Joint Alternative Report to the Committee against Torture in relation to its review of the fifth periodic Report of Türkiye

Prepared by

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The World Organization against Torture (OMCT)

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Submitting Organizations

World Organisation Against Torture (Organisation Mondiale Contre la Torture, OMCT) was established in 1985 in Geneva, and since then leads a global network of over 200 NGOs in fighting against arbitrary detention, torture, summary and extrajudicial executions, forced disappearances and other forms of violence. It empowers and protects anti-torture organizations, especially in harsh environments, and works with United Nations mechanisms and local NGOs to prevent torture.

Association of Lawyers for Freedom (Özgürlük İçin Hukukçular Derneği, ÖHD) was established in 2010 in Istanbul, with all its members being lawyers or interns. ÖHD aims to research legal issues and rights violations encountered by individuals and groups due to actions by national or international authorities. It seeks to effectively utilize all legitimate national and international legal remedies, combat all forms of discrimination and rights violations and develop legal solutions.

Foundation for Society and Legal Studies (Toplum ve Hukuk Araştırmaları Vakfı, TOHAV) was established in 1994 and focuses on investigating and reporting serious and systematic rights violations and working to end the violations, as well as providing legal and medical support to victims. Being one of the rare CSOs in Turkey composed entirely of lawyers, TOHAV's field of study is human rights law; all of its members are lawyers. In the past three decades, it has been TOHAV's aim to provide holistic support to victims of torture and ill treatment to ensure everyone can exercise and enjoy fundamental freedoms on an equal basis with others.

Media and Law Studies Association (Medya ve Hukuk Araştırmaları Vakfı, MLSA) is a non-profit organization founded in Istanbul in December 2017 to respond to an urgent and growing need for a return to democracy and normalization in Turkey by providing pro bono legal support to journalists whose freedom of expression is violated.

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I. Executive Summary

This alternative report is submitted to the UN Committee against Torture (hereinafter CAT), providing a comprehensive analysis of the Republic of Türkiye's implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter Convention), ratified in 1988. It serves as a supplementary perspective to Türkiye's fifth periodic report submitted to CAT on 27 October 2020.

As this report demonstrates Türkiye has failed to implement the Convention's obligations and the CAT's previous recommendations with regards to the following aspects.

Despite the recommendations of the CAT pending over the years, Türkiye, has not only failed to effectively address the recommendations on **reception conditions** for asylum seekers but as the current report presents, there was a substantial regress in the situations in both reception and removal centers. According ÖHD the conditions in removal centers can be categorized as "ill-treatment" and access to certain rights largely depends on the arbitrary attitudes of the staff.

With regards to the prevention of torture during **arrests** it is important to highlight instances of extra-custodial torture and ill-treatment before the official detention period begins. As the report points out, a large portion of cases involving allegations of torture and ill-treatment during arrests are arrests made under the justification of unauthorized demonstrations per Law No. 2911 on Meetings and Demonstrations.

Despite the recommendations of the CAT in its Concluding observations with regards to the lack of **independent oversight mechanisms** for the monitoring of the conditions in prisons and detention centers and the incompatibility of the existing structure (Turkish Human Rights and Equality Institution-TİHEK) with the Paris Principles, no improvements have been made in the prevention mechanisms and civil society organizations are still being denied the opportunity to conduct independent monitoring.

The report also reveals significant deficiencies in the investigation processes of torture and ill-treatment claims, indicating a failure to comply with Convention standards. In many cases, the passivity of prosecutors in responding to torture allegations, and the decisions not to prosecute despite the presence of reliable evidence point to a reluctance to initiate criminal proceedings. This systematic behavior leads to lack of investigation and compensation procedure while restrengthening the culture of impunity with regards to torture.

This report also illustrates that cases of **ill-treatment of individuals accused of terrorism, journalists and human rights defenders** continue to increase. The consistent legal harassment against these groups and prolonged legal processes, including in the cases of Osman Kavala, Eren Kesin, Selcuk Kozagacli and many others, amount to forms of torture and ill-treatment.

The report provides comprehensive about the most actual issues in relation to the situation in prisons.

The intensified repressions against dissidents have also had an impact on prisoners, particularly those detained or convicted for political crimes. There are also significant differences between the treatment of political prisoners and other inmates within the penitentiary institutions as to their rights to communication, socialization, visits, access to health care. In this context, many changes made to improve prison conditions are designed or implemented in a way that excludes political prisoners.

There are serious violations in relation to ill detainees: those not receiving the necessary treatment, those who are terminally ill or whose health conditions are incompatible with prison conditions continue to be detained. Hospital transfers involve intimate searches, single shuttle vehicles, and handcuffed medical examinations, turning the process into torture for ill prisoners.

The most serious problem related to torture and ill-treatment of prisoners in penitentiary institutions is arbitrariness of administrations and observation boards in prisons which are not impartial and independent. These bodies make all the decisions about detainees including who will benefit from socialization and common area activities, decisions on the restrictions of the right to communication and also decisions that form the basis for conditional release and the execution regime. The judicial mechanism relied upon to oversee this arbitrariness and address rights violations often issues blanket rejections without proper reasoning. This eliminates the possibility for detainees who have been subjected to torture and ill-treatment to obtain redress for their suffering.

The report also raises serious concerns about the conditions at **Imrali Island Prison**, which, despite being under the Ministry of Justice, is unique in its location, status, and administration. Here, violations of the prohibition of discrimination and torture are severe, especially given that no news has been received from prisoners held there for over 38 months and the ongoing incommunicado detention.

II. Methodology

The primary source of the information and data presented in this report comes from the monitoring of human rights violation by Association of Lawyers for Freedom (Özgürlük İçin Hukukçular Derneği, ÖHD), Foundation for Society and Legal Studies (Toplum ve Hukuk Araştırmaları Vakfı, TOHAV) and Media and Law Studies Association (Medya ve Hukuk Araştırmaları Vakfı, MLSA) in their respective fields. This data has been supplemented, where necessary, by research conducted by OMCT experts, based on the submissions from these organizations.

The cases in violation of non-refoulement enshrined in Article 3 of the Convention reported herein reflect the findings of the lawyers from the ÖHD based on the interviews conducted while providing legal assistance to refugees.

The reported cases of torture and ill-treatment and the findings on the inadequacy of the compensation mechanisms are based on the data collected by lawyers from TOHAV and ÖHD through legal aid requests made by individuals who have been subjected to torture and ill-treatment during arrest and detention.

The violations reported regarding human rights defenders (HRDs) and journalists are mostly based on the data obtained from the "2023 Litigation Monitoring Report" of the MLSA, prepared as part of its freedom of expression litigation monitoring program conducted since 2018 and the findings within this report are related to the cases monitored from September 2022 to September 2023. These findings are supported with the information gathered by lawyers from the ÖHD and TOHAV.

The information regarding torture, ill-treatment, and detention conditions in penitentiary institutions are based on the interviews with prisoners conducted by lawyers from the ÖHD during their visits to prisons between 2021 and 2024, and on the '*Association of Lawyers for Freedom Türkiye Prisons Rights Violation Report for 2023*'. The data presented here covers 91 closed penitentiary institutions spread across all geographical regions of Türkiye, reflecting a 33% of the closed penitentiary institutions in the counrty [1].

In addition to the above-mentioned sources, the data regarding the problems of prisoners' and seriously ill prisoners' access to health are taken from the reports of the Human Rights Association and the Lawyers' Association for Freedom "*Report on the Detection and Evaluation of Violations of Rights in Prisons in Çukurova Region*".

Finally, the findings and recommendations regarding Imrali Island Prison and the prisoners held there were taken from the lawyers and family members of person's detained there.

III. Recommendations

The OMCT, ÖHD, TOHAV and MLSA request the CAT to urge the State party to:

1. Immediately cease the fabricated charges and convictions against independent journalists, activists, human rights defenders and politicians who exercise their fundamental human rights and freedoms, in particular in relation to Selahattin Demirtaş, Osman Kavala, and Can Atalay.
2. Take decisive measures to comply with and effectively implement the decisions of the CAT, the Human Rights Committee, the European Court of Human Rights (ECtHR), and the Constitutional Court of the Republic of Türkiye in relation to torture and ill-treatment.

[1] Considering According to the Ministry of Justice, as of May the 1st, 2024, the number of closed penitentiary institutions in Turkey is 272. https://cte.adalet.gov.tr/Home/SayfaDetay/cik-genel-bilgi#:~:text=9%20%C3%A7ocuk%20ve%20gen%C3%A7lik%20kapal%C4%B1,anlay%C4%B1%C5%9F%C4%B1%20do%C4%9Frultusunda%20h%C4%B1zla%20azalt%C4%B1lmas%C4%B1%20gerekmektedir

3. Establish an independent law enforcement unit to investigate any reports of harassment, arbitrary arrest, detention, torture, and other forms of ill-treatment committed by law enforcement officers and take necessary measures to combat impunity especially related to disproportionate use of force and torture during protests and demonstrations and establish an independent supervisory body to oversee decisions of non-prosecution.
4. Include the United Nations' "Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Istanbul Protocol) in the curriculum of the Directorate General of Migration Management and accordingly ensure the training of employees in this field.
5. Establish separate units within bar associations to provide legal assistance for foreigners and refugees staying in removal centers, and to set up legal aid offices within these centers to ensure foreigners and refugees have access to legal assistance when needed.
6. Bring the increasing incidents of torture, mistreatment, and humiliating behavior in removal centers to the agenda of the Turkish Grand National Assembly (TBMM) and take the necessary steps to ensure that these incidents are monitored and reported by an impartial observation committee.
7. Enact the necessary regulations for the oversight of use surveillance cameras intended to prevent torture by law enforcement officers, ensuring that it is overseen by an independent authority separate from the security apparatus and that the footage can be presented to prosecutors when necessary.
8. End the practice of keeping detainees waiting for long periods in detention vehicles and effectively investigate such forms of ill-treatment and ensure the installation of video-cameras in detention vehicles to prevent torture and ill-treatment in these vehicles.
9. Allow prisoners to maintain social relationships by communicating with each other through common area activities such as sports, conversations, as well as opening workshops and courses to enable prisoners to develop themselves.
10. Cease incommunicado detention for all detainees in İmralı F Type High-Security Closed Prison, Ensure that all the prisoners in Imralı F Type High-Security Closed Prison have access to a lawyer at all times and take the necessary steps to put an end the systematic prohibition of lawyer visits at six-month intervals since July 21, 2016.
11. The government should implement the interim decision of the United Nations Human Rights Committee dated September 6, 2022, and bring detention conditions in İmralı F Type High-Security Closed Prison in line with the international standards. We recommend considering closing down the İmralı F Type High-Security Closed Prison if the detention conditions are not brought in line with international standards in the shortest period possible.
12. Amend the legislation on the execution method of aggravated life imprisonment which has been found to violate the prohibition of torture on the basis of Article 17/4 of Law No. 3713,

Article 107/16 of Law No. 5275, Temporary Article 2, and Article 47 of Law No. 5237 in line with the case-law of the ECtHR and Article 90 of the Constitution.

