



## **The Science Academy Report on ACADEMIC FREEDOMS 2019-2020**

### **INTRODUCTION**

On September 4, 2020, Mr. Robert Spano, the President of the European Court of Human Rights (ECHR), made the following statement in his speech to accept the title of Doctor Honoris Causa awarded to him by the University of Istanbul: *The academic world must play a role in a democracy. Critical and independent thought is crucial, as there can be no democracy without debate and dissent. Every human being must be able to think freely to flourish and to grow. Society cannot progress without critical engagement by its citizens. Those in power cannot stifle freedom of speech and must be very careful in limiting a person's capacity to express his or herself. Interferences with this right are only acceptable in exceptional circumstances. In particular, academic freedom is protected under the Article 10 of the European Convention on Human Rights. In this regard it protects freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction.*<sup>1</sup>

Unfortunately, the academic year of 2019-2020 has been once again a time in which Article 10 of ECHR was often disregarded in terms of academic freedoms in Turkey. The restrictions have drastically remained on freedom of speech and on academic liberties to disseminate research findings. Similar to the reports the Science Academy of Turkey had published throughout the previous years, this report also aims to discuss the news and developments we find significant for the sphere of academic freedoms and assess the negative consequences of the forfeiture of the autonomy of the universities and of their right to choose their own executives.

### **A. The Ongoing Erosion of Universities' Autonomy**

As the so far published Science Academy reports on Academic Freedoms<sup>2</sup> and the special reports regarding academic autonomy<sup>3</sup> indicate, university autonomy in Turkey, and the freedom of the universities for self-governance in this context decline gradually. This problem can be recognized with a glance on how The Council of Higher Education (YÖK) members, those who have the central authority over almost all higher education related topics, are appointed, for instance.

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<sup>1</sup> [Click](#) for the full text of the speech.

<sup>2</sup> [See](#) the Science Academy reports on Academic Freedoms.

<sup>3</sup> [See](#) the Science Academy Statements regarding autonomy.

According to Article 6 of the Higher Education Act no. 2547, as last modified in 2018, the twenty-one members of YÖK are now determined as follows:

- The twenty-one members of the Council consist of seven who are appointed by the President of the Republic, by giving priority to professors who have demonstrated successful service in rectorate and teaching; seven selected from among distinguished, high ranking civil servants or retirees; and another seven selected by the Inter-University Council from among professors who are not members of that Council, and again all of them are appointed by the President of the Republic.
- However, in case those candidates who are proposed by the Inter-University Council but not appointed by the President of the Republic within a month, are not replaced with new candidates within two weeks by the same Council, appointments are made directly by the President.
- The President of the Republic appoints the President of the Council from among the Council members for a tenure of four years.

As seen, both the twenty-one members of YÖK and its president are ultimately determined by the President of the Republic. A clear signifier of how instead of academic merit, service in specific non-academic civil duties in public bureaucracy matters in the appointment of the YÖK members, we observe that the same people occupy both the offices of the General Secretary of the Turkish Presidency or the Directorate of Presidential Administrative Affairs and simultaneously also prominent positions in YÖK. The fact that comprehensive powers held by the members of YÖK by virtue of the Article 7 of Act 2547, extend from the fields of research in higher education institutions of Turkey, to student fees and quotas in universities, the establishment or closure of faculties in universities, and to the determination of minimum class hours in education programs, demonstrates clearly the extent to which the selection of YÖK members in itself transgresses the university autonomy as defined by the Article 130 of Turkish Constitution. The dramatic increase or decrease of the financial resources of universities through the designation of student admission quotas by YÖK, which has the capacity to stop the admission of students or close a program in the wake of non-transparent investigations obviously creates a constant “sword of Damocles” impact upon the university administrations and the faculty.

## **1. Rectors and Merit**

With another modification on Act 2547, the Law on Higher Education in 2018, the authority to appoint rectors for public and private universities was completely given to the President of the Republic.<sup>4</sup> Just in private universities distinctly, the appointment is executed following the proposal of the board of trustees. Still, even this limited space of freedom is often confined in practice. When the candidates proposed by the boards of trustees are not approved by the Presidency of Turkey, they are not appointed, and as a result can only practice the duty vicariously, for a limited time. Afterwards, those boards of trustees must propose another candidate to the approval of the President of Turkey.

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<sup>4</sup> See our announcement on the appointments of rectors. The decisions concerning the appointment of rectors are ruled by virtue of the Article 13 of Law no 2547, Higher Education Act and Article 2, 3 and 7 of the Presidential Decree no 3. For example, see *Official Gazette* 14.08.2020, no. 31213.

Recently, there has been a great number of media coverage on the negative consequences of universities' being stripped of their right to self-governance. Among those, news about scientific qualifications of the rectors have been particularly striking.<sup>5</sup> A remarkable study on that matter by Engin Karadağ, a professor from Akdeniz University, Antalya, Turkey was published on May 19, 2020, in the journal Higher Education.<sup>6</sup> Among the series of crucial findings, the following conclusions of Karadağ must be underlined:<sup>7</sup>

