NAVIGATING PRECARITY: THE CASE OF THE PUBLISHING SECTOR IN TURKEY



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Abstract

It is well documented that many hybrid regimes worldwide have witnessed an authoritarian turn in recent years. Incumbents in these regimes have sought to consolidate and extend their power through the use of legal institutions, as opposed to direct suppression. Using the rhetoric of liberal-democratic principles such as "the rule of law" and "free and fair elections," leaders meanwhile have weakened the mechanisms of accountability and the independence of the judiciary. Meanwhile, despite the erosion of freedom of expression, life in many hybrid regimes is marked by an upsurge in civil society activism. Yet, almost no effort has been made to understand the puzzle of how a vibrant society can coexist with the suppressive power of government.

The thesis addresses this gap by studying the lived experience of the publishing sector in Turkey with reference to the threat of criminal prosecution. The thesis traces the evolution of post-Ottoman Turkey as a hybrid regime, describes the political legacy that the current regime inherited and re-shaped, and shows how repeated political turmoil has molded the publishing world. It follows by an examination of the contradictions apparent in contemporary Turkey: a dynamic industry that is producing a variety of publications yet operating with a widespread sense of fear lurking behind; and although there is a persistent anticipation of criminalisation of their work, it is not matched by the actual scale of criminal prosecutions.

Based on 14 months of ethnographic fieldwork, including direct observation of political trials, study of a publishing house, and in-depth interviews with authors and publishers, the thesis contends that the legal and political environment of precarity generated by the state on the one hand, and the strategies authors and publishers adopt to navigate and push the permissible political boundaries, on the other, form the core of these disparities. The socio-psychological impact of arbitrary use of anti-terror and defamation laws that are often invoked but do not result in imprisonment and fear of a mere possibility of being subjected to criminal proceedings is examined.

The thesis then focuses on how different groups in the publishing sector experience precarity and navigate "red lines." Because the industry is not uniform, the perceptions of various groups are scrutinised, ranging from one that is close to the regime ideologically or in other ways to another extreme that is in open defiance against the state's suppression of freedom of expression. The final section of the thesis offers a typology of the impacts of precarity on the industry, ranging from acquiescence to resistance. Overall, this dissertation argues that generating precarity allows governments in hybrid regimes to create a silencing effect, even while making democratic claims.

However, that contradiction itself creates a space for the expression of dissent, although it is controlled. Lived experiences in the publishing industry show that active, strategic, and defiant social actors mitigate the extent to which a hybrid regime can shape everyday life.

Dedication

To Pembe and Güner

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Note on translation

All the translations from Turkish into English are mine, unless otherwise indicated. In these translations, I have conveyed the general sense of my interlocutors' words, while staying as true as possible to the literal words they used.

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List of Abbreviations

AKP	Justice and Development Party (*Adalet ve Kalkınma Partisi*)
BYB	Press and Publishing Association (*Basın Yayın Birliği*)
ÇHD	Progressive Lawyers Association (*Çağdaş Hukukçular Derneği*)
CHP	Republican People's Party (*Cumhuriyetçi Halk Partisi*)
DP	Democrat Party (*Demokrat Parti*)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HAGB	Deferral of the announcement of the verdict (*Hükmün açıklanmasının geriye bırakılması)*
HSK	Council of Judges and Prosecutors (*Hakim ve Savcılar Kurulu*)
KHK	Executive decree having force of law (*Kanun Hükmünde Kararname*)
NATO	North Atlantic Treaty Organisation
PKK	Kurdistan Workers' Party
SETA	Foundation for Political, Economic and Social Research (*Siyaset, Ekonomi ve Toplum Araştırmaları Vakfı*)
TBYM	Turkish Grand National Assembly
TEDA	Project on International Expansion of Turkish Culture, Art and Literatue (*Türk Kültür, Sanat ve Edebiyat Eserlerinin Dışa Açılma Projes*i)
TESEV	Turkish Economic and Social Studies Foundation (*Türkiye Ekonomik ve Sosyal Etüdler Vakfı*)
TYB	Turkish Publishers Association (*Türkiye Yayıncılar Birliği*)

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Chapter 1 - Introduction

1. Setting the Research Question

In recent years, academic works and news have repeatedly reported a slide into authoritarianism in many states around the world, including Turkey. However, it can be confusing when one observes everyday life in these states as life on the street often seems ordinary and vivacious. In the case of Turkey, news reports and academic works underline the increasing centralisation of power, weaponisation of law and political trials against dissidents, diminishing freedoms, including the freedom to demonstrate and freedom of expression, and heightened surveillance of social media platforms and civil society organisations. Yet, despite increasing government pressure, the publishing sector has expanded over the years. At the same time, the trappings of democratic institutions remain; elections take place, opposition parties are highly outspoken, and civil society is vibrant.

These conflicting messages convinced me that a closer study of the state's role in everyday life was crucial to make sense of these divergent signs and for a nuanced understanding of living and working in increasingly authoritarian regimes. In this respect, I decided to focus on publishers and authors who can be generalised as a creative middle class who interact more with political institutions owing to their work. At the same time, these are also the groups that clearly need the space of freedom to express and to produce. I was particularly interested in exploring law and legal institutions as modalities of state power in the experience of these groups. Indeed, while the news reports cover the criminal prosecutions of civil society members, lawyers, academics, and journalists, much less information is available about the repercussions of these cases on the everyday life and work of the people in these circles. Hence, I was keen to study the legal means through which the state shapes the everyday life of the creative middle class, in my case, actors in the publishing industry, and how they experience the power of the state yet still carry on as engaged creatives. Understanding these two phenomena seemed key for unpacking what increasing authoritarianism entails on the ground in Turkey and other hybrid regimes around the world.

I chose the publishing industry as a case study, and as soon as I started discussing with authors, publishers, and editors about the role of law and legal institutions in everyday life, I was confronted with expressions of "uncertainty" conveyed by many of my interlocutors. Over time, I realised that they were using the term "uncertainty" to express feeling fragile and at risk vis-à-vis an omnipresent possibility of arbitrary criminal prosecution. However, the potential of criminal prosecution for defamation and terror-related charges, which always loomed large, had materialised only with respect to a fraction of the people I spoke to. In other words, the atmosphere of tension, disquiet, and insecurity I had observed and experienced did not correspond to the actual scale of criminal prosecutions and convictions of actors in the publishing industry. In fact, it appeared that by the time I had started fieldwork at the end of 2018, the number of cases against authors and publishers was decreasing.[1] Moreover, as time went on and as I made an effort to speak with a variety of publishers (with different ideological outlook, background, size, and priorities), it became clear that different groups and individuals experienced "uncertainty" or what I call precarity along different lines. Furthermore, despite the atmosphere of fear and increasing economic difficulties in the country, the publishing scene was flourishing. The number of books published per annum was rising yearly and the sector was performing well economically.[2] The two annual Istanbul book fairs I had attended over 14 months of fieldwork were a testimony to the buzzing industry. There was a perplexing contrast between the dynamism, shiny banners, and book signing events and the sense of vulnerability and fragility lying beneath these for many.

I have not approached the field with ready notions or concepts: the terms and conceptions used here are primarily based on what I observed during fieldwork. Indeed, a series of questions emerged early during my research in the field: How was the sense of precarity (and insecurity and vulnerability) generated through criminal prosecutions? How was it experienced across the publishing industry? Along which lines did the experiences of authors and publishers diverge or converge? How did the sense of precarity impact the everyday life and work of publishers and authors? How did they cope with and navigate the threat of prosecution? To what extent was precarity a successful mechanism of control? What was the range of practices, if there were any, which undermined it? How

[1] On the other hand, the number of prosecutions against social media users, including ordinary citizens, has increased.
[2] Despite the currency exchange crisis that began in the summer of 2018, the number of books published per annum continued to rise until 2021. See the market reports available on the website of Turkish Publishers Association, https://turkyaybir.org.tr/turkiyede-yayincilik/turkiye-kitap-pazari-raporlari/, accessed:15 August 2023.

come an atmosphere of disquiet, insecurity and fear on the political front coexisted with a buzzing industry? These are the main questions that have guided the current research. Overall, they can be distilled into the overarching research question: **How do hybrid regimes use precarity to shape everyday life?** This led me to the two empirical questions that directed my research**: a) How is precarity generated through legal means? b) How is it experienced, interpreted and navigated by the creative middle class?** The current thesis tries to give a comprehensive and nuanced answer to these questions with reference to the publishing industry in Turkey.



Figure 1: An image captured by the author from the annual Istanbul Book Fair, 3 November 2019

2. Methodology

As mentioned, the current research seeks to study the ways in which precarity operates as a mechanism to control dissent in increasingly authoritarian regimes. More specifically, I look at how criminal prosecutions against actors such as lawyers, civil society leaders, academics, and journalists produce public dissimulation, create a sense of fear and uncertainty, and encourage self-policing in the wider society. As a case study, I focus on the publishing world, which is concentrated in Istanbul and, to a less extent, in Ankara. First, it is important to point out that I have not begun my fieldwork with some ready hypotheses. As I have already mentioned, concepts and themes I use, such as the atmosphere of fear and the sense of uncertainty, have emerged from the research I have carried out in Istanbul and Ankara over 14 months. In the following sections, I will elaborate on these concepts as they are significant for understanding and analysing what was observed in the field.

Data for this study were collected using qualitative methodology: participant observation and semi-structured interviews between December 2018 and mid-January 2020. As a significant part of participant observation, I have frequented the Second Criminal Court of First Instance (which looks at media-related criminal cases) and several heavy penal courts at the Çağlayan Palace of Justice in Istanbul to observe cases that involved academics, journalists, lawyers, activists, and authors. I also observed two high-profile political trials at the Silivri courtrooms, an hour from Istanbul, in the Silivri Prison Complex. These cases are known in the media as the *Çağdaş Hukukçular Davası* (The Trial of Progressive Lawyers' Association) and the *Gezi Davası* (The Gezi Trial).[3] I also participated in numerous events in the legal community such as the Istanbul Bar Association's meetings in advance of the Gezi trial hearings, a dinner organised by an activist lawyers' association, and an excursion to Adana with another activist lawyers' group, Social Law (*Sosyal Hukuk*), to observe the hearings of a criminal case where they represented the families of the victims in the deadly Aladağ dormitory fire.[4] Besides, during the entirety of the fieldwork, I spent two to three days a week in a small law office led by a doyen lawyer who has been representing countless authors, journalists, and publishers in

[3] The Gezi trial is the prosecution of a group of civil society leaders for "attempting to overthrow the government by force" by organising the Gezi protests in 2013. Meanwhile, in the Trial of the Progressive Lawyers Association, a group of lawyers were prosecuted for allegedly forming and being members of a criminal organisation.
[4] In November 2016, a dormitory fire killed 11 children and an 18-year-old staff member in Aladağ, a district of the southern city of Adana. Local media reported that the dormitory was founded and run by a charity association affiliated with a religious movement.

criminal prosecutions since the 1970s. There were also junior lawyers in his team who were involved with the Social Law group. I spent a significant amount of time with both the senior and the junior lawyers, followed their media-related cases in the courts, and had numerous informal conversations with them on various occasions.

As for the publishing world, I spent time at a small publisher's office, visiting at intervals between June and September of 2019 while helping with the translation of a non-fiction book on English politics from English into Turkish. Besides, I followed closely the foundation of a new publishers' cooperative, YAYKOOP, attending both several preparation meetings and its plenary session. In addition, I attended many other meetings and events such as the meeting of a translators' professional association, meeting of the editorial board at an Islamist literary magazine, several award ceremonies including the freedom to publish awards given by the Turkish Publishers Association (the "TYB") and Metin Göktepe Journalism Awards.[5] I also attended talks and panels on several topics related to publishing, like the history of publishing, publishing activities in minority languages, and freedom of expression. Furthermore, I visited several book fairs including the book fair in the conservative working-class district of Sultanbeyli, the book fairs and events organised at the Kıraathane Istanbul Literature House, and the prominent annual Istanbul Book Fair. I have incorporated the informal discussions and observations at these events and meetings in my analysis and conclusions.

In terms of semi-structured interviews, I conducted over 60 of them with authors, editors, owners of publishing houses, lawyers working in the publishing field, activists working on freedom of expression, representatives of professional publishers' associations, a literary agent and a judge who presides over media-related criminal cases. Amongst others, the questions that loosely structured these interviews were about the interlocutors' work, their perceptions regarding the conditions in the publishing world and regarding the high-profile criminal prosecutions of certain dissidents. Along with formal interviews, I had several informal conversations with some of my interlocutors at the events I attended. I have translated these conversations into English, while keeping some of the words in Turkish in brackets where appropriate.

[5] The awards have been organised since 1998 in honour of Göktepe, a correspondent at the daily *Evrensel,* who was killed in police custody in 1996.

Initially, I used an audio recorder during the interviews. However, I later shifted to taking notes after observing that interlocutors, even those who openly voiced their anti-government stance, felt more relaxed without the recording machine. Right after the interviews, I usually found a place to sit and write more comprehensive notes. Hence, the analysis is based on transcriptions of recorded interviews, interview notes, and field notes. Using pseudonyms, I have edited identifying information and anonymised the interview notes and transcripts.

When starting the fieldwork, including participant observation and semi-structured interviews, I followed a snowball sampling method, starting with some contacts from friends in Turkey. One of these contacts invited me to the Freedom of Expression Award Ceremony organised by the TYB. This event was influential for my fieldwork since it was here that I personally connected with several authors and publishers. In fact, the first group of people I approached at the cocktail party after the award ceremony was from a publishing house that had been shut down by an executive decree. When I had introduced myself and explained what I was researching, they replied with a sombre grin: "You are talking to the right people."

Studying the lived experiences in the publishing world provided an opportunity to explore the everyday life and work of a group of generally "learned" individuals, who might loosely be referred to as the intelligentsia or the creative middle class. Unlike the political elites at one end of the social spectrum and the marginalised people at the other, this group does not often constitute the subject of ethnographic work. Hence, the current study is a significant contribution to knowledge on the experiences of intellectuals in an increasingly authoritarian context.

After speaking to the authors and publishers who were generally secular with liberal or left-wing tendencies, I recognised in the first few months that it was essential to speak to others outside this group to gain a more nuanced understanding of everyday experiences in the publishing world. Specifically, I wanted to reach out to authors and publishers who hailed from loosely similar ideological backgrounds as the ruling government. I was partly guided by the existence of two separate publishers' and authors' associations, which were roughly liberal/ left leaning and

conservative/ nationalist ideologically.[6] I attended several book fairs organised by municipalities in conservative Istanbul neighbourhoods, such as Sultanbeyli, to build contacts. Besides, I was also helped by a leftist publisher who worked on industry-wide projects with conservative/ nationalist publishers. Although gaining access was not easy, I did eventually succeed in carrying out several interviews with authors and publishers from "the other side." In addition, I tried to approach authors who were perceived to be conservative while at the same time critical of the current government. These were, usually, authors who had become disillusioned with the government over the years for various reasons. Besides, some were never close to the government due to differences in outlook on economic or religious matters; they usually found the government too liberal. However, some of these authors refrained from engaging with me. When I explained my research subject during an initial conversation on the phone, one of them explicitly stated: "I won't provide you with the kind of data you are looking for." However, eventually, I managed to speak to some of these authors who are conservative yet stand at a distance from the government. Altogether, talking to a variety of publishers and authors was very helpful in developing a comprehensive understanding of socio-political differences within the industry.

The politically charged environment in Turkey was a challenge during the field research. There was a sense of tension ready to erupt in several interviews. Some of the interlocutors perceived me as the voice of the enemy while others believed I provided an opportunity to communicate their message to the wider world. It is possible to say that generally, when I spoke to interlocutors who were close to the government either in terms of their background or current professional relations, the question of criminal prosecutions against dissidents left a chill. During the interview with an Islamist publisher, the latter insinuated, "I was given money to collect data on Turkey for the West." Similarly, in another interview with a publisher and their author, I was told that "the West encourages students like me to focus on such topics." On the other hand, at a dinner event organised by a society of progressive lawyers, the lady who invited me approached the table I was sitting at with several young lawyers and joked that "it would serve (them) well to make friends with me," implying that I could spread and amplify their agendas. Although I initially found it difficult to navigate the tense situations, I learned to approach these attitudes as a part of my research subject.

[6] The term conservative (*muhafazakar*) is used with respect to its meaning in the Turkish context, which is not defined but usually implies religious and/ or nationalist and often closer to the current government.

Meanwhile, the politically rigid environment made it more difficult for me to spend extended time at publishing houses. I had approached several publishing houses to offer to work on a voluntary basis. I had explained to them that my goal was to gain a comprehensive understanding of the steps and procedures of publishing and the workings of a publishing house. While I was not turned away openly, none of the publishing offices, even the most progressive and radical ones, seemed keen to have me on board despite the benefit that they would gain from an English-speaking team member working free of charge. While I cannot back it up with concrete expressions of words, I observed that they were hesitant to include an outsider, even if a qualified person, in their teams. The family-like atmosphere and the generally small size of the teams at the publishing houses was probably a factor. Nevertheless, half a year into fieldwork, I did manage to take on some translation work. I spent some time at a small leftist publisher in Cağaloğlu, the old publishers' neighbourhood in historical Istanbul, next door to the Sultanahmet Square. Here, as mentioned, I helped with the translation of a book from English into Turkish. The small team at the publishing house consisted of a single editor, a secretary and the owner working together. Still, each visit was filled with interesting conversations.

Being a Turkish Cypriot researcher proved helpful in these politically charged spaces. It is possible to suggest that my role coincided somewhat with Simmel's stranger, combining the qualities of nearness (speaking Turkish as a mother tongue – although with a Cypriot accent) and remoteness (not being a Turkish citizen, having never lived in Turkey previously, and not representing any "side" in the politics of ethnicity and religion in the Turkish context). Not being a (direct) stakeholder in socio-political disputes and discussions in the domestic context made it easier for many informants to open up to me.

Despite several accusations concerning the insidious intentions of Western academic institutions, studying at Oxford University was also helpful in my gaining access to the schedule of many interlocutors. For instance, while I was carrying out participant observation in media-related criminal hearings, a young lawyer working at the law office which represented President Erdoğan had approached me after a trial to ask a few questions about the University of Oxford. This allowed me to have an informal conversation over a cup of tea with this young lawyer who would probably not have spoken to me otherwise.

3. Law and Legal Institutions in Hybrid Regimes

Reflecting on my fieldwork data and taking a comparative approach to the available scholarship, the following concepts proved particularly useful in interpreting my findings. They also represent the body of scholarship to which my study is contributing.

3.1 Autocratic Legalism, Emergency Powers, and Dual States

Political scientists have identified a pattern of rising authoritarian leaders in several hybrid regimes or young democracies around the world. The idea of a hybrid regime or a state is a general frame of reference for discussing a political system that cannot be easily categorised as fully authoritarian or fully democratic; hybrid polities usually carry elements of both. According to Thornhill, in a hybrid regime, or a "hybrid democratic polity" as he refers to it, legitimacy for political functions is derived from sovereign citizens who "articulate their free will, freely, through sovereign institutions." However, at the same time, "the procedures enabling citizens to exercise sovereignty are either weakly developed or subject to restriction." Besides, the mechanisms holding political institutions accountable to citizens are limited.[7]

"Democratic backsliding" is commonly used to refer to a variety of processes whereby those in power in hybrid polities debilitate or make use of democratic institutions and procedures for authoritarian ends. Laws and legal institutions have played a significant role in the consolidation of autocratic power in many contexts. As will be further described below, the case of Turkey is one example. The new authoritarian rulers have become more effective at co-opting or instrumentalising institutions and principles, especially the legal ones, which are meant to support democratic rule. Some are dismantling the relative autonomy of the judiciary, especially in political matters, while often retaining a formal commitment to the separation of powers. Others have resorted to new laws, emergency powers, or popular referendums to erode checks and balances and consolidate their power.

[7] Christopher Thornhill, *Democratic Crisis and Global Constitutional Law* (Cambridge: Cambridge University Press, 2021), 3.

Autocratic Legalism

Hence, scholars have increasingly scrutinised the role of law in the current crisis of democracy from different perspectives. "Autocratic legalism" has been a popular term employed in describing how these leaders have used constitutional and legal provisions to boost their powers. Corrales first employed it to indicate the "use, abuse, and non-use of law" by the government in Venezuela to increase further the state's capacity to control non-state actors and opponents.[8] For instance, Corrales pointed out that the government passed laws, which contained autocratic clauses "buried deep" while seemingly empowering citizens. He mentions an enabling act which allowed the President to rule by decree, penal code reforms expanding the scope of defamation against government officials, and the Law for the Defence of Political Sovereignty and National Self-Determination, which prevents human rights activists from "receiving international assistance."[9] These laws were passed through constitutional channels, making it more difficult to challenge them.[10] In my thesis, I will elaborate on how the Turkish regime fits the pattern and also provide some details and specific features of its autocratic-ness.

Scheppele has also employed the concept of "autocratic legalism" to analyse how leaders in several cases including Turkey, Hungary, Poland and India strategically use law to further consolidate their political power.[11] She has emphasised the use of electoral mandates for enacting constitutional and legal changes in the service of an illiberal agenda.[12] Resonating Corrales' point about autocratic clauses being "buried deep," she indicates how autocratic leaders such as Erdoğan passed court packing reforms, which also included liberalizing steps. Highlighting similar practices in Hungary, she argued that Erdoğan and Orban "confused critics who could not tell if the courts were being politically compromised or judicially bolstered."[13] She also pointed out parallels in Poland and Russia and argued that a signature element common with the new autocrats is that they "confound their critics by adding to toxic constitutional changes ideas that seem like constitutional advances."[14] Therefore,

[8] Javier Corrales, "The Authoritarian Resurgence: Autocratic Legalism in Venezuela," *Journal of Democracy* 26, no:2 (2015): 38.
[9] Corrales, "The Authoritarian Resurgence," 39.
[10] Ibid, 38-40.
[11] Kim Lane Scheppele, "Autocratic Legalism." *The University of Chicago Law Review* 85, no. 2 (2018): 545-584; Deepa Das Acevedo "Autocratic legalism in India: A roundatble," *Jindal Global Law Review* 13, no.1 (2022):117-140
[12] Scheppele, "Autocratic Legalism," 548.
[13] Ibid, 552.
[14] Scheppele, "Autocratic Legalism," 554.

according to Scheppele's account, new autocrats are different from leaders who posed threats to liberalism in the twentieth century because their political technologies do not involve "invocation of total emergency, mass violations of human rights, and tanks in the streets."[15] Besides, under the rule of the new autocrats, election opponents might be "harassed with nuisance criminal charges, but they do not wind up in jail, or at least not for long."[16] Instead of resorting to direct confrontations, legalist autocrats consolidate their control over legal institutions and use these and economic measures to intimidate their opponents and to weaken opposition. For instance, the new autocrats do not censor the press but may refuse to give critics any public advertising, refuse to renew broadcasting licenses, and might facilitate takeovers of their businesses by oligarchs.[17] The description above resonates well with my own findings in the case of Turkey, as I elaborate throughout the thesis. Besides, expanding on how "use, abuse, and non-use of law" can generate an atmosphere of precarity in Turkey's context will be a novel contribution to the discussion on political technologies of the new autocrats.

Emergency Powers

Another framework that can be useful in interpreting the role of law with respect to increasing authoritarianism is the concept of expanding emergency powers.[18] In contemporary times, the executive is usually both the body deciding the existence of an emergency and at the same time, the principal beneficiary of the powers that such a designation produces.[19] Securitisation theorists have argued that the designation of an issue as a security matter (or as a public emergency) depends on those with the power to make such pronunciation rather than material and objective conditions.[20]

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[15] Ibid, 582. However, while military tanks are not patrolling the streets, armoured police (and sometimes military) vehicles have increasingly become common in urban centres, especially spaces of congregation in various countries, including established democracies, in recent years. Besides, there is still extended political imprisonment in some of the countries she looks at such as Turkey and Russia.

[16] Ibid.

[17] For examples from Hungary, Venezuela and Poland see, Jozsef Bayer, "Emerging Anti-pluralism in New Democracies – the Case of Hungary," *Osterreichische Zeitschrift für Politikwissenschaft* 42, no:1 (2013):103; Will Freeman, "Colonization, Duplication, Evasion: The Institutional Strategies of Autocratic Legalism," Social Science Research Network (2018).

[18] While most constitutions involve some form of emergency powers, there are also cases where the state's constitution does not provide for emergency rule but allows more competence or legislative power to the executive branch during wartime or war-like crises.

[19] While it is expected that the judiciary and the legislature will act to restrain the exercise of emergency powers by the executive, the former usually defer to the decisions of the latter on matters of national security, especially in the wake of crises. For an example, see Neocleous's discussion of the Korematsu case in the US in Mark Neocleous, "The Problem with Normality: Taking Exception to 'Permanent Emergency,'" *Alternatives* 31(2006):206.

[20] B. Buzan, O. Waever, and J. de Wilde, *Security: A New Framework for Analysis* (Boulder: Lynne Rienner, 2018).

Identifying threats to public order and security often goes hand in hand with identification of political enemies who constitute sources of threat to the authorities in power. According to Schmitt, a prominent theorist of "the exception," the enemy, which might emerge at any moment to target the regime, must be quickly and decisively identified, and crushed. The institutions of parliamentary democracy, with its fractious and endless debate, are not suited to this work. Therefore, according to his view, the executive must be able to invoke emergency powers.[21] However, laws which are initially passed to tackle the perceived enemies of the state, such as anti-terror laws, can be employed against political opponents by those in power. In fact, Agamben argues that the state of exception or emergency rule, facilitates a "legal civil war" which enables the government to physically eliminate political adversaries and "entire categories of citizens who for some reason cannot be integrated into the political system."[22] He also argues that "the declaration of the state of exception has gradually been replaced by an unprecedented generalisation of the paradigm of security as the normal technique of government."[23] Emergency powers allow the states to exercise unregulated sovereign power with respect to certain categories of the population.

Several scholars have used the concept of emergency to analyse the authoritarian decline and its "legal disguise" in Turkey.[24] For instance, Arslanalp and Erkmen coined the strategy of "mobile emergency rule" while studying the repression of street protests with legal tools. Mobile emergency rule refers to temporary and limited suspension or restriction of rights enshrined in the constitution by way of administrative measures in the name of public order with a view to pre-empting or controlling dissent without putting in practice a full-fledged suspension.[25] The authors illustrate how these "mobile emergency" practices undermine the right, among others, to peaceful assembly and

[21] Naomi Claire Lazar, "What is the state of exception?," in *States of Exception in American History* edited by Gerstle and Isaac (University of Chicago Press: 2020), 25.
[22] Giorgio Agamben, *State of Exception* (Chicago, The University of Chicago Press: 2005), 2.
[23] Ibid, 14.
[24] Mert Arslanalp and T. Deniz Erkmen, "Mobile emergency rule in Turkey: legal repression of protests during authoritarian transformation," *Democratization* 27, no. 6 (2020): 947-69; Saygun Gökarıksel and Umut Türem, "The Banality of Exception? Law and Politics in 'Post-Coup' in Turkey," *The South Atlantic Quarterly* 118, n.1 (2019): 175-187; Ayşegül Kars Kaynar, "Political Trials and the Second Jurisdiction of the State: Normalcy of the Exception,*" in Contemporary Turkey at a Glance II: Turkey Transformed? Power, History, Culture,* eds Meltem Ersoy and Esra Özyürek (Springer, 2017), 25-29 (E-book); Zafer Yılmaz and Byran S. Turner, "Turkey's Deepening Authoritarianism and the Fall of Electoral Democracy." *British Journal of Middle Eastern Studies* 46, no. 5 (2019): 691-98; Ceylan Begüm Yılmaz, "A state in anomie: An analysis of modern Turkey's states of exception," in *States of Exception*, eds Cercel, Fusco and Lavis (Abingdon: Routledge, 2021), 167-183.
[25]Arslanalp and Erkmen "Mobile emergency rule," 2.

demonstration.[26] Meanwhile, Yonucu has argued that the targets of emergency laws such as anti-terror laws and related practices have expanded, shifting from the "margins" of the society (for example, left wing and Kurdish activists in working class neighbourhoods) to "encompass the whole country."[27] There is a similar discussion in India about the expansion of emergency practices from few regions such as Punjab and Kashmir, where they were usually concentrated, to the whole of the country, referred to as "the Kashmirisation of the rest of India,"[28] The People's Union for Civil Liberties (India) has also described the contemporary situation in India as an "undeclared emergency."[29] In my thesis, I will highlight the socio-psychological and political impact of such practices on the society.

There are strong grounds to argue that normalising emergencies is producing vulnerable subjects and that each citizen is conceptualised as a suspect for uncommitted crimes.[30] When the sovereign perceives certain groups within the society as disrupting its union with its people, it turns into the aggressor and "seeks to subdue and reduce us to bare life under the cloak of law."[31] With the arbitrariness and indeterminacy of the exception, "we are all, always bare and vulnerable to sovereign power."[32] Bare life is Agamben's concept for "life that has been exposed to … the structure of exception that constitutes contemporary biopower."[33] Agamben believes that in our age all citizens can be sacrificed given the right circumstances.

The concept of bare life evidently refers to an extreme consequence of repression and hence, it may not appear relevant to include it in a discussion of the role of law and legal institutions in the recent rise of authoritarianism in hybrid regimes. Nevertheless, as I will demonstrate through data from my fieldwork, the *possibility* of being reduced to bare life emerges as a threat of punishment that can shape behaviour. In other words, what I describe in the case of Turkey is the *fear* of such a

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[26] Ibid.
[27] Deniz Yonucu, "The Absent Present Law: An Ethnographic Study of Legal Violence in Turkey," *Social & Legal Studies* 27, no.6 (2018):720.
[28] Pratap Bhanu Mehta, "The story of Indian democracy written in blood and betrayal," *Indian Express*, 6 August 2019, https://indianexpress.com/article/opinion/columns/jammu-kashmir-article-370-scrapped-special-status-amit-shah-narendra-modi-bjp-5880797/, accessed:16 August 2022.
[29] Das Avecedo, "Autocratic legalism in India." 123.
[30] Christos Boukalas, "No exceptions: authoritarian statism. Agamben, Poulantzas and homeland security," *Critical Studies on Terrorism* 7, no:1 (2014):126.
[31] Lazar, "What is the state of exception," 26.
[32] Ibid.
[33] Ian Buchanan, "Bare life (*nuda vita*)," in *A Dictionary of Critical Theory,* ed Buchanan (Oxford: Oxford University Press: 2010).

move, not the actual experience of repression akin to a concentration camp. Therefore, the concept here helps to explain precarity generated by exceptional practices such as restriction orders on case files, extended pre-trial detention, or detention order for investigation of insult charges, which are increasingly being employed beyond "a particular place" or "definite category" such as "terror suspects" by the judiciary in hybrid regimes. Hence, by referring to Agamben's image of bare life living in each body, I am ruminating on the *possibility* and *fear* of punishment that dissident citizens confront and the related loss of the sense of security they used to derive from respecting and navigating "the boundary", which runs between consistently targeted groups and the rest of the population. In this respect, an important example is the sense of fear generated by the manner in which political trials are conducted in high-security, militarised courtrooms located in the Silivri prison complex on the outskirts of Istanbul. I elaborate on the impact of these political trials elsewhere in this thesis.

Dual States

It is also reasonable to suggest that when emergency practices become the norm, there is fertile ground in authoritarian and hybrid political systems for a "dual state" to emerge. The dual state refers to a juridico-political system where there are two principles of government functioning simultaneously: the "normative" state which follows the legal rules and procedures and the "prerogative state" which is led by political expediency and unconstrained by legal regulation. Fraenkel developed this idea while working as a lawyer in the Third Reich courts between 1933 and 1938. Hence, the concept is intended to provide analytical tools concerning Nazi Germany before the latter deteriorated into complete totalitarianism. The dual state does not "imply a duplication of state structures."[34] It describes "a single state which appears Janus-faced with regard to the application and validity of law."[35] There are laws and rules that are applied with regularity. Nevertheless, the "prerogative state" retains the potential to encroach upon areas or groups which have been under the domain of the "normative state," creating apprehension in the wider society.[36]

[34] Jan Christoph Suntrup, "Between prerogative power and legality – reading Ernst Fraenkel's The Dual State as an analytical tool for present authoritarian rule," *An International Journal of Legal and Political Thought* 11, no:3 (2020): 342.
[35] Suntrup, "Between prerogative power and legality," 343.
[36] Ibid, 351.

The division of labour in the German dual state was as follows: the normative state ensured the operation of the capitalist economic order including the protection of private property, the binding power of contracts and the regulation of competition.[37] The prerogative state, on the other hand, dealt with the perceived enemies of the state and controlled political dissent. The emergency decree of 1933 applied to any matter that fell within the definition of the "political" while the Prussian Supreme Court defined the "political" as "that which involves the domestic and foreign security of the state."[38] In other words, the political sphere had no clear boundaries. For instance, the Court of Appeal of Kiel decided that the prohibition of a newspaper, which "defamed the medical profession and damaged its reputation," was a political question because the newspaper obstructed "the policy and aims of the state with respect to the protection of public health."[39] Under these circumstances, citizens in Germany, let alone dissenting voices, could never be sure whether there were any "matters safe from the intervention of political authorities."[40] In this sense, the dual state concept is helpful in analysing the blurry boundaries of politically permissible behaviour regarding life in new authoritarian settings. It is also useful in explaining what some scholars have identified as the co-existence of the atmosphere of fear and a "sense of normality" in these contexts. Jayasuriya argued that Singapore provides a good example of a contemporary dual state where "economic liberalism is enjoined to political illiberalism."[41] In other words, Jayasuriya maintains that "the rule of law", or what he refers to as "legalism," is applied to the economic and commercial sphere, keeping day-to-day life smooth and regular. In the political sphere, however, the executive is free "from the constraints and restraints of normative law" and "uses the law itself to curtail and limit political opposition."[42]

In the meantime, the concept of the dual state has been employed to analyse what has been referred to as the co-existence of "rule by law" and "rule of law" in Russia. In his writing in 2010, Sakwa suggests that the dual state helps to explain the political system in Russia, which is "more than a personalised leadership or neo-patrimonialism, but less than an institutionalised, law-governed

[37] Serdar Tekin, "Diktatörlük kuramına bir katkı: Ernst Fraenkel ve İkili Devlet," *Birikim* 354 (2018).
[38] Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (Oxford: Oxford University Press, 2017), 42.
[39] Fraenkel, *The Dual State,* 43. The assumption here is that the Court of Appeal of Kiel must have had some indication from the "dominant officials" about the political nature of the case against the newspaper.
[40] Ibid.
[41] Kanishka Jayasuriya, "The Exception Becomes the Norm: Law and Regimes of Exception in East Asia," *Asian-Pacific Law & Policy Journal* 2, no. 1 (2001): 120.
[42] Ibid, 121.

system."[43] Hendley argues that the Russian legal system is in an equilibrium, which "somehow balances 'rule by law' and 'rule of law.'"[44] Sakwa also argues that the two blocs were "locked in a stalemate," preventing "degenerating into full scale authoritarianism,"[45] but also preventing a shift "towards a more genuinely open and competitive political system."[46] The current study provides an empirically informed account of how dual-state politics operates in Turkey and is experienced by its citizens. In this respect, the focus on instrumentalisation and lived experiences of precarity will contribute to studies of social control in dual states that might emerge in hybrid settings.

3.2 Importance of Courts for Political Ends in Hybrid Settings

Law and legal institutions are often conceived as constituting a dispassionate force that protects the peace in society. Yet, as Sarat and Kearns maintain in their edited volume on *Law's Violence*, violence is integral to the constitution of modern law and "law is a creature of both literal violence, and of imaginings and threats of force, disorder, and pain."[47] What they call the "relations of necessity and possibility between law and violence"[48] is not symmetrical; law cannot extinguish force, "its best promise is a promise to substitute one kind of force – legitimate force – for another."[49] In other words, it is reasonable to suggest that law can be understood as the institution embodying the Weberian state's monopoly of legitimate violence. Besides, echoing Walter Benjamin's law-preserving violence, Sarat and Kearns assert that "once established, law is maintained through force; it is maintained as an apparatus of violence that disorders, disrupts, and repositions pre-existing relations and practices all in the name of an allegedly superior order."[50] Indeed, Sarat and Kearns

[43] Richard Sakwa, "The Dual State in Russia," *Post-Soviet Affairs* 26, no: 3 (2010): 187. Sakwa also points out that in the Russian case, there is no formal prerogative state established by extra-constitutional laws or decrees, "but instead there is informal behaviour by an administrative regime that fulfils some of the functions of the prerogative state." Ibid 191.
[44] Kathrin Hendley, "'Telephone Law' and 'the Rule of Law': The Russian Case," *Hague Journal on the Rule of Law* 1, no: 2 (2009): 259.
[45] Sakwa, "The Dual State," 198.
[46] Ibid, 191. Sakwa also argued that the changing power balance between the constitutional and the administrative state would determine the further evolution of the political system which he claimed remained "liminal."
[47] Austin Sarat and Thomas R. Kearns, "Introduction" in *Law's Violence*, eds Austin Sarat and Thomas R. Kearns (The University of Michigan Press, 1995), 1.
[48] Ibid, 2.
[49] Ibid, 6.
[50] Sarat and Kearns, "Introduction," 3. According to Mattei and Nader, on the other hand, the legitimacy provided by notions of law such as the rule of law justifies oppression and plunder by hegemonic nations and other powerful actors both at international and national levels. See Ugo Mattei and Laura Nader, *Plunder: When the Rule of Law is Illegal* (Oxford: Blackwell Publishing, 2008)

claim that regimes are distinguishable "by the ways they authorise and use the coercive force at their disposal."[51]

On the other hand, according to Althusser, while law is an apparatus of repression with courts, fines, prisons, and various detachments of the police, "it is clear that the practice of law is not exclusively based on repression *in actu*."[52] Law also rests on "legal ideology and a little supplement of moral ideology."[53] More importantly, "most of the time, repression is, as the expression goes, 'preventative.'" In other words, the coercive force of the law does not materialise in every single case: "It intervenes in legal-state forms in a very small number of cases, over against the infinite number of contracts that are respected without the intervention in propria persona of the repressive state apparatus."[54] Meanwhile, Mattei and Nader point out that "the rule of law displays a double-edged contradictory nature: it can favour oppression, but it can also produce empowerment of the oppressed that leads to counter-hegemony."[55]

The ways in which authoritarian regimes make use of the coercive force of law at their disposal has received little scholarly attention up until recently. Writing back in the late 1970s, Nonet and Selznick expressed regret that "there has been little effort to explore systematically the distinctive characteristics of repressive law and to do so in a way that accounts for variation."[56] Even studies or surveys of authoritarian regimes devoted little space to political trials or the relationship of repression to the legal system.[57] For instance, Moustafa held that "until recently, courts in authoritarian regimes were generally regarded as little more than window dressing for dictators."[58] However, since the 1990s studies have demonstrated that judicial politics in authoritarian regimes cannot be characterised by "the caricatures of kangaroo courts and telephone justice." [59] Moustafa and Ginsburg have

[51] Sarat and Kearns, "Introduction," 5.
[52] Louis Althusser, *On the Reproduction of Capitalism:Ideology and Ideological State Apparatuses* (London: Verso Books, 2014) 65-66.
[53] Ibid, 68.
[54] Ibid, 66.
[55] Mattei and Nader, *Plunder*, 18.
[56] Philippe Nonet and Philip Selznick, *Law and Society in Transition: Towards Responsive Law* (London: Transaction Publishers, 2001), 29. The original publication dates to 1978.
[57] Anthony W. Pereira, *Political (In)justice: Authioritarianism and the Rule of Law in Brazil, Chile and Argentina* (Pittsburgh: The University of Pittsburgh Press, 2005), 5-6.
[58] Tamir Moustafa, "Law and Courts in Authoritarian Regimes," *Annual Review of Law and Social. Sci*ence 10, no.1 (2014): 282.
[59] Ibid.

maintained that authoritarian leaders can empower courts or resort to them as instruments for securing investment, administrative discipline, garnering legitimacy, and delegating difficult reforms.[60]

On the other hand, studies have also illustrated how judges with a significant level of autonomy can be participants of an illiberal agenda, irrespective of the regime type. For instance, the judgements of the judiciary in the US were largely deferential, at least initially, to the security policies of the Bush administration after the September 11 attacks. As another example, the Constitutional Court in Turkey, which was largely autonomous until 2010, handed out verdicts which had served the illiberal agenda of the bureaucratic-military establishment at the expense of the protection of fundamental human rights and liberties.[61] Nevertheless, this ideologically-driven illiberal decision-making should be distinguished from judicial decisions that are made under the political influence of increasingly authoritarian hybrid regimes.

While the complexities of the question of judicial autonomy have been scrutinised, there is still more work to be done to add nuance to our understanding of the social impact of courts, which may not be pawns but *are* indeed largely under the influence of the executive. Indeed, Cheesman explains that courts, even those functioning under military rule, are important for analysis of politics because "they transmit and realise political ideas through what Lisa Wedeen calls 'performative practices' – actions learned and repeated over time that produce particular kinds of social beings."[62] In his study of criminal prosecutions in Myanmar under military rule, he approaches Courts "as representations of a larger political order" and "as spaces for political language and practice." [63] He points out that criminal cases are particularly important since "in the exercise of control over the body of an accused we find the basic elements for the exercise of control over the body politic."[64] Cheesman's study also encompasses written documents that circulated between the police, the prosecutors, the defendants, and the lawyers and hence is a "story not of adjudication but of

[60] See Tamir Moustafa and Tom Ginsburg, "Introduction: The Functions of Courts in Authoritarian Politics," in *Rule by Law*: The Politics of Courts in Authoritarian Regimes, eds Ginsburg and Moustafa (Cambridge: Cambridge University Press, 2008).
[61] See Ceren Belge, "Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey" *Law & Society Review* 40, no.3 (Sep 2006): 653-92; Vahap Coşkun, "Turkey's Illiberal Judiciary: Cases and Decisions," *Insight Turkey* 12, no.4 (2010): 43-67.
[62] Nick Cheesman, *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order* (Cambridge: Cambridge University Press, 2015), 9.
[63] Cheesman, *Opposing the Rule of Law*, 10.
[64] Ibid, 11.

interaction."[65] Studying interaction through "the texts that move into, through, around, and out from courts construct and reconstruct the idea of the state, and of a particular bureaucratic vision, or visions, of society."[66] Yet, as I will demonstrate through ethnographic observations in the court, a similar effect can be achieved by the deliberate interruption of that interaction, such as preventing a lawyer from accessing case documents.

Kirchheimer, in his influential study on the employment of legal procedures for political goals, has described the courts as an "exclusive staging area for clashes between conflicting political claims," above all, the "clash between the authorities of the day and their foe."[67] It is common for the executive branch, especially in 'political' cases, to resort to courts for judicially sanctioned repression of opponents, to restrict their movements or fundamental freedoms. Shklar defines political trials as those where "the prosecuting party, usually the regime in power aided by a cooperative judiciary, tries to eliminate its political enemies."[68] Similarly, Kirchheimer defines the "classic political trial" as "a regime's attempt to incriminate its foe's public behavior with a view to evicting him from the political scene."[69] Shen-Bayh, in her study of political trials in several post-colonial Anglophone African countries, draws attention to the two strands of explanation used to illuminate the function of political trials: the concealment theory argues that "courts and other legal instruments serve as 'window dressing' to cloak repressive behaviours" of governments.[70] In other words, turning political violence into a juridic-bureaucratic process allows autocrats or authoritarian leaders to continue to preach democratic ideals to some extent. This correlates in many ways with the practices under autocratic legalism, as described above. The second strand of explanation focuses on the function of courts in reinforcing the contract between an autocrat and his or her supporters. The idea is that courts can allow a ruler to communicate to his supporters his willingness to be constrained with reference to pre-determined rules and norms.

[65] Ibid, 9-10.
[66] Ibid, 10.
[67] Otto Kirchheimer, *Political Justice:The Use of Legal Procedure for Political Ends* (Princeton: Princeton University Press, 1961), 4.
[68] Judith N. Shklar, *Legalism: Law, Morals and Political Trials* (Cambridge: Harvard University Press, 1964), 149.
[69] Kirchheimer, *Political Justice,* 46.
[70] Fiona Shen-Bayh, *Undue Process: Persecution and Punishment in Autocratic Courts* (Cambridge: Cambridge University Press, 2022), 6.

In addition, Pereira underlines that courts in authoritarian regimes can also serve to stabilise repression since judicialization of repression "reduces the need to exercise force by providing information and a predictable set of rules around which opponent and government officials' expectations can coalesce."[71] Similarly, Shen-Bayh points out that codified punishment can generate expectations regarding potential consequences of defiance or failure to obey. Where the court decisions follow a steady pattern, political trial can reveal the boundaries of the politically permissible. Moreover, Shen-Bayh argues that routinising infliction of violence in the courtroom can be a powerful disciplinary tool, cultivating docile behaviour and bodies. In other words, as opposed to co-ordination theories, which look at "judicialization of punishment" as a way for the ruler to offer certain concessions, the judiciary can "use the language of the law and the procedures of the court to establish in no uncertain terms the consequences of violating the rules of political order – that is, of defying the autocrat's authority." [72] Therefore, it is reasonable to suggest that routinized and institutionalised repression of dissidents through criminal prosecution can help build social acquiescence and silence opponents.[73] Shen-Bayh claims that the disciplinary function of the courts have not received enough attention.[74]

On the other hand, political trials can also help build social acquiescence by generating precarity about the bounds of politically permissible behaviour and about the threat of prosecution, as I will elaborate throughout this dissertation. Having said that, political trials and the precarity they generate also create opportunities for political opponents and defendants in trials to subvert the role of laws and trials as disciplinary tools. By exploring different dimensions and repercussions of political trials with references to the case of Turkey and its publishing sector, the current research will contribute towards a better understanding of how legal means are used for social control in hybrid regimes that are turning increasingly authoritarian. This is especially important given the recent and global rise of authoritarian rule.[75]

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[71] Pereira, *Political (In)justice*, 192.
[72] Shen-Bayh, *Undue Process*, 11.
[73] Ibid, 28.
[74] Ibid, 31. Shen-Bayh claims that "more attention has been paid to the coordinating functions of autocratic judicial bodies, including the ways in which courts help manage and defuse conflict among ruling elites."
[75] Freedom House, *Freedom in the World in 2022: The Global Expansion of Authoritarian Rule* (Washington DC: Freedom House, 2022) https://freedomhouse.org/report/freedom-world/2022/global-expansion-authoritarian-rule, accessed: 19 August 2023.

4. Lived Experiences Under Authoritarian Leaning Hybrid Regimes

To address the question of how the state in Turkey makes use of law and legal institutions to generate an atmosphere of precarity and to examine how this is experienced and navigated by authors and publishers, I now turn to scrutinising literature on the setting of political trials and lived experiences in hybrid and authoritarian states.

4.1 Lived Experiences of Political Trials

Lived experience of political trials can be defined as the personal dimension of criminal prosecutions: individual experiences that people have with the court system and law enforcement authorities either as a member of the audience, an accused, or a member of the defence counsel. Exploring and analysing how people perceive and experience political trials will help gain a better understanding of the ways in which hybrid regimes can generate an atmosphere of fear and precarity through law and legal institutions.

While there are several works that have studied political trials, they mostly reflect experiences in routine and criminal settings, and only few provide insight into such experiences in a politically charged courtroom. Sarat and Kearns have observed that sitting judges in courtrooms "have the power to unleash or restrain the coercive power of the law."[76] In this respect, Wald, in her chapter in the same edited volume, provides insight into the lived experiences of a judge. She highlights that "the Courts are generally regarded as the alternative to fighting in the streets, yet, inherent in many of our decisions (as a judge) is the probability, even the certainty of violence; we affirmatively sanction yet try to control and channel that violence to attain the law's ends."[77] Hence, she explains that recognising this fact has traditionally pushed judges to strive to reach a just sentence by "weighing an offender's past record, the seriousness of the crime, the injury to the victim, the potential danger

[76] Sarat and Kearns, "Introduction," 13.
[77] Patricia M. Wald, "Violence under the Law: A Judge's Perspective," in *Law's Violence*, eds Austin Sarat and Thomas R. Kearns (Ann Arbor: The University of Michigan Press, 1995), 78.

to the community if she or he is released, the rehabilitative potential of the defendant."[78] Cover, on the other hand provides some thoughts on the perspective of the accused: "The defendant's world is threatened. But he sits, usually quietly, as if engaged in a civil discourse. If convicted, the defendant customarily walks – escorted – to prolonged confinement, usually without significant disturbance to the civil appearance of the event." However, Cover underlines that "the defendant's 'civil conduct' can never signify a shared understanding of the event."[79] It simply represents "the defendant's autonomous recognition of the overwhelming array of violence ranged against him, and of the hopelessness of resistance or outcry."[80] Although above points are probably applicable in routine criminal prosecutions everywhere, they do not give a full picture of political trials where judges might willingly participate in the agenda of a ruling government and where the audience, defence counsel, and the defendant together contest and disturb the "civil appearance" of the ritual. I will elaborate further on this based on my field data.

The political trial is also important as a ritual, which compels each individual present in the courtroom, not just the defendant but also the defence counsel, the audience and the administrative officers, to partake in "the same story at the same time."[81] Drawing on Wedeen's work on the politics of "as-if" Shen-Bayh argues that "regardless of whether anyone truly believes this story to be true, to see others act *as if* these proceedings are credible can compel individuals to act *as if* they agree."[82] I would add that, even where the crowd, including the defence counsel, is vocal about their lack of belief in the proceedings, for example by shouting slogans or other reactions that I observed during my research, the legal form and the machinery of criminal justice, along with the immediate potential of violence, compels them to be complicit in the state's domination. The fact that they recognise the weaponisation of criminal prosecution against opponents does not, in effect, stop the transformation of political violence into a juridico-bureaucratic process.[83] Shen-Bayh also argues that "autocratic rituals – whether in or out of court – can thus generate self-fulfilling prophecies whereby perceptions of power lead to genuine support."[84] However, it is important to point out that Wedeen is looking at

[78] Ibid, 81.
[79] Robert Cover, "Violence and the Word," *The Yale Law Journal*, 95, no. 8 (1986):1607, note 17.
[80] Ibid, 1607.
[81] Shen-Bayh, *Undue Process,* 11.
[82] Ibid.
[83] There are also lawyers who participate in defence counsel out of a belief that their representation might make a difference, despite the dire circumstances.
[84] Shen-Bayh, *Undue Process,* 16.

the power of regime symbols, imagery and rituals to generate *obeisance*, not genuine support. In her work, Wedeen has demonstrated how most Syrian citizens had acted "as if" they loved and supported Hafez al-Asad during the public pledges of support.[85] Witnessing the voluntary submission of others with whom one shares the same space can itself be a state of domination. Wedeen maintained that while a politics of "as if" "may appear irrational or even foolish at first glance," compelling obeisance was politically effective.[86] In the thesis that follows, I explore the power of *the courts* in Turkey to generate obeisance, if not genuine support, through examples based on participant observation in political trials and interviews with actors in the publishing world.

During the trial, the defendants and their counsel are forced to engage with the court on the terms set out by the judicial process. The legal language plays an important role in this respect. As mentioned before, a political opponent becomes "a suspect" once an investigation begins, and "a defendant" as soon as an indictment is submitted. The application of criminal articles such as terror propaganda or defamation to complex facts of the real world introduces a mandatory epistemological shift to the lived realities of the defendants and the others in the courtroom. The defendant must now respond to the state's charges using the language imposed on her – the language of criminal law. For instance, in the case of the prosecution of members of a social movement, the defendants won't be able to use the language and the ideas they propagate and defend on the street. If they do, the court will readily dismiss these arguments for legal invalidity. Hence, it can be argued that the political trial immobilises activists and dissidents, both physically and in terms of narrative. The judicial process constructs a reality whereby the prosecution and the judiciary have the power to determine which facts are legally relevant. Hence, the state, along with a cooperative judiciary, has control over the narrative of a trial and over the validity of related facts from real life. As I will argue in my thesis, this has a profound impact on the socio-psychological environment that extends far beyond the court setting.

Often, authoritarian governments use their control over the narrative of a trial to discredit their opponents. The discussions on India indicate that anti-terror and sedition laws have been increasingly

[85] Lisa Wedeen, *Ambiguities of Domination:Politics, Rhetoric, and Symbols in Contemporary Syria* (Chicago: The University of Chicago Press, 2015). Wedeen argues that citizens become tired mentally and physically from the monotonous slogans and empty gestures that "clutter the public space."
[86] Ibid, 5.

used to label activists, lawyers, and intellectuals as "terrorists" or as "enemies of the state."[87] Designating a perceived opponent as a defendant or suspect in a criminal legal procedure allows the state to cast suspicion over those it regards as sources of threat and to employ legal means such as arrest and detention against them. In Turkey, charges of crimes against the state, terrorism and defamation have been instrumental in discrediting, undermining and controlling the movements of those who posed a threat to the ruling government.

Overall, criminal prosecution of opponents not only transforms the political violence of the state into a juridical process of the law, but it also compels opponents to take part in a game where the rules are pre-determined by the state. In this sense, it can be argued that the judicial process becomes a spectacle of domination in and of itself, and not just an instrument for control. Similarly, Wedeen argued that the public rituals (including imagery and symbols) of pledging support to Asad are not mere representations of power; they in fact produce political power. My research points out that, in addition to the above, criminal prosecutions generate an atmosphere of precarity in the case of Turkey. To this end, Chapter 4 elaborates on political trials and lived experiences of them based on ethnographic research in several criminal hearings in Istanbul.

On the other hand, autocrats take several risks when they resort to courts for repression. First, the cooperation of the judiciary has to be secured for the judicialisation of repression to work.[88] Due to the guild-like nature of the judiciary and the existence of several entry requirements into the profession, the government might have to take ex-ante or ex-post measures, such as arbitrary investigations, dismissals, demotions, and limiting of tenure, to influence the decision making of the judiciary.[89] In more extreme cases, judges might be threatened with violence. Second, when a renowned individual is being prosecuted, especially in high profile cases, their treatment by the state draws public attention. According to Kirchheimer, the "image-creating capacity" of trials means that defendants, and not only the state, might be able to use it to create "very effective alternative images."[90] In other words, courts can also become sites of resistance where solidarity and contestation are practiced. In this sense, criminal prosecution can help turn political opponents into heroes. For

[87] See Das Acevedo, "Autocratic legalism in India."
[88] Kirchheimer, *Political Justice*, 421; Shen Bayh, *Undue Process*, 13-14.
[89] Shen-Bayh, Undue Process, 51.
[90] Kirchheimer as quoted in Başak Ertür, "Spectacles and Spectres: Political Trials, Performativity and Scenes of Sovereignty" (PhD diss., Birkbeck, University of London, 2015), 40.

instance, Erdoğan had drawn significant public sympathy following his conviction and imprisonment for "inciting people to hatred" after he recited a poem with Islamist themes at a political rally in 1997. Besides, some defendants can succeed in using the platform the criminal trial provides them to disseminate their views or to explicitly resist political violence. Nelson Mandela's trial is a case in point; Mandela had been prosecuted by the apartheid government in South Africa for treason on account of his refusal to abide by the white-minority rule. During his trial, it was largely expected that the sentence would be a conviction.[91] Mandela used his testimony in the hearing to condemn apartheid and to discredit the narrative the state tried to advance about him and the African National Congress, a party that fought against the white-minority rule. There can be similar practices in court hearings in hybrid regimes or authoritarian settings. Indeed, my data reveals resistance and solidarity practices in several criminal prosecutions I have observed during my fieldwork.

Overall, studying how political trials generate political power, resistance *and* precarity in the case of Turkey is key to comprehending and analysing the ripple effect these criminal prosecutions (for example, terror, defamation and sedition charges) produce in different communities, more specifically, in the publishing world. Through in-depth interviews with actors in the publishing sector, the current work seeks to identify how hybrid regimes sliding towards authoritarianism like Turkey make use of criminal prosecutions to generate an atmosphere of fear and insecurity and, in turn, shape the everyday life and work of actors in the publishing industry.

4.2 Lived Experiences of Precarity

While the authoritarian rise has been studied at the institutional level, much less is known about the impact of it on the lived experiences of people, especially intellectuals. How do those on the radar of the state comprehend arbitrary criminal prosecutions and experience what has been referred to as "normality" in their everyday life? How do members of the section of the creative community who are not targeted perceive and interpret those criminal proceedings? In the context of Turkey, the intensity of the number of criminal charges brought against media workers draws the

[91] His trial was part of a prosecution campaign against the African National Congress, a party which explicitly resisted the white-minority government.

attention of researchers in that direction.[92] Even then, such studies usually focus on censorship rather than exploring the experiences, perceptions, and strategies employed to navigate the shifting boundaries of permissibility.

In comparison, the publishing world in Turkey has been subjected to fewer prosecutions. Nevertheless, its actors constitute an influential group in terms of the intellectual work produced in the country. In this sense, studying the publishing industry allows a peek into the subtle and everyday repercussions of criminal prosecutions on these prominent social and creative actors in the country. Besides, studying authors and publishers provides a deeper understanding of strategies intellectuals employ in dealing with an increasingly autocratic state.

Studies such as Wedeen's work on Hafez al-Assad's Syria and Havel's work on communist Czechoslovakia explore how authoritarian regimes can succeed in achieving public dissimulation and in making citizens perform observable signs of loyalty for the most part. Wedeen's work illustrates how ordinary citizens pledge support to the autocrat in ways that are "transparently phony both to those who orchestrate them and to those who consume them."[93] Similarly, Havel's work also looks at ordinary citizens like the famous grocery vendor who placed a tag in his shop calling "Workers of the world, unite!" to make it clear to everyone that he is a man of the system.[94] Wedeen pointed out that Asad's cult operated as a disciplinary device, producing guidelines for acceptable speech and behaviour, and generating public dissimulation where citizens act "as if" they revere their leader. By following the guidelines, citizens become "accomplices" in reproducing Asad's domination and become alienated from one another. Similarly, Shen-Bayh suggests that autocrats engage in purges from the ruling circle to reveal the bounds of permissible behaviour. She highlights that the effect of a public purge in the elite circle is rarely limited to the individual being punished; it has an impact on "the audience of other elites who might be punished in the future."[95] While Shen-Bayh focuses on elite circles, the same can be said about different communities or social groups.

[92] Recently, the number of criminal prosecutions against ordinary twitter users have also risen dramatically and there are also studies on this topic.
[93] Wedeen, *Ambiguities of Domination*, 6.
[94] Václav Havel as quoted in Wedeen, *Ambiguities of Domination*, 74.
[95] Shen-Bayh, Undue Process, 9.

However, this observation is not directly applicable to hybrid regimes with various configurations of democratic and illiberal institutions, including free elections. Genuine polarisation of society is a common pattern in hybrid regimes where some segments of the population sincerely support the government while others feel no need to imitate or perform approval and are not shy to express their opinion. In other words, everyday life in hybrid regimes is not always drastically different to that in stable democracies, perhaps except for political dissidents.[96] In most regimes, there is usually some space for a certain degree of political and civil society activism. This allows governments to make use of the language of democracy and fundamental rights, while, at the same time, resorting to a variety of means to send indications as to the boundaries of politically permissible behaviour. Criminal prosecutions against dissidents serves the purpose of delineating the domain of tolerable political behaviour and expression.

Yet, the effect of arbitrary prosecutions and responses to it at the receiving end is complex, nuanced and understudied in the context of hybrid regimes, where some space for democratic interplay is still preserved. The impact of criminal proceedings and political trials on fragmented and diverse communities such as the publishing world is not elaborated adequately. Studying citizens who share loosely defined commonalities with defendants in politicised cases can reveal the impact of criminal prosecutions on individuals and groups in society. For instance, the arrest of young activists in India has led parents to tell their children to "shut up, keep quiet, stay at home, don't be visible."[97]

Meanwhile, generating uncertainty about the boundaries of politically permissible conduct can also benefit autocratic governments. Stern and Hassid, in their study of the mechanics of quiescence among journalists and lawyers in China argue that "unpredictable flashes of repression instil fear and amplify silence."[98] Besides, although less than 0.2 per cent of journalists and lawyers are affected by state coercion (such as administrative punishment, imprisonment and violence), "deep rooted uncertainty about the boundaries of the permissible magnifies the effect of these isolated

[96] Thomas Pepinsky, "Life in authoritarian states is mostly boring and tolerable," *Vox*, 9 January 2017, https://www.vox.com/the-big-idea/2017/1/9/14207302/authoritarian-states-boring-tolerable-fascism-trump, accessed:13 August 2023.
[97] Das Acevedo, "Autocratic legalism in India," 137-138.
[98] Rachel E. Stern and Jonathan Hassid, "Amplifying Silence: Uncertainty and Control Parables in Contemporary China," *Comparative Political Studies* 45, no:10 (October 2012):1231.

incidents."[99] Stern and Hassid's work highlighted that studies concentrating on coercive repression and regulation leave out another significant component of control: precarity.

As mentioned previously, the term "uncertainty" was frequently used by my interlocutors, that is, authors, editors and publishers. While they used the term to refer to similar notions, there was no single, uniform meaning. Amongst others, they have employed the term to refer to what they perceived as the selective and arbitrary interpretation and application of criminal laws, to describe what they saw as blurry boundaries of "dangerous" action that would cause criminal prosecutions against them, and to explain their lack of trust in legal institutions. Overall, as mentioned previously, a section of the publishing world felt vulnerable and exposed to the threat of criminal prosecution, which they felt was constant. In the current study, I employ the term "precarity" to scrutinise and provide a comprehensive explanation of the various ways interlocutors have used the term "uncertainty" to relay or talk about their lived experiences. Hence, I explore what "uncertainty" meant to a variety of participants and different sections in the publishing world and the nuances between the different uses of the term.