13. Ensure that the judicial and administrative decisions within the penitentiary system, and in particular the decisions and practices of the Administration and Observation Board, Execution Court, and İmralı Prison Administration are conducted transparently and that the lawyers are included in legal processes, have access to files for reviewing, and obtaining samples from decisions and evidence.
14. Ensure that the provisions of Law No. 7242 on the Execution of Penalties and Security Measures and Amending Certain Laws, which came into force on April 14, 2020, are applied to the crimes committed after this date in line with Article 7 of the ECHR and accordingly cease the violations of the freedom and security rights of prisoners, especially those who have completed 30 years in prison but have not been released by the Administration and Observation Board authorized by the same Law No. 7242.
15. Discontinue the systematic disciplinary penalties that prohibit family visits at three-month intervals, despite the absence of legal basis and ensure the regularity of family and guardian visits.
16. Terminate the arbitrary practices and actions of prison administrations and personnel that lead to violations of prisoners' rights to access healthcare and treatment, personal freedom and security, freedom of communication, and freedom of expression.
17. Terminate the practice of conducting detailed searches, including mouth inspections and removal of shoes, during the acceptance of prisoners to the penitentiary centers and hospital transfers of prisoners and ensure the establishment of specific standards instead of vague terms.
18. Arrange the vehicles used during hospital transfers in accordance with humane conditions such as using air conditioners according to weather conditions, monthly checks/maintenance of these air conditioners, and ensure that handcuffs are not used during the transfer of prisoners except for the exceptional conditions prescribed by law, in line with the legal framework, the case-law of the ECtHR and the international standards for the treatment of prisoners.
19. Ensure that the prisoners access adequate health care in penitentiary institutions in sterilized conditions and that the prisoners should be transferred to a hospital without delay when the treatment and care facilities in prisons are insufficient or in cases of medical emergencies and avoid the use of handcuffs during medical examinations.
20. Ensure the independence of oversight mechanisms by strengthening the financial and functional independence of all official bodies monitoring places of deprivation of liberty, including the National Preventive Mechanism and the prison monitoring boards.
21. Adopt formal regulations explicitly authorizing independent CSOs, medical professionals, members of local bar associations and HRDs to undertake independent visits to places of detention.

IV. Non-Refoulement and Conditions in Removal Centers

The CAT in its Concluding Observations, (2 June 2016, CAT/C/TUR/CO/4) recommended that the Government should *'strengthen its domestic framework by continuing to develop a new asylum system consistent with international standards and in accordance with article 3 of the Convention.* Despite being a party to the Convention Against Torture (CAT), a drafter and initial signatory of the Refugee Convention, and a current member of the Executive Committee (EXCOM) of the Refugee Convention, Türkiye frequently violates the principle of non-refoulement. Additionally, the conditions in asylum seeker and refugee detention centers are alarming due to both procedural rights violations and the poor material conditions of the centers.

In domestic law, the primary legal regulation on this issue is the Law on Foreigners and International Protection numbered 6458. Article 4 of the law, titled "Non-Refoulement," states that no one within the scope of this law can be sent to a place where they may face torture, inhuman or degrading punishment or treatment, or where their life or freedom would be threatened based on their race, religion, nationality, membership of a particular social group, or political opinion.

Foreigners in Türkiye are in a very vulnerable position. If an investigation is initiated against any foreigner for any reason, they are subjected to the removal procedure. These individuals are sent to removal centers in the city where they were apprehended, following decisions of "administrative detention". Because the individuals held in removal centers are transferred to another city's removal center within a very short period, often no more than 48 hours, it becomes difficult for lawyers who follow their cases to maintain communication, often resulting in a loss of contact.

Another issue is that although refugees share information about the rights violations with lawyers, they are hesitant to initiate written complaints fearing that this could negatively impact their cases and lead to deportation. Many do not want to pursue any legal action, fearing increased mistreatment even when they apply through the Presidential Communication Center (CİMER)[2]. Consequently, once placed in a removal center, it is very difficult for a refugee to have legal protection.

Conditions Constituting Ill-treatment in Removal Centers

The CAT in its Concluding Observations, (2 June 2016, CAT/C/TUR/CO/4) recommended that the Government should *'take the measures necessary to ensure appropriate reception conditions for returned refugees, asylum seekers and irregular migrants'. Despite these recommendations pending over the years Türkiye, has not only failed to effectively address the recommendations on reception conditions but as the current report presents, there was a substantial regress in the*

[2] CIMER is a communication platform in Turkey where citizens can submit requests, complaints, suggestions, and information inquiries to public institutions and organizations. Established in 2015, this system aims to facilitate direct and rapid communication between citizens and the government

situations in both reception and removal centers. As observed during visits conducted by the Association of Lawyers for Freedom's (ÖHD) Migration and Refugee Commission, and through individual client meetings, various conditions in removal centers can amount to ill-treatment. These include restrictions on family visits, phone calls, inadequate food and hygiene, and overcrowding.

Interviews with individuals held in removal centers reveal that access to certain rights largely depends on the arbitrary attitudes of the staff working there. For example, refugees reported that their phone rights are often granted only when they assist staff with tasks such as food distribution, making communication with their families extremely difficult otherwise. Furthermore, due to misguidance by staff, refugees are often denied their right to legal aid. Nearly all interviewees reported that they face physical and psychological pressure to sign "voluntary return forms" prepared for their deportation. According to the accounts shared during lawyers' visits, refugees often agree to "voluntary return" procedures, fearing further mistreatment in the detention centers, even if they fall under the non-refoulement principle.

According to lawyers, the officials working at removal centers alter the documents of foreigners, and even falsely prepare "voluntary return" documents as if they were signed by the foreigner. When foreigners oppose this, they face violence. One of the many cases referring to such practices have been brought to administrative court upon complaint of a refugee at the Gaziantep Removal Center, who stated that they were made to sign "voluntary return" documents. They had their lawyer file a complaint against the police for misconduct. When a decision of "no permission for investigation" was issued regarding the police, the refugee's lawyer pursued an administrative lawsuit, which ultimately resulted in a decision to prosecute the police officer[3].

Additionally, the treatment of foreigners appears to vary depending on the border they crossed when entering the country. Lawyers have been informed that, after their initial apprehension, detainees are transferred to other removal centers where they encounter so-called "persuasion rooms" aimed at convincing them to return voluntarily. When detainees resist, they face increased difficulties with basic necessities such as food and shelter (e.g., lack of beds and blankets).

In May 2021, the Harmandalı Removal Center in İzmir, frequently highlighted for torture allegations and poor conditions for refugees, witnessed a fire on June 23, 2021, resulting in the death of a refugee. The Turkish Human Rights and Equality Institution (TIHEK), a governmental institution, conducted a visit to the facility, a year after the incident, when no traces of the fire remained, t[4]. TIHEK's report, dated August 31, 2022, is filled with commendations for the institution and claims that no problems were observed, reflecting a pro-institution bias.[5] Similarly, TIHEK visited the Hereke Removal Center in Kocaeli, producing a report dated January 4, 2022, with decision number 2022/04. This report, like the previous one, portrayed the institution in a favorable light, which starkly contradicted the findings of ÖHD member lawyers based on their

[3] Gaziantep Regional Administrative Court, 6th Administrative Case Court, E. 2023/652, K. 2024/82, 31.01.2024.
[4] https://www.tihek.gov.tr/unannounced-visit-to-izmir-harmandali-removal-center/
[5] https://www.tihek.gov.tr/public/images/kararlar/AB172A.pdf

visits and the verbal accounts of their clients. Given these discrepancies, it is crucial not to rely on TIHEK's reports to obtain "accurate and truthful" data regarding removal centers.

On 22 July 2020, at the Kurubaş Removal Center in Van, under the Van Provincial Directorate of Migration Management, an Iranian woman named Z.M. was raped by three security officers[6]. This incident, reported by only a few media outlets, is crucial in highlighting how vulnerable the conditions are for foreigners in removal centers and the extent of torture they endure.

V. Fundamental Legal Safeguards

The Convention provides a range of fundamental guarantees for detainees essential to prevent torture and other ill-treatment during arrest and detention. Although these guarantees are enshrined in the Turkish legislation, including the Constitution (Article 19) and the Code of Criminal Procedure (Articles 90 and subsequent), in practice, these fundamental safeguards are often not implemented and are effectively suspended, resulting in a significant increase in cases of torture during arrests in recent years.

Based on data collected through legal aid requests made by individuals who have been subjected to torture and ill-treatment during arrests[7], TOHAV and ÖHD have found accounts of systematic torture and ill-treatment. Both organizations have observed that a large portion of cases involving allegations of torture and ill-treatment during arrests are arrests made under the justification of unauthorized demonstrations per Law No. 2911 on Meetings and Demonstrations.

It is crucial to highlight that during the arrests under Law No. 2911, handcuffs, including reverse handcuffing, are systematically used to all detainees without meeting the necessary conditions. The application of handcuffs during the transportation of detainees is regulated by Article 93 of the Criminal Procedure Code (Law No. 5271). and Article 7 of the Apprehension, Detention, and Statement Taking Regulation dated 01.06.2005. According to these provisions the use of handcuffs should be an exceptional measure. However, during detentions under Law No. 2911, handcuffs are applied routinely without considering whether these conditions are met. Moreover, the applied measure often involves reverse handcuffing, where the hands are cuffed behind the back. This practice causes more humiliation and physical pain and suffering compared to normal handcuffing. The use of handcuffs, particularly reverse handcuffing, without indications of escape or posing a danger to one's own or others' life and bodily integrity, represents an arbitrary and disproportionate interference. Such practices constitute a violation of the prohibition against torture and other cruel, inhuman, or degrading treatment or punishment. Additionally, it has been observed that many detainees have bruises on their wrists due to the tight application of handcuffs.

[6] https://bianet.org/haber/van-geri-gonderme-merkezi-nde-tecavuz-234415

[7] The relevant data were collected with the explicit consent of the lawyers who personally handled the cases of torture and ill-treatment

According to Article 149 of the Criminal Procedure Code, a person detained as a suspect can benefit from the assistance of one or more defense attorneys at every stage of the investigation, and the lawyer's right to meet with the suspect or accused, to be present during the taking of statements or interrogation, and to provide legal assistance cannot be hindered or restricted. However, ÖHD member lawyers have reported that, starting from 2022, there has been a systematic attempt to prevent lawyers from participating in the interrogation processes at the Istanbul Police Department. Firstly, detainees were told that their lawyers had not arrived and that if they wished, they could give their statements without a lawyer, thereby attempting to deprive them of basic legal support. Secondly, lawyers were prevented from entering the police department, hindering them from accompanying their clients during the interrogations. In many instances of mass detentions, lawyers were unable to enter the Police Department and only after significant efforts were a limited number of lawyers allowed entry.