*From this standpoint, according to the international evaluation criteria (publications, citations and H-indices), the academic qualifications of rectors in Turkey is generally low, such that the H-index of one third of all rectors is zero. Yet the frequently uttered expression among faculty with poor academic qualifications that "It is not a necessity to be a good researcher in order to be good a rector. Research is one thing, and management is another" does not reflect reality. According to the rankings by URAP (University Ranking Academic Performance), universities in Turkey can be categorized into five groups. The ranking of the universities in each group vary according to the average research output of the rector of that university after 3 years in office [...]. The rectors of the top 32 universities (which have the highest research output) in the URAP have an average of 80.5 publications in WoS databases. However, according to URAP, the average number of publications drops to 25.8 in the second group and to 20.7 in the third group, and the average numbers of publications of rectors in the last two groups are 12.5 and 8, respectively. The universities managed by those rectors whose academic qualifications are at a low level slid down without exception in the rankings such as the URAP, among others, as well as in production of scientific knowledge, after these rectors had been in office for 2 years. Thus, as with the poor academic qualifications of their rectors, these universities are poorly rated in both national and international rankings, and the quantity and quality of production of scientific knowledge is significantly low[...]*

*As a result, we can make two inferences. First, with respect to university presidency, the most basic competence is academic qualification. The rectors who have this competence know what science is, as well as how to produce scientific knowledge and support the research process. Second, institutional isomorphism is very high at universities that are managed by rectors, whose academic qualifications are poor. Most of these universities convey information without the opportunity for practice; their campuses are limited in terms of social activities, and their faculties are comprised of academics who lecture without attention to whether their students are mastering the subject or not. In addition, in these universities, the activities of training graduate students, and teaching activities are not geared at producing new knowledge, guiding scholarship, and opening horizons of the students and kindling their imaginations are nearly non-existent.*

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<sup>5</sup> For example, see, (in Turkish): "[Türkiye'de rektör olmak için akademik niteliğe bakılmıyor](#)", 10 December 2019; "[71 rektörün atf sayısı 0](#)," 19 December 2019; Türkiye, "[Dünyadaki Üniversiteler Sıralamasında İlk 1000'e Bile Giremeyecek](#)", 11 December 2019; "[Aydın Adnan Menderes Üniversitesi rektörü hakkında iddialar](#)"; "[Munzur Üniversitesi Rektörü Hakkında İddialar](#)."

<sup>6</sup> Engin Karadağ (2020), [Academic \(dis\)qualifications of Turkish rectors: their career paths, H-index, and the number of articles and citations](#), Higher Education.

<sup>7</sup> Although the numbers of publications, citations and h-indexes examined in this study, are not precise indicators for academic competence, the lack or deficiency of publications and citations often signifies academic incompetence.

If universities had the right to choose their own rectors, this would not necessarily guarantee the selection of the most qualified rectors. Turkish universities have gone through difficult periods with equally incompetent managements in the past, when rectors were elected by faculty vote. However, as we have emphasized previously, deterioration is inevitable in the quality of all universities, including the ones which had cultivated at least a sturdy tradition for choosing their own rectors, when the rectors in 209 universities are all determined by a single person. The margin of error is much higher with the single person rule than with the election-based systems in this respect. Hence, for the sake of pursuing the aim to place at least two Turkish universities in the top 100, and at least five universities in the top 500 of worldwide rankings of academic performance, as specified with the Presidential Annual Program of 2021 of the Turkish Republic, published on October 27, 2020,<sup>8</sup> the first step appears to be indeed to reintroduce the provision for university rector appointments at the mandate of individual universities.

## **2. Deans of Law Faculties without Backgrounds in Law**

The above-mentioned remarks on appointments of rectors may be repeated regarding the appointment of deans of faculties, as the issue of autonomy is similarly quite out of the question. As Article 16 of Act no 2547 rules, “The dean who represents a faculty and its units is selected for three years from among the three professors the rector nominates from inside or outside the university to be appointed with normal procedure by the Council of Higher Education.” In other words, although the faculty members can identify their own candidates for dean with an election, the rector might not include any of the so elected candidates to the list of three-nominees he/she will be proposing to YÖK, or even when that candidate is endorsed and proposed by the rector, YÖK still has the final power to appoint someone else.

Beside the issues of autonomy and merit in the conduct of deans’ selection, a situation that is more worrisome has occurred when lay people were appointed to the role of dean, as recently covered by the media and reported in a research article<sup>9</sup>. As of today, the deans of 18 of the existing 132 law faculties do not have law backgrounds. It is not clear how those deans, among whom are holders of degrees in theology, veterinary medicine, chemistry, and medicine, will contribute to the education of knowledgeable lawyers or improve the academic research performance of a law faculty. A frequently encountered problem is probably that the Faculty of Law and the university in question itself were established recently, and without the opportunity and the resources to recruit law professors among their faculty. Even so, such a situation is quite dreadful all by itself. In conclusion, the pretense that the capacities to train university students and to produce academic research can be achieved just by allocating a space for construction of buildings and giving a name to a university, with no further planning, bears the grave consequences we witness today.

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<sup>8</sup> *Official Gazette*, 27 October 2020, no. 31287 bis, p. 273, Caution N. 561.1.

<sup>9</sup> Kemal Gözler, “[Hukukçu Olmayan Hukuk Dekanları - Türkiye’de Bazı Hukuk Fakültelerine Hukukçu Olmayan Dekan Atanması Hakkında Eleştiriler](#)” (in Turkish), October 12, 2019.

### 3. The Closing of Istanbul Şehir University

Istanbul Şehir University's operation has been revoked per the Presidential Decree no 2708, on June 29, 2020.<sup>10</sup> According to the statement YÖK released on June 30, 2020, the findings leading to the decision were that “the university is not capable of covering the revenue gap, the salaries of the university staff cannot be paid, the prolongation of the temporary suspension of the university's operation will cause students, academics, administrative staff, and public and private service providers to incur further adverse effects and the university will not be able to continue its educational activities.” As decreed, all the students of Istanbul Şehir University were thereafter transferred to Marmara University, which had, during the establishment of Istanbul Şehir University, been assigned to be the guarantor university of the latter.