Lorey explains that the conceptual composition of "precarious" in the broadest sense is made up of "insecurity, vulnerability, destabilization and endangerment."[100] Discussions of precarity usually revolve around insecurity and vulnerability of employment and welfare. Nguyen, however, employs the concept in the context of authoritarian or dictatorial rule. She defines "precariousness" as the "uncertain and vulnerable nature of life and work, especially in times of rapid and unpredictable structural transformations" and highlights that the concept is especially important for "discussion of the legal behaviour of vulnerable, marginalised, and disadvantaged groups."[101] At the same time, she underlines that the concept is scarcely acknowledged in studies on law in authoritarian regimes. She points out that precarity must be studied "as a lived experience of vulnerability and uncertainty" *and* "as the outcome of regulatory and government processes." Similarly, Lorey, building on Foucault's notion of governmentality, draws attention to precarity as a result of the governmental process of *precarisation* where "the conduct of life and thus of bodies" is "destabilised."[102] My research

[99] Stern and Hassid, "Amplifying Silence," 1231.
[100] Isabell Lorey, *State of Insecurity: Government of the Precarious* (London: Verso Books, 2015), 12.
[101] Tu Phuong Nguyen, "Law and Precariousness in an Authoritarian State: The Case of Illegal House Construction in Vietnam," *Law & Policy* 42, no.2 (2020): 189.
[102] Lorey, *State of Insecurity*, 13.

similarly highlights precarity as a consequence of repressive tactics, especially political trials, and investigates how it is experienced and navigated by authors, editors and publishers. While it has been widely documented that states use laws and regulations to mould social behaviour towards desired economic, social, and political goals, laws and legal institutions can also cultivate docile behaviour by generating an atmosphere of fear and uncertainty. However, while precarity can often lead to quiescence and pre-emptive action, it can also give rise to perseverance and other subversive strategies, which I elaborate on later in this dissertation.

Stern and Hassid argue that in cases where heavy-handed laws, threats and violence maintain order, actual coercion may be employed relatively less. This is because "uncertainty over the limits of political tolerance amplifies repression and pushes people to control themselves."[103] Hence, groups such as lawyers and journalists, which they define as public professionals, must deal with the anxiety of being unable to ascertain "permissible political boundaries."[104] They cannot know "in advance what constitutes a safe story or a safe case."[105] In the Chinese context, state repression is based on whatever actions catch official attention, as there is no mechanism of pre-publication censorship or pre-litigation approval. The state does not have the resources to monitor each publication and there is no clear indication of what can attract official attention. Hence, a story which had not attracted any attention in the past might get a journalist into trouble when a follow up is published later.[106] Apart from clear, taboo topics such as Taiwanese independence or the events of 1989, it is quite difficult to anticipate state action or identify a pattern and adjust one's conduct accordingly. Hence, it often makes sense to take the most comprehensive measure possible, which may create a silencing effect. For instance, Stern and Hassid report that journalists might overlook an angle on a story.

There are also more structural forms of uncertainty. For example, non-governmental organisations in China are required to find a government sponsor to register their legal status. However, the state-initiated Clean-up and Reorganization reviews mean that the legal status of an NGO can be withdrawn at any time. Online platforms appear to be similarly vulnerable: the political environment at a given time, the website's background, its size, and its location all play into whether

[103] Stern and Hassid, "Amplifying Silence," 1233.
[104] Ibid.
[105] Ibid, 1236.
[106] There is a Central Publicity Department (CPD), which is a party unit whose task is to "guide" the Chinese media. However, even the standards published by CPD may not be consistent.

the government will take down a post. Hence, the two authors hold that while there are instances of coercion, a nuanced approach would require exploring how uncertainty magnifies the impact of each occasion of political violence in a way that limits the political practices of these groups.

There are examples from established democracies, too, where anti-terror laws generate precarity and produce vulnerable citizens. For instance, O'Donnell argues, in the context of the United Kingdom, that implementation of the government's "Prevent Duty," "along with the offences of indirect public provocation and glorification or encouragement of terrorism" (s.1 of the Terrorism Act 2006) generated suspicion and uncertainty amongst students and teachers as to "what one is permitted to say or do" and where they feel they have "to reflect upon how one's statements, comments, beliefs, views, behaviours and readings might be interpreted by an unknown other who is positioned as expert, without having full knowledge of the framework of or criteria guiding that other's interpretation."[107] O'Donnell also argued that this sense of uncertainty provoked among some "a paranoid self-doubt precipitated by the idea that one may be punished or targeted for one's beliefs and ideas, even those which one did not know one had."[108]

On the other hand, there are entire communities that are "rendered suspect by the institution and operation of the anti-terrorist legislation."[109] In other words, legal and security apparatuses produce "suspect communities" out of them. A study carried out by Hickman, Thomas, Nickels and Silvestri found that within the Irish (with respect to the period between 1974-1996) and Muslim (since 2001) communities in Britain, there was a sense of being perpetually watched by state authorities and a pattern of "laying low" and "keeping your head down" during periods of political violence.[110] Both groups indicated that experiences with police practices including stop and search, house raids, being stopped while travelling, and being arrested created a sense of fear within the communities. The study also indicated that Muslim interlocutors were "being careful on the telephone and Internet and taking care not to mention al-Qaeda or terrorism, even in jokes."[111] On the other hand, Breen-Smyth's work

[107] Aislinn O'Donnell, "Securitisation, Counterterrorism and the Silencing of Dissent: The Educational Implications of *Prevent*," *British Journal of Educational Studies* 64, n.1(2016): 61.
[108] Ibid.
[109] Marie Breen-Smyth, "Theorising the 'suspect community': counterterrorism, security practices and the public imagination," *Critical Studies on Terrorism* 7, no. 2 (2014): 224.
[110] Mary J. Hickman et al., "Social cohesion and the notion of 'suspect communities': a study of the experiences and impacts of being 'suspect' for Irish communities and Muslim communities in Britain," *Critical Studies on Terrorism* 5, n.1 (2012): 101.
[111] Hickman et al., "Social cohesion and the notion of 'suspect communities,'" 97.

showed that the atmosphere created in the wake of the September 11 attacks made it difficult for anyone, let alone Muslims, to express criticism of Western foreign policy. Especially for suspect groups, criticising government security practices and foreign policy could lead "at best to attract censure, and at worst, to risk one's safety."[112] Being labelled a "radical" or "dangerous" could lead them to face strict legal charges and penalties which include imprisonment, deportation, imposition of control orders.[113] While the "suspect communities" experienced all this turmoil, for the rest of the "ordinary citizens" everyday life went on as usual. They did not feel the same level of pressure and they did not regulate themselves in the same way.[114]

Hillyard's research of the impact of the Prevention of Terror Act (PTA) on the Irish community in Britain is one of the first studies of anti-terror laws, which had focused on experiences of individuals at the receiving end. He had illustrated how the PTA often created fear among the Irish community, in effect restricting "political activities, debate and discussion around the Northern Ireland problem."[115] Hillyard has also pointed out that "some would go as far as to argue that this was a deliberate policy."[116] While there is no way to ascertain whether generation of fear among vulnerable communities was a conscious decision, it is important to study closely the capacity of legal institutions to build up social acquiescence by generating a sense of uncertainty through investigations, detentions, and imprisonment in selective cases. While the practices discussed above generated precarity and vulnerability among certain groups in an established democracy like the UK, they have not constituted, at least not until now, a mode of generalised, indirect control of dissenting voices. Indeed, Nguyen has claimed that "the precarization effect of the law seems to become more prominent" outside the UK and liberal democracies more broadly.[117]

In authoritarian and hybrid regimes where division of sovereignty is eliminated or where checks and balances are weak or non-existent, legislation like anti-terror laws or defamation provisions can turn into tools of indirect control or suppression of political dissent at large. In other

[112] Breen-Smyth, "Theorising the 'suspect community,'" 237.
[113] The prosecution and conviction of Tarek Mehanne in the US is an apt example.
[114] See Ross Caputi's article "Tarek Mehanna: punished for speaking truth to power," *The Guardian*, 16 April 2012 at https://www.theguardian.com/commentisfree/cifamerica/2012/apr/16/tarek-mehanna-punished-speaking-truth, accessed:27 June 2022.
[115] Paddy Hillyard, *Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain* (London: Pluto Press, 1993), 252.
[116] Ibid.
[117] Nguyen, "Law and Precariousness," 190.

words, when the circumstances allow, the generation of precarity as a tool can move from the margins to the centre stage of government strategies. An arbitrary or selective implementation of penal codes makes it difficult for relevant groups to navigate the threat of state repression. Hassid and Stern relay the statement of a Chinese HIV activist to Yunnan provincial officials in 2008: "We want to know what we can do! Tell us what we are allowed to do and this will help us decide our activities!"[118] Hendley, in her work dating from 2009 on the rule of law in Russia, similarly underlines that citizens, recognising that they do not inhabit a world where there is universalistic law and even-handed courts, demand predictability "even if it means that the law may not always protect them."[119] Hence, she explains that citizens want to "know when they can depend on the courts and when the courts are likely to be compromised."[120] According to her account, this reckon-ability does exist in the Russian legal system where citizens can grasp "this division between politicized and non-politicized cases," although it might be invisible to an outsider. Hence, they "adapt their behaviour accordingly."[121] However, in many hybrid regimes sliding towards authoritarianism, a selective and strategic enforcement of laws and regulations generate an atmosphere of precarity where the boundaries of the "dangerous domain of activity" or "the permissible" are unclear. In these circumstances, the response is usually wider forms of self-monitoring. This is an important difference to bear in mind when studying lived experiences under authoritarianism.

A recent report prepared by the Open Society European Institute indicates that an atmosphere of fear is becoming more and more prominent in several increasingly authoritarian states in the Europe Union.[122] Drawing attention to smear campaigns against the judiciary, journalists, civil society organisations and human rights activists, the report suggests that Article 2 of the Treaty on European Union[123] must be interpreted to entail both positive and negative obligations on the states. Accordingly, the article must be construed "as imposing an obligation to refrain from creating a climate of distrust, fear or stigmatisation" and "as imposing an obligation to create a favourable

[118] Stern and Hassid, "Amplifying Silence," 1238.
[119] Hendley, "The Russian Case," 260.
[120] Ibid.
[121] Ibid, 261.
[122] Laurent Pech, *The Concept of Chilling Effect: Its Untapped Potential to Better Protect Democracy, The Rule of Law, and Fundamental Rights in the EU* (Open Society European Policy Institute, 2021), https://www.opensocietyfoundations.org/publications/the-concept-of-chilling-effect, accessed:7 August 2023.
[123] "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities."

environment for the fulfilment of the values provided for in this Treaty provision, as well as an obligation to react when threats, attacks, smear campaigns, etc., aim to discourage journalists, judges, lawyers, etc., from exercising their rights and/ or fulfilling their professional duties." [124] Hence, there is a strong ground to suggest a link between increasing authoritarianism in hybrid regimes and increasing uncertainty and insecurity amongst government critics. In fact, as Scheppele had highlighted, it can be argued that autocratic legalism "removes certainty" and guarantees, "rather than imposing a different certainty," like certainty of repression or prosecution.[125]

Meanwhile, Scheppele also argues that "in the days when dictators come to power with law reform as their primary tool, civil defence requires citizens to be empowered with law."[126] In other words, she claims that the citizenry should be educated about liberal and democratic constitutionalism which remain, in her account, "an elite idea that has no resonance in the general public."[127] Nevertheless, while she makes such broad propositions about the citizenry, she does not acknowledge the presence of dissenting and defiant groups and individuals in many hybrid regimes turning increasingly authoritarian. Going back to the case of Turkey, given the existence of civil and political activism, one can predict or foresee that acquiescence is not the sole outcome of navigating precarity. In this sense, the current study explores the range of coping strategies and practices of subversion within the courtroom and beyond, in the context of the publishing world. Given that there is a vibrant publishing scene in Turkey, what strategies do authors and publishers develop or use in dealing with precarity? What kind of practices of resistance are there?

On the other hand, Nguyen points out that studies of law and everyday life in authoritarian regimes often focus on explaining the ways in which "people manipulate tactics or resist the law as well as the legal and regulatory implications of their behaviour."[128] In this respect, the law's power of submission can easily be neglected. In bringing together explorations of the social and political repercussions of the threat of legal sanction, the compelling power of the law, resistance tactics, and coping mechanisms in general, I pay particular attention to my interlocutors' subjective experiences

[124] Pech, *The Concept of Chilling Effect*, 3.
[125] Scheppele in Deepa Das Acevedo, "Autocratic Legalism in India: A roundtable," *Jindal Global Law Review*, 132-133.
[126] Scheppele, "Autocratic Legalism," 583.
[127] Ibid.
[128] Nguyen, "Law and Precariousness," 189.

of precarity in the publishing world to better understand how hybrid regimes can cultivate public dissimulation through criminal prosecutions. Through this, the current work contributes to the limited scholarship on the notion of precarity vis-à-vis the role of law and legal institutions in shaping lived experiences in hybrid or authoritarian settings.

5. Turkey as a case study to examine the generation and navigation of precarity in a hybrid regime

The term "hybrid regime" is often used when the political system in Turkey is being described. As mentioned, the idea of a hybrid regime is a general frame of reference to discuss a political system that cannot be easily categorised as being fully authoritarian or fully democratic; each state involves configurations rooted in its historical, political, and social background. Hence, the term is often used in combination with sub-types. Turkey has, in the past, been described as a "tutelary democracy," which Przeworski defined as a regime where the "military extricates itself from the direct performance of government and withdraws into barracks but withdraws intact and contingently."[129] In this political system, there are still competitive elections and formally democratic institutions, but while the elected representatives govern, "the power apparatus, typically reduced by this time to the armed force, retains the capacity to intervene to correct any undesirable state of affairs," or to correct anyone "who transgresses too far in undermining their values or their interests."[130] It is reasonable to suggest that in the case of Turkey, the military stood at the centre of what Belge refers to as "the Republican alliance," which included the civilian bureaucracy, the Republican People's Party, and sections of the intelligentsia (universities, professions, and the press). A Kemalist worldview was a common denominator of the alliance.[131] When the Justice and Development Party (AKP) came to power in 2002, elites forming the Republican alliance were well entrenched in key state institutions including the judiciary, the military, and in different branches of the bureaucracy such as the Higher Education Board (YÖK). The judiciary in Turkey had a history of aligning itself with the interests of the state, which had meant the interests of the Republican alliance up until AKP's win in the 2002

[129] Adam Przeworski, "Democracy as a contingent outcome of conflicts," in *Constitutionalism and Democracy*, eds Jon Elster and Rune Slagstad (Cambridge University Press: Cambridge, 1988), 60.
[130] Ibid, 61.
[131] Belge, "Friends of the Court," 656.

elections.[132] In Chapter 2, I will trace the trajectory that the Republic of Turkey followed, since its establishment, in becoming a hybrid regime, explaining its specifics, characteristics, and political shifts up until the time AKP came to power. Meanwhile, in Chapter 3, I will, amongst others, examine the transformation of the state in Turkey under AKP rule by looking at liberal and authoritarian tendencies, which often went hand in hand in the legal and political spheres in recent decades.

Turkey is a good model to scrutinise how legal means, especially political trials, can be used by hybrid regimes for political ends since several governments in each political era have resorted to them to control their perceived or real opponents. More specifically, Turkey is a relevant case to evaluate the generation of precarity and lived experiences of it in a hybrid regime that is turning increasingly authoritarian. As has been underlined, uncertainty was a term that interlocutors frequently used when describing the threat of criminal prosecution. Tekin, who applied the concept of the dual state to Turkey, has argued that the political regime in Turkey operates today through "uncertainty" in the legal sphere: "there are laws, but the laws do not provide predictability since they are sometimes enforced, and sometimes not. Also, sometimes they are enforced in such a way as to contradict the very logic of the law itself."[133] Similarly, Alemdar points out that the judiciary has turned into a disciplinary arm of the AKP against the latter's opponents.[134] She has argued that trials such as the Cumhuriyet, Gezi and Academics for Peace, which I discuss in Chapter 4, "educate" journalists, academics and civil activists "about the new limits of their freedom of expression and criticism, and thereby disciplined (them) towards self-censorship."[135] In other words, as we have discussed above, the process of the political trial itself is turning into a form of punishment and tool of control. According to Tekin, different scenarios play out in line with the needs of those in power and the priorities of the law enforcement authorities. This does not sound entirely different from another hybrid regime, the case of Russia. However, in the Russian case, Hendley's research in 2009 indicated that ordinary people felt able to navigate the "politicised cases" and to adapt their behaviour

[132] The influence of the Republican alliance over the judiciary was usually exercised through their powerful links in the institution, especially in the higher judiciary, and through the political atmosphere over which the alliance had dominance.
[133] Serdar Tekin, "The Dual State and Transformation of the Political Regime in Turkey," 27 September 2020, Online Presentation for Turkey Beyond Borders: Critical Voices New Perspectives, video, 25:41, https://www.turkeybeyondborders.org/project/serdar-tekin-part-bolum-2/, accessed:19 August 2023.
[134] Zeynep Alemdar, "Courtrooms as solidarity spaces and trials as sentences: defending your rights and asking for accountability in Turkey," in *Turkey's New State in the Making: Transformations in Legality, Economy and Coercion*, eds Pınar Bedirhanoğlu, Çağlar Dölek, Funda Hülagü, and Özlem Kaygusuz (London: Zed Books, 2020), 207.
[135] Alemdar, "Courtrooms as solidarity spaces and trials as sentences," 208.

accordingly.[136] Consequently, uncertainty about state actions did not emerge as a primary concern among ordinary citizens.

On the other hand, Tekin maintains that in Turkey the regime "runs through the capacity of the political power to create indeterminacy and abuse it in myriad ways."[137] In line with our previous discussion about the limited knowledge of social and political consequences of criminal proceedings, Alemdar underlines, with respect to criminal prosecutions of dissidents in Turkey, that "the real effects of these processes on wider society are yet to be observed."[138] Through an ethnographic study of the publishing sector, the current research contributes to a bottom up understanding of how prosecutions and the precarity they generate shape the life and work of the creative groups in Turkey, namely those in the publishing industry. A focus on generation and lived experiences of precarity will shed light on complexities with respect to new repressive tactics deployed by hybrid regimes turning increasingly authoritarian and the range of outcomes they lead to, including social acquiescence and various forms of resistance, in the case of Turkey.

6. Structure of the Thesis

The thesis is divided into the following subsections: Chapter 2 looks at the emergence of the state in Turkey as a hybrid regime and the evolution of the publishing industry in connection to it. Chapter 3 focuses on the AKP rule between 2002 and 2020 and looks at the political, legal, and economic landscape in which authors and publishers operated during this period. Chapter 4 studies the ways in which the machinery of criminal justice is producing political power and generating precarity among the broader society through political trials, selective enforcement of laws, and instrumentalisation of legal procedures. It also sheds light on the lived experiences in political trials where the courtroom often turns into a battleground for the law enforcement authorities on the one hand, and defendants, their lawyers, and the audience, on the other. Chapter 5 identifies the political dynamics in the publishing industry, explores how authors and publishers from various backgrounds approach the state and perceive the criminal prosecutions of dissidents, and looks at the variations in

[136] Hendley, "The Russian Case," 261.
[137] Serdar Tekin, "The Dual State and Transformation of the Political Regime in Turkey."
[138] Alemdar, "Courtrooms as solidarity spaces and trials as sentences," 221.

the everyday experiences of precarity in the industry. Chapter 6 focuses on the strategies actors in the publishing industry make use of to navigate, adapt, or challenge the threat of criminal prosecution. It also looks at how these strategies affect the publishing process. Finally, Chapter 7 returns to the questions in the Introduction and provides answers, final remarks, and concluding thoughts in light of the discussion of the findings.

Chapter 2 - The Publishing Industry in Turkey: Political Turns and the Shifting Boundaries of the Politically Permissible 1923-2002

"*All the important authors in this country have gone to prison."*- Chief Editor at Sirani Publishing[139]

Publishing is a domain closely tied to the production of knowledge, dissemination of information, and spreading of ideas. For this reason, governments, especially in hybrid regimes, usually pay close attention to it. In this chapter, I elaborate on the specific model of the hybrid regime that developed in Turkey from the establishment of the Republic up until contemporary times. As discussed in Chapter 1, a hybrid regime does not have a definite formula; each has its own institutional background, and its own configuration of democratic and illiberal components which also keep changing. The changing relations of power between the different groups of the political elites provide a background against which shifts in the publishing world are examined. This discussion provides the reader with the necessary background for grasping the nuances regarding the contemporary lived experiences of authors and publishers, which I examine in Chapters 5 and 6.

I divide the chapter into three sections, reflecting the turning points in the political system and the connected policies towards the publishing industry. The sections are structured as follows: the Founding of the Republic and the Single Party Era (1923-1950), the Multi-Party Era (1950-1960), and the Era of Coups (1960-2002). In the section on the Era of Coups, I examine the coups d'état of 1960, 1971, 1980 and 1997 and their impact on the publishing industry. In terms of power and control over the publications, I survey what constituted a source of threat in the eyes of the state and the general condition of the authors and the publishers in each era. In this respect, the legal tools which the state used in dealing with the perceived sources of threat are also considered.

[139] From the interview conducted with the chief editor, 17 June 2019.

1. The Founding of the Republic and the Single Party Era 1923-1950

At the end of the First World War, the Treaty of Sèvres (1920) was signed between the Allied powers and the Ottoman Empire. It gave large portions of the Ottoman territory to France, the United Kingdom, Greece, and Italy and created large occupation zones within the Empire. The terms of the Treaty caused resentment and stirred Turkish nationalism, igniting the Turkish War of Independence (1919-1923). After the victory of the nationalists in the war, a new peace treaty, the Treaty of Lausanne (1923) was concluded between the Allied powers and the Turkish national movement. Later in 1923, the Republic of Turkey was established, and Ankara was proclaimed as the capital. Nevertheless, a large part of the socio-economic and cultural life in the country, including the publishing and the printing activities remained concentrated in Istanbul.[140] While there were several continuities between the empire and the new republic in terms of the institutions, human resources, and policies, the conceptualisation of the republic as a nation-state was a clear rupture from the multi-ethnic and multi-religious nature of the empire.[141] Mardin explains that "what happened was Mustafa Kemal giving life to an imaginary, non-existing being, the Turkish Nation."[142] An important goal of the leadership regarding the new nation-state was developing nationalistic feelings and social bonds that did not rely on Islam, the religion of the majority. Accordingly, the new republic sought to confine the religion entirely to the private realm.[143] A related ambition was modernising and westernising the country. At the same time, any organised or individual opposition to these goals or to the methods to be used to attain them met with a heavy handed response.

1.1 Law on the Maintenance of Order – Early Attempts to Control Political Opposition

The nationalist movement split after the proclamation of the republic in 1923 and there was a sense of unease amongst certain social and political groups about the authoritarian tendencies of the government and the radical nature of its policies of westernisation and secularisation. Indeed, the tension between the liberal press based in Istanbul and the government in Ankara became apparent at

[140] The *Cağaloğlu* area in the old peninsula in Istanbul remained the unofficial home of publishers up until the 1990s.
[141] Şerif Mardin, *Türkiye'de Din ve Siyaset: Makaleler 3* (İstanbul: İletişim, 2017), 62.
[142] Ibid.
[143] Şükrü Hanioğlu, *Atatürk: An Intellectual Biography* (New Jersey: Princeton University Press, 2011), 160.

the time of abolition of the office of the Caliphate in 1924.[144] *Tanin, Tevhid-i Efkar*, and *İkdam* were the eminent newspapers which supported the War of Independence and the establishment of the Republic but were critical of the methods and the agenda of the Republican regime, including the prospect of abolishing the Caliphate. In late 1923, they published a letter sent to İsmet İnönü (the Prime Minister at the time) on behalf of Indian Muslims and arguing for keeping the institution of the Caliphate.

The government responded to the letter not through a dialogue, but by setting up an Independence Tribunal to try the chief authors and editors of the three papers.[145] Originally, the Independence Tribunal was an extraordinary court established during the War of Independence to try those impending the efforts of the nationalist resistance. They were closed at the end of the War but were soon reinstated at the end of 1923 by the Parliament upon İnönü's proposal to try the journalist and editors involved in the writing of the letter.[146] Although the journalists were ultimately acquitted, the trials reverberated through the circles of the political elites and intellectuals, constituting a clear indication of what they would encounter if they crossed a certain line.[147] As I show throughout the thesis, this mode of manifestation of power, arrests followed by acquittals was one of the legal tools used repeatedly for setting the boundaries of permissibility.

Shortly after the trial, Atatürk addressed media leaders at a meeting in İzmir stating that the political war of the new regime was not over yet and conveyed a request to be in harmony with Ankara,[148] despite the right to publish which had already been stipulated under Articles 70 and 77 of the new Constitution passed by the Parliament in 1924.

Critical sentiments were also voiced by the opposition party set up in November 1924, Progressive Republican Party (*Terakkiperver Cumhuriyet Fırkası,* the TCF). The TCF differed from the ruling Republican People's Party (*Cumhuriyet Halk Fırkası*, the CHF and after 1935, the CHP)

[144] The office of the Caliphate was an Ottoman public office that claimed to be the leader of the Islamic world and the true representative of Islam. It was abolished by the Republic on 3 March 1924.
[145] Ali Gevgilili, "Türkiye Basını," in *Cumhuriyet Dönemi Türkiye Ansiklopedisi vol.1* (İstanbul: İletişim Yayınları, 1983) 213-214; Deniz Güner, *Sansür ve İktidar: Cumhuriyet Dönemi Tehdit Algıları* (İstanbul:Yeditepe, 2015) 44-45.
[146] İnönü's proposal was passed with 89 votes in favour compared to 63 votes against it. See Güner, *Sansür ve İktidar,* 45; Sadık Erdaş, "Muhalefeti Yıldırma Aracı Olarak İstiklal Mahkelemeri Lütfi Fikri Bey'in Yargılanması Örneği," in *İstiklal Mahkemleri Sempozyumu,* ed. Aynur Yavuz Akengin (Ankara: Atatürk Araştırma Merkezi Yayınları, 2016), 176-177.
[147] Orhan Koloğlu, *Osmanlı'dan 21.Yüzyıla Basın Tarihi* (İstanbul: Pozitif Yayınları, 2006), 117.
[148] Gevgilili, "Türkiye Basını," 214.

in their advocacy of "decentralisation, separation of powers and evolutionary rather than revolutionary change."[149] In line with their support of decentralisation, they also advocated a more liberal economic policy.

A few months after the establishment of the TCF, an armed rebellion broke out in the Kurdish majority areas north of Diyarbakır in February 1925. Repressive policies towards the Kurdish identity, emerging Kurdish nationalism at the time, and grievances about the abolishment of the Caliphate, a religious symbol that bounded the pious Kurds and Turks together, were the main reasons behind the armed uprising. [150] The President and the hardliners in the ruling CHF made use of what is referred to as the Sheikh Said rebellion to put an end to political opposition all together. The Law on the Maintenance of Order (*Takrir-i Sükun Kanunu*), an emergency law, was passed by the assembly in the wake of the rebellion on 4 March 1925. It had a time limitation of two years (though it could be renewed) and allowed the government to ban any organisation or publication it perceived as a threat to law and order. Soon after the enactment of the Law on the Maintenance of Order, the opposition party TCF was closed down in June 1925 under the pretext that it had supported the rebellion and tried to make use of religious sentiments for political ends.

In addition, the assembly adopted a resolution for the establishment of two Independence Tribunals, and more than a dozen newspapers and magazines, that were critical of the government, were closed. During this period, the government newspapers remained as the only national papers.[151] Furthermore, several authors and journalists who wrote in some of the newspapers were arrested and prosecuted by the Independence Tribunals.[152] They were charged with harming the domestic security

[149] Erik J. Zürcher, *Turkey: A Modern History* (London: I.B.Tauris, 2004), 168.
[150] Zürcher, *Turkey*, 169- 172. Zürcher explains that: "the public use of Kurdish and the teaching of Kurdish were prohibited. Influential Kurdish landowners and tribal chiefs were forcibly resettled in the west of the country. The first sign of resistance against these policies was an abortive rebellion by the garrison in Beytüşşebap in the extreme southeast in August 1924." See also Mete Tunçay, *Türkiye Cumhuriyeti'nde Tek Parti Yönetiminin Kurulması* (Ankara: Yurt Yayınları, 1981), 129.
[151] Mete Tunçay, "Basın ve İstiklal Mahkemeleri," in *Cumhuriyet Dönemi Türkiye Ansiklopedisi vol.1* (İstanbul: İletişim Yayınları, 1983), 212.
[152] Recently published memoirs indicated that Ali Saib, one of the judges on the panel, had privately told Sheikh Said, the leader of the armed rebellion, that if he claims that journalists incited rebellion through their articles, he will avoid a death sentence and will be punished with exile instead. See Yurdal Demirel, "Şark İstiklal Mahkemesinde Görülen bir Dava: 'Gazeteciler Davası,'" in *İstiklal Mahkemleri Sempozyumu,* ed. Aynur Yavuz Akengin (Ankara: Atatürk Araştırma Merkezi Yayınları, 2016), 318-319.

of the state and inciting rebellion; in the end, all were acquitted.[153] Interestingly, this group, which contained both liberal and conservative-Islamist authors and journalists, were treated differently from the other detainees in the city of Elazığ; they stayed in private houses rather than the prison. Once again, the mild, if not cordial, treatment of the authors and journalists during the prosecution indicated that the trial was a kind of warning.[154] Indeed, after their acquittal, these journalists and owners of the newspapers were silenced to a large extent.[155] By contrast, some communist leaning journalists were given prison sentences, even though they had largely supported the government during the Sheikh Said rebellion. They were being charged with carrying out propaganda to violate the social order in the country. Among those charged and convicted in absentia was Nazım Hikmet, whose poetry was later widely appreciated.[156]

Once the control over political dissent was consolidated, the ruling government launched wide ranging reforms. Identifying modernisation largely with westernisation, the first wave of republican reforms included: the ban on religious shrines and Sufi convents; the ban on the turban and fez, the traditional headgear of the Ottoman Empire which was replaced by the Western style hat; the adoption of the European calendar; and the adoption of civil and penal codes which were based on the Swiss civil and Italian penal codes respectively. Besides, in 1928, the Ottoman Turkish script which was a version of the Perso-Arabic script was replaced by the Latin-based new Turkish alphabet.

Keen to control possible reactions from the religious groups and opposition to the westernising reforms, the government had included an article (Article 163) in the penal code passed in 1926 that punished making use of religion or religious sensitivities to encourage people to act in a way or to set up an organisation that could violate the security of the State.[157] A decade later, in 1936, the ruling government amended Articles 141 and 142 of the penal code to introduce the punishment for revolutionary communist movements and propaganda in the face of the alleged communist threat. Article 141 punished uprooting the existing economic and social order by means of force or forming

[153] During the trial, the authors and journalists had sent letters to Mustafa Kemal Atatürk, appealing to him for forgiveness. These petitions had played a role in their acquittal. See Demirel, "Şark İstiklal Mahkemesinde Görülen bir Dava," 327-328.
[154] Ibid. 337.
[155] Hilmi Bengi, "İstiklal Mahkemelerinde Yargılanan Gazeteciler," in *İstiklal Mahkemleri Sempozyumu,* ed. Aynur Yavuz Akengin (Ankara: Atatürk Araştırma Merkezi Yayınları, 2016), 347.
[156] Ibid, 386-390. While he was being searched for arrest, Nazım Hikmet had fled to Moscow.
[157] See Sulhi Dönmezer, "Dini Cemiyet Teşkili ve Din Propagandası," *Journal of Istanbul University Law Faculty* 17, no.1-2 (1951): 24-43.

organisations to carry out these acts. In parallel, Article 142 prohibited propaganda carried out to this effect.[158] Articles 141, 142, and 163 of the penal code were to remain in force until 1991 and were widely used to supress religious and communist ideas and movements.

The Law on the Maintenance of Order lasted until 1929 and as Zürcher argues, marked the emergence of "an authoritarian one-party regime and, not to put a too fine a point on it, a dictatorship."[159] Criticism of the new regime and its reforms could easily turn an author into a source of threat in the eyes of the state during this time. According to Güner's account, the majority of the 38 publications which were banned in 1925 after the proclamation of the Law on the Maintenance of Order were prohibited for "publishing against the country and opposing the country."[160] Almost all traditionalist/Islamist papers of the time were closed for inciting the uprising or being somewhat linked to it.[161] Subaşı explains that any publication or political-cultural project which resisted radical secularism in everyday life was gradually declared a threat to the Republic.[162] Several other books were banned on the grounds of ethnic separatism.[163] Between 1925 and 1929, the Council of Ministers implemented most of the bans on books with the simple phrase "in line with the Law on Maintenance of Order" without providing any other reason.[164] For instance, with the concentration of several government opponents in Syria, the Cabinet banned the entry of all Syrian print media into Turkey with an executive decree in 1925 that was renewed in 1928.[165]

The bans, prosecutions, and the Law on the Maintenance of Order generated a fearful environment where authors of all orientations felt compelled to be careful. Güner explains that in the early years of the Republic, the government was banning authors rather than the publications.[166]

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[158] These two articles were based on Articles 270 and 272 of the new Italian Penal Code adopted under Mussolini in 1931. See Uğur Alacakaptan, "Demokratik Anayasa ve Ceza Kanunu'nun 141 ve 142'inci Maddeleri," *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 22, no.1 (1966): 3-20.
[159] Zürcher, *Turkey*, 176.
[160] Deniz Güner, *Sansür ve İktidar*, 66. According to Güner, 4 of the 38 publications were banned on grounds of constituting communist propaganda, 2 on grounds of publishing against Republican revolutions, 1 publication on account of carrying out religious propaganda and another one for spreading ethnic racism.
[161] Necdet Subaşı, "1960 Öncesi İslami Neşriyat: Sindirilme, Tahayyül ve Tefekkür," in *Modern Türkiye'de Siyasi Düşünce: İslamcılık vol.6* (İstanbul: İletişim, 2018), 218.
[162] Subaşı, "1960 Öncesi İslami Neşriyat," 217.
[163] As an example, a book called "Gonca-i Bahar" published in Kurdish in Damascus was banned in August 1925 account of "pro-Kurdish propaganda."[163] However, bans on account of Kurdish propaganda increase in number after the Kurdish uprisings in the eastern provinces in 1931. See Güner, *Sansür ve İktidar*, 92-97.
[164] Güner, *Sansür ve İktidar*, 47.
[165] Ibid, 54.
[166] Ibid, 64. The number of bans later dropped between 1926-1929.

Meanwhile, the number of bans decreased between 1926-1929. One of the reasons for the drop in bans appears to be the atmosphere created by the emergency Law on the Maintenance of Order; it is reasonable to suggest that authors were restricting themselves.[167] Meanwhile, the interaction between Hüseyin Yalçın, one of the authors prosecuted and sentenced to exile by the Independence Tribunal, and the Prime Minister İnönü is telling of the government's outlook on authors. In later years, after İnönü had reconciled with Yalçın, he told him that: "A strong pen [referring to Yalçın's writing] was writing, it was spitting fire. At such a time, we could not let this pen free as we did not know in which direction it was taking us. But now the past is erased. You can work as you wish."[168]

The Lapse of the Law on the Maintenance of Order

In 1929, the government, having stabilised its power, allowed the Law on Maintenance of Order to lapse. In later years, to project more western outlook on one hand and to calm the increasing social discontent on the other, Atatürk encouraged the establishment of a loyal opposition party. Consequently, his old friend Fethi Okyar set up the Free Republican Party (*Serbest Cumhuriyet Fırkası,* the SCF).[169] Okyar had reassured Atatürk that the party would be faithful to the ideals of republicanism and secularism. Like the TCF, SCF's party manifesto advocated liberal economic policies and encouragement of foreign investment. It also supported freedom of expression.[170] While the establishment of an opposition party created some dynamism in political life, and as a reflection, in the print world, it also led to polarisation within the print media and within the country at large between supporters of the two parties.[171] The new party gained immediate popularity. Alarmed by the success of the SCF in several local elections a few months after it was established in August 1930, the ruling CHF stepped back into its safety zone by accusing the SCF of being infiltrated by reactionary and communist forces and soon after, Okyar dissolved the SCF.[172]

[167] Güner, *Sansür ve İktidar*, 66.
[168] Hıfzı Topuz, *II.Mahmut'tan Holdinglere Türk Basın Tarihi* (İstanbul: Remzi Kitabevi, 2003), 150.
[169] Zürcher, *Turkey*, 178.
[170] Ibid, 177-179.
[171] Nurşen Mazıcı, "1930'a Kadar Basının Durumu ve 1931 Matbuat Kanunu," *Ankara Üniversitesi Türk İnkılap Tarihi Enstitüsü Atatürk Yolu Dergisi* 5, no.13 (1996):143.
[172] Ibid, 145.

The discontinuation of the SCF coincided with the uprising in Menemen, where a group of young dervishes, or what might be called Muslim monks, called for the restoration of the Sharia law and violently attacked a group of soldiers sent by the gendarmerie.[173] Reinforcements from the gendarmerie later quelled the uprising. While it was a relatively small incident, the government resorted to emergency measures, declared martial law, and arrested over 2,000 individuals many of whom were former supporters of the SCF. Around 28 people were executed.[174]

The totalitarian tendencies of the ruling government strengthened after the Menemen incident. The independent social and cultural organisations, even those close to the government, were shut down, including the Turkish Women's Union.[175] This also affected the media. Some Members of Parliament (the "MPs") put a motion in the parliamentary discussions to highlight the "abuse of press freedoms" claiming that some papers were "thought bandits" who "poison innocent souls."[176] Ahmet Süreyya, one of the MPs, even claimed that the press was more dangerous than the enemy armies.[177] The motion asked the government for a plan to tackle this "abuse." During the parliamentary discussion, Prime Minister İnönü argued that a distinction had to be made between press freedom as "a fundamental norm of modern rule" and those who "abused" this freedom. He claimed that existing measures were not enough in preventing the abuse of press freedoms and that new measures were needed.[178] Another MP contended that the CHF "only want a law to be made to tie the hands of press bandits, vagrants, and enemies of the press and of the nation."[179]

Consequently, a new Press Law was passed in 1931 in order to "prevent, as much as possible, the harms of abusing the press freedoms."[180] Indeed, the preamble to the law points out that the press can become an instrument that may cause disorder and threat and that "modern states pass relevant laws to protect the country from the harmful impact of the press."[181] The law officially gave power to the Council of Ministers to close newspapers or magazines on account of their publications that

[173] Although newspapers at the time had claimed that the young dervishes were affiliated with the SCF or the Naqshbandi religious order, no conclusion has been reached in either regard. See Süleyman Sıdal, "1929 Ekonomik Bunalımının Bir Sonucu Olarak Menemen Olayı," *SDE Akademi Dergisi* 2, no.6 (2022):76.
[174] Zürcher, *Turkey*, 179.
[175] Ibid, 180.
[176] Mazıcı, "1930'a Kadar Basının Durumu ve 1931 Matbuat Kanunu," 145.
[177] Ibid.
[178] Ibid.
[179] Ibid, 146.
[180] Law no:1881; Mazıcı,"1930'a Kadar Basının Durumu ve 1931 Matbuat Kanunu," 147.
[181] Servet İskit, Türkiye'de Matbuat Rejimleri (İstanbul: Matbuat Umum Müdürlüğü Neşriyatından, 1939), 68.

"touch the public politics of the country."[182] Similarly, the Council of Ministers' power to ban foreign publications from entering Turkey was no longer tied to an emergency law; it had now become part of the Press Law. Moreover, publications that harmed or brought suspicion to the honour of the MPs, the Council of Ministers, or the government officers could be punished with a prison sentence or a judicial fine.[183] In addition, government permission or a licence had to be obtained for setting up a newspaper, and the criminal liability of an article was on the author, the chief editor, and the owner of the newspaper jointly. In effect, it became a crime, punishable by a prison sentence, to publicly criticise the government. The Council of Ministers used the Press Law to continue banning books on account of insulting or criticising the President (generally foreign books); books "inciting" other minorities like the Jewish, Greek and Armenian minorities; works opposing the Republican "revolutions"; inciting religious reactionism; and pro-religion propaganda.[184] Furthermore, in 1938, the Articles 141 and 142 of the Penal Code which prohibited communist propaganda were amended to remove the requirement of violence for committing the offence. As a result, mere expression of ideas could now be prohibited as communist propaganda under the new provisions.[185] In fact, the poet Nazım Hikmet and the prominent novelist Kemal Tahir were convicted of "spreading sedition" based on their left leaning literary works and were sentenced to 15 years in prison. They served 12 years in prison and were released in the general amnesty of 1950. However, the prosecutions and the bans against Nazım Hikmet's work, his publisher, and the printer of his books continued in the following years and Hikmet was convicted for "inciting people against the regime" on account of another series of poems.[186]

1.2 The State's Role as the Leading Publisher During this Period

The relationship between the rulers and the press in the period under discussion was more complex than simply suppression of the freedom of expression for the sake of holding on to power. The founding fathers of the Republic were ideologically driven; they were strongly influenced by the ideals of the Enlightenment and the doctrine of nationalism based on territoriality and ethnicity rather

[182] Mustafa Yılmaz, "Cumhuriyet Döneminde Bakanlar Kurulu Kararı ile Yasaklanan Yayınlar 1923-1945," *Kebikeç* 6 (1998): 57.
[183] Article 30 of the Press Law No:1881.
[184] See, Yılmaz, "Cumhuriyet Döneminde Bakanlar Kurulu Kararı ile Yasaklanan Yayınlar 1923-1945," 53-80.
[185] Halit Çelenk as quoted in Bülent Habora, *Yasak Kitaplar* (İstanbul: Habora Kitabevi Yayınları, 1969), 46.
[186] Emin Karaca, *Vaaay Kitabın Başına Gelenler* (İstanbul: Belge Yayınları, 2012), 60-66.

than multi-culturalism or religious affinity.[187] After 1925, the hardliners who advocated a more radical implementation of the ideals of the Enlightenment had gained hold over the government and the books played an important part in their campaign to promote the new regime, to introduce contemporary science to the people, and to increase literacy rates. Therefore, the government, alongside its strict control of print media, produced works promoting secular values and nationalistic ideals over religious ones.[188] State institutions such as the Ministry of Education took on a leading role in several areas of publishing that included translation and publication of foreign language classics, Turkish classics, and western-oriented technical and educational material such as high-quality visual arts magazines. According to Kaynardağ's account, 60 books published by the state institutions in the wake of the establishment of the Republic in 1923 included 8 philosophy books, 4 history books, 10 social science books, and 20 educational books. Many of these works were translations of authors such as Durkheim, Montesquieu, and Kant.[189] The state also published classics in Turkish such as the "Travels of Evliya Çelebi" and other titles such as the "New Turkish Literature" (*Türk Teceddüt Edebiyatı*), and "The Grand Turkish Dictionary" (*Büyük Türk Lugatı*). However, most books printed by the state institutions comprised translations of European works, which Kaynardağ argues was an indication of the state's policy of turning its gaze toward the West.

The strict monitoring of print media and printing titles went hand in hand with the establishment of several institutions that contributed to the educational campaign of the Republic. These included Schools of the Nation (*Millet Mektepleri*) established in the wake of the change of the alphabet in 1928 to teach people literacy in new letters. The People's Houses (*Halkevleri*) and People's Rooms (*Halk Odaları*) were established in 1932 as institutions affiliated with the CHF and aimed to instil the ideals and principles of the Republic including national unity and belief in secular education. The state-owned printing house was publishing most of the books used in these institutions. Books were sent to teacher colleges in the countryside, helping them amass a rich collection over time.[190] The Turkish Language Institute (*Türk Dil Kurumu*) and the Turkish History Institute (*Türk Tarih Kurumu*) were also established in 1932. Soon after, they started publishing

[187] Mohammed Ayoob, "Turkey's Multiple Paradoxes," *Orbis* (Summer 2004): 454
[188] İpek Kamacı, "The Cultural Policies of the Turkish Republic During the Establishment of the Nation State:1923-1938," (Masters thesis, Bilkent University, 2000), 10.
[189] Arslan Kaynardağ, "Yayın Dünyası: Türkiye'de Yayıncılığın Gelişmesi ve Sorunları" *Cumhuriyet Dönemi Türkiye Ansiklopedisi vol.10* (İstanbul: İletişim Yayınları, 1987), 2824-2825.
[190] Lütfi Sunar and Büşra Bulut, *Türkiye'de Yayıncılığın Hafızası* (Memory of Publishing Project) (Ankara: İlem Yayınları, 2021), 149.

works which advanced official claims with respect to the Turkish language and history. Overall, in the years following the Menemen incident, state institutions were mobilised to emphasize the Kemalist message principles of which included the promotion of science and modernisation, Turkish nationalism, and secularism; hence, a stifling political and intellectual environment had emerged.

In the meantime, the state authorities took an active interest in co-opting authors and publishers in the "modernisation" and "nation-building" projects in early years of the Republic. Private publishers had limited resources and were still recovering from years of armed conflict.[191] Generally, publishers were also booksellers at the same time; there was no clear differentiation between the two during this period. Similarly, most of the time, the publishers also engaged in printing. Many new publishing houses that were set up in the early Republican era largely shaped their publishing policies according to the priorities of the state.[192] In the first five years of the Republic, the small number of titles published by private publishers were often on the popular theme of the "National Struggle," usually memoirs from the newly won War of Liberation or biographies of esteemed commanders. They were also publishing works by popular novelists such as Hüseyin Rahmi Günpınar and Reşat Nuri Güntekin.[193]

Educational books were another field in which the private publishers were active. Although the content of the schoolbooks was controlled by the Ministry of Education, the printing of the school textbooks delegated by the state was a significant source of income for them. Nevertheless, it appears that in early 1930s, the state decided to standardise the schoolbooks and started delegating the task of printing to the state's printing house, generating an adverse impact on the publishing sector.[194]

Similarly, the replacement of the Ottoman alphabet with Latin letters in 1928 initially had an adverse impact on private publishers. The government's policy, often called the "the alphabet revolution", left the publishing scene in disarray. Most of the equipment of the publishers and the printers became redundant and the books with Ottoman script became irrelevant. In other words, the value of the book stocks of the publishers suddenly dropped. Many booksellers wanted to get rid of

[191] Alpay Kabacalı, *Başlangıcından Günümüze Türkiye'de Matbaa Basın ve Yayın* (İstanbul: Literatür Yayınları, 2000), 163.
[192] Mehmet Erken, "Türkiye'de Yayıncılık Alanının Dönüşümü 1980-2015," (Master thesis, Istanbul University, 2016), 30.
[193] Kaynardağ, "Yayın Dünyası," 2825.
[194] Ibid, 2826.

their holdings by selling them in bulk.[195] Printers, on the other hand, had to procure new equipment, i.e., the new type-sets and train their personnel to be able to work with the new alphabet and the new machinery.[196] Consequently, publishers and printers could not execute new jobs for months. Many publishers and printers shut down their businesses during this period.[197] The economic difficulties were later exacerbated by the increasing price of raw materials, especially paper, in the wake of the Great Depression of 1929. To support those loyal to the official ideology, the government authorities purchased books from the private publishers and distributed these to the schools and public libraries.[198] In effect, the disarray in the publishing scene and the measures of aid enabled the state to increase its power over the publishing world. It further enlisted the help of private publishers in spreading the principles and the ideas of the new Republic and in engaging with culture planning activities. In a few years after the adoption of the Latin alphabet, the number of books published had reached the pre-1928 levels. However, the proportion of the state publications had risen significantly compared to before.[199]

To sum up and looking back to the early years of the Republic from 1923 to 1950, a few inferences could be drawn that explains the evolution of Turkey as a hybrid regime and the environment in which the publishing industry was formed and shaped. Evidently, contradictions were seeded in the foundation of the Republic: aspirations to modernise the society and the political system went hand in hand with intolerance to any deviation from the top-down blueprint of what the Republic must look like. The single party government used a wide range of legal instruments, such as emergency powers, target specific tribunals, and restrictive press laws to legitimise their repressive actions, yet accommodate it with an image of modernisation.

Both the press and the publishing output were seen and used as a means of implementation of the official ideology. Those authors and publishers that unconditionally supported and implemented the government policies on westernisation, secularism, and science-based education were encouraged

[195] Kaynardağ, "Yayın Dünyası," 2825. Hundreds of copies of Nutuk by Atatürk, which was published by the state with high quality material in 1927, also remained in storage spaces.
[196] Gürçağlar, *The Politics and Poetics of Translation in Turkey* (New York: Rodopi, 2008), 143.
[197] Cemil Boyraz, "Book Publishing in Turkey: Problems and Prospects in the Context of Industrialization," (Masters thesis, Middle East Technical University, 2006), 23.
[198] Server İskit as quoted in Gürçağlar, *The Politics and Poetics of Translation in Turkey,* 144.
[199] Between 1928 and 1938, the state published 7,445 books while private publishers produced 8,618 books. Gürçağlar, *The Politics and Poetics of Translation in Turkey,* 156.

and received favourable conditions to operate. It made possible the emergence of the intellectual creative middle class. At the same time, even a slight challenge to the official ideology by expressing religious sentiments, support for multi-culturalism, and leftist ideas were criminalised and silenced. As an industry, publishing at the time emerged as mostly a state enterprise and along with it came weak and private initiatives in need of state support that combined publishing, printing, and selling as a single business.

2. The Multi-Party Era: 1950-1960

In the wake of the Second World War, discontent with the rule of the Republican People's Party (CHP after 1935) had spread not only amongst the general population but also amid important elements of the coalition supporting the Republican regime. The rift within the CHP between those who supported the economic and political liberalisation policies and the hard-line statists who were against loosening the hold of the state was exacerbated by a rise in inflation and cost of living.

There were also external pressures for democratisation. As part of its commitment to contain communism, the United States had launched "the Truman doctrine" and "the Marshall Plan" entailing immense financial aid to the European countries for post-war recovery of the economy. The leadership in Turkey was aware that commitment to the political and economic ideals such as democracy and free enterprise championed by the USA would help them in their bid to benefit from American support.[200]

Those global and national developments jointly led to the emergence of multi-party politics in Turkey starting from 1946, and in 1950, the Democrat Party (the DP) won the majority of seats in the National Assembly in a landslide victory. It was around this time that the Republic of Turkey was steadily transitioning into a hybrid regime, combining authoritarian tradition with democratic institutions of multi-party politics and elections.

[200] Zürcher, *Turkey*, 209.

From the perspective of the publishing sector, the DP's liberal and anti-statist approach to the economy meant that the State's role as the culture planner in the early Republican years was relegated to the background. Similarly, publications printed by the state institutions, including those by People's Houses, lost momentum, and influence.[201] The Minister of Education had moved away from the policy of a "single book" in education institutions and opened the field once again to the private publishers who started generating significant revenues from textbooks.

The outlook of the publishing industry also underwent transformation shifting from the model of bookseller-publisher to author-publisher. Armağan explains that this trend was started by author Yaşar Nabi with the establishment of Varlık Publishing in 1946 and was later followed by several other author-publishers in 1950s.[202] This model usually involved a journal or a magazine around which number of authors and essayists were organised. The author-publisher model marked the emergence of publishing houses and bookshops as sites of discussion and exchange of ideas. There was increasing dynamism in the sector which was reflected on the increasing number of books published; the number of titles rose from 2400 in 1950 to 4124 in 1959.[203]

In the first few years of the multi-party system, there was an initial period of political liberalisation in certain spheres. For instance, the Islamist publishers gained more freedom for their activities. Several religious pamphlets which were hand copied in secret until then were printed for the first time in the 1950s.[204] Besides, the DP government worked with representatives appointed by the Istanbul Association of Journalists to loosen the regime of strict regulation under the single party rule. Accordingly, the Press Law of 1950 was adopted, replacing the Press Law of 1931, and remained in force until 2004. It marked the emergence of a dynamic environment for authors and journalists.[205]

The new Press Law was a significant step towards freedom of press; it limited the previous powers of the State by abolishing the requirement to obtain a government permission to establish a newspaper and removed the criminal liability of owners of newspapers for news and articles

[201] Kaynardağ, Yayın Dünyası, 2828.
[202] Yalçın Armağan, "Türkiye'de Yayıncılığın Hafızası Projesi, Sözlü Tarih Atölyesi, III. Oturum," 10 December 2020, video, 2:02:30, https://www.youtube.com/watch?v=PQNsNemTnrI&t=3913s, accessed: 2 May 2023.
[203] Kabacalı, *Türkiye'de Matbaa Basın ve Yayın*, 227.
[204] The pamphlets dictated by Said Nursi are the most prominent examples.
[205] Tanel Demirel, *Türkiye'nin Uzun On Yılı: Demokrat Parti İktidarı ve 27 Mayıs Darbesi* (İstanbul: İstanbul Bilgi Üniversitesi Yayınları, 2011), 200; Barış Bulunmaz, "Türk Basın Tarihi içerisinde Demokrat Parti Dönemi ve Sansür Uygulamaları," *Öneri* 10, no. 37 (2012):208.

published in their papers. [206] The new law ruled that press cases would be heard in designated courts which significantly reduced the time log and, according to Kabacalı, was welcomed by the press.[207] Warm relations the DP politicians had initially formed with the reporters and journalists created significant sympathy towards the DP government in the press. In fact, according to Demirel, the DP had become a source of hope for many authors and journalists.[208]

On the other hand, contradictions persisted under the DP government. The new Press Law retained some of the old powers of the government during the single party era, such as the power of the Cabinet to ban the entry of foreign publications into Turkey.[209] Besides, printers were still required to submit two copies of the publications they printed to the Prosecutors' Office in their area, a requirement that is still applicable today. Moreover, a bill introduced in 1951 to reinstate the requirement of violence for Articles 141 and 142 of the Penal Code which punished Communist movements and propaganda was rejected by the Assembly. In addition, the DP government used import licences (necessary for printing equipment), its hold over paper production and allocation, official advertisements, subscriptions, and aid from the discretionary public funds to co-opt and exert economic pressure over the media outlets.[210]

Even partial as it was, the period of liberalisation did not last long. By the end of the DP's first term in office, some newspapers started publishing articles that severely criticised the government due to the rising living costs and corrupt practices of some the DP members. Around this time, the government started enacting legal changes that made the prosecution of the journalists and newspapers easier and increased the penalties. For instance, shortly before the elections in 1954, the government passed the Law (No:6334) on Crimes that are Committed by Way of Publication or through the Radio[211] that designated heavy penalties for making public claims on a matter that damages reputation or wealth of someone or exposing a family or personal situation without consent through the press or radio broadcast. The law gave power to prosecutors to start defamation related

[206] Kabacalı, *Türkiye'de Matbaa Basın ve Yayın*, 213; Nuran Yıldız, "Demokrat Parti İktidarı (1950-1960) ve Basın," *Ankara Üniversitesi SBF Dergisi* 51, no.1 (1996):487.
[207] Kabacalı, *Türkiye'de Matbaa Basın ve Yayın,* 213.
[208] Demirel, *Türkiye'nin Uzun On Yılı*, 200.
[209] The CHP government had changed the Press Law in 1946 to require court decisions for issuing bans. Yet, the DP government chose to reinstate the Council of Ministers' power in the 1950 law. Article 31, The Press Law of 1950.
[210] Demirel, *Türkiye'nin Uzun On Yılı,* 204-209; Altan Öymen, *Ve İhtilal* (İstanbul: Doğan Kitap, 2014), 202-205.
[211] *Resmi Gazete* (Official Gazette), 17 March 1954.

investigations even without a formal complaint. Moreover, the journalists had no right to defend their claims in court. In other words, were they to reveal corrupt practices of politicians, they would be charged with defamation.[212] Topuz claims that the Law no:6334 hung over the heads of the journalists like "the sword of Damocles" until 1960.[213]

The policies of the government vis-à-vis the press were part of its increasingly authoritarian rule that started to alienate parts of its support base, which had been a broad coalition with representatives from a wide range of backgrounds. After his significant victory in the elections of 1954, Menderes increased his control within the party and within the bureaucracy. Out of the 19 MPs who had submitted a proposal to the Assembly for the press to have the right to defend their claims, 9 were expelled from the party.[214]

In September 1955, newspapers published a report of an alleged bombing of the house where Atatürk was born in Thessaloniki, Greece. The news led to a pogrom of Greek citizens in Taksim, and the government later blamed the press for the hostility. Following this event, in 1956, the government introduced amendments to the Press Law of 1950, limiting freedoms of the press with provisions such as the prohibition on reporting news that will panic people or the limitation on reporting on confidential Parliamentary discussions.[215] By the DP's third term in office (1957-1960), there were widespread prosecutions of journalists and newspapers including the prominent publications such as the *Cumhuriyet, Vatan, Milliyet* and *Tercüman*. The individuals who worked at newspapers were visiting the courts frequently, sometimes several times a week.[216] A news report from 17 September 1959 indicates that 35 journalists had been prosecuted in one day.[217]

Nevertheless, Demirel points out that, despite all its efforts, the government had not succeeded in silencing the press. He argues that being an opponent under a multi-party system became less "costly" compared to the previous single party rule.[218] Although there were prosecutions of journalists, Demirel underlined that "these [prison] sentences were often spent in hospitals, by getting

[212] Topuz, *Türk Basın Tarihi*, 196.
[213] Ibid, 197.
[214] Öymen, *Ve İhtilal*, 200-220.
[215] Topuz, *Türk Basın Tarihi*, 201.
[216] Ibid, 204.
[217] Ibid, 205.
[218] The discussions on the Press Law of 1931 in the National Assembly mentioned these assassinations too.

health reports, and that journalists were treated with positive discrimination in the prisons."[219] The existence and active support of the main opposition party, the CHP, was a significant factor. For instance, İnönü, the Chairman of CHP, had visited the journalist Hüseyin Cahit Yalçın while he was in prison.[220]

Communist propaganda was the principal ground on which foreign publications were banned by the Cabinet of Ministers during this time. Between January 1950 and April 1960, 53 magazines and 36 books were banned on account of communist propaganda.[221] With the Republican regime gaining steadiness over three decades and the nation state taking hold, religion-oriented publications and criticisms of the early Republican reforms or the regime were no longer the primary danger in the eyes of the state authorities. As Turkey was keen to join the NATO (The North Atlantic Treaty Organization), and it eventually did in 1952, state officials responsible for monitoring the publications had focused their attention on avoiding any visibility of communist publications.[222] In other words, as Güner has argued, the practices of censorship during this time reflected the sensitivities of the countries with which the Turkish state was looking to form relations. For instance, no media outlet published the poems of the convicted communist poet Nazim Hikmet from 1938 until 1964, including the entire rule of the Democrat Party between 1950 and 1960. This was the case even though Nazim's poems were not banned by any court. It was only in 1964 that Yön, a literary magazine, included a selection of his poetry in what was considered a courageous move at the time.[223] In addition to communist propaganda, propaganda based on ethnic identity, separatist propaganda harming national unity (internal security), and insulting Turkishness were also frequent grounds resorted to for banning foreign books, newspapers, and magazines between 1950 and 1960. Publications which defined Kurds as a separate ethnic group and emphasized their cultural and linguistic differences were banned with the concern that these publications could stir up a separatist movement.[224] Meanwhile, the number of bans on account of religious propaganda was lower compared to the previous periods.[225]

[219] Demirel, *Türkiye'nin Uzun On Yılı,* 212.
[220] Ibid.
[221] Mustafa Yılmaz and Yasemin Doğaner, *Cumhuriyet Döneminde Sansür 1923-1973* (Ankara: Siyasal Kitabevi, 2007), 20.
[222] See Güner, *Sansür ve İktidar*, 218-232. Communism remained the primary source of threat up until late 1980s.
[223] Çetin Yetkin, *Siyasal İktidar Sanata Karşı* (Ankara: Bilgi Yayınevi, 1970), 75.
[224] Yılmaz and Doğaner, *Cumhuriyet Döneminde Sansür*, 61.
[225] Ibid, 85.

In sum, the shift from single party to multi-party politics marked the emergence of a dynamic publishing industry with the DP government initially enacting laws that increased the protection of press freedoms. Nevertheless, contradictions in political governance persisted under the DP which exhibited a majoritarian understanding of democracy and press freedoms. Hence, when confronted with scathing attacks of the press, the DP government passed legislation which was used to prosecute authors, journalists, and publishers. Besides, it used its power over access to resources to co-opt and exert pressure over the press. Therefore, the experience of multi-party politics in Turkey evolved into what can be called a dominant party case.

With Turkey firmly taking its part in the Western bloc and becoming a NATO member, communism became the most significant source of threat in the eyes of the state authorities during the 1950s. Besides, the government continued to ban the entry of several foreign publications into Turkey on grounds that they carried out propaganda based on ethnic-identity or religion or harmed the interests of the state. Despite the rising governmental pressure, authors and publishers pushed the boundaries of the politically permissible. Democratic institutions, such as a powerful main opposition party, were instrumental in perseverance of the public space where the creative middle class continued to assert themselves and their views. Nevertheless, restrictions and prosecutions did impact the publishing sector, with certain works not being published at all, even though it was not against the law.

In the end, the DP government was forced out of power by a military intervention. In this reconfiguration of relations of power, the Republican alliance, with elements in the opposition party, the state bureaucracy, and the army, emerged as the most important political force for the next few decades.

3. The Era of Coups

3.1 The Coup of 1960

The increasingly authoritarian rule of the first democratically elected political party, the DP, was ruptured by a military coup d'état in 1960. The DP politicians resorted to an already established practice in Turkish politics to secure their stay in office; they alleged that the former Republican elite, the CHP party was looking to regain political power by stirring up a rebellion rather than winning the elections.[226] Therefore in April, the MPs of DP in the Assembly set up a Committee of Inquest with powers of a court to look into the actions of the political opposition against the government.[227] Demirel argues that the Committee of Inquest gave the pretext needed to those who were looking for an opportunity for a coup.[228] The leading figures in the army had close relations with the CHP and its chairman İnönü; they were part of the Republican alliance as discussed. On 3 May 1960, the commander of the land forces, General Cemal Gürsel demanded political reforms and resigned when his demands were refused. On 27 May, a group of young officers carried out a largely bloodless coup d'état. The young officers then established the National Unity Committee which ruled the country between May 1960 and October 1961.[229] Meanwhile, the political leaders of the DP were arrested. The coup was the first of a series of military interventions into democratic politics that followed in 1971, 1980, and 1997.