TOHAV and ÖHD have received numerous applications from individuals who reported being subjected to physical and verbal violence by law enforcement during their arrest. Meetings with lawyers revealed that these individuals had bruises on various parts of their bodies. An interesting example of psychological torture and ill-treatment involved Kurdish students being subjected to loud racist music while in a detention vehicle.

There are many common characteristics in the cases of torture and ill-treatment that TOHAV provides legal support for. These cases exhibit the following common features:

- Physical violence by police or other security forces during or after arrest,
- Insults experienced while in custody,
- Threats directed at the detainee and their relatives,
- Being held in reverse handcuffs for hours in a police vehicle after arrest,
- Not being provided with water for hours while in custody,
- Not being allowed to use the toilet while in custody,
- Physical assault during the detention period.

According to Article 9 of the Regulation on Apprehension, Detention, and Interrogation[8], after being apprehended, individuals for whom a detention order has been issued are taken to an official institution to undergo a medical examination to determine their health status at the time of apprehension. The health status of the detained person is also determined by a doctor's report in cases of relocation for any reason, extension of the detention period, release, or referral to judicial authorities. A frequently encountered issue during hospital examinations of detained individuals is that law enforcement officers, despite the detainee's requests, do not leave the examination room. In many cases, the examining physicians also do not require law enforcement personnel to leave the room during the examination despite the requests.

[8] 01.06.2005 tarih ve 25832 sayili Resmî Gazete'de yayinlanarak yururluge girmistir: https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=8197&MevzuatTur=7&MevzuatTertip=5

The Independence and Effectiveness of the Oversight Mechanism

The obligations set forth in Articles 2, 16, and 11 of the Convention require State Parties to establish a system for the regular and independent monitoring and inspection of all places of detention.

The CAT in its Concluding Observations, (2 June 2016, CAT/C/TUR/CO/4) stated that *'The State party should take appropriate legal measures to ensure the functional, structural and financial independence of the Human Rights and Equality Institution and to guarantee that the appointment of its members is in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). In addition, the State party should ensure that the Human Rights and Equality Institution effectively fulfils its mandate as a national preventive mechanism, with a dedicated structure and adequate resources for that purpose. The State party should encourage the Institution to apply to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights for accreditation.'*

The CAT in its Concluding Observations, (2 June 2016, CAT/C/TUR/CO/4) reiterated its previous recommendation (see CAT/C/TUR/CO/3, para. 16) that '*the State party adopt formal regulations explicitly authorizing human rights non-governmental organizations, medical professionals and members of local bar associations to undertake independent visits to places of detention. The State party should also ensure the financial and functional independence of all official bodies monitoring places of deprivation of liberty, including the prison monitoring boards.'*

Despite the recurring recommendations from the CAT and demands from civil society, Türkiye continues to fail to implement this obligation. Access to detention facilities for monitoring purposes is limited to only a few national and international bodies including the national human rights institution, namely, Human Rights and Equality Institution of Türkiye (TİHEK), the Human Rights Committee of the Turkish Grand National Assembly (TBMM), and the Ombudsman at the national level as well as the European Committee for the Prevention of Torture of the Council of Europe (CPT) and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) internationally.

In the list of issues prior to submission of the fifth periodic report of Turkey CAT/C/TUR/QPR/5 dated 27 December 2018, the Committee requested information on whether the reports of these bodies have been made fully accessible to the public. As of the latest available information[9] on CPT reports from the following visits have not been accessible to the public:

- Ad hoc visit: 29/08/2016 - 06/09/2016
- Ad hoc visit: 04/04/2018 - 13/04/2018
- Periodic visit: 11/01/2021 - 25/01/2021
- Ad hoc visit: 20/09/2022 - 29/09/2022

[9] https://www.coe.int/en/web/cpt/turkiye

The fact that detention facilities are inaccessible to civil society organizations effectively makes public monitoring impossible. Civil society organizations have long been denied the opportunity to conduct independent monitoring of penitentiary institutions.

Turkish Human Rights and Equality Institution (TİHEK) as a National Preventive Mechanism

Türkiye has failed to meet these recommendations regarding the Turkish Human Rights and Equality Institution (TİHEK). Despite the need for functional, structural, and financial independence, TİHEK is heavily influenced by governmental structures, compromising its impartiality and effectiveness. The appointment process of its members is even further from aligning with the Paris Principles, which emphasize independence and transparency. Although TİHEK sought accreditation from the Global Alliance of National Human Rights Institutions (GANHRI)[10], the resulting B-class accreditation in October 2022 hinders its ability to protect and promote human rights independently and robustly, indicating only partial compliance with international standards.

TİHEK was established by Law No. 6701 in 2016[11]. Many human rights organizations provided recommendations on the legislation before its passage, aiming to align it with the Paris Principles. However, these recommendations were disregarded, and a law was enacted that did not guarantee independence, pluralism, and transparency.

The CAT previously raised concerns over the previous legislation which stipulated the appointment of eight of its members by the Cabinet and three others by the President, thereby undermining its independence. However,[12] in 2018 the President was granted the sole authority to appoint and dismiss all eleven board members of the institution, ending any pluralism within the institution. This resulted in a structure deviating further from the Paris Principles, hindering the institution's ability to discuss problems independently and freely.[13]

Appointed board members also do not reflect the social diversity in Türkiye and do not include the groups most affected by the prohibition of discrimination. For example, Roma people, Kurds, Arabs, Caucasians, Circassians, religious minorities, and Alevis are not represented on the board. The current board, consists of 11 members, reflects a binary gender perception, with only two female members among them.

According to the provisions of the law regarding the qualifications of board members (Article 10, paragraph 4) [14], they are required to have the qualifications of civil servants. The majority of the 11 members appointed to the Board by the President have been appointed from among bureaucrats or

[10] Previously known as the International Coordinating Committee of institutions for the promotion and protection of human rights (ICC)
[11] https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6701.pdf
[12] https://www.resmigazete.gov.tr/eskiler/2018/07/20180709M3-1.pdf
[13] The recent Constitutional Court Decision this legislation is cancelled; the decision will enter into force on 4 June 2025. Constitutional Court Decision 7/12/2023 tarihli ve E.:2018/117; K.:2023/212 sayılı
[14] https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6701.pdf

civil servants working in various state institutions. Under the current regulations, board members can only be replaced in cases of dismissal by the President, resignation, or death. There is no specified minimum or maximum term of office for members. This also creates risks for ensuring pluralism and fostering positive change within the institution in the future, as well as the potential for casteism within the board.

The legal regulations regarding the recruitment process of TİHEK personnel also include procedures that raise doubts about the competence of the personnel and the transparency of the processes. Oral exams create the possibility of arbitrary behavior by public administrations. The employment of personnel by equality institutions through this method raises questions about merit and the competence of personnel. When the backgrounds and competencies of the Board members are examined, it is understood that they are not competent in the field of human rights.

TİHEK has the task of preparing annual reports in the areas of combating torture and ill-treatment and combating discrimination (Article 9 of Law No. 6701) [15]. However, statistical data regarding applications to TİHEK was not included in the report published by TİHEK in 2018. Furthermore, national preventive mechanism reports have not been published by the Institution since 2021, meaning that the reporting obligation has not been fulfilled for the past two years. Although four-year reports for the protection and improvement of human rights have been prepared since 2018, TİHEK has requested opinions from some NGOs but has not included any of these opinions in these reports[16]. TİHEK does not collaborate adequately with other public institutions and NGOs, there is no regular and effective coordination between institutions.

Thus far, apart from very general recommendations expressed ambiguously in the reports published by TİHEK, it has not made any constructive suggestions to the legislative body or the government. On the contrary, in TİHEK's human rights reports, instead of making violations of rights visible or finding solutions, the practices constituting human rights violations by the government and public authorities are defended. For example, the defense of the long-term curfew imposed on citizens over the age of 65 during the COVID-19 pandemic in the Annual Human Rights Report for 2020 can be cited[17].TİHEK is assigned with the Law No. 6701 *"to fight against torture and ill-treatment effectively and to fulfill the function of national preventive mechanism in this regard"*. Pursuant to the Article 9 of the Law, among the duties of TİHEK "to act as a national preventive mechanism (NPM) within the framework of the provisions of the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" is listed. Thus, TİHEK was established, and the Institution was mandated with fighting against

[15] https://www.tihek.gov.tr/public/editor/uploads/1512202114002018-ulusal-onleme-mekanizmasi-raporupdf.pdf, https://www.tihek.gov.tr/kategori/pages/Yillik-Raporlar.

[16] TİHEK, STÖ'lerine görüş talepleri için çok kısıtlı bir süre tanıdığı, hak temelli STÖ'ler tarafından sunulan görüşlere raporlarda yer vermediği halde 2020 yılına ait raporda "STK'lardan beklenen düzeyde veri akışı gerçekleşmemiştir," https://www.tihek.gov.tr/upload/file_editor/2022/02/1644846431.pdf p. 13

[17] TİHEK, İnsan Hakları Raporu (2020) https://www.tihek.gov.tr/upload/file_editor/2022/02/1644846431.pdf , p. 42.

discrimination and acting as Equality Body, in addition to its duties as a National Human Rights Institution (NHRI) and a National Preventive Mechanism (NPM).

Acting as an Umbrella Institution as NHRI, NPM and Equality Body, among the tasks of TİHEK is to examine, investigate, decide on, and follow up on applications within the scope of the national preventive mechanism for persons deprived of their liberty or placed under protection. While according to the principles of the Optional Protocol to the Convention Against Torture (OPCAT), national preventive mechanisms should have a preventive system against torture and other ill-treatment, with the authority granted to TİHEK, it acts as an investigative body or a judicial body and makes judgments in the form of 'violation occurred' or 'did not occur'. According to the data made public, it is seen that there are very few violation decisions in proportion to the number of applications. The low number of applications made to the Board is based on two reasons. Firstly, TİHEK does not have a policy encouraging groups at risk of discrimination to apply, and secondly, TİHEK is perceived by the public as a biased and ineffective institution. Indeed, the partiality of the Institution was explicitly stated by a Board member in the dissenting opinion written by the Board member in Decision No. 2020/198[18]. The data disclosed to the public in the annual reports by TİHEK creates a rather optimistic and unrealistic picture compared to the reporting done by civil society organizations regarding the violation of the prohibition of torture and ill-treatment. This situation raises serious doubts about whether the Institution adopts a neutral and independent stance in the examination of applications. An important deficiency in applications is that NGOs are not given the authority to apply on behalf of victims of discrimination by law.