The Science Academy's previous statements had criticized the authorization of the establishment of tens of universities which did not have the necessary financial and human resources.<sup>11</sup> The problem is, once the law permits academically insufficient institutions with resources no better than those of any high school to be established as universities, those universities begin to admit students, and finally turn into unsustainable operations. It is highly probable for those operations, to which the sole source of income is the fees of the students, to move towards bankruptcy, due to the shrinkage in the number of their students, which is triggered with the ongoing recession in the economy.<sup>12</sup> Specifically concerning the private universities, the state should follow a more consistent policy and take into account the sustainability as much as the sufficiency of the resources to be allocated. Otherwise, as the guarantor public universities are obliged to take over those economically unsustainable operations, their qualities will also deteriorate eventually. To illustrate the extent of the problem, it is worth mentioning that 6000 students of the former Istanbul Şehir University, will now continue their education as students of Marmara University, Istanbul.

The Additional Clause 42 annexed to Act no 2547 on April 15, 2020 hints at an effort to surmount this problem: “Each year, private higher education institutions transfer 2% of the total income by student fees to a deposit account in their name in a public bank, as a resource to secure the completion of their students' education if the authorization to their activity is ceased temporarily or revoked.” A realistic solution to this problem requires applying a closer inspection during the establishment of private higher education institutions, and giving the authorization to establishment after examining the applicant foundation's financial resources in advance, taking into account objective criteria such as the number of students, the unemployment rates of university graduates, and the demand to train students in specific fields of education. Otherwise, those universities are more likely not to outperform vocational schools and to remain as institutions with no contribution to academic productivity in Turkey.

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<sup>10</sup> *Official Gazette*, no. 31171: ‘As the constitutional foundation was appointed with a trustee and the results of the inspections that were done by the guarantor university revealed that it will not be able to continue its educational activities with its current assets, and [since] this condition is approved by the Council of Higher Education; the cancellation of Istanbul Şehir University's official authorization is ruled by virtue of annexed Article 11 of Law no 2547, Law on Higher Education.’

<sup>11</sup> [See](#) Science Academy Report on Academic Freedoms 2016-17.

<sup>12</sup> As a matter of fact, a lot of private universities are recently getting out with mass layoff of academic staff.



Another worrisome aspect comes to light in the case of Istanbul Şehir University during its foundation exemplifying the unlawful practices in the allocation of public land to new universities, particularly, the role played by founding charitable organizations having close contacts to the state authorities in those allocations. The state should maintain equal distance to each application for foundation of a new university, establishing and following objective and transparent criteria for land allocation to universities. The threat of an instant retrieval of those land grants is obviously problematic as such a decision will most probably undermine the sustainability of operations of the university in question. If the state aids will be at stake for private universities, as they are for public universities, there should be the same set of rules and principles to be considered for each university equally. Anything to the contrary would justify accusations of favoritism.

## **B. Freedom to Conduct Scientific Research and to Disseminate Research Findings**

At a time when the whole world is combating a grave and relentless pandemic, the value of science and of building health policies based on science is once again of grave importance. However, scientists who try to work on the pandemic face particularly severe challenges. They find themselves pressured to rely on limited data to convey crucial information for public health in response to people's right to demand information. They have to take the risk of providing false guidance due to lack of data provided to them or working with unconfirmed data. In all countries of the world, these exceptional times have required discussions on what means are ethically acceptable in order to convey research findings and outcomes, before they are duly published in academic publications. However, in the case of our country, some measures introduced by the government authorities are in discord with Articles 25 and 27 of the Constitution. Medical scientists have been subjected to criminal proceedings for conveyance of data to the public or obliged to seek permission for research from the Ministry of Health and to submit information to a website by the Ministry, prior to the reporting of the research results in an academic publication.<sup>13</sup>

### **1. The Ministry of Health Requires Permission to do Research**

The Ministry of Health introduced a central application and permission procedure for Covid-19 related research through an announcement published in April.<sup>14</sup> The website for applications offers the following statement:

*For any scientific research on humans about the Covid-19 disease that is planned to be initiated and conducted by researchers, including clinical research, this Commission must be notified prior to the application to the ethical committee. Research proposals on the theme of Covid-19, which have already received ethical committee approval, the application to the Commission must be completed within 10 days after ethical committee approval, at the latest. The forms of notification to the Commission will be filled up on-line at <https://bilimselarastirma.saglik.gov.tr>. The Commission will review the research within 5 working days and respond to the application in question.*<sup>15</sup>

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<sup>13</sup> See Turkey targets critics of its pandemic response, *Science* September 25 2020, c. 369, p. 6511.

<sup>14</sup> In this regard, see the Science Academy statement, [It is Problematic to Subject Scientific Research on COVID-19 to Permission](#), issued on May 12 2020.

<sup>15</sup> [Scientific Research Studies on COVID-19](#) (in Turkish).