In the wake of the military intervention, mass trials were held where cabinet members, amongst others, were prosecuted. The trials led to the execution of the ousted Prime Minister Menderes and his two ministers Fatin Rüştü Zorlu (Foreign Minister) and Hasan Polatkan (Finance Minister). The coup of 1960 significantly restructured the political system in the country as the military leadership and their allies in the state bureaucracy paved the way for the enactment of a new constitution in 1961. The new constitution was passed by a constituent assembly whose members were approved by the military leadership and excluded members of the ousted DP. Nevertheless, the

[226] This was the main finding of a report prepared by the Investigation Committee and submitted to the Prime Minister Menderes on May 25, 1960. See Demirel, *Türkiye'nin Uzun On Yılı,*325.
[227] Zürcher, *Turkey,* 240.
[228] Demirel, *Türkiye'nin Uzun On Yılı*, 327.
[229] The National Unity Committee had 38 members and was headed by Cemal Gürsel.

Constitution of 1961 is still often referred to as the most liberal constitution in the history of the Republic due to the importance it had attached to individual freedoms and rights. On the other hand, this Constitution also boosted the autonomy and powers of the unelected state officials by establishing "non-majoritarian institutions" such as the National Security Council, the Constitutional Court, and the Higher Council of Judges. Belge suggests that rather than protecting citizens, these institutions helped protect the republican state elites from the elected officials.[230] Özbudun also highlights how the Constitution of 1961 weakened civilian control of the military and granted the military leadership significant autonomy.[231]

In terms of freedom to publish, the National Unity Committee quickly acted to revoke the "anti-democratic provisions" passed by the DP in October 1960. The Committee passed the Law (No:94) that annulled The Law (No:6334 and No:6732) on Crimes that are Committed by Way of Publication or through the Radio.[232] Later, the Committee also revoked the "anti-democratic provisions" in the Press Law of 1950 with another law (No:143) passed in November 1960. Besides, with an amendment made to Article 481 of the Penal Code on 1 December 1960, the Committee also instituted "the right to prove" (*İspat Hakkı*) which meant that journalists who reported on corrupt practices would now have the right to prove their claims.[233]

Nevertheless, despite several positive actions taken by the Committee, the publishing world still had to deal with prosecutions and bans. Even after the changes the Committee made to the Press Law of 1950, the Cabinet's power to ban foreign publications from entering Turkey remained. Indeed, "communist propaganda" was the most frequent ground on which foreign publications (a total of 39) were banned in the period between 1961-1973. There were 36 bans on account of "pro-Greek" and "pro-Armenian" propaganda and 14 bans for "pro-Kurdish" propaganda in the same period. In

[230] Ceren Belge, "Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey," *Law & Society Review* 40, no.3(2006): 662.
[231] Ergün Özbudun, *The Constitutional System of Turkey 1876 to the Present* (New York: Palgrave Macmillan, 2011), 12.
[232] The Committee passed Law no:94 to annul these laws on 12 October 1960. Topuz, *Türk Basın Tarihi*, 228.
[233] Topuz, *Türk Basın Tarihi*, 228.

comparison, the number of bans on publications "against the country" or conducting "religious propaganda" were less, with 11 and 8 bans respectively.[234]

Meanwhile, although the Law no:6332 had been abolished, Articles 141,142 and 163 of the Penal Code which criminalised communist and religious movements and propaganda remained as they were. Besides, these articles still did not include an explicit requirement of violence.[235] Hence, they could be used to criminalise any political expression with leftist or Islamist views. Indeed, the first incident of arrest of a journalist after the coup d'état occurred in May 1961 when the famous author and journalist Aziz Nesin was arrested during an investigation for communist propaganda (Article 142) in his articles in the newspaper *Tanin.* There was no element of crime found in his writings and hence, Nesin was released. Prosecutions persisted even after the restoration of civilian politics. For instance, Mehmet Fuat of De Publishing was prosecuted under Article 142 for publishing Nazım Hikmet's book "From Four Prisons" (*Dört Hapishaneden*) in 1966. He was acquitted in 1968.[236] By contrast, in 1968, Nezihe Meriç of Dost Publishing was prosecuted and convicted to18 months in prison under Article 142 for publishing the first volume of Nazım Hikmet's complete works. That same year, the famous author and politician Çetin Altan had complained in a newspaper article about "living in a country where there are still bans on books in 1968."[237] According to Habora's account, 78 books (domestic publications) alone were banned during the three years of the Justice Party's rule between 1965-1968.[238] While Habora pointed out that the majority of the banned books had been acquitted in trial, he also argued that the decision of acquittal was not relevant since the harm had already been done.

Nonetheless, despite the prosecutions and restrictions, the country was going through another period of liberalisation in the 1960s. The newly set up Constitutional Court, an autonomous Higher Judicial Council, autonomous universities, public radio and TV, and trade unions ensured the

[234] Doğaner and Yılmaz, *Sansür*, 21. Although "obscenity" was also a prominent ground, with 36 bans in the same period, it is beyond the scope of the current study.
[235] For a while in 1960s, the Court of Appeal (*Yargıtay*) had interpreted articles 141 and 142 as including the requirement of violence. See Halit Çelenk, "141-142. Maddeler ve 'Cebir Unsuru'" in *Yasak Kitaplar,* edited by Habora (İstanbul: Habora Kitabevi Yayınları, 1969).
[236] Yetkin, *Siyasal İktidar Sanata Karşı*, 86-94.
[237] Çetin Altan as quoted in Habora, *Yasak Kitaplar*, 60. Altan had penned this article upon the decision of the court to ban the novel "Hope" by Andre Malraux on account of spreading communist propaganda.
[238] Habora, *Yasak Kitaplar*, 29. Justice Party was the successor of Democrat Party and won the majority rule in the elections in 1965.

availability of space for authors, journalists, and publishers, amongst others, to produce their work. Indeed the publishing scene flourished whereby thinkers, readers, and intellectuals were examining the problems of the country with renewed excitement and spirit.[239] Zürcher argues that the intellectual debates of the time "found expression in a host of new periodicals whose publication was made possible by the new constitution."[240] Besides, in almost all universities, political debating societies (*fikir kulüpleri* or "idea clubs") emerged.[241] On another note, the model of author-publisher, initiated by Varlık Publishing in 1950s, became more widespread during the 1960s. By this time, some of the older publishers had managed to accumulate a certain level of capital over the years and moved into bigger office spaces with bigger teams. In contrast to the increasing dynamism among private publishers, the Ministry of Education's role as a publisher remained stagnant during this period. Very few new titles initiated by the state were being published and the state institutions mainly confined themselves to printing new copies of already existing publications.[242]

The dynamism of the 1960s had generated several political movements, especially youth movements, with a variety of ideas and goals. Demirel claims that the terms "right" and "left," as used in the vernacular, gained clarity in these years. The label "left" lost some of its dangerous connotations and gained some legitimacy.[243] Hence, for the first time, leftist ideas were voiced openly and legally, and formed the basis of prominent student movements. In addition, trade unions expanded and became more active. On the other hand, the popularity of leftist ideas triggered, to some extent, a parallel emergence of a movement which included nationalist and traditionalist/Islamist streams and can broadly be called "the right."[244] According to Demirel, these two streams came from similar socio-economic backgrounds and were also informed and inspired by similar ideological currents.[245]

Although the "left" and the "right" had already constituted opposite camps in the publishing sector during this period, there were interactions and friendships between individuals, if not groups.[246] The offices and shops were often near one another; they were concentrated around the neighbouring

[239] Tanel Demirel, "1946-1980 Döneminde 'Sol' ve 'Sağ'" in *Modern Türkiye'de Siyasi Düşünce: Dönemler ve Zihniyetler vol.9* (İstanbul: İletişim, 2009), 419; Zürcher, *Turkey*, 254.
[240] Zürcher, *Turkey*, 254.
[241] Ibid, 255.
[242] Kaynardağ, "Yayın Dünyası," 2830.
[243] Demirel, "1946-1980 Döneminde 'Sol' ve 'Sağ,'" 420-421.
[244] Ibid, 424-425.
[245] Ibid, 425.
[246] Sunar and Bulut, *Türkiye'de Yayıncılığın Hafızası* (Ankara: İlem Yayınları, 2021).

Cağaloğlu and Beyazıt districts in the historical peninsula, steps away from iconic monuments like the Blue Mosque. Having said that, the relations between the groups were characterised by unease and there was still a degree of separation in terms of space, too. For instance, the smaller right-wing publishers and booksellers were concentrated in the well-known book market, *Beyaz Saray* (White Palace) in Beyazıt. [247]

In addition to the publishing world, student movements were also affected by polarisation between the "left" and the "right." In late 1960s, the left-wing groups started engaging in political violence. For instance, during visits by the American Sixth Fleet in July 1968 and February 1969, protesters clashed with the police and troops and several people died. Besides, there were kidnappings and bombing attacks. Soon, the political violence of the armed right-wing groups matched and even exceeded the violence of the left, preparing the pretext for another military coup d'état.

Overall, the coup of 1960 marked the beginning of the era of "tutelary democracy" in Turkey, whereby the military retained the capacity to intervene into political affairs. In a series of contradictory developments following the coup, the ruling military council instituted martial courts which executed the Prime Minister Menderes, passed a liberal constitution (by popular vote), and rectified some of the restrictive Press laws. Subsequently, the 1960s witnessed the expansion of the intellectual creative middle class, with a wider range and increasing number of people discussing and disseminating political ideas. The publishing sector became a driving force in this expansion with the active involvement of authors, and bookstores and publishing houses becoming gathering points. Though the space for press freedoms had significantly expanded, it was still regulated, although at lower levels, through criminal prosecutions, bans, and restrictions, often on grounds of spreading communism. Arrests followed by acquittals or detentions followed by release were still employed and created a source of stress for authors and publishers. Yet, the overall political atmosphere remained vivid and led to increasing polarisation between socio-political movements on the "left" and the "right," preparing the pretext for the tutelary power to carry two further military interventions in 1971 and 1980.

[247] Sunar and Bulut, *Türkiye'de Yayıncılığın Hafızası*, 51, 90.

3.2 The Coup of 1971

Alarmed by the increasing radicalisation of the left- and right-wing groups and the threat this might constitute to the safety of the state, the military leadership carried out another intervention into democratic politics on 12 March 1971. Zürcher explains that this time the coup was led "by the high command, not by a radical group of officers," who were "mesmerized by the spectre of a communist threat."[248] After the 1971 coup, neither the Parliament nor the Constitution was suspended. The political parties were not shut down either. The military leadership replaced the ruling government with an "above-party, technocratic" government and martial law was declared in May 1971 in 11 provinces which included Ankara, İstanbul, and İzmir.[249]

One of the first actions of this government was amending the Constitution of 1960, increasing the powers of the executive over the judiciary and the power of the higher judges over the first-degree judges. Besides, the power of the National Security Council (dominated by the military) was boosted. Similarly, the autonomy of the universities, the public radio, and the TV was ended. The changes in 1971, and subsequently in 1973 and 1974, not only strengthened the executive powers, but drastically narrowed the wide scope of fundamental freedoms and rights which was regarded by the military as the cause of the emergence of radical political movements and clashes in the campuses and in the streets. Parla points out that under the 1960 Constitution, it was set out clearly that fundamental rights and freedoms could only be limited by law and in a fashion that was compatible with the spirit and the wording of the Constitution. The grounds for restriction included public benefit, general morality, public order, social justice, and national security. The changes in 1971 added "the integrity of the state with its country and its nation" and "public health" and erased "social justice" from the grounds of restriction.[250] Besides, there was a new paragraph stipulating that fundamental rights and freedoms could not be employed against the integrity of the State and the Republic.

[248] Zürcher, *Turkey*, 257.
[249] Ergün Özbudun , *Contemporary Turkish Politics: Challenges to Democratic Consolidation* (London: Lynne Rienner Publishers, 2000), 34.
[250] Taha Parla, *Türkiye'de Anayasalar* (Metis Yayınları, İstanbul:2016), 45.

A sentiment against books resurfaced and became prevalent among the state authorities during this time.[251] The number of banned and confiscated books and the number of authors and publishers arrested had increased in the sombre atmosphere following the 1971 coup. Communism continued to be perceived as the paramount threat. For instance, Süleyman Ege, the owner of the publishing house, Scientific Socialism (*Bilimsel Sosyalizm*), had been convicted on account of "communist propaganda" to 30 years of imprisonment. Evidence used in the case were four of the books he had published. Ege stayed in prison for 3 years, until he was released due to a general amnesty in 1974.[252] House searches in Istanbul and Ankara led to the arrest of many individuals who had books with leftist themes in their homes.[253]

At the time when there was a tense atmosphere surrounding book publication in Turkey, UNESCO proclaimed 1972 as the "International Book Year" with the slogan "Books for all." Despite the rigid atmosphere, the international book year was marked in Turkey too. The press had covered it widely and several book exhibitions were organised where books were sold at discounted prices. Many publishers, inspired by UNESCO's catchphrase, made use of the slogan "*Herşeyin Üstünde Kitap*" ("Books above everything") to reassert the place and status of books in social life.[254] Moreover, the Turkish Editors Association attended the Frankfurt Book Fair as an association for the first time.

When martial rule was lifted before the general elections of October 1973, the stern atmosphere improved to some extent and problems and pressures related to books and publishing began to be discussed again. Soon after, the Turkey Authors Syndicate convened its first general meeting in 1974 and drew attention to the difficulties of the political environment and called for an end to the practice of banning books.[255] The proscription of books was also discussed, albeit cautiously, at the Second Publishing Congress organised in 1975.[256] As a result of the polarisation in the publishing world, conservative writers' set up a parallel author's association in 1978. Overall, the

[251] Kaynardağ, "Yayın Dünyası," 2831.
[252] Süleyman Ege, *Kitabın Ateşle Dansı* (Ankara: Bilim ve Sosyalizm Yayınları, 1992), 43-45.
[253] Uğur Kökden, *12 Mart Günleri 1971-1974* (İstanbul: YKY, 2009), 25.
[254] Kaynardağ, *Yayın Dünyası*, 2830-2831.
[255] Ibid, 2832.
[256] Kabacalı, *Türkiye'de Matbaa Basın ve Yayın*, 241.

number of distribution networks for books were increasing while marketing and sales were emerging as distinct activities in the publishing world.[257]

In the 1970s, the left-wing movement started to fragment and the tension between different factions in the left and between the political "left" and the "right" in general intensified, leading to violent clashes in the streets and on university campuses. In the late 1970s, several authors, academics, and journalists were targeted, some murdered by the right-wing groups.[258]

The atmosphere of terror had a negative impact on bookshops and publishers alike. Kaynardağ maintains that the 250th anniversary of the publication of the first book in Turkey could not be celebrated properly in 1979 due to the climate of fear. Overall, the 1970s are widely remembered as years of civil strife by the publishers who spoke to the Publishing Memory Project in 2019.[259] Political violence between 1975 and 1980 caused the loss of five thousand lives and wounded three times as many.[260] Indeed, the leaders of the third military coup in 1980 referred to the crippling street terror and the need for civic order as justifications for their intervention into political life once again.

In sum, the military leadership regarded the social dynamism of the late 1960s as a "dangerous" repercussion of the political liberties under the Constitution of 1961. Hence, they intervened once again in 1971 and made use of martial law to significantly limit the scope of fundamental freedoms and to boost the power of the executive. Books and the actors of the industry were increasingly seen as a part of the social "danger" and prosecutions and convictions of publishers and authors became more widespread.

[257] Sunar and Bulut, *Türkiye'de Yayıncılığın Hafızası*, 71.
[258] Kaynardağ points out that the famous journalist Abdi İpekçi, Prof. Bedri Karafakioğlu, Prof. Ümit Doğanay, Prof. Cavit Orhan Tütengil, Doç.Bedrettin Cömert, Ümit Kaftancıoğlu were killed by right wing extremists. Kaynardağ, "Yayın Dünyası," 2833.
[259] Sunar and Bulut, *Türkiye'de Yayıncılığın Hafızası.*
[260] Özbudun, *Contemporary Turkish Politics*, 35. Acts of violence was particularly severe in the two years preceding the coup of 1980 and included assasinations, kidnappings, occupation and destruction of workplaces, and bombings.

3.3 The Coup of 1980

The military coup of 1980 is remembered as the most brutal intervention in terms of its social repercussions. It dealt a significant blow to political movements and dissidents of all convictions. The military closed all political parties and dismissed all MPs, mayors, and municipal councils. Moreover, martial rule was declared and lasted until 1987, although it was lifted in most provinces by 1985. After the coup, the military leadership paved the way, once again, for the enactment of a new constitution. Parla claims that there had already been a shift in the status of individual rights "from Protection to Limitation" from the 1961 Constitution due to the amendments in 1971.[261] The Constitution of 1982 continued the trend by facilitating wide application of limitations by the courts regarding individual rights and freedoms, including the freedom of expression and freedom to publish. The new Constitution also gave official authorities the power to restrict the freedom of expression and imparting of thoughts for "prevention of crimes." [262] Besides, the President and the Minister of Justice were accorded significant powers over the judiciary. In parallel, the new Constitution increased the military's influence over the executive through the increased power of the non-majoritarian institutions where the military had significant influence, most importantly, the National Security Council. Importantly, the new Constitution established the State Security Courts, mixed tribunals composed of civilian and military judges and prosecutors with special powers that heard a specific category of crimes.[263] Articles that were often used to limit and control freedom of expression, Articles 141 and 142 which criminalised Communist movements and propaganda and Article 163 which prohibited religious movements and propaganda, as previously discussed, fell under the scope of these special tribunals. Hence, the military leadership enacted fundamental changes in the political system before handing power back to the civilians.

In the period following the coup, martial courts became key instruments in the campaign of terror where 122,600 people were arrested in the first year and 230,000 people were prosecuted between 1980-1983 on a variety of charges including crimes against the security of the state and

[261] Taha Parla, *Türkiye'de Anayasalar*, 46. The "limitations" the new constitution included for preventing the "abuse of rights and freedoms" resonated with the parliamentary discussions on press freedoms in 1930, which I have discussed above.
[262] Ibid.
[263] The State Security Courts were initially introduced by the constitutional amendments of 1973 but the Constitutional Court struck them down soon after on procedural grounds. See Belge, "Friends of the Court," 681-682.

public order.[264] Zürcher maintains that "anyone who had expressed even vaguely leftist (or in some cases Islamist) views before September 1980, was liable to get into trouble."[265] Of these defendants, 3000 were authors, journalists, publishers, and artists. Chief editors were given 5000 years of prison sentence in total.[266] Between 1980 and 1989, 850 publication bans were put in place and 440 of these were based on decisions taken by the Cabinet of Ministers. Many defendants were convicted despite the lack of compelling evidence. Recounting his experience as a lawyer at the Martial Courts, Kırlangıç points out that in almost all the cases he represented, the case files included lists of "captured publications," referring to books as if they were "criminal fugitives." Moreover, books were being confiscated without court orders.[267] Even books acquitted by the courts, including Martial Courts, could subsequently be confiscated by the military administration. Under the military rule, hundreds of thousands of books on socialist and communist themes were destroyed by fire.[268]

Süleyman Ege, a leftist publisher who documented his ordeal with the military rule in detail, explained that, one morning in 1982, he found his publishing house, Scientific Socialism Publishing, locked up and sealed by the Command of Martial Law (*Sıkıyönetim Komutanlığı*). Later, he received a martial law order informing him that the printing and distribution of 16 books published by his publishing house had been prohibited under the Martial Law.[269] Besides, the military administrators had confiscated thousands of copies of these titles that were stored in the offices of the publishing house. Ege penned a petition to underline that these 16 books had already been acquitted of charges of communist propaganda (Article 142) brought against them in the preceding years. He had also resorted to the press to inform the public about his case.[270] In response, the military administrators confiscated copies of the remaining 14 titles of the publishing house, which had been similarly acquitted of the charges.[271] There were many others who had similar experiences to Ege, although very few were as vocal and as meticulous as him in documenting their experience. The killing of a leftist publisher, İlhan Erdost of Left Publishing (*Sol Yayınları*), while he was in custody in the wake

[264] Zürcher, *Turkey*, 280.
[265] Ibid.
[266] Topuz, *Türk Basın Tarihi*, 273.
[267] Kemal Kırlangıç, *Politik Yargı ve Devlet Güvenlik Mahkemeleri* (İzmir: İmece Yayınları, 1992), 70.
[268] For instance, 133,607 books belonging to the Science and Socialism Publications (*Bilim ve Sosyalizm Yayınları*) and published before the 1980 coup were confiscated in 1982 and burned by the Command of Martial Law in 1985. See Ege, *Kitabın Ateşle Dansı*, 112-116.
[269] Ege, *Kitabın Ateşle Dansı*, 11-14.
[270] Ibid, 19. Yet, out of all the newspapers, only *Cumhuriyet* and *Milliyet* had reported his case.
[271] Ibid, 158-162. Ege brought an action and won the case in 1990 after the restoration of the civilian rule.

of the coup, remains another continuing trauma for many in the publishing world and often came up in the conversations I had during my fieldwork. İlhan had been detained on grounds of printing and storing banned publications. While in detention in the infamous Mamak Prison, he was beaten to death. Overall, authors, publishers, booksellers, and readers naturally felt intimidated in this atmosphere. Hence, the drop in the number of book sales at the time came as no surprise.[272] Indeed, the number of bookstores, as well as book distributors, swiftly declined in the wake of the 1980 coup.[273]

Criminal Prosecutions in the 1990s

Communism remained a significant threat in the eyes of the state authorities until the fall of the Soviet Union and the end of the Cold War. Therefore, Articles 141 and 142 which did not require any involvement of violence were continuously evoked in banning books and prosecuting publishers and authors. These Articles were followed by Article 163 which prohibited propaganda using religious symbols. In 1991, the government finally abolished these articles which had caused so much pain and suffering over decades. However, it also enacted the Anti-Terror Law the same year, creating a crime of "terror" and designating a group of crimes in the Penal Code as "terror crimes" based on the intention of the accused. The definition of terror was vague enough to cover non-violent acts of political protest and expression. The law contained other charges that directly had a bearing on dissenting voices such as "propaganda against the indivisibility of the state" (Article 8) and "revealing the identity of counter-terror officers and publishing the announcements of terror organisation" (Article 6).

The Anti-Terror Law primarily targeted Kurdish politicians, minority, and human rights activists since Kurdish separatism was becoming an important source of concern at the time. However, provisions of the law were also employed against wider groups of authors and publishers.

[272] Müge Sökmen, "Türkiye'de Yayıncılık Ortamı," *Cumhuriyet Dönemi Türkiye Ansiklopedisi: Yüzyıl Biterken vol.15* (İstanbul: İletişim Yayınları, 1996), 1466.
[273] Salt Alioğlu, "İslami Yayıncılık," *Cumhuriyet Dönemi Türkiye Ansiklopedisi: Yüzyıl Biterken vol.15* (İstanbul: İletişim Yayınları, 1996),1469; Taylan Tosun, Abdullah Arı, and Fatih Taş, "Türkiye'de Yayıncılık Alanında Dönüşümler," *Artizan,* 4 November 2007, https:f/www.art-izan.org/artizan-arsivi/turkiyede-yayincilik-alaninda-donusumler/, acessed: 5 June 2023.

"Separatist propaganda" under Article 8 (The Anti-Terror Law) became the most frequently evoked charge in this period. For instance, Fikret Başkaya was prosecuted for his book *Paradigmanın İflası* (the Failure of the Paradigm) which was published right after the enactment of the Anti-Terror Law in 1991. Başkaya's work was challenging the official historiography, including the official theses on the War of Independence between 1919-1922. He was prosecuted in the State Security Court for carrying out "separatist propaganda", in other words, propaganda against the indivisibility of the state through the text of his book. After an arduous legal process spanning over three years, Başkaya's conviction was approved by the Court of Appeal (*Yargıtay)* and he went to prison in March 1994 and served his sentence until June 1995.[274] Başkaya later applied to the European Court of Human Rights (ECtHR) which convicted Turkey for violating his freedom of expression and his right to a fair trial.[275] "Separatist propaganda" was followed by "insulting Turkishness" (Article 159, the Penal Code) and "incitement to hatred and hostility" (Article 312, the Penal Code).[276] In fact, Tayyip Erdoğan had also been charged under Article 312 for a speech he made at a political rally in 1997. In terms of the lived experience of the criminal process, the main distinction between defamation charges on the one hand, and terror-related and incitement charges on the other was that the latter were heard by the State Security Courts at the time.

Along with these gloomy developments, parts of the publishing world, mostly secular orientated, left leaning and producing fiction, showed signs of recovery soon after the coup of 1980. The authors and translator's cooperative, YAZKO, which was established months before the coup in 1980 resumed its activities in the wake of the military intervention and became an active actor in the publishing world for the next two years. It published over 100 books authored by its members including novels, poetry books, edited volumes on philosophy, issued a literary magazine, and organised conferences, panels, and similar events.[277] For instance, they had organised a symposium on "the historical and contemporary responsibility of the intellectual" in March 1982. As one of my interlocuters recalled, although the cooperative was discontinued on account of financial difficulties,

[274] "Fikret Başkaya yargılandı," *Bianet*, 3 June 2003, https://m.bianet.org/bianet/siyaset/19458-fikret-baskaya-yargilandi, accessed: 5 May 2023.
[275] In 2003, the State Security Court prosecuted Başkaya a second time on account of his book *Failure of the Paradigm* which was in its 8th print by this time. The case resulted in an acquittal.
[276] The previous Turkish Penal Code No:765
[277] See Deniz Depe, "Türkiye'nin ilk ve tek yazarlar kooperatifi YAZKO ve YAZKO edebiyat dergisi," *Türklük Bilimi Araştırmaları (TÜBAR*) 36 (2014):83-106.

it gave hope to many authors and breathed life to the publishing world at the time.[278] Another sign of recovery was the unexpected success of the book fair organised by TÜYAP (a fair organisation company) in 1982 with 30 publishers. To everyone's surprise, 80,000 people attended the fair over 9 days.[279] Consequently, the book fair was organised at a larger venue the following year with 76 publishers and with the participation of famous authors and book signings events. It was attended by 250,000 over a period of 9 days. As a result, the TÜYAP book fair became an annual constant in Istanbul.

As another sign of the resilience of the publishing scene, a new generation of publishers started to emerge from 1982 onwards, after the initial campaign of prosecutions, confiscations, and drop in book sales. Sökmen, one such publisher, pointed out that many of the post-1980 publishers were loyal readers of the pre-coup publishing houses and were generally amateurs with enthusiasm who wanted to continue the exchange of ideas.[280] Those who hailed from the leftist movements were in the majority although there were also new publishers with Islamist and nationalist orientations. Many of these new publishing houses turned into commercially successful actors in the industry today. Sökmen also noted that having unmarked, fresh names allowed them to avoid the attention of the State, and hence was their biggest advantage in this environment where almost anything could be forbidden and where there was a threat of 7.5 years imprisonment per book.[281] Meanwhile, with the restoration of civilian politics in 1983, a wide variety of issue specific (including ecology, gender, human rights) civil society organisations emerged.[282] While there were continuing problems and risks involved in the publishing process, publishing offices were still spaces of discussion and gathering. One publisher active in those years reminisced in the interview he gave to Sunar and Bulut that their office at Cağaloğlu was the meeting spot of their friends in the late 1980s and was also used as a gathering spot by different civil society groups, including a teachers' and a doctors' group.[283]

In 1990s, following the measures to liberalise the market in Turkey in 1980s, communication networks were globalised and private television and radio channels which broadcasted non-state

[278] Interview with Emir, 31 May 2019. Emir was an active member of YAZKO.
[279] Kaynardağ, "Yayın Tarihi," 2834.
[280] Sökmen, "Türkiye'de Yayıncılık Ortamı," 1466.
[281] Ibid.
[282] Nilufer Göle, "Toward an Autonomisation of Politics and Civil Society in Turkey," in *Politics in the Third Turkish Republic*, eds. Metin Heper and Ahmet Evin (Oxford: Westview Press,1994), 218.
[283]Sunar and Bulut, *Türkiye'de Yayıncılığın Hafızası*, 89.

material appeared. Besides, banking and capital groups entered the publishing sector and some of the independent publishers accumulated significant capital. As a result, marketing practices gained in significance. The notion of "bestsellers" emerged, the quality and the design of titles increased, and chain bookstores appeared, often located in shopping malls. Around this time, publishers started moving away from their traditional neighbourhoods and dispersed around the city. Consequently, professional associations became the spaces where publishers got together.

Emergence of Professional Publishers' Associations and Polarisation in the Sector

Another significant development in the publishing sphere in the 1980s was the emergence of professional associations. The first professional association of publishers, the Turkish Publishers Association (*Türkiye Yayıncılar Birliği*, the TYB), was established in 1985. A few years later, traditionalist/Islamist publishers set out to establish a second professional association called the Press and Publishing Association (*Basın Yayın Birliği*, the BYB). The two associations performed similar functions; several publishers I spoke to maintained that the difference between them was mainly "ideological."[284] Although some of the publishers I met referred to the TYB as the association of the "left" in the sector, it contained many publishers who were first and foremost commercial actors. In fact, those who identified as socialist or Marxist publishers appeared to be in the minority at the time I conducted my fieldwork. Besides, major banks and capital groups who entered the publishing sector in the 1990s and several prominent publishers in the nationalist-conversative and traditionalist-Islamist circles were also members of the TYB. The annual book fairs organised by TÜYAP (a fair organisation company) in cooperation with the TYB were attended by all stakeholders in the industry, including many members of the BYB. However, despite participating in the annual TÜYAP book fairs, traditionalist-Islamist publishers organised a separate book fair, too, as I discuss in the next chapter.

There was initially a division within the TYB between publishers focusing on textbooks and those who produced cultural works. The "culture publishers," as Sökmen calls them, wanted to focus on issues such as the problems of freedom of expression and channels of communication with the

[284] Interview with Nurettin, 19 November 2019; Interview with Muhittin, 5 November 2019.

reader. However, when the TYB did not act on these matters, these "culture publishers" organised campaigns between themselves and independent of the association. Their first step was the "Let's Bring the Book Back" ("*Kitabı Geri Getirelim*") Campaign, organised with 16 publishing houses in 1985. Based on Sökmen's account, the aim of the campaign was encouraging the reader to hold on to books again.[285] Another campaign they worked on was a response to the ban the courts imposed in 1988 on the Turkish translation of the *Tropic of Capricorn* by Henry Miller on account of it being "obscene."[286] After the trial, 39 publishers got together and re-published the book with the notice "For a world where no one is afraid of books." In a clever act of subversion, the publishers had blurred the "obscene" parts yet added the legal documents, with the "obscene" sections included, to the foreword of the book. Although this book, too, was confiscated and prosecuted, the case which was defended by 25 voluntary attorneys ended with an acquittal. The solidarity campaign organised around Miller's translation still forms a part of the communal memory of resistance amongst liberal and leftist circles in the publishing world.

In this atmosphere of pressure, activists, publishers, and authors had organised another solidarity campaign, *Düşünce Suçuna Karşı Girişim* (the Initiative Against Thought Crimes) to challenge the prosecution of the prominent author Yaşar Kemal in 1995 under Article 8 of the Anti-terror Law for propaganda against the indivisibility of the state. Kemal was prosecuted for writing an article in the German magazine *Der Spiegel*, criticising state policies with respect to the Kurdish minority. The initiative gathered hundreds of people at the State Security Court on the first day of Kemal's hearing on 23 January 1995. The initiative also collected and published ten banned articles by various authors in a book called "Freedom to Think."[287] Subsequently, 1080 citizens signed the campaign and proceeded to turn themselves in.[288]

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[285] Sökmen, "Türkiye'de Yayıncılık Ortamı," 1467. Within the framework of the campaign, they published several announcements which some newspapers printed for free as a show of support. They also sent a common catalogue of their books to over 200 booksellers around to country to initiate a relationship.
[286] Ibid.
[287] Interview with Şahin, 4 April 2019. Şahin is one of the founders of the Initiative Against Thought Crimes.
[288] 185 people were prosecuted at the State Security Court for inciting people to hatred (Article 312) and for separatist propaganda (Article 8). Testimonies of the defendants alone took two and a half years to complete and when the trial reached the stage of judgment, the government passed a law which annulled all the cases; Şanar Yurdatapan's declaration: "Aydınlardan yine 'özgürlük için sivil itaatsizlik' eylemi" *Radikal*, 21 March 2006, http://www.radikal.com.tr/turkiye/aydinlardan-yine-ozgurluk-icin-sivil-itaatsizlik-eylemi-775116/, accessed:5 May 2022.

In sum, the military intervention in 1980 led to a transformation of the political system where legal instruments of repression were boosted and placed on a firm footing. The new Constitution of 1982 not only gave the executive wide powers of restriction of fundamental rights on security grounds, but it also established permanent special tribunals with civilian-military mixed members and with exceptional powers and procedures. Moreover, the power of the executive over the judiciary also increased while the institutions through which the military exerted its power over the executive also became stronger. In other words, the Constitution of 1982 significantly strengthened the tutelary character of the hybrid regime in Turkey.

The atmosphere following the first few years of the coup was one of terror under martial rule where martial courts meted out convictions, bans, and confiscations to authors, publishers, and journalists. Hence, the intellectual creative middle class was dealt a heavy blow. Yet, the publishing world continued to produce even under martial rule as exemplified by the activities of the YAZKO (the writers' cooperative) between 1980-1982 and the first Istanbul book fair (1982). After the restoration of civilian politics, dynamism emerged once again in the sector and generally in civil society. Publishing houses started organising around professional associations while also engaging in informal solidarity networks when a case was brought against an author or a publisher.

With the end of the Cold War and the rise of the Kurdish separatist movement in the late 1980s, terrorism replaced communism as the paramount security concern in Turkey, long before 11 September. The legal framework was quickly amended to adjust to the changing threats: Articles 141, 142 and 163 were abolished and replaced by the new terror-related charges which targeted pro-Kurdish activists and politicians but also more generally authors and publishers critical of official policies. These cases, along with the charges of incitement, were heard at the special tribunals which disseminated fear through their special procedures and civil-military mix of judges. Prosecution and convictions of authors and publishers continued under defamation charges too. Besides, the state of emergency which had been lifted in most of the country by 1987 remained in effect in 13 provinces in the east and the southeast on account of "increasing terror incidents" until 2002.

3.4 The Coup of 1997

Although traditionalist/Islamist publishers initially had an easier time following the annulment of Article 163, circumstances changed when the military intervention in 1997 initiated an era of severe pressure for them. The Welfare Party, hailing from the Islamist National Outlook Movement (*Milli Görüş Hareketi*), came out as the first party in the elections of 1996 and succeeded in forming a coalition government under its leader, Necmettin Erbakan. After months of tension building up between the Welfare Party and the military leadership, the latter sent a memorandum to Erbakan, accusing him of acting with an Islamist agenda and effectively forced him out of power through pressure as opposed to armed force. In the following period, cases were brought against the Islamist or conservative civil society organisations, authors and journalists affiliated with the National Outlook Movement and beyond, and even corporations whose owners were known to be close to the religious movements were targeted. During this time, the military leadership considered Islamists as more dangerous than the PKK, the Kurdistan Workers' Party, that was and still is designated as a terror organisation.

In the interviews I had carried out, many traditionalist-Islamist publishers remembered the tense atmosphere following the 1997 intervention with bitterness. One of them said: "The military leaders acted as if they were gods during those days," "they would bring cases for intimidation, they knew they could not win. Maybe they were going to put pressure on the judges, they did anyway. I cannot know. When these cases were brought 9 out of 10 people who would publish otherwise gave up." He went on to claim that the AKP era brought liberalism, rendering publishing an easy activity with which everyone now engages.[289] Another interlocutor, the leader of a leftist-Islamist movement and an author, had to frequent the criminal courts incessantly in the wake of the military intervention of 1997 up until the AKP came to power in 2002. He had said that "cases were directed at the speeches (he) made at the radio and on (his) daily column. There was a case against anything I wrote, I was going to the court all the time." There were some practices of solidarity within the publishing industry in the wake of the 1997 coup, but these were limited. In fact, it is possible to suggest that the military

[289] Interview with Nurettin, 19 November 2019.

intervention of 1997 reinforced the sense of fragmentation between the different groups in the publishing world.

After Turkey was officially declared a candidate country for EU accession at the end of 1999, the coalition government of the time started passing certain reforms between 1999-2002 as a part of the EU Harmonisation process. Some of these were directly relevant for the expression of political dissent in the country: In 2002, Article 312 which punished incitement to hostility and hatred based on differences in social class, race, religion, sect, and region was amended to include the phrase "such expressions would constitute a criminal offense only if they created a danger to public order." Later on, Article 159 which punished insulting and deriding the Republic and "Turkishness" was amended to include the stipulation that "criticisms without the intention of insult or contempt would not constitute an offense." Another important reform of the coalition government was the removal of the military judge from the panel of the State Security Courts. Despite these progressive steps, many judges and prosecutors continued to apply these provisions without paying sufficient heed to the amendments.[290] For instance, criticism of the state and political claims for the protection of the distinct culture, language, and identity of Kurds could still be labelled as incitement to hostility or as insulting "Turkishness."

To sum up, with the increasing popularity of the Islamist political party, publications on religion became a source of threat for the State once again. Consequently, publishers and authors who were affiliated with a wide range of traditionalist-Islamist movements had a difficult time in the wake of the 1997 coup due to political pressures and charges of incitement and defamation. Prosecutions created a sense of fear amongst them until the AKP's coming to power in 2002. The prosecutions against the Kurdish activists, authors, and publishers working on the Kurdish issue also continued, mainly under terror-related charges.

[290] "Gazeteciler ve TCK 312. Maddesi," *Bianet*, 24 September 2002, https://bianet.org/bianet/medya/13443-gazeteciler-ve-tck-312-maddesi, accessed:5 May 2023.

4. Conclusion

The trajectory of the Republic has been characterised by contradictions since its establishment. The founders of the Republic envisioned a modern, secular state that would derive its legitimacy from its people and constitute a rupture with the "despotic" rule of the past. However, when this project was challenged by different political actors, including authors and journalists, the political leadership in the early Republican era quickly resorted to emergency laws, penal articles, and extraordinary tribunals, to control increasing dissent. Consequently, the newly founded Republic quickly evolved into a single party rule after 1925. Major legislative changes, enacted with the purported aim of modernisation, such as the institution of the Swiss Civil Code and the alphabet reform, were passed in an environment where criticism and dissent were closely monitored and controlled by legal means.

The leaders of the early Republican regime not only controlled but also co-opted those in the publishing world to promote the values of the secular Republic and to amass educational resources. In this process, dissenting authors, journalists, and publishers lost their platforms and became marginalised while a new intellectual middle class close to the state emerged. In other words, since the establishment of the Republic, sections of the publishing sector which were critical of the official position had to deal with criminal charges and trials while those in support of the state had an easier time and often had support.

Following the shift to multi-party elections and the emergence of the hybrid regime, authors and journalists who were silenced during the single party era gained more space in the early years of the DP rule. Although the DP government passed several laws for the better protection of press freedom, it also used administrative measures and access to funds to co-opt and control media outlets. Indeed, it is reasonable to suggest that the predicament of the authors and publishers did not change overall. Once they were critical of the official government policies, they were targeted with prosecutions and trials which resulted in convictions in many cases. However, the emergence of the hybrid regime during the multi-party era meant that the critics and dissenting voices could not be

silenced to the same extent as they were under the single party rule. Being a critic was still costly, but not as costly as it used to be.

Successive political actors continuously resorted to legal means for socio-political design and for repressing critics. Dissenting voices, including authors and publishers, were continuously targeted with detentions, prosecutions, and convictions in the following years. Even when the prosecutions resulted in acquittals, defendants had to undergo a lengthy and stressful trial process. In other words, they endured harmful effects in any case.

Moreover, contradictions which characterised the early Republican era continued to afflict the political trajectory of the Republic. When the rule of the first democratically elected political party was ruptured by a military coup in 1960, the military council eliminated political opponents through martial courts and enacted a new liberal Constitution with increased protection of individual freedoms at the same time.

Under the new configuration following the coup of 1960, the political system in Turkey became more clearly a tutelary democracy with the military carrying out further interventions in 1971, 1980, and 1997. Besides, after passing the relatively liberal Constitution of 1961, the military leadership paved the way for the enactment of constitutional changes (1971) and a new constitution (1980) that limited the scope of fundamental rights, including press and publishing freedom, and increased the powers of the executive and the National Security Council (dominated by the military). Moreover, permanent special tribunals were introduced after the 1980 coup to hear charges related to state security.

Nevertheless, after each coup d'état, accompanied by the political reconfigurations and periods of martial law, civilian politics was restored, and democratic institutions resumed their operation, even if under increased constraints. Consequently, the publishing sector made a comeback every time.

During the single party era, works focusing on religious or ethnic themes were categorised as security threats against the project of the secular Turkish nation state. After the Republican regime

officially sided with the Western camp in the wake of the Second World War, communist ideology and movements emerged as the paramount security threat. Indeed, this remained the case through the several coups and up until the fall of the Soviet Union and the end of the Cold War in the early 1990s. Even during the increasing political violence between the leftist and nationalist groups in the 1970s, the military leadership often targeted the communist groups in a more brutal fashion.

With brutal and successful repression of the leftist movements following the 1980 coup d'état and the end of the Cold War, the communist threat became peripheral. Meanwhile, the Islamist movements and Kurdish nationalism were on the rise. As a result, publications on religion and ethnic identities, especially Kurdish identity, were once again constructed as the paramount security threats to the project of the secular Turkish nation state. As a reflection in the legal framework, anti-terror laws were introduced and have been widely employed, till today, against rights defenders and politicians talking about the Kurdish minority. Besides, following the 1997 coup d'état, the Islamist authors and publishers were targeted with prosecutions and trials on defamation and incitement charges.

Overall, in each period, sections of the publishing sector, often those critical of the official government policies and the state ideology, had to navigate weaponization of legal tools against them and the sense of fear this generated: emergency laws, special tribunals, restrictive laws, and criminal prosecutions. Meanwhile, there were others who were co-opted by the state through financial support or other advantages. Yet, as described above, leaving the periods of martial rule aside, there was some space available at each turn in this hybrid regime to continue to write and produce independent works. Authors and publishers duly seized these opportunities.

Chapter 3 - The AKP era and the Publishing World: 2002-2020

"*Some books are more powerful than a bomb*"
Recep Tayyip Erdoğan[291]

In this chapter, I discuss the contemporary state of Turkey as a hybrid regime, focusing particularly on explaining the socio-political and legal background against which I conducted my fieldwork. In the first section, I look at the political transformations that took place under AKP rule between 2002 and 2020 and the connected developments in the publishing world. The second section focuses on the legal tools frequently employed in the criminalisation of publications. In this respect, I focus on defamation and terror related charges. Finally, the last section provides a contemporary overview of the publishing sector. With this aim, I look at the expansion of the publishing sector under AKP rule, the role of the state as a stakeholder in it, and the non-legal tools it uses to exert influence. I also describe the various publishers' groups in the publishing world.

1. Political Developments

Just a few years after the National Security Council's memorandum precipitated the resignation of the Prime Minister Erbakan and his cabinet, the Justice and Development Party (AKP), whose leadership hailed from Erbakan's party, won the general elections in 2002.

After coming to power, the AKP government kept up with the EU harmonisation reforms, especially between 2002 and 2004, continued with market oriented economic measures and enacted several legislative changes that signalled better protection of civil rights and liberties. For instance, in 2003 the AKP government repealed the Article 8 of the Anti-Terror Law that had made "propaganda against the indivisibility of the state," a criminal offence. The government also amended the definition of terror in the Anti-Terror Law by inserting the requirement of "violence and compulsion" for the crime of terror. They also abolished the special tribunals called State Security Courts (*Devlet Güvenlik Mahkemeleri*, DGM) in 2004.[292]

[291] From an interview Erdoğan gave on TV to NTV Channel in June 2011. He had compared Şık's unpublished manuscript critical of the Gülen movement with a bomb.
[292] Ergün Özbudun, "Democratisation reforms in Turkey 1993-2004," *Turkish Studies* 8, no.2 (2007): 186; Meltem Müftüler Baç, "Turkey's Political Reforms and the Impact of the European Union," *South European Society and Politics* 10, no.1 (2005): 27.

In 2004 a new Press Law was passed, replacing the Press Law of 1950 enacted under the Democrat Party. It placed predominant responsibility for the content on the authors, while making responsibilities of the editor and the publisher only conditional.[293] The legislative changes and the abolition of special tribunals were generally interpreted at the time as a significant step towards liberalisation of the expression of dissent.[294] Yet, many other provisions of the Press Law remained unchanged. Printers are still required to submit two copies of any publication they print to the relevant office of the prosecutor in their area. Once an investigation (or prosecution) is initiated, all copies of a printed work can be confiscated and distribution or sale of confiscated publications are treated as criminal actions.

At the same time, the AKP government introduced a brand-new Penal Code that brought aggravated sentences for crimes committed through the media.[295] The new Penal Code kept the vague and broad terms in many charges, allowing for a wide interpretation of the penal articles by the prosecutors and the judges. İlkiz, an eminent human rights lawyer, argued that "the Turkish Criminal Code and the system of law in general are still structured to provide the means to strengthen, utilize, and implement key measures of restriction."[296] Laws which were often used to prosecute expression of critical views, such as insulting Turkishness, insulting the President, and publicly praising a crime or criminal were not abolished.[297]

In a seemingly liberalising move, the AKP government abolished the controversial State Security Courts (DGM) in 2004, only to be replaced by a new set of almost identical special tribunals, Special Heavy Penal Courts (*Özel Yetkili Ağır Ceza Mahkemeleri*, ÖYM) a month later.[298] The category of specific charges that ÖYMs would hear largely overlapped with those that fell under the

[293] If the creator of the work cannot be identified or cannot be put on trial in Turkey (if they are abroad or in few technical circumstances), the responsible manager, the editor, the chief editor will be responsible. When it comes to books, if the creator of the work is missing in a manner like circumstances described above, the publisher will be responsible. If the same circumstances apply to the publisher, then the printer will be responsible. Article 11 of the Press Law No:5187.
[294] Özbudun, "Democratisation reforms in Turkey 1993-2004," 184.
[295] Law no:5237. As a result of public outcry, government changed the penal code to address these concerns. However, aggravated sentences for crimes committed through the media remained a part of the Anti-Terror Law.
[296] Fikret İlkiz and Defne Över, "Freedom of Expression," in *Authoritarianism and Resistance in Turkey*, eds Özyürek et al (Springer International Publishing, 2018), 220.
[297] For instance, both the charges of incitement of hatred and enmity and insulting Turkishness made their way to the new Code.
[298] Law No:5190.

jurisdiction of the abolished DGMs. The law establishing the ÖYMs specified that those judges serving at DGMs were to hold office at the special courts that were to be founded. The references made to the DGMs in other legislation would now be admitted as if they were made with respect to the ÖYMs.[299] However, unlike the State Security Courts, which operated under a separate piece of legislation, the Special Heavy Penal Courts were governed by the articles 250-252 of the new Code of Criminal Procedure passed in December 2004.[300] In other words, these courts of exception were integrated into the general legal structure. This had significant implications on the way the court operated and on the experiences of the defendants, as I show in the next chapter.

Overall, in the first years of AKP rule, there was a drop in the number of injunctions against books. Charges of terror, terror propaganda, incitement to hatred, defamation were still being brought against authors and publishers, but the number of acquittals had increased.[301] For instance, according to the report prepared by Turkish Publishers Association, it had become somewhat less problematic to publish on the Kurdish problem.[302]

There was also some evidence that the judiciary was giving more consideration to the rights to freedom of expression. Judges were making a higher number of references to the European Convention on Human Rights (ECHR).[303] Human rights activists living in the Kurdish majority parts of the country had stated that living there had become easier after the lifting of the state of emergency in 2002. Several Islamist authors and publishers had also pointed out that the heavy psychological and at times actual pressure on Islamist institutions and organisations following the military intervention of 1997 had been significantly eased by the electoral victory of AKP in 2002.[304]

However, even in those early years the signs of an illiberal political mindset were present. The AKP government kept in line with the overall approach of the previous governments on the

[299] Law no:5190, Provisional Articles 1-4.
[300] Law No:5271.
[301] Türkiye Yayıncılar Birliği (TYB), *Yayınlama Özgürlüğü Mücadelesinin 20 Yılı: Düşünce ve İfade Özgürlüğü ve Yayınlama Özgürlüğü Raporları 1994-2014*, (İstanbul: Türkiye Yayıncılar Birliği, 2014), 90, https://turkyaybir.org.tr/yayinlama-ozgurlugu/turkiyede-yayinlama-ozgurlugunun-20-yili-1994-2014/ , accessed:16 August 2023.
[302] Ibid.
[303] Ibid, 127.
[304] Interviews with Erdem, 12 March 2019; Nurettin, 19 November 2019; and Tevfik 7 October 2019.

security matters, such as the Kurdish issue. In 2006, the government introduced amendments to the Anti-Terror Law stipulating additional charges for actions, such as theft, praising a crime or a criminal, or insulting the national anthem or the flag, if committed "within the scope of the activities of a terror organisation."[305] The amendments also restricted the communication between defendants charged with terror crimes and their defence counsel. While initially affecting certain groups such as the Kurdish political movement and activists, these practices later impacted larger sections of political dissent.

Although the new Anti-Terror Law was passed in the Parliament without a serious challenge from the opposition camp, the media and publishing industry were alarmed. Turkish Publishers Association, Turkey Office of the International PEN, Authors Union of Turkey, Association of Book Translators, Journalists Association of Turkey, Journalists Union of Turkey had released a common statement in June 2006, asking the Parliament to reject the law.[306] An Islamist NGO claimed that it turned all citizens into "potential terrorists."[307] Turkish Publishers Association also warned that the lack of clear definitions of the actions that qualify as a crime under the law made it possible to criminalise any act based on an investigation of a prosecutor or someone officially complaining.[308]

The Struggle with the Kemalist Elites

Meanwhile, it did not take long for the tension between the still powerful Republican elites and the democratically elected AKP government to erupt. In 2007, when the term of the incumbent President Ahmet Necdet Sezer was coming to an end, AKP was able to designate the new President as the party with the majority in the Parliament. Some of the military officers, however, believed that if AKP were to control both the Parliament and the Presidency, this would pose a danger to the

[305] Article 6 of the Anti-Terror Law No:3713.
[306] For more on the political background of the law and the reactions of civil society, see the report prepared by Volkan Aytar, *Daha Karanlık Bir Geleceğe Doğru mu? Terörle Mücadele Kanununda Yapılan Değişiklikler* (İstanbul, Türkiye Ekonomik ve Sosyal Etüdler Vakfı, 2006).
[307] Türkiye Gönüllü Teşekküller Vakfı (TGTV), See Ibid, 7.
[308] The report also warned against the power given to the Courts to stop the publications and to give prison sentences. See, TYB, *Yayınlama Özgürlüğü Mücadelesinin 20 Yılı*, 106-108.

principle of secularism.[309] As the General Staff announced, "as defenders of secularism," they would clearly and openly put forward their attitude and behaviour where necessary.[310]

At the time, the Republican elite remained in key positions in state institutions such as the judiciary, the military and different branches of the bureaucracy. To prevent AKP to take full control, the Constitutional Court ruled that the vote for the President in the Parliament was void. The AKP responded by calling for early national elections. It won a significant victory and elected their candidate Abdullah Gül to the Presidency later in 2007. In the next move to block AKPs policies, the Constitutional Court struck down the legal amendments (passed in February 2008) lifting the ban on wearing the headscarf at universities in June 2008.[311] The confrontation escalated to the point that the Chief Prosecutor of the Supreme Court of Appeal (*Yargıtay*) brought a case before the Constitutional Court to shut AKP down on grounds that the latter had become "a focal point of acts against secularism." The Constitutional Court ruled against closing the party by a marginal vote of six against five.[312]

After unsuccessful attempts by the Republican elite to control or even to outlaw the AKP, a steady backsliding from the initial liberalisation reforms towards authoritarian consolidation of power became more apparent. Political power of non-majoritarian institutions that were supportive of the old regime, such as the army and the bureaucracy, started dwindling. Trials of high-ranking military officers, including the former Chief of Staff, in the Ergenekon and Balyoz cases for allegedly attempting to overthrow the government also played an important role in undermining the political power of the military apparatus.[313]

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[309] Yaprak Gürsoy, "The Impact of EU Driven Reforms on the Political Autonomy of the Turkish Military," *South European Society and Politics 16*, no:2 (2011):296. Moreover, the fact that the wife of AKP's nominee Abdullah Gül was wearing the headscarf become a source of controversy.

[310] "27 Nisan e-muhtırası tam metni," *Mynet*, 4 December 4 2015, https://www.mynet.com/27-nisan-e-muhtirasi-tam-metni-110102212559, accessed:13 May 2023.

[311] CHP had applied to the Constitutional Court for the annulment of the law.

[312] "AK Parti kapatılmasın kararı çıktı," *Milliyet*, 30 July 2008, https://www.milliyet.com.tr/siyaset/ak-parti-kapatilmasin-karari-cikti-972729, accessed:15 May 2023.

[313] Ergenekon trials took place between 2008 and 2013. The indictment claimed that members of a terror organisation called Ergenekon had plotted a coup against the government. Former Chief of Staff of the Turkish Armed forces, retired generals, head of the Ankara Chamber of Commerce, and eminent journalists were defendants in the case. In August 2013, most defendants were convicted with lengthy prison sentences. Yet, at the end of the same year and following the fall out within the new ruling elite, the prosecutors in the Ergenekon case were accused of being Gülenists and

Initially the Ergenekon trial was widely regarded as a step towards challenging military control over democratic institutions. This was the case despite serious concerns being voiced about the problematic nature of the evidence used in the conviction. Still, the "shady" backgrounds of some of the defendants and the excessive influence of military leadership over politics in the country helped let the prosecution off the hook.

The success in diminishing the power of the Republican elites and establishing equilibrium in civil-military relations, together with legislative reforms introduced by the AKP government in its first term as a part of EU Harmonisation process, led some liberal and progressive groups to believe that Turkish democracy was finally "normalising" following "decades of military-dominated intra-elite politics."[314] This impression helped AKP solidify its position by winning consecutive local and general elections. AKP went as far as initiating the peace and reconciliation process with the Kurds in 2013. Overall positive impulse of the early years of AKP led to significant economic growth and a sense of social stability.

However, many among the secular middle class believed that AKP's pro-EU stance, its insistence on keeping up with the reform process, and its rhetoric of democracy was a façade to conceal their true agenda of replacing secular-Kemalist establishment with an Islamist regime.[315] Meanwhile, no drastic change had occurred in practice with respect to the circumstances of the historically discriminated groups such as the Kurdish or the Alevi minority. The ruling government did not hold back from targeting opposition groups and silencing criticism by way of criminal prosecutions.

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fabricating evidence. Subsequently, the Supreme Court of Appeals (*Yargıtay*) reversed the judgments in 2016 and all the defendants were acquitted. "Ergenekon davasında karar: Tüm sanıklar örgüt üyeliğinden beraat etti," *T24*, 1 July 2023, https://t24.com.tr/haber/ergenekon-davasinda-karar-tum-saniklar-orgut-uyeliginden-beraat-etti,828539, accessed:18 May 2023. Similarly, Balyoz trials were about an alleged military coup plan (dating from 2003) of a group of army officers. The trial lasted between December 2010 and September 2012. In the end, 237 out of 361 defendants were convicted. Following the judgements, the defendants applied to the Constitutional Court which ruled that the due process rights of the defendants had been violated. Later, the Supreme Court of Appeal reversed the decision and ordered a retrial of the case. It ended with the acquittal of all defendants in March 2015, "Balyoz davasında beraat kararı," *BBC Türkçe*, 31 March 2015, https://www.bbc.com/turkce/haberler/2015/03/150331_balyoz, accessed:18 May 2023.

[314] Hakkı Taş, "Turkey – From tutelary to delegative democracy" *Third World Quarterly* 36, no:4 (2015):776-777.

[315] Ibid.

The Alliance with Gülen

In its political altercation with the Republican elites, AKP moulded an alliance with the Gülen movement. The Gülen movement is a grass-root Islamist movement led by the Turkish cleric Fetullah Gülen, who, along with his advisors, has been based in the United States since 1999. The movement gave scholarships to students and sponsored several schools and universities in Turkey (and around the world) and had been placing its followers to positions in the Turkish civil service and other state institutions such as the military, the judiciary, and the police, to gain influence over policymaking from within. Once in positions of power, its members notoriously promoted loyalists only. AKP's rise to power and its alliance with the Gülenist movement facilitated the latter's infiltration of state institutions. By 2007, the movement had "followers in most critical departments of almost every ministry."[316] The Gülen movement was instrumental, through its network of followers, in diminishing the power of the military establishment by initiating investigations and criminal cases like the Ergenekon and Balyoz cases. They were also involved in other prominent investigations and trials, such as KCK investigations against Kurdish activists and politicians.[317] These cases normalised extraordinary practices such as spectacle-like and militarised hearings, large number of defendants in a single case, excessively long indictments, extensive and prolonged pre-trial detentions, use of secret witnesses, intercepted phone conversations, email correspondence, and fabricated (transpiring later) evidence. Also, restriction orders on case files and restriction of communication between the accused and their counsel became common. As the key actors in the judiciary and the police, Gülenist judges, prosecutors and policemen were instrumental in the proliferation of these practices, which were still very much in action during my fieldwork in 2019.

Another development in this period was the construction of a new complex in Silivri (completed in 2008), 70 kilometres from Istanbul, which contained a prison together with a courthouse with two hearing rooms (the number later increased), offices for judges, prosecutors, and the secretariat. A newspaper at the time reported that certain "high-security" hearings designated by

[316] Hakan Yavuz and Bayram Balcı, "Introduction: The Gülen movement and the coup," in *Turkey's July 15 Coup,* eds. Hakan Yavuz and Bayram Balcı (Utah University Press: Utah, 2018), 9.
[317] Natalie Martin, "Allies and enemies: The Gülen Movement and the AKP," *Cambridge Review of International Affairs* 35, no.1(2022):114.

the courts would be heard here "under appropriate circumstances."[318] As I further elaborate in chapter four, these courtrooms operated under a significantly militarised atmosphere.

In 2010 AKP enacted, through a public referendum, constitutional amendments that reshaped the entire justice system, changing the makeup of high courts, the rules of appointment of judges within the institutional hierarchy, the terms of service and security in the office. Commenting on the amendments, *Zaman*, a newspaper close to the Gülen movement, reported the changes as democratic steps. It argued that the amendments would end the unwarranted interventions of the Higher Council of Judges and Prosecutors (HSYK) in the judiciary such as the removal of "prosecutors and judges handling the Ergenekon, Balyoz and other cases."[319] A majority of liberal minded organisations and institutions such as the European Union, the Council of Europe, and the Venice Commission welcomed and understood the constitutional changes regarding the HSYK as increasing the autonomy of the judiciary and bringing a more representative structure to it.[320]

With this reshuffle the side-lining of secularists over the composition of judicial bodies was completed. This opened space for Gülenists and entrenched their influence in the judiciary. Due to their loyalty to each other and networking canons, a higher number of judges close to the Gülen movement managed to obtain positions in the higher judiciary at the expense of the influence of the members of the secular-bureaucratic elite.

Meanwhile, emboldened by the victory in the general elections of 2011 that reinforced his hold of both the presidency and the parliamentary majority, Erdoğan started consolidating his power within the AKP by side-lining many of his close allies. In the following period, the blurring of boundaries between the state and the party boosted the authoritarian tendencies of the government. Already in the fall of 2011, the report by the Commissioner for Human Rights of the Council of Europe expressed concerns about the due process of trials, the nondisclosure of evidence to suspects, the resort to secret witnesses, practical problems regarding the possibility for the defence to summon

[318] "Silivri Cezaevine Mahkum Sevkiyatı Başladı," *Haber Silivri*, 6 June 2008, https://web.archive.org/web/20090124172458/http://www.habersilivri.com/haber_detay.php?haber_id=177 accessed:25 April 2023.
[319] "What will the September 12 Referandum bring?" *Today's Zaman*, 8 August 2010, https://web.archive.org/web/20121010013031/http://www.todayszaman.com/tz-web/news-218436-what-will-the-sept-12-referendum-bring.html, accessed: 20 April 2023.
[320] Ergün Özbudun, "Turkey's Judiciary and the Drift Towards Competitive Authoritarianism," *The International Spectator* 50, no:2 (2015):45.

and cross-examine witnesses and experts.[321] The 2012 annual Amnesty International Report stated that "critical journalists, Kurdish political activists, and others risked unfair prosecution when speaking out on the situation of Kurds in Turkey, or criticizing the armed forces."[322] The report also emphasized that anti-terrorism laws "routinely contravened fair trial standards" and were used to target political activists, "among them students, journalists, writers, lawyers, and academics."[323]

However, the readiness for unyielding and brutal exercise of power by the government was fully displayed when it responded to wave of mass demonstrations in May 2013, known as the Gezi Park protests. The protests were triggered by a government project to turn the large Gazi park into a construction site. The project was seen as a corrupt construction deal with developers to boost the economic power of the companies allied with the government. The sit-in at the park and demonstrations around the country were suppressed with use of excessive police brutality, numerous arrests and defamation charges brought against journalists and citizens for insulting the then prime minister.

The manner in which the government dealt with the Gezi Park social unrest evaporated remaining illusions among intellectuals about the intentions of AKP to "normalise" democracy in Turkey. The events at Gezi Park were an important turning point in the relationship between the government and the significant part of the society that was supportive of the protest, mostly, urban, educated, and secular. The social trauma of Gezi Park was strongly felt at the time of my research and was brought in conversations by many interlocutors.

To calm down growing criticism of the government, and of Erdogan personally, the AKP government relaunched talks with The Kurdish Workers' Party (PKK) (the first phase was around 2009 and lasted few months) in early 2013.[324] It lasted only 2 years but was one of the political twists

[321] Thomas Hammarbeg, *Report by Commissioner for Human Rights of the Council of Europe on administration of justice and protection of human rights in Turkey*, (Strasbourg, Council of Europe, 2012) Report No:CommDH(2012)2, 17-20.
[322] Amnesty International, *The State of the World's Human Rights-Report* (London: Amnesty International Publications, 2012), 32.
[323] Ibid, 37.
[324] See Elçin Aktoprak, "Between Authoritarianism and Peace: The Kurdish Opening in Turkey," in *Democratic Representation in Plurinational States:The Kurds in Turkey*, eds Nimni and Aktoprak (Palgrave Macmillan: 2019). There was also an Alevi opening which lasted up until 2013. For details, see İhsan Yılmaz and James Barry, "The

that significantly contributed to the atmosphere of precarity by shifting boundaries of permissibility back and forward.[325]

First, it led to legal amendments in the Anti-Terror Law and the Penal Code that made it more difficult to categorise expression of opinion as terror propaganda. For instance, endorsement or encouragement of "methods of the terror organisation that include compulsion, violence or threat," became a necessary component of the crime of terror propaganda and publication of terror organisation's statements.[326] Another change was with respect to Article 215 of the Penal Code which punished "praising a crime or a criminal." Now, only when "a clear and immediate threat to public order arises" that such an act would be punished.[327] Second, the negotiation process itself and the statements made by the government politicians generated an environment where writing on the Kurdish issue, discussing taboo topics such as guerrilla fighters, and publishing and writing in Kurdish language became easier and even popular.