Based on the analysis on the 'Board Decisions' page on the TİHEK website conducted by the Turkish Human Rights Foundation (TİHV) [19], in 2022, only three decisions among the 219 decisions that could be assumed to be within the scope of the National Preventive Mechanism include a determination of "violation of the prohibition of ill-treatment,". As of April 30, 2023, there is no decision in the total of 210 decisions that could be assumed to be within the scope of the National Preventive Mechanism that contains a "decision" of "violation of the prohibition of ill-treatment". The majority of the violation decisions given are predominantly against individuals or private companies. Out of the 8 violation decisions given in 2018 and 2019, only one was against state institutions. TIHEK fails to monitor whether the violation decisions given against public institutions are implemented. For example, TİHEK fined the Istanbul Governor's Office for closing Taksim Square, Istiklal Street, and metro stations on March 8, 2021 International Women's Day. This decision was based on a complaint from a citizen with disability, who claimed the closures caused "indirect discrimination" against people with mobility issues, as they struggled to navigate alternative routes[20]. Despite the violation decision, Governor’s office[21] continues to make similar prohibition decisions on assemblies, as TİHEK follow up on its decisions.

[18] https://www.tihek.gov.tr/upload/file_editor/2020/11/1604652496.pdf
[19] https://tihv.org.tr/wp-content/uploads/2023/05/UOM-2022-Degerlendirme-Raporu_WEB.pdf
[20] https://www.birgun.net/haber/8-mart-ta-taksim-meydani-ni-kapatan-istanbul-valiligi-ne-tihek-ten-ceza-324022
[21] https://www.birgun.net/haber/8-mart-ta-taksim-meydani-ni-kapatan-istanbul-valiligi-ne-tihek-ten-ceza-324022

In examining applications made by disadvantaged groups, TİHEK fails to evaluate the allegations of torture and ill-treatment within the context of the prohibition of discrimination and does not prioritize these applications with the necessary importance and urgency. For example, Mehmet Bozan, a Romani prisoner who received an aggravated life sentence and suffered from tuberculosis, applied to TİHEK in 2021 while serving his sentence at Keskin T Type Closed Prison, alleging ill-treatment and torture. In his application, he complained of being kept in solitary confinement for 2 years, being deprived of access to healthcare, obstruction of communication rights, not being taken out for fresh air, not being given the right to petition, and going on a hunger strike, among other grievances. However, Mehmet Bozan passed away on August 8, 2022, at Keskin T Type Closed Prison. TİHEK, after a full two years, issued a decision on January 10, 2023, stating that there was no violation of the prohibition of ill-treatment in relation to this application[22].

TİHEK also rarely utilizes the power of 'ex officio examination of human rights violations' as per Article 6/1-f of the Law. When it does exercise this power, its selection criteria for cases lack objectivity and appear to be conducted on an arbitrary basis, making choices and distinctions between victims, perpetrators, and rights. In the case of Garibe Gezer, a Kurdish female prisoner who was detained and then sent to Kandıra 1 No. F Type Closed Prison in 2016 in the Nusaybin district of Mardin, and allegedly committed suicide on December 9, 2021, videos showing that she was subjected to torture were published. However, TİHEK did not conduct an investigation. As in this case, it can be seen in the data included in its annual reports that TİHEK rarely exercises its power of ex officio examination, despite many torture and ill-treatment allegations reported in the media and evidenced by videos[23].

Furthermore, TİHEK has only used its authority to file a criminal complaint regarding human rights violations or violations of the prohibition of discrimination (Article 18/5 of Law No. 6701) once to date. The fact that the Institution has not used this authority even in cases where it issues violation decisions and in cases where the violation constitutes a crime raises serious doubts about its effectiveness.

Regarding the visits carried out by TİHEK, there is no information available on how the centers visited, are selected, the preparation process for visits, the composition of visiting delegations. There is no protocol for conducting unannounced visits, and in practice, these facilities seem to be aware of and able to prepare for visits. For example, visits to the detention centers of the Istanbul Police Department are conducted sequentially, allowing each subsequent center time to prepare. Additionally, there is no information available on whether visiting delegations inspect all sections of the facilities. The fact that visits to almost all centers last only one day raises doubts about whether the centers are thoroughly examined. Moreover, there are no different protocols for different places

[22] https://www.tihek.gov.tr/public/images/kararlar/vyrd0i.01

[23] According to the data shared with the public, the Board initiated 2 ex officio examinations in 2019 and issued 1 violation decision and 1 decision of non-determination (see p. 91. https://www.tihek.gov.tr/public/editor/uploads/1512202113582019-iskencepdf.pdf). In 2020, the Board decided to examine 3 allegations ex officio (see p. 81 https://www.tihek.gov.tr/public/editor/uploads/ik2020.pdf). According to the 2021 report, the Board decided to examine 2 allegations ex officio.

where people are deprived of their liberty or under protection. However, different needs should be identified, and different protocols should be prepared for different centers such as disabled care homes, nursing homes, and detention centers.

In 2019, TİHEK conducted a total of 34 monitoring visits[24]. Due to the impact of COVID-19 measures, visits were made to 13 centers where individuals were deprived of their liberty or placed under protection in 2020[25]. In 2021, a total of 56 visits were made[26]. The failure to report cases of torture or ill-treatment despite these visits highlights systematic issues in reporting and investigation processes in Türkiye. This also raises important questions about the independence of TİHEK, the expertise of its staff, and its ability to conduct unannounced visits and have confidential interviews with detainees. In particular, there is no known example of TİHEK officially objecting to or filing a complaint against authorities for torture, degrading, or inhuman treatment of detainees, prisoners, or others.For example, an unannounced visit was made by a TİHEK delegation to Diyarbakır D Type Penitentiary Institution, and information was obtained regarding the situation of prisoner Mehmet Emin Özkan[27]. However, despite this, no reporting, findings, or evaluations were made by TİHEK regarding the health condition of 84-year-old severely ill prisoner Mehmet Emin Özkan, who is held in Diyarbakır[28], yet no investigation has been initiated.

VI. Lack of Investigation of Torture and Other Forms of Ill-treatment

Examination of the applications TOHAV and ÖHD received, reveals significant deficiencies in the response of prosecution and judicial authorities to allegations of systematic torture and ill-treatment, indicating a failure to comply with Convention standards. In many cases, the passivity of prosecutors in responding to torture allegations or the decision not to start public prosecution despite the presence of reliable evidence point to a reluctance to initiate criminal proceedings. In some cases of arrests, when disproportionate use of force or physical abuse by a police officer is proved by reliable evidence such as health reports or camera footage, complaints of torture and ill-treatment are still rejected by prosecutors.

Although public prosecutors have the duty and authority to conduct investigations ex officio according to Article 12 of the Convention (CMK Article 160), in practice, effective investigations are not conducted, and public prosecutors overwhelmingly issue non-prosecution decisions on complaints of torture and ill-treatment supported by concrete evidence, including health reports indicating torture findings. In the trials monitored by TOHAV, all objections made by victims and their lawyers to non-prosecution decisions before the peace criminal judgeships, as stipulated by

[24] bkz. sf. 101 https://www.tihek.gov.tr/public/editor/uploads/1512202113582019-iskencepdf.pdf
[25] bkz. sf. 61 https://www.tihek.gov.tr/public/editor/uploads/ik2020.pdf
[26] bkz. sf.7 https://www.tihek.gov.tr/public/editor/uploads/ENg6W4jE.pdf
[27] https://www.tihek.gov.tr/hreit-delegation-conducted-investigation-in-diyarbakir/
[28]https://www.esithaklar.org/2021/06/25/ortak-aciklama-hasta-tutuklu-mehmet-emin-ozkan-icin-ilgili-tum-kurumlari-sorumlu-davranmaya-cagiriyoruz/

CMK 172, are rejected without even adhering to the mandatory reasons stipulated by law, turning the peace criminal judgeships from a review body into a mere paper presence.

As will be observed in the sample cases below, upon comprehensive review of the files, it is determined that public prosecutors fail to fulfill their obligations to conduct effective investigations in the following aspects:

- Non-taking of victims' statements, failure to interview witnesses, issuance of non-prosecution decisions based solely on the statements of perpetrators or even without taking their statements,
- Disregard for health reports obtained during detention and arrest processes in legal proceedings, inadequate evaluation of medical reports indicating signs of assault and injury, stating insufficient evidence,
- Compelling individuals taken for medical examination to declare that they were not beaten, conducting the examination while handcuffed,
- Failure to investigate interventions in peaceful protests and commemoration ceremonies and the violence inflicted during such interventions as they are automatically considered within the scope of the right to use force by prosecutors,
- Non-request of camera footage by prosecutors despite requests from lawyers, bringing only limited footage when requested, performance of expert examination not by independent experts but by police authorities.

Illustrative cases

Among the cases supported by TOHAV a significant instance involves the detention of F. A., M. A., and C. Ç. on December 18, 2022, in Istanbul, Kadıköy, during the protest held for the freedom of prisoners who were ill or burned to death in custody. These detentions made under Law No. 2911 on Public Meetings and Demonstrations, included severe cases of torture and ill-treatment. The arrestees were forcibly dragged, beaten and subsequently detained without any warning to disperse. During the arrests a law enforcement officer known for torture in Türkiye kicked activist M.A. directly in the chest causing breathing difficulties. Images of this beating were circulated in the media[29]. Three other victims were also beaten and detained. They were subjected to insults, profanity and threats by law enforcement officers. The victims reported being kept hungry, thirsty, and in inhumane conditions with handcuffs during detention.

The Istanbul Chief Public Prosecutor's Office did not conduct the necessary investigation and prosecution process regarding these allegations, claiming that the intervention of law enforcement fell within the authority of using force granted by law, and decided not to prosecute[30]. The appeal against this decision was rejected by the Peace Criminal Judge. Subsequently, the case was brought before the Constitutional Court, and a decision has not yet been made.

In another incident in Istanbul on January 20, 2023, members of the Socialist Party of the Oppressed (ESP) and the Federation of Socialist Youth Associations (SGDF) were arrested for holding a press

[29] http://mezopotamyaajansi35.com/GUNCEL/content/view/192168
[30] İstanbul Cumhuriyet Başsavcılığı Soruşturma No: 2023/159078 Karar No: 2024/5278 Karar Tarihi: 08/01/2024

conference in front of the Bakırköy Prison to protest human rights violations in prisons. When the police arrived, B. P., H. İ., and M. O., were subjected to violence which also continued in the vehicle that transported them to a detention facility. There, they were beaten by the police chief who is known for his brutality towards protestors. They were subsequently brought to the State hospital for medical examinations which confirmed serious injuries. On March 28, 2023, they filed a criminal complaint with the Bakırköy Chief Public Prosecutor's Office. Despite documented injuries, the Prosecutor's Office decided not to prosecute on January 11, 2024, citing insufficient evidence[31]. The victims' lawyers appealed highlighting the overlooked evidence and lack of effective investigation. However, the objections were rejected by the Court.