Restrictive of the freedom of science per se, nontransparent, and unclear about what function it serves beyond the existing scientific and ethic evaluation procedures, the present permission procedure has unluckily inhibited not only the research funded by the Ministry of Health itself, but also some of the projects supported -or in the application process to receive support, by TÜBİTAK [The Scientific and Technological Research Council of Turkey]. Furthermore, not a single statement has been released on why the research proposals refused permission were rejected, and which particular aspects of the proposed research were found insufficient and worthy of refusal. The infringement of the freedom to scientific research also obstructs the access to accurate information and the conveyance of such information to the public in the struggle against COVID-19 pandemic.

Additionally, in the absence of academic freedom and transparency, a grave conflict of interest exists as high-ranking officers of the Ministry of Health themselves have made scientific publications on COVID-19, while holding the authority to issue or withhold research permissions to others. Such practices suggest the possibility that those concerned are using their authority to grant research permissions, not to combat with the acute problem posed by COVID-19, but to give priority to or facilitate publications by certain parties. For example, two research papers, which had the initial permissions to conduct research, and were written by a group of researchers that included the Deputy Health Minister have been retracted from pre-print archives subsequent to the related debates becoming public.<sup>16</sup> The explanation given for the retraction of the paper seems to be further cause for consternation: It was claimed that the paper had “inadvertently” referred to the first COVID-19 cases in Turkey occurring about a month before March 11, when the first cases were officially announced by the Health Ministry.

## **2. The investigation about Prof. Dr. Kayıhan Pala**

The Chief Public Prosecutor's Office of the city of Bursa has filed a criminal complaint against Prof. Dr. Kayıhan Pala, a professor in the Public Health Department of Bursa Uludağ University Medical Faculty, for his statements about COVID-19 that were published on the website enBursa.com. Later on, the Office sent his file to the Uludağ University Rectorate on allegations of misconduct. The Rectorate put a law professor at the university in charge to launch a criminal investigation pursuant to the Article 53/c of Act no 2547. Another commission of three professors were additionally assigned to examine whether a final investigation may be launched considering his statement. Both the investigator and the members of the commission ruled for non-jurisdiction by considering the issue within the framework of Professor Pala's academic freedom and freedom of expression, which are under the protection of the Turkish Constitution; to conclude, that it is incontestable for him to collect, evaluate and publicize data on a public health problem.<sup>17</sup> In the end this has been a smooth and sound investigation, hopefully to be exemplary as well for other universities. The case has been brought to the examination of the Council of State.

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<sup>16</sup> For example, see (in Turkish): <https://yetkinreport.com/2020/10/09/yalan-ruzgari-saglikta-makale-tartismasi/>; “*İkinç makale skandalı: Bilimsel dürüstlük nerede?*”

<sup>17</sup> See the [letter](#) by Bursa Uludağ University Rectorate's Office of Legal Counselor issued on 24 August 2020. (in Turkish)

### 3. The Conviction of Dr. Bülent Şık

Last year's report on Academic Freedoms referred to the severity of the trial on Bülent Şık, for sharing the findings of a research project carried out with support from the Ministry of Health aimed at determining the level of carcinogenic chemicals in areas with a high prevalence of cancer, with the public. Following the allegations of “disclosure of prohibited secret information” (Penal Code Art. 258), "providing prohibited secret information” (Penal Code Art. 334) and "disclosing secrets related to his duties" (Penal Code Art. 336), finally, he was convicted of ‘disclosing secrets related to his duties’ with a 15-month prison sentence on September 26, 2019. The sentence is currently at the court of appeals. A large number of academicians around the world have started a support campaign for Bülent Şık.<sup>18</sup>

### 4. The Limitation on the use of Organic Residues collected at Archaeological Excavations, such as Plant Residues and Samples of Earth and Sediment; and the Seizure of Samples by Certain Agencies

On October 22, 2020, The Istanbul office of the Turkish Archaeologists Association released a public statement,<sup>19</sup> regarding the decree issued by the Ministry of Culture and Tourism's General Directorate for Cultural Heritage and Museums, and sent to the Department of Excavations and Laboratory Directorate on 4 September 2020,<sup>20</sup> which rules:

*[...] On the basis of assessments by the Ministry and associated institutions related to residues, earth, clay and sediments; the transportation/transmission of plant residues of grains, flowers, tree seeds, organic material or piece samples belonging to insects, mushrooms, algae and microorganisms - to any university, laboratory, depot, institution etc. in Turkey or abroad, other than those of our museum directorates, is halted until a further regulation,.*

As is revealed by further news on the topic, the motive behind this intervention is to regenerate the seeds found among the seized materials, pursuant to the "Ancestral Seed" project implemented by the Ministry of Agriculture.<sup>21</sup>

In this respect, the seizure of the entire collection belonging to the British Institute at Ankara, which has carried out scientific work in our country since 1947, has evoked great uneasiness in the scientific community. The British Institute has earned its reputation by pioneering the preservation and collection of carbonated grains at excavations, identification of sub-species and their domestication processes; as well as conducting the sampling of wild grains in Turkey and bringing them to the utilization of the scientific community. A similar intervention was made to the collection of the Koç University, where samples of archaeobotany, which had been brought from various excavations for examination, and a major part of which had not been studied yet, were all taken away.

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<sup>18</sup> [Open Letter in Support of Dr. Bülent Şık, Sentenced to Prison for Publicizing Threats to Public Health.](#)

<sup>19</sup> [https://www.facebook.com/ArkeologlarDerneğiIstanbulSubesi/posts/1609903392524561?\\_tn\\_ =K-R](https://www.facebook.com/ArkeologlarDerneğiIstanbulSubesi/posts/1609903392524561?_tn_ =K-R) (in Turkish)

<sup>20</sup> Kültür ve Turizm Bakanlığı, 04.09.2020, Sayı: 94949537-160.99-E.654203, Konu: Analiz örnekleri.

