

The ECHR's priority policy is failing Turkey's human rights victims



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Turkey's political prisoners are being failed not just by the Turkish judicial system, but also by the European Court of Human Rights (ECHR). As their last resort to seek justice, being failed by the ECHR hurts these victims even more.

Mehmet and Ahmet Altan, the journalists and brothers, were taken into custody on Sept. 9, 2016 as part of an operation against the so-called media wing of the Gülen movement, a religious group accused of orchestrating the July 2016 coup attempt.

The pair were prosecuted and indicted for publishing columns and giving speeches to media outlets that had been dissolved by the government under the emergency rule decrees. The Altan brothers lodged separate individual applications with the ECHR in Jan. 2017. Despite the almost identical cases of the siblings, Mehmet Altan's case was heard in March 2018, while Ahmet Altan's case remains pending before the Court.

The ECHR's failure occurs not only when the court refuses, misjudges or delays a case, but when its policies defy the principles of equality before law, transparency and procedural fairness.

A failure to accomplish its positive duties, where the court acts under a heavy burden of a backlog of cases as well as financial and human resources limitations might be understandable, but a failure on negative duties is a cumbersome defect for the highest court of appeals of 47 countries.

That defect largely pertains to the second part of Lord Hewart's century old dictum: "Justice must not only be done, but must also be seen to be done."

The Strasbourg Court's priority policy is one of many areas where the court fails to show that it is fair and just. The legal maxim "Justice delayed is justice denied," becomes even more disturbing when a group of victims of injustice develop a feeling that their turn for justice will come last, if ever. The Orwellian adage "All animals are equal, but some animals are more equal than others," is equally problematic in the distribution of the proceeds of justice.

It was this sentiment that was espoused by Figen Albuga Çalığışu, the lawyer of Turkish journalist and author Ahmet Altan, when she said:

“The ECHR is well aware of my client Ahmet Altan’s application through the case of Mehmet Altan, which was considered by the court as a priority case. However, the ECHR is not giving a good account of itself by failing to consider my client Ahmet Altan's application after 34 months. This inaction itself constitutes a new rights violation. One wonders whether the ECHR, too, has been politicised.”

Could there be a legal explanation of why Mehmet Altan was deemed more equal than Ahmet Altan? We don't know.

Prominent U.K. lawyer Tony Fisher, a member of the Human Rights Committee of the Law Society of England and Wales, while commenting on the issue of procedural fairness reminds us that the court has had a priority policy since June 2009. But that policy suffers from an unfortunate lack of transparency as to how different cases, which fall into the most urgent Category 1, are treated.

“Some are fast tracked to hearing whilst others are not,” Fisher said. “Many Turkish applicants have remained imprisoned for many years in alleged violation of their Convention rights whilst some of their fellow countrymen have had cases heard within relatively short periods of time.”

That feeling of discrimination is further exacerbated when the victims belong to an ethnicity or a social group that has been subject to a history of discrimination before domestic courts.

The Kurds already know that the Turkish Lady Justice is not blindfolded. Even a perceived inattention on the part of the ECHR to the cases relating to discrimination of the Kurds would have a devastating effect on their belief in the rule of law and their trust in the court. Yet, the applications of Turkey’s pro-Kurdish Peoples’ Democratic Party’s (HDP) deputies, whose parliamentary immunity was revoked unlawfully in May 2016, have been pending before the ECHR since October that year. The fact that the European court has produced a chamber decision on the case of Selahattin Demirtaş, the former leader of HDP, does not help, either. The Grand Chamber decision on Demirtaş's case has been pending for over a year now.

Emma Sinclair-Webb, Turkey Director of Human Rights Watch suggests that these delays are counterproductive for Turkey’s implementation of the court’s rulings.

“Given that Turkey has ignored the European Court judgments and found ways of getting round the rulings, bolder steps to expedite rulings would have sent a clearer message to Turkey about the obligation to implement the decisions of the Court and would have demonstrated more starkly that Turkey is in breach of the European Convention,” according to Sinclair-Webb.

The latest unpeople, or to use Günter Walraff's term, the "Ganz unten" (The Lowest of the Low) of the unseen Turkish caste system are the Gülenists, followers of the Gülen movement. They are at Cocytus, the ninth and the lowest circle of Erdoğan's Inferno, punished for their alleged guilt of treachery against those with whom they had special relationships. Whatever their level of complicity in Erdoğan's sins, they too turn to the Strasbourg Court as their last hope for justice. And they, too, feel betrayed.

The case of Cafer Tekin İpek is exemplary. İpek was a philanthropist and a partner of Turkey's **Ipek Media Group**, which was seized by the Turkish government in Nov. 2015, almost a year before the failed coup attempt. This seizure was a milestone in the history of the crackdown on free media in Turkey. When he was arrested at his residence in Istanbul, İpek's lawyers were getting ready for a flight to Strasbourg to file an application for the unlawful seizure of his 18 companies. The case files to be submitted to the ECHR were also seized and İpek was remanded into pre-trial detention.

His lawyers made it to the court a year later, this time for the violation of rights of İpek himself. His case is clearly a Category I fast-track case. But four years after the application, his lawyers have yet to hear a response from the court.

"The court's inconsistency in this area is inexplicable, and is undermining its authority, leaving authoritarianism emboldened," says his lawyer Patrick Dorris, echoing Çalığıuşu's feelings of disappointment in the ECHR.

According to Dr. Emre Turkut, a postdoctoral researcher at International Law Institute of Ghent University, there have been many flaws in the design, transparency and speed of the ECHR's priority policy – all of which has been exposed once again in the court's dealings with the recent Turkish cases.

"The court does not offer any information as to why a certain case has been placed among its seven categories of priority beyond a general explanation that a case is listed as such," according to Turkut. "Moreover, even under the most 'ideal' circumstances, the court takes its time in deciding priority cases, which often results in substantial delays."

Does the court have the luxury of being aloof to the adverse perceptions of the very victims to whom it is meant to be distributing justice? Can the court simply disregard these sentiments as paranoid illusions or constructs of discontent? Definitely not.

Such a perception undermines the credibility of the court and of the European Convention on Human Rights. Procedural fairness serves not only the recipients of the court's services, but the ECHR itself.