However, following the collapse of the negotiations and the clashes between military forces of the state and PKK guerrillas in the Kurdish majority city of Diyarbakir, the government quickly re-securitised the Kurdish problem. As I discuss below, even some of the publications that came out during this period got their authors and publishers into trouble after the peace process failed in 2015.

The Struggle with the Gülenist Movement

In the meantime, the alliance between the AKP, that was formally in power, and the Gülen movement, that had significant covert influence through its secretive networks in all institutional structures, including judiciary, military, and police, started cracking. Although tensions had been building up over time, the final nail in the coffin was the arrest of prominent AKP politicians, advisors, and their relatives, including the sons of cabinet ministers, in December 2013 on account of

AKP's de-securitization and re-securitization of a minority community: the Alevi opening and closing," *Turkish Studies* 21, no.2 (2020):231-253.

[325] The imprisoned PKK leader Öcalan's letter that was read at the traditional new year celebrations in March 2013 in Diyarbakır marked the beginning of a new "solution process" that lasted until 2015.

[326] This change applied to both the crime of terror propaganda under Anti-Terror Law Article 7 and Article 220(8) of the Penal Code.

[327] Law No:6459, Articles 8 and 10.

corruption charges related to tenders in the construction sector and illegal gold deals with Iran. The corruption scandal was driven by the judiciary and was interpreted as a display of its dominance over the government. In response, the Erdoğan led government accused prosecutors of acting on the orders of Fetullah Gülen. Subsequently, the AKP government introduced changes into the structure of the judiciary to increase the power of the executive and to reduce the power of Higher Council of Judges and Prosecutors (HSYK) allegedly filled with Gülen affiliated judges and prosecutors. Along with re-configuring institutional powers, AKP promoted their own candidates in the new judicial elections for the HSYK to make sure that the composition of higher courts is favourable.

It was also around this time that the Magistrate's Courts (*Sulh Ceza Mahkemeleri*) were replaced by a new and highly controversial set of Criminal Peace Judgeships (*Sulh Ceza Hakimlikleri*). The new courts, as I further elaborate in the next chapter, had increased jurisdiction to oversee the investigation process and significantly limited the right of appeal of the accused. Jurist Ayhan Erdoğan argues that the new courts, with their powers to intervene swiftly, were instrumental for the government in creating an atmosphere of fear and silencing opponents.[328] For instance, these courts were readily giving detention orders in investigations on account of "Insulting the President", which emerged as a significant ground of prosecution in recent years.[329] Akdeniz and Altıparmak also argue that "the newly established Judgeships quickly became the government's weapon for repressing oppositional views in the media, among journalists, on the Internet and social media platforms."[330]

On another note, the government declared the Gülen movement a terrorist organisation in May 2016 (before the failed coup attempt), which paved the way for terror-charges being brought against alleged followers of Gülen who were working in various public institutions. [331]

The failed coup in the summer of 2016 was a defining factor in pushing Turkey ever closer to the authoritarian end of the spectrum. It was used to justify the launch of unrestricted suppression of

[328] Ayhan Erdoğan, "Sulh Ceza Hakimliği," in *Türkiye'de Hukuku Yeniden Düşünmek,* ed. Haluk İnanıcı (İstanbul: İletişim, 2015), 269-271.
[329] Ibid, 275.
[330] Yaman Akdeniz and Kerem Altıparmak, *Turkey: Freedom of Expression in Jeopardy* (English PEN, 2018), 9-10, https://www.englishpen.org/posts/campaigns/turkey-freedom-of-expression-in-jeopardy/, accessed: 20 April 2023.
[331] "Turkey officially designates Gülen religious group as terrorists," *Reuters,* 31 May 2016, https://www.reuters.com/article/us-turkey-gulen/turkey-officially-designates-gulen-religious-group-as-terrorists-idUSKCN0YM167, accessed: 20 April 2023.

dissent. A state of emergency was declared and a purge of allegedly Gülenist officers from public institutions was undertaken at a massive scale. More than 130,000 public servants (amongst others 4,156 judges, 29,444 army officers, over 8,000 academics) were summarily removed from their positions by emergency executive decrees, which were not subject to scrutiny either by the judiciary or by the parliament.[332] Some of the judges and prosecutors dismissed are now facing criminal charges or serving sentences in prison, including those who had run the notorious trials of Ergenekon and Balyoz. Younger and less experiences judges have been swiftly appointed to fill in the positions the purges had left empty.

In an ironic twist, a few months before the 2016 coup attempt, the already reshuffled Supreme Court of Appeal had overruled the convictions given out in the Ergenekon trial back in 2013.[333] In the period following the coup attempt in July 2016, generals and officers who had previously been purged from the army on account of being members of "the Ergenekon terror organisation," were summoned back to their positions.[334] In other words, the ruling government cooperated with the "old enemies," who were willing to serve under the rulers of the day, in the fight against the "new enemies." In the end, the AKP succeeded in having a cooperative judiciary and military by eliminating the power of both the Republican alliance and the Gülenists.

The AKP has also succeeded in passing constitutional amendments in 2017 that initiated a presidential system with few checks and balances. The proposed amendments were voted in a referendum that was held while the state of emergency was still in force, in an oppressive and polarised environment. Given these changes, the executive power President Erdoğan exercised were now put on a legal footing. [335]

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[332] Laura Pitel, "Turkey says purge of judiciary over after sacking 4,000," *Financial Times*, 26 May 2017. https://www.ft.com/content/0af6ebc0-421d-11e7-82b6-896b95f30f58 accessed: 20 April 2023.
[333] "Turkey "Ergenekon: Court quashes 'coup plot' convictions," *BBC*, 21 April 2016, https://www.bbc.com/news/world-europe-36099889 accesed: 22 April 2023.
[334] See "Ergenekon trial: what was it and what happened?," *Evrensel Daily*, 5 July 2019, https://www.evrensel.net/daily/382506/ergenekon-trial-what-was-it-and-what-happened accessed:22 April 2023.
[335] For implications of the constitutional amendments, see Bill Kissane, *What is at stake in the Turkish constitutional referendum?* (Oxford: The Foundation for Law, Justice and Society, 2017); Ahmet Erdi Öztürk and İştar Gözaydın, "Turkey's Constitutional Amendments: A Critical Perspective," *Research And Policy On Turkey* 2, no. 2 (2017): 210-224.

The State of Emergency

The state of emergency that was declared in the aftermath of the coup attempt in July 2016 dealt a significant blow to publishers, newspapers, and authors who were believed to have been affiliated with the Gülen movement. Two hundred media outlets and publishing institutions were shut down, all through executive decrees.[336] Eighty writers and journalists were subjected to investigations and prosecutions. Akdeniz and Altıparmak maintain that the accusations against them (being members of a terrorist organisation or disseminating propaganda on behalf of a terrorist organisation) were based on their writings or speech.[337] Emergency decrees also targeted and closed private legal entities such as associations. Closed outlets could not resort to courts to re-start their operations since they were expected to apply to the Commission on the Examination of State of Emergency, which was set up to hear complaints about the executive decisions having the force of law (or KHKs).[338] Amongst the 30 closed publishers, 29 were allegedly linked to the Gülen movement.[339] In addition to the executive decrees shutting down these publishers and confiscating their properties, thousands of books published by these outlets were banned. Being in possession of a book authored by Gülen could be enough evidence to warrant detention in this period. The Minister of Education had announced in the summer of 2019 that approximately 300,000 books with alleged links to the Gülen movement had been removed from schools and libraries and subsequently destroyed.[340] Hence, as explained in the following chapters, many publishers had to review the works that they had published on Gülen or containing references to the Gülenist movement. Moreover, the scrutiny of broadcasts on TV and radio (through the Supreme Board of Radio and Television) and the smear campaigns by pro-government media outlets against newspapers and journalists critical of the government intensified in this period. Although the investigations and prosecutions mentioned above

[336] Akdeniz and Altıparmak, *Turkey: Freedom of Expression in Jeopardy*, 21.
[337] Ibid, 24.
[338] The Commission did not have institutional autonomy, took long time to respond to applications and did not provide the accused with necessary means to rebut the claims against them. See a Position Note prepared by the Amnesty International for the Universal Periodic Review on Turkey, Amnesty International, *Turkey: Deepening Backslide in Human Rights* (London: Amnesty International 2019), 6.
[339] There was also a leftist publisher, Doğa Publishing which owned the Evrensel Publishing House and several other magazines, that was shut down through an executive decree during this time with no justification.
[340] "Turkish government destroys more than 300,000 books," *Guardian*, 6 August 2019, https://www.theguardian.com/books/2019/aug/06/turkish-government-destroys-more-than-300000-books, accessed: 17 May 2022.

were generally against journalists and newspapers, it sent shock waves through the entire publishing world.

Unsurprisingly, the executive decrees and criminal prosecutions of authors, publishers and journalists were not limited to those allegedly linked with the Gülenists. The closure of *Evrensel* is a good example. The three left wing magazines, *Evrensel Kültür*, *Tiroj* ve *Özgürlük Dünyası* were shut down by an executive decree, with no allegations or formal accusations brought against them. [341] They had operated under the parent company Doğa Publishing whose accounts were blocked and property confiscated by the executive decree of the government. As a result, the operations of *Evrensel*, a publishing house which also functioned under Doğa Publishing, stopped, although the executive decree did not address it. Those at *Evrensel* could obtain no answer despite repeated attempts to ascertain the status of the publishing house. They applied to the State of Emergency Commission, which was set up to hear complaints about the KHKs, yet by the time I had spoken to them in 2019, they had still not heard from the Commission and were not expecting to hear from them any time soon. Under the circumstances, *Evrensel* could not resume its activities.

In the meantime, the investigation and prosecution of a group of journalists at *Cumhuriyet*, demonstrated how practices that emerged during the Gülen-AKP alliance, such as punitive pre-trial detention of defendants, convictions based on meagre evidence, secret witnesses, and militarised hearings were still employed after Gülenists were purged from the judiciary. In the *Cumhuriyet* case, the journalists were accused of being followers of two unrelated, even antagonistic organisations, PKK and FETÖ (The Gülenist Terror Organisation). The defendants spent 8 months in detention before an indictment was submitted and one of the defence lawyers suggested to me that the defendants were kept in detention while the prosecutors were trying to gather "evidence" to fill the case dossiers.[342] One of the defendants in the case, the caricaturist Musa Kart, had told a newspaper that "in contemporary states of law (rule of law), people are first tried, then punished. We had the exact reverse. We were detained for 9 months at Silivri and finally we could appear before the

[341] Executive decree (KHK) No:675 that was passed on 29 October 2016. The decree shut down a total of 15 leftist and Kurdish media outlets. 11 newspapers, 2 news agencies and 3 magazines were shut down. Amongst them *Evrensel Kültür* was the most well-known; it was an established and popular monthly literature and culture magazine.
[342] Interview with Tahir and Ramadan, 8 May 2019.

judge."[343] Despite the meagre evidence, an overwhelming majority of the defendants were convicted in the judgment given out in the summer of 2018. Later, the court of appeal annulled the decisions for lack of solid evidence, yet the heavy penal court repeated its judgement when the appeal court sent back the case.

The state of emergency was officially lifted in July 2018. However, the government passed Law No 7145, purportedly to fight the "terror" organisations, that allowed dismissal of public sector workers on unclear grounds for another three years.[344] This means that judges and prosecutors remain vulnerable vis-à-vis the risk of arbitrary dismissal for a longer time. Similarly, some of my interlocutors, who were lawyers working in the publishing industry, had pointed out that the spirit of the State of Emergency had remained in the courtrooms even after it was officially lifted. The European Commission's report from 2020 on Turkey corroborates this assertion. The report has indicated that even after the lifting of the state of emergency "the adverse impacts of the two-year long emergency rule continued to significantly impact on democracy and fundamental rights." In other words, the pattern of the dual state in Turkey was solidified. The prerogative state, led by political expediency and unconstrained by legal regulation, dealt with matters it considered as "political," a notion that included a vast array of issues. Meanwhile outside the sphere of "political matters," laws and rules were applied regularly to a certain extent, ensuring matters like the protection of private property and the binding power of contracts.

In sum, the initial shift of power from unelected state elites, that is the secular-bureaucratic establishment and their affiliates, to elected political rulers did not translate into a strengthening of the existing democratic institutions. The AKP government initially passed liberal reforms and undertook political openings. However, each time, the favourable repercussions of these developments were short lived. Indeed, over the course of AKP rule, the increasing centralisation of power in the hands of elected representatives led to the diminishing of separation of powers and accountability mechanisms, causing scholars in recent years to locate the political system in Turkey closer to the authoritarian end of the spectrum. As discussed previously, the machinery of criminal justice has long been used against dissenting voices, especially minority groups such as Kurds or

[343] "Musa Kart: Önce ceza alıp sonra mahkemeye çıktık," *T24*, 14 September 2019, https://t24.com.tr/haber/musa-kart-once-ceza-alip-sonra-mahkemeye-ciktik,839307, accessed:18 May 2023.
[344] Amnesty International, *Turkey: Deepening Backslide in Human Rights*, 6.

leftist political movements. Yet, with the hybrid regime turning increasingly authoritarian, the criminalisation campaign against intellectual activity expanded to include a wider range of class, ethnic, religious, and political backgrounds. [345]

2. Criminalisation of Dissent under AKP rule: Prosecutions of Authors, Journalists and Publishers

Under AKP rule, the long-standing charges of terror propaganda,[346] and defamation charges such as "insulting Turkishness" (and state institutions)[347] and "insulting the President"[348] have been prominent tools in prosecution of expression and activities of journalists, authors, and publishers and dissenting voices in general.[349] Recently, the Turkish Publishers Association (Türkiye Yayıncılar Birliği , "TYB") released a statement after Orhan Pamuk's novel *The Nights of Plague* (*Veba Geceleri*) was investigated on account of insulting the Turkish state and Atatürk's legacy, and underlined that such cases place a heavy burden on the time and resources of authors and publishers and create "a threatening and tensed atmosphere."[350] Indeed, Akdeniz and Altıparmak indicate that, prosecutions aside, "criminal investigations, have become the most crucial element of the new "less brutal but much more effective strategy" of silencing opposition.[351] In this section, I will provide an overview of the legal background against which authors and publishers operate and function. In this respect, I focus on defamation charges and the charge of terror propaganda.

[345] See Deniz Yonucu, "The Absent Present Law: An Ethnographic Study of Legal Violence in Turkey," *Social & Legal Studies* 27, no.6 (2018):716-733. Yonucu highlights that "lawfare" against the opposition initially targeted left wing and Kurdish activists in working class neighbourhoods and later shifted to dissidents from various class, ethnic, religious, and political backgrounds.
[346] Article 7 of the Anti-Terror Law No:3713.
[347] Article 301 of the Penal Code No:5237.
[348] Article 299 of the Penal Code No:5237
[349] Charges such as "incitement to hatred and hostility" and "praising a crime or criminal" also continue to be frequently employed in prosecutions.
[350]"Yayıncılar Birliği: Orhan Pamuk'a yönelik soruşturma son bulmalıdır," *Gazete Duvar*, 11 November 2021, https://www.gazeteduvar.com.tr/turkiye-yayincilar-birligi-orhan-pamuka-yonelik-sorusturma-son-bulmalidir-haber-1541477, accessed:19 May 2023.
[351] Akdeniz and Altıparmak, *Turkey: Freedom of Expression in Jeopardy*, 5.

Other articles employed to silence voices in the publishing sector and the press include breach of confidentiality of investigation (Article 285) and attempts to influence a fair trial (Article 288). For instance, journalist Kemal Göktaş was prosecuted under these provisions in 2010 for quoting a secret intelligence report (which had already been published in the media) in his book *Hrant Dink Murder: The Media, Judiciary and the State.*[352] Similarly, the article on incitement to hatred and enmity (Article 216) is also used. For instance, celebrated academics İbrahim Kaboğlu and Baskın Oran were prosecuted under this clause for a report they had prepared on human rights under the Prime Minister's Office.[353] In another example, Murat Coşkun, the author of the book *Woman, the Language of Pain* (*Acının Dili Kadın*) by Peri Publishing was sentenced to 1 year 15 days prison on account of incitement to hatred and enmity in 2008. Uncommonly, he actually went to prison and spent his sentence.[354]

While a great variety of articles and laws have been weaponised against authors, journalists, and publishers, I focus on the main provisions under which investigations and prosecutions are often brought.

2.1 Defamation Charges

Insulting the State and its Organs

Located in the section of the Penal Code on the "Offences against the Symbols of State Sovereignty and the Reputation of its Organs," Article 301 punishes "Degrading the Turkish Nation, the State of the Turkish Republic, and the Organs and Institutions of the State":

[352] The case was dropped on procedural grounds.
[353] In 2020, the European Court of Human Rights ruled that prosecution of Kaboğlu and Oran violated their right to freedom of expression under Article 10. "AİHM, Oran ve Kaboğlu'nun başvurularında Türkiye'yi suçlu buldu," Gazeteduvar, 20 October 2022, https://www.gazeteduvar.com.tr/aihm-oran-ve-kaboglunun-basvurularinda-turkiyeyi-suclu-buldu-haber-1502246, accessed: 3 August 2023.
[354] "Yazar Coşkun'a 'Acının Dili Kadın' adlı kitaptan tutuklama," *Bianet*, September 5, 2008, https://m.bianet.org/bianet/ifade-ozgurlugu/109537-yazar-coskun-a-acinin-dili-kadin-adli-kitaptan-tutuklama, accessed:03.08.23.

1. *A person who publicly degrades Turkish Nation, State of the Turkish Republic, Turkish Grand National Assembly, the Government of the Republic of Turkey and the judicial bodies of the State shall be sentenced to a penalty of imprisonment for a term of six months to two years.*
2. *A person who publicly degrades the military or security organisations shall be sentenced according to the provision set out in paragraph one.*
3. *The expression of an opinion for the purpose of criticism does not constitute an offence.*
4. *The conduct of an investigation into such an offence shall be subject to the permission of the Minister of Justice*.[355]

This is perhaps the most notorious of the defamation provisions. It has been in force since the enactment of the Turkish Penal Code in 1926 and previously existed as Article 159. The defence of "the purpose of criticism" was first introduced to Article 159 in 2002 within the framework of the EU Harmonisation reforms. The most recent changes to the present Article 301 were made in 2008 when the crime of denigration of "Turkishness" was replaced by denigration of the "Turkish Nation," the upper limit for the prison sentence was decreased from 3 to 2 years, and a clause was introduced necessitating the approval of the Minister of Justice for starting an investigation.[356]

Although the requirement of the approval of the Justice Minister curbed the number of cases, it did not provide a reliable guarantee for the authors and publishers. As argued by Algan, the Minister of Justice, after all, is a politician and he or she is vulnerable to changes in the political climate, in the ruling political will, or in the EU-Turkey relations.[357] According to government records, 955 request for prior authorisation were made to the Ministry of Justice between 8 May 2008 and 30 September 2009, the Ministry granted the permission for institution of legal proceedings in 77 cases.[358] However, İlkiz argued that a statistical decrease in number of cases brought under Article

[355] Article 301, The Penal Code of Turkey No:5237, The Venice Comission, CDL-REF(2016)011.
[356] Besides, the clause which stipulated that "denigration of Turkishness" abroad would be an aggravating circumstance was removed.
[357] Bülent Algan, "The Brand New Version of Article 301 of the Turkish Penal Code and the Future of Freedom of Expression Cases in Turkey," *German Law Journal 9* (2008): 2245.
[358] *Akçam v Turkey* (Application no: 27520/07), para: 29.

301 did not correlate to a transition to democracy since the prosecutors started using Article 299 (insulting the President) more frequently in bringing cases.[359]

On the other hand, the change in the length of prison sentences has paved the way for the deferral of the announcement of the verdict (HAGB) to be applicable in these defamation cases. HAGB is a legal procedure that is applicable where the defendant has no prior confirmed sentence and where the immediate sentence is no more than two-year imprisonment or an equivalent judicial fine. For HAGB to be applicable, the court needs to get the approval of the defendant at the beginning of the trial.[360] When a judge defers the announcement of the judgment, the sentence remains on hold for five years. If the defendant does not intentionally commit a crime in the next five years, the sentence is annulled. Therefore, HAGB compels the defendants in question to behave more carefully. For the next five years, they live with the uncertainty of a sentence on hold, one that might be executed based on the defendants' actions. This strategy of initiating investigation followed by acquittal or conviction yet not resulting in imprisonment has been extensively used and has been one of the most powerful devices to generate precarity.[361]

It is possible to claim that on the whole, the core of the Article 301 remains intact. In this regard, TYB has maintained that these changes were merely "cosmetic" and were intended for reducing the overload of cases and for easing criticisms.[362] Yet, Algan argues that the problem is more to do with the Turkish Courts as opposed to the legislation. He maintains that if the prosecutors and the judges interpret the article as a whole "in favour of liberties, this would confute the idea that 2008 changes on the article are only cosmetic."[363] Yet judges and prosecutors usually implement the

[359] Meanwhile, İlkiz claims that prosecutors began to use Article 301 more frequently when other criminal provisions such as "the incitement of hatred and enmity" in Article 312 and "aiding and abetting criminal organisations" in Article 169 of the old Code were reformed by the government as a part of the EU harmonisation process. İlkiz and Över, "Freedom of Expression," 220.
[360] Once a defendant agrees to HAGB, they are then prevented from appealing the case in the courts of appeal. They can only file an objection about the decision at the level of heavy penal courts. Yet, heavy penal courts review the decisions only on procedural grounds related to the HAGB.
[361] Criticising its widespread use, the Constitutional Court has recently repealed the HAGB in a decision on 1 June 2023. The application was made by the Second Court of First Instance in Trabzon. The judgment will take effect in a year. "AYM 'Hükmün Açıklanmasının Geri Bırakılması' düzenlemesini iptal etti," *Birgün*, 1 August 2023, https://www.birgun.net/haber/aym-hukmun-aciklanmasinin-geri-birakilmasi-duzenlemesini-iptal-etti-457494, 18 August 2023.
[362] TYB, *Yayınlama Özgürlüğü Mücadelesinin 20 Yılı*, 143.
[363] Algan, "The Brand New Version of Article 301," 2250- 2251.

articles with a state-centred approach. In other words, there is an argument that the core of the problem is not so much in the legislation itself, but in its use.

Overall, like other defamation offences, the terms used in Article 301 remained equally vague under the new Penal Code passed in 2004. Indeed, human rights lawyers and activists had criticised the government for keeping Article 301 in the new Penal Code. For instance, although Article 301(3) stipulates that expressing an opinion with the purpose of criticism cannot constitute an offence, what constitutes "the purpose of criticism" is largely left to the sitting judge in a case to determine. As I discuss in the next chapter on political trials, judges can apply this clause narrowly and justify it with vague explanations such as "this is not Norway or Denmark. It is a country where everything is complicated, at the centre of the Middle East."[364]

The report of the Venice Commission from 2016 maintains that there is a need for well-developed case law defining what constitutes the act of "degrading." It claims that otherwise, prosecutions and punishments will remain unforeseeable.[365] Yet, court judgments have not provided the much-needed clarity in terms of application of the article. As underlined by the Human Rights Common Platform (*İnsan Hakları Ortak Platformu*) report prepared by Öndül, judges generally do not consider the conditions set by the European Court of Human Rights (ECtHR), such as legitimate purpose, necessity in a democratic society and proportionality, in assessing the legality of limitations brought under Article 301 to the right to freedom of expression. Moreover, they often do not indicate how the defendant at hand exceeded the limit of criticism and by what measure this has been identified.[366]

Article 301 can be applied to a wide variety of books ranging from works on the human rights violations to studies of nepotism within state institutions.[367] The first person to be convicted under Article 301 was author Zülküf Kışanak in 2005 for his book *Lost Villages* (*Yitik Köyler*) by Belge Publishing, which told the story of the evacuation of 14 villages in South Eastern Anatolia with

[364] Interview with Judge Peri, 15 April 2019.
[365] The Venice Commission, *Opinion on Articles 216, 299, 301, and 314 of the Penal Code of Turkey*, Opinion No.831/2015 (Strasbourg, the Council of Europe, 2016), 14.
[366] Hüsnü Öndül, *Türkiye'de İfade Özgürlüğü: Mevzuat ve Yargı Gözlem Raporu*, (İstanbul: İnsan Hakları Ortak Platformu 2012).
[367] TYB, *Yayınlama Özgürlüğü Mücadelesinin 20 Yılı*, 58.

pictures of villages that were burned down. The prosecutor argued that Kışanak had denigrated the state publicly by writing that the people who lived in these villages had been exiled and their houses burned down. The case against Kışanak had caused concern within publishing circles and several publishers and authors were present at the hearing to offer their support to him. He was sentenced to 5 months in prison yet the penalty was converted into a judicial fine.[368] In a different case, Istanbulite-Armenian journalist Hrant Dink was prosecuted in 2006 after he had used the term "genocide" in a statement he made to Reuters and had explained this in his column by stating that: "I say, surely this was a genocide because the outcome already defines and names it. We see that people who had lived in this land for four thousand years have now disappeared because of what happened."[369] The indictment against Dink had merely pointed out that these words were denigrating Turkishness.[370]

On another note, during the early years of AKP there were many cases under Article 301 that were initiated by citizens who, according to a report by the Turkish Publishers Association, were organising to turn the courts into a platform for an ultra-nationalist campaign.[371] Prosecutors acted on these complaints and many defendants were convicted. Furthermore, nationalist or Kemalist civilian groups were gathering at the courthouses and causing ruckus on the trial days of acclaimed authors and columnists such as Orhan Pamuk, Elif Şafak, and Murat Belge. In other words, non-state actors emerged as prominent elements in flaring up public campaigns, which influenced the decisions of the courts. Around this time Hrant Dink, who was being prosecuted under Article 301, was murdered outside the offices of the newspaper he headed over.[372] A similar lynching campaign against Taner Akçam, a historian controversial for his work on the Armenian genocide, had waned when the court dropped the case against him (also under Article 301), confirming the incendiary power of the court cases. Publications on minorities also became targets of nationalist campaigns and judicial action around this time. The Freedom to Publish Report from 2007 prepared by Turkish Publishers

[368] "301; görme, yazma, bilme diyor," *Evrensel*, 27 December 2005,https://www.evrensel.net/haber/168252/301-gorme-yazma-bilme-diyor, accessed:19 May 2023; "Adaletin 301 nolu Kılıcı kesiyor hala," *Bianet*, 22 December 2005,https://m.bianet.org/bianet/medya/71975-adaletin-301-nolu-kilici-kesiyor-hala, accessed:19 May 2023.
[369] "Soykırım oldu diyen Dink'e yeni soruşturma," Bianet, 18 July 2006, https://bianet.org/cocuk/medya/82430-soykirim-oldu-diyen-dinke-yeni-sorusturma, accessed: 19 May 2023.
[370] The case was dismissed following Dink's murder. "Hrant Dink nelerden yargılandı?," *Internet Haber*, 19 January 2007, https://www.internethaber.com/hrant-dink-nelerden-yargilandi-63546h.htm, accessed:19 May 2023.
[371] TYB, *Yayınlama Özgürlüğü Mücadelesinin 20 Yılı*, 106.
[372] The murderer, Ogün Samast, was 16 at the time and allegedly acted on orders from another criminal Yasin Hayal. Yet, it is often believed that these non-state actors received help or support from certain groups entrenched within the state or groups close to the "deep state" in Turkey. "Deep state" at the time was aligned with the republican elite.

Association indicated that due to violence perpetrated by ideological groups towards those exercising their freedom, 2006 was one of the "most negative years in terms of freedom of expression and of publishing."[373]

More recently, there was an increase in physical violence carried out by civilian groups against publishers and bookshops. The warehouse of Avesta Publishing which focuses on the Kurdish issue was set on fire in Diyarbakır by an unidentified group in June 2016.[374] Besides, there was an assault in February 2017 on the offices of the popular bookstore and publisher Kırmızı Kedi in Istanbul by two masked individuals.[375] Also, there has been an increasing number of incidents where some authors and publishers were dismissed or prevented from attending book fairs organised under the premises of municipalities or governors. Some publishers were not invited despite repeatedly contacting organisers, while others received invitations that were subsequently revoked. There was also an incident where the stand of Kırmızı Kedi was attacked at the Istanbul Book Fair due to a new book that they had published on the life of Devlet Bahçeli, the leader of the ultranationalist coalition partner of AKP, the Nationalist Action Party (MHP).[376]

Insulting the President

The offence of insulting the President under Article 299 stipulates: "Any person who insults the President of the Republic shall be sentenced to a penalty of imprisonment for a term of one to four years."[377] Hence, the provision does not define the scope of the act of insult against the President. Sınar argues that, with respect to Article 299, too, the courts must draw a line between criticism and insult, and that they must consider the case law of the ECtHR which is binding according to Article

[373] TYB, *Yayınlama Özgürlüğü Mücadelesinin 20 Yılı*, 127.
[374] "Avesta Yayınevi'nin deposu ateşe verildi," *Evrensel*, 12 June 2016, https://www.evrensel.net/haber/282389/avesta-yayinevinin-deposu-atese-verildi, accessed:18 May 2023.
[375] "Kırmızı Kedi Yayinevi'ne kar maskeli 2 kişi saldırdı," *Evrensel*, 10 February 2017, https://www.evrensel.net/haber/307707/kirmizi-kedi-yayinevine-kar-maskeli-2-kisi-saldirdi, accessed: 18 May 2023.
[376] "TÜYAP'ta Sabahattin Önkibar'a saldırı," *Gazete Duvar*, 4 November 2017, https://www.gazeteduvar.com.tr/gundem/2017/11/04/tuyapta-sabahattin-onkibara-saldiri, accessed:18 May 2023.
[377] Article 299 of the Penal Code No:5237 in The Venice Commission, *Opinion on Articles 216, 299, 301, and 314 of the Penal Code of Turkey*, 99.

90(5) of the Constitution.[378] Indeed, under ECtHR case law, the threshold for insult is especially high with respect to politicians. Yet, in practice, as discussed above, the precedents in the ECtHR case law are rarely implemented.

Prosecution under this article (as opposed to investigation under Article 301) is subject to the approval of the Minister of Justice. Yet, despite this requirement, the article has been invoked in an increasing number of cases in recent years, especially since the election of Recep Tayyip Erdoğan to presidency in August 2014.[379] While the number of investigations for insulting the President was 682 in the year of 2014, there were 33,973 investigations in the year of 2021 alone. Meanwhile the number of prosecutions made an equally huge jump from 110 in 2014 to 9,168 in 2021. The number of defendants below the age of 18 also rose from 1 in 2014 to 305 in 2021.[380] In addition, measures such as arrests and detentions on remand have been increasingly used for the charge of insulting the President. In a vivid example, a 16-year-old boy was arrested at school in 2014 for violating Article 299 due to a speech he made at a commemoration gathering. He was later released but the Minister of Justice approved the prosecution. Hence, his prosecution continued, and he was sentenced to 21 months prison, but the sentence was reduced to 11 months due to his age being under 18 and good behaviour in the courtroom. Besides, the court deferred the announcement of the verdict (HAGB was applied, as explained above).[381]

On the other hand, Atalay Girgin, a high school teacher, was investigated in 2016 for insulting the President on account of his novel "Lağımpaşalı" about a politician who comes to power as a principled man but gives up his ideological drive to retain his position.[382] Although there was no case brought against him in the end, he was investigated by the professional authorities, had a salary cut,

[378] Hasan Sınar, "Cumhurbaşkanına Hakaret ve Devletin Egemenlik Alametlerini Aşağılama Suçları", *Ceza Hukuk Dergisi* 10, no:27 (April 2015): 29-69.
[379] Onur Atakan, "Cumhurbaşkanına Hakaret Suçunun İfade Özgürlüğü Kapsamında Değerlendirilmesi" *Bahçeşehir Üniversitesi Hukuk Fakültesi Dergisi 11*, no:141-142 (Mayıs-Haziran 2016): 199-220.
[380] "Son 8 yılda cumhurbaşkanına hakaret soruşturma sayısı 200 bine dayandı," *Cumhuriyet*, 15 September 2022, https://www.cumhuriyet.com.tr/siyaset/son-8-yilda-cumhurbaskanina-hakaret-sorusturma-sayisi-200-bine-dayandi-305-cocuk-davalik-1981115, accessed:14 March 2023.
[381] "Cumhurbaşkanı'na Hakaretten Yargılanan Liseliye 11 Ay Hapis," Hurriyet, 12 September 2015, https://www.hurriyet.com.tr/gundem/cumhurbaskani-na-hakaretten-yargilanan-liseliye-11-ay-hapis-30045579, accesed: 4 July 2023.
[382] Ibid., 13. The title of the book "Lağımpaşalı" which can be understood as an 'insult' rhyme with the nickname "Kasımpaşalı" a term occasionally used to refer to Erdoğan indicating his home neighbourhood, Kasımpaşa.

and was transferred to another city.[383] Girgin's case is important for demonstrating how an investigation under this article, which falls short of a full prosecution can still have a significant impact on the author involved and on the general socio-political atmosphere.

2.2 Terror Propaganda

Article 220 of the Penal Code (Law No:5237) and Article 6 and 7 of the Anti-Terror Law of 1991 are the relevant legal provisions in respect of the charge of terror propaganda. Article 220 stipulates that "any person who establishes or manages an organisation for the purposes of committing offences proscribed by law" will be punished with imprisonment from two to six years. Article 220(8) also penalises making "propaganda for an organisation in a manner which would legitimise or praise the organisation's methods involving force, violence or threats or in a manner which would incite the use of these methods." The penalty for this is imprisonment for one to three years. The crimes of publishing announcements of a terror organisation (Article 6) and carrying out terrorist propaganda (Article 7) under the Anti-Terror Law complements Article 220. Article 7 rules that "anyone who makes propaganda of a terrorist organisation by justifying or praising or inciting the terrorist organisations' methods which contain violence, force, or threat shall be sentenced to imprisonment for a term of one to five years." Besides, the chief editors of the publisher or the media organisation in question will also be sentenced to judicial fine based on 1000 days to 5000 days rate. For both Article 220(8) and Article 7, commitment of the crime through the press and the media is an aggravating circumstance, increasing the penalty by half in each case. Given that there was no requirement for violence to be a factor for either organisations or publications to be charged under this article, unarmed political organisations and political works critical of government could fall under this clause. In fact, the requirement of violence or a threat of violence was not a part of propaganda crimes up until 2013.

[383] "Felsefe Öğretmenine Cumhurbaşkanına Hakaretten yine Sürgün," *Bianet*, 10 March 2017, https://bianet.org/bianet/ifade-ozgurlugu/184375-felsefe-ogretmenine-cumhurbaskanina-hakaret-ten-yine-surgun, accessed: 24 October 2018.

For instance, both the publisher, Ragıp Zarakolu, and the author, Mehmet Güler, of the novel *Decisions Harder than Death* (*Ölümden Zor Kararlar*) were prosecuted in 2009 for "making terrorist propaganda" because the characters in the novel were PKK members.[384] The publisher was acquitted while the author was sentenced to 15 months' imprisonment. Later, the prison sentence was suspended.[385] As another example, Do Publishing's owner Hüseyin Gündüz was prosecuted in 2011 on account of the book *Şırnak is Burning* (*Şırnak Yanıyor*) by Sertaç Doğan. The book had included testimonies explaining what happened before and during Newroz celebrations where dozens of people died on 21 March 1992. The publisher was convicted under Article 7 of the Anti-terror Law to 1000 days prison and the sentence was converted to judicial fine. The Amnesty International maintains that many of the problems encountered by those seeking to exercise rights to freedom of expression are rooted in the broad definition of terror under Article 1. The UN special rapporteur has also maintained that Article 1 does not provide a definition of what type of acts constitute terrorism.[386]

An Amnesty International report on criminalisation of dissent has observed that in cases where Article 220 is involved, the courts often fail to demonstrate any evident link to a terrorist organisation and that the evidence presented for being a member of or committing a crime in the name of an organisation is often equivalent to participating in a demonstration or writing pro-Kurdish articles.[387] In an example concerning the publishing sector, Ahmet Önal was prosecuted in 2007 as the editor of the book *Diaspora Kurds (Diaspora Kürtleri)* by Hejare Şamil for making propaganda for PKK in a manner that legitimised, praised or incited the use of violent methods and hence going against the Article 220(8). The book looked at the relation between PKK and diaspora Kurds in post-Soviet Republics. The prosecutor's case was based on a few paragraphs of the book analysing the popularity of PKK among Kurds in these countries. Önal had maintained in his defence to the court that these paragraphs had been selected out and isolated from the overall content of the book, leading to a wrong conclusion. He had maintained that the author approached the topic scientifically, evaluating PKK's initial popularity along with the reasons of the subsequent loss of support from Kurds living in these

[384] "PKK'lı Roman Karakterleri Hapisle Yargılanıyor," Bianet, 13 August 2009, https://m.bianet.org/bianet/ifade-ozgurlugu/116444-pkk-li-roman-karakterleri-hapisle-yargilaniyor, accessed: 18 May 2023.
[385] TYB, *Yayınlama Özgürlüğü Mücadelisinin 20 Yılı*, 224.
[386] United Nations (UN) Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on his mission to Turkey* (A/hrc/35/22/Add.3)(UN General Assembly, 2017), 5.
[387] Amnesty International, *Turkey: Decriminalise Dissent: Time to Deliver on the Right to Freedom of Expression*, (London: Amnesty International Publications, 2013), 23.

diaspora communities. Moreover, he pointed out that there were no explicit references to PKK in the book. In the end, Önal was acquitted of the charge.[388] Nevertheless, the fact that he was prosecuted points to a significantly wide interpretation of the terror charges identified above by the prosecutor and the judge in the case.

The well-publicized proceeding against Ahmet Şık from 2011 is another example. Ahmet Şık is the author of the book *Imam's Army* (*İmamın Ordusu*), which explored the infiltration of the Turkish state by the Gülenists who are presently referred to as a terror organisation. Şık was remanded in custody in 2011 and charged under Article 220 on account of this book, which was still an unpublished digital manuscript at the time. The investigation and subsequent prosecution were carried out as a part of the notorious *Ergenekon* case. The prosecutor claimed that the manuscript was a document commissioned by the *Ergenekon* terror organisation and that it was written to comply with the media strategies of the organisation.

Şık had denied all the charges and links to the organisation. However, the prosecutor presented documents found in the possession of organisation members, which made references to Şık and his manuscript. After being remanded for over a year and a lengthy trial process spilling over a few years, Şık was acquitted in 2017. The judge presiding the case in the final hearing in 2017 (after the failed coup attempt in 2016) claimed that Şık and other defendants in the case were "framed" by the prosecutor who was close to the Gülen movement. As pointed out by Doğru and Şirin, the judgement amounts to an acknowledgement of the arbitrary detention of Şık.[389] His case is important for clearly illustrating how dominant political forces at a given time determines who gets targeted with criminal prosecutions.

As mentioned above, the talks between the government and the PKK between 2013 and early 2015 had led to revisions in the Anti-Terror Law, which made it harder to categorise expression of opinion as terror propaganda. The talks also generated a political opening where publishing on the Kurdish problem became popular. Several Kurdish language publishers had expressed that the peace

[388] TYB, *Yayınlama Özgürlüğü Mücadelisinin 20 Yılı*, 146.
[389] Osman Doğru and Tolga Şirin, "Human Rights Paradox of Turkey: Punishment for victims and impunity for suppressors," *Research and Policy on Turkey* 2, no:2 (2017):232.

process had a positive impact not only on their work but also on authors who wrote in Kurdish, the readers, the distributors and booksellers.[390] Ulaş Güldiken, who works at Aram Publishing, highlighted that obstacles in terms of publishing in the Kurdish language dropped during this period. He claimed that the kind of covers they had used during that period would not be possible to print at any other time. Nevertheless, after the failure of the peace process, the mood shifted quickly. For instance, more than hundred books published by Aram Publishing was banned.[391] Publishers in Kurdish language point out that many of their books were returned by distributors or booksellers.[392] Also, with the reversion to the security approach and criminalisation of many Kurdish language books, the readers also became hesitant again in buying and reading these titles, being aware that it could be counted as evidence of crime. "Everyone has started to be more distant and hesitant towards the thing called Kurd."[393]

A number of books published during this period were prosecuted after the failure of the peace talks, even where time limitations for prosecutions had lapsed according to the Press Law. For instance, in late 2015, the prosecutor's office in Antep applied to Court (Criminal Courts of Peace, described above) to demand an injunction order to ban 25 books and magazines that were collected in terror operations carried out at homes in three different cities.[394] The judge's decision to grant the order simply read that upon assessing the confiscated material, it was determined that the books and magazines were making propaganda that justified, praised, or encouraged resort to violent methods of a terror organisation and praised a crime and a criminal. Examples are books by well-known journalists, Hasan Cemal and Tuğçe Tatari, *Bir Genç Kadın Gerillanın Dağ Günlükleri* (*Diaries of a Young Woman Guerilla*) and *Anneanne ben aslında Diyarbakır'da değildim* (*Grandma, I was not in Diyarbakır*) respectively. Cemal and Tatari were investigated for "making terror propaganda," "inciting the people to hate and enmity," and "praising a crime or a criminal."[395] For instance, the investigation against Cemal were based on passages and expressions from the book, which the prosecutor claimed portrayed the terror organisation and its members in a positive light. This included

[390] Tufan Sünbül, *Çözüm/Müzakere sürecinin İstanbul'daki Kürt yayınevleri ve Yayıncılığına Etkisi* (Türkiye Kültürleri Projesi) (İstanbul: Bilgi University, 2018), 16, https://www.turkiyekulturleri.org/tr/Dijital-Yayinlar-Detay/39/-Cozum-Muzakere-Surecinin-Istanbul-daki-Kurt-Yayinevleri-ve-Yayinciligina-Etkisi, accessed: 8 July 2024.
[391] Ibid, 20.
[392] Ibid, 22-27.
[393] Ibid,18-19.
[394] Balıkesir, Hatay and Siirt.
[395] TYB, *Yayınlama Özgürlüğü Raporu 2016* (İstanbul: Türkiye Yayıncılar Birliği, 2016), 10-11.

references to Delila, a young female member of PKK, as a "guerrilla" or as "the Sezen Aksu [a very popular Turkish pop singer] of the Kurds," and to the death of a member of a terror organisation as "martyrdom."[396] The prosecutor in the case found no ground for legal action.

The books had faced no charges when they were first published and already passed the 6 months' time limits outlined in the Press Law. Their lawyers challenged the decision but the court upheld the ban on distribution and sale of these books. Subsequently, the lawyers applied to the Constitutional Court but their case is still pending.[397]

In sum, those involved in publishing and book production cannot take the legal framework and how it operates at face value. This is due to the way laws are freely and selectively applied and the way the operation of the legal framework changes in line with the political atmosphere. The judges can evade legal amendments by giving judgements or orders without clear legal reasoning or by ignoring relevant ECtHR case law. Besides, prosecutors can resort to different articles to bring cases against dissenting voices in the wake of legal reforms. Hence, this creates a need for authors and publishers to interpret the overall environment and to assess the boundaries of the politically permissible, which I further elaborate in Chapter 5 with empirical data from field research.

The main challenge in trying to interpret the environment is the sense of uncertainty generated by the legal framework. When judges do not give clear reasonings for their findings of insult (and not criticism) or fail to demonstrate clear evidence of making terrorist propaganda beyond writing of pro-Kurdish articles, they leave the scope of these crimes vague. Besides, as the cases discussed above indicate, the policies and the alliances of the government have a significant impact on which sections of the spectrum of publishing on variety of issues and orientations get to be targeted with criminal prosecutions in that period. The boundaries of permissibility become blurred and subject of interpretations and risk assessment by producers and transmitters of ideas in the industry. This has become even more clear since the consolidation of the power of the executive over the judiciary.

[396] "Hasan Cemal, Tuğçe Tatari ve Müslüm Yücel'e 'terör propagandası'ndan takipsizlik, kitap yasağına devam!" *T24*, 17 June 2016, https://t24.com.tr/haber/hasan-cemal-ve-tugce-tatariye-takipsizlik-kitap-yasagina-devam,345722, accessed:24 November 2018.
[397] "Hasan Cemal ve Tuğçe Tatari'den 'kitap' başvuru," Hürriyet, 21 December 2015,https://www.hurriyet.com.tr/gundem/hasan-cemal-ve-tugce-tatariden-kitap-basvuru-40029821, accessed:22 June 2023.

Especially after the failed coup attempt, the declaration of emergency, and the purge of the judiciary, the dual state in Turkey seems to be entrenched and operates, as Tekin has argued, through the uncertainty the legal framework generates.

3. An Overview of the Publishing Sector

3.1 Expansion of the Industry

AKP's decentralisation policies and market reforms in the economic sphere in 2000s had repercussions for the publishing sector. On the one hand, the industry expanded and diversified. On the other, marketisation provided the governing elite with additional economic and administrative tools for intervention, control, and promotion of actors positioned close to it.

The publishing sector steadily expanded in the last two decades because of market reforms and the economic growth under AKP. The co-ordinator of the TÜYAP Istanbul Book Fair stated in 2015 that the number of readers in Turkey was growing and that there was also an important increase in the number of bookstores in Istanbul.[398] In 2019, Turkey's publishing market was estimated to be the 11th largest in the world with an annual revenue of 2.5 billion dollars.[399] The number of new published titles rose from 7,795 in 1995 to 21,000 in 2004, and reached 32,339 by 2008. By 2020, this number equalled 78,500.[400] While educational books hold the biggest market share, culture books, which include non-fiction, literature, and children's books, have picked up in their share of the sector since mid 2010s. Indeed, according to data provided by Idefix, one of the biggest online book sellers in Turkey, the most popular genre of books sold in 2022 were Turkish and international novels, self-help books, and psychology books.[401] For instance, a new novel on the life of Sultan

[398] Hakan Güngör, "Fuar Kitaplar için sanıyorduk," *Evrensel*, 29 November 2022, https://www.evrensel.net/haber/475709/fuar-kitaplar-icin-saniyorduk-meger-kitaplar-fuar-icinmis, accessed:3 August 2023.
[399] Ed Nawotka, "The International View: Raising Turkey's Publishing Profile," *Publishers Weekly*, 15 March 2019, https://www.publishersweekly.com/pw/by-topic/international/international-book-news/article/79560-the-international-view-raising-turkey-s-publishing-profile.html, accessed:3 August 2023.
[400] There was only a decrease in the year of the failed coup attempt when 54,446 book titles had been published. See the market report prepared by Turkish Publishers Association from 2020, https://turkyaybir.org.tr/2020-yili-turkiye-kitap-pazari-raporu/, accessed:3 August 2023.
[401] "Türkiye ne okuyor," Idefix, accessible at: https://www.idefix.com/turkiye-ne-okuyor, accessed:3 August 2023.

Abdülhamid in exile by the acclaimed author Zülfü Livaneli, a book based on interviews with the famous historian İlber Ortaylı, self-help books by the prominent psychologist Doğan Cüceloğlu, and the English language classic "*The Animal Farm*" by George Orwell in its translated version in Turkish were among the bestsellers in 2022.[402] In 2019, the Minister of Education printed around 153.4 million copies out of the 577 million copies printed that year. In other words, despite the decentralisation policies, the state still occupies an important place in the field of educational books which amount to approximately 228.6 million copies (53.96 per cent of the market). The category of culture totalled around 148 million copies (34.93 per cent of the market).[403]

The number and variety of publishers is no less significant than the number of copies printed. Overall, the sector is quite diverse and vibrant.[404] Accordingly, the ownership patterns are also varied. There are prominent publishers owned by private banks or industrial groups. These actors have entered the publishing sector around the time of the first wave of liberalisation in 1980s and early 1990s. However, there are also many independent publishing houses with significant capital. Many of these were established in the wake of the 1980 coup d'état by individuals who hailed from political movements. There are also many publishing houses with smaller capital who are more ideologically oriented in their line of publishing. Generally, all publishers, even those ideology-oriented actors, must generate revenue to survive and hence, are commercial actors. However, there are several smaller and ideal or mission-oriented actors who put less emphasis, compared to others, on the motive of profit making. The annual book fairs organised by TÜYAP in cooperation with TYB both in Istanbul and in other cities in Anatolia reflect the diversity and vibrancy of the sector. The book fairs open to the public are considered major cultural events and attract hundreds of thousands of visitors. My personal experience at several book fairs testified to the lively spirit and the importance of these events.

[402] See the annual bestseller list on the online bookseller Kitapyurdu at https://www.kitapyurdu.com/index.php?route=product/best_sellers&list_id=6&filter_in_stock=1, accessed:3 August 2023.
[403] Within the category of culture, non-fiction occupied the biggest place with 79.3 million copies. It was followed by works of literature with 27.3 million copies. Apart from the category of culture, books on faith totalled approximately 36.9 million copies amounting to 8.71 per cent of the industry. See Türkiye Yayıncılar Birliği, 2019 Türkiye Kitap Pazarı Raporu, https://turkyaybir.org.tr/2019-turkiye-kitap-pazari-raporu/, accessed: 3 August 2023.
[404] In 2014 there were 1732 publishers. See Türkiye Yayıncılar Birliği, 2014, Türkiye Kitap Pazarı Raporu, https://turkyaybir.org.tr/2014-turkiye-kitap-pazari-raporu/, accessed: 3 August 2023.

3.2 Shaping Publishing through Selective Sponsorship

The state temporarily stopped its publishing activities in 2003 and announced its decision to re-organise its policies in this field. Going forward, the government decided to print only limited material, support the expansion of the private sector, work on the legal infrastructure to help the process of industrialisation, and encourage the promotion of the Turkish language works on international platforms. Within this framework, the Ministry of Culture provided financial assistance to Turkish publishers seeking to attend international book fairs and initiated the Project on International Expansion of Turkish Culture, Art and Literature (TEDA) project. The project provided financial support on a competitive basis for the translation, publication, and promotion of works on Turkish literature, culture, and art. The main goal of the TEDA was to increase the visibility and presence of Turkish authors in international platforms.

The project initially created widespread excitement and allowed the works of Turkish language authors from a variety of political backgrounds to be translated into numerous languages. However, by the time I carried out my fieldwork in 2019, there appeared to be a shift in opinion: Several interlocutors had indicated that in recent years the TEDA project had become dominated by partisanship, privileging favourable groups close to the ruling government. A literary agent explained to me that the selection process in the TEDA project had become less and less transparent over the years.[405] An author whose books had been translated with TEDA in the past had also remarked that authors critical of the government, like her, were being snubbed by the TEDA programme in recent years.[406] Echoing their dissatisfaction, the 6th National Congress of Publishers organised in 2018 called for decisions of TEDA support to be made by a commission comprising of (at least 5 members) publishers, authors, literary agents, and representatives of translators.[407]

[405] Interview with Hülya, 6 May 2019.
[406] Interview with Leyla, 22 May 2019.
[407] Altıncı Ulusal Yayın Kongresi Sonuç Bildirgesi (Ankara. T.C. Kültür Bakanlığı Kütüphaneler ve Yayımlar Müdürlüğü, 2018), 17, https://turkyaybir.org.tr/sektorel-raporlar/, accessed: 3 August 2023.

3.3 Use of Market Tools to Consolidate Control

After consolidating its power, the AKP government began to co-opt powerful actors and help its allies acquire positions of power in the industry. The ruling government have helped friendly actors acquire major media outlets. For instance, despite poor financial indicators regarding mainstream print media, Demirören Group, a large corporation that operates in multiple sectors and is close to the Erdoğan family, bought the newspapers *Milliyet* and *Vatan* from Doğan Media and appointed a former advisor of Erdoğan as the head of the media branch in 2012.[408] Later in 2018, Demirören Group bought the remaining media outlets and assets of the Doğan Media Group (which included TV channels *Kanal D*, *CNN Turk* and newspapers *Hürriye*t, *Posta*) with 700 million dollars lent by a state bank on favourable terms that caused controversy.

Moreover, another large conglomerate close to the AKP government, the Kalyon Group, acquired the two largest bookstore chains in the country, the NT and D&R bookstores in 2015 and 2018 respectively. NT bookstores were owned by Kaynak Holding, which allegedly belonged to Gülenists. Before the failed coup attempt, the Court had placed NT bookstore chain, with 148 bookstores around Turkey, under government conservatorship on account that they had operated with the "Fettullah Terror Organisation" (The Gülenist organisation).[409] After this, Gülen's book were no longer sold at NT stores.[410] Subsequently, all the assets of Kaynak holding, including the NT bookstore chain, were acquired by Kalyon Group (Turkuvaz Medya).[411] As for D&R, it is noteworthy that a report prepared by Foundation for Political, Economic, and Social Research (SETA), a think-tank close to the government, had pointed out in 2017 that "except for bestsellers, conservative and religious publishers rarely find space on the shelves of D&R bookstores," which "hold 25% of the book market in Turkey."[412] Hence, when Kalyon Group (Turkuvaz Medya) bought the D&R chain in 2018, there was widespread apprehension in certain sections of the industry that they would start

[408] Aslı Tunç, *Media Ownership and Finances in Turkey: Increasing Concentration and Clientelism* (South East European Media Observatory, 2015), 7.
[409] The Court appointed a governor for Kaynak Holding and the enterprises under its umbrella. See "Kaynak Holdinge ait 12 şirkete kayyum atandı," *Mynet*, 27 November 2015, https://finans.mynet.com/haber/detay/ekonomi/kaynak-holdinge-ait-12-sirkete-kayyum-atandi/105416/, accessed: 3 August 2023.
[410] Ibid.
[411] The bookstore chain is no longer operational.
[412] Mehmet Akif Memmi, *Siyasi Bir Alan Olarak Türkiye'de Yayıncılık* (Ankara: SETA Yayınları, 2017), 16.

having issues with access to the shelves at the bookstore chain. Following these developments and combined with the atmosphere created by the state of emergency, several publishers stated that both D&R and some independent bookstores had become reluctant to purchase copies of titles on politically sensitive topics such as the Kurdish issue, or they did not put such titles on display.[413]

Furthermore, the government also exerts indirect influence over the publishing sector through the advertisements public bodies and powerful economic actors close to the government publish in media outlets. An example is an Islamist literature magazine that stopped receiving municipality support and advertisements from big corporations close to the government in the wake of the attempted coup. The reason for withdrawing funds was the refusal of the magazine to feature a military tank and the Turkish flag on its cover. According to the chief editor's account, they did not publish the cover that was demanded of them "because we did not know what happened on July 15 [the day of the failed coup attempt]. There might be different groups involved. Yet, when we did not publish that cover, we were considered not to have paid our respect, when we did not pay homage, we were counted as the opposition. In their eyes, we are now the same as the left wing and opposition groups."[414] The case of this magazine illustrates how the government employed tools beyond law to discipline media outlets, especially groups which relied on financial assistance.

[413] Interview with Zeynep, 5 May 2019; Interview with Hüseyin, 26 March 2019.
[414] Interview with Yusuf, 10 October 2019.

3.4 Professional Associations, Solidarity and Polarisation

During fieldwork, I came upon a sharp distinction between the two publishers' associations that are active in the sector: The Turkish Publishers Association (*Türkiye Yayıncılar Birliği*, "TYB") and the Press and Publishing Association (*Basın Yayın Birliği*, "BYB"). As described previously, TYB is generally more varied as it includes mainstream liberal, leftist, and some traditionalist/ Islamist publishers. On the other hand, BYB is mainly made up of publishers who hail from the traditionalist/ Islamist political movements.

In the early years of AKP rule, the division between the two associations turned into a conflict over the question of representation of Turkey in international book fairs. In 2005, the Ministry of Culture asked the two professional associations to participate jointly at the 2006 Frankfurt Book Fair, the most significant annual international book event. It appears that TYB, being the more significant party, objected to the call of the government to organise the stand together with BYB. TYB believed BYB comprised less established publishers and did not represent the publishing sector in Turkey. In the end, BYB organised Turkey's stand at Frankfurt Book Fair and TYB did not participate in Turkey's country stand and set up a second stand of their own.

The issue became even more pressing when Turkey was designated as the guest of honour for the 2008 Frankfurt Book Fair. Subsequently, a national publishing committee, where both associations participated, was established in 2007 and a compromise was reached.[415] This national committee then went on to organise Turkey's country stand at the Frankfurt fair and organised the fifth Turkey Publishing Congress in 2009. Subsequently, the two associations cooperated on economic and technical issues, such as piracy and the advancement of copyrights, under the Publishers Copyright and Licencing Association (YAYBİR) and to some extent under the Federation of Publishers Associations (YAYFED) since 2011.

However, political tensions following the Gezi protests of 2013 affected the relations between the two associations as they both expressed political viewpoints, with TYB endorsing and BYB

[415] Erken, "Türkiye'de Yayıncılık Alanının Dönüşümü 1980-2015," 155-156.

criticising the protests.[416] Indeed, a report published by SETA, a think-tank close to the government, on the publishing industry in February 2017 criticised the positive approach of TYB and "dominant publishers in the industry" towards "the Gezi Park Violent Acts."[417] The report underlined that these publishers issued books which "supported and romanticised the protests."[418] According to the report, the fact that none of the best-selling publishing houses published anything critical of the "Gezi Park Violent Acts" reflected their "problematic" hegemony and one-sidedness.[419]

Hence, it is not surprising that the cooperation on issues such as copyright and taxes did not translate into cooperation with respect to freedom of expression campaigns. For instance, BYB does not participate in the freedom of expression awards TYB annually gives since 1995. In fact, its members regard these events with scepticism. For instance, commenting on the annual freedom of expression awards organised by the TYB, a publisher from BYB who also participates in the common industry platforms, YAYBİR and YAYFED, indicated that he had attended the ceremony a few times but found it "too political."[420] Many other members of BYB, with whom I spoke during fieldwork, held similar views. When I interviewed another member of BYB and asked him about the freedom of expression awards given by TYB, he got offended and told me that having asked this question, it was clear that I "need to read many more books to better understand Turkey."[421]

In addition to a lack of cooperation between the associations on political issues, there is also some resentment on the part of traditionalist/ Islamist publishers towards what they call "the left" within the publishing industry. The theme of "the dominance of the left" in the industry recurred throughout the interviews with these publishers.[422] One of them had expressed dissatisfaction that the "dominant culture is still left-liberal. They see the domain of publishing as their property."[423] Similarly, SETA's report on the publishing sector highlighted "the still intact western secular hegemony" in the industry.[424] It claimed that this hegemony placed a constraint on the expression of

[416] Erken, "Türkiye'de Yayıncılık Alanının Dönüşümü 1980-2015," 156.
[417] Memmi, *Siyasi Bir Alan Olarak Türkiye'de Yayıncılık*, 15-16.
[418] Ibid, 16.
[419] Ibid. The report also emphasized how BYB had released a statement criticising the protests at Gezi and calling them "illegitimate."
[420] Interview with Muhittin, 5 November 2019.
[421] Interview with Nurettin, 19 November 2019.
[422] Interview with Yusuf, 10 October 2019; Interview with Fahrettin, 25 December 2019.
[423] Interview with Tevfik, 7 October 2019.
[424] Memmi, *Siyasi Bir Alan Olarak Türkiye'de Yayıncılık*, 10.

different ideas. Perhaps to challenge the dominance of TYB in the TÜYAP Book Fair which is organised annually since 1982, BYB started its own book fair in cooperation with another fair organising company, the CNR. The report by SETA had argued that the state institutions ought to support new book fairs such as the CNR, which provide "an alternative to the monopolisation" in the industry.[425] The first convention of the CNR Book Fair took place in 2015 and in 2017, the third CNR Book Fair was inaugurated by Tayyip Erdoğan in a show of support. Nonetheless, some of the BYB members still claimed that the government failed to change the power balance in the sector.[426] Indeed, a columnist in a newspaper close to the government criticised the TÜYAP Istanbul Book Fair affiliated with TYB for allegedly excluding publishers "whose views they disapprove" and claimed that there were some publishers who refused to attend the CNR Book Fair affiliated with BYB.[427]

However, there is also some discontent with TYB among smaller publishers many of whom are openly critical of the ruling government. Hence, a new publishers' association, in the form of a publishers' cooperative (*Yayıncılar Kooperatifi*, YAY-KOOP), was established by 16 small to medium publishers when I was conducting fieldwork in the summer of 2019. There was a sentiment amongst these publishers that the TYB was more focused on serving the interests of the medium to large institutions. There was also the sentiment that the TYB was not "courageous" enough either on the political or on the economic front. Small publishers at the plenary session complained about the rising prices of the stands at the book fairs organised by TÜYAP and TYB and the increasing power of a small group of people over the distribution and sales channels. It was pointed out by one of the publishers during the plenary session of the cooperative, which I attended, that the dominance of D&R over retail channels and the power of a few firms over distribution and supply chains narrowed the space for smaller publishers who traditionally push the boundaries of the freedom of expression.[428] Another publisher underlined that "there is always an economic dimension to freedom of expression. Today most booksellers are chain stores, they determine the market and they impose their conditions."[429] So, it was stated that the cooperative would "help increase and collectivise [their] bargaining power in the market mechanism and to create capital accumulation, to create pressure"

[425] Memmi, *Siyasi Bir Alan Olarak Türkiye'de Yayıncılık*, 19.
[426] Interview with Fahrettin, 25 December 2019.
[427] İsmail Çağlar, "Kitap Fuarının Ardından," Takvim, 8 March 2017, https://www.takvim.com.tr/yazarlar/yrd-doc-dr-ismail-caglar/2017/03/08/kitap-fuarinin-ardindan, accessed:19 May 2023.
[428] Field notes, First plenary meeting of YAYKOOP, 19 May 2019.
[429] Interview with Işık, 26 March 2019.

and to "create our own channels and to develop alternatives in the face of censorship policies narrowing our domain."[430] They also wanted to build a common brand through the cooperative to challenge the dominance of the bigger publishers and to expand their readership base by organising alternative, smaller book fairs.[431]

In sum, the publishing sector has expanded in parallel to the overall economic growth in the country under AKP government. While the AKP government started off on a decentralising agenda and with equal distance to different actors in the industry, it has tried, through various means described above, to address the dominance of the liberal and leftist publishers and authors in the industry by giving support and encouragement to publishers and authors who share similar ideological backgrounds and stand close to the government. Having said that, the government does not shun and in fact cooperates with secular, leftist and liberal publishers. On the other hand, the leftist-liberal publishers are not one uniform group; there are differences between them depending on a variety of factors, and as described, the difference in size is one important variable, which has led to alternative forms of organisation. As I will show in Chapter 5, these differences account for the diversity in their lived experiences under the AKP rule.