<sup>21</sup> [Turkey Seizes Ancient Seed Collection in Nationalist Move; Turkey snatches rare seeds from British collection.](#)



Such measures are thought-provoking for various reasons. First of all, from the scientific point of view, organic residues like plants, which constitute the field of archaeobotany, can reach our day only by charring. As charred remains cannot preserve their DNA, it is impossible to generate new species from the charred seeds with today's technology. Even if these samples are, for future use, gathered in a center which is yet in the project stage, the seizure will have detached them from the information obtained during the excavation, thus turn them into a plant residue of whatsoever origin, and consequently deprive their possible scientific value for agricultural research per se. Considering how the findings of each new excavation conducted in our country change our knowledge, we may fairly expect this measure to lead up to grave consequences. The wild ancestors of current seed varieties still exist in many places, and different teams are collecting samples for scientific studies. The correct scientific approach is to study the species in the field in order to arrive at ancestral seeds. Endorsement of this field research with archaeological research findings is possible, not by seizing archaeological samples from the scientists' hands, but through complementary work by archaeology, agriculture, and genetics researchers.

Furthermore archaeological digs are not simple earthworks, they are studies to answer scientific questions, to develop new methods, to understand how our societies arrived from the past ages to the present state. The artifacts found in archeological digs may attract public attention in museums with their visual charm. However, carbonated seed finds, bone pieces, earth samples manifest greater scientific value than museum "artifacts" when they undergo suitable analysis. When the rights and facilities to do scientific research on such organic material are taken away from teams of scientists, archeological digs are degraded to mere earthworks rather than being camps of scientific study.

Lastly, it is unacceptable, from the points of view of scientific ethics and freedom of research, to take the material obtained through scientific work away from a team of researchers, before they complete the research and report their findings in scientific publications<sup>22</sup> As a consequence, not only were the archeologists leading the excavations left in a dire situation, but also many graduate students were deprived of the materials they need to conduct research for their dissertations.

### **C. Limitations on Freedom of Expression**

The situation of Academics for Peace is still on the agenda concerning the limitations on the freedom of expression. As a reminder, we would like to point out that 406 of the academicians who signed the Academics for Peace petition were dismissed from public office by State of Emergency Decrees (KHK).<sup>23</sup> In addition to these dismissals, it is also reported that 89 academics have been expelled from their work for other reasons or forced to resign or retire.<sup>24</sup> Several other academics were detained or arrested. 822 academics were put on trial before criminal courts in

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<sup>22</sup> See also, the statement by the Turkish National Committee of the International Council on Monuments and Sites "[Arkeobotanik buluntular bilimsel araştırma ortamlarında korunmalıdır.](#)" (in Turkish)

<sup>23</sup> For all the quantitative data on this topic, see [Academics for Peace: Report on the Current Situation](#), Human Rights Foundation of Turkey (TİHV), 24 August 2020.

<sup>24</sup> For details, see [Academics for Peace Report by Solidarity Group](#), 4 December 2019, and ve [Academics for Peace: Report on the Current Situation](#), (TİHV, 2020).

connection with the "Peace Statement" signed by the Academics for Peace, with the accusation of "making propaganda for a terrorist organization" according to Article 7/2 of the Anti-Terror Act.<sup>25</sup> The Human Rights Foundation of Turkey (TİHV) shared the latest developments on cases involving academics, in their Actual Situation Report prepared in August 2020. According to the report, the Constitutional Court's July 2019 decision on the individual application of Zübeyde Füsün Üstel and Others formed an effective precedent regarding the academics who have been tried with Academics for Peace cases.<sup>26</sup> Data gathered within the Academics for Peace Platform indicates that 622 out of the 822 cases resulted with acquittal within the year following the Constitutional Court's landmark decision.<sup>27</sup>

Despite these positive developments, it is still worrisome that some of the cases are not yet decided, and some judicial procedures are left in limbo by the district courts. The perseverance of such judicial actions in district courts in disregard of the Constitutional Court's decision and precedent, exemplifies the continuation of "deterrent effect" with regard to the freedom of expression of academics. For instance, the TİHV Report recounts that "during a lawsuit in Van, even though acquittal could have been ruled following the precedent that the Constitutional Court's decision set, the district court instead mandated the accused academic, who is living abroad, to return to Turkey to give a statement, and finally ruled a warrant of apprehension." The report further emphasizes that postgraduate researchers who were not among tenured academic staff at the time of signing the "Peace Statement," have faced discrimination in their applications for academic positions because employment is conditional on security clearance.<sup>28</sup>

The prolongation of the judicial process for these academics means that their passports continue to be withheld.<sup>29</sup> Passport constraints remained in effect even for those whose judicial processes had ended. Changes introduced to the Passport Act which were supposed to address and alleviate the cases of dismissal from public office, appear to be insufficient in preventing arbitrary practices; and the Academics for Peace were not subjected to equal treatment on this issue. It is reported that signatory academics whose passports were not delivered, had to apply to the Commission for Administrative Decision on Passports under the Ministry of Interior in order to find out the reason for the refusal.<sup>30</sup>

It is worth pointing out that some Academics for Peace litigated their dismissal cases in administrative courts after the termination of the State of Emergency. However, the administrative courts did not assume the kind of progressive interpretation that they had adopted regarding the academic purges of the September 12, 1980 military coup, and refused the stay of execution requests.<sup>31</sup>

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<sup>25</sup> Ibid.