In another case, ME.K. was insulted, verbally abused, and physically assaulted by law enforcement officers while waiting at a bus stop in Istanbul on March 6, 2018. He was handcuffed and beaten and taken to the Istanbul Police Department's Counterterrorism Branch at around 19:00, where he endured torture until midnight. Threatened with execution and left nearly naked, E.K. was also strangled for several minutes. His right to meet with his lawyer was unlawfully prevented for 40 hours. Despite filling a criminal complaint on March 12, 2018, the Istanbul Chief Public Prosecutor's Office decided not to prosecute on October 30, 2018[32]. His lawyers appealed against the decision citing a lack of effective investigation and evidence collection in the 8 months pending investigation, but the objection was rejected by the Court.

When investigating the reasons behind the lack of prosecution regarding torture allegations during detentions made based on Law No. 2911 on Public Meetings and Demonstrations, it is observed that prosecutors often fail to consider medical reports documenting physical assault. Injuries are often deemed lawful, falling within the scope of police authority to use force due to the demonstrations being unauthorized. Similarly, when reviewing torture allegations during detention, prosecutors typically cite insufficient evidence for their decisions not to prosecute. For instance, the indictment against 26 individuals detained while intending to gather to commemorate the Amasra mine disaster can be cited: "*... as they persistently physically resisted law enforcement officers by throwing themselves to the ground in a manner that posed harm to themselves, the use of force during apprehension escalated...*".

VII. Violence against Human Rights Defenders, Journalists and Dissidents

Reviewing the general situation regarding torture and other forms of ill-treatment shows that specific groups are increasingly at risk. Human rights defenders and journalists are the two most at-risk groups.

[31] Bakırköy Cumhuriyet Başsavcılığı Soruşturma No: 2023/120851, Soruşturma Karar No: 2024/3468, Karar Tarihi:11/01/2024

[32] İstanbul Cumhuriyet Başsavcılığının 2018/47073 soruşturma, 2018/80925 karar, 30.10.2018 tarihli kovuşturmaya yer olmadığına dair kararı

In the final observations on Türkiye's fourth periodic report dated June 2, 2016 by the CAT, in paragraphs 44 of the report, the CAT requests information regarding cases of ill-treatment of individuals accused of terrorism, the trial of journalists and human rights defenders in terrorism cases, the prevention of their reporting freely, and the existence of effective domestic remedies, as well as information on the situations of academics dismissed from their jobs by decrees, including Osman Kavala, Eren Keskin, Selçuk Kozağaçlı. In its response dated October 27, 2020, the Government unfortunately failed to address any of these questions in a meaningful way. The presented data below indicates the continuation of a systematic, multifaceted policy of silencing and intimidating journalists and human rights activists.

As part of its freedom of expression litigation monitoring program, the Media and Law Studies Association (MLSA), shared its findings on the cases monitored from September 2022 to September 2023 in the "2023 Litigation Monitoring Report". The data obtained from 464 hearings in 233 freedom of expression cases during this one-year period reveals the situation of judicial harassment against journalists and human rights activists.

In the cases reflected in the report, out of a total of 1646 defendants, 329 were human rights defenders, 314 were journalists, and 49 were lawyers[33]. In the 233 cases monitored, a total of 329 different charges were brought under various laws, including the Turkish Penal Code (TCK) and the Anti-Terror Law (TMK). The most common charges were, respectively, violating Law No. 2911 on Public Meetings and Demonstrations (47 times), making "terrorist propaganda" as regulated in TMK Article 7/2 (46 times), "insulting a public official" as regulated in TCK Article 125/3 (30 times), and "membership in an armed terrorist organization" as regulated in TMK Article 7/1 (30 times) [34].

Examining the legal basis of these cases, journalism and reporting activities accounted for 57% of the total cases, making it the most common reason for prosecution[35]. 16 cases were opened due to press statements made by human rights defenders[36].

The crime of "insulting the nation, the state, and its organs" regulated in Article 301 of the Turkish Penal Code, which the European Court of Human Rights (ECHR) has ruled to contain "overly broad and vague expressions," was the offence in 15 cases. While the charge of "inciting hatred and hostility among the public" regulated in Article 216 of the Turkish Penal Code was raised in 12

[33] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 12, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)
[34] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 22, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)
[35] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 19, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)
[36] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 20, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)

cases, and the charge of "disclosing/disseminating or targeting individuals who have participated in the fight against terrorism" regulated in TMK Article 6/1 was raised in 12 cases[37].

Situation with the Journalists

In journalism cases, the most frequently leveled accusation was terrorism-related, constituting 43% of the charges. Journalists were accused of terrorist propaganda in 29 cases, membership in a terrorist organization in 15 cases, and targeting individuals who have participated in the fight against terrorism in 10 cases[38].

Journalists received a total of 28 years and 9 days of imprisonment based on the charges of membership in a terrorist organization and 15 years, 6 months, and 28 days for terrorist propaganda charges[39]. The use of journalists' news and social media posts as evidence in terrorism cases became more prevalent. Out of 94 pieces of evidence presented for membership in a terrorist organization, 20 were related to journalists' published news and 11 were related to social media posts[40]. Additionally, with the Disinformation Law[41], 26 journalists underwent investigation, 6 of whom were detained, and 4 journalists were arrested[42].

Journalist Fırat Can Arslan revealed that the prosecutor and the judge in a case against his colleagues, were married by sharing the offical gazette where the information regarding their assignment was published. For this reason, he was arrested on charges of disclosing the identity of individuals who have participated in the fight against terrorism[43].

Journalist Bülent Kılıç was subjected to ill-treatment by the police, including being pressed on his throat and being detained with his hands cuffed behind his back, while covering the 2021 Pride March. His complaint about the ill-treatment resulted in a decision of non-prosecution, and the same prosecutor filed an indictment against Kılıç for "resisting to fulfill his duty" and "publicly insulting a public official." The trial is ongoing.

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[37] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 22, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)
[38] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 32, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)
[39] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 7, 8, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)
[40] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 35, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)
[41] The law known to the public as the "Disinformation Law," officially titled the "Law No. 7418 on Amending the Press Law and Certain Other Laws," includes additional regulations to the Press Law No. 5187, the Turkish Penal Code No. 5237, and the Law No. 5651 on the Regulation of Publications on the Internet and Combating Crimes Committed Through These Publications. Criticized heavily for creating the potential to monitor and suppress social media, this law was published in the Official Gazette No. 31987 on October 18, 2022, and came into effect.
[42] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 26-29, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)
[43] TMK 6/1'den tutuklanan ilk gazeteci olan Fırat Can Arslan'a 3 yıla kadar hapis istemi (bianet.org)

Journalist Sinan Aygül was arrested on charges of "publicly disseminating misleading information" due to his reporting on allegations of sexual harassment of a girl in Bitlis-Tatvan[44]. The same charges were made against Ruşen Takva, who was prosecuted for his social media post alleging the involvement of Hakkari MHP Provincial Chairman Fatih Özbek in an armed attack[45].

The trial of journalists Deniz Nazlım, Yıldız Tar (Tarık Yıldız), and Sibel Yükler, who were detained and subjected to ill-treatment for wanting to participate in a press release issued by DISK-Press Workers Section[46] about imprisoned journalists, continues. The detained journalists suffered injuries all over their bodies as a result of ill-treatment[47].

Situation with Human Rights Defenders and demonstrators

Among the various charges leveled against human rights defenders are "making terrorist propaganda," "resisting a public official from performing their duty," "insulting a public official," "degrading the nation, the state, and the Turkish Parliament," and "membership in an armed terrorist organization." However, the highest percentage of charges made was for violating Law No. 2911 on Public Meetings and Demonstrations.

According to the applications received by TOHAV and IHD, a significant portion of the allegations of torture and ill-treatment during detention stemmed from arrests made based on Law No. 2911 on Public Meetings and Demonstrations. Although a precise number cannot be provided regarding detentions made based on this law, among the 2773 applications received by ÖHD between 2022 and 2024, a significant portion of examples of torture and ill-treatment fall within this scope. Moreover, several cases investigated and prosecuted for allegations of torture and ill-treatment are based on the same law, as observed by TOHAV. Out of the 14 cases included here by TOHAV in the context of allegations of torture and other forms of ill-treatment, 8 are based on complaints made by individuals arrested under Law No. 2911 on Public Meetings and Demonstrations.

Investigations initiated following detentions based on Law No. 2911 on Public Meetings and Demonstrations have mostly resulted in decisions by the prosecutor stating that there is no need for prosecution. Many were thus detained arbitrarily. In. In these cases, despite the absence of violent acts by demonstrators, all were detained by encircling without warning to disperse or providing a corridor to disperse, indicating that detention by law enforcement were conducted arbitrarily and for deterrent purposes.

[44] Gazeteci Sinan Aygül tutuklandı (gazeteduvar.com.tr)
[45] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 22, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)
[46] DISK Press-workers Section is a union affiliated with the Confederation of Progressive Trade Unions of Turkiye (DİSK) and operates with the aim of protecting and advancing the rights of workers in the press, media, and communication sectors.
[47] Ankara journalists appear in court after protesting arrest of colleagues (mlsaturkey.com)

In recent years, human rights defenders have also faced trials under Article 301 of the Turkish Penal Code, which regulates "insulting the nation, the state, the Turkish Grand National Assembly, the government, and its institutions." Due to the announcement made by IHD on the anniversary of the Armenian Genocide in 2021, Human Rights Defenders Eren Keskin and Güllistan Yarkın were prosecuted under Article 301 of the Turkish Penal Code[48]. Although they were acquitted on May 2, 2024, individuals/institutions organizing events commemorating the Armenian Genocide on April 24 can systematically be prosecuted under Article 301 of the Turkish Penal Code. Similarly, the President and Board Members of the Diyarbakır Bar Association face the same judicial harassment every year due to their commemorations of the Armenian Genocide[49].

The final observations of the CAT on Türkiye's fourth periodic report dated June 2, 2016[50], noted that contrary to the European Court of Human Rights (ECHR), Osman Kavala and Selahattin Demirtaşhave not yet been released. On April 25, 2022, Osman Kavala was sentenced to aggravated life imprisonment on charges of attempting to overthrow the government, and the request for retrial made by Kavala's lawyers was rejected by the 13th Heavy Penal Court on May 15, 2024. Selahattin Demirtaş, on the other hand, was sentenced to a total of 37 years and 60 months in prison on May 16, 2024, for seven separate charges.

During the reporting period, the trial of lawyer Can Atalay, one of the detained defendants in the 'Gezi Park Trial,' was not halted despite his election as a member of parliament. The 3rd Criminal Chamber of the Court of Cassation issued two decisions, ignoring the two decision of the Constitutional Court[51].

Human Rights Defender and President of the Turkish Medical Association (TTB), Şebnem Korur Fincancı, was arrested on charges of terrorist propaganda, and a criminal case was opened against her[52]. She was sentenced in a trial initiated due to assessments suggesting that Türkiye may have used chemical weapons[53].