4. Conclusion

Overall, liberalisation in certain spheres while authoritarian consolidation in others constituted a prominent pattern during most of AKP rule. This has conveyed different, sometimes conflicting messages, to the society at large, where certain groups felt at ease and unencumbered while others experienced increasing repression at different times. This is still the case today.

Over the years, the AKP government has successfully eliminated the tutelary position of the military and the power of the Republican alliance, followed by the eradication of its one-time close ally, the Gülen movement. As a result, it has ensured a cooperative judiciary, initiated a presidential

[430] Field notes, First plenary meeting of YAYKOOP, 19 May 2019.
[431] By 2022, the cooperative reached 41 members, organised a series of local book fairs, started online sales through the cooperative's website and set up a small bookshop under the cooperative's name.

system and diminished the powers of the parliament. Hence, while competitive elections, functioning parliament and courts, and constitutional protection of freedom of liberties remain, the government's hold over these democratic institutions have significantly increased.

A combination of a democratic form with authoritarian substance has allowed the state to extend its control without much difficulty. This interplay between form and substance generates precarity that publishers must face. More and more, legal form is being employed to control dissenting voices. Defamation, and terror-related charges, amongst others, have been used to punish and intimidate actors in the publishing world. Penal laws are freely and selectively applied by a generally cooperative judiciary and the political alliances of the government seem to determine who gets to be targeted. In any case, with the consolidation of power of the executive, it appears that people from a wider range of class, ethnic, and political backgrounds are being categorised as sources of threat and targeted.

Yet, in addition to the weaponisation of criminal charges against segments of the publishing industry, the government also took on a "supportive" role in the form of financial support programmes (like TEDA) which have, over time, increasingly favoured publishers who are positioned close to it. Besides, the government has successfully co-opted many conservative-nationalist publishers and authors simply by ending, when they came to power in 2002, the pressure they faced since the 1997 intervention.

Meanwhile, in line with AKP's market-oriented approach, many private actors in the sector grew, new actors emerged, and the publishing sector significantly expanded during this time. The increasing dynamism of the industry makes it necessary for the two publishers' associations to cooperate on economic and technical matters concerning the industry. However, they do not come together to show sector-wide solidarity when an author or a publisher is prosecuted. In addition to a lack of cooperation, there seems to be resentment about what has been referred to as "the dominance of the left" in the industry. By supporting publishers and authors who are close to it, the AKP government has tried to address this issue. At the same time, the government does not stop cooperating with prominent actors in the field who are often secular and liberal publishers.

In the following chapters, I examine the ways in which intellectuals are affected by coexisting liberal and authoritarian forces in society, the widening weaponisation of criminal law against opponents, and the accompanying atmosphere of precarity. In the next chapter, I focus on examining the link between the atmosphere of precarity and criminal prosecutions of those the government perceives as sources of threat.

Chapter 4 - Courts and Political Dissent: Weaponization of Law and Resistance

"Silivri is cold!" (*Silivri Soğuktur!*)[432]

As discussed in the previous chapter, an increasing number of writers, publishers, academics, journalists, lawyers, and opposition politicians have had to appear in court to defend themselves against defamation and terror charges in recent years. Even issuing press statements or participating in a demonstration have formed the basis of indictments. In addition to targeting dissenting voices, what other repercussions can criminal charges produce? In this respect, the current chapter examines, with examples from the field, how the government and a cooperative judiciary employ a combination of defamation, anti-terror laws and accusations of crimes against the state to generate an atmosphere of precarity amongst the intellectual creative middle class in Turkey.

On the other hand, as it has been discussed in Chapter 1, judicialization of repression can sometimes lead to unfavourable outcomes for an autocrat or a ruling government depending on how the trial plays out. Sometimes, prosecutions can turn the defendants into heroes to the dismay of the rulers. In this respect, it is equally important to explore the dynamics and lived experiences within the courtrooms as the criminal hearings unfold. How do the defendants and their defence counsel respond to the charges? Does the audience feature or step in at any point during the hearings?

In the first section of the following chapter, I examine the practices employed at the investigation and prosecution stage of criminal charges against dissident figures and groups. In this respect, I focus on defamation, terror-related charges, and crimes against the state heard at the first instance and heavy penal courts respectively. In the second section of the chapter, I consider the strategies employed by the defendants, their defence counsel, and the audience during the

[432] The aphorism, which refers to the Silivri Prison, has become a popular phrase uttered when someone criticises the government in public. In response, the government changed the name of the Silivri Prison Complex to Marmara Prison Complex in September 2022.

hearings in the court. In this regard, I look at the practices of accommodation and resistance in the courtroom and the solidarity networks organised around the defendants.

1. Manifestation of Power and the Criminalisation of Dissent

1.1 Capricious Criminal Investigations with Strategic Hostility

Every step of the criminal legal procedure, from triggering an investigation to the trial and the sentencing, is being used to contribute to the atmosphere of precarity. A prosecutor can easily launch an investigation based on a report of a crime or some "information" received by law enforcement agents. For instance, ordinary citizens can anonymously report "crimes" to the President's Communication Centre (the 'CİMER'), usually resulting in a criminal investigation. While reporting directly to the CİMER (and previously BİMER) was initially meant for enhancing the delivery of public service, over the years, it has increasingly become a platform where ordinary citizens inform on each other to the state. Several journalists have been investigated based on reports filed with the CİMER.[433] Moreover, a single statement on a social media platform criticising the policies of the state or the President can lead to the machinery of criminal justice to wield power over an ordinary citizen**.** For "material reality" to be examined and "for a fair trial," the prosecutor is required by the Code of Criminal Procedure to collect evidence both for and against the suspect while investigating the report of a crime with the help of the police force.[434] Yet, in practice, the prosecutors frequently bring cases without, what could reasonably be called, an investigation.[435] The Commissioner for Human Rights of the Council of Europe (the "Commissioner") reports that in practice the "prosecutors often fail to take account of evidence or

[433] "CİMER," in *Bianet Medya Gözlem Veritabanı*, Bianet, https://medyagozlemveritabani.org/?fwp_searchd=cimer, accessed:14 March 2023.
[434] Code of Criminal Procedure (No: 5271), Article 160.
[435] Marcel Lemonde, *Needs Assessment Report and Reccommendations of Action for Turkish Criminal Justice Sytem* (The Council of Europe, 2013), https://rm.coe.int/16806f234c, accessed: 14 March 2023.

witness statements in favour of the defendant."[436] Besides, many investigations go on for extended periods of time and require the suspect to hire a lawyer and interact with the prosecutor and the police. Hence, the process itself is often costly for the suspect.

As mentioned in the previous chapter, Criminal Peace Judgeships, established in 2014, supervise criminal investigations of all types of cases. They have the power to issue search and seizure warrants, as well as warrants of arrest and detention. They also have the power to remove content from the Internet, and to block access to Internet websites. They review decisions of the prosecutors on non-prosecution.[437] This magistrates' system operates as a closed circuit; so, objections to their orders can only be heard by another Criminal Peace Judge. Hence, the drop in the number of magistrates' courts after the establishment of the Criminal Peace Judgeships is important with respect to the right to appeal. For instance, previously, there were 93 magistrates' courts in the Çağlayan Palace of Justice in Istanbul alone. After 2014, the number dropped to 6, meaning that, when an order of one of the six criminal peace judges is contested by an accused, it is one of the other five judges who decide on the objection. Jurist Ayhan Erdoğan argues that this made it much easier for the ruling government to establish and maintain control over these judges who give important orders in criminal investigations against government critics.[438]

During the investigation process, the Criminal Peace Judges generally do not adequately scrutinize the demands for orders made by the prosecutors. For instance, according to the Commissioner, the decisions of the magistrates' court (or Criminal Peace Judges) concerning initial and continued detention and Internet blocking lack individualised arguments and reasoning, which consider the freedom of expression standards established by the case law of the ECtHR. Instead, the Commissioner points out that decisions often "consist of stereotypical formulas limited to the enumeration of statutory provisions and the final conclusions of the judge, making them

[436] Thomas Hammarbeg, *Report by Commissioner for Human Rights of the Council of Europe on administration of justice and protection of human rights in Turkey*, (Strasbourg, Council of Europe, 2012) Report No:CommDH(2012)2, 26.
[437] The Venice Commission, *Turkey: Opinion on the Duties, Competences and Functioning of the Criminal Peace Judgeships*, Opinion No.852/2016 (Strasbourg, the Council of Europe, 2017).
[438] Ayhan Erdoğan, "Sulh Ceza Hakimliği," in *Türkiye'de Hukuku Yeniden Düşünmek*, ed. Haluk İnanıcı (İstanbul: İletişim Yayınları, 2015), 275.

fully interchangeable from one case to another."[439] Several lawyer-interlocutors referred to search orders issued by the Criminal Peace Judges as "copy-paste orders".[440] This is because they rarely discussed or identified the facts of a given case with a view of identifying "reasonable doubt," as is typically required by the Code of Criminal Procedure.[441] Besides, as a strategy to generate fear, the police generally carries out search orders around the break of the dawn, even if the crime under investigation is defamation against the President. Hence, the entire household gets woken up and alarmed by the searching party of the policemen. Books found in the personal libraries of the suspect have been (and can be) identified as evidence of the crime, especially with respect to terror charges. One of my researcher-interlocutors told me that he had gotten nervous about the books on the Gülen movement in his library when the police came to search their house early in the morning. He had been afraid that those books "could be used to somehow connect him to the movement."[442] Indeed, due to past and ongoing examples, there is a perception that books in a personal library can be implicated as evidence in a criminal investigation. This leads to anxiety and uncertainty among the people and the word "somehow" is a good indication of that.

For a specific catalogue of crimes which include crimes against the state and terror related crimes, Criminal Peace Judges frequently give restriction orders on case files. Several lawyer-interlocutors have indicated that judges grant these orders automatically without questioning, as required by the code, whether the defendants' access to the case files may "jeopardize the purpose of the investigation."[443] Restriction orders remain in force until an indictment is issued and severely limit the defence counsel's ability to access the case files and follow the investigation. Lawyers whom I interviewed expressed frustration that the courts often apply restriction orders beyond the provisions of the Code of Criminal Procedure. They explained to me that under the provisions of the Code, the defence counsel can access the testimony of the suspect and the expert reports even where there is a restriction order in place.[444] However, in practice, the restriction order

[439] The Council of Europe, *Third party intervention by the Council of Europe Commissioner for Human Rights in Wikimedia Foundation, INC. v. Turkey,* CommDH(2019)28 (Strasbourg, 2019), 7.
[440] Interview with Ramadan, 8 May 2019 ; Interview with Toprak, 15 May 2019; Field notes, 21 May 2019.
[441] Article 116 of the Code of Criminal Procedure (No:5271) states that "In cases where there is *reasonable doubt* that he may be arrested, or evidence of the crime may be obtained, then a body search and a search of the belongings, or a search in the dwelling, business place and in the other premises of the suspect or the accused may be conducted."
[442] Field notes, Informal conversation with researcher-interlocutor Yasin, 21 December 2018.
[443] Code of Criminal Procedure (No:5271), Article 152 (2).
[444] Code of Criminal Procedure (No:5271), Article 153 (3).

is stretched to cover those documents too. Many lawyers representing political dissidents, and whom I interviewed, also believe that restriction orders have become instrumentalised for buying time to gather or fabricate evidence. Teoman, one of my lawyer-participants, had suggested that "(The prosecutor) must hide the case, otherwise, if they open it, it is empty. So, they must conduct the investigation secretly."[445] Considering that sometimes the indictment is not issued for more than a year, it is clear how restriction orders keep the defendants and the defence counsel immersed in uncertainty. Besides, the same court can give pre-trial detention orders in combination with the restriction orders, which means that, the suspect can be kept in prison with no means of ascertaining, let alone challenging, the case against him.

In sum, ordinary citizens can easily find themselves as suspects in a criminal investigation and then be subjected to searches and other orders. The use and abuse of criminal legal procedure creates a sense of uncertainty as they cannot know what will happen and how.

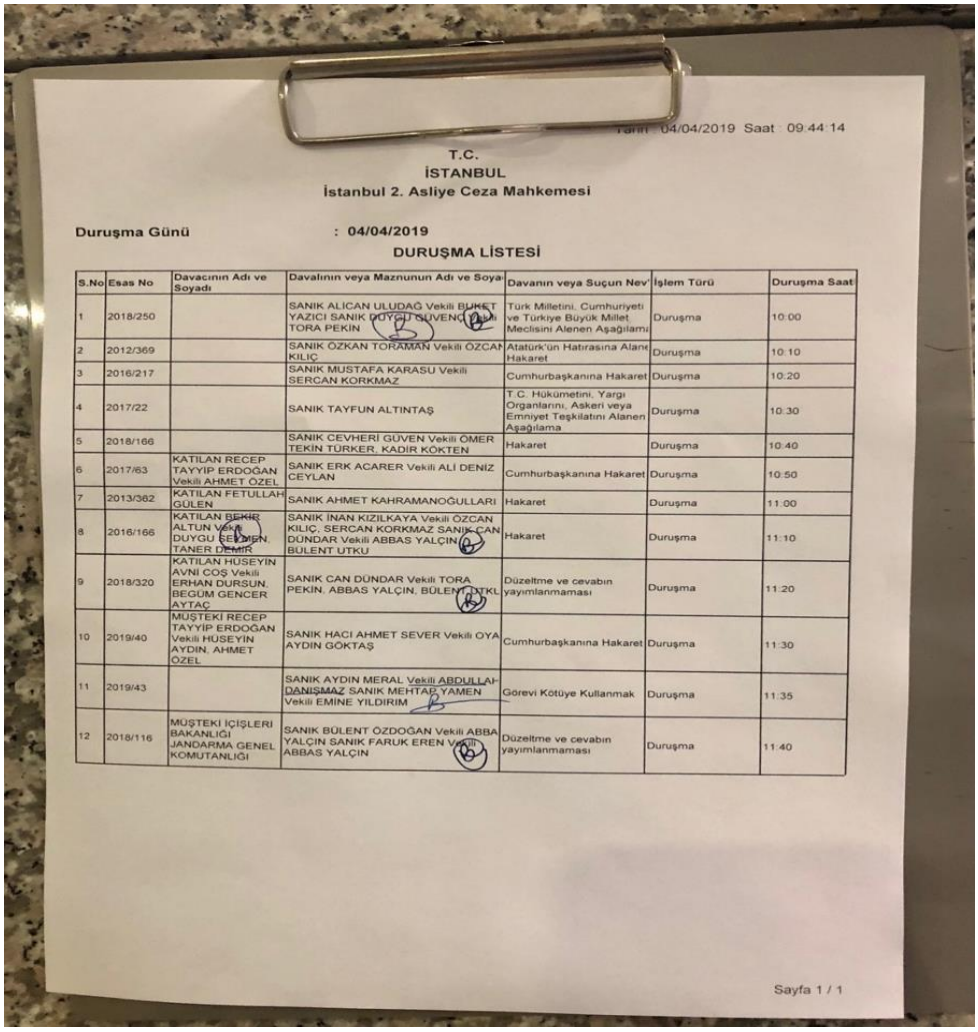
1.2 Defamation Cases and the Courts of First Instance

It is important to note that the experience of the suspects and the defendants accused of the crimes of defamation differ from the experience of those charged with terror-related crimes or crimes against the state. For instance, defamation and insult charges are not among the catalogue of crimes for which restriction orders can be given. As another example, detention orders issued for defamation and insult charges are usually lifted after a couple of days. As I elaborate below, those investigated or charged with terror-related crimes or crimes against the state endure a relatively more volatile and brutal legal process.

Defamation charges are usually heard at the first instance courts that are specialised in media-related crimes. Given that a significant amount of the defamation investigations materialise into prosecutions, the list of hearings on a given day at the Second Criminal Court of First Instance

[445] Interview with Teoman, 08 May 2019.

at the Çağlayan Palace of Justice in Istanbul is likely filled with those charges. The list I had gathered on April 4, 2019 from the Second Criminal Court of First Instance at the Çağlayan Palace of Justice consisted of charges for "publicly insulting the Turkish nation, the Republic, and the Grand Turkish National Assembly" (*Türk Milletini, Cumhuriyeti, ve Türkiye Büyük Millet Meclisini Alenen Aşağılama*), "publicly insulting the legacy of Atatürk" (*Atatürk'ün hatırasına alenen hakaret*), "publicly insulting the government of the Republic of Turkey, the judicial institutions, the army or the police force" (*T.C. Hükümetini, Yargı Organlarını, Askeri veya Emniyet Teşkilatını Alenen Aşağılama*), "insulting the President" (Cumhurbaşkanına Hakaret), and simple "insult" (*Hakaret*) (See Figure 2 below). Indeed, 9 out of the 12 hearings the Court heard on that day were about defamation charges. As the reader can observe in Figure 2, the cases are listed in an orderly table, with the case numbers, the names of the defendants, the subject/crime involved, the type of the legal procedure (all of them are hearings, *duruşma*, in this case), and the time of the hearing (*duruşma saati*) in columns in respective order. All the names of the individuals being tried are listed in the format of "Defendant Name Surname" as in *Sanık Alican Uludağ*. Hence, the document, hanging at the door of the courtroom, conveys the sense that all that is happening, including the transformation of a citizen into a defendant, is bureaucratic, impersonal, and routine.



Tarih: 04/04/2019 Saat: 09:44:14

T.C.
İSTANBUL
İstanbul 2. Asliye Ceza Mahkemesi

Duruşma Günü : 04/04/2019

DURUŞMA LİSTESİ

S.No	Esas No	Davacının Adı ve Soyadı	Davalının veya Maznunun Adı ve Soya	Davanın veya Suçun Nev	İşlem Türü	Duruşma Saat
1	2018/250		SANIK ALICAN ULUDAĞ Vekili BÜKET YAZICI SANIK DUYGU GÜVENÇ Vekili TORA PEKİN	Türk Milletini, Cumhuriyeti ve Türkiye Büyük Millet Meclisini Alenen Aşağılama	Duruşma	10:00
2	2012/369		SANIK ÖZKAN TORAMAN Vekili ÖZCAN KILIÇ	Atatürk'ün Hatırasına Alene Hakaret	Duruşma	10:10
3	2016/217		SANIK MUSTAFA KARASU Vekili SERCAN KORKMAZ	Cumhurbaşkanına Hakaret	Duruşma	10:20
4	2017/22		SANIK TAYFUN ALTINTAŞ	T.C. Hükümetini, Yargı Organlarını, Askeri veya Emniyet Teşkilatını Alenen Aşağılama	Duruşma	10:30
5	2018/166		SANIK CEVHERİ GÜVEN Vekili ÖMER TEKİN TÜRKER, KADİR KÖKTEN	Hakaret	Duruşma	10:40
6	2017/63	KATILAN RECEP TAYYIP ERDOĞAN Vekili AHMET ÖZEL	SANIK ERK ACARER Vekili ALİ DENİZ CEYLAN	Cumhurbaşkanına Hakaret	Duruşma	10:50
7	2013/362	KATILAN FETULLAH GÜLEN	SANIK AHMET KAHRAMANOĞULLARI	Hakaret	Duruşma	11:00
8	2016/166	KATILAN BEKİR ALTUN VEKİL DUYGU ERDEMİR, TANER DEMİR	SANIK İNAN KIZILKAYA Vekili ÖZCAN KILIÇ, SERCAN KORKMAZ SANIK CAN DÜNDAR Vekili ABBAS YALÇIN, BÜLENT UTKU	Hakaret	Duruşma	11:10
9	2018/320	KATILAN HÜSEYİN AVNİ COŞ Vekili ERHAN DURSUN, BEGÜM GENCER AYTAÇ	SANIK CAN DÜNDAR Vekili TORA PEKİN, ABBAS YALÇIN, BÜLENT UTKU	Düzeltme ve cevabın yayımlanmaması	Duruşma	11:20
10	2019/40	MÜŞTEKİ RECEP TAYYİP ERDOĞAN Vekili HÜSEYİN AYDIN, AHMET ÖZEL	SANIK HACI AHMET SEVER Vekili OYA AYDIN GÖKTAŞ	Cumhurbaşkanına Hakaret	Duruşma	11:30
11	2019/43		SANIK AYDIN MERAL Vekili ABDULLAH DANIŞMAZ SANIK MEHTAP YAMEN Vekili EMİNE YILDIRIM	Görevi Kötüye Kullanmak	Duruşma	11:35
12	2018/116	MÜŞTEKİ İÇİŞLERİ BAKANLIĞI JANDARMA GENEL KOMUTANLIĞI	SANIK BÜLENT ÖZDOĞAN Vekili ABBAS YALÇIN SANIK FARUK EREN Vekili ABBAS YALÇIN	Düzeltme ve cevabın yayımlanmaması	Duruşma	11:40

Sayfa 1 / 1

Figure 2: Image captured by the author of the list of hearings at the Istanbul Second Criminal Court of First Instance at the Çağlayan Palace of Justice on 4 April 2019

As mentioned previously, criminal prosecutions on account of "insulting the President" have increased drastically since the election of Recep Tayyip Erdoğan to Presidency in 2014. During an informal conversation I had with Sahil, a young lawyer who worked at the law office which represented President Erdoğan in Istanbul, he admitted that the people at the law office recognised the "discomfort felt in society about the high number of charges brought for insulting the President." While some of the cases were initiated upon complaints made by the President's lawyers, Sahil pointed out that there were also many prosecutors who initiated such cases to gain favour in the eyes of the politicians. As the responsible law office, they had to make sure that they

followed up with the cases and did not shy away from prosecution since they did not want to appear as if they were shirking their duties.[446]

Criminal courts of first instance usually sit in small hearing rooms (accommodating 10-15 people) with a single judge, a clerk, and an usher at the door, and have a more informal atmosphere, compared to the heavy penal courts where terror-related charges are generally held. The first time I went to observe hearings at a criminal court of first instance specialised in media-related cases, the sitting judge noticed me after I sat through several hearings and asked which case I was waiting for. When I explained that I was there for research, she asked about my university and topic. Upon hearing that I was working on a topic related to freedom of expression, she laughed up her sleeve, did not respond, and made eye contact with Sahil, the young lawyer who was there to represent the President as a complainant in a defamation case.

At these courts, while a prosecutor carried out the investigation and prepared the indictment, there was no prosecutor present during the hearings.[447] In my observations at the Second Criminal Court of First Instance, the judge did not question the claims in the indictment prepared by the prosecutor. In any case, the indictments were usually short and simply stipulated that a given article, such as Article 301 of the Penal Code (Insulting the Turkish nation, the Republic, the Parliament, the Government, the Judiciary, the Military, or the Security Forces) or Article 299 (Insulting the President), applied to the facts of the case at hand. Subsequently, the judge often reiterated the claims of the prosecutor without engaging with the facts of the case or the statements or arguments of the defence counsel.

It was also apparent that the judges usually applied penal articles of defamation and insult in a selective manner, depending on the identity of those involved. For instance, I had observed a case at a first instance court where a journalist was being prosecuted for incitement to hatred and enmity on account of an article she had written where she made connections between the tradition

[446] Informal conversation with Sahil, 21 March 2019.
[447] As a procedural rule, the prosecutor who is present in the hearing is different from the one who prepares the indictment. However, the prosecutor at the hearing was removed with a measure passed in 2011 to enhance the speed of the proceedings at the criminal courts of first instance. Since September 2020, prosecutors have returned to these courts following a reversal of policy.

of hijab and the aristocratic courtesans during the Sumerian age. I had interviewed one of the plaintiffs to the case; he represented Erdoğan in defamation cases and was evidently an AKP sympathiser if not a member. The plaintiffs spoke in an aggressive manner during the hearing and called the journalist's article a "ragbag". When the defence counsel made an official complaint about the plaintiff's use of the term "ragbag" constituting an insult, the judge dismissed their complaint without even considering it.[448] Similarly, complaints made against President Erdoğan for calling academics, who had signed a petition criticising armed forces of the state, "traitors, villains, tricksters, terrorists" all resulted in a decision of non-prosecution. [449] The court maintained that as the head of the Republic of Turkey, the President had the right to comment on and criticise the petition of the academics.

One of the defamation hearings I had observed was that of Veysel Ok, a young lawyer prosecuted under Article 301 for his critical comments on the question of the independence of the Turkish judiciary in an interview. Many civil society members and representatives of foreign delegations had come to watch the hearing, but the small courtroom could not handle all of them. The judge allowed the door of the courtroom to be kept open, allowing those outside some glimpses of the hearing. I had squeezed myself into the entrance door to watch the case unfold. The indictment was barely two pages long and consisted of the claim that Ok's comments in the interview constituted the crime of insulting the judiciary under Article 301. The defendant contended that his "comments were certainly not insults against the judiciary, an institution of which I am a part of."[450] Besides, Ok emphasized that according to Article 301, expressions which constitute criticism could not be held as a crime. He told the court that "it is within the boundaries of criticism to say that the judiciary is not independent, and it was uttered for the betterment of the judiciary". He also underlined that he was "not the only person making this criticism. Both the government and the opposition have expressed doubts about the impartiality of the judiciary". Ok also referred to the ECtHR case law to point out that his comments were within the boundaries of freedom of expression and did not constitute a crime. The judge responded by asking in a

[448] Field notes, 4 July 2019.
[449] "Yargıdan Erdoğan'a hakaret özgürlüğü," *Cumhuriyet*, 21 February 2019, https://www.cumhuriyet.com.tr/haber/yargidan-erdogana-hakaret-ozgurlugu-istedigini-soyleyebilir-681734, accessed: 27 May 2023.
[450] Field notes, 21 March 2019.

dismissive manner "What decision is that?" and he referred to the case of *Handyside v UK* (1976).[451] In the end, the judge did not assess any of the arguments of the defence counsel in her verdict. She also did not provide an assessment of the ECtHR case law and did not examine whether the defence of criticism under Article 301 applied. Her decision merely indicated that Article 301 applied to Ok's comments and underlined the parts of his statements which, according to the judge, constituted an insult.

The lack of engagement with the arguments of the defence counsel was something I had witnessed repeatedly in the criminal prosecutions. One of my lawyer-participants deplored "we come, we prepare all these arguments in detail, voice them out eloquently, only to be hit by a wall."[452] Many defendants felt similarly; one defendant in the "Academics for Peace" case[453] had told her lawyer "What is the point of defending ourselves, they have obviously made their decision."[454] In the several hearings I observed, the judges were dismissive and kept interrupting the testimony of the defendants. [455] In one hearing, where the defendants were facing life sentences if convicted, the judge harassed them by repeatedly telling them to "speed up and sum up what they want to say " as they were speaking.[456] Considering the disheartening experiences with the judiciary, I had asked lawyer-interlocutors how they managed to keep their motivation for their work. Several of them indicated that there was still the odd "positive" decision that occasionally came out, and the possibility of such a decision helped them go on.[457] Yet, in many cases, it appeared that both the defendants and their lawyers continued to frequent the courts because the machinery of criminal justice operated in a routine, bureaucratic manner; hence, there seemed to be no feasible alternative. One of the lawyer-interlocutors, Nuri, became slightly upset when I

[451] Ok referred to the famous phrase from the case : "Freedom of expression...is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population."
[452] Field notes, 3 April 2019.
[453] Academics for Peace case was the trial of hundreds of academics who had been charged with "terror propaganda" for having signed the declaration entitled "We will not be a party to this crime". The petition criticised the severe human rights violations carried out by the armed forces in Diyarbakir during a conflict with PKK in December 2015. Consequently, many were dismissed from their jobs, physically and verbally threatened, and prosecuted on account of terror propaganda.
[454] Field notes, Meeting between the academic and her lawyer, 25 March 2019.
[455] Indeed, Lemonde also noted that "representatives of the Bar complained that, frequently, the lawyer making a statement is interrupted by the judge." See Lemonde, *Needs Assessment Report and Reccommendations of Action for Turkish Criminal Justice Sytem*, 98.
[456] Field notes, 21 March 2019.
[457] Field notes, Dinner organised by a lawyers' association, 11 April 2019.

inquired about the reason for which they kept going to trials, even when they knew the result and when judges did not engage with the defence arguments. He said "What should we do? Leave the battlefield to them?".[458] Although he had conceptualised the courtroom as an arena of war, it is possible to claim that the disregard of the defence counsel stripped both the defendants and their lawyers of any capacity to defend themselves in law. In other words, defendants like Ok were being accused and compelled to come to the courtroom and defend themselves in line with the legal terminology ordained by the courts and the legal system. At the same time, their testimonies or legal contentions went unheeded. The disinterested and dismissive attitude of the judges suggested that they felt well protected by the state.

As illustrated above, the brazen non-observance of the ECtHR case law was another practice which disarmed the defence counsel. In fact, a sitting judge in one of the hearings I attended had remarked in her judgment that the ECtHR case law was not binding. When I interviewed her, I expanded on this point and reminded her of the well-known Article 90 of the Constitution which states that international conventions to which Turkey is a party, such as the ECHR, takes precedence over domestic law. Peri, the judge, had replied with unconvincing oblivion "what was the article 90?" and took a pamphlet of the constitution to read it aloud.[459] She then continued by claiming that the ECtHR decisions are not binding unless they directly reverse her own decisions, "just like the decisions of the Supreme Court of Appeal." When I enquired whether there was consensus on this specific interpretation of Article 90, she said "No, different courts can give different decisions. Even the same court can give different decision. At the end of the day law is not like '2 times 2 equals 4.' Every situation must be evaluated based on its own merits."[460] Although the judge made a valid point about the necessity of evaluation, she used this reasonable argument to avoid having to answer the question about the binding power of the ECHR and the ECtHR case law under Turkish law. To say that even the same court can approach the ECtHR case law differently means that in practice the defendant can never know how the laws will be applied in her or his case. This creates another level of arbitrariness and uncertainty regarding the interpretations of law which the defendant must navigate.

[458] Field notes, Informal conversations with lawyers, 6 May 2019.
[459] Interview with Peri, 15 April 2019.
[460] Interview with Peri, 15 April 2019.

In Ok's case, the court took more than 3 years to reach the verdict of a five-month prison sentence.[461] The journalist who published the interview received the same sentence and the announcement of both the verdicts were deferred by the court. During the prosecution, defendants like Ok must hire a lawyer, give testimony to the police or the prosecutor, appear and give a testimony in court and defend themselves, all this while facing disinterested judges, and then waiting for months to reach a verdict. Moreover, as I elaborate below, deferral of the announcement of the verdict means that the sentence will not be executed so long as the defendant does not commit another crime in the next five years. Hence, it must be underlined that in parallel to the criminal investigations, precarity unfolds in the defendants' lives with these criminal cases hovering over their head for a significant period.

Interpreting Intention

In recent years, courts have freely applied the element of intention in criminal charges. For instance, when I had enquired about the defence of "purpose of criticism" (the provision protecting statements made with the purpose of criticism) under Article 301, Peri, the judge with whom I spoke, had suggested that the journalists and the critics were using their right to criticise in bad faith. She suggested that "for instance, by making comparisons with Hitler, using the word dictator, they are trying to claim that the government does not rely on a legitimate source of power."[462] She went on to say: "Imagine if these claims are not limited to 1-2 people and goes up to 10 people. They might be trying to create this perception that those in government are dictators, creating such a perception at the United Nations, preventing their rule, and leading to their (the government's) overthrow." Hence, the judge who presided over the insult and defamation charges involving the media was attributing intent without relying on any concrete evidence but merely a set of "what-ifs". Besides, she was extrapolating criticism made by the press to the overthrow of the government and was trying to infer such an intention from the expression of non-conformist views. While she did not resort to such arguments in her judgments and reasoning, this train of thought surely

[461] The official complaint against him was made by the office of the President in 2015. The indictment was submitted in 2016 and was only accepted by the court in 2017, around the time Ok started representing some authors critical of the government. Thereafter the case fumbled between different courts up until 2019 when the court of first instance finally heard the case in March 2019 and convicted him in September 2019.
[462] Interview with Peri, 15 April 2019.

affected the way in which Peri approached the cases that came before her. This line of reasoning, although subtle, led to verdicts that created significant uncertainty for the stakeholders in the media who could not be sure about what kind of intent the courts could attribute to their acts and amounted to pre-emptive punishment. Indeed, as I will further elaborate in the following chapter, several authors and publishers did express concern about avoiding certain sensitive themes or names in their writings, even academic works, since they could not be sure about what kind of legal consequences these works could lead to.

Deferral of the Announcement of the Verdict

In contrast to the informal and subtle nature of attributing intent, deferral of the announcement of the verdict (*Hükmün Açıklanmasının Geri Bırakılması,* the "HAGB"), which I have previously explained, is an official legal instrument that has been extensively practiced in recent years.[463] It allows to supress the critical voices and undesirable publications, yet to project an image of the regime that some could interpret as being "humane" by giving the defendants a second chance and enabling them to avoid prison and even having a criminal record if they do not intentionally commit a "crime" during the next five years. With respect to dissidents who are always at risk of repeated prosecution, the HAGB brings precarity as opposed to relief. Nevertheless, many of them end up agreeing to it for practical reasons: their faith in the working of the judicial system is low and they do not want to risk a sentence of imprisonment. Lawyers underlined that the defendants do not always grasp the meaning of the HAGB: "It is not a postponement of the sentence, is he giving a sentence or is he not, it is not clear, defendants don't always understand."[464] On the other hand, the HAGB makes it easier for the judges to convict the defendants and to avoid scrutiny of their decisions by the higher courts since a defendant who agrees to the HAGB cannot appeal the decision of the court in a court of appeal.[465] Several lawyers had claimed that "they (first instance judges) decide for HAGB instead of acquittals."[466]

[463] Initially, HAGB was passed under the Law on Protection of Children in 2005 and was enacted to be applied to children only. A year later in 2006, after amendments to Article 231 of the Code of Criminal Procedure Law No:5271, it started to be applied to adults, too.
[464] Field notes, 20 March 2019.
[465] Defendants can only file an objection about the decision at the level of heavy penal vourts.
[466] Interview with Toprak, 15 May 2019; Interview with Filiz, 25 March 2019.

For instance, Peri, one of the judges at the criminal court of first instance that I have interviewed, had undermined the gravity of the criminal prosecutions she presided over by claiming that the newspapers were "dealing okay" with the charges by virtue of the HAGBs.[467] According to the Press Law, the chief editor of a newspaper was the responsible party in addition to the author. Peri claimed that the newspapers "know it and that's why they keep changing the person in this position".[468] Once a chief editor had agreed to a HAGB, it was too risky for them to carry on with their work for the next five years. Besides, a convict with a converted sentence (from prison time to judicial fine) could not benefit from the same procedure a second time. Hence, newspapers often changed their chief editors so that they would not risk another charge for the same person. Indeed, one of my lawyer-interlocutors had explained to me that, at one point he had to be the chief editor on paper for one of the newspapers he represented because it was too risky for others in the newspaper to be named.[469]

Nevertheless, despite Peri's claim that the chief editor usually bears the brunt of the sentence, in Veysel Ok's case it was Ok and Cihan Acar, the journalist who had interviewed him, who both received 5-month imprisonment sentences in the end. As they had both agreed to the HAGB at the beginning of the prosecution, the judge deferred the announcement of their sentences. According to lawyers' assessment expressed to me, Ok had reasonable chances to succeed if he could appeal the guilty verdict (there were numerous shortcomings, such as disregard of the statutory limitation, disregard of the ECtHR case law, etc.). However, the deferral of the announcement of the verdict meant that there would be no appeal and the judge's approach and the legal ambiguities remained unscrutinised. Hence, the deferral of the announcement of the verdict is useful in creating leeway for the judges. From the perspective of the defendants, however, it puts them in a position of uncertainty.

[467] Interview with Peri, 15 April 2019.
[468] Interview with Peri. 15 April 2019.
[469] Interview with Ramadan, 8 May 2019.

"No One Actually Goes In."

When I had suggested to Peri that citizens are facing severe punishment for expressing criticism, she had replied claiming that "no one actually goes in (*Kimsenin doğru dürüst içeri girdiği yok*)," [470] referring to the contrast between the high number of cases of defamation and the low percentage of prison sentences. After speaking to a variety of interlocutors, both lawyers and defendants, I could tell that being investigated for or charged with defamation had been normalised to an extent. It was prison time which seemed to be rare and the HAGB procedure was a part of the explanation. Indeed, when a lawyer-interlocutor had expressed anger at the detention and imprisonment of an ordinary citizen for insulting the President, he explained to me that this was uncommon: "Prosecutions either result in HAGB or end with judicial fine." [471] Hence, there appeared to be a sense that the investigations and prosecutions could be somehow handled, so long as there was no detention or imprisonment involved.

To sum up, what I observed in the defamation cases heard at the first instance courts specialised in media-related cases was that those who expressed views which are interpreted as being critical of the government or the state could be selectively targeted and put through the legal process in which their defence is limited. Yet, they were often let go without actual imprisonment or execution of the sentence, allowing the argument that I often heard during fieldwork that people don't go to prison. This is a strategy that works as a warning for them and others of what could happen if they step out of line, although the line itself is vague. However, this strategy allowed the regime to keep its distance from openly repressive regimes such as a dictatorship and to claim a "humane" and "lawful" approach to its citizens and opponents.

[470] Interview with Peri, 15 May 2019.
[471] Interview with Ramadan, 8 May 2019.

1.3 Terror-related Charges, Crimes against the State, and the Heavy Penal Courts

In Istanbul, charges related to terror and crimes against the state are heard in two different types of location: either at the heavy penal courts located at the Çağlayan Palace of Justice or in the hearing rooms located at the Silivri Prison Complex outside of Istanbul. There is no clear distinction regarding which case will be heard in which of the two locations. Furthermore, the same case could be moved from one location to the other without providing any justification. Yet, experiences in the two places are remarkably distinct.

Heavy penal courts are generally larger than the criminal courts of first instance; three judges, with one presiding, sit on an elevated platform in one end of the courtroom. The judicial clerk sits in front of them on a lower platform which is still above the ground. The entrance is usually located at the opposite end where the audience sits facing the judicial panel. Usually, few security officers wait at the entrance of the courtroom. The prosecutor is seated just a few meters left to the judicial panel, on the same elevated platform. The defence counsel is located to the right of the judicial panel and is not elevated.[472] The defendant sits in a dock between the judicial panel and the audience and can generally have contact with the defence counsel.

Entering to watch hearings at heavy penal courts is certainly more difficult compared to the criminal courts of first instance. The security officers place barriers in the corridors leading to the hearing rooms and they regulate the entry. For instance, they usually ask "why are you here?" or "for whom you came?". However, since they do not have the power to stop or regulate entry into the hearing rooms which are supposed to be public (unless there is a judicial decision to the contrary), they usually allow one to pass after a few tense exchanges. Yet, in more crowded cases where many people turn up to watch, the security officers end up deciding the priority of access. Having said that, the security officers at heavy penal courts acted politely when I encountered them together with Sahil, the young lawyer who represented President Erdoğan. To my surprise, they had swiftly removed the barriers in the corridor the moment they saw us.

[472] Indeed, the difference in the elevation of the positions of the prosecutor and the defence counsel had been raised by several laywer-interlocutors as evidence illustrating the partial nature of the office of the prosecution.

Courtrooms located in the notorious Silivri Prison Complex outside of Istanbul are markedly different to ordinary heavy penal courts located at the Çağlayan Palace of Justice in Istanbul, which I frequented during fieldwork. The sign above the building structure reads "Hearing Rooms" (*Duruşma Salonu*) and not a courthouse (*Adliye*). This is because the courtrooms here do not constitute an independent courthouse that hears the cases within its vicinity; it is a designated trial space that is used when judges at the heavy penal courts in Istanbul can "for actual or security reasons, decide for the hearing to be conducted at a different location within the provincial boundaries". [473] While the Çağlayan Palace of Justice is a central hub of ordinary legal business where hundreds of cases are heard every day and where people of all walks of life fill the corridors from the early hours of the morning, courtrooms at the Silivri Prison are detached from ordinary life. In order to access this encapsulated and monitored space, one must go through a security control point at the entrance to the prison complex, and another check at the entrance to the courtroom building. The administration of security is carried out by the gendarmerie (who also administers the prison) so you are accompanied by armed men at each stage. When entering the courthouse, you are asked to leave a form of identity document ("I.D.") and your mobile phone with the gendarmerie. In return, they give you a visitor card that you can hang around your neck. Hence, one immediately feels the omnipresent power of the state as they enter the Silivri courtrooms; there is no "ordinary business" happening here.[474]

As it was mentioned in the previous chapter, the Silivri Prison Complex, including the courtrooms, was completed in 2008. The courtroom at Silivri in which I sat several times as a member of the audience looked like a small-scale stadium where the defendants were encircled by separated sections; the press (and politicians) on the left, the audience in the back, the defence counsel on their right, and the judicial panel and the prosecutor in their front (See figure 7). The very large size of the defendants' section was not surprising given that these courtrooms were built to hold mass trials. There was nearly zero contact between the different sections in the hearing room. The defendants were seated separately from one another in the hearings I had observed; armed gendarmerie stood by each one of them. Besides, the defendants were also separated from

[473] Article 19(3) of the Code of Criminal Procedure No:5271

[474] Furthermore, once you are in the building, it is troublesome to exit and re-enter. In crowded hearings, you have to que to get back your I.D. when exiting and then you have to que again to re-enter and to do the security check.

their defence counsel who were seated in a segregated section to their right. There could be no contact between them and the gendarmerie quickly intervened to prevent any interaction. The hearing room was so large that there were two visual displays put up on both sides of the judicial panel where the recording of the proceedings was projected on. The audience at the back had to use these screens to be able to see the faces of the judges, the prosecutor, and the defendant, when they spoke. Due to the size of the room, even the defence counsel who were seated closer to the judicial panel had to rely on the screens to see clearly. Citizens' entry or exit from the hearing room was regulated by the gendarmerie which conveyed a sense of being in a militarized space. Besides, a line of gendarmerie stood along the line separating the audience and the defendants. The number of gendarmeries was remarkably higher than the number of defendants in the trials I had observed.[475] The defendants did not come into the room through one of the gates in the salon but entered separately, through a door not visible to the audience, from beneath the hearing room. This entrance was linked to the passage that runs from the Silivri Prison to the hearing rooms and was inaccessible to the lawyers and the press. Both those defendants who were held in detention pending trial at the Silivri Prison and those others who came from Istanbul were brought into the hearing room through that entrance. They would appear and disappear quickly in the defendants' section in the middle of the room while everyone else was seated, as if they were taking the field.

A plastic orchid welcomed guests at the sterile café located on the upper floor of the building which was run by the prison inmates. The only sign of ordinary life around was the sound of a singing bell from the school nearby which accommodated the children of those who work at the prison complex. The cheerful school bell was a sharp contrast to the lifeless and constricted environment at Silivri Prison, amplifying the extraordinary sense of the space.

Despite the stark difference of atmosphere between an ordinary heavy penal court and a courtroom in the Silivri Prison Complex, hearings of two similar cases heard by the same heavy penal court can take place in the Silivri and the Çağlayan respectively, depending on the decision of the judicial panel. Besides, as mentioned, judges can also decide, in the middle of a trial, to move the hearing from an ordinary heavy penal court room in the Çağlayan building to the hearing

[475] In the case of ÇHD, there were over 50 gendarmeries and at the Gezi trial, the number of gendarmeries were around 70.

rooms at the Silivri. This is what happened in the case of the Progressive Lawyers' Association (the "ÇHD case") at the end of the first hearing in September 2018; the judicial panel decided to move the hearings to the rooms located within the Silivri Prison Complex.[476]



Figure 3: The Çağlayan Palace of Justice (Source: www.yenicaggazetesi.com.tr, 30 November 2022)



Figure 4: The interior of a courtroom at the Çağlayan Palace of Justice (Source:www.yeniasya.com.tr, 16 December 2014)

[476] Criminal Commission of the International Association of Lawyers, *Fact-finding Mission on ÇHD's Trials: Breach of Fair Trial, Independence of the Judiciary, and Principles on the Role of Lawyers*, (İstanbul, 2019), 10.



Figure 5: The entrance to the Silivri Prison Complex (Source:www.gazeteduvar.com.tr, 29 May 2020)



Figure 6: The entrance of the hearing room (duruşma salonu) in the Silivri Prison Complex (Source: www.t24.com.tr, 5 August 2013)



Figure 7: The interior of one of the hearing rooms at the Silivri Prison Complex from the vantage point of the seating area for the public (Source: www.ntv.com.tr, 7 May 2017)

Given the militarised atmosphere of the court, defendants usually perceive the decision of the judge to conduct the hearing at the Silivri Prison as a negative signal;[477] the conduct of hearings at Silivri is always exceptional. The provision in the Code of Criminal Procedure that allows the judges to designate Silivri as the location of the hearing is open ended, so the defendants must wait for the decision of the judge. The extensive power of the judge in determining the location of the hearing and possibly steering it towards an explicitly militarised atmosphere generates uncertainty and anxiety among the defendants tried by the heavy penal courts, especially in prosecutions with multiple defendants as these are the cases that are usually heard at Silivri.

Interferences with the Judicial Panel, Hostile Judges, and Secret Witnesses

The first hearing I had observed at Silivri involved a group of lawyers from the Progressive Lawyers' Association and the People's Law Office (the "ÇHD" case)who were prosecuted for membership or administration of Revolutionary People's Liberation Party/Front (the DHKP/C) which is listed by the state as a terrorist organisation. At the end of the first hearing at the Çağlayan Palace of Justice, the court had ordered the release of all detained lawyers. Yet, they were re-arrested soon after upon the appeal of the prosecutor.[478] Furthermore, the composition of the judicial panel and the prosecutor had changed in the second round of hearings in March 2019. Subsequently, the trial was moved to Silivri. I sat in the audience, among the families and friends of the defendants and international observers watching the trial.[479] The large section of the defence counsel was packed with representatives of bar associations from around Turkey and by a significant number of lawyers based in Istanbul. The new President of the judicial panel put on a hostile attitude towards all stakeholders in the courtroom. [480] He used the familiar format (considered disrespectful in formal settings) when addressing defence lawyers and the defendants, interrupted both the lawyers and the defendants when they spoke, switched off their microphones

[477] For instance, the initial Gezi trial was heard at the Silivri Prison Courtroom in the summer of 2019. When the proceedings of the retrial of the Gezi case, still ongoing, started at the Istanbul Çağlayan Palace of Justice, some cautiously took the change of venue as a possible positive sign. However, the retrial ended with the conviction of all the defendants in April 2022.
[478] This appeal is legally questionable.
[479] The families of the defendants appeared to be members of socio-economically lower classes in society. Field notes, 18-19 March 2019.
[480] Akın Gürlek, new President of the judicial panel, is widely perceived as being particularly close to the ruling government. He has presided over many political trials including the case of Selahattin Demirtaş, İhsan Eliaçık, and Şebnem Korur Fincancı.

when they challenged the court, and threw out some lawyers who kept speaking even after their microphones were turned off. He did not scrutinise the evidence the indictment relied on and rejected, without any consideration, all the demands put forward by the defence counsel for additional investigation and additional witnesses. The court commented that the demands were submitted late. However, there is no legal deadline to request for evidence under Turkish criminal law. Moreover, the court also refused to hear a witness without giving any justification.[481] The witnesses of the prosecution joined the hearing remotely, via video set up even if they were not categorised as "secret witnesses".[482] When the defence lawyers contested this, the judge was indifferent. Also, he ordered the gendarmerie not to allow the lawyers and the public to return to the court after a recess he had given before announcing the verdicts.

The indictment mainly relied on secret witnesses whose use was introduced with the new Code of Criminal Procedure passed under the AKP government in 2005. However, it was after the enactment of the Law on Witness Protection in 2008 that secret witnesses started to be increasingly used. Accordingly, the identity of a secret witness is kept from the defence counsel and the latter cannot ask questions during the secret witness's testimony (on video call). A report prepared by the Izmir Bar Association back in 2011 had argued that when a witness "appears" in court remotely while their identity and image is hidden, it becomes harder to check the veracity of the testimony of the witness. Besides, the report contended that when the defence counsel cannot pose questions to the secret witness and observe their demeanour and physical properties, the equality of arms and the right to defence are violated.[483] While three of the secret witnesses at the ÇHD case were not heard during the trial, the verdict of the 37th Heavy Penal Court relied on their previous testimonies which lasted hundreds of pages. Furthermore, the prosecutor presented to this court printed documents that were reportedly copies of digital documents taken by the Turkish police

[481] See also Criminal Commission of the International Association of Lawyers, *Fact-finding Mission on ÇHD's Trials*, 13-14.
[482] "Açlık grevindeki ÇHD ve HHB üyesi avukatlar hakim karşısına çıktı," *Evrensel*, 18 March 2019, https://www.evrensel.net/haber/375845/aclik-grevindeki-chd-ve-hhb-uyesi-avukatlar-hakim-karsisina-cikti, accessed:15 March 2023.
[483] İzmir Barosu, CMK m.250 Özel Görevli Mahkemeler Konulu Atölye Çalışması Özet Raprou, (İzmir Barosu, 2011), http://baro.izmirbarosu.org.tr/sayfalar/merkezler/insan-haklar%C4%B1-merkezi/raporlar.aspx, accessed:10 August 2023; Turgay Demirci, "Gizli Tanık" in *Parçalanmış Adalet: Türkiye'de Özel Ceza Yargısı*, ed. Haluk İnanıcı (İstanbul: İletişim Yayınları, 2011), 243-250.

from the Belgian and Dutch authorities back in 1998 and 2003.[484] The experts could not corroborate the authenticity of the printed copies of the digital documents given that the originals of these documents had not been provided. Nevertheless, the Court still accepted them as valid evidence.

The prosecutor in the trial appeared to be quite young and inexperienced. On the rare occasion that he spoke, his voice was youthful and mechanic. Several lawyer-interlocutors had noted that ordinarily prosecutors in heavy penal cases would never be so young. However, they had highlighted that the wave of dismissals from the judiciary had dropped the average age of both the judges and the prosecutors.[485] Although the happenings in the court seemed theatrical at times, the judge gave real prison sentences between 3-18 years, for the 18 accused lawyers.[486] The recklessness with which the composition of the court was altered by the Council of Judges and Prosecutors (the "HSK") and the legal procedures abused by the judicial panel indicated that the former did not feel concerned about being accountable for their actions. Soon, I figured that these were repeating patterns.[487]

The second case I observed at Silivri was the prosecution of a group of civil society leaders who were charged, nearly six years after the Gezi protests, on account of organising and funding the grassroot demonstrations at Gezi Park with the alleged intention to topple the government by force.[488] The indictment claimed that the Gezi Park protests were started to incite the government's overthrow and the defendants were accused of forming the "Taksim Solidarity" platform which gathered unions, associations, political parties, and environmental organisations under the same umbrella. The evidence presented by the 657-page indictment included, among other things,

[484] According to the report by the International Association of Lawyers on ÇHD's trial, these computer files were shared with Turkish authorities by the authorities in Belgium and the Netherlands in 1998 and 2003 respectively. The printed versions of the digital documents circulated in Turkey in 2006 and it appears that the law enforcement authorities started to use them in trials from 2013 onwards. Criminal Commission of the International Association of Lawyers, *Fact-finding Mission on ÇHD's Trials*, 9.
[485] Field notes, Informal conversations with lawyers, 18-19 March.
[486] After their conviction, some of the lawyers started a hunger strike in prison to demand a fair trial. Ebru Timtik, in prison at Silivri, lost her life on 27 August 2020.
[487] See also Canan Coşkun, *Burası Mahkeme: Yeni Türkiye'de Yargı Rejimi* (İstanbul: İletişim Yayınları, 2019) for a journalistic account of several high-profile cases such as the Cumhuriyet case, the case against Ahmet Altan, Mehmet Altan and Nazlı Ilıcak, and the Progressive Lawyers case (the ÇHD case).
[488] Article 312 of the Penal Code.

surveillance images allegedly showing one of the defendants providing first-aid kits to three protesters in September 2013; a phone conversation between two defendants about a photography exhibit on the protests; phone transcripts of a defendant where he mentions to his friends that Europeans asked him about the Gezi protests; and receipts of plane tickets for a defendant's travel to Belgium, Germany, and the United States in 2012.[489]

Compared to the ÇHD case, the Gezi trial was attended by a higher number of journalists, politicians, and activists. In each hearing of the trial, there were around 300 attendants from the general public. The relatively less hostile approach of the judicial panel in the Gezi trial might be related to this. However, similar to the ÇHD trial, the judicial panel brushed aside with indifference the petitions filed by the lawyers for additional investigation and witnesses, and for additional time to prepare their defence. Besides, the judicial panel refused to allow the defendants who were abroad to give their testimony through a video-connection, although they allowed the prosecution to get the testimony of one of its witnesses through the same means. Moreover, the prosecutor in the Gezi trial, too, resorted to secret witnesses whom the defence counsel could not cross examine. Indeed, the testimony of a secret witness was taken in a closed session excluding the defence counsel and the defendants. When the audience protested this, the head of the judicial panel removed everyone from the hearing room, including an opposition MP.[490]

Similar to the ÇHD case, the composition of the judicial panel was changed by the Council of Judges and Prosecutors (HSK) in the wake of the first round of hearings on June 24-25, 2019. The judicial panel had given a release order for one of the two detained defendants. Subsequently, the HSK replaced the President and the judge on the judicial panel who had cast their vote in favour of the release of both the defendants. By contrast, they kept on the other judge in the panel who had voted for the continued detention of both the defendants. [491]

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[489] Project on Middle East Democracy, *Fact Sheet- Turkey's Absurd Gezi Trial* (Washington DC: POMED, 2019), https://pomed.org/publication/fact-sheet-turkeys-absurd-gezi-trial/, accessed: 26 May 23.
[490] International Commission of Jurists (ICJ) and International Bar Association Human Rights Institute (IBAHRI), *Gezi Park Trial: Case Observation Notes*, (Geneva, ICJ and IBAHRI, 2020) 15-16.
[491] "Gezi davasında heyet değişti," *Bianet*, 30 July 2019, https://bianet.org/bianet/hukuk/211081-gezi-davasinda-heyet-degisti, accessed:30 November 2022. Later on, the new judicial panel gave a verdict of acquittal after which they, too, were investigated by the HSK.

In the end, contrary to most expectations, the court acquitted the defendants of the charges in February 2020, ordered the release of Osman Kavala (the remaining defendant in detention), and held that the acts which were the subject of the trial were within the scope of freedom of association and gathering. The court also ruled that there was no evidence proving that the Taksim Solidarity Platform was a criminal organisation. Nevertheless, on the day of the ruling, a new charge was brought against Kavala, resulting with his continued detention in the Silivri Prison pending investigation of new allegations. There were other cases where new charges were brought against acquitted defendants before their release. Moreover, the Court of Appeal reversed the decisions of the acquittal in 2021; the defendants were retried and convicted to prison sentences and immediately arrested at the final hearing in April 2022.

The stark difference between the hearings conducted at the Çağlayan and those at the Silivri. as well as the wide power of the judge to determine the location of the trial, places the defendants involved in terror-related cases in significant uncertainty. Besides, the militarised and hostile hearings at the Silivri Prison, combined with the interferences into the judicial panel, hostile behaviour of the judges, and the widespread use of secret witnesses, represent the government's readiness to strip away the rights of the defendants as citizens, creating the impression that it *can* reduce them to bare life.

1.4 The Power of Categorising Citizens as Defendants and Framing of "Cases"

An opinion expressed publicly, can become a legal matter once it becomes the subject of an investigation. At the same time, the individual who has expressed their mind, be it an author, journalist, lawyer, or an activist, becomes a criminal suspect or a defendant. Many countries in the world have penal provisions punishing different types of speech like "defamation" or spreading "terrorist propaganda." However, the interpretation and application of these provisions vary greatly from country to country. This is what allows penal articles to become weaponised by some governments against the dissidents confronting power. Hence, when Veysel Ok criticises the judiciary in a newspaper interview with the statement "the judiciary has become a single colour", his statement becomes a matter of law, with a judge to decide whether it constitutes the crime of

insulting the judiciary or not. And this is how Ok, a lawyer, turns into a defendant in a criminal court. While confidence in the legal system might be wavering in Turkey,[492] being involved in a criminal prosecution and being labelled a "suspect" or a "defendant" still generates social repercussions. Many of my defendant-interlocutors were still baffled at having to appear before the court. To be cast in this light is a difficult experience for the defendants, especially when sombre accusations such as "terror propaganda" and "plotting to overthrow the government" are at stake. For instance, the physics professor accused of carrying out terror propaganda along with the rest of the "Academics for Peace" told her lawyer that she felt hesitant to appear in a courtroom.[493] Meanwhile, one of the defendants at the Gezi trial found it humiliating to be "a defendant" in a case where the accusation was plotting to overthrow the government; he was working with the civil society and firmly believed in the principles of non-violent change.[494]

Lawyers, civil society workers, authors, and journalists who are categorised as suspects or defendants by the legal machinery are left exposed, at the same time, to smearing campaigns by the pro-government media outlets and incriminating statements by the ruling politicians. In other words, the legal process allows the state to build a narrative around the dissidents and those it considers sources of threat. Besides, there were also cases where the politicians made incriminating statements even prior to an investigation. The case of "Academics for Peace" is a clear illustration. Members of the government and pro-government media outlets have targeted the 1,128 academics and PhD students who signed the petition titled "We will not be a party to this crime," which criticised the human rights violations committed by the military during anti-terror operations carried out in the majority Kurdish towns. Soon after the publication of the petition and prior to any criminal investigation, President Tayyip Erdoğan labelled the petition a "terrorist propaganda" and those who signed it as "so-called intellectuals."[495] He argued that they were using "the jargon

[492] See Social Democracy Trust (*Sosyal Demokrasi Vakfi*), *The Independence of the Judiciary and the Confidence in the Judiciary Research Report*, June 14, 2019, https://sodev.org.tr/sodev-yargi-bagimsizligi-ve-yargiya-guven-arastirmasi-raporu-aciklandi/, accessed:10 August 2023.
[493] Field notes, Meeting between an academic prosecuted for having signed the"Academics for Peace" petition and her lawyer, 25 March 2019.
[494] Field notes, Meeting between a civil society leader prosecuted in the Gezi case and his lawyer, 16 March 2019.
[495] See the statement published on the Presidency's official website "İmzalanan bildiri eleştiri değil terör örgütü propagandasıdır" (The signed announcement is not criticism; it is propaganda of the terror organisation."https://www.tccb.gov.tr/haberler/410/38588/imzalanan-bildiri-elestiri-degil-teror-orgutu-propagandasidir, accessed:3 December 2021

of the terror organisation."[496] Dismissals from university positions and criminal investigations quickly followed President Erdoğan's statements.[497]

Smearing campaigns and incriminating statements work in tandem with the indictments to constitute a narrative around the targeted groups. For instance, the indictment in the Gezi case, along with the pro-government media outlets, portrayed unconnected organisations and members of the civil society as conspiring together against the government and as being funnelled by the same foreign sources. Indeed, the defendants expressed feeling like they were thrown in a common case with people they barely knew, so that they could be portrayed in a certain light.[498] Similarly, the mass protests at the Gezi Park were presented as an "externally" or "foreign-funded" plot or "a coup attempt."[499]

Besides, details of the investigations are often 'leaked' to the pro-government media outlets who employ them to develop a narrative around the defendants. This can occur even where there is a restriction order over the case preventing the defence counsel from accessing the case documents.[500] Indeed, one of my lawyer-interlocutors had expressed his frustration at having found out about the details of an ongoing investigation from the pro-government newspapers when there was a restriction order in force. Meanwhile, he "could not even access the detention order the Judge gave" in respect of his client.[501]

When a lawyer, academic, author, or a journalist is labelled a defendant or a suspect, there can be repercussions for their families too. For instance, the son of the physics professor who had signed the petition had faced trouble at his government job due to the case against his mother.

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[496] "Cumhurbaşkanı: Lümpen, Yarım Porsiyon Aydın, Müsvedde," *Bianet*, 20 January 2016, https://m.bianet.org/bianet/print/171323-cumhurbaskani-lumpen-yarim-porsiyon-aydin-musvedde, accessed: 3 December 2021.

[497] The Higher Board of Education asked all universities to draw up lists of petitioners and in majority of universities administrative measures were used to force signatory academics to resign or retire, disciplinary process was initiated against them, their contracts were suspended.

[498] Field notes, Informal conversations with several defendants in the Gezi case during different occasions. Dates include 21 May 2019, 17 May 2019, 4 April 2019, 23 March 2019.

[499] These were phrases used in the indictment and by pro-government media outlets.

[500] Certain documents must be accessible under all circumstances but in practice these are also beyond the reach of the defence counsel. Yet, somehow, details of these documents appear in pro-government media outlets.

[501] Field notes, Informal conversation with Ramadan, 4 April 2019.

While he was expecting a promotion, his superior privately enquired with him about "the person with the same surname who signed the peace petition." He was told that his mother's name was marked as a terrorist. He conceded that it was indeed his mother but underlined that she was "a distinct individual." He also told his superior that "she is a peace-loving woman - she had named me after peace" – referring to his name which means peace in Turkish.[502] However, his promotion was halted and there was even concern that his job became insecure.