<sup>26</sup> Karş. Anayasa Mahkemesi, *Zübeyde Füsün Üstel ve diğerleri* [GK], B. No: 2018/17635, 26 Temmuz 2019; also see (in Turkish): "[Barış Akademisyenine Verilen Ertelenmesiz Hapis Cezası, İstinaftan Döndü](#)"; "[Barış Akademisyenlerinden Prof. Dr. Kaboğlu'na Beraat](#)".

<sup>27</sup> [Academics for Peace: Report on the Current Situation](#), (TİHV, 2020).

<sup>28</sup> [Academics for Peace: Report on the Current Situation](#), (TİHV, 2020)

<sup>29</sup> See for instance Assoc. Prof.. Dr. Tuna Altinel's situation. "[Tuna Altinel Beraat Etti](#)"; "[Tuna Altinel'e Pasaport Verilmiyor](#)". Also see [Academics for Peace: Report on the Current Situation](#), (TİHV, 2020)

<sup>30</sup> In this regard, see [Academics for Peace: Report on the Current Situation](#), (TİHV, 2020).

<sup>31</sup> Danıştay İçtihadı Birleştirme Genel Kurulu, E.1988/6, K.1989/4, 7 Aralık 1989; [Academics for Peace: Report on the Current Situation](#), (TİHV, 2020).

The issue of the Academics for Peace being allowed to return to their jobs is kept on hold as a case to be reconfigured according to the decision of the Inquiry Commission on the State of Emergency Measures (OHAL Commission). The decisions ruled by the OHAL Commission show a general tendency to refusal (12.680 admissions and 97.570 refusals as of October 2, 2020).<sup>32</sup> Whether the Constitutional Court's decision on the matter will be followed in practice, or not is to be seen, on the basis of the decisions of the OHAL Commission. Multiple rights violations will continue to accumulate as the process drags on, precedents in the Constitutional Court's rulings are not complied with, and as applications for passports are handled differently in different cases.

#### **D. Changes in Disciplinary Measures of the Higher Education Act 2547**

With an amendment of Act 2547, the Law of Higher Education, made on April 17, 2020, disciplinary penalties that apply to academic staff have been once again modified without consulting any academic agency or institution, and without any public debate.<sup>33</sup> This manner of introducing changes is in itself an infringement of university autonomy and therefore a sufficient reason for criticism of the new measures. However, the content of the modifications (once again) creates the impression that the lawmakers had civil servants working in a hierarchical state structure in mind, rather than the staff of autonomous institutions as universities are supposed to be.<sup>34</sup>

Still, after the last amendment, "the disciplinary penalties that may apply to the academic staff of public and private universities are: warning, reprimand, forfeiture of payment or salary, suspension of promotion or forfeiture of multiple payment, dismissal from the academic profession, and dismissal from public service" (Art. 53, b). Some of the misdemeanors which require disciplinary action on academic staff, and their penalties, are as follows<sup>35</sup>:

- **Warning (Art. 53, b. 1): *Not paying attention to the training of subordinate staff; showing negligence or disorderly behavior in conducting duties fully and in time, failing to abide by the institution's rules and regulations at the place of work; filing undue applications or complaints.*** Paying attention, showing negligence, disorderly behavior, or filing undue complaints - each one of these is totally ambiguous, amorphous, and at times restrictive for the freedom of expression of the academic staff; we believe none of these disciplinary 'offenses' can possibly be included within the laws of an advanced country.
- **Reprimand (Art. 53, b. 2): *Failure to conduct duties fully and in time, being faulty in obeying the institution's rules and regulations at the place of work, not fulfilling obligations of notification set out in regulations; showing verbal disrespect to***

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<sup>32</sup> For quantitative data, see [Announcement on the Decisions of the Inquiry Commission on the State of Emergency Measures](#), October 2, 2020.

<sup>33</sup> "Yükseköğretim Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun", *Official Gazette* 17.04.2020, no. 31102.

<sup>34</sup> For the Science Academy's previous statements regarding disciplinary measures, see the Reports of [2016-2017](#) and [2018-2019](#)

<sup>35</sup> Another report will tackle with the violations of science ethics and the sanctions imposed on them, which are issued at Law no 2547, and partly reviewed with the last amendment.

*superiors during duty; showing behavior and attitudes inappropriate for the title carried and outside the bounds of public morality and decency.* Here again the amendments introduce definitions of misconduct which are extremely vague and open to abuse of discretion. The concepts of public morality and decency in particular are not 'public' as such, as their contents clearly alter from person to person, according to cultural prejudices and sexist stereotypes. Identities, preferences and expressions of opinion (such as clothing style, sexual orientation or gender identity, critical course material that is not in accord with traditionalist approaches), which do not infringe on the rights and freedoms of others, but are related to individual autonomy, right to privacy, to inclusivity and prohibition of discrimination and to critical teaching-learning, etc. will be under risk when viewed from such arbitrary standpoints.