Arbitrary and unpredictable trials against peace academics continue to this day. In some administrative proceedings lower courts acknowledge the signing of the "We Will Not Be a Party to This Crime" petition as an exercise of academic freedom, in line with the decision of the Constitutional Court in the Zübeyde Füsun Üstel case[54]. However, other courst fail to follow this

[48] Ermeni Soykırımı davası: Keskin ve Yarkın'a TCK 301'den ceza istendi (mlsaturkey.com)
[49] Diyarbakır Barosu'na TCK 301'den 6 yılda 7 soruşturma, 3 dava açıldı (mlsaturkey.com)
[50] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 17, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)
[51] Yargıtay'dan Anayasa Mahkemesi üyeleri hakkında suç duyurusu: CHP Genel Başkanı Özgür Özel 'darbe girişimi' dedi, hukukçulara göre karar Anayasa'ya aykırı - BBC News Türkçe
[52] MLSA, İfade Özgürlüğü Davaları Dava İzleme Programı Raporu 2023, 1 Eylül 2022- 1 Eylül 2023, s. 37, DAVA İZLEME PROGRAMI RAPORU 2023.docx (mlsaturkey.com)
[53] DW
[54] Zübeyde Füsun Üstel ve diğerleri, AYM Başvuru No. 2018/17635

ruling. For example, in the case of F.B.Ü who is a member of Academics for Peace[55],dismissed by a statutory decree (KHK) during the state of emergency, Ankara 14th Administrative Court overturned the decision of Ankara 21st Administrative Court, which ruled for her return, stating that Ünsal's signing of the mentioned petition and having 1,000 TL in her Bank Asya account were evidence of her affiliation with PKK and FETÖ, respectively[5657] The District Administrative Court, with this decision, not only disregards the decision of the ICCPR in the Alakuş v. Turkiye case[58] [59], but also arbitrarily refuses to implement the decisionof the Constitutional Court mentioned above. An even more alarming example concerns another member of Academics for Peace H.D. who has not been reinstated to her position at Marmara University, which arbitrarily refuses to implement and acknowledge the administrative and Constitutional court decisions. The prolonged legal processes and the struggle to reclaim their rights, which have been going on for over 8 years, since the declaration of the petition "We will not be a party to this and caused severe psychological damage to peace academics.

VIII. Situation in the Closed Penitentiary and High-Security Closed Penitentiary Institutions

The current chapter describes in detail the situation in the penitentiary institutions, including the gaps at the legislative level, torture and ill-treatment taking place in prisons, the treatment of political prisoners and the situation in the Imrali Prison.

Gaps and Lacunae in the Legislation Enabling Torture and Ill-Treatment in Penitentiary Institutions

1. Invasive searches

The regulation to be applied in terms of the body searches of prisoners in penal execution institutions and the search of their wards and rooms is included in Article 36 of the Law No. 5275.

[55] Academics for Peace refers to the group of academics who support a peaceful solution to the Kurdish-Turkish conflict. After the peace process was terminated and the conflict intensified, the group initiated an effort, and in January 2016, the statement titled "We will not be a party to this crime!" was announced to the public at a press conference. Since then, hundreds of the over 2,000 academics who signed this statement have been dismissed from their jobs, had their passports confiscated, prevented from finding employment elsewhere, threatened and attacked in their local areas, repeatedly summoned to police stations, and four were arrested for reading a press release highlighting these human rights violations. Hundreds were banned from public service through emergency decrees, and eventually, individual lawsuits were filed against all of them. As a result of this process, the signatories of the "We will not be a party to this crime!" statement are now known as "Academics for Peace."

[56] Ankara Bölge İdare Mahkemesi 14. İdari Dava Dairesi, 2023/2760 E., 2023/5452 K. sayılı dosyası.

[57] Ankara Bölge İdare Mahkemesi 14. İdari Dava Dairesi, 2023/2760 E., 2023/5452 K. sayılı dosyası

[58] CCPR/C/135/DR/3736/2020 (drgokhangunes.com)

[59] Yargı kararına rağmen barış akademisyenine 'keyfi arşiv' engeli: 'Başka örneği olmayan bir hukuksuzluk' (artigercek.com)

According to this article, ‘(1) In the institutions, searches may be made without notice at all times in rooms and in their annexes and of convicts and their belongings. A search shall be made once a month in any case. (2) When required, searches may be conducted jointly with external security personnel or law enforcement bodies or other public officers’.

Apart from the Law No. 52725, the Regulation on the Administration of Penitentiary Institutions and the Execution of Penalties and Security Measures also contains provisions on searches. According to Article 34 of this administrative Regulation, there are three different types of searches namely general search, thorough search and body cavity search.

Other legislation applied in relation to searches is the Regulation on Visiting convicts and detainees and the general circular of the General Directorate of Prisons and Detention Houses dated 12/06/2017. In the Regulation on the Administration of Penitentiary Institutions and the Execution of Penalties and Security Measures, the purpose, scope and method of the search measure and three types of search methods, namely general search, thorough search and search in intimate parts, are regulated in Article 34 titled ‘Search, security drill and counting’.

In recent years, searches based on the Regulation on the Administration of Penitentiary Institutions and the Execution of Sentences and Security Measures have led to humiliating practices.

Within the framework of the body amendments issued within the scope of the 'Judicial Reform' and the activities targeted in line with the 'Human Rights Action Plan', the Regulation on the Administration of Penitentiary Institutions and the Execution of Criminal and Security Measures was amended in 2021. With this amendment, the term strip search was removed from the regulation and replaced with ‘thorough search’. According to Article 34, a thorough search shall be conducted in a manner that does not violate the convict's sense of shame and by taking measures to ensure that no one other than the officer can see the convict. During the search the convict shall be given a disposable clothing apron. The clothes on the upper part of the body shall be removed first during the search, the clothes on the lower part of the body shall be removed after the clothes on the upper part are put back on. These clothes are also searched. During the thorough search, due care is taken to avoid touching the body and gloves are used by the officer. In case there are reasonable and serious indications that something is found in the intimate parts of the person searched, the convict is firstly asked to remove the substance or item by themselves, otherwise the detainee is informed that this will be done by force. The search in the intimate parts shall be carried out by the prison physician. The thorough search shall be completed in the shortest possible time and the procedure shall be recorded in a report, and the report shall include the signatures of the officers conducting the search and the detainee. In case the detainee refrains from signing, this shall be recorded in the minutes.

According to this regulation, a thorough search is an exceptional practice and can only be carried out if there are reasonable and serious indications that the detainee has substances or prohibited items p brought into or kept in the institution and only if the highest authority of the institution deems it necessary.

It should be noted, that while thorough searches are included in the Regulation, which is of administrative nature, they have no legislative basis. According to Article 20 of the Constitution, even a general body search cannot be conducted without a duly authorized judge's decision and only for the reasons mentioned in article 20. Furthermore, according to Article 13 of the Constitution, fundamental rights and freedoms may be restricted only by law and only for the reasons specified in the relevant articles of the Constitution. However, the detailed search, which should only be regulated by law in accordance with the requirements of Article 20 of the Constitution, continues to be applied without legal basis.

Moreover, 'thorough searches', which should only be carried out in necessary cases and in a manner that respects human dignity and the privacy of the persons searched and at the same time within the framework of the principles of proportionality, legality, and necessity, are still carried out in practice in the form of 'strip searches' often amounting to torture or other ill-treatment.

The ECtHR is of the opinion that 'while recognizing that strip searches may be necessary in certain circumstances to ensure prison security or to prevent disorder in prisons, such a search must be conducted in an appropriate manner[60]'. Therefore, for this practice to be accepted, there must be elements 'compatible with human dignity' which demonstrate that it is based on 'necessary' and 'justified' 'compelling reasons' for security reasons. Moreover, these reasons must be identifiable and of a special nature.

Reports compiled by the Association of Lawyers for Freedom (OHD) from 2021 to 2024, based on regular interviews with prisoners and occasional discussions with prison authorities revealed that searches conducted within prison wards and cells often unfold in a manner reminiscent of raids, creating an atmosphere of disproportionate intrusion. Belongings are haphazardly scattered, without clear justification for the searches, and prisoners frequently endure repeated searches in short intervals. Furthermore, prisoners encounter challenges during hospital transfers, opting to avoid them whenever possible due to the undignified way searches are conducted.

Moreover, interviews conducted by lawyers from OHD with prisoners at Eskişehir H Type Closed Prison, revealed that prisoners who refused intraoral searches during hospital transfers were subsequently reported and sentenced to solitary confinement. A prisoner held at Düzce T Type Closed Prison recounted being subjected to forced intraoral searches three times in June during their transfer to the hospital.

2. Regulations Leading to Arbitrariness on the Conditional Release of Prisoners

In recent months, numerous prisoners have faced hindrances in their release despite reaching their conditional release date. This obstruction stems from arbitrary judgments by the Administrative and Observation Boards, as outlined in the 'Regulation on Observation and Classification Centers and Evaluation of Convicts'. This Regulation, which was introduced on December 29, 2020,

[60] Iwanczuk v. Poland, 15 November 2001, No. 25196/94, para.59

conferred extensive powers to the Administrative and Observation Boards. These powers encompass a wide array of decisions, including but not limited to determining and altering the accommodations for convicts within penitentiary institutions, assessing their adherence to rehabilitation programs and their outcomes, determining which convicts may access amenities such as sports facilities, multipurpose halls, libraries, and workshops, deciding on restrictions for convicts in potentially hazardous situations or those associated with organizations regarding communication privileges like phone calls, radio, television broadcasts, and internet access. Moreover, these boards are authorized to make decisions concerning conditional release and establish the basis for evaluating good conduct for the implementation of the penal regime, either in conjunction with the institution's director or independently from them.

However, the composition of this board raises concerns about impartiality and independence. The board is chaired by the Republic prosecutor, or a prosecutor appointed by them. Members of the board are administrative personnel and staff members of the penitentiary institution who have ongoing interactions with inmates, are implicated in allegations of torture and ill-treatment of inmates, read inmates' correspondence and make adverse decisions based on it, conduct disciplinary inquiries of inmates, and impose disciplinary measures on them. Given their direct involvement with inmates in these capacities, it is questionable whether these individuals can make impartial and independent decisions.

This board also evaluates every six months whether a detainee is in good conduct and has the authority to make decisions for conditional release.