When an academic is categorised as a defendant on account of "terror-propaganda," their research work can also be affected. One of my interlocutors, an assistant law professor at an established university in north Cyprus, generally known as a relatively more liberal space in terms of freedom of expression, said she had incurred trouble for assigning the work of an academic who had signed the "Academics for Peace" petition in the reading list of one of her classes. She was asked by her superior to be more careful. She also stated that many academics were hesitant to even quote in their work the research carried out by those who signed the "Academics for Peace" petition.[503] Nevertheless, despite the intensity of the ostracization campaign against the "Academics for Peace" petition, these academics found ways, as I will describe below, to engage in solidarity practices and to challenge the narrative built around them.

While unconnected defendants were brought together in a single indictment in the Gezi trial, signatories to the "Academics for Peace" petition, which was obviously a collective action, were charged in different cases and hence, were tried separately as defendants. Several lawyers and academics saw this as a strategy to prevent a mass campaign and to avert solidarity between the defendants.[504] They believed that breaking down a potential mass trial of the 1,128 academics into individual cases has helped the judiciary to keep the legal process within its remit. Indeed, distinct cases allowed the judges to give varying sentences for the same charge and indictment, generating significant uncertainty among the defendants. After the trials began in December 2017, the courts kept giving 15-month imprisonment sentences for a year. Being under two years, the announcement of these verdicts could be deferred (that is to say, the HAGB was applicable).

[502] Field notes, Meeting between the academic and her lawyer, 25 March 2019.
[503] Interview with Selma, 3 January 2020.
[504] Perhaps the only silver lining for the academics was that the cases, with few defendants, were heard in ordinary - heavy penal courts instead of the heavily militarised atmosphere of Silivri Courtrooms.

Nevertheless, in December 2018, a heavy penal court gave one of the academics a 27-month imprisonment sentence. Following this, the same court and several others started giving prison sentences that differed from the pattern of the 15-month sentences without providing legal or factual reasoning. Hence, from December 2018 onwards, 28 academics had received 18-to-22-month sentences and 29 academics were sentenced to more than two years of prison. In cases where the defendants received sentences over two years, the judges cited "negative attitude and behaviour during the hearing" and "absence of remorse" as grounds for giving a higher punishment.[505] Yet, the impression is that the court was punishing the defendants who openly challenged it, as I will further elaborate below. This is another example of how political violence inflicted through the criminal prosecutions remain a "legal" and somewhat "technical" affair.

Overall, when labelled a suspect or a defendant, citizens not only cope with the use and abuse of the criminal legal procedure, but they also struggle with the smearing campaigns and a narrative built around their identities and names. Especially those charged with terror-related crimes also deal with repercussions on their families and their work.

[505] Two defendants who got the highest prison sentences were Yonca Demir (36 months) and Şebnemn Korur Fincancı (30 months). "Barış imzacısı akademisyen Demir'e ertelemesiz 3 yıl hapis cezası," *Kronos*, 25 January 2019, https://kronos36.news/tr/baris-imzacisi-akademisyen-demire-ertelemesiz-3-yil-hapis-cezasi/ , accessed:16 March 2023; "Prof.Dr.Şebnem Fincancı'ya 2 yıl 6 ay ertelemesiz hapis cezası," *Bianet*, 19 December 2018, https://bianet.org/bianet/ifade-ozgurlugu/203674-prof-dr-sebnem-korur-fincanci-ya-2-yil-6-ay-ertelemesiz-hapis-cezasi, accessed:16 March 2023.

2. Accommodation and Resistance

2.1 Accommodation

Most of the defendants displayed a mixed approach; a combination of engagement (as opposed to complete rejection) with and defiance of the court and the legal process.[506] In cases where the charges warranted relatively lower sentences such as "terror propaganda" and "defamation and insult," the defendants tended to be more accommodating towards the court while still holding their ground. For instance, an overwhelming majority of the defendants in different "Academics for Peace" prosecutions agreed to a deferral of the announcement of their verdict. Indeed, many of the academics I had observed in the hearings were keen to get done with the case and move on with their lives.[507] One of the trials I watched was particularly interesting as the defendant in question was an academic who had written on political trials, and I had recently finished reading her work before the hearing. The academic was working in a western university and had come back to attend the trial (and avoid being a fugitive). During the hearing, she looked nervous and not at all interested in using the platform to make arguments based on law or on her research to defend herself. I was sitting next to her parents in the audience, and they were also apprehensive. The academic was eager to get finished dealing with the court; she obediently followed the court procedures and accepted the deferral of the announcement of her judgment (the HAGB).[508] The academic was aware of the political nature of the charges brought against her and the informal conversations after the trial indicated her dissenting stance. Hence, her travel to Turkey to attend the trial and her compliance with the court procedure did not represent a faith in the legal system; it represented the power of the courts (and the legal system) to generate fear whereby citizens try to limit the gravity of potential consequences.

[506] There have been some who did not appear in court at all. For example author Perihan Mağden did not come to the hearing where she was charged for insulting the President, but her lawyer was present, representing her. In cases where the charges are terror-related crimes, the court will usually issue a warrant of arrest. I have not seen any case where a defendant was present and refused to engage with the court in totality.
[507] Academics were usually hesitant while their lawyers appeared more at ease in trials due to their experience and skill in dealing with the court.
[508] Field notes, 4 April 2019.

It is possible to make a comparison between this academic and the Syrian-interlocutors in Wedeen's *Ambiguties of Domination* who engage in public displays of support to Assad while privately being critical of him. However, there is a significant difference at play, in Wedeen's case study, the Syrian citizens she discusses feel obliged to participate in public allegiances of support to the autocratic leader to avoid trouble. In the current case, the academic is not showing support to an autocratic leader; she is simply participating in a criminal prosecution to avoid detention at the airport the next time she visits Turkey. Nevertheless, by participating in the legal process and following the procedures of the court, the defendant, like Wedeen's interlocutors, became complicit in the reproduction of the state's domineering power.

On another note, Wedeen explains that witnessing the submission of others alone can be an act of domination. Citizens watching a political trial as a part of the audience, especially in trials like those at Silivri, witness the law's power of submission and control over the defendants (and often the defence counsel) in the case. Yet, there are also cases where citizens witness the challenges raised against the legitimacy and power of the court. Still, in the end, those watching the trial become a party in confirming the state domination by being exposed to and witnessing the inevitability of state power and experiencing its control over one's own bodily movements as a part of the audience. Challenges against the court do undermine their legitimacy to some extent. However, legitimacy is not usually the primary concern of political trials; they succeed in generating fear and domination, what they often aim to elicit. I can confirm that watching hearings at the Silivri hearing rooms did not get easier over the course of my fieldwork. Every time I went there, I had a first-hand experience of how these courts generated fear even in an observing member of the audience. It was a deeply distressing and disturbing experience every single time.

On the other hand, it is important to note that even in cases where the defendants did not openly challenge the court, they rarely accepted any fault or wrongdoing. For instance, all the academics, including the one mentioned above, stood by their signature in the petition; none of them expressed regret. In addition, the phrase "demanding peace is not a crime" was often employed in the hearings. Similarly, Veysel Ok had also stood by his comments on the (lack of) impartiality of the judiciary during his trial, even though he had agreed to the HAGB.[509] Cansu

[509] Field notes, 21 March 2019.

Pişkin, a journalist convicted to a 10-month prison sentence for "making a public officer a target of terror organisation," in a news article, had declared fervently in her trial that "journalism is not a crime." At the same time, she was quite relieved when the judge deferred the announcement of the verdict.[510] Overall, the defendants had to adapt to the court proceedings to minimise further uncertainty and avoid potential prison time. While many maintained their stance, it can be said that agreeing to the HAGB enabled the judges to avoid decisions of acquittal, even where that would be the most appropriate outcome. Besides, it also allowed judges to put the defendants in question under supervision for the next five years, inducing caution not to get into "legal trouble" again.

In sum, in cases where deferral of the announcement of the verdict was available, the defendants usually opted for it and cooperated with the court to navigate their precarious situation. This was the case even though they often stood their ground and stuck with their solidarity networks, as exemplified by the cases concerning the "Academics for Peace" petition. Cooperating with the court usually allowed them to minimise the repercussions of the criminal prosecutions and move on with their lives. However, it also meant that they often lived with a sentence on hold, hovering above their head for the next five years. Therefore, the state was able to generate fear and reproduce precarity despite not actually sending the people into prison.

[510] Field notes, 7 May 2019.

2.2 Resistance

The ÇHD trial

Nevertheless, there were others who chose to engage with the court in a more confrontational manner. These defendants used the legal space to challenge, advance their own narrative, and resist the judiciary and the state more explicitly. They were usually charged with crimes that warranted higher sentences, where it was not possible for them to benefit from the HAGB procedure. In other words, due to the nature of the charges against them, they would not be able to "get done" with the prosecution and move on with their lives in the same way.

If resistance is understood not only as organised political defiance but "everyday practice and emotions that are shaped by people's attempts to find their own political, social and cultural integrity,"[511] it is possible to argue that the courts have also turned into sites of resistance where several defendants and defence lawyers challenged the power and legitimacy of the courts.

However, even the most radical challenges were shaped to some degree by the constrictive power of the language of the law. In the end, they were compelled to respond to the charges brought against them by using the language of criminal law – the state's own language. When they would not conform to this custom and perhaps tried to pose challenges and make arguments based on politics, history etc., the judicial panel shut them down or ignored these arguments.

However, the voicing of both the legal and non-legal counter arguments contributed towards challenging the categorisation of the defendants as criminals and defining their acts as acts of crime. Ironically, some of their statements could easily be a subject of a defamation charge if uttered outside the courts. For instance, one of the accused lawyers in the *ÇHD* case, Selçuk Kozağaçlı, known for his skills in oration, refuted the legitimacy of the judicial panel without mincing his words. The following exchange took place between the President of the heavy penal

[511] W.Harcourt as quoted in Zeynep Özen and Lülüfer Körükmez, "Persistence in Resistence: Purge of Academics for Peace Under Authoritarian Neoliberalism in Turkey," in *Authoritarian Neoliberalism and Resistance in Turkey*, ed. Borsuk et al. (Basingstoke: Palgrave Macmillan, 2022), 180.

court and Kozağaçlı during the hearing of the *ÇHD* trial on March 19, 2019, at the hearing room in the Silivri:[512]

Kozağaçlı: In the presence of the Prosecutor of the Republic, I hereby denunciate you and make an official complaint. I will also apply to the Investigatory Board of the Ministry of Justice and to the Council on Judges and Prosecutors. You are in command of the state, you are members of a branch/power of the state. Yet, I am certain that this is not the judiciary, I do not accept you as judge. Not only do I refuse you, but I also refuse all that you represent.
President: Ok, sit down
Kozağaçlı: I refute the immorality you represent.
President: Sit down.

The audience protested with chants and applause. Kozağaçlı's microphone was then turned off and he was taken out of the courtroom, and soon after the judge gave a recess. As mentioned, political trials can sometimes inadvertently provide a platform for dissident ideas and turn a defendant into a hero. The resort to turning off the microphone and the recess were attempts by the judicial panel to maintain its control in the courtroom by rupturing the transgressive sense of solidarity that could potentially be disorienting, if not transformative.

Earlier, when the President of the judicial panel refused to discuss some of the evidence, one of the defence lawyers reminded the court that "it is a legal obligation under Article 216 of the Code of Criminal Procedure to discuss the evidence. Give us our legal rights."[513] Indeed, there were dozens of lawyers who were there to defend their colleagues; 16 different bar associations around Turkey were represented during the hearing that day. Confronted with an unresponsive judicial panel, the defence lawyers banged on the benches and demanded the court to be recused. However, the judicial panel decided unanimously to dismiss the demand and go ahead with the hearing. Subsequently, the audience began chanting: "*Devrimci Avukatlar Onurumuzdur*" (revolutionary lawyers are our honour) which further raised the tension.

[512] Field notes, 19 March 2019. You can also reach a video clip of the exchange at Dokuz8 Haber (@dokuz8haber), "Çağdaş Hukukçular Derneği Başkanı Selçuk Kozağaçlı'nın mahkemede yaptığı konuşma yayınlandı," Twitter, 22 March 2019, https://twitter.com/dokuz8haber/status/1108977860184813568?s=20, accessed:10 August 2023.
[513] Field notes, 19 March 2019.

Furthermore, the President of the judicial panel decided not to let the defence lawyers and the public back in the hearing room after the recess, and to announce the verdict in their absence. Yet, a quarrel broke out between the defence lawyers who tried to reach the defence benches and the gendarmerie guarding the door of the hearing room. In the meantime, I had remained in the audience section along with several relatives of the defendants during the recess. When the gendarmes asked them to leave, the relatives refused to move. The head of the gendarmerie said: "Please help us, there is an order for emptying the room." The father of one of the defendants said: "No harm will come from our family to anyone. I just want to see my son." He went on to say: "You are talking about 10-15 years sentences. I am not going anywhere. The judge must come and look us in the eye when giving the verdict." Another member of the audience, the mother of a defendant, said: "I am a village woman, I don't understand but they should let them speak. What kind of person, what kind of judge? He does not allow anyone to say a word!" She went on to say: "I am a seasonal worker. I worked on the farms to raise my child; I did not labour so that they can throw my child to prison!". Their words seemed to have an impact on the group of gendarmes; the men looked sad. Another woman in the audience highlighted that the President of the judicial panel did not have a right to exclude them from the room since this was not a secret hearing. She said "It is unlawful. You do not have to be a part of this injustice. Do not execute his order. Let him produce a written order." In the end, the gendarmerie could not manage to remove the audience, including myself, from the hearing room, while the defence lawyers were not allowed to return. The court announced its verdict with us present, found all the defendants guilty, and imposed hefty sentences. [514] While the audience had successfully challenged the decision of the President to expel them and remained in the room, they could not prevent the convictions. While the court did not use physical violence against a recalcitrant audience and the expressions of resistance were tolerated, at the same time, non-obedience was tightly managed and controlled.

[514] Field notes, 20 March 2019.

The Gezi trial

Defendants and lawyers in the Gezi trials also had to respond to the charges against them by using the state's own language: the language of criminal law. One of the defendants, Can Atalay, a lawyer who was a leading figure at the Gezi protests, told the court that the prosecution cannot talk about the security of "the constitutional order without mentioning other rights enshrined in it such as the right to demonstration without permission, the right to housing, the right to health."[515] Aksakoğlu exclaimed "There is no crime in this 657 page long indictment," and underlined that "there is even no evidence that I even went to the Gezi protests." Lawyers expressed concern regarding a fair trial in the case. One of them claimed, "we believe there is an effort to forge evidence." Violations of law during the investigation and the hearing were highlighted.[516]

Defendants and the defence counsel alike reiterated that the indictment relied on the investigation reports which had been prepared a few years earlier by police officers and prosecutors who were later charged for being members of the Gülenist organisation.[517] They also highlighted that the investigation reports prepared by alleged Gülenists often consisted of unlawful wiretaps. However, the prosecutor justified the resort to these reports by claiming in the indictment that "a re-evaluation of all evidence was carried out, thus all external [meaning Gülenist] influence has been removed."[518] However, the defendants and the defence lawyers demanded to know what "re-evaluation" of the investigation reports prepared by Gülenists entailed. Like the ÇHD case, the lawyers in the Gezi trial also sought the recusal of the judicial panel. When the panel refused the demand, they collectively walked out of the courtroom in protest.

Although it had been clear to the defendants and their lawyers in the Gezi case that the trial was not a matter of law but of politics, both political and legal arguments were still quite central in their defence. For instance, lawyers who had gathered in a solidarity meeting of the Istanbul Bar Association before the Gezi trial had discussed and tried to understand the government's goal with

[515] Field notes, 24 June 2019.
[516] Field notes, 24 June 2019.
[517] Many of these prosecutors or police officers were convicted or were still being prosecuted.
[518] "Gezi Trial: Arrest of Osman Kavala to continue," *Bianet*, 18 July 2019, https://bianet.org/english/diger/210628-gezi-trial-defense-statements-of-attorneys-completed, accessed on 7 December 2021.

the case and what kind of strategies they could employ in addition to preparing a defence in law. One of them said: "This is not a case one can win with good lawyering and a good defence."[519] It was emphasized that the important aspect of this case, "like the ÇHD case," is "the outside" (*dışarısı*), meaning outside of the legal domain.[520] Although there was a consensus in the meeting that the Gezi case was highly political, a "matter of honour" for the government to settle, there was also a dominant sentiment that an elaborate legal defence is still crucial; if "one wing of defence is political, the other is legal." However, the defendants and their defence counsel had limited tools in navigating the uncertainty surrounding the investigation and the prosecution. For instance, in the run up to the Gezi trial, I had participated in a meeting between one of the defendants and his lawyer. After swiftly identifying the weakness of the legal premise of the case, they went on to spend more time analysing "what might be the intention behind the case" that was "being built up against them."[521] The anxious discussions between the defendant and the lawyer to try to navigate and ascertain what to expect in the trial clearly reflected the precarity generated by the criminal prosecution.

Confronted with a political trial, the defendants and the lawyers at the Gezi trial did go out of the legal framework; they highlighted the political motivations behind the prosecutions. Besides, several of them defended, with varying emphasis, the socio-political importance and legacy of the Gezi protest. They also posed challenges to the court that emanated from political arguments that they would use against the state and its authorities outside the courtroom. For instance, Can Atalay called the indictment "a ragbag" and "the most recent example of the smearing effort against one of the most honourable public events in this land and in the history of Turkey." Referring to the moderate attitude of the judicial panel, Atalay also claimed "Your soft attitude … does not eliminate the heaviness of the indictment. We are watching the judiciary becoming instrumentalised for intervention in social life." Meanwhile, Duman, one of the lawyers, referred to the case as a "political showdown" (*siyasi hesaplaşma*).[522]

[519] Field notes, Solidarity with Gezi meeting at the Istanbul Bar Association, 23 March 2019.
[520] Field notes, Solidarity with Gezi meeting at the Istanbul Bar Association, 23 March 2019.
[521] Field notes, Meeting between a civil society leader who was a defendant in the Gezi trial and his lawyer, 16 March 2019.
[522] Field notes, 25 June 2019.

Nevertheless, resistance shown by the defendants and the lawyers, whether emanating from law or not, had limited impact on the trajectory of the case. Soon after the verdict of acquittal in the Gezi trial, the HSK started an investigation against the judicial panel presiding the case. The HSK had been moved to action following Erdoğan's criticism of the verdict of acquittal. Meanwhile, as mentioned, Osman Kavala had been charged with separate "crimes" on the day of his acquittal that prevented his release from the Silivri Prison.[523] At the same time, the prosecutor appealed the verdict of acquittal, and the Regional Court of Appeal in Istanbul reversed the judgment in January 2021. Subsequently, a new round of hearings began in the spring of 2021 and concluded a year later with the conviction of all the defendants.

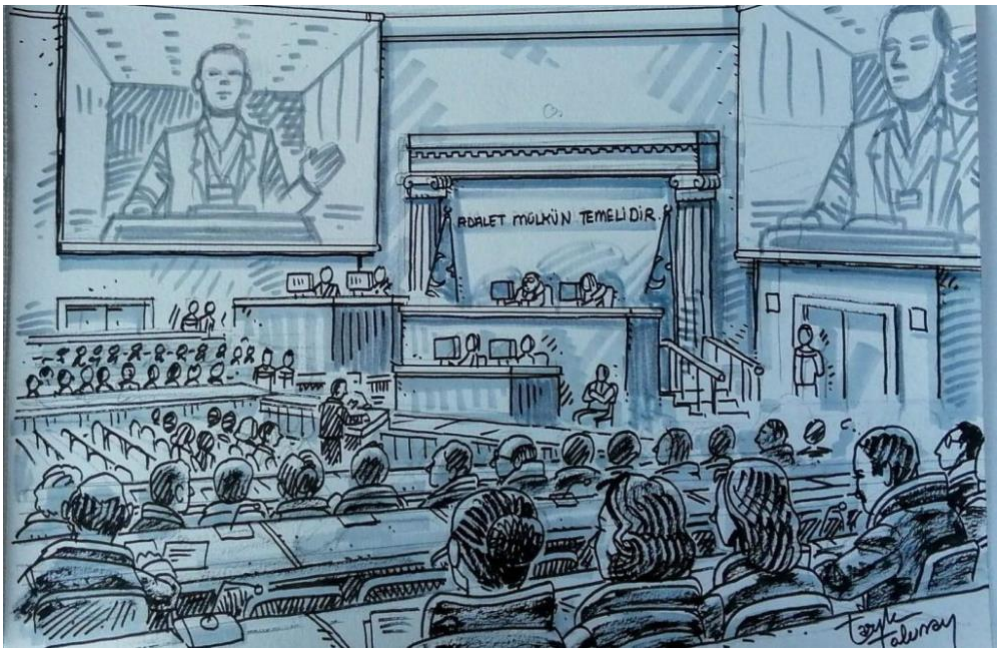


Figure 8: An image of the Gezi trial by the painter Tarık Tolunay (Source: www.diken.com.tr, 25 June 2019)

[523]Coşkun maintains that the strategy of preventing the release of an acquitted defendant from prison by introducing new and separate charges on the very same day was first used against Atilla Taş. See Coşkun, *Burası Mahkeme*, 129.



Figure 9: Drawings of Atalay and Kavala from the Gezi trial by the painter Murat Başol (Source: www.diken.com.tr, 25 June 2019)

There were some cases where the defendants openly challenged the court although the deferral of the announcement of the verdict *(*HAGB*)* was available to them. For instance, Korur Fincancı was one of the few signatories of the peace petition in the "Academics for Peace" cases who refused the deferral of the announcement of her verdict, and hence risked going to prison. She was subsequently convicted with the second highest prison sentence among the academics. In her address to the court, she made references to human rights declarations but also went beyond the law to emphasize abstract notion of justice and other political ideals such as peace and reiterated that "demanding peace is not a crime" and that they (dissidents) will "keep asking uncomfortable questions."[524] Nevertheless, as mentioned above, her open challenge of the court (by not accepting the HAGB and by openly contesting the case) resulted in a heavier sentence on account of her "lack of remorse" and "negative attitude" in court. In other words, the court, having the upper hand in this battleground, punished her acts of defiance by using its "discretion" in determining the length of the sentence.[525] A case which could have concluded with no immediate repercussion except for the court supervision of the defendant for the next five years had taken a very different path with Fincancı's refusal of the HAGB procedure, demonstrating the price of defiance. This illustrates how the coercion inflicted on the dissidents through criminal prosecutions could be easily furthered and exacerbated when openly challenged by the defendants. Hence, the case of Fincancı also illustrates that while the lived experiences in the criminal charges of defamation and terror-related propaganda seem to be apart from the experiences in cases with graver charges such as the Gezi trial, that gap can quickly be closed with resistance being severely punished.

[524] Field notes, 19 December 2018.
[525] It was also this "discretion" which was the root of variegated length of sentences for the same crime in the cases brought against endorsing the "Academics for Peace" petition.

In brief, the defendants, the audience, and the defence counsel were able to employ defiant strategies against the court in both the ÇHD and the Gezi trials in the highly militarised Silivri courtrooms. Some of the defendants openly refused the legitimacy of the judicial panel and used their defence as a platform to advance their own narratives about the acts that were criminalised by the charges in question. Meanwhile, the lawyers highlighted the arbitrary practices and irregularities in the prosecution, demanded the recusal of the judicial panel, and walked out in protest. Similarly, the audience expressed their objections to the trials by chanting slogans, applauding the defendants, and sometimes by refusing to follow the orders of the judicial panel. Hence, overall, the trials allowed contestation and protest in the courtroom. Besides, despite unfriendly, if not hostile, attitude of the judicial panel, I have not witnessed physical violence used against the disobedient audience at the Silivri. Confrontations with the court made it more difficult for the state and the cooperative judiciary to propagate their own narratives through the trials. Besides, the acts of defiance emphasized the political nature of the prosecutions, challenging the ways in which criminalisation of dissent has been presented as a bureaucratic affair. However, although acts of resistance were tolerated, the state and a cooperative judiciary still maintained their control over the criminal prosecution and over the defendants' freedom and mobility. Punitively higher sentences for defiant behaviour in court by the defendant and new charges brought on the day of release of the defendant are apt examples. Where the cases resulted in acquittal, the judicial panels were investigated while defendants were embroiled in retrials and sometimes detained pending a new trial.

2.3 The Solidarity Networks

Although there were an excessive number of gendarmes and a tense atmosphere in both the Gezi and the ÇHD trials, the mood in the Gezi trials was somewhat not as rigid and harsh as the ÇHD trials. The successful mobilisation campaign carried out by the Taksim Solidarity (*Taksim Dayanışması*), a platform made up of over a hundred civil society organisations, in the Gezi trial is an important factor. The platform had organised bus services from six different locations in Istanbul to the Silivri Courtrooms, located 80 kilometres away. The turnout at the first hearing was significant; we had to queue both at the entrance to the Silivri Prison and at the entrance of the

court building. In fact, not everyone made it to the hearing room.[526] The audience included several MPs, diplomatic representatives, press officers, intellectuals, and activists. Consequently, the atmosphere in the court was noticeably different to that at the ÇHD trial, despite the high number of the gendarmerie present. For instance, when Kavala and Aksakoğlu, the two defendants held in detention pending trial, were brought to the courtroom, the public cheered them feverously, and they greeted them in return. Unlike the other hearings I had witnessed, the President of the court did not give warnings to the crowd during this time round.

In the "Academics for Peace" petition hearings too, solidarity networks were effectively mobilised against the power of the court and the state. Özen and Körükmez illustrate how the charges brought against the academics had nurtured a sense of resilience and united them.[527] The academics set up a co-ordination network which was quite successful in following every single trial. They organised press statements before the trials, live tweeted during the hearings, and reported on the trials in their aftermath. Every time I went to watch a hearing of one of the cases concerning the "Academics for Peace" petition, there were people from the solidarity network present in the hearing room. These efforts created a platform for academics to share experiences with one another and formed an archive of information. Besides, bar associations, trade unions, and individual lawyers provided voluntary legal advice and representation to them.[528] In 2019, three years after the initial prosecutions, the Constitutional Court ruled that the petition signed by the academics fell within the scope of academic freedom and the right of freedom of expression. Following this, all criminal prosecutions eventually concluded with acquittals. Nevertheless, the State of Emergency Commission, the public body set up to address grievances about the executive

[526] Field notes, 24 June 2019.
[527] See Özen and Körükmez, "Persistence in Resistance: Purge of Academics for Peace Under Authoritarian Neoliberalism in Turkey," 171-190.
[528] The solidarity network turned out to be effective beyond the legal sphere, too. Academics living abroad helped them secure some international funding, unions provided monthly aid to their members. Most of the dismissed academics expressed that they received monthly aid from the unions. All these helped them continue to exist despite a "civil death" being imposed upon them. See the 2021 report by Human Rights Foundation of Turkey (TİHV) on Academics for Peace, accessible in English: *Barış için Akademisyenler: Güncel Durum Raporu Kasım 2021* (TİHV, 2011), https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/baris-icin-akademisyenler-guncel-durum-raporu-kasim-2021/. For an insightful analysis of the persecution of academics as knowledge producers, see Seçkin Sertdemir Özdemir, "Civic death as a mechanism of retributive punishment: Academic purges in Turkey," *Punishment and Society* 23 no:2 (2020): 145-163.

decrees, refused to reinstate dozens of academics. [529] It is not easy to determine whether the academics' solidarity network had an impact on the judgment of the Constitutional Court. However, it helped academics who were dismissed or prosecuted to deal with and navigate their precarious circumstances.

In sum, solidarity networks and mobilisation campaigns helped the defendants who faced prosecution navigate their precarious situation by raising awareness about their cases and by providing both legal and political support. Besides, these networks, especially in the "Academics for Peace" cases, helped prepare and preserve a record of these criminal trials. Overall, they were important for the perseverance of the defendants and preservation of the space for defiance.

3. Conclusion

First hand experiences, observations, and interviews with the actors involved in the criminal legal procedure demonstrated how the legal system operates to achieve control and suppression of undesirable voices. It starts from the very beginning with the initiation of an investigation. The question of who will be channelled into the machinery of criminal justice is unclear; any phrase or publication can trigger investigation. Yet, by no means anyone who expresses criticism goes through this procedure. Quite the opposite; the space for expression is relatively open but dangerous because one never knows who might be targeted and when. Hence, the state plays the "game" quite cleverly, creating a widespread apprehension that often does not match the actual scale of investigations (or prosecutions). Interestingly, it can also distance itself from criminal prosecutions in many cases by arguing that it is citizens who make the complaints or that the judiciary is simply doing its work.

The next stage of uncertainty unfolds when an investigation materialises into a prosecution. Once a case is brought, there is little ground to assess how the prosecution will proceed. It can go in arbitrary directions depending on circumstances which often cannot be calculated. In other

[529] According to TİHV's 2021 report, 39 per cent of academics who participated in TİHV's survey did not have full-time jobs.

words, once you are in the legal system as a defendant or a suspect, you are helpless. The legal procedure and the form are intact, but the substance of the process is out of the hands of the lawyers. Lawyers are vocal and often put forward well-thought-out defence arguments, but the way the judiciary applies the laws in the type of cases we looked at is influenced by the state. Hence, in these cases the defence is toothless. Experiencing the legal system without the power of defence creates an atmosphere of fear and precarity. Yet again, this does not mean that the criminal legal procedure is a direct pipeline to punishment. Indeed, the procedure itself is the punishment because even where the defendant is acquitted, he or she returns to everyday life with the knowledge and experience of the uncertain legal process. More often, the sentence of a defendant is deferred which means that they are sent back to daily life and work with the pressure of a deferred sentence looming in the background.

As discussed in Chapter 1, political trials often help illustrate the boundaries of the politically permissible and the repercussions of overstepping them. In defamation and terror propaganda cases, prosecutions work towards establishing a mechanism of control by sending out warnings and by demonstrating the hurdles the defendants face. Prison sentences in these cases are usually lower, which makes deferral of the verdict applicable as a result of which the defendants usually do not openly challenge the court. On the other hand, the defendants whom the state considers as being more threatening to their regime often go under terrorism charges. In these cases, the existence of two distinct set of locations for prosecution creates anxiety. Indeed, even the same trial can be moved from one location to another in the course of the proceedings. One of these locations is an ordinary court while the other is a highly securitised hearing room located in a prison complex. The latter is a full display of what can happen if citizens recalcitrate. Yet, this does not mean that there is no resilience or resistance to the prosecutions. In many cases and in both locations, the defendants, their lawyers, and in some cases the audience defy the court through legal and political arguments, solidarity networks, and acts of disobedience during the hearing. These acts of defiance are important for interrupting the narratives built around the defendants and to disrupt the turning of suppression into a technical bureaucratic affair. Nevertheless, the overall message of the political trials is firm: everything is under the control of the state. The message is spread far beyond the court and the sense of fear and uncertainty works as a means of control.

In the following chapters, through my fieldwork, I shed light on how people in the publishing industry interpret what is happening and how they navigate the atmosphere of precarity. In other words, I explore the ripple effect that these criminal prosecutions generate in different segments of the publishing world.

Chapter 5 - Experiencing Precarity: The State and Criminal Charges in the Everyday Life of Publishers and Authors

"They want to imprison [us] in anxiety."
-A veteran lawyer[530]

In this chapter, I look at the lived experiences of precarity that political trials generate in the publishing world. To this end, in the first section of the current chapter, I discuss authors' and publishers' perceptions of the state and understanding of criminal prosecutions in the publishing industry. I categorise my interlocutors on a spectrum according to their proximity (ideological or otherwise) to the ruling government and explore different views along the "friend-enemy" scale. In the second section, I evaluate the foreseeability of state repression by discussing the factors, which publishers and authors in the "non-aligned" camp believe can turn them into sources of threat in the eyes of the state. I also consider how different actors in the "non-aligned group" experience precarity, which adds nuance and complexity to our understanding of configurations of factors and variables. In the third section, I turn to the "aligned" camp and evaluate the same issues, the so called "risk factors" and variances in the lived experiences, in this part of the sector.

1. Perceptions of the State and Criminal Prosecutions Amongst Actors in the Publishing Industry

Reflecting on the field data, it became apparent to me that to understand the viewpoint of my interlocutors they must be positioned along a spectrum of proximity to the ruling government. This analytical approach allows me to discuss the complexities of views and gain a nuanced understanding of the ways of thinking and meaning-making in the publishing world. I will explain below how the state is perceived and criminal prosecution is viewed by different groups along that spectrum.

[530] Field notes, Informal conversation with the veteran lawyer who has, over the years, represented many authors, journalists, and publishers in criminal prosecutions, 21 May 2019.

1.1 The Spectrum of Proximity to the Ruling Government

On one end of this spectrum are publishers, editors and authors who sympathise with, share, or feel a certain degree of affinity to the ideological background of the ruling government. They usually hail from traditionalist-Islamist or nationalist-Islamist movements and their views on topics considered of taboo nature such as the Kurdish issue or the Armenian genocide are usually in harmony with the position of state authorities. I refer to this position as a "friend" end of the spectrum. On the other end of the spectrum are those who are usually critical of the ruling government and engage with the taboo topics. Many of these publishers, authors and editors tend to perceive publishing as a part of their effort to further their ideals; hence, they are mission and ideology oriented. I refer to this as the "enemy" end of the spectrum. In between these opposing ends of the spectrum are the groups, which comprise the majority of publishers in the industry. They include a variety of profiles, such as commercial publishers, publishers focusing on literature, Islamists critical of the government, amongst others.

Authors and publishers positioned in the middle and on the "enemy" end of the spectrum make up the majority of the sector. I refer to them as the "non-aligned group". In contrast, publishers and authors positioned more towards the "friend" end of the spectrum can be called the "aligned" group with the caveat that they are not all active supporters of the government. For many of them, the state had once been a threatening body in the late 1990s and they were happy to talk about the pressures they had endured during that period of time at length. They compartmentalised their experiences in relation to a different period of time and articulated without any hesitation their difficult experiences with the state in the late 1990s when the military leadership was dominant. Yet, the general sentiment amongst them vis-à-vis the contemporary situation was positive.

In terms of professional associations, those on the "friend" end of the spectrum are usually members of the Press and Publishing Association (*Basın Yayın Birliği*, BYB) although some are members of both BYB and Turkish Publishers Association (*Türkiye Yayıncılar Birliği*, TYB.) Indeed, as explained previously, TYB is the "mainstream" and more influential association where,

in general, publishers from all backgrounds have membership. Those on the "enemy" end of the spectrum are also usually members of the TYB but some of them played an important role in the establishment of the new publishers' cooperative, YAYKOOP, described previously.

I illustrate below how the position on the "friend-enemy" spectrum produces different perceptions and experiences of my interlocutors vis-à-vis the possibility of state intervention in the form of criminal charges.

1.2 Perceptions of the State

Interviews and informal conversations with authors and publishers, as well as participant observation at publishing events and at a publishing house, have revealed that the state has a silent, yet omnipresent presence in the publishing environment. For a large part of the publishing industry, the state's image is menacing with many authors and publishers feeling "exposed" to the intervention of a hostile state. Defamation and terror-related charges against dissenting figures in general and those within the industry, addressed earlier in this thesis, are fundamental in generating an antagonistic atmosphere of uncertainty.

Interviews with "non-aligned" interlocuters indicate that the state is perceived by them as a distant, yet omnipresent and surveillant power that can strike at any time. Different interlocutors variously referred to an individual or collective sense of "unease," "fear," "terror," and "sense of surrender" vis-à-vis the state. Çetin, a well-established author and journalist who has been writing for 50 years, compared the sense of fear to a ghost moving around the sector, when he was explaining to me how the state is seen and felt by the people in the publishing industry.[531] Some participants also used analogies with whimsical connotations such as "natural disaster like flood"[532] or "a bear that would emerge from woods unexpectedly"[533] to describe state intervention

[531] Interview with Çetin, 13 March 2019.
[532] Interview with Nedim. 21 February 2019.
[533] Interview with Aylin, 14 May 2019.

or the state itself, indicating that they understand the actions of the state as being unpredictable. According to many interlocutors, sovereign violence operates mainly, albeit not exclusively, through the channel of the criminal legal procedure. In this respect, criminal charges are considered an "attack," and indeed the materialisation of the pervasive threat of state intervention. Authors and publishers in this group did not usually make a distinction between the judiciary and the ruling government, and largely perceived the former as being under the influence of the latter.[534]

Several interlocutors acknowledged a drop in the actual state interventions (*fiili müdahaleler*) in recent years and several of them stated that they had never been to court and have never been investigated. Several others pointed out that they had been prosecuted, but the cases usually resulted in either an acquittal or a deferral of the announcement of the sentence (HAGB). However, even those who had never been investigated or prosecuted indicated feeling "watched", "monitored", and "scrutinized". The general understanding amongst the interlocutors was that the lack of an intervention "does not mean that there will not be any intervention in the near future."[535] Thus, it was clear to many of the interlocutors in this study that the prerogative state had the potential, as Fraenkel argued in his work *The Dual State* in 1941, to encroach upon domains previously left under the normative state when considered necessary.[536] Additionally, as discussed by Agamben regarding the concept of "potentiality", the state could choose not to exercise its potential of intervention even if the latter remained ever-present.[537] These publishers and authors therefore believed that they each could potentially constitute a threat, turning them into a "target" in the eyes of the state, at any given moment. Emir, an editor at a major commercial publishing house, underlined what he believed to be a change of form in repressive state practices: "They used to come get you from your house, now they subpoena you and record your testimony."[538] He also claimed that a more important aspect was the environment the rulers created: "today they create an atmosphere, they urge (or propel) people to self-censorship. So, you take your own

[534] It appears that trust in legal institutions, which was already weak, have further deteriorated since the coup attempt in 2016.
[535] Interview with Kaan, 8 March 2019; Interview with Nehir and Işık, 26 March 2019; Interview with Fikret, 17 June 2019.
[536] See Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (Oxford: Oxford University Press, 2017).
[537] See the section on "potentiality" in Utku Özmakas, *Biyopolitika: İktidar ve Direniş* (İstanbul: İletişim Yayınları, 2018), 190-197.
[538] Interview with Emir, 31 May 2019.

measures out of a fear that they might get offended, and they do not have to do anything." [539] In simple words, Emir's description illustrates the efficiency and power of self-monitoring – without state intervention. As the top editor at a popular, mainstream publisher with no history of criminal prosecution, his emphasis on the atmosphere of fear is a significant indication of the extent of the "ghost of fear" and precarity existing in the industry.

In contrast, publishers and authors positioned more towards the "friend" end of the spectrum were, in general, not in a state of alarm or unease. The state did not constitute a source of tension in their everyday work. Many in the "aligned" camp believed that the days of pressure were an issue of the past, and the publishing sphere was freer than ever before. Tevfik, the owner of a small conservative publishing house had admitted that "there might be some issues relating to due process," without articulating what they are, but he was adamant that "although there might be 20 percent to go [referring to 'democratisation'], the country has come 80 percent of the way."[540] Several of participants within this group also pointed out that extra-judicial killings against critical voices, which were common in the 1990s, were now nearly non-existent. For many of them, AKP's coming to power amounted to a rupture of the threat of state repression.

1.3 Understandings of Criminal Prosecutions

Differences between the views of publishers and authors were apparent with respect to their interpretation of criminal charges. Charges brought against publishers and authors under AKP's rule were mainly directed at "non-aligned" publishers.[541] This also meant that criminal cases brought against dissidents at large, including human rights activists, civil society leaders, journalists, and lawyers, also mostly impacted the "non-aligned" group in the industry. Many of them were related to the defendants in these cases either in a personal or professional capacity. Notably, while attending the hearings of the Gezi case in the Silivri courtrooms, I recognised a few of the editors who were interviewed as a part of this research. Moreover, many authors who write

[539] Interview with Emir, 31 May 2019.
[540] Interview with Tevfik, 7 October 2019.
[541] After the failed coup attempt in 2016, publishers and authors allegedly linked with Gülen became the primary target.

non-fiction publications are also a part of the world of journalism. Hence, it is no surprise that criminal cases against them came up in the conversations I had with actors in the publishing industry. As mentioned, these prosecutions were regarded as state assault on critical voices and were used as examples to illustrate what they perceived as the further deterioration of the already imperfect due process in criminal prosecutions. Thus, despite the decreasing number of cases, several interlocutors in the "non-aligned" group who have been active since the post-coup era in 1980s believed that the pressure they experienced at the time we spoke was unique.[542]

As for criminal prosecutions, many interlocutors believed that the process itself was detrimental to authors and publishers, even where charges resulted in acquittal or in cases where the sentence is a fine rather than imprisonment. Kemal, a poet and columnist, highlighted the stress of having to deal with cases: "You are interrupted. Instead of writing and thinking, you have to go and explain yourself to the prosecutor in an investigation. The time I lose in the process is time stolen from my life."[543] In addition to the time and effort spent, he also remarked that "the pecuniary penalties are not just symbolic, it is difficult to pay them."[544] For instance, Fahriye's conviction for "insulting the institutions of the state" and "insulting the President" for writing about AKP and ISIS in her books was converted to a pecuniary fine of 3,000 Turkish Liras. Later, another court also ruled that she had to pay 15,000 Turkish Liras compensation to a group of politicians in a civil "defamation" case they had brought against her. Fahriye emphasised that as a salaried public employee, these amounts were financially "important for people like us" and was distressed that she had to pay it "out of her children's sustenance."[545] When charged with defamation, Fahriye also had to take early retirement to avoid being dismissed from her position by the relevant Ministry, which would have jeopardised her pension rights. In addition to financial costs, both Fahriye and her publisher suffered damage to their morale and team spirit. Zeynep, Fahriye's publisher, pointed out that having to deal with a series of criminal cases has been unnerving and disheartening for the whole publishing team.[546]

[542] Interview with Leyla 22 May 2019; Interview with Çetin 13 March 2019; Interview with Halil, 19 November 2019.
[543] Interview with Kemal, 08 March 2019.
[544] Interview with Kemal, 08 March 2019.
[545] Interview with Fahriye, 28 May 2019. The net national minimum income in 2018 was 1603 TL.
[546] Field notes, Informal conversation with Zeynep,19 June 2019.

On the other hand, many amongst authors and publishers located in the relatively smaller "aligned" camp believed that the state was under threat and had to fight those who posed threat to it. While they had to deal with criminal charges in the era of coups, especially during and after the military intervention in democratic politics in 1997,[547] the pressures they faced in general, and those emanating from the legal institutions in particular have gone down in the wake of AKP's victory, as several of these publishers and authors pointed out.[548] As a consequence, they perceived the criminal charges in a different light. Many of them used the term "reflex of the state" to refer to what they considered as being the natural impulse of state institutions to protect the interests of the Turkish nation-state. Several of these participants made a causal link between the "Hendek incidents" (the conflict between Turkish armed forces and PKK fighters in Diyarbakır) or "the trauma of July 15" (the failed coup attempt in 2016 by Gülenists) and the increasing securitisation of the state and increasing number of cases against dissident groups. In this respect, they considered "this much intervention" as being "normal" because the country "is suffering big pains and terror," and because the country "cannot be compared with Sweden, Norway and Finland."[549] One participant asked rhetorically: "Which other country went through something like the 15th of July?" referring to the failed coup attempt in 2016.[550]

A number of interlocutors on the "friend" end of the spectrum also undermined the gravity of the criminal charges. Muhittin, the owner of a medium sized commercial publishing house, claimed that cases against publishers and authors were "isolated incidents" (*münferit olaylar*).[551] Several of them highlighted that there were indeed cases being brought forward, but that they mostly resulted in acquittals. In this respect, Muhittin argued that "one must focus on the result of a case. If there is no solid physical evidence, they give a verdict of non-prosecution."[552] Echoing the words of judge Peri from the criminal court of first instance specialised in media cases, another editor said "there are cases, but no one goes in."[553] Given the focus on the acquittals or defendants not going to prison, it is reasonable to suggest that the deferral of the announcement of the sentence

[547] It must be noted that leftists and Kurds were also frequently prosecuted during this period.
[548] Interview with Erdem, 12 March 2019; Interview with Nurettin 19 November 2019; Interview with Tevfik, 7 October 2019.
[549] Interview with Bekir, 2 October 2019.
[550] Interview with Ersin, 31 October 2019.
[551] Interview with Muhittin, 5 November 2019.
[552] Interview with Muhittin, 5 November 2019.
[553] Interview with Ersin, 31 October 2019.

(HAGB) has succeeded, at least with respect to certain circles, in keeping invisible the control mechanism over publishers and authors to silence them. Indeed, the owner of another publishing house claimed that "as far as I see, these cases do not have much impact on publishers."[554] Finally, several of these authors and publishers made a distinction between the judiciary and the government and pointed to the judiciary specifically as the main source of problems in criminal prosecutions.

2. Interpretations of "Risk Factors" and Experiences of Precarity amongst "Non-Aligned" Authors and Publishers

Even though many participants contended that it was nearly impossible to reliably ascertain whether one is going to be targeted by the state, many also believed that there are certain factors explaining what might constitute a threat or an enemy in the eyes of the government. In what follows, I explore the factors which were communicated to me, namely, publishers' and authors' engagement with taboo issues, visibility, the genre of publication, and the political atmosphere at a given time. I also explore lived experiences in the industry, which shed light on the contingent nature of state repression.

2.1 Engagement with Taboo Topics

Many believed that watching out for taboo topics or the "red lines of the state," which are unwritten, yet discernible precepts or boundaries of permissible expression, was a key factor. Given that the red lines" were not fixed and stable, interlocutors pointed out that criminal prosecutions were an important source of information on contemporary taboo topics. Several others indicated that the content shared by pro-government media outlets, including newspapers and TV-channels, social media accounts (including AKP trolls) and reports published by pro-government NGOs (such as the SETA report on publishing discussed earlier) also reflect the "up-to-date sensitivities" of the government. According to them, by checking these sources, one could

[554] Interview with Bekir, 2 October 2019.

tell which groups or what topics were on the government's radar. On the other hand, there were also topics such as the Kurdish issue that has been considered a red line in each era, except, perhaps, for brief periods of political openings.

The conversations with interlocutors indicated that the current red lines include the Kurdish problem, Armenian issue, criticism of President Erdoğan and his family in specific, and the ruling government in general, religion (for example, Alevis or the Sharia state), lesbian, gay, bisexual, transgender and queer (LGBTQ) sexuality, and the Gülenist terror organisation. Among these, the Kurdish issue was the "taboo" that was reiterated by almost all interlocutors, although authors and publishers close to the ruling government generally referred to it as the question of "terror."

As explained previously, the topic of the Gulenist organisation became a significant "taboo" in the wake of the failed coup attempt. It was mainly authors and publishers close to the "friend" end of the spectrum who emphasised the red line regarding the Gülenists since publishers affiliated with Gülen were previously among their ranks. However, there were others in the middle and toward the "enemy" end of the spectrum who also highlighted the risks of writing about the Gülenists. For instance, Harun, who is a famous author and academic, emphasised that writing about injustices committed against Gülenists could get one into serious trouble: "It is too dangerous to utter these, you can immediately be pronounced a FETÖ supporter and be prosecuted."[555] Indeed, as I further elaborate in the next chapter, all actors across the industry distanced themselves from the Gülenists.

Another often cited "red line" was criticism of the ruling government and President Erdoğan. Indeed, Harun ranked criticism of Erdoğan and his family as "the first and foremost red line."[556] It was generally believed that this also extended to criticism of the presidential system, business networks, and the question of corruption within the ruling government. The owner of a prominent publisher argued that there were no "real books investigating the arms capital, corrupted trade relations, money laundering, and money transfers, for example, apart from a set of sloppy

[555] Interview with Harun, 29 May 2019.
[556] Interview with Harun, 29 May 2019.

ones who pretend to do so."[557] He argued that this was the case because "if we publish a book investigating real business relations, they will raid here in 24 hours and take us away too."[558]

Hence, it is reasonable to suggest that certain issues like the Kurdish issue, the Gülenist organisation and criticism of the President, constitute more or less clear "red lines" and leave little space for negotiation or navigation. Thus, they provide a certain degree of foreseeability with respect to the threat of prosecution. However, as indicated throughout the chapter, there are controversial publications on "red lines", which have not been investigated or prosecuted. This prospect creates uncertainty, and perhaps leeway, allowing some authors and publishers to take risks with respect to the scope of "taboo" topics.

For example, another clear "red line," the Armenian genocide, which is officially denied by the state, was openly challenged by some publishing houses on a routine basis with no repercussion, while others faced criminal charges for similar work.[559] As mentioned, "taboos" are not articulated in any written form and have more to do with how at any particular time the regime chooses to apply existing laws. Returning to the concept of the dual state, authors and publishers who work on the Kurdish issue or the Armenian genocide are aware that the ordinary norms might be interpreted and implemented in line with the priorities of the "prerogative" or the "security state." Yet, it is still not possible to suggest that "red lines" or the security state will come into play or materialise every time someone publishes a work dealing with these issues. Hence, a degree of uncertainty surrounds even the sharp-edged taboos.

The Case of Sirani Publishing

The case of Sirani Publishing both illustrates the uncertainty with respect to a clear taboo, the Armenian genocide, and highlights how there is no direct relation between the number of criminal charges one has faced and the experience of precarity. Sirani was founded by a group of

[557] Interview with Halil, 19 November 2019. He indicated that the atmosphere of pressure succeeds in preventing the appearance of such books. Yet, he argued that if any such title was submitted to them, they would take the risk of publishing it.
[558] Interview with Halil, 19 November 2019.
[559] Interview with Ulus, 25 March 2019.

intellectuals with an ethnic minority background in Istanbul. Fikret, the lead editor, explained to me that it was with the murder of the Istanbulite-Armenian journalist Hrant Dink in 2007 that Sirani started to use the term "genocide."[560] Previously, the publishing house was more cautious and hesitant. When Fikret started working at Sirani in mid 2010s, the term "genocide" was still in use, but they were not publishing books that focused on the Armenian genocide. Fikret wanted to change that, and he returned to Sirani with "this awareness, thinking that [he] will bear the risks and repercussions."[561] He succeeded in publishing several books that put the Armenian genocide at the centre of inquiry. Despite his apprehension, however, there was no "intervention" to the work of the publishing house: "We have not been bothered by the state, neither for an investigation nor a case. We never had contact with the police. We have had a few disturbances, but they came from citizens."[562] Nevertheless, he did not consider lack of criminal charges reassuring. He felt that they were being watched closely: "I am certain that they are keeping track, they know the books we publish, and review them. But this has not transformed into state intervention."[563] He gave a twofold explanation for the lack of intervention. First, he believed that publishing did not draw as much attention of the government as current media and newspapers since its readership was limited. Second, he believed that the government had made a strategic decision not to deal with non-Muslim minority media outlets to protect its image on the international scene. He then added that he was not even sure if the government really cared about international reaction anymore, showcasing the uncertainty experienced with respect to the actions of the state. Overall, Sirani's case shows that even when a publisher engages with one of the obvious red lines of the state, criminal charges may not follow. At the same time, lack of criminal prosecution does not mean that the publisher is feeling secure and having an easy time. As Fikret's comments indicate, a minority publisher who "engages with the red lines" still feels as though it is on the state's radar, exposed and susceptible to state intervention, even if they have never faced an investigation or prosecution.

[560] Fikret claimed "it was the psychological impact of his murder and an act of rebellion." Until then, the publishing house tried not to alienate its readership by using the term, but after Dink's murder they thought "let them listen to us this way if they will listen." Interview with Fikret, 17 June 2019.
[561] Interview with Fikret, 17 June 2019.
[562] Interview with Fikret, 17 June 2019.
[563] Interview with Fikret, 17 June 2019.

2.2 Recognition and Visibility

Levels of public recognition and visibility are important secondary factors that play into the significance of "the red lines" crossed. It appears that the higher these two, the higher the risk that a "transgressive" piece of writing might draw the attention of a public prosecutor.[564] Social media plays a significant role in this respect. When a work receives attention or becomes a trending topic on the Internet, it is more likely that pro-government media or pro-government trolls (or "AKtroll" as some of my interlocutors called them) would scrutinise the work and perhaps make an official complaint to the office of the public prosecutor. Indeed, several authors and publishers admitted that they deliberately keep a low profile on their personal social media accounts and are careful about what they share to avoid unwarranted scrutiny that could cause trouble for their work.[565]

Another factor is the popularity or the prominence of the author. For instance, two fiction books written by authors in prison and published by two small scale leftist publishers received very different levels of scrutiny. One was the short story collection written by a Kurdish politician in prison,[566] the other one was a novel penned also in prison by a convicted Kurdish guerrilla. While no charge has been brought in connection with either of the book, the politician's work came under much more scrutiny. The publisher of the book told me that he had received calls from multiple prosecution offices asking for a copy for inspection. The book was also temporarily barred from prisons and was not displayed on shelves in several bookshops.[567] Pro-government media targeted the Kurdish politician's short story collection and the journalists who have written reviews about it. Furthermore, the Director of Communications of the Office of Presidency spoke out

[564] As mentioned, printers are required by law to submit two copies of a work they print to the designated Office of the public prosecutor in their district. The office of the public prosecutor can, within six months from the date of receipt, bring a criminal case against the published work. With vast amounts of works being printed every day, the office of the public prosecutor has a section devoted to publications. Yet, it is widely believed in the industry that it is impossible for them to check each copy they receive.
[565] Interview with Fikret from Sirana Publishing, 17 June 2019; Interview with Selin from Odyssey Publishing, 5 March 2019. For instance, social media statements are the most prominent subject of prosecution, more than books, on account of defamation against the President.
[566] I am referring to *Seher* written by Selahattin Demirtaş, the former head of the pro-Kurdish People's Democratic Party (HDP), who is in prison. Selahattin Demirtaş, *Seher* (Ankara: Dipnot Yayınları, 2017).
[567] Interview with Emirali Türkmen from Dipnot Publishing, 25 May 2019. It is noteworthy that the book itself was written in a prison.

against the book.[568] By contrast, the novel written by the Kurdish guerrilla, who was not in the public domain, made no news.[569]

On the other hand, the fact that the author was a well-known political figure did not always mean that the book he or she writes will be scrutinized at length. For instance, two other Kurdish politicians, İdris Baluken and Gülten Kışanak, had also written books while they were in prison. However, these works did not draw the same level of attention and reaction as the short story collection by Selahattin Demirtaş. It is not possible to offer a clear explanation for the discrepancy between the cases. Hence, this is a relevant example that signifies the limitations of identifying factors. There are multiple layers and more than a single factor at play in a given case.

I have been told that low prominence can provide the author or the publisher with more space to engage with "taboo" topics. An editor of an online publisher and a literary magazine *E-Kitap*, explained that "if you are not a group or an individual featured by the media, you do not create a reaction, they do not look or search for you."[570] After being convinced that *E-Kitap* was not visible, she had admitted that their anxieties about criminal prosecutions had dropped in the last two years.[571] Similarly, an author in the "aligned" group had indicated that authors with wide readership, like Orhan Pamuk, are scrutinised more by prosecutors. He claimed that "the government does not even hear about books which do not have wide readership," unless it is pointed out to them specifically.[572] Meanwhile, as mentioned, there are multiple layers to how factors operate. For instance, it has also been suggested that a prominent reputation, when combined with advanced age, can turn into a favourable factor for an author. Leyla who was nearly 80 years old at the time of our interview put it plainly: "They hesitate to touch people of my age; they might want to refrain from having to deal with the repercussions."[573]

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[568] Fahrettin Altun, "Kültürel alan da demokratikleşmeli," *Sabah*, 9 July 2018, https://www.sabah.com.tr/yazarlar/fahrettinaltun/2018/07/09/kulturel-alan-da-demokratiklesmeli, accessed:19 September 2022.
[569] Interview with Baran from Letter Publishing, 11 October 2019.
[570] Interview with Pınar from E-Kitap, 28 June 2019
[571] Interview with Pınar from E-Kitap, 28 June 2019.
[572] Interview with Engin, January 7, 2020.
[573] Interview with Leyla, 22 May 2019.

According to Hüseyin, the title of a book can be a significant trigger in terms of visibility. He argued that titles can be signs that the prosecutors interpret amidst vast amount of printed works they have to check. Two of *Somut*'s books, which were prosecuted had "Kurdish" in their title: *The Kurdish National Movement* and *The Kurdistan Left*.[574] At the same time, another book they published, a work that provided insight into daily life during the clashes between Turkish armed forces and PKK fighters in Diyarbakır between 2015-2016, a subversive publication at the time, went unnoticed. According to Hüseyin, the title of the book had a role to play; "the name *Birds (Kuşlar)*[575] did not mean anything," and he believed that for this reason the book did not draw the attention of the Office of the Public Prosecutor.[576]

2.3 The Genre of Publication

Numerous publishers and authors maintained that literary works were less risky than works of non-fiction in terms of criminal prosecution. Many believed that fiction, with its relatively limited readership, did not constitute a significant threat in the eyes of the state authorities. Many also believed that it was harder for the state to target literary works, which are always more ambiguous and whose "messages" are more contingent. *Seher,* the short story collection of the imprisoned Kurdish political leader Selahattin Demirtaş is an appropriate example. As mentioned above, several different actors put the book through close examination. Nevertheless, despite all the scrutiny, there were no criminal charges brought against the author or the publisher. Leyla, an established novelist who has also been writing political columns over the last 40 years argued that in Turkey none of the governments in different eras "targeted fiction in the same way" they attacked non-fiction.[577] She emphasised that she never had legal trouble on account of the fictional works she has written, including the few novels based on controversial historical events such as

[574] The original titles of the books have been amended to maintain the anonymity of the publisher.
[575] The original title of the book has been changed to maintain the anonymity of the publisher.
[576] Interview with Huseyin at Somut Publishing, 26 March 2019.
[577] Interview with Leyla, 22 May 2019.

the Kurdish uprisings in the east.[578] Yet, the genre of publication was in interplay with other factors, as examined in the lived experiences of different fiction authors and publishers below.

Different Experiences amongst Fiction Writers and Publishers

In practice, the main "risk" for those who write or publish literature are charges on account of obscenity, also a criminal charge.[579] Obscenity charges aside, it can be argued that amongst my interlocutors, authors and publishers who worked on literature did not feel the same level of surveillance and the sense of exposure as many others.

For instance, the threat of criminal prosecution was not a primary concern for editors at Odyssey, a small publishing house focusing on publishing translated works of literature. I met Selin, the co-founder of Odyssey, at their offices in a beautiful old apartment building in the central and historical neighbourhood of Pera.[580] Selin's family owns the entire floor of the building where the office of the publishing house is also located. As we started talking, Selin remarked that she did not consider potential criminal charges while picking titles, "If I do that, there is no point left in publishing. If I obsess over it, I will reduce my space".[581] Yet, Selin quickly added that as a publisher focusing on translated works of fiction, their situation was different from "publishers with a certain stance," or "publishers with a political discourse, those who operate in the south-east of the country or Kurdish publishers" who are usually scrutinised more and are embedded in very different dynamics.[582] Nevertheless, she also acknowledged that "it was not possible to isolate oneself" from the tense environment and indicated that they also feel exposed.[583] "If they want to

[578] Interview with Leyla. 22 May 2019. She even argued that "if a novelist claims she or he is under pressure, it is untrue." Upon this remark, I had pointed out the criminal charge brought against Elif Şafak in 2006 for denigrating Turkishness in her novel *The Bastard of Istanbul,* on account of a comment one of the characters in the book made about the Armenian genocide. She pointed out that the case was initiated by a nationalist lawyer and not by the prosecutor ex officio and that the charges were dropped soon after. This indicates how authors in the "non-aligned group" also occasionally underestimated the gravity of the process of the prosecution itself.
[579] However, due to constraints of space, the current work leaves out obscenity charges in studying the repression of dissenting voices. State-society dynamics behind them must be studied separately.
[580] Interview with Selin, 5 March 2019.
[581] Interview with Selin, 5 March 2019.
[582] Interview with Selin, 5 March 2019.
[583] Interview with Selin, 5 March 2019.

find something, they can do it in any work".[584] She had also pointed out that it was possible to become a target "if your publishing is out of the bounds of the values of the ruling power today," adding that, as a small publishing house, "a criminal case would debilitate (us) materially and emotionally."[585] However, it was obvious that this was not a driving factor in her work. She maintained that in her experience the main impact of the threat of prosecution has been on her personal life, rather than her work. She admitted that she was careful when speaking to people on Instagram and on Twitter but not in her work. In other words, Selin, was able to relegate the threat of criminal charges to the background and could limit its impact on her everyday experience. She also believed that there was room for defending her work in a courtroom: "If prosecuted, I would discuss the international dimensions of the book," and "its place in world literature" to defend the publishing house in a trial.[586] In other words, as a publisher operating in a relatively protected world, she was neither too alarmed about state intervention nor very sceptical about the criminal legal procedure.

Süreyya's relative ease as a short story author resonated with Selin's experience. I met her at a laid-back bar on the side streets of Taksim. Süreyya was a friendly young woman who had just won an award by E-Kitap, an online publisher, for her short story depicting a woman fleeing domestic violence through a magical realist approach. She was in her late thirties and worked as a lawyer during the day and wrote stories in her private time. As a lawyer, she was well acquainted with the weaponisation of law against journalists, activists, and other dissenting voices. Yet, when asked about the impact of this on her own work as a writer, she highlighted that "I am not someone who writes in those fields, so it does not affect me directly." By "those fields," she referred to "political issues such as tender malpractices, corruption, and the Kurdish issue."[587] She believed that she would have a different experience if she was focusing on these issues. Her stories looked at women in society and involved politics of gender, but she emphasised that "women and animal rights are two broad based issues which the government has appropriated, especially after Gezi."[588]

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[584] Interview with Selin, 5 March 2019.
[585] nterview with Selin, 5 March 2019.
[586] According to her, it could be more challenging to defend a work of fiction written in Turkish as she would not be able to make the "global impact" argument: "I would have to argue the literary value of the work itself." Interview with Selin, 5 March 2019.
[587] Interview with Süreyya, 25 September 2019.
[588] Interview with Süreyya, 25 September 2019.

She also pointed out that "there was no relevant law" to indict texts looking at rights of women or animal rights. [589] It was also more difficult to apply defamation and terror related charges to these themes. She claimed that "in the worst case, I would be detained for two days and then I would be released," unlike people who write in risky fields mentioned above.[590] Thus, she was quite confident that if one writes "about the issue of women, it is more difficult to get a reaction from the state."[591] At the same time, she was keen to underline that she did not avoid writing on "political issues" out of fear of state intervention and affirmed that if she were writing on those topics, she "would not hesitate" to speak up and run the risk of the consequences. Nevertheless, it appears that writing on women comes with its own baggage. She had to navigate social pressure as opposed to the threat of criminal prosecution. Overall, Süreyya was cognizant of the limits of the relative security of writing fiction.