- Forfeiture of payment and salary (Art. 53, b. 3): ***Intentional failure to conduct duties fully and in time; failure to obey the institution's rules and regulations at the place of work; continuous absence from work for 3-9 days without excuse; using or helping or letting someone use any location within the boundaries of the workplace for the purpose of a ceremony, meeting etc. without permission; publishing, copying, disseminating or exhibiting any banned publication.*** The first two conditions which require the penalty of forfeiture are already problematic as pieces of legislative writing. While "failure to conduct duties fully and in time" has already been mentioned in the section on Reprimand, "intention" is sought for the same action in the section on forfeiture. However, intention is clearly intrinsic to the concept of guilt. What was meant to be indicated as a cause for reprimand is likely to be negligent behavior. For another example, listing of the fault "continuous absence from work for 3-9 days without excuse" creates the impression that another penalty will be introduced if the absence is 10 days and longer. Yet the legislator left the period of 10-19 days unpunished and considered an absence without excuse 20 days or more to be a cause of dismissal from the profession, as quoted below. Leaving these contradictions of the legislature aside, the fact that 'places of work' for academic staff are far more flexible than those of a civil servant, and that it is common and normal for academics to work in libraries or at home, leads one to surmise this phrasing in the Act will also serve the function of a "sword of Damocles" The means to follow who is in the university at what times will be provided by establishing a milieu in which colleagues spy on each other. Whereas, besides teaching and fulfilling executive duties, an academic's staff's most essential duty is to research. And that has no definite location. Proper auditing of academic function should be based on the output; it is clear what purpose will be served by the model of researcher who is at the university every day but has no research output. Finally, still having to speak of "banned publications" and to write this phrase in a law on higher education in our country, in the year 2020, is simply disgraceful.
- Suspension of promotion or multiple forfeiture of payments (Art. 53, b. 4): ***As It is impossible to make sense of the offense recently added to this section, "Arriving at work in a drunken state, consuming alcoholic drinks at the workplace.*** Not fulfilling

the requirements of a job would obviously have some sanctions. This situation may arise for hundreds of reasons other than alcohol addiction. Additionally, the clause refers not to a medically diagnosed state of addiction, but to a state of being “drunk,” without specifying how this is to be determined, or even merely to having consumed alcohol. One wonders if those breath test stations for drivers will be established on university campuses? On what basis is having an alcoholic drink during lunch or at a conference dinner is considered to be impeding for proper job performance? It seems the legislators have forgotten that the Constitution of the Turkish Republic still provides protection of basic rights and freedoms and foresees that limitations on these rights and freedoms may not contradict the requirements of the secular Republic and the principle of proportionality (Art. 13).

- Dismissal from academic profession (Art. 53, b. 5): *absence from work without authorization or excuse for a total of 20 days a year*. As mentioned above for absences of 3-9 days, one of the essential functions of an academic, producing academic output, is generally unconnected to a location. While the evaluation of research outputs is meaningful, putting a reservation on where research will be performed, and introducing an excessive sanction like dismissal from the profession, is an extension of seeing a university faculty member as a civil servant under all conditions and as someone working in subordination.
- Dismissal from public service (Art. 53, b. 6): *Committing or supporting acts of terror, using or letting someone use public resources and facilities for such organizations*. Since these offenses are punishable with dismissal not only from the profession but from any public service, the use, yet again, of ambiguous expressions like 'supporting acts that qualify as terror,' or “using resources” is particularly objectionable. Prior conviction in a criminal proceeding should be sought as a prerequisite in such cases. In any case, it is neither appropriate nor possible for an administrative disciplinary board to make such judgments.

Consequently, as the Constitutional Court's annulment decision of July 17, 2019, quoted in the Science Academy's 2018-2019 Report on Academic Freedom,<sup>36</sup> states "...as the legislation related to academic staff, and the duties given to them require different qualifications than those of other civil servants, the disciplinary judgements on them should also take into consideration the different characteristics of this professional group..." The Constitutional Court's finding is here overlooked once again and a chance to introduce a liberal disciplinary regulation is squandered away.

## E. Gender Equality

Detailed and reliable information on the latest situation regarding Turkey's current performance on gender equality in research could not be accessed while this report was under preparation as data by SHE Figures had not been published yet, The EU Commission's Turkey 2020 Report dated

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<sup>36</sup> [Report on Academic Freedom 2018-2019](#), p. 8.



October 2020 may be taken instead as a guiding reference regarding gender equality in scientific research. First of all, Turkey's general performance on gender equality is low, according to the EU Commission's Turkey 2020 Report. Still, Turkey was placed in the highly successful category within the European Research Area (ERA) with regard to the gender equality and gender mainstreaming.<sup>37</sup> In the context of gender equality, the EU commission underlines that Turkey is placed third among European Research Area countries.

The universities' and in general the judiciary's inadequacy for the investigation, prosecution and punishment of sexual harassment and sexual assault claims (which are reflections of gender based inequalities), and their tendency to support sexist conduct, have been a matter of explicit public debate during the years of 2019-2020.<sup>38</sup> Sexist attitudes prevail in the form of turning a blind eye toward male perpetrators, and failure to enforce effective sanctions or any sanctions at all. Such policies are reflected in gender discriminatory patterns of impunity, of favors like promotions and awards to the perpetrators while investigations and criminal proceedings continue, and of victim blaming as well.

In the years of 2019 and 2020, the media has reported critically and with specific examples, and more than in previous years, on how women researchers have been submitted to gender based discrimination through varieties of controlling and exclusionary behavior or hierarchical relations, including cases of sexual harassment and assault.<sup>39</sup> In this context it is worth noting that "Gender Equality Action Plan" is mostly absent within the YÖK system, and as internal policy preferences of universities; a very few number of universities do have such practices with institutional preferences or through EU projects. Furthermore, universities' basic policies are clearly not subjected to a "Gender Impact Analysis," and a "Gender Based Budgeting" approach has not yet become a prioritized public preference. In a research and education environment devoid of effective tools and procedures to ensure equality, the struggle against deeply rooted gender-based inequalities becomes more challenging as well. This situation creates diverse forms of discrimination and inequalities in the utilization of rights based on academic freedom.