The Regulation on Observation and Classification Centers and Evaluation of Convicts places prison administrations in a position that equals the authority of judicial bodies, particularly in cases where judicial bodies typically have jurisdiction over prisoners. This grants prison administrations seemingly unchecked authority over prisoners, enabling them to make arbitrary decisions. These boards without legal professionals, apart from the prosecutor, effectively function as parallel courts and determine whether prisoners will be released. Upon entry into the prison system, individuals find themselves subject to the whims of the Administrative and Observation Boards, which dictate various aspects of their incarceration, including their assigned ward or cell and participation in recreational and social activities. Remarkably, even the slightest objection from a prisoner, whether regarding a statutory provision or legal entitlement, can be misconstrued as evidence of 'not being in good conduct' by the administration. Common justifications for denial of release include being placed in solitary confinement, failure to express remorse, alleged wastage of resources such as water and electricity, prior disciplinary infractions, insufficient utilization of the prison library, classification of outgoing letters as objectionable, perceived insubordination toward staff, or failure to comply with arbitrary requests from correctional officers.

Recent practices raise concerns about whether prison administrations are lawfully exercising the authority granted to them by this new regulation. Despite hundreds of political prisoners reaching their conditional release dates, they remain incarcerated due to decisions by the administration and

observation boards which lack concrete evidence, relying instead on subjective opinions and abstract reasoning, thereby denying prisoners their rightful release.

3. Conditional Release and Aggravated Life Imprisonment

According to Article 25 of Law No. 5275, aggravated life imprisonment is a penalty designated for particularly severe crimes and acts of terrorism. It involves the convict being held under strict security measures, with significantly restricted social interaction, limited opportunities to meet with family and lawyers, and reduced access to social and cultural activities compared to regular imprisonment. Convicts are typically held in solitary confinement cells for the duration of their life sentence. The execution of aggravated life imprisonment is determined according to Articles 25 and 107 of Law No. 5275, and Article 17/4 of Law No. 3713. Under these articles, those sentenced to aggravated life imprisonment have the right to benefit from conditional release.

However, certain prisoners sentenced to aggravated life imprisonment for specific crimes have been excluded from this right. According to the 16th paragraph of Article 106 of Law No. 5271, if one of the crimes listed under the Fourth Section titled "Crimes Against the Security of the State," the Fifth Section titled "Crimes Against the Constitutional Order and Its Operation," or the Sixth Section titled "Crimes Against National Defense" of the Turkish Penal Code is committed within the framework of an organization's activities, conditional release provisions do not apply to the conviction of aggravated life imprisonment. A similar provision is included in Article 17 of the Anti-Terror Law. According to this, those sentenced to death, converted to aggravated life imprisonment by Law No. 4771 dated 3/8/2002 amending various laws with Law No. 5218 dated 14/7/2004, or those sentenced to aggravated life imprisonment for terrorist crimes, cannot benefit from conditional release. The aggravated life imprisonment sentence continues until death for these individuals. The exclusion of certain prisoners, especially those categorized as political prisoners, who have been sentenced to aggravated life imprisonment, from benefiting from conditional release constitutes a violation of the prohibition of discrimination and also eliminates the "right to hope" for these prisoners as recognized by CAT in 2018 in its Concluding observations on the seventh periodic report of the Netherlands[61] . This rule was specifically implemented for prisoners held in Imrali Prison following the abolition of the death penalty, with the aim of excluding these individuals from eligibility for conditional release. The sentences of these prisoners are executed for life, meaning until death. Abdullah Öcalan complained before the European Court of Human Rights that found a violation of Article 3 of the European Convention on Human Rights[62]. The Grand Chamber unanimously found that the imposition of life imprisonment without the possibility of parole constituted a violation of Article 3 of the Convention. The judgment established that the prohibition of torture begins from the moment the provisions causing the violation to come into existence. This indicates that the imposition of life

[61] CAT/C/NLD/CO/7 , para. 35.
[62] Ocalan v. Turkey (No. 2), 18 March 2014, Nos. 24069/03, 197/04, 6201/06 and 10464/07

imprisonment without parole introduced by Law No. 4771 in 2002 violated the prohibition of torture from that moment onwards. For Öcalan, this means 23 years of detention under conditions of torture.

After Öcalan's judgment, the ECtHR also issued violation judgments in the cases of Hayati Kaytan v. Turkey, Emin Gurban v. Turkey, and Boltan v. Turkey. The Committee of Ministers of the Council of Europe has initiated a monitoring process regarding these four judgments. Although Turkey has submitted multiple action plans during this monitoring process, it has not taken steps in line with the ECtHR judgment. In December 2021, the Committee of Ministers issued interim resolutions. It determined that Türkiye has not yet taken steps in line with the judgment, that the regulations causing the violation to persist, and that immediate action is necessary. The Committee requested that information be provided on developments and the number of individuals who have received this sentence. However, no information regarding this data has been provided to the Committee, nor have any legal regulations or amendments been made.

Practices that amount to torture and ill-treatment in closed and high-security penitentiary institutions

1. Lack of adequate access to health care

Thousands of prisoners, hundreds of them severely ill, are held in closed and high-security prisons. Due to indirect obstacles in accessing medical assistance, prisoners cannot exercise their right to health. Ill prisoners are not receiving the necessary treatment, and those who are terminally ill or whose health conditions are incompatible with prison conditions continue to be detained. Hospital transfers involve intimate searches, single shuttle vehicles, and handcuffed medical examinations, turning the process into ill-treatment for ill prisoners. Consequently, prisoners often cannot go to the hospital, and even if they do, they are not properly examined or treated. The living conditions of sick prisoners in prisons, amount to torture or ill-treatment.

Prisoners, particularly those who are seriously ill, encounter significant challenges when trying to access the healthcare system. Within penitentiary institutions, there is a notable shortage of doctors in infirmaries, and on occasion, doctors have arbitrarily refused to examine prisoners. Interviews conducted between 2021 and 2024 with prisoners from a total of 73 penal and execution institutions across Türkiye highlighted numerous issues. These include handcuffed medical examinations, mouth searches, inadequacies in the vehicles used for hospital transfers, mistreatment by prison guards during transfers, intraoral searches, and long waiting times during hospital transfers. Furthermore, delays in the arrival of prescribed medications, often resulting in substitutes being provided, have been reported. Many prisoners in penitentiary institutions suffer from dental diseases, primarily stemming from their participation in prolonged hunger strikes in 2019. In all prisons, ill prisoners have reported that referrals to dental hospitals can take anywhere from 1 to 2 years.

The treatment of prisoners by doctors and other healthcare personnel during hospital transfers is often demeaning, and there is a lack of communication between hospital doctors and prisoners. In this context, the violations we would like to specifically highlight the following:

At Bakırköy Women's Closed Prison, the prison doctor refuses to examine prisoners under any circumstances. Instead, when prisoners request examination due to illness, medical staff from the infirmary visit the ward and ask the ill prisoners to describe their medical conditions, after which medication is prescribed. Furthermore, gendarmes accompanying prisoners during hospital visits are often present in the examination room, creating an uncomfortable environment. In one instance, during a gynecological examination, a gendarmerie member attempted to intrude into the examination area behind a curtain, causing distress to the prisoner undergoing examination. This incident was reported by the prisoner, and the matter is currently under investigation. Moreover, handcuffed examinations are a common practice in nearly all prisons across different regions, further exacerbating the indignity experienced by prisoners during medical assessments.

Another violation observed in Bakırköy Women's Closed Penitentiary Institution, which began during the 2020 pandemic and persists, involves the treatment of ill prisoners. Following the transfer of ill prisoners to hospitals for examinations or treatment related to upper respiratory tract diseases such as lung or heart conditions, they are confined to cells until the results of their medical procedures are relayed back to the penitentiary. IWith the disappearance of pandemic conditions, this measure has effectively transformed into a punitive action, discouraging prisoners from seeking necessary medical attention.

An 87-year-old ill prisoner in Bakırköy Penitentiary Institution faced arrest on charges of 'aiding an organization' for sending money to his daughter and a ward mate in prison. An application for the postponement of execution was subsequently filed. Presently, the prisoner is undergoing outpatient clinic examinations, and upon completion, their case will be referred to the Forensic Medicine Institution (ATK). Historically, politically affiliated ill prisoners have remained incarcerated despite ATK reports indicating their unsuitability for prison conditions.

In Bandırma Penitentiary Institution, prisoners complained about their limited access to healthcare, reporting that they are only permitted to visit the infirmary once a month, where a single doctor manages the medical needs of approximately 1200 inmates. Additionally, referrals to dental hospitals are deferred for up to two years, according to accounts from incarcerated individuals.

Meanwhile, Bolu F Type High Security Closed Prison houses 30 ill prisoners, including 20 deemed seriously ill. Despite the inadequate physical conditions of the facility for accommodating individuals with severe and chronic medical conditions, these prisoners have not been granted release.

At Duzce T Type Closed Penitentiary Institution, a troubling incident occurred on July 6, 2023, when a prisoner reportedly vomited blood within the ward. Instead of receiving immediate medical attention, infirmary staff solicited accounts from wardens, prioritizing their testimony over the prisoner's health concerns. The attending doctor instructed that if the situation recurred, wardens

should attend to the prisoner first, underscoring a concerning lack of urgency in addressing medical emergencies within the facility.

In Edirne Women's Closed Prison, deplorable conditions were reported within the cells, characterized by extreme dirtiness, construction debris, and cobwebs. These unsanitary conditions led to a prisoner with asthma experiencing an asthma attack, prompting referral to the hospital for medical attention. Furthermore, reports indicate that air conditioners are often non-functional in the transportation vehicles during hospital transfers, particularly in the winter months, which appears to be used as a punitive measure against prisoners.

Meanwhile, at Metris R Type Closed Prison, troubling circumstances persist where ill prisoners are housed together in shared rooms without regard for their specific medical needs. In one instance, two prisoners are paired together—one paralyzed from the waist down and the other suffering from ALS—yet they are unable to adequately assist each other due to their respective conditions. Despite objections raised against this arrangement, they have been summarily dismissed without justification. Similarly, another pair of prisoners in the same room face challenges in meeting each other's needs, with one having two amputated hands and the other grappling with dyslexia and balance issues. Again, objections to this situation have been met with no meaningful resolution.

In Sakarya L Type Closed Prison No. 2, a concerning lack of medical attention was reported for several prisoners. One inmate, who had undergone angioplasty twice for heart disease, repeatedly requested visits to the infirmary for regular check-ups but was denied. Eventually, he was urgently referred to a hospital for examination by the cardiology department. Another seriously ill prisoner suffering from kidney failure requires dialysis every two days, indicating that their health condition is incompatible with continued incarceration. Additionally, this prisoner experienced sleep disturbances due to a lack of prescribed medication, neurontin, from the neurology department. Despite expressing a desire to be referred to psychiatry for further evaluation, this request has yet to be fulfilled. Furthermore, a prisoner with a hernia has been awaiting treatment for approximately eighteen months without resolution.

In Izmir F Type High Security Prison No. 1, a prisoner with spinal disability, heart issues, and high blood pressure, supported by a medical report recommending release, remains incarcerated. Similarly, in Izmir Type F High Security Prison No. 2, another inmate was transferred from Istanbul Çapa Hospital while awaiting wrist surgery for a bone disorder, exacerbating their condition due to inadequate treatment at Izmir Yeşilyurt Hospital. Lastly, in Menemen R Type Closed Prison, a prisoner who was supposed to receive a special diet was forced to consume baby food due to the prison's failure to provide the necessary dietary conditions.