On the other hand, Emin's case illustrates the limits of the "relative safety," which the genre of literature bestows on authors and publishers. Emin is a Kurdish high school chemistry teacher who, like Süreyya, writes short stories in his private time in Turkish.[592] I met him at the award ceremony organised by E-Kitap, where I had also met Süreyya. Emin was living in a rural town and had come to Istanbul for the ceremony. Very open and sincere in his conversation, he explained to me that he turned to literature later in life as a way "to share the pain and sensitivity [he] feels on political issues."[593] He felt that there was more room to speak openly during the peace process between the government and the PKK between 2013-2015. He also talked about how he personally experienced the narrowing of that space after the peace talks had failed. "Hence, I turned to literature, I have been told that it is a safer field since it is difficult for it to be used as evidence," he reflected.[594] Although Emin was reassured by the space the genre of literature offered him, his experience as a writer whose stories touched "red lines" like the Kurdish issue and the Armenian minority in Turkey, was not similar to that of Süreyya. He was still anxious about criminal charges due to awareness of how easily one "can be prosecuted and become a target."[595] He did not want

[589] Interview with Süreyya, 25 September 2019.
[590] Interview with Süreyya, 25 September 2019.
[591] Interview with Süreyya, 25 September 2019.
[592] Field notes, Informal conversation with Emin at the short story award ceremony, 4 July 2019.
[593] Field notes, 4 July 2019.
[594] Field notes, 4 July 2019.
[595] Field notes, 4 July 2019.

to get into trouble but also wanted to say his "share and not hold back." He also believed that there was "the baggage of being a Kurd." He maintained that "when you are a Kurd, when you are from a village and from the lower strata of the society, there is innate censorship."[596]

Overall, Selin, Süreyya and Emin were all conscious of the threat of repression in the form of criminal prosecution; it formed a part of their everyday experience. At the same time, they had greater scope for expression as fiction writers. Nonetheless, as the discussion illustrates, Emin still felt more exposed and at risk compared to Selin and Süreyya, principally due to the political themes he engaged with in his work and his minority background. It therefore should be kept in mind that usually more than a single factor is at play. Other factors, like prominence, might override the relative safety of the literary space. For instance, as mentioned earlier, internationally renowned novelist Orhan Pamuk faced an investigation for defamation against Atatürk and the Turkish flag on account of a novel in 2021.

Different Experiences amongst Non-fiction Authors and Publishers

Regarding the genre of publication, another point interlocutors raised was that non-fiction works were inherently riskier in terms of prosecution. Yet, the cases of Somut and Referans Publishing indicate that there were differences between non-fiction publishers, too, depending on the themes or topics they were working on. Both Somut and Referans were publishing houses that consider promoting critical thinking and "alternative publishing" as a fundamental part of their work. Both were established by a group of individuals who identified themselves as leftists and both have published non-fiction series.[597] The main orientation of Referans was establishing a leftist canon more generally while Somut had been building a canon in leftist-Kurdish studies. Given the themes they focus on, both Referans and Somut anticipated criminal charges on account

[596] Field notes, 4 July 2019.

[597] Interview with Hüseyin, 26 March 2019; Interview with Umay, 15 May 2019. Referans was established in late 1980s, in the aftermath of the 1980 coup d'état and over time became a medium sized yet prominent actor in the publishing industry whose series range from philosophy, underground fiction to Turkish literature, classics, and critical Studies. Somut, on the other hand, was established in 2000. Huseyin, the editor-in-chief at Somut had left his job at a sizeable leftist publishing house, which had become a successful commercial actor in the industry. His intention was to focus more on publishing subversive works that could be, according to him and his co-founders, braver in terms of Turkeys "fundamental issues," especially the Kurdish issue. Somut's publishing line was also varied, ranging from political thrillers to cinema, anthropology and academic works.

of some of the books they had published. For Referans, an example was the edited volume they had published on the Soma mine explosion at a time when even newspapers faced publication bans with regards to the incident. However, no charge was brought against them. As mentioned, Somut also expected an investigation concerning a "risky" work they published in 2018, *Birds* (*Kuşlar*). Yet, the book did not lead to any inquiry or charge.

On the other hand, both publishers faced criminal charges on account of other titles. Somut had been charged twice for terror propaganda on account of two academic books that looked at the Kurdish national and Kurdish left-wing movements respectively.[598] Meanwhile, Referans has been charged several times (around eight times) on account of obscenity, all due to works of fiction published as a part of a series on underground literature.[599] As for the non-fiction works it has published, Referans had not faced any criminal charges. Despite spending significant amounts of energy and money to defend themselves against obscenity charges, Umay, the owner of Referans, remarked that "nowadays, the pressure on the publishing world does not appear to be very intense."[600] Comparing the current situation with the period following the coup of 12 September 1980, he pointed out that "there are not as many confiscation orders, raids on publishers, and confiscation of their books."[601] He also pointed out that publishing leftist works and titles on communism, a key area of focus for them, was not as risky as it used to be. However, Umay was aware that criminal prosecutions and executive decrees were negatively affecting many of his friends. He admitted that all publishers are somehow affected as they must consider the possibility of criminal charges. However, he still maintained that the impact on Referans was limited; for instance, they did not put any books on hold. Hence, overall, Umay did not feel as exposed to intervention as Hüseyin at Somut. Although Somut had fewer criminal charges compared to Referans, Hüseyin, the chief editor, pointed out that they were being watched even when there is no actual intervention. In Hüseyin's understanding, this was related to the fact that Somut was one of the few publishers to publish "risky" works such as the writings of imprisoned Kurdish

[598] The case brought against the book on the Kurdish national movement resulted in an acquittal while the other case was still ongoing.
[599] Some of these prosecutions resulted in acquittal while others concluded with deferral of the announcement of the sentence.
[600] Interview with Umay, 15 May 2019.
[601] Interview with Umay, 15 May 2019.

politicians, while publications with socialist ideas that would most likely be charged as communist propaganda in 1980s, moved into a relatively "safe zone."

The differences in the experience of the two publishers could also be inferred from their attitude to precautions. For instance, Hüseyin had explained that one measure they took was moving the contracts they had with their authors to another location to preserve them in case of a police raid. By contrast, Umay at Referans was quite dismissive regarding such measures. While they also made copies of all their documents, he remarked "where will you put the copies? You will move them from here to your home. Those who can raid here can also raid your house."[602] He then claimed that one must run the risk rather than take precautions. In other words, although both Somut and Referans were leftist publishers focusing on non-fiction works, Umay appeared to be more at ease compared to Hüseyin. Hence, the discussion above reveals how the genre of publication alone has limited explanatory power; working on minority themes such as the Kurdish issue is another layer that shapes the experience of precarity in the industry.[603]

2.4 Politics of the Time

Many publishers and authors pointed out that changes in the political atmosphere, small or radical, immediately resonated in the publishing world. Writing about or publicly discussing certain "taboo topics" such as the Armenian genocide and the Kurdish problem had become less dangerous following several political "openings" under AKP. A number of interlocutors agreed that the space of discussion started to narrow after the Gezi Protests in 2013. On the other hand, the space was opened with respect to the Kurdish problem during the Kurdish Peace Process between 2013-2015. In this short period, there was a marked increase in the number of books that examined the Kurdish issue from different perspectives. Hüseyin, discussed above, expressed his

[602] Interview with Umay, 15 May 2019.
[603] Hüseyin at Somut also argued that larger publishers generally smaller, non-commercial publishers who focus on taboo topics are in a more vulnerable position. He argued that sometimes larger publishers got away more easily with publishing on the Kurdish issue, since these titles were somewhat absorbed in the large range of publications they have. He gave the example of a small publisher focusing on the Kurdish issue alone who was expelled from a private book fair on account of their books while a bigger publisher who was showcasing similar books on the Kurdish issue did not receive the same reaction from the book fair organisers.

surprise at the time: "even mainstream monopolistic publishers had started to publish on the Kurdish issue. Doğan Kitap had even published a story book in Kurdish during the peace process. It was a good time for those of us who suffered the heavy distress of this job. We were being discovered and receiving more public attention."[604] It appears that attention during this period did not put one in danger. Yet, as mentioned earlier, some of these books were prosecuted for "terror" charges such as "terror propaganda" following the failure of the peace process. Most of these cases were brought forward in disregard of the existing legal requirements of time limitation delineated in the Press Law. Ece, a young journalist and author recalled how pro-government newspapers that avoided referring to PKK as a "terror organisation" reverted to the term right after the failure of the peace process.[605] As mentioned above, *Kurdish Left* published by Hüseyin at Somut Publishing in 2013, during the peace process, was prosecuted years later in 2018 after it was "confiscated" in a house raid and used as evidence in another criminal charge.[606] Therefore, it comes as no surprise that several authors and publishers remarked that some of their work published just a few years ago would be too risky to publish at the time of the interview.

In addition to the policies of the government, its alliances also affected the political atmosphere. For instance, publishing works critical of the Gülenist movement could trigger defamation cases against an author or publisher before the collapse of the alliance between the Gülenists and the government and while Gülenist cadres were still embedded in the bureaucracy and the judiciary. Ironically, publication of positive or even analytically neutral material on the movement would likely trigger counter-terror charges after the fall out. As discussed previously, Ahmet Şık's unpublished manuscript "The Imam's Army," which examined the influence of the Gülenist movement within the police cadres and institutions, had been seized by the police and banned by the courts. Şık was charged with "assisting a terrorist organisation," the Ergenekon organisation, and was kept in detention pending trial for a year. However, as pointed out by Ece, countless books appeared following the failed coup attempt by Gülenists to explain and tell the "dark side" of the Gülenist movement.[607] Meanwhile, writing or publishing anything critical about the government measures against public officers, academics, authors, journalists, and others

[604] Interview with Hüseyin, 26 March 2019.
[605] Interview with Ece, 20 May 2019.
[606] Interview with Hüseyin, 26 March 2019.
[607] Interview with Ece, 20 May 2019.

allegedly linked to the Gülenist movement became a significant taboo. Works which contained the slightest sympathy or commendation for Gülen or for the movement also categorically became too dangerous to publish.

In sum, although factors discussed above throw some light on the experiences of precarity, they are not exhaustive. Authors and publishers who, based on these factors, are supposed to be on the state's radar may not get targeted at all. Yet, the lack of a criminal prosecution in the past does not seem to prevent numerous authors and publishers from feeling at risk. In practice, these factors are always in an interplay and can work in various configurations. Consequently, the experiences of precarity in the "non-aligned" group in the industry is multi-layered and include subtle distinctions, as demonstrated above.

2.5 The Sense of Precarity: How Foreseeable is State Repression?

As for the foreseeability of repression, I have demonstrated how all the factors discussed above involve a degree of uncertainty. For instance, as discussed, an author or publisher who produces a "controversial" work of non-fiction on a taboo topic may not get targeted. Indeed, amongst authors and publishers in the "non-aligned" group, it was widely agreed that the predictability of criminal prosecution is inherently limited. Leyla declared that "there is predictability up to a degree, not thereafter."[608] She explained that this was because the government "actions are arbitrary; they are not based on the laws. You cannot calculate that, neither can you change anything by calculating."[609] It was believed that while analysing what makes one a threat or a target was of some use, there is always an inexplicable, near mythic, dimension to the operation of the power of the government in their case. Kaan, the lead editor at *United*, argued that "there is no mathematics to what, when and how you might get into trouble. It can occur whether you calculate it beforehand, or even if you have not calculated it at all in advance."[610] Indeed, even Umay from Referans, referred to government intervention as "lottery."[611]

[608] Interview with Leyla, 22 May 2019.
[609] Interview with Leyla, 22 May 2019.
[610] Interview with Kaan, 8 March 2019.
[611] Interview with Umay, 15 May 2019.

When I met Nehir, a founder and an editor at a small alternative publisher focusing on women's issues, she pointed out that "now we cannot say very clearly who is targeted." She mentioned an Armenian publisher as an example: "For all I know being an Armenian publisher must be the toughest thing in this country."[612] After pointing out that they had not yet been bothered by the state, she quickly knocked on wood and said, "never mind, we do not want something bad to happen to them."[613] Knocking on wood in Turkey's context is an attempt to avoid "tempting fate" after making a favourable declaration. It is a cultural expression of an instinctive act of protection when there is a probability that something might go wrong. It therefore reveals the anxiety, or the tension experienced by the person who utters or hears the statement. The anxiety or the tension in this case emanated not from fate but from the state, demonstrating the near mythical dimension of sovereign violence.[614] Nehir continued to argue that the existence of an Armenian publisher or an LGBTQ magazine would make one think that "this place is the cradle of democracy."[615] However, as she emphasised "you do not know what will happen tomorrow. They can close it down or make arrests tomorrow. That is the entire story. We cannot claim that leftist publishers are directly targeted either. Even the Kurdish publishers can go on with their work."[616]

Several interlocutors also felt that they were at the mercy of "a word that might come out between the two lips" of the leadership.[617] This is an expression that delineates one's complete vulnerability and helplessness vis-à-vis those in power in a given situation. In other words, these are citizens who feel that they are exposed to arbitrary power and believe that they are already suspects of uncommitted crimes, as Boukalas had suggested.[618] In other words, they believe that the government can, at any time, strip them of their basic rights as citizens. Fahriye's experience highlights how the already thin ice of trust in legal institutions had further melted in recent years: "When me and my publisher first worked on publishing these books, we were convinced that there

[612] Interview with Nehir and Işık, 26 March, 2019.
[613] Interview with Nehir and Işık, 26 March, 2019.
[614] For more on mythic nature of state violence in Turkey, see Deniz Yonucu, "The Absent Present Law: An Etnographic Study of Legal Violence in Turkey," *Social & Legal Studies* 27, n.6 (2018): 716-733.
[615] Interview with Nehir and Işık, 26 March 2019.
[616] Interview with Nehir and Işık, 26 March 2019.
[617] Interview with Baran, 11 October 2019.
[618] See Christos Boukalas, "No exceptions: authoritarian statism. Agamben, Poulantzas and homeland security," *Critical Studies on Terrorism* 7, no:1 (2014): 112-130.

was nothing we could not defend. We thought, 'these are real, there is no distortion.' If there is a case, we will defend it and we might even get more media coverage."[619] Yet a few years on, the author is clear that this is no longer an option: "certain acts which are not crimes in law are counted as crimes because the government wants it so."[620] As Ulus from Rapor Publishing maintained, there is a widespread belief among the "non-aligned" authors and publishers that books which explore contentious figures and events can be easily charged with one of the many vague legal provisions such as praising an act that is a crime or praising a criminal.[621] Although most prosecutions against authors and publishers result in acquittal or HAGB, they believed that criminal cases against journalists, activists and others were proof that the government was ready to "run the risk of finding something, making up events to put you in jail."[622] Therefore, although some interlocutors used the term "legal uncertainty," the gist of the matter for these authors and publishers is not a question of "legal indeterminacy," but principally the contingent and unpredictable repression of the ruling government.

3. Interpretations of "Risk Factors" and Experiences of Precarity amongst "Aligned" Authors and Publishers

Many amongst authors and publishers in the "aligned camp," predominantly of nationalist and religious orientation, simply believed that the government was usually justified in targeting certain publications with criminal charges. Several of them argued that every state in the world had "red lines." They also maintained that in Turkey "red lines" and the "taboos" of the state were sufficiently clear for the authors and publishers to avoid trouble.[623] Consequently, authors and publishers in this group usually did not consider it necessary to discuss "risk factors." When I met the chief editor and the two owners of a medium-sized publisher, they agreed that "if you keep away from terror propaganda and defamation of Atatürk, you are fine." [624] Bekir, the owner of

[619] Interview with Fahriye, 28 May 2019.
[620] Interview with Fahriye, 28 May 2019.
[621] Interview with Ulus, 25 March 2019.
[622] Interview with Ece, 20 May 2019.
[623] Interview with Ahmet from Şehir Publishing, 30 September 2019; Interview with Nurettin at Dew Publishing, 19 November 2019.
[624] Interview with Ersin, Ahmet and Hamdi from Adım Publishing, 31 October 2019.

another medium sized conservative publishing house, also claimed "so long as you do not deal with terror propaganda or defamation, you don't get into trouble."[625] Mehmet, the owner of a small conservative publisher, maintained that "there are many who criticise [the government] in books, newspapers and television; no one has any difficulty unless they use insults."[626] Several of them also dismissed the statements of other authors and publishers about the atmosphere of pressure and uncertainty as "exaggerated" or even "abusive." Mehmet underlined that "many authors in the West are in self-imposed exile" and that they are "causing drama in foreign book fairs to cause a stir in certain places abroad."[627] Muhittin, active in several publishers' associations, asserted: "I do not think there is any legal uncertainty. Why are my books not prosecuted? We have published more than 800 books to this day and never had a legal issue."[628] He also claimed that "those who are prosecuted are certain publishers, on account of certain topics. If you look at those prosecuted, 50-60 per cent of the time, they are always the same people."[629] Another publisher, Tevfik, suggested that there were "some minor injustices," but also argued that the latter were used by "certain groups" as a "tool for politics."[630]

On the other hand, I heard Sırrı, an Islamist scholar and author, mention legal problems and criticise the conduct of the pro-government media at a book fair organised in the pro-AKP, conservative working-class neighbourhood of Sultanbeyli. Yet, when I met him again, at the office of the publishing house he worked with in the historical Cağaloğlu district, he refrained from elaborating on what he meant by "legal problems." He claimed that "all the governments in the world instrumentalise the law but especially in Muslim countries or the third world countries, governments make use of law, including human rights law, for their ends."[631] He then changed the topic and focused on my studies, claiming that "they direct children to study Turkey and countries like ours. If you would like study Ireland for your thesis, they would not allow you even if you pay for it."[632] Sırrı's cautious approach, in contrast to his outspoken stance at the panel, indicated that he felt he had to choose his words wisely when speaking to an "outsider." While Sırrı was hesitant

[625] Interview with Bekir, 2 October 2019.
[626] Interview with Mehmet from Civilisation Publishing, 13 November 2019
[627] Interview with Mehmet, 13 November 2019.
[628] Interview with Muhittin, 5 November 2019.
[629] Interview with Muhittin, 5 November 2019.
[630] Interview with Tevfik, 7 October 2019.
[631] Interview with Sırrı, 25 December 2019.
[632] Interview with Sırrı, 25 December 2019.

to interact with me, there were others, as discussed below, who allowed me to gain an insight into the variations in the lived experiences amongst those who stand at the "friend" end of the spectrum.

Experiences of Precarity in the "Aligned" Camp

It has been outlined that those who are a part of the "aligned group" do not feel exposed or vulnerable to the threat of prosecution and do not perceive the state in a hostile light. Nonetheless, some of them, too, felt that they were under surveillance and subjected to backlash. Variations in the experience of authors and publishers in the aligned group revolved mainly around the question of whether they write or publish anything that casts doubt on the government's actions and the official ideology. Ahmet Hüseyin Kutsayan's case is a relevant example. He was a conservative short story writer, poet and columnist of Kurdish ethnicity and a part of the "aligned" group. His writings were not preoccupied with themes related to his ethnic background; he was more interested in religion.[633] He also wrote commentaries on current affairs in a conservative newspaper. Yet in January 2018, he had written an article critical of the operation launched by the Turkish Armed Forces in Afrin, north Syria where they had fought against Kurdish fighters. In his article, he criticised the fighting between Muslims and stated that it was *haram* (forbidden) and proscribed by Islamic law. His article caused serious backlash; it was discussed on pro-government TV channels and social media platforms. He said that he experienced "an exceptional level of psychological pressure" and that "there were people who insulted me, who connected my writing to my Kurdish ethnicity."[634] Hence, Kutsayan's ethnicity gained importance as soon as he expressed disapproval of government actions in a matter connected to the Kurdish issue. Although no charges were brought against him, he admitted that he has been careful since the incident, as he is aware that being targeted by pro-government media outlets can foreshadow a future criminal prosecution. He also admitted that his children, who were afraid that Kutsayan's writings would jeopardize their career, warned him to be more careful. His case is important for illustrating how authors and publishers close to the government experienced a conditional form of "security." If

[633] Interview with Ahmet Hüseyin Kutsayan, 8 January 2020. Kutsayan indicated that he hails from an Islamist movement of thought called the "School of Resurrection."
[634] Interview with Ahmet Hüseyin Kutsayan, 8 January 2020.

they did not remain within the bounds the state set overall, they could easily end up in precarity. Kutsayan's case also shows how authors and publishers of Kurdish origin who stand close to the state still feel more vulnerable than their counterparts.

The case of the Islamist literary magazine *Yeni Bahar* is another example. Yusuf, a publishing board member at *Yeni Bahar*, explained that in the wake of the failed coup attempt against the government in 2016, they were "asked," along with many other outlets, to put the picture of a military tank and the Turkish flag on the cover of the magazine. When the board refused to do so, they encountered "certain sanctions," illustrating the conditional nature of "security" they enjoyed.[635] The financial support the literary magazine received from the Istanbul municipality and large corporations with close relations to the state was cut when they did not publish the cover. Yusuf remarked that not publishing the cover was an act of disobedience that placed them among the ranks of the leftist and opposition circles in the eyes of the government. However, the state still did not become a source of anxiety in their everyday experience, even after the incident. Conversations with Yusuf and other members of the editorial board of Yeni Bahar, observations at their board meeting and at an event they had organised indicated that the main consequence for them had been the diminution in their financial resources.

Engin, a short story writer and essayist who has around 20 titles published, explained to me that the possibility of being charged rarely, if ever, crossed his mind when writing. Yet he relayed that his editor had given him "friendly advice" for the first time after reading his latest collection of essays on the relation between power, language, space, and literature.[636] In one essay he had contemplated whether the takeover of Istanbul in 1453 was "a conquest" or "an invasion" and in another essay he reflected on who was called "a terrorist" and "a martyr." [637] He told me that as an accomplished author, editors could not intervene easily in his work. However, his editor did tell him that he "has started writing many pieces like this, do not get yourself into trouble, you are pushing it too hard."[638] Engin still published the book and argued that authors should not compromise their work in situations like this. Although some from his circle of friends, warned

[635] Interview with Yusuf, 10 October 2019.
[636] Interview with Engin, 7 January 2020.
[637] Interview with Engin, 7 January 2020.
[638] Interview with Engin, 7 January 2020.

him not to put himself in danger, Engin indicated that no case was brought against him. Engin's case is another example showing that authors in the "aligned" group also navigate a threat of prosecution. Still, Engin did not interpret his position as being under surveillance or "exposed," like authors in the "non-aligned" group.

As discussed above, non-conformist writings or actions of Kutsayan, Yusuf (*Yeni Bahar*), and Engin rendered their everyday experiences different with respect to the majority of publishers and authors in the "aligned" group. However, the extent of this difference was limited: like the rest of those who stood close to the ruling government, the threat of criminal prosecution did not constitute a primary concern. Although there was an element of precarity in their lives, it was not of the same type or intensity as the rest of the publishing industry. Publishers and authors who stood close to the government were aware that turning a critical gaze to the government and official state ideology would have consequences. Yet, usually, consequences of non-conformity were media backlash, alienation from the conservative community, or a cut in funding, rather than immediate danger of facing criminal prosecution.

4. Conclusion

Overall, I have placed authors and publishers in the industry on a spectrum of proximity to the ruling government demonstrating how their position on the spectrum is an important factor shaping the ways in which they approach the state and experience precarity. While a small group of publishers and authors are the usual targets on one end of the spectrum, publishers and authors on the other end usually approve the ruling government's securitised practices. There is a large group in between both ends of the spectrum who acknowledge a general atmosphere of fear and the need to be cautious as a result. Those located in the middle or towards the "enemy" end of the spectrum usually perceive the state as a surveillant power that might intervene in their lives through a criminal prosecution at any time. The criminal prosecutions of civil society leaders, lawyers, and academics, amongst others, affect their views of the state. Even where defendants don't go to jail and cases result in acquittal, judicial fine or HAGB, there is the belief that going through the process of prosecution itself is detrimental. On the other hand, those on the "friend" end of the

spectrum usually believe that the publishing domain is mainly free, except for some "normal", namely justified interventions the state makes to protect itself against sources of threat. As for criminal prosecutions, the general sentiment is that they are not so common and that they don't really affect authors and publishers.

Aside from their position on the spectrum of proximity, factors such as engagement with taboo subjects, the genre of publication, level of visibility, and politics of the time also influence the lived experience of authors and publishers and the question of whether they might be on the state's radar. Due to the atmosphere of precarity, authors and publishers from minority communities in Turkey and those who work on "taboo" topics have a higher propensity to feel susceptible to state intervention, even if they have no history of criminal conviction. Interlocutors from these backgrounds believed they were constantly being watched. However, an author or a publisher who might be most likely to be targeted under these factors may in fact never be investigated or prosecuted. Indeed, the examples discussed indicate that there are several layers to how these factors operate and shape authors' and publishers' experiences, and subtle distinctions make it difficult to foresee state repression. Indeed, not being able to predict a criminal charge constitutes an important aspect of their experiences of precarity, as has been analysed throughout this chapter.

On the other hand, actors in the "aligned group", who constitute the minority in the publishing world and whose publishing lines are broadly in conformity with the policies of the ruling elite, generally did not discuss any "risk factors," since they did not conceptualise state intervention as a source of threat. Many amongst them also believed that that "red lines" of the state were clear enough for anyone to easily avoid criminal prosecution. According to them, these red lines were "defamation," and "terror propaganda," a reiteration of the language of criminal law. Nonetheless, discussions with various authors and publishers in the aligned group reveal that there are some amongst them, too, who experience precarity in their daily life and work, even if along different lines. As soon as they pose questions about the government policies or may not conform fully to the official state ideology, the relative sense of "security" they have is eroded. Yet, even then, they do not fear criminal charges in the same way as authors and publishers in the "non-aligned" group do, since they are rarely investigated or prosecuted.

While the current chapter explores experiences of precarity across the publishing sector, the next chapter looks at the consequences of these experiences on the work of authors and publishers. In this respect, Chapter 6 investigates the range of strategies authors and publishers develop and deploy in navigating the atmosphere of precarity. It also examines the ways in which the atmosphere of precarity can have a silencing effect on dissenting voices.

Chapter 6 - Navigating Precarity: The Threat of Criminal Prosecution

"When the pressure increases [on writers], so does the work they produce."

-An editor at E-Kitap[639]

The previous chapter gave an account of the atmosphere of precarity prevalent in the publishing industry; it provided an overview of the ways in which publishers and authors have experienced and interpreted the threat of repression in their everyday life. While many publishers and authors feel at risk of being prosecuted, there is also an understanding amongst many interlocutors that the publishing industry is vibrant, even more so than in the past.[640] Several of my interlocutors pointed out that more has been written, and more has been produced as a reaction to political pressures. This suggests that authors and publishers are finding ways to continue writing and publishing despite the atmosphere of precarity and the prosecutions they face. In this respect, the current chapter investigates the strategies they employ to continue their work in this environment: What kind of measures publishers and authors take to navigate the blurry boundaries of "permissible behaviour" and to minimise the threat of prosecution? In what ways does the threat of prosecution contribute to the state's control over dissenting voices across the publishing industry?

As I further elaborate below, authors and publishers adopt a variety of strategies to navigate a publishing environment characterised by precarity. Several interlocutors reiterated that it was "impossible" not to engage in self-censorship in contemporary Turkey. Indeed, the term self-censorship was quite often used by interlocutors. Nevertheless, I refrained from using the term not only in my interviews, but also as an analytical concept. I would argue that "censorship" and "self-censorship" are not helpful terms to examine the strategies that publishers and authors employ to navigate precarity in hybrid regimes. It does not convey the complexity and variety of the practices that have been developed by actors in the field to steer around the selective and therefore

[639] Field notes, from the speech the editor gave at the short story award ceremony of E-Kitap, 4 July 2019.
[640] See annual market reports available on the website of Turkish Publishers Association, https://turkyaybir.org.tr/turkiyede-yayincilik/turkiye-kitap-pazari-raporlari/, accessed: 15 August 2023.

unpredictable threat of being targeted. My approach is in line with the observation made by the editor of the *Encyclopaedia of Censorship*, that censorship should be understood as "a variety of processes … formal and informal, overt and covert, conscious and unconscious, by which restrictions are imposed on the collection, display, dissemination, and exchange of information, opinions, ideas, and imaginative expression."[641] This approach allows us to explore the multiple forms that these restrictions can take in practice, especially the informal processes of self-regulation that both authors and publishers engage in, distorting their thinking and writing at the deepest level of consciousness that is generally not visible to an outsider.

In the following, I will first provide a brief survey of the general approach of publishers and authors vis-à-vis works that they wish to publish or submissions that they receive. Next, I will examine the rich assortment of tactics that publishers and authors adopt in the editorial and writing process. I will also consider examples where publishers take administrative measures, as well as cases where publishers and authors claim to take no measure at all. In the last section, I will look at the final category of strategies of navigation: the industry-wide collective practices.

1. General Parameters of Navigation

The previous chapter elaborated on the differences between publishers and authors in terms of their experiences regarding the atmosphere of precarity. The position of the publisher (or the author) on the spectrum of proximity to the ruling government, the type of genre they worked on, and the changing state policies regarding certain political issues at a given time emerged as important factors. Likewise, these were important factors influencing the strategies they adopted while they continued to publish in an environment where the threat of criminal prosecution was ever-present. As discussed previously, several publishers maintained that they did not experience any precarity while carrying out their work. However, those located in the middle and towards the "enemy" end of the spectrum generally acknowledged that the question of criminal prosecution necessarily crossed their mind when they would pick a title for publication, especially works that were about current affairs or politics, or topics that could cause reaction in a given political climate.

[641] Derek Jones (ed), *Censorship: A World Encyclopaedia* (Routledge: New York, 2015) Editor's Note, page xii.

Several of them pointed out that they consulted a lawyer if they were unsure about a passage or style in a book, or "if something stood out."[642] I further elaborate below on the increased involvement of lawyers in the publication process. It appeared that amongst these publishers, when a lawyer warned of any potential risk involved, the next step was determining whether the work was worth the risk. In some cases, especially where the risk of prosecution was related to defamation against the President, "throwing out a sentence"[643] could possibly do the job, but in other cases, where the work addressed a thorny issue such as the Kurdish problem, amending the text would not suffice. Besides, several publishers stated that they were against directly interfering with the text of a manuscript. In such cases, a publisher still has to decide whether taking the risk is justified. Ulus, a senior editor at Rapor, one of the most prominent publishing houses, explained to me that when they predict that a given work might be attacked, legally or politically, their approach is *not* to directly rule it out and say, "Let's not publish such things." He pointed out that "The question of 'is it worth it?'" is also important; hence, that is discussed too: "In other words, it can be risky, but is it worth it? A title which is not bright, does not have a very strong literary, political, or theoretical content may not be worth it. If [the attack] is going to happen, at least it should be worth it."[644] Another publisher, Umay, put a higher threshold: "If publishing the work is essential, due to its topic, I can personally say that we will publish it, and take the chance of prosecution. But if it is not essential, if it is something the editorial board is fine with not publishing, we will not."[645] Meanwhile, Hüseyin from Somut Publishing maintained that they would be willing to publish a "valuable work" even if lawyers advise against it, given that the author is also on board and is ready to defend the work in the courtroom. He held that, otherwise, not publishing such works would be "self-censorship."[646]

Meanwhile, there are publishers, mostly among sizeable commercial actors, who generally believe that no single book would be worth the risk of criminal prosecution and the publishing house possibly shut down by an executive decree. The executive editor Murat at the large commercial publisher Genesis explained that he believes publishers should not risk criminal

[642] Interview with Umay, 15 May 2019.
[643] Interview with Murat, 11 March 2019.
[644] Interview with Ulus, 25 March 2019.
[645] Interview with Umay, 15 May 2019.
[646] Interview with Hüseyin, 26 March 2019.

prosecution or closure by an executive decree for any work: "Why should we take a risk which might result in this institution being shut down, or taking this institution to that point, for one single book? It is not worth it. I am sure there are other ways to say the same thing - let them say it that way."[647] Indeed, for many publishers, this way of thinking forms the basis of strategies of navigation, as will be further explained below. Aykut, a lawyer who specialises in publishing and represents numerous publishers moreover pointed out that he advises against publishing certain books containing criticism of politicians such as Erdoğan where he can see that the author is "seeking self-promotion or to be 'remembered' without doing serious work."[648]

While most publishers and authors indicated that self-censorship was rampant, it was not always clear what type of practices they referred to with the term. Indeed, this is one of the reasons why I focus on the actual practices employed rather than the label "censorship." As an example, many publishers put books on hold but not all of them considered this practice as a form of restriction that constitutes censorship. Baran, editor at a small leftist publishing house Letter Publishing, stated that they do not apply any self-censorship but quickly added that there are texts, for instance "texts on the Kurdish problem" that they, too, have put on hold upon request by authors.[649] Hüseyin, discussed above, claimed that "there is self-censorship in all publishing houses," pointing out that they could not separate themselves from it. Yet he also said: "But, maybe ours is not as strong as others. Still, today, when a file comes before me, there is always the thought 'if we publish this file, it'll be confiscated.'"[650] Later on during the interview, he explained that they had put a title on hold and were waiting for a better time to publish it; however, he did not refer to this practice as a clear instance of self-censorship: "It is a form (of self-censorship) but… You do not retract from publishing, but you wait for the right moment. If it was during the peace process, we would publish it right away."[651] He also held that "most likely another publisher would not accept publishing it at all."[652] It appeared that, for him, censorship means to interfere with the author's writing: "By principle, we do not go into the text in terms of submissions. When deciding whether to publish, we look at its methodology, whether it has an idea, whether it is up to date with

[647] Interview with Murat, 11 March 2019.
[648] Interview with Aykut, 25 April 2019.
[649] Interview with Baran, 11 October 2019.
[650] Interview with Hüseyin, 26 March 2019.
[651] Interview with Hüseyin, 26 March 2019.
[652] Interview with Hüseyin, 26 March 2019.

respect to the area it studies, whether it is articulate and carries critical thought. We do not go into terms used, that is censorship."[653] Besides, when speaking about self-censorship, he drew attention to the decreased number of submissions they were recently receiving on the Kurdish issue: "Previously, submissions on the Kurdish issue dropped before us like flies. But now they do not come."[654] In other words, when thinking of this term, what first came to his mind were restrictions authors implemented on their own writing. Murat from Genesis also highlighted that they do not interfere with the terms used by authors, but admitted that certain topics might be non-starters. The publishers' initial statements were therefore not always entirely consistent with the variety of practices they undertake.

The occasional differences between statements on censorship and actual practice partially stems from a subtle stigma around the notion of self-censorship. I spoke to a few authors who had publicly announced and had shared with me in private that their publishers had decided not to print their books. When I subsequently spoke to some of the publishers concerned, I asked about the restrictions they implemented, which made all of them uneasy. Still, while some acknowledged the necessity of restrictions, others referred to alternative explanations for the decision to not publish these works. For instance, Murat, the executive editor of Genesis, explained that publishing houses had much more at stake than individual authors when making decisions with respect to publishing a work. He pointed out that institutions must think of a variety of factors, including the people they employ. He maintained that "authors," by contrast "wanted more bravery because they are single individuals, in the end they say: I will go in and serve my sentence courageously."[655] Yet, Murat held that, at the same time, certain authors have asked them to take out certain passages in their work that could cause trouble for both Genesis and the author. On the other hand, Ulus, senior editor at another publishing house, noted several risky titles they had published recently to emphasize that there were alternative reasons, like excessive length, for not publishing the work of one of their long-time authors.[656]

[653] Interview with Hüseyin, 26 March 2019.
[654] Interview with Hüseyin, 26 March 2019.
[655] Interview with Murat, 11 March 2019.
[656] Interview with Ulus, 25 March 2019.

There were also authors who were understanding towards the decision of their publishers. For instance, Leyla, a veteran author maintained that: "One must see this issue from multiple dimensions. I understand why they made this decision. It is not just a matter of law or pressure. You won't publish a book you cannot sell. They don't put the book on display, it is not talked about. If others do not do it, the publisher will not print the book. At the end of the day, they are profit-making institutions; why would it publish it? Having said that, they would have sold a lot if they had printed mine."[657] Similarly, a prominent journalist and author remarked: "When they tell you 'Let's wait,' you cannot say anything. Indeed, they published three serious books of mine in the past, tough books to publish." Referring to a few other publishers, he said "they would not publish it during that time, for instance."[658]

Meanwhile, the publishers and authors located towards the "friend" end of the spectrum generally believed there was not so much self-censorship in the world of books. Tevfik, the owner of Berrak Publishing, argued that self-censorship was at one per cent maximum.[659] Another publisher, Eyüp from Dawn Publishing, argued that those publishers who claimed that there was widespread self-censorship were, in reality, at ease: "We are not as comfortable as those who say there is self-censorship and even us, we do not self-censor."[660] Several of them argued that, in the context of Turkey, it was more difficult for any government to control books compared to daily papers. Within this group, concern for potential criminal charges was relatively lower, except for terror-related charges on account of authors allegedly linked to the Gülenist organisation. Eyüp indicated that they had to "eradicate the books of an author associated with FETÖ" after a prosecutor wrote to them asking for the books in question: "We destroyed them and notified the prosecutor."[661] However, the same publisher highlighted that they did not apply censorship: "When we are publishing something, we do not think 'Oh we may have trouble' because we do not have any expectation from the state."[662] What he meant by "expectation" was material support or benefits from the state. Hence, as I have pointed out in the previous chapter, unlike the general atmosphere of fear, the relationship between the state and publishers located toward the "friend"

[657] Interview with Leyla, 22 May 2019.
[658] Interview with Çetin, 13 March 2019.
[659] Interview with Tevfik, 7 October 2019.
[660] Interview with Eyüp, 3 December 2019.
[661] Interview with Eyüp, 3 December 2019.
[662] Interview with Eyüp, 3 December 2019.

end of the spectrum is not characterised by tension. It rather revolves around the question of access to public resources. The publisher in question highlighted that he does not rely on state support, and is thus able to publish freely. This is quite different from publishers in the middle and toward the "enemy" end of the spectrum for whom prosecution, not the availability of support, is the primary concern with respect to the state.

Another point emphasized by several publishers on the "friend" end of the spectrum was that they usually knew the authors of the works they printed. For instance, Fahrettin from Yazı publishing explained that the books they published on the Kurdish problem were written by expert persons who "speak on the TV, they have written articles on this topic. We know how they approach the issue. These people do not come to us randomly, they are people we know. Their text does not contain any terror-related content; in any case, such content does not come to us."[663] Eyüp highlighted a similar point with respect to the authors they worked with. Referring to the risk of Gulen affiliated authors, he maintained that "We have been warned about a few other authors too; but we know these people. That's why we published the work."[664] In any case, as Fahrettin highlighted, works critical of the government or the official ideology would rarely be sent to publishers in the "aligned" group.

Many publishers located toward the "friend" end of the spectrum maintained that they are ready to publish any work as long as it is supported by concrete documents and does not contain insulting language. When assessing the question of insult, their ideological principles were the key factor they considered, and they rarely included the threat of prosecution in their evaluation. For instance, Yusuf, the lead editor of *Yeni Bahar*, the Islamist quarterly literary magazine, said that no submission to their magazine would be cast aside as long as they do not cross the red lines of "insult against Islam," "too much sexuality," or "heavy language" meaning offensive language.[665] Following our interview, I attended one of their editorial board meetings at an old bookshop where members filtered the submissions for the new issue of the magazine.[666]A large wooden table had been placed in the bookshop for the gathering and tea was brewing in the room behind. During the

[663] Interview with Fahrettin, 25 December 2019.
[664] Interview with Eyüp, 3 December 2019.
[665] Interview with Yusuf, 10 October 2019.
[666] Field notes, Observation at *Yeni Bahar*'s editorial board meeting, 11 January 2020.

meeting, the editorial board appraised the submissions based on their compatibility with the policies of the magazine. For instance, one of the members of the editorial board, Hakkı, ruled out a poem which was submitted on account that "it praised a drunk." He explained to me that they did not have an issue with "what the man wrote." However, he maintained that "it is not a text in line with what we want to do here, and we have the power of decision."[667]

Later during the meeting, the editorial team made jokes about censorship and pressure. They were saying, in a pleasant manner, things like "no pressure please, otherwise we will be known as censors at the Oxford University."[668] The pleasantry gradually ended, and they went back to reading submissions. Soon after, one of the members of the editorial board showed an article to the lead editor and said, "this one enters the political terrain." When the lead editor asked, "How?" he responded: "It discusses the talk in Frankfurt about the detained, saying that it is Turkey's shame."[669] After that, the lead editor simply said, "pass that one" and the article quickly landed on the "negative" pile. The team then went about their business. When I inquired about this submission, the editor's response was that it was too political for a literary magazine. While there is no way to ascertain whether risk of prosecution played a role in the decision of the lead editor to "pass" the submission, his demeanour had made it clear that he did not like the critical political approach of the article in question. In other words, although Yusuf had claimed that concrete evidence and lack of insulting language (according to their principles) were the key factors for selection, there was a subtle yet solid wariness about entering the domain of political criticism of the government. Yet, there was no reference to or discussion about criminal prosecutions, an issue which occupied the agendas of countless editors in the "non-aligned" group. In other words, they were able to publish generally freely in the domain they focused – that of Islamist literature.

In sum, it appeared that the potential of criminal prosecution pushes the authors on the "enemy" end and in the middle of the spectrum to being cautious and evaluating the added value of titles they perceived as risky for various reasons explained in the previous chapter. While many

[667] Field notes, 11 January 2020.
[668] Field notes, 11 January 2020.
[669] Field notes, 11 January 2020. Probably the article was referring to the speech Martin Schulz made in 2016 as the head of the European Parliament at the opening ceremony of the Frankfurt Book Fair where he made a call for the release of arrested authors and journalists in Turkey.

of them spoke about censorship and self-censorship, there was not a uniform understanding of what that constituted. Besides, publishers were often uncomfortable when discussing the restrictions and practices they themselves employed in the course of their work. On the other hand, publishers located on the "friend" end of the spectrum, whose publications are broadly in line with the policies of the current regime, believed restrictions and regulations in the face of the risk of criminal prosecution were quite limited. They admitted having to navigate the risk of prosecution with respect to authors which might be linked, at any point, to the Gülenist movement. Otherwise, they did not have to grapple with questions of worth and style of language in the same way as the first group of publishers do in deciding the works to be published.

2. Strategies Employed in the Publishing Process

2.1 An Added Step in the Editing Process: Increasing Involvement of Lawyers

As mentioned above, an increasing number of publishers and authors have started referring to their lawyers more frequently to navigate the risk of criminal prosecution. Aykut, a lawyer who has made a name in the publishing world, pointed out that his involvement with his clients' publishing process had expanded. He represents several mainstream, commercial publishers, but he also works with a few publishers who are closer to the "enemy" end of the spectrum of proximity to the state. During the several conversations I had with him, both scheduled interviews and informal conversations, he reiterated that there was a significant sense of hesitation in the publishing world, although this may not be visible in terms of the end numbers which reflect the output of the industry. He highlighted that "certain risks are taken, and books are published; but, a book which we published, let's say in a day in the past, can now take a month due to lengthy deliberations we have amongst ourselves. We might also consult a second lawyer in the process. So, although it may not be visible to an outsider, the publishing process has grown longer." [670] He gave the example of books authored by Demirtaş, the imprisoned Kurdish politician. "Previously,

[670] Interview with Aykut, 25 April 2019.

a book by Demirtaş would be published right away, but now publishers get a second opinion, and the publication can be delayed."[671] According to Aykut, the experience of the state of emergency between 2016 and 2018 left its mark on the publishing industry: "We are talking about a period where certain rights and freedoms were suspended." He argued that the sense of caution continued even after the state of emergency was lifted.[672]

Aykut also remarked that previously it was usually authors, and especially those who were relatively more "radical," who would approach him and ask him to read their work: "They consulted me, but they always had the last say." However, he pointed out that recently, "it is the publishers who take the lead and approach me."[673] Several publishers indicated that if their lawyers advise against publishing a book, they will comply. Also, some others pointed out that they will remove sentences that are identified as "risky" by their lawyer. Considering the uncertainty surrounding the criminal prosecutions, I asked Aykut about the approach he employs in giving advice to his clients. He explained that the situation was not easy for lawyers who were expected to provide *reliable* legal advice: "the less clearly you speak, the more the ambiguity for them. The lawyer secures himself by not speaking in definite terms. At the same time, those in the publishing department are securing themselves too by expecting a clear answer from the lawyer. This is where the space of uncertainty expands."[674] Hence, overall, Aykut explained that he advised publishers to minimise the risks they take in an already precarious environment. He sometimes told his clients to wait for a while and observe the political atmosphere before publishing a work. He also pointed out that deviations from written laws, wide interpretations or irregular implementations made it impossible to give reliable advice: "When evaluating whether a given phrase can cause a problem or not, you say it will not cause a problem considering the ECtHR case law and previous judgments in Turkish courts. But as soon as you inform a publisher that in the current dynamics and circumstances it might still cause a problem, you stir the executive editor, the junior editors, and the editorial board towards uncertainty."[675]

[671] Interview with Aykut, 25 April 2019.
[672] Field notes, Informal conversation with Aykut, 20 November 2019.
[673] Interview with Aykut, 25 April 2019.
[674] Interview with Aykut, 25 April 2019.
[675] Interview with Aykut, 25 April 2019.

Ulus from Rapor Publishing, the prominent left-wing publisher established in the wake of the coup in 1980 and now a popular publishing house, indicated that legal advice has moved from the margins to the centre of the discussions of the editorial board in the last few years.[676] Rapor Publishing is one of the few publishing houses where decisions with respect to publishing policies are made collectively by an editorial board that meets regularly. Ulus explained to me that in the past the board rarely consulted lawyers in the publishing process: "We used to ask [our lawyer] to read a few texts but now we make her read many works."[677] He also pointed out that there was a sense of nervousness in the publishing house although only two books had been confiscated by the time of speaking. The editors guided their legal consultants by referring certain sections to them. Ulus underlined that a few years ago the lawyer would say, "They can accuse it in this way, but we can defend this," for works which she believed could be defended in law. Now, she simply says, "It will be better if we change it."[678] He explained that the lawyer could not be sure, for instance, that a court would offer "a legal assessment," as opposed to an evaluation under the influence of the government – an evaluation of whether the book in question commits a crime, "such as the offense of praising a criminal act."[679] Resonating what Aykut had said, Ulus underlined that the lawyer could not give reliable advice even where there was legal precedent in this respect.

The discussions with informants indicated that many authors and publishers have grown familiar with the criminal code and legal terms as they have to spend time consulting lawyers and considering the risk of criminal charges. Umay, one of the publishers Aykut works with, jokingly suggested that this was "the price of living in this country; somehow they turned us all into jurists."[680] Hence, he explained to me that it is the editors who do the first review of the works: "Surely, we do consider the risk of prosecution when picking the book. The editor roughly appraises it."[681] He went on to describe that "the moment we say 'this section might be an issue under the current circumstances,' we immediately consult one of our legal consultants. We then scrutinise together whether the work is likely or not likely to be interpreted as problematic and

[676] Interview with Ulus, 25 March 2019.
[677] Interview with Ulus, 25 March 2019.
[678] Interview with Ulus, 25 March 2019.
[679] Interview with Ulus, 25 March 2019.
[680] Interview with Umay, 15 May 2019.
[681] Interview with Umay, 15 May 2019.

trigger a legal reaction, and we try to come up with a solution."[682] He indicated that the solution could be to take the risk of prosecution.

Some of the authors have stated that they, too, have started working more closely with their lawyers and getting them to read their books and columns, sometimes line by line. Harun, a prominent author, had commented that by virtue of his lawyer's close legal scrutiny of his writing and his lack of presence on social media, he has managed to steer clear of imprisonment.[683] However, it is possible to suggest that for the most part, consulting lawyers does not resolve the uncertainty of prosecution, as emphasized by Aykut. For instance, Fahriye, who has authored several non-fiction books on the foreign policy of the state of Turkey, indicated that she recently started working with lawyers during the preparation process.[684] In fact, she said that while preparing her last manuscript for publication, she consulted closely several judges who had been dismissed by the executive decrees during the state of emergency. She maintained that "All of them said that there is no element of crime here."[685] Yet, she was subsequently charged with "publicly insulting the government, the judiciary, the military and the security forces," under Article 301. Another author, Erdem, too, complained that the Court had acted entirely different from what his lawyer had foreseen: "The lawyer said that the case must result in an acquittal. I went, and the exact opposite happened."[686] Hence, the importance of law and involving lawyers in the publishing process has ironically increased as their legal advice becomes less reliable.

2.2 Putting Books on Hold

Another phenomenon that has appeared in recent years is "suspension" of the publishing of a book. Several major publishers I have spoken to admitted that they have temporarily put on hold the publication of some books due to the political atmosphere they are operating in. There were also cases where authors asked their publishers to wait and not proceed with the publication

[682] Interview with Umay, 15 May 2019.
[683] Interview with Harun, 29 May 2019.
[684] Interview with Fahriye, 28 May 2019.
[685] Interview with Fahriye, 28 May 2019.
[686] Interview with Erdem. March 12, 2019.

of their work. The underlying belief in these cases was that it would be safer to publish these works in a more favourable political environment.

As mentioned in the previous chapter, political atmosphere in the context of Turkey has shifted on multiple occasions, turning the books on the Kurdish issue and on the Gülen movement from "safe" to "high-risk" material. Reflecting the prominence of the Kurdish issue as a "red line," as discussed in the previous chapter, books put on hold or "suspended" works also appear to be mostly related to the Kurdish issue. Ulus revealed that they had put on hold two short story collections which were about the "hardcore topic" of "destruction and massacre at Sur."[687] Unlike some other smaller publishers, he did not find it uncomfortable to admit that they had first taken the books on board but then decided to wait for the appropriate time to publish them. The editor explained the move in a self-assured tone: "One of them used the word 'guerilla'. They are works of literature; they do not include any propaganda, but they do show us scenes from that world. We told them we cannot do this now and they were quite understanding."[688] As mentioned, Huseyin at Somut, a smaller publisher with a more mission oriented approach, also acknowledged that they have had to put on hold the publication of a novel telling the story of three sisters living in the south east Kurdish town of Şırnak where clashes between the government forces and PKK guerrillas have been common.[689]

Meanwhile, sometimes it was authors who asked publishers to wait for "a better time." Baran from Letter Publishing indicated that they had put on hold an edited volume on the life and work of a Kurdish academic who lost his life in Rojava after the authors declared that they would not be able to "handle it," referring to possible repercussions.[690] Baran thought that their demand to wait was "understandable" since "they are afraid." He explained that: "There are academics amongst them. Some are still working; some have been expelled by the KHKs (executive decrees). They can put them in the prison, et cetera".[691]

[687] Interview with Ulus, 25 March 2019. By this, he referred to the operations of the armed forces between September 2015 and March 2016 in the town centre in Diyarbakır after Kurdish guerillas dug up moots and built barricades to establish control over the city center.
[688] Interview with Ulus, 25 March 2019.
[689] Interview with Hüseyin, 26 March 2019.
[690] Interview with Baran, 11 October 2019.
[691] Interview with Baran, 11 October 2019.

The Kurdish issue was not the only topic deemed to be a dangerous subject, as outlined in the previous chapter. Even non-controversial books on topics such as religion, which might be assumed to be a safer theme nowadays, could also be put on hold. Halil, the owner of Artemis which is a major publishing house focusing on translated fiction, Turkish fiction, and academic works, mentioned that they were waiting for a more suitable time to publish a book on national imagery and another academic manuscript in the field of religious studies.[692] The work in the field of religious studies was a critique of an orientalist play by Voltaire about the prophet Mohammed. Although this was not a controversial study, Artemis had been prosecuted in the past for "publicly insulting religious values." Hence, it appears that they preferred to be on the safer side when publishing any work about religion. Halil also mentioned that there are authors who ask for the publishing of their manuscripts to be postponed. For instance, several academic authors that Halil worked with wanted to keep their books on hold while the cases against the "Academics for Peace" was unfolding. Rapor Publishing also put on hold the publication of an academic work that scrutinised the premise and the criteria for the criminalisation of political violence. The manuscript did not defend violence, but the publishers were worried that those who would evaluate it "would take it out of context, focus on a single quote and possibly stamp it as 'praising an act that is a crime'".[693] This is a clear example of how publishers do not regard academic research as being immune from distortion by law enforcement authorities.

More notoriously, a recent book by Hasan Cemal that included passages critical of the government was put on hold by his publishers. The book, called "Sorrow" (*Hüzün*), is a collection of Cemal's articles on contemporary politics in Turkey most of which were already published in his column in an online newspaper. In an uncommon fashion, Cemal has spoken out about the suspension of the publication of his book and expressed his hurt.[694] When I interviewed Cemal, he was still upset but also acknowledged that the publishing house had a point.[695] His publisher

[692] Interview with Halil, 19 November 2019.
[693] Interview with Ulus, 25 March 2019.
[694] This led a few other authors to reach out to him to say that they were also going through the same experience. Hasan Cemal, "Adı istibdat olan bir kitap düşünüyorum, basılır mı?" T24, 7 January 2019, https://t24.com.tr/yazarlar/hasan-cemal/adi-istibdat-olan-bir-kitap-dusunuyorum-basilir-mi,21297, accessed: 10 April 2023.
[695] Interview with Hasan Cemal, 13 March 2019.

had made it clear to him that publishing this book might spell prison time not only for him but also for the editors.

2.3 Not Publishing at all

In some cases, the publishers did not suspend a book or a book project; they simply did not publish it. Several commercial publishers made it clear that certain taboo topics were "non-starters." The principal examples were books on the Kurdish movement or on the Gülen organisation as several publishers believed that such works would necessarily include certain names which would put them at risk. Indeed, publishing anything other than criticism of the Gülen movement has become especially fraught with danger. Murat, the editor in chief of a large commercial publisher, Genesis, maintained that they would not publish a book, even an academic work, analysing the Gülen movement or the PKK "since unavoidably certain names would be mentioned."[696] Emir, the editor in chief of Dünya, another popular publisher, also explained that he might have to object from the beginning a book explaining the Kurdish movement as the Kurdish issue is too risky even if you go over the text with a lawyer.[697]

There were also cases where manuscripts by authors, some of whom are established figures, have been turned down by their long-time publishers. Ayşe, a prominent author changed her publisher Odak after the latter made it clear to her that they would not be publishing her latest work, which was a direct criticism of the increasing authoritarianism of the government. Odak, a commercial publisher, also refused to print the collected articles and op-eds of Leyla, an author and columnist who has been working with them for many years. They had informed her that "the publishing house has decided not to publish political works and works of non-fiction."[698] Leyla considered this a "regressive step" for the publisher but added that she found the fear understandable, given the commercial concerns and the position of the owner of the publishing

[696] Interview with Murat, 11 March 2019.
[697] Interview with Emir, 31 May 2019.
[698] Interview with Leyla, 22 May 2019.

house who had been actively involved in the Gezi protests. Hence, she stayed with her publisher. Harun, an author and academic, explained to me that his publisher of 16 years put his latest title on hold for nearly six months. The book was a sharp and ironic critique of President Erdoğan and his publisher informed him that they were going to have a lawyer read over the text. When he did not hear from them after a few months, Harun asked them "if they were afraid to publish the work," one of the senior editors responded by insisting that it was not a matter of fear.[699] The editor underlined that they have dared to publish many publications that are generally considered "high-risk." His editor also pointed out to him that the book comprised articles which had already been published in newspapers; in other words, material that was not original. However, several of Harun's previously published titles with the same publisher also consisted of already published articles. Hence, Harun was not convinced by this argument. In the end, one of the directors in the publishing house, an old friend of Harun, contacted him personally through e-mail and let him know that they would not publish the work since publishing it in the contemporary political climate would mean "you go to prison and we pay a heavy compensation."[700] In the end, he published the book with another publishing house and there was no charge raised against him.

There were also cases where authors rescinded ongoing book projects. The senior editor at Rapor had given the example of an academic who had concluded a contract to publish his research on "the deep state" in Turkey. Yet, after the project had started, the author decided to withdraw. Ulus remarked that "it was not even a necessarily troublesome topic."[701] Similarly, Hülya, a literary agent, also mentioned that one of the authors she represents rescinded a short story collection on working class lives in contemporary Turkey, a work the agent did not find particularly perilous.[702] It seems that the authors and publishers were taking pre-emptive measures even where the publisher did not regard the work as worrisome or where the work did not lead to charges in the end.

[699] Interview with Harun, 29 May 2019.
[700] Interview with Harun 29 May 2019; Field notes, Interview with Filiz, Harun's lawyer, 25 March 2019.
[701] Interview with Ulus, 25 March 2019.
[702] Interview with Hülya, 6 May 2019.

2.4 Amending the Text

As explained above, some publishers, especially smaller, leftist publishers defined censorship as changing the content of a given text and ruled it out as an option. Nevertheless, many other publishers did acknowledge that they ask authors to modify and change certain passages, phrases, or words to make the text "softer," "less controversial," and sometimes "more open to engagement by the reader." These authors and publishers, which included those from both ends of the spectrum, emphasized the importance of "reasonable style" (*makul üslup*) when expressing ideas. What constituted "reasonable style" differed between publishers; but, they all believed that it offered some degree of protection by paying attention to the unwritten sensitivities of the state and the ruling government.

Emir is the executive editor at the successful and sizeable publishing house Dünya which is a liberal publisher. He was part of a leftist authors' initiative in the early 1980s and had experienced first-hand the state oppression in the wake of the coup d'état in 1980. During the interview, he readily acknowledged that they, as a team, worked extensively on certain passages in books that touch issues which require caution, like the Kurdish issue, religion, government, and leadership. He gave an example: "If an author uses, in a book on the economy, a phrase like 'the political understanding of *Tayyip Erdoğan*,' we will change it to 'the political understanding of *the government*.' We take care to make sure no concrete names are used."[703] He also indicated that they always warn an author when they think he or she uses "a very strident tone that will draw a reaction unintentionally."[704] Besides, Emir had no difficulty admitting that they might tell an author "it is not necessary to say it this way," and to ask them to "change it."[705] He believed their approach was simply ensuring a "reasonable style of expression."[706] He argued that this also meant avoiding slogans such as, "You have thrown the country down a pit, you are responsible for it, et cetera" or provocative sentences such as, "The whole nation should revolt against this situation."[707]

[703] Interview with Emir, 31 May 2019.
[704] Interview with Emir, 31 May 2019.
[705] Interview with Emir, 31 May 2019.
[706] Interview with Emir, 31 May 2019.
[707] Interview with Emir, 31 May 2019.

According to Emir, adopting this approach was part and parcel of adjusting to the realities on the ground.

Deniz, the owner of another successful commercial publisher, Kalem, reported that they tried to "soften" Noam Chomsky's language when publishing one of his books. After Kalem had bought the translation rights to one of Chomsky's books, they realised that the text included the phrase "The Turkish state is a murderer."[708] Deniz explained that "we could not publish it, publishing this would mean a criminal charge 100 per cent." The publishing house then reached out to Chomsky's agency to discuss whether it would be possible "to change or soften the phrase."[709] However, Deniz remarked that "Chomsky is a principled man. We were told that we could not change a single letter."[710] The publishing house then annulled the contract, referring to the judicial environment in Turkey as a compelling reason. While the owner appreciated Chomsky's integrity, he did not feel conflicted or uneasy about not publishing the work in its original format. Instead, he emphasized that they were a commercial institution first, and for them ideology came second. Deniz also made it clear that they did not want to deal with defamation or terror-related charges.

At the small leftist publishing house where I spent time helping with the translation of a book, I had the chance to have several informal conversations with the editor Nurhayat. She explained to me that Zeynep, the owner of the publishing house, usually did not intervene in the book's writing process or in the text of the works. Sometimes, however, she found certain expressions as "too sharp."[711] For instance, Nurhayat recalled that Zeynep once asked her to change a blurb she wrote for a book on the political order under AKP rule since it was "too harsh."[712] At other times, Nurhayat explained that it was her who took the initiative to make the text "softer." As an example, she had asked the author of a book on the Kurdish separatist movement to change a few sentences where the writer had shared his observations of the PKK headquarters in Qandil. She indicated that, even though Zeynep was fine with keeping the

[708] Interview with Deniz, 26 September 2019.
[709] Interview with Deniz, 26 September 2019.
[710] Interview with Deniz, 26 September 2019.
[711] Field notes, Participant observation and informal conversations with Nurhayat at the publishing house Güven, 18 September 2019.
[712] Field notes, 18 September 2019.

sentences, she had "asked the author to make them softer" since "these sentences relaying observations could potentially be perceived as being laudatory."[713] The author conformed. According to Nurhayat's account, Zeynep had joked and told her that "they take the editor [not the owner] to prison, but don't worry, I'll bring you cigarettes."[714] In another example, Nurhayat once told me that they might need my help with the translation of an international best-seller, a novel which takes place in Armenia. When I asked if the term "genocide" was used in the book, she responded: "Yes, it is used but we'll make it softer; I'll change it to 'deportation' because it will cause reactions and it might lead to a criminal charge. We are already dealing with criminal charges; we do not need more."[715]

Murat, the lead editor at another major publishing house, Genesis, argued that restricting or warning authors were necessary measures in navigating the risk of criminal prosecution. Accordingly, when the publishing house believed that a given text might cause trouble, they notified the author about it. Murat explained that they never told the author that "they would not publish their work."[716] In fact, they continued to work with some very controversial authors.[717] Hence, similar to many other publishers, the approach at Genesis is pragmatic; they ask the authors to amend certain parts of the text. Murat argued that authors were not subject to the financial commitments involved in running a major publishing house; they could therefore be more confrontational. However, he did not see any point in pushing the boundaries of the permissible as he believed that "there are a thousand ways to express an idea." He also claimed that "the market is very clear, when this book is published, the author and publisher will be prosecuted, and this will result in conviction. Why should we be turkeys voting for Christmas? There is no reason to run the risk."[718] He also noted that, after the failed coup attempt, they had taken out certain passages in books that could be read as being positive or even neutral-analytical about the activities of the Gülenist organisation. He claimed that "the authors themselves requested us not to print the book or to throw out those sections. We supported their requests."[719]

[713] Field notes, 18 September 2019.
[714] Field notes, 18 September 2019.
[715] Field notes, Informal conversation with Nurhayat, 29 June 2019.
[716] Interview with Murat, 11 March 2019.
[717] Recently, they published the latest books of two highly controversial authors.
[718] Interview with Murat, 11 March 2019.
[719] Interview with Murat, 11 March 2019.