The political proposal "to establish women's universities," which were criticized for being sexist, segregationist and unsuccessful, as discussed in our 2019 Report,<sup>40</sup> appears to have turned into a development objective by being included within The Eleventh Development Plan (2019-2023), during the period by our present 2020 Report.<sup>41</sup> Similarly, the Presidential Annual Program of 2021, published on October 27, 2020, calls for a report examining the model in Japan and to initiate efforts to establish the academic units of the women's universities, under the section titled "the Promotion of Diversity in Higher Education."<sup>42</sup> We feel the urge to reassert that the Japanese

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<sup>37</sup> Turkey 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2020 Communication on EU Enlargement Policy (COM(2020) 660 final) - {SWD(2020) 350 final} - {SWD(2020) 351 final} - {SWD(2020) 352 final} - {SWD(2020) 353 final} - {SWD(2020) 354 final} - {SWD(2020) 355 final}, European Commission, Brussels, 6.10.2020 SWD(2020) 355 final, s. 97.

<sup>38</sup> For instance, see (in Turkish): "[Akademide Cinsel Saldırı](#)"; "[İstanbul Üniversitesi'nde Cinsel Saldırı Suçlaması](#)".

<sup>39</sup> In particular, See (in Turkish) "[Eriş Akademik Tartışması](#)", "[Akademide Kadın Olmak 1](#)", "[Akademide Kadın Olmak 2](#)", "[Akademide Kadın Olmak 3](#)".

<sup>40</sup> [Report on Academic Freedoms 2018-2019](#),

<sup>41</sup> *Official Gazette*, July 23, 2019, no. 30840: "560.2 Japonya örneği incelenerek sadece kadın öğrencilerin kabul edildiği kadın üniversiteleri kurulacaktır."

<sup>42</sup> *Official Gazette* October 27, 2020, no. 31287 bis, p. 273, Caution N. 561.1.

model of women's universities is in fact an unsuccessful model, which maintains sexist patterns. These universities cannot even make it to the top 1000 in world university rankings. In the USA the number of women's universities, which, 50 years ago, amounted to 230 has fallen down to 45.<sup>43</sup>

A significant and positive development with regard to gender equality in research is the series of principles TÜBİTAK adopted for increasing the participation of women researchers in research processes.<sup>44</sup> With the policy document published on December 25, 2019 TÜBİTAK announces a preference of principle for gender equality in the evaluation panels of its research support programs, as well as at the researcher level. This preference is a crucial step for women researchers to benefit equally from the rights based on freedom of research, for equal participation in decision-making processes in the allocation of research funding, and for the elimination of gender-based imbalances and disadvantages. If applied effectively, the document will improve Turkey's position in the European Research Area and reinforce its position of "good example." In view of the importance of this document, we hereby quote the "basic principles" it puts forth:

*Policy Principles for Increasing the Participation of Women Researchers in TÜBİTAK Processes*

*1. TÜBİTAK embraces gender balance for the participation of female and male researchers and prioritizes increasing the ratio of female researchers in a way to achieve balance when deemed necessary in;*

- *governance mechanisms established for decision-making processes (e.g. group executive boards and advisory boards),*
- *project evaluation and monitoring processes*

*while ensuring scientific excellence and/or research quality within the scope of R&D and innovation support programs.*

*2. TÜBİTAK, in order to encourage female researchers to apply to R&D and innovation support mechanisms, places importance for the integration of facilitating measures for the dependents under the responsibility of the researcher within the regulations of the R&D and innovation support programs.*

*3. TÜBİTAK encourages the inclusion of female researchers and/or scholars in project teams that are established within the scope of supported R&D and innovation projects.*

*4. TÜBİTAK promotes the publication of special calls for female researchers in the field of technology-based entrepreneurship.*

*5. TÜBİTAK regularly monitors the gender balance of researchers through statistics, within the scope of its R&D and innovation support programs and in the activities that are conducted through its R&D centers and institutes.*

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<sup>43</sup> Burcu Karakaş (2019), "Kadın üniversitesi tartışması: Türkiye'yi geriye götürür", 5 July 2019, Deutsche Welle; Ilgın Yorulmaz (2019), "Japonya'daki kadın üniversiteleri: Neden kuruldular, başarılılar mı?", BBC Türkçe, 5 July 2019; David Matthews (2019), "Turkish Academics Sound Alarm Over Gender Segregation Plans", Inside Higher Education, 8 November 2019.

<sup>44</sup> See <https://www.tubitak.gov.tr/en/news/policy-principles-for-increasing-the-participation-of-women-researchers-in-tubitak-processes-are>

6. *TÜBİTAK gives utmost importance to ensure the gender balance of researchers who are employed in its R&D centers and institutes while maintaining or improving research quality.*

7. *TÜBİTAK carries out awareness activities regarding facilitating measures and encouragement given to female researchers in its R&D and innovation activities.*

8. *The implementation of the measures included in the policy document will be piloted with the approval of the policy document by the TÜBİTAK Executive Board and disseminated across all activities.*

9. *TÜBİTAK will monitor the implementation of these policy principles and review and improve as necessary. These policy principles come to force as of 24.12.2019.”*

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Respectfully presented to the public,

Executive Board of The Science Academy, November 9, 2020