shall be proposed by the Minister and selected by the Prime Minister.

*third by the Regular members”, which constituted an objectionable situation in conflict with the traditions of academia. According to the new provisions, “Election of the members to the Academy shall take place following the acceptance of the Council of the Academy of the nominees put forward by the Regular members or the Higher Education Council or the Executive Board of TÜBİTAK with their accompanying justification, after which they are presented to the General Assembly, which puts to vote the accepted nominees and hence elects the members.”*

## **E. Conclusion**

The 2017-2018 academic year will unfortunately not be synonymous with the strides made by universities and academic institutions in Turkey in terms of autonomy and freedom. Far from strengthening decentralization, it is obvious that a centralist structure gets even more overbearing with a corporate state tendency to control everything from the centre, while the institutions of science continue to lose ground in terms of the freedom indispensable for scientific production. It is clear that in the long-term, Turkish society will inevitably be the loser with each constraint on the free expression of ideas, also considering the possibility of self-censor by scientists. Regression in academic output, as manifested by scientific publications, will probably continue to deteriorate as these practices persist. The international reputation that has been garnered by our universities through immense efforts and in a relentless manner over the years is facing a rapid erosion at the present time. Even if the present route is abandoned in a while, this loss of reputation will be felt by the graduates of universities in Turkey as well as the university staff for at least one generation. The loss of reputation in the long term, the cost of regression in academic freedoms and autonomy, will also be negatively affecting related fields such as technology and economy. In an environment where its graduates are having difficulty finding jobs and being admitted to overseas graduate programmes, and where its universities are being excluded from leading academic programmes around the world, Turkey will face problems in producing new technologies, obtaining, and using new technologies produced elsewhere, and in creating new employment. We feel it is our duty to draw attention to this colossal risk once again.

**Executive Board of the Science Academy of Turkey,  
October 13<sup>th</sup>, 2018**