There were authors who also believed that one could express an idea in multiple ways without necessarily using confrontational language, which may not always serve a purpose. Leyla, a columnist in an online newspaper, is known for not mincing her words. Nevertheless, in our interview she expressed her surprise at the people who used evidently confrontational language to make a point: "If you say it like that, a case will be brought, what do you win? You can say it in another way, you can still criticise."[720] She then explained to me her own approach to caution: "I have been writing since 1973 so there is a certain habit of calculating how to say what. But the principle is this: Do not change the idea. That is shameful, to express yourself differently from what you think. You can speak your mind by changing your style, express the same idea but with different words."[721] Leyla did not consider adapting her language as a form of self-restriction but as a strategy given that she does "not compromise the idea." She indicated, as an example, that she called a politician "a spokesperson for the deep state" instead of "an agent of the deep state."[722] She also gave the example of saying "someone has lied," instead of accusing them of being a "liar."[723] However, she also admitted that there are limitations to her strategy; changing the tone or adopting the language cannot ensure safety under "today's circumstances since the charges are arbitrary, not based on law."[724] Indeed, legal representatives of the above politician had contacted her to say that they will take necessary steps on account of "the insult" she used. She had consulted her lawyer, and believed nothing would come out of it. [725] Yet, she was still apprehensive to some extent. In fact, during our interview in Leyla's bright living room filled with books, plants, and souvenirs, her husband joined our conversation to let me know that Leyla keeps a small hand luggage filled with her necessities in case the police came to detain her, changing her clothes in the bag according to each season. She moreover puts her laptop in a certain place every night before going to sleep so that the police would not be able to confiscate it if they came to search the house.

[720] Interview with Leyla, 22 May 2019.
[721] Interview with Leyla, 22 May 2019.
[722] Interview with Leyla, 22 May 2019.
[723] Interview with Leyla, 22 May 2019.
[724] Interview with Leyla, 22 May 2019.
[725] Her lawyer had told her that it was best to wait and see if the legal representatives of the politician would take action.

In other instances, it appeared that unconscious or perhaps internalised mechanisms of control were at play. For instance, Işık, editor at Sea Horse Publishing, a small publishing house focusing on women's issues, pointed out that they do not interfere with the content of texts they publish. However, when I later spoke to Ece, one of their authors, she recalled a "suggestion" that Işık had made to her when she was working on her book project for them.[726] Ece was writing a biography of a Kurdish journalist and she had included a joke the journalist had made about guerrillas while visiting the Qandil Mountains where the headquarters of the PKK are located. Ece reported that Işık had told her, in a text message "with a lot of smileys" to not put that bit, saying that "it is not necessary." [727] In the end, the joke was not included in the book. While there is no way to ascertain it, it is probable that Işık did not consider the message she sent to Ece as interfering with the content of the text. The practice of eliminating parts that may potentially pose an issue and are not "necessary" for conveying an idea is an illustration of how unconscious restrictions might operate.

2.5 Use of Abstract Language

Another method authors, especially those in the "aligned" group closer to the centre, referred to was using abstract language to be less confrontational. Engin, who wrote short stories and non-fiction essays and who was closer to religious literary circles, pointed out that criminal prosecutions and "the problems of the judiciary" steered authors towards caution.[728] Still, he believed, like Murat and Leyla, that authors almost always found a way to express themselves, maybe not through "linear reality as we know, but through dystopic, utopic, fables, through magical realism."[729] He gave the example of the literary movement of "magical realism," arguing that it emerged in Latin America in connection with the coups and political upheavals of the region. Engin also stated that when he is being cautious, he resorts to "the main principle" which "is for the time and the place to become vague and abstract."[730] Ahmet Hüseyin Kutsayan, another short

[726] Interview with Ece, 20 May 2019.
[727] Interview with Ece, 20 May 2019.
[728] Interview with Engin, 7 January 2020.
[729] Interview with Engin, 7 January 2020.
[730] Interview with Engin, 7 January 2020.

story writer in the "aligned" group, remarked that he belonged to a group of authors who "were always cautious," writing in abstract fashion even before the military coup d'état in 1980.[731] He argued that irony itself provides a form of emphasis and maintained that they still use irony and symbolism, as well as stay away from slogans, direct language and confrontation today.[732] Hikmet, another figure in the group of authors Kutsayan referred to, also indicated that he tries to use abstract language when criticising a person or an institution. He emphasized that he did not do it "because [he is] hesitant or protecting [himself]."[733] For him, the non-confrontational language was part of his effort to communicate his criticism effectively. For instance, when he wanted to criticise a building, he would refer to the "people who have built it instead of saying the Üsküdar Municipality has built this building."[734] He explained that he would omit mention of the municipality, because he believed that the issue was not the people in the municipality. [735] He claimed that "this mayor goes, someone else comes in, someone from another political party comes in but the problems carry on."[736] His choice of language was thus aimed at being understood.[737]

2.6 Turning to Literature and the Use of Metaphors

Similar to the opportunities that abstract language and symbolism provide authors with to express ideas, literature as a genre, as discussed previously, can be a relatively safer domain than non-fiction. Therefore, it is not surprising that turning to literature, i.e. changing genre instead of language, is also a strategy that I came across. Emin, the Kurdish story writer mentioned before, explained to me how he turned to literature to be able to speak his mind. Resonating with several other authors and publishers we have discussed above, he claimed that "a person who has something to say finds a way."[738] He indicated that, for him, this was entering the literature circle. As mentioned previously, he turned to literature when the space of expression had narrowed in the

[731] Interview with Kutsayan, 8 January 2020.
[732] Interview with Kutsayan, 8 January 2020.
[733] Field notes, Informal conversation with Hikmet after the editorial board meeting of *Yeni Bahar*, 11 January 2020.
[734] Field notes, 11 January 2020.
[735] In recent years, Üsküdar municipality has been run by mayors elected from the AKP.
[736] Field notes, 11 January.
[737] Hikmet's comments indicate the depth of the polarisation in the society in Turkey which often leads to statements being categorised according to the source, before being taken in. However, this issue requires further elaboration and goes beyond the scope of the current study.
[738] Field notes, Informal conversation with Emin at the short story award ceremony of E-Kitap, 4 July 2019.

wake of the failure of the peace process between the government and the PKK. He remarked that, "literature is a safer domain because it is difficult to use it as evidence" in a criminal investigation.[739] So, in parallel to the authors mentioned above, he also used metaphors in his stories: "For instance, in one of my stories which takes place on a mountain, I did not say 'guerrilla' or 'PKK fighter', I used the phrase 'ghosts with arms.' Those who understand, understand it anyway."[740] He believed that by using such symbols, he was being cautious and working on the aesthetics of expression at the same time.

Another turn to literature I came across involved Somut Publishing. Hüseyin, the editor and the director of the publishing house, stated that they had started a new series of political thrillers. He believed that political thrillers would allow them to survive the economic and political difficulties and retain their critical position at the same time: "If we keep continuously publishing texts on the Kurdish issue, the publishing house will go bankrupt. It would not be viable. We are a small publisher, many of us are working with our hearts. But at the same time, we want the work we produce to have a meaning, to provide a tool for intervening in life, to provide critical flow. We believe political thrillers enable this."[741] He explained that they had made the decision after discussing the option in their board meeting and being convinced that this was one path in which "the opposition finds its way in experiences under rising fascism."[742] He commented that this is what happened in Italy, Greece, and Mexico during the height of fascism. Once again, it is not possible to categorise the turn to literature in the above cases as merely an act of restriction of oneself or as an act of subversion against state authorities. It is rather a way of navigating the threat of state repression while trying, at the same time, to retain one's critical stance and economic viability.

[739] Field notes, 4 July 2019.
[740] Field notes, 4 July 2019.
[741] Interview with Hüseyin, 26 March 2019.
[742] Interview with Hüseyin, 26 March 2019.

2.7 Inclusion of Controversial Terms Only If They are Used by Interlocutors

Non-fiction authors, especially those whose work was based on interviews, indicated that they refrained from using controversial terms such as "guerrilla." Nevertheless, one strategy was to use these terms only if their interlocutors employed them. For instance, Ece had written a non-fiction book on difficulties in the field of journalism in Turkey in the 1990s. The book was based on interviews with veteran journalists and was published in the mid-2010s. The Kurdish issue was one of the significant sources of tension and trouble for those dealing in journalism in the 1990s. Hence, the interviewees often referred to it as they reminisced those years and their experiences in the field. In doing so, some of them used politically charged terms such as "Kurdistan" which can easily cause legal trouble in the current political circumstances in Turkey.[743] Ece had to therefore decide whether to include such terms when relaying the interviews in her manuscript. She explained that after giving it much thought, she decided to use controversial terms such as "Kurdistan" where her interlocutors used it themselves in the interviews, with the belief that this could provide her with a feasible defence in the case of prosecution.[744]

Nurhayat employed a somewhat similar strategy while editing a section which discussed the ease of human trafficking across the border in Fahriye's book. She suggested to Fahriye that it is safer to make references to news reports published in *Sabah*, a newspaper known for its support of the AKP government.[745] The news report described the testimonies detainees gave to the police. In these testimonies, the human traffickers described how they were able to move across the border with ease. The book quoted these sworn statements to make the point and, thus, if a case was brought against her, the author would be able to defend herself by indicating that she merely repeated the content of a news report in the *Sabah* newspaper.

[743] Interview with Ece, 20 May 2019
[744] Interview with Ece, 20 May 2019.
[745] Field notes, Informal conversation with Nurhayat during participant observation at the publishing house Güven, 12 June 2019.

2.8 Indirect References to Turkey's Issues

Several authors have maintained that they sometimes use indirect references to a historical period or to another country which has parallels with contemporary Turkey to make a point about the latter in a relatively safer manner. Vasıf, a veteran author in his late 80s, said he sometimes writes about the period of autocracy between 1878 and 1908 known as *İstibdat*, or the period of oppression under the Democrat Party between 1950 and 1960 to reflect upon the issues of Turkey today.[746] Fahriye, mentioned above, admitted that she became more cautious in her writing following a criminal conviction on account of a previous book she wrote. As another measure, she explained to me that in her latest book she did not focus on the refugee problem in Turkey and instead talked about the problems of refugees in Jordan: "I did include a bit about Turkey but kept it really short and succinct."[747] She emphasized that that she could go into more depth, sharing her observations in more detail, but "then there would be another case."[748] Umay, the owner of the medium sized leftist publisher Referans, also admitted that one of the reasons why they published a historical novel by a Kenyan author was the similarity between the events in the book and the "pains experienced in Turkey."[749] He remarked that one only need to "replace the names with names in Turkey; the confessors, informants, those who hide their informant activities."[750] He said it would be easier to defend a work like the historical novel written by the Kenyan author if a case was brought against them. He continued smilingly: "You can say this has happened in Kenya, what does it have to do with Turkey?".[751]

[746] Interview with Vasıf, 23 May 2019.
[747] Interview with Fahriye, 28 May 2019.
[748] Interview with Fahriye, 28 May 2019.
[749] Interview with Umay, 15 May 2019.
[750] Interview with Umay, 15 May 2019.
[751] Interview with Umay, 15 May 2019.

2.9 Writing for Later or Writing Less

It is possible to say that keeping a private diary to be published later is a response which includes both self-restriction and subversion. Cemal is a veteran author and journalist who has been active for more than 50 years and has published more than a dozen non-fiction books. In the years following the 1980 coup d'état, during which there was an atmosphere of terror, Cemal started keeping a diary to write the ideas and opinions he could not publish freely under martial rule. At night, he would go home and write in his diary because he "could not write" during the day, and as a journalist he had no other recourse. [752] These diaries later made up two books that were published in 1986: *12 September Diaries 1: Waking up to the Sound of a Tank* and *12 September Diaries 2: The Fear of Democracy*. These works are still popular and widely read today. When Cemal's latest book, due to be published in December 2018, was put on hold by his publisher, he started keeping a diary again. According to Cemal's account and the accounts of those close to him, the publisher's decision to put Cemal's book, *Hüzün* (can be translated as melancholy), on hold was partially based on the language he had used (including words such as "dikta" and "dictator") and on the particular dislike of the upper echelons of the government towards him. In his online column, Cemal wrote about his experience of starting to keep diaries again. When we met for the interview, he had just recently visited his publisher to edit and review the introduction he wrote for *Hüzün,* which was still on hold. He remarked how the team at the publishing house remarked on the sharpness of the text, saying, "What an introduction!" (*Abi, bu da yazılır mı*?).[753] Cemal seemed sorrowful for having to return to keeping diaries once again later in life, and not knowing when these diaries would be made public.[754] At the same time, he had found a way in his current circumstance to retain his critical stance.

On the other hand, several publishers pointed out that in recent years there has been a drop in the number of submissions with political themes, claiming that this was related to increasing

[752] Cemal explains that he did not write in a notebook; he wrote on pieces of paper which he kept in a private drawer where he also put press clippings of interest. See: Hasan Cemal, "Onca Yıl Sonra Günlüğün Dili," *Milliyet*, 7 March 2010. https://www.milliyet.com.tr/yazarlar/hasan-cemal/onca-yil-sonra-gunlugun-dili-1208025, accessed: 29 March 2023.
[753] Interview with Hasan Cemal, 13 March 2019.
[754] Interview with Hasan Cemal, 13 March 2019.

self-censorship amongst authors[755]. For instance, Hüseyin remarked that the high number of submissions on the Kurdish minority that they had received during the peace process had significantly plummeted in recent years. The editor at an online literary magazine and publisher E-Kitap also underlined that the number of stories they received with overtly political themes had decreased in recent years; the political stories they received almost always involved covert symbolic political references only.[756]

3. Pre-emptive Administrative Measures

Some publishers take administrative precautions in addition to measures that focus on the text itself. Interviews revealed that publishers, especially those closer to the "enemy" end, who felt under scrutiny, took pre-emptive administrative measures to prepare for what they perceived as an intervention by the state in the form of, amongst others, tax reviews, health and safety controls, and work permit checks. Hence, both the director (Nedim) and the chief editor (Kaan) at United Publishing expressed that they, as one of the activist leftist publishing houses working on taboo topics, had to make sure all their administrative affairs were in order.[757] This, for instance, included making sure that the fire exits were fitted not only according to law, but in a manner that satisfied every single letter of the law. Nedim, the director, also noted that they made sure their financial accounts were impeccable. Both Nedim and Kaan explained that they always backed up copies of published books, including their graphic design and layouts, so that they do not have to do it all from scratch in case there was a raid on their offices.

Another publisher which was shut down during the state of emergency by an executive decree managed to resume its activities by virtue of the preparations they had in place. They operated under a new publishing brand at a new address. The team there was still preparing for the

[755] Interview with Hüseyin, 26 March 2019; Interview with Esra from E-Kitap, 28 June 2019; Interview with Hülya who is a literary agent, 6 May 2019.
[756] Interview with Esra, 28 June 2019.
[757] Interviews with Nedim and Kaan.

future: they had stocked up a second and even a third corporate personality to activate if necessary and they were backing up their archives on the cloud system.[758]

Meanwhile, Evrensel's case also served as an important warning for several publishers to take measures against a potential closure by an executive decree.[759] For instance, Hüseyin indicated that after witnessing what happened to Evrensel, the team at Somut emptied their official storage space except for a few items and moved their stocks to a different location, the address of which they did not notify the relevant authorities.[760] They have also moved the agreements and contracts they have with their authors from the offices of the publishing house to a safer place. The primary motive of these measures was not avoiding criminal prosecution but being able to move on quickly in case of a state intervention in the form of an executive decree. This was due to a prevalent apprehension, especially among similarly positioned publishers, that the state can use an executive decree to confiscate their property and appoint an administrator. Similar to United, the team at Somut also indicated that they were careful about keeping their financial accounts in perfect order, beyond "business as usual." The senior editor, Huseyin, explained that, after publishing a novel by a highly controversial political figure, they were expecting the government to flex its muscles in the form of tax reviews. Indeed, their anticipation materialised, and the tax office placed them under review and asked for and procured their tax documents from 2017 and 2018. Subsequently, Somut was fined.[761]

Overall, while the majority of publishers focused on strategies of navigation in the editorial process, several publishers were preoccupied with administrative measures too, as explained above. Believing that the government is keen to find ways to punish them for their conspicuously defiant stance, these publishers tried to make sure that everything was in absolute order. They also took measures to be in a fit state and able to resume their work in case the dreaded closure took place.

[758] Interview with Tarık, 27 February 2019.
[759] As described in Chapter 3, Evrensel could not resume its activities after its parent company, Doğa Publishing, was shut down by an executive decree during the state of emergency in 2016.
[760] Interview with Hüseyin, 26 March 2019.
[761] Interview with Hüseyin, 26 March 2019. Tax evasion is quite common in Turkey and the government periodically issues tax amnesties.

4. Not Taking Any Measures

There were also some authors and publishers, mostly at the "enemy" end of the spectrum, who shared with me that they opted for not applying any strategy or measure. When I asked Kemal, a poet and a columnist in a leftist newspaper, whether he consults any lawyers, his response was humorous: "No, my pieces are written directly by the prosecutor!".[762] He maintained that he did not write with such awareness of consequences in mind but that he did "own up to the consequences of the risk (he is) running."[763] Another author, Erdem, an Islamist critic of the government, also claimed that he writes "as it is": "I do not try to change or soften my language. Because in my opinion my writing is already soft; I do not use swear words, I only express my opinion. If some people will take offence, let them take offence. My conscious is clear and knowing that will help me overcome any case that they might bring against me."[764] Yet both admitted that their children were concerned. Kemalü remarked that his daughter warns him: "Dad you said so and so!" to which he jokingly responded: "Are you now a prosecutor?".[765] Erdem's daughters would also warn him, saying "The atmosphere is bad, why don't you just not write it?".[766] Both had been investigated on account of their writings (and speeches regarding Erdem) on several occasions. However, while no investigation resulted in a charge with respect to Kemal, Erdem was dealing, at the time we spoke, with charges of terror propaganda on account of several speeches he had given at a conference.

There were also publishers who held that they applied no precaution regarding the content of the texts they publish. These were generally small ideologically oriented publishers like Letter, United, and Somut. The senior editor at United's team emphasized that they do not take any measures other than the pre-emptive administrative measures for the future. He maintained that there was no point in interfering with the content, "since the mathematics of state intervention are not clear anyway."[767] Hüseyin from Somut noted that his lawyer friend advised against including

[762] Interview with Kemal, 8 March 2019.
[763] Interview with Kemal, 8 March 2019.
[764] Interview with Erdem, 12 March 2019.
[765] Interview with Kemal, 8 March 2019.
[766] Interview with Erdem, 12 March 2019.
[767] Interview with Kaan, 8 March 2019.

PKK's founding declaration in a book on the Kurdish left. He had told Hüseyin that the book would be confiscated. However, Hüseyin was ready to take the risk of confiscation: "Now, you cannot compile a book on the Kurdish Socialist movement without putting this text in. People will laugh. If I see such a text, I'll laugh. I'll say, 'Look at it, [he] could not be bold enough.'"[768] There was an ongoing prosecution regarding this book at the time we spoke. Baran from Letter Publishing, another small leftist publisher, maintained that they did not apply any "self-censorship": "How far can you go running? If we close down, we close down. We will run away until where?".[769] When I asked what he means by closing, he referred to the state closing the firm, and expropriating its property. However, he also explained that he does not criticize people who do act cautiously: "We have printed 410 books over 10 years here, it is not a joke. We built it up with serious labour. It really is not easy to lose it. But we cannot give up what we think just because of this risk."[770] Letter Publishing had never been investigated as of the time we spoke.

Overall, it was apparent that there were publishers and authors who take no measures at all, believing that precautions are futile and that it is important to stick to principles. Navigating precarity in a defiant manner, that is to say, while writing or publishing on "risky" topics did not automatically lead to retribution. Having said that, amongst those with whom I spoke, several had some form of interaction with the criminal justice system, either an investigation or a prosecution, even if it did not result in any conviction.

[768] Interview with Hüseyin, 26 March 2019.
[769] Interview with Baran, 11 October 2019.
[770] Interview with Baran, 11 October 2019.

5. Collective Responses from the Industry

I now turn to assess the strategies employed by publishers' associations and industry wide practices which helped publishers and authors navigate the threat of criminal prosecution and becoming a state target.

5.1 Putting Distance

As explained previously, there are two distinct professional associations of publishers in Turkey: the Turkish Publishers Association (TYB) and the Press and Publishing Association of Turkey (BYB).[771] TYB is the larger of the two whose members include the principal commercial actors, including several publishers on the "friend" end of the spectrum. However, its members are usually liberal and left-leaning publishers. BYB also includes important actors, yet its membership is more homogenous in terms of its proximity to nationalist and Islamist thought and circles. Both these associations have put a clear distance between themselves, and the publishers and authors allegedly affiliated with the Gülen movement in recent years. For instance, neither association showed any solidarity or cooperated in any way with publishers, allegedly Gülenists, whose businesses were shut down with executive decrees having force of law (KHK) following the failed coup attempt.[772] After the executive decree, many of these publishers were charged with terror-related crimes, the property which belonged to the publishing houses was confiscated by the state, and even possession of a book published by them became an evidence of crime. Hence, these publishers and the work they had published became taboos. As a result, all the actors on the spectrum of proximity to the government were quite careful to avoid any association with them. For instance, the reports on freedom to publish and freedom of expression prepared by the Turkish Publishers Association (TYB) acknowledged the closure of these publishing houses but did not

[771] As decribed, there are also organisations like YAY-FED that work on technical matters in the industry.
[772] As explained previously, 131 media outlets were shut down with an executive decree passed less than two weeks following the coup attempt of 15 July 2016. Later, another 22 media outlets were shut down with another executive decree passed on 29 October 2016.

provide any further information about the conditions of these publishers or the status of their criminal prosecutions. Indeed, there was hardly any information about or discussion of the case of these publishers or authors; it was as though they had become invisible. When I inquired as to the possibility of visiting and speaking to one of the imprisoned publishers, Aykut, the lawyer specialised in publishing, strongly advised me against it. He explained to me that only lawyers (and law interns) could visit a prisoner and the process entailed a lengthy bureaucratic application which would result in me being "marked" or "blacklisted."[773] Within circles of liberal and leftist publishers, there was a belief that the Gülenist publishers belonged to a world they did not know well enough to take any action. [774] They rarely interacted with a grassroot Islamist organisation like the Gülenist movement.

By contrast, publishers who were closer to the government on the "friend-enemy" spectrum had shared a similar platform with the allegedly Gülenist publishing houses for many years. Hence, in contrast to the liberal and leftist publishers, the distance they had put came in the aftermath of the failed coup attempt. Following the closure of 29 publishers with an executive decree on account of affiliation with the Gülenist terror organisation, the group of "aligned" publishers released a statement welcoming the executive decree addressing the operations of the FETÖ (Fetullah Gülen Terrorist Organisation) in the publishing industry. The statement read: "If some of us have slipped from legitimate grounds and expressed loyalty to terrorist and coup-making structures like FETÖ, they must pay the price within the framework of law and democracy. We evaluate the decree in this context and believe that they have received the appropriate punishment for their crimes within our legal framework."[775] The statement also underlined, for "both the domestic and international public opinion," that the executive decree was not directed towards preventing freedom to publish and stated that "according to data from 2013, the 2,000 active publishing houses, 150 distribution channels, and approximately 10,000 bookstores out there are publishing freely and delivering books to their readers without being subjected to any limitation or pressure." One of the publishers who was an active member of BYB had explained that following the executive decisions, it was illegal for these publishing houses to remain as members of an association. Besides, "there was no

[773] Field notes, Informal conversation with Aykut, 20 November 2019.
[774] Field notes, Informal conversation with Aykut, 20 November 2019; Interview with Çetin, 13 March 2019.
[775] "FETÖ bağlantılı yayınevlerinin kapatılması," 19 August 2016, https://www.tbym.org/icerik/feto-baglantili-yayinevlerinin-kapatilmasi.html, accessed: 10 April 2023.

case brought against them since the whole process was based on an executive decree (KHK). If the state had prosecuted the publishing houses, we, as the association, would have followed the case."[776]

5.2 Symbolic Practices of Solidarity

Solidarity on the political front generally takes place between publishers located in the middle and on the "enemy" end of the spectrum of proximity to the ruling government. As mentioned, TYB occupies a leading role by publishing annual reports on freedom of expression and giving freedom of expression awards to a publisher, an author and an independent bookstore every year. The awards for authors and publishers are generally given to figures who have recently been targeted by the state and who are usually in the middle of a criminal prosecution. Receiving the awards gives them both morale and public attention which can be beneficial during their legal struggle and in resuming their work. In addition to the reports prepared by TYB, several civil society organisations issue their own reports on violations of freedom of expression and instances of censorships.[777] By contrast, members of BYB generally believed these awards were futile since, according to them, these incidents were not common. [778]

There are also commemoration days such as the Day of Imprisoned Authors on 15 November and other awards like the Metin Göktepe Journalism Awards which bring together stakeholders such as the Authors Union, Journalists Association, and publishers under the same roof. These associations usually issue a declaration of support when one of their members are charged or detained.[779] Kaan at United Publishing argued that "people feel very lonely during

[776] Interview with Mehmet, 13 November 2019.
[777] See the online newspaper Bianet's Medya Gözlem Veritabanı (Media monitoring database) at: https://medyagozlemveritabani.org/, accessed 10 April 2023; Reports prepared by Susma 24 - Platform against Censorship and Self-Censorship available at: https://susma24.com/sansur-censor/, accessed:10 April 2023; Reports (English available) prepared by Media and Law Studies Association available at: https://www.mlsaturkey.com/en/publications/, accessed:10 April 2023.
[778] Interview with Muhittin, 5 November 2019.
[779] Publishers Association of Turkey and Translators' Association usually issue statements of public support when a criminal charge is brought against one of their members.

periods of pressure such as the one we are living through."[780] In this sense, the show of support is important in providing a sense of community. On the other hand, several publishers and authors believed that the power of solidarity campaigns had decreased in recent years in terms of effectiveness; they believed the government no longer cared about these campaigns.

Although many stakeholders in the non-aligned group share similar concerns on the political and the economic front, differences between the positions, needs and priorities of smaller and more sizeable publishers seem to have limited solidarity practices to meaningful yet symbolic shows of support. Hence, it comes as no surprise that a new initiative has emerged between smaller publishers with similar positions in the publishing market for stronger cooperation on the political and economic fronts. As discussed earlier on, a publishers' cooperative, YAY-KOOP, has been founded by more than a dozen small and medium publishing houses to provide a platform for primarily economic but also political solidarity. There also appears to be informal networks of solidarity between smaller and defiant publishers with similar ideological orientations. Indeed, Hüseyin claimed that larger leftist publishing houses like Rapor and Referans call up to show support, but in practice "there is more solidarity between publishers who are more of dissidents."[781] He expressed that they have helped small, alienated publishers get stands at book fairs. The dialogue between Somut and United is also a case in point. In this sense, all these different kinds of solidarity practices, even if symbolic, do help authors and publishers who have run into trouble with the state; they raise public awareness and provide some reassurance to non-conformist actors in the industry that they are not alone while navigating the boundaries of the permissible.

There are also international solidarity campaigns, in addition to the national ones, with authors and publishers who are targeted by the government. International organisations such as the International Publishers Association and PEN International usually voice their support for an author or a publisher when a case is brought against them. The International Publishers Association has awarded the Voltaire Prize to publishers in Turkey four times in the last 16 years.[782] PEN International, through its representatives in Turkey, is usually present in legal hearings. Human

[780] Interview with Kaan, 8 March 2019.
[781] Interview with Hüseyin, 26 March 2019.
[782] See the details of IPA Voltaire Prix at https://www.internationalpublishers.org/, accessed: 10 April 2023.

rights organisations such as Amnesty International and Human Rights Watch also follow the criminal prosecutions and publish intermittent reports. One of the authors interviewed remarked that the EU Representation Office had asked her what they could do to help authors at risk.[783] Overall, like national campaigns, the efforts of international organisations mainly work to lift the morale of the authors and publishers who have been targeted and bring them much needed public attention that might positively affect the outcome of a prosecution.

5.3 Subversive Campaigns

There have moreover been subversive solidarity campaigns organised by informal groups or networks rather than professional associations. A relatively recent illustration of subversive solidarity on the ground was the campaign organised for Ahmet Şık's unpublished manuscript "*Imam's Army"* which landed its author in prison in March 2011. Şık was detained on account of his unpublished book manuscript and was charged with support for an armed organisation. The draft manuscript scrutinised the influence of the Gülenist organisation within the institutions of the police. It was seized and banned as an "illegal organisational document" of "the Ergenekon organisation". Soon after, digital versions of the book started circulating the Internet and were downloaded over a hundred thousand times. Upon the demands of the Office of the Public Prosecutor, these copies were erased under police supervision. Subsequently, Şık's publisher, who owned the publishing rights of the manuscript, led a campaign whereby Şık's manuscript was published as "*000Book*" (*000Kitap*) with the signatures of 125 publishers, academics, journalists, and authors. The book was presented to the public at a press conference at the annual Istanbul Book Fair, one of the most important events in the industry, in November 2011.[784] Kaan remarked that nearly all publishers at the İstanbul Book Fair had simultaneously put *000Book* on their stands.[785]

[783] Interview with Ece, 20 May 2019.
[784] "Banned book goes on sale in Istanbul fair," *Hurriyet Daily News*, 18 November 2011, https://www.hurriyetdailynews.com/banned-book-goes-on-sale-in-istanbul-book-fair-6901, accessed: 10 April 2023.
[785] Interview with Kaan, 8 March 2019.

Similarly, publishers showed support to Academics for Peace by forming a group called "Publishers for Peace" which released a statement of solidarity and organised a series of events. 110 publishers, which included prominent and established publishing houses, signed the statement of solidarity.[786] Different initiatives for peace which appeared after the prosecution of academics then participated in a forum called "Everyone for Peace" in Ankara and İstanbul. Over 1000 people attended the forum in Istanbul alone.[787] Kaan argued that even "to see an outlet, to see that peace has a voice was good for all of us. To feel like we can do something, within this group hoping for peace, felt great."[788]

In short, in addition to the individual practices employed, collective strategies have also emerged in the publishing world. These collective strategies include the of freedom of expression and publishing awards, setting up a publishers' cooperative, and organising subversive campaigns such as the "000Kitap" campaign and the "Publishers for Peace" group. There have also been informal networks of solidarity between publishers who feel more at risk. Distancing themselves from Gülenist authors and publishers has also been an industry wide practice. On the whole, it is possible to suggest that collective strategies are especially important in counteracting the sense of alienation which the atmosphere of precarity seems to have induced in the publishing world.

6. Conclusion

Overall, authors and publishers generally take pre-emptive action to protect themselves, even where they are not directly targeted or evidently at risk, in an environment where the threat of prosecution is felt as omnipresent. In other words, the atmosphere of precarity and anticipation of repression, which I have explored in the previous chapter, surpass and overtake the frequency with which the government intervenes, through criminal charges, in the publishing industry.

[786] "Barış İçin Yayıncılar'a 110 Yayınevinden destek," *Birgün*, 18 January 2016, https://www.birgun.net/haber/baris-icin-yayincilar-a-110-yayinevinden-destek-101094, accessed:10 April 2023.
[787] "Barış için herkes bir araya geldi," 11 February 2016, https://barisicinakademisyenler.net/node/123, accessed: 10 April 2023.
[788] Interview with Kaan, 8 March 2019.

Hence, authors and publishers tend to regulate and restrict themselves without the state having to flex its muscles.

As discussed, there are authors and publishers who continue to write and publish without taking any measures. Meanwhile, there are others who try to conform entirely with the unwritten demands of the tense atmosphere. On the other hand, most of the publishers and authors, especially those located in the middle and on the "enemy" end of the spectrum, are navigating the threat of criminal prosecution through a range of strategies that do not neatly fit the categories of subversion, defiance or conformity with the "security priorities" of the state authorities.

Through these strategies that include increased involvement of lawyers in the editorial process, using abstract language, symbolism, irony, amending the text, adapting language without compromising the idea, indirect references to Turkey through discussion of other case studies, and writing to be published later, authors and publishers are finding ways to communicate their ideas, remain engaged and retain what they understand as their integrity.

However, there is also significant evidence that the security priorities and the repressive tactics of the government are shaping the industry through an atmosphere of precarity. Several publishers feel the need to take administrative precautions such as emptying their storage space, backing up the copies of contracts with their authors, and keeping at hand registered corporate identities to be used in case of a state intervention through an executive decree. As described, the risk of prosecution crosses the minds of almost every publisher when they are assessing a given book for publication. In cases where there is a hint of danger, publishers must determine whether the book in question offers the added value that justifies the risk of prosecution. Certain titles are put on hold while others are either not published by the publishing house or rescinded by the authors. Despite the upsurge in works of literature, there appears to be a drop in works on politically taboo subjects. Publishing or writing about certain topics such as criticism of the government, the Kurdish issue or the Gülenist organisation are fraught with danger, especially when certain expressions and terms are used, and names and spaces are mentioned. Indeed, the notion of "reasonable language" (*makul dil*) has widely penetrated the industry, leading publishers and authors to commonly engage in an assessment of whether it is necessary to use certain terms.

As discussed above, amongst others, mention of Qandil or the term "guerrilla," critical references to Erdoğan himself, use of pejorative adjectives such as "murderer" for the state or "dictator" for Erdoğan are minimised in public discussions. Public discussions of scenes of hardship of life in the southeast or any praise of Gülen is also largely restricted depending on the political atmosphere and policies of the government at a given time.

The range of strategies discussed are generally executed individually by a variety of actors and do not amount to a united front. Collective strategies do exist; however, they remain limited to certain occasions and provide publishers with a sense of comfort rather than transformative power. Hence, overall, despite the significant dynamism and output of the sector, the threat of criminal prosecution has created a self-regulating, self-restricting publishing environment.

In terms of differences between actors, it can be argued that larger and commercially oriented publishers located in the middle of the publishing spectrum are more careful in navigating the "red lines" of the state, especially in terms of criticism of the government, the Kurdish issue and the Gülenist movement. While these publishers employ a pragmatist approach and are open about adapting their work to what they perceive as the realities of the environment, some of them have also continued publishing works which can be considered risky or controversial. On the other hand, smaller, ideologically oriented publishers are generally able to be more daring and subversive in navigating the boundaries of what is considered "safe" to publish. However, these publishers, too, have not been immune to the political atmosphere in which they operate; some of them have put books on hold, a few have "softened" the language of certain texts, and several have taken pre-emptive administrative measures.

On the other hand, as mentioned, the group of "aligned" publishers are able, in the atmosphere of precarity, to refer to the significant number of publishers and bookstores, while the total number of books published increases yearly. In other words, although it is regulated and restricted, the publishing world is far from being silent on "taboo" topics and "red lines"; it continues to generate works, amongst others, on Turkey's foreign policy, the AKP's political order, the Kurdish issue, the Armenian issue, and works critical of the government. Perhaps the only type of work the industry is not generating at the moment is books linked to the Gülen movement. In

other words, the state in Turkey succeeds in creating a silencing effect in the publishing environment to a certain degree by fueling an atmosphere of fear and threat of prosecution. However, it falls short of establishing complete control over the industry. Whether establishing complete control serves the interests of a hybrid regime turning increasingly authoritarian is open to further discussion.

Chapter 7 - Conclusion

In my research, I have intended to address the perplexing contrast that I faced when starting my fieldwork in the publishing sector: a sense of vulnerability lurking behind a dynamic and colourful world alongside vocal criticisms of state intervention that did not seem to match the actual scale of criminal prosecutions and convictions. The current dissertation has illustrated that the legal and political environment of precarity generated by the regime, on the one hand, and the strategies adopted to interpret and navigate between and along the boundaries of permissibility on the other, are at the core of these disparities. These inferences are made entirely from the data collected in Turkey. Yet, there are substantial grounds to argue that the findings of this research can be extended to other, what the current scholarship refers to as, hybrid regimes drifting towards authoritarianism. Although the extent to which authoritarian governance co-exists with democratic institutions varies in each hybrid regime, there are common features that they exhibit. It is reasonable to suggest that precarity generated by legal forms is one of them. Findings reveal that, in these regimes, generating precarity emerges as a repressive practice that can coexist, at least in appearance, with liberal-democratic institutions while still allowing some space for oppositional activity in and outside these institutions. Studying experiences of precarity in the publishing world has allowed an in-depth exploration of the socio-political and socio-psychological impact of increasing authoritarianism on the ground. Indeed, this study shows the ways in which a hybrid regime can shape everyday life by generating precarity through law.

Generating Precarity through Legal Means

Under the AKP rule, the anti-terror and defamation laws have been the most actively employed legal tools in criminalising dissenting voices. Every step of the criminal legal procedure, from triggering investigation to the trial and sentencing, is used by the government and a cooperative judiciary to generate precarity at the institutional level. As discussed in Chapter 4, the hybrid regime makes use of procedural measures such as search orders, restriction orders on case files, pre-trial detention, secret witnesses, and interferences into the judicial panel to engulf dissidents in a sense of insecurity and uncertainty. Moreover, the failure of members of the

cooperative judiciary to subject claims in indictments to rigorous examination means that dissidents often must face vague cases which makes it harder for them and their defence counsel to challenge the accusations.

At the sentencing stage, the deferral of the announcement of the verdict (HAGB) has become a prolific tool in avoiding acquittals where they were due and supervising and monitoring dissidents without sending them to prison. As explained, the HAGB procedure means that the sentence is not announced, put on hold, and is annulled entirely after five years unless the defendant is charged with another "crime." Therefore, the defendant must be careful not to get tangled in any other investigation or prosecution. HAGB is especially a challenge for outspoken critics of the government who are vocal either in the media or on social media platforms. These tactics allow the regime to control those who have voiced dissent and convey a message to others, as a preventive measure, while claiming to abide by democratic-liberal principles. The "tolerant" or "humane" image projected by the state is often embraced and reproduced by some sections of society. Consequently, many in the "aligned" camp argue that "no one actually goes to prison" and that those who talk of government oppression are "exaggerating." In this sense, generating precarity also contributes to polarisation in society and allows the state to mobilise support among some sections and leave space for justification of its actions.

These routinised tactics are combined with a small number of cases where the regime comes down hard on dissent, mainly where it is a collective action, such as the Gezi trial and the trial of Academics for Peace. The power of the judges to hold these trials at salons located in the Silivri Prison Complex, and the highly militarised and menacing nature of these hearings, reinforce the idea that the state is ready to strip away the rights of defendants as citizens and that it *can* reduce them to bare life based on unsubstantiated charges.

All together, these practices give rise to the perception that once someone is labelled a suspect or a defendant, the scope for defence in law and the ability to ascertain how the laws will be implemented are largely limited. The selective and unpredictable application of the laws also keeps the boundaries of the politically permissible elusive. Referring back to Tekin's analysis of the state in Turkey as a dual state which functions on uncertainty, the current study's findings

reveal that actors in the publishing industry believe that *who* the state perceives as a source of threat and *when* it acts remain unclear. What "the prerogative state" considers to be "political," and hence open for intervention based on political expediency, is vague. Importantly, this co-exists with the regular application of laws in numerous fields, such as contracts and family disputes, contributing to a sense of stability in these spheres whereby the ordinary flow of socio-economic life is largely uninterrupted. Meanwhile, the potential of the "prerogative state" to encroach upon new domains or groups creates a significant sense of precarity for those who believe they can be targeted at any moment.

The state additionally makes use of the criminal legal procedure to develop a narrative around its perceived opponents. Dissidents become "suspects" or "defendants" which entails social repercussions, even if public confidence in the legal system has declined. The accompanying smearing campaigns carried out by pro-government media outlets are a contributing factor in this respect. Hence, with the magic wand of cooperative prosecutors and judges, hundreds of academics signing a strongly worded petition turn into "suspects" and "defendants" in a terror propaganda case. Similarly, a lawyer commenting critically on the judicial independence in an interview becomes "a suspect" and "defendant" in a case for defamation against the state. Criminal prosecutions are moreover used to conflate unconnected actors and advance the state's account of prominent social events such as the Gezi Park protests. Indeed, the indictment in the Gezi case lumped distinct, non-associated actors in civil society, law, journalism, urban planning, and cinema into the same mass category. The resort to criminal charges to construct labels and narratives around opponents generates fear that independent acts and publications can "somehow" be categorised as a crime or linked to unrelated groups or criminal activity.

The precarity generated through the means discussed above at the institutional level affects both those within the courtroom *and* those outside, especially those who follow or know about cases because they share similar spaces with prosecuted dissidents. The group of authors and publishers who live with a constant threat of criminal prosecution, studied in the current research, is an important example. As explained in previous chapters, many authors and publishers have relations with civil society leaders, activists, academics, lawyers, and journalists who have been charged. Moreover, authors and publishers who are not aligned with the official ideology or

government policies generally believe that the state can target them through criminal charges due to the intellectual and inquisitive nature of their work. Hence, the sense of precarity that is generated penetrates life in the publishing world, even if to varying degrees.

The Effect of Precarity as Felt by the People in the Publishing Industry

The current study has explored lived experiences of precarity in the courtroom *and* the publishing world. Concerning criminal charges, findings indicate that the experience of precarity leads many defendants and their defence counsel to try to understand the goals behind a criminal case and minimise the "costs" of prosecution. Many defendants agree to the option of HAGB (wherever available) to move forward and prevent a criminal case from dominating their daily lives. Indeed, the widespread resort of the courts to HAGB, with the agreement of defendants, has turned the criminal legal procedure into a somewhat "ordinary" experience for perceived opponents unless detention or actual prison time is involved. Even the jokes several interlocutors made to each other were about going to prison, not to court.

Meanwhile, the typology of lived experiences in the courtroom is not limited to pragmatic accommodation by the defendants, particularly when the deferral option is unavailable. There are other defendants who challenge the legitimacy of the judicial panel and use their defence to advance their political arguments. Despite the militarised atmosphere of the trials at Silivri, there are occasions where lawyers and the audience protest the judicial panel by shouting slogans, walking out or banging the desks. They seize the opportunities for resistance presented by the trial. Hence, contrary to the ordinary criminal trial Cover describes, in politically charged criminal hearings, such responses challenge the trial's "civil" and "bureaucratic" appearance and make evident the lack of a shared understanding of the event. Hence, acts of defiance undermine the atmosphere of precarity, manifestation of state power, and the bureaucratisation of violence against dissidents. As a reflection of the hybrid nature of the political regime, the judiciary, which is under the influence of the government, tolerates yet tightly controls acts of defiance, as explained in Chapter 4. That said, certain defendants receive higher sentences in identical cases (for example, in the Academics for Peace case) due to their confrontational attitude in court.

On the other hand, lawyers generally believe that they can still mobilise the law in the circumstances in which they operate. They are given the space to be active but not to determine the outcome. Despite the dismissive, at times hostile, attitude of several judges, lawyers generally continue to make detailed legal arguments and use procedural laws to make further applications or challenges in the hearings. Findings from the field show that there is a sustained belief in not only the lack of an alternative but also the occasional positive decision to emerge, as indicated in the initial acquittal in the Gezi Trial in February 2020 as well as the Constitutional Court's decision in July 2019 where it ruled that charges against the Academics for Peace were a violation of freedom of expression. Yet even these "good" decisions are questionable since several are subsequently reversed or fail to be implemented. Not giving up on the criminal legal procedure is moreover a strategy to eventually appeal the case to the European Court of Human Rights.

Concerning the lived experiences of precarity in the publishing world, proximity to the ruling government emerges as an important distinguishing factor. Placing authors and publishers along a "friend - enemy" spectrum proved to be a productive starting point to outline the diversity in the industry. Nationalist-conservatives on the "friend" end generally sympathise with the policies or feel a certain degree of affinity to the ideological background of the ruling government. These actors largely share the state view regarding "taboo" topics such as the Kurdish issue or the Armenian genocide. On the "enemy" end of the spectrum are those actors who broadly challenge the state's position on these matters and are widely critical of the government. In between are the majority of the industry's actors amongst whom are discrete profiles such as large commercial publishers, publishers focusing on translated works of literature, and Islamists critical of the government.

In addition to this spectrum, an author or publisher's lived experience of precarity is also related to how often they engage with sensitive themes, their level of visibility and recognition, the genre they work with, and the politics of the time. Nevertheless, findings indicate that these factors are not always exhaustive either. For instance, although fiction appears as a relatively safe genre, the prominence of a novelist can still lead to increased scrutiny by the state. At the same time, when combined with advanced age, prominence can override other factors and provide a

degree of security to an author. In other words, multiple layers and more than one factor are at play in each given case.

On the other hand, an author or a publisher who might most likely be targeted under these factors may never be investigated or prosecuted. As described, the boundaries of what is politically permissible and what leads to actual state intervention remain ambiguous. Consequently, as findings reveal, the lack of a criminal prosecution does not prevent authors and publishers from feeling susceptible to interference by the state.

Meanwhile, experiences of precarity among authors and publishers who stand close to the government are not uniform either. The majority of those I spoke with did not consider the state a source of threat, and either undermined or normalised the gravity of the consequences of criminal prosecution. They were largely unconcerned about state intervention unless the matter was related to state support. Yet, this does not mean that those among them who pose questions or criticise the government will be immune from state intervention. Many are aware that dire consequences can follow if they engage in criticism of the state or the government policies. Still, these consequences are generally limited to media backlash, alienation, and the cut of financial support. It is, therefore, possible to suggest that while there is an element of precarity in their lives, too, it is of a different nature. Contrasting experiences of precarity between different groups contribute to a deepening division in the sector and the society at large.

It is important to note that although there is discussion in the public sphere about criminal prosecutions and the distortions of due process, the profound effect of these prosecutions on the feelings, perceptions, and work of actors in the industry, as well as their subsequent coping mechanisms, rarely come to the surface. The apprehensions and anxieties that permeate the daily tasks of writing or selecting and editing a publication on a sensitive topic – perhaps using controversial terms or written by a particular author – came out as a result of the current research and in-depth ethnographic observation of the study as an analytical tool. Authors and publishers make assessments about texts and the choice of words in private. Consequently, the precarity they experience is essentially not visible to an outsider, for instance, a visitor at a colourful book fair or book signing event or a reader from the general public. Moreover, unlike journalists and television

personalities, their experiences are rarely studied or written about. In this respect, the current study's findings regarding the experiences of precarity in the publishing industry allow access to the thoughts and anxieties of its actors, which have so far not been accounted for.

The Navigation of Precarity

One would expect authors and editors to take the widest measures possible in the face of ambiguous boundaries of the politically permissible. While this is true in many cases, others keep pushing the boundaries and publish "dangerous" works on "taboo" topics. Chapter 6 has presented, based on findings from the field, a typology of the range of effects that the threat of criminal prosecutions and the precarity they entail have on actors in the publishing world, including acquiescence, flight, and resistance. Yet, most of the publishers and authors are navigating the prevalent sense of precarity through a range of strategies that do not neatly fit these categories. These strategies include an increasing resort to legal advice in the editorial process, using abstract language, metaphors, and irony, adapting language while keeping the essence of the idea, and indirect references to Turkey through discussion of other countries or other historical eras. Through these tactics, authors and publishers are finding ways to communicate their ideas without compromising, as much as they can, their economic viability and what they regard as their integrity.

When a publication, especially one that might be considered "risky" in terms of criminal charges, is presented to a publisher, the latter has to evaluate whether the title is "worth" the risk of prosecution. When assessing this question, authors and publishers seek legal advice to try to determine the type of criminal charge they might face and the degree of risk involved. In other words, in contrast to increasing arbitrariness in the application of the laws, the importance of legal advice has become greater, indicating that not only lawyers but citizens, too, still turn to the law for a solution in hybrid settings like Turkey. Indeed, field research reveals an increasing preoccupation with the law in the publishing sector and the wider society. When deciding whether to publish a work that carries a threat of prosecution, publishers and authors also evaluate the added intellectual value of the work and its importance in ideological terms. However, there are also

publishers, especially larger commercial ones, who believe that no single book is worth the risk and that there are many different ways to express the same idea.

Some authors and publishers believe that the strategy of changing words, or using metaphors or indirect references, is acquiescing to the state's repressive tactics while others consider it a smart tactic as long as the essence of the original idea is preserved. Hence, whether this strategy constitutes obeisance or a subversion of power can only be assessed according to the circumstances of each case. For the most part, however, authors and publishers tend to exclude important terms such as "the Armenian genocide" and "guerrilla", observations from taboo spaces such as the Qandil mountains, phrases such as "the murderer state," or scathing criticism directed at the President. Another frequent strategy is putting a publication on hold while waiting for a more favourable time for publication. In other words, many authors and publishers often reproduce official narratives and language by mediating, controlling and sometimes excluding certain phrases and terms from public circulation. The widespread resort to these strategies is one explanation for the industry's continuing vibrancy and prolific output.

Meanwhile, another finding is the propensity of authors and publishers to take pre-emptive action even where they are not targeted or at risk. Indeed, Stern and Hassid have pointed out in their study based on China that "unpredictable flashes of repression instil fear and amplify silence." This is the critical effect that the atmosphere of precarity has on everyday life in the publishing sector; it amplifies the silencing effect of the threat of prosecution. As a result, apprehension regarding possible state repression surpasses the frequency with which the government intervenes in the industry through criminal charges. Consequently, many authors and publishers do the state's work by monitoring themselves.

Moreover, the individual nature of the experience of precarity and the subtle stigma around censorship make it harder for authors and publishers to cooperate and support each other. While the Turkish Publishers Association and others voice support for those targeted, there are no coherent networks where actors share and discuss anxieties and strategies. The informal dialogue between a few publishers who feel most at risk is an exception to this. Yet, it is reasonable to suggest that precarity has an overall alienating effect on authors and publishers.

On the other hand, as mentioned, publishers positioned closer to the government experience precarity differently and, as a result, they generally believe they can publish any work as long as it complies with their ideological and ethical principles. The primary source of concern for them is being linked to authors who might have been affiliated, at any point, to the Gülenist movement. In addition, some authors and publishers are aware that public criticism of the government could entail a loss of financial support, alienation, and media backlash, as previously mentioned. Still, they do not feel the need to negotiate the question of worth and style of language in the same way as other actors do. This is also caused by the fact that most of them simply do not receive controversial material due to their ideological orientation and policies, which are generally known.

The Extent to Which Hybrid Regimes Can Shape Everyday Life by Generating Precarity through Law

As a hybrid regime turning more authoritarian, Turkey differs from more consolidated authoritarian states, as well as democratic systems. According to Stern and Hassid's account, in the case of China, uncertainty over the limits of the politically permissible is generated not through legal means but through arbitrary administrative orders (such as warnings, suspended or revoked licences) and, to a lesser degree by violence (kidnappings, detention and beatings). In the case of an established democracy with checks and balances like the UK, it is through a target-specific application of anti-terror laws that suspect communities experience precarity and the need to monitor themselves. In Turkey, a wider range of laws and criminal legal procedures regularly generate a sense of precarity that affects a larger section of society. In other words, in hybrid contexts, such as Turkey, where checks and balances on the executive power have been eroded, generating precarity through legal means becomes a central mode of implementing generalised, indirect control over perceived opponents.

Overall, this study indicates that the atmosphere of precarity amplifies the silencing effect of the threat of criminal prosecution. Consequently, authors and publishers take pre-emptive action and monitor themselves. Nevertheless, while precarity creates and amplifies a silencing effect, the latter is incomplete. Findings show that titles on sensitive topics, including controversial ones

using highly critical language, continue to this day to be published. In other words, as Chapter 6 demonstrates, acquiescence is not the only effect created by the atmosphere of precarity; practices of subversion and resistance are also prevalent. Strategies such as using controversial terms cited by interlocutors themselves, increasing the use of metaphors, and changing words while keeping the original idea intact undermine the threat of prosecution. Besides, certain authors and publishers continue to write or publish works without any edits or strategies used. Moreover, the effort among smaller and more vulnerable publishers to cooperate on a new platform (YAYKOOP) illustrates a form of perseverance in the industry.

By contrast, the silencing effect in the case of publications on Fetullah Gülen and the Gülenist movement has been more comprehensive. Certain publishers have had to eradicate laudatory books on Gülen or edit approving passages. Moreover, in addition to publications, authors and publishers who are allegedly Gülenist have become nearly invisible after their businesses were shut down; many fled the country or were arrested during the state of emergency. The sharp difference in the sector between the silencing effect on the theme of the Gülen movement and other controversial topics, such as the Kurdish issue, the Armenian genocide or criticism of Erdoğan, can be explained to some extent by the distance the industry adopted to anything related to Gülen. There has been no show of solidarity with the Gülen movement by any group in the publishing sector. In other words, one of the reasons the silencing effect in the case of the Gülenists has been so comprehensive is because the industry's usually defiant and bold actors – who feel compelled to choose their battles – did not pick this fight. Thus, the case of the Gülenists reveals the importance of the existence of a variety of actors who continue to publish and push the boundaries of the state's "red lines." The extent to which a hybrid regime can create a comprehensive silencing effect is indeed mitigated by active, strategic and defiant social actors.

By employing certain strategies to continue writing and publishing, authors and publishers sometimes find they are carrying out the state's work by controlling themselves. Yet, these same strategies make it harder for the state to establish absolute control and shape everyday life through prosecutions. It is also reasonable to suggest that, by continuing to push the boundaries of the politically permissible, authors and publishers contribute to making these "red lines" porous and

blurry. In other words, the boundaries of permissibility are continuously shifting not only because of the state but also on account of subversive actors in the industry.

Placing Observations in the Context of Existing Scholarship

Overall, the case of Turkey is one example of a hybrid regime making use of laws and courts to generate an atmosphere of precarity where citizens find themselves monitoring what they say and do. By providing a comprehensive picture of lived experiences in the publishing sector in Turkey, the current dissertation has significantly enriched the understanding of the extent to which generating precarity through criminal prosecutions can turn into a tool to control the creative middle class.

In terms of existing literature on Turkey, despite widespread criticism of the government's abuse of laws, the effects of this phenomenon in the broader society have not been sufficiently studied. Indeed, Alemdar has underlined that "the real effects" of prosecutions of dissidents "on wider society are yet to be observed." [789] The current work not only illustrates the continuing patterns in the criminalisation of dissidents, but it also sheds light on the socio-political and socio-psychological effects of these prosecutions on the creative middle class. The existing studies in this regard generally focus on individual cases related to media and journalism. Even so, they rarely offer ethnographic insight into lived experiences in journalism. Hence, with its focus on the publishing sector, a sector that is not usually studied, and its exploration of experiences and navigation of the threat of criminal prosecution based on rich empirical data, the current study fills a significant gap in the literature in this respect.

The research presented in this thesis moreover enhances the current understanding of the political regime in Turkey. The empirical evidence provided in this thesis adds novel insight into contemporary analyses of Turkey through the lens of emergency laws and a dual state that is systematically undermining and eroding key democratic institutions. In this respect, Tekin has maintained that the regime in Turkey "runs through the capacity of the political power to create

[789] Alemdar, "Courtrooms as solidarity spaces and trials as sentences," 221.

indeterminacy and abuse it in myriad ways."[790] While he refers to concepts such as "deconstitutionalisation" and "securitisation" in his theoretical analysis, there is no case study illustrating these theoretical evaluations. The current study, with its focus on the use of law to generate precarity and its experience of and navigation by actors in the publishing sector, contributes to theoretical discussions in this field by providing a rich case study of how "indeterminacy" is created and abused. The current study also contributes to knowledge on Agamben's concept of bare life by showing that, in hybrid regimes, the state does not go so far as to reduce people to "bare life." The hybrid regime achieves its goal by simply conveying a message of *possibility* and its power to do so through a small number of selective cases. In the atmosphere of precarity, such messages have a powerful effect of silencing dissenting voices without categorising the state, in conceptual terms, as a dictatorship.

With respect to socio-legal studies of courts, their capacity to construct social categories and narratives has been documented. Studies have also demonstrated how rulers in authoritarian settings might resort to them to secure investment, garner legitimacy, delegate difficult reforms and enforce administrative discipline.[791] On the political front, the power of trials to "stabilise repression" and to draw the boundaries of permissible political behaviour has also been discussed.[792] The current thesis contributes to the literature in this field by studying how political trials can generate precarity, not stability, concerning state repression *and* lead to self-policing in the wider society. Indeed, it has been underlined that the concept of precarity has rarely been acknowledged in studies of law in authoritarian regimes and examined as an outcome of government processes.[793] The current research has moreover focused on lived experiences and acts of defiance in the courtroom that undermine the state's control over the criminal legal procedure and the atmosphere of precarity. Hence, the study of resistance in the courtroom helps move beyond a functionalist approach to courts in hybrid and authoritarian settings and, thus, is a significant contribution in this regard.

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[790] Serdar Tekin, "The Dual State and Transformation of the Political Regime in Turkey."
[791] Moustafa and Ginsburg, "Introduction: The Functions of Courts in Authoritarian Politics."
[792] Cheesman, *Opposing the Rule of Law*; Pereira, *Political (In)justice*, Shen-Bayh, *Undue Process: Persecution and Punishment in Autocratic Courts*.
[793] Nguyen, "Law and Precariousness in an Authoritarian State: The Case of Illegal House Construction in Vietnam," 189.

The research presented in this thesis also contributes to the emerging literature on autocratic legalism, which looks at the "use, abuse, and non-use of law" by governments to consolidate power and control non-state actors and opponents.[794] In this respect, the findings of the current work show that the use of courts to generate precarity can be approached as one of the legal-political technologies of rising autocrats in hybrid regimes. Besides, the findings also shed light on the removal of certainty and the puzzle of the coexistence of a sense of normality and increasing authoritarianism in hybrid regimes which Scheppele, who made key contributions to studies on autocratic legalism, has identified. Finally, Scheppele has argued that citizenry in hybrid regimes drifting towards authoritarianism should be educated about the liberal and democratic ideals that, according to her, remain as elite notions. However, the current study's findings indicate that there is significant political activism in the case of Turkey, and the widespread preoccupation with liberal and constitutional norms shows that the latter are far from an "elite idea that has no resonance in the general public."[795] Indeed, the current study illustrates that many authors and publishers recognise the weaponisation of criminal charges and employ a range of strategies to keep exercising their freedom of expression.

Much of the work on increasingly authoritarian states, including those which look at the link between law and illiberalism, focus on institutions of the state or the elites or are alternatively concerned with the experiences on the periphery of the society, such as those of marginalised or minority groups. Other sections of the citizenry, such as the creative middle class or the intelligentsia, are relatively understudied. Hence, the current thesis fills this important gap in the literature by studying authors and publishers in the case of Turkey, illustrating the lines along which their experiences differ, how certain segments are co-opted by the state, how certain actors are silenced and how many others remain engaged and subversive through a range of strategies.

Finally, the concept of a chilling effect has been employed to analyse repressive tactics of increasingly authoritarian states to pre-emptively dissuade citizens from exercising their rights out of fear of state proceedings against them. While the chilling effect might seem to be a relevant

[794] Javier Corrales, "The Authoritarian Resurgence: Autocratic Legalism in Venezuela." 38.
[795] Kim Lane Scheppele, "Autocratic Legalism." 583

concept to use in a study on the lived experiences in the publishing sector in an increasingly authoritarian context, the current research findings reveal that the range of effects on the publishing sector cannot be simply explained as "chilled." Indeed, the concept of a chilling effect can obscure, as opposed to illuminate, the experiences of defiant actors who refuse to be chilled and continue to push political boundaries.

Concluding remarks

There are solid grounds for believing that the sense of precarity generated through legal means is a common trait in hybrid regimes, especially those that are becoming increasingly authoritarian. In this respect, comparing different cases like India and Hungary through a study of how precarity is generated, experienced and responded to in these contexts can reveal further significant insights.

While the hybrid regime in Turkey has been steered towards increasing authoritarianism through the law, the government still enjoys the benefits and the legitimacy that competitive elections and the persistence of an active social space, as exemplified by the vibrant publishing industry, bestow upon them.

The recent 2023 general and presidential elections in Turkey were dominated by Turkish nationalism, and an anti-LGBTQ and anti-refugee sentiment. Hence, the victory of AKP and President Tayyip Erdoğan led to apprehension amongst many that the ruling elites have been emboldened, possibly entailing further personalistic interventions into economic policies, an increasing narrowing of the space for social and political liberties and further criminalisation of the Kurdish opposition in particular. Therefore, it remains to be seen how the President Erdoğan's third term in office will affect the publishing industry.

Meanwhile, the requirement to obtain certification for my UK Higher Education degrees from the Inter-Universities Council (ÜAK) in Turkey has led me to relate to my research from a different angle. I recently read about a PhD graduate whose application to ÜAK to validate his PhD thesis, titled "Who Rules Erdoğan's Turkey? Business Power and the Rise of an Authoritarian

Populist," was rejected.[796] Besides, it transpired that ÜAK filed charges (Defamation against the President and Terror Propaganda) against him. The graduate, however, was not questioned by the police, and no charge has been brought against him. I also received warnings from friends and family to be careful when validating my thesis since the study addresses a rather "political" issue and looks "directly" at the ruling government. I must admit that I have thought about how to amend the title of the thesis to evade the attention of the state authority who will carry out the validation process. Thus, I found myself in the shoes of Hüseyin from Somut, who was the first one to tell me that the title of a work matters. On the one hand, I am trying to assess whether I am amplifying the threat, while on the other, it does seem wise to take the cautious route. My experience indicates the ongoing, continuous nature of the subject of this research. Indeed, the slide towards authoritarianism entails continuous and different phases that must be further elaborated, monitored, and studied.

[796] " 'Türkiye'de siyasi otoriterleşme' konulu teze 'Cumhurbaşkanı'na hakaret'ten yargılama talebi," *Birgün,* 9 March 2022, https://www.birgun.net/haber/turkiye-de-siyasi-otoriterlesme-konulu-teze-cumhurbaskani-na-hakaret-ten-yargilama-talebi-379821, accesesed: 29 July 2023.

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