In Sincan High Security Prison No. 2, a 60-year-old inmate, who underwent an operation, is now unable to attend to his own needs. Additionally, another prisoner diagnosed with schizophrenia is kept in solitary confinement andalso unable to meet his own needs.

In Sincan Women's Closed Prison, a prisoner underwent open brain surgery for a brain tumour and was transferred back to prison just three days later upon the approval of her sentence by the Court of Cassation. Although a medical report from the Ministry of Health Darıca Training and Research Hospital, dated December 24, 2021, recommended against her remaining in prison due to her condition, the Istanbul Forensic Medicine Institution (ATK) issued a contradictory report stating she could stay in prison. However, her health rapidly deteriorated while in prison, with the brain tumours multiplying and growing, and she experienced symptoms of instability such as epilepsy and vertigo. Despite a 70% hearing loss in her left ear caused by the tumour, and a hospital medical committee report recommending against her continued stay in prison, the Forensic Medicine Institution's approval kept her incarcerated. Upon reevaluation in January, it was found that her brain tumours had significantly grown compared to a previous MRI. Due to the urgent risk to her life posed by the tumours, she was referred to Ankara for surgery. However, she was informed that there was no suitable prisoner ward at Gazi University (in Ankara) for her surgery. Subsequently, on July 10, 2023, the prisoner experienced a severe episode of instability, hitting her head on a bunk bed and then on the wall. Following a tomography scan, it was discovered that she had bleeding in the brain. She was then transferred to Ankara Etlik City Hospital, where another scan revealed that the tumours posed a life-threatening risk. The medical recommendation was for surgical intervention, but with the significant risk of coma or death. Despite this, the prisoner declined the operation, fearing the potential consequences, and was subsequently discharged and returned to prison.

In Diyarbakır Women's Closed Prison, seriously ill prisoners remain incarcerated despite their deteriorating health conditions. The Forensic Medicine Institution consistently issues reports stating that these prisoners can remain in prison, effectively preventing their release. Among these prisoners is one suffering from Alzheimer's disease and with platinum in their feet, rendering them unable to climb stairs unaided. Despite their clear need for medical care and inability to function independently, they are not granted release.

Prisoners in the facility have repeatedly appealed to relevant state authorities regarding these health access barriers. However, these appeals have not resulted in any effective action, and the state has failed to fulfill its duty to inspect health institutions, prisons, and infirmaries. Moreover, there is a lack of supervision over doctors in prison infirmaries or hospitals, potentially leading to examinations that violate the Istanbul Protocol and professional ethics.

In interviews conducted by lawyers from OHD with prisoners at Giresun Espiye L Type Closed Prison, it was reported that a prisoner named M. C., suffering from heart disease, was denied hospital transfer due to the refusal of an open mouth search imposed to them. As a result, treatment was delayed, leading to a sudden heart attack one night. M. C. was eventually taken to the hospital, where he underwent angioplasty but tragically passed away after one night.

Similarly, in interviews with prisoners at Malatya Akçadağ T Type Closed Prison, it was revealed that several seriously ill prisoners were denied hospital access due to mouth searches. Among them were a 45-year-old with chronic asthma, a 50-year-old with stomach diseases, a 40-year-old with

a stomach hernia, another with lymph node disorders, and two prisoners with feet in plaster casts. Their treatments were significantly delayed as a result.

2. Thorough Body Searches and searches of wards and rooms

One illustrative case of the detailed search practice was reported from interviews with prisoners at Ödemiş T Type Closed Prison. Prisoners recounted instances where gendarmerie officers imposed a search involving open legs, arms, and facing the wall with arms in the air during hospital transfers. When prisoners refused these practices, gendarmerie officers filed reports alleging that they refused hospital transfer, resulting in further denial of medical access.

There are many penitentiary institutions where the prisoners have been informed that the strip search is quite routine. In this context, we would like to cite a few cases as examples: In Osmaniye T Type Closed Prison No 2, a prisoner objected to a strip search imposed at the entrance to the penitentiary. Consequently, a report was filed against the prisoner, resulting in a disciplinary penalty of two months without visitation rights. Despite appealing to the Assize Court, the penalty was upheld. At Tekirdağ Type F High Security Closed Penitentiary Institution No 2, a prisoner transferred from another institution was subjected to a strip search at the entrance. When the prisoner refused, they were beaten, and a criminal complaint was filed. In Gaziantep L Type Closed Penitentiary Institution, prisoners are routinely subjected to strip searches. This involves wearing an apron-like surgical gown backward, making them sit and stand up, and some prisoners being provided with slippers and underwear. Another example in this context is Çorlu High Security Prison. Prisoners there stated that this kind of search is routine at the entrance to the prison, that prisoners who refuse to accept it are subjected to it by force, and that the criminal complaints made in this regard were given a decision of non-prosecution. Prisoners in Diyarbakır T Type Closed Prison No 2 stated that many prisoners who were brought to the reception unit of the prison after their arrest were forced to be searched thoroughly in this way, and those who objected were beaten and disciplined.

Prisoners are subjected to treatment incompatible with human dignity during routine searches in the wards or frequent raid-type searches. In this context, in many prisons there is a systematized pattern; frequent, often raid-type searches of rooms or wards, rummaging of wards during such searches, confiscation even of books given to prisoners by the administration during such searches, confiscation of non-banned books, newspapers, magazines, etc. belonging to prisoners, The confiscation of personal writings and diaries, most of which were not returned afterwards, damage to prisoners' belongings in the wards or rooms during the searches, and destruction of all belongings have been reported by prisoners in a large number of penitentiary institutions. According to a prisoner in the same penitentiary institution, whether the searches are conducted in accordance with the rules or not varies according to the behavior of the execution guard conducting the search.

In some cases, there are also examples of camera recordings made by prison guards during ward searches for display purposes. In many execution institutions, even items purchased from the canteen are arbitrarily confiscated without any justification (for example, yellow threads, nail scissors, etc.). It is understood from the reports of the prisoners in Urfa T Type Closed Prison No 1 that the conditions in this institution comprise very serious violations of rights.

Prisoners stated that staff attitudes and behaviors were hateful, including mobbing, provocation and threatening. For example, the prison staff said things like 'we will come and destroy your belongings, no one can do anything'. It was also reported that in the same penitentiary institution, detainees, and convicts in prison for political offences were treated in a discriminatory manner compared to others.

In Sincan Women's Closed Penitentiary Institution, the wards where the prisoners stay are searched very thoroughly on a weekly routine and the room is ransacked during the searches.In Sincan High Security Penitentiary Institution No. 2, it was reported that ward searches were carried out every week and that during the searches the belongings of the prisoners was rummaged through and dismantled.

Another example is Kirsehir S Type High Security Prison. Prisoners here stated that they are searched 4-5 times a month and the searches are carried out by way of rummaging the belongings of the prisoners.

The cases mentioned here as examples represent a very small part of these systematic practices. These searches, which are carried out in a highly arbitrary manner and in violation of human dignity are common to almost all 91 prisons, where interviews have been conducted by lawyers from OHD with the prisoners during their visits between 2021- 2024 and spread across a wide range of provinces[63]. .

3. Denial of right to conditional release and supervised release of political prisoners

In recent years, practices preventing political prisoners in closed and high-security prisons from benefiting from conditional release and supervised release, which are their legal rights under certain conditions, have gradually increased. Despite having served the requisite period for the execution of their sentences under the conditions of conditional release, many prisoners, particularly those convicted on political grounds, remain incarcerated due to decisions made by prison administrations and observation boards pursuant to the 'Regulation on Observation and Classification Centres and Evaluation of Convicts'. Since 2023, a significant number of individuals, colloquially referred to as '30-yearers' in public discourse, who have completed the necessary time for their life sentences, have seen their release postponed by board decisions.

[63] More information on this is included within the "2023 Human Rights Violations Report of Turkish Prisons", https://www.ozgurlukicinhukukcular.org/tr/detay/ozgurluk-icin-hukukcular-dernegi--turkiye-hapishaneleri-2023-yili-hak-ihlali-raporu

Unfortunately, due to a lack of transparent data sharing by authorities, the precise number of prisoners not released as a result of decisions made by administrative and observation boards remains unknown.

The case of Veysi Aktaş, a prisoner held in Imrali Island Prison, illustrates the situation well. y. Veysi Aktaş was arrested and imprisoned on May 11, 1994. He received a life imprisonment sentence that he served in various prisons. After he was transferred to İmralı F Type High Security Closed Penal Execution Institution on March 17, 2015, Bursa Chief Public Prosecutor's Office issued a summary of legal status on April 16, 2015 (Annex-2). According to this summary of legal status Aktaş's conditional release date was set for April 28, 2024, as this is when he served 30 years in detention, (Article 107, Paragraph 4 of Law No. 5275,) April 28, 2024 was set as he should be released after 30 years. According to the same report. However, Aktaş was not released on April 28, 2024. Following communications with the İmralı Prison Administration, it was revealed that Aktaş had appeared before the Administrative and Observation Board on April 26, 2024, and his conditional release was not approved. Instead, it was postponed for an additional year. The objections made by their lawyers as well as their request that a copy of the postponement decision and its basis be given to them were rejected by the Office of the Judge of Execution in Bursa.

Veysi Aktaş's release was obstructed despite the failure to apply the legal regulations that should have been applicable to his case. Instead, his release was impeded based on Law No. 7242, enacted on April 14, 2020, amending article 89 of Law no. 5275. Since this amendment brings regulations disadvantageous to convicts, it is proscribed from application against the convict. Hence, the prevention of Veysi Aktaş's release three times from the moment of his trial until today, constitutes a violation of his right to liberty and security. Moreover, the severity of the situation is exacerbated by the lack of any news received from him for over three years.

The decisions of the Administrative and Observation Board, which prevent Veysi Aktaş's freedom, are applied in practice to hundreds of prisoners and maybe even more, as understood from both the press and the visits made to prisons within the scope of the association. The problem is more than an individual issue and is applied in a systematic manner. Despite legal regulations prohibiting such actions, the postponement of conditional release rights seems to be implemented as a state policy. This approach is particularly noticeable in cases involving prisoners incarcerated in the 1990s and political prisoners serving term sentences. However, any unfavorable regulation should only be applied to offenses committed after its enactment, not retroactively.

Conditions for political prisoners[64] and detainees in closed penitentiary institutions and high-security closed penitentiary institutions

In the recent years violations of the rights of political prisoners have also intensified. Among these violations, the breach of the prohibition of torture stands out. In prisons, there are significant differences between the treatment of political prisoners and other inmates. Political prisoners, especially in high-security prisons, endure prolonged or indefinite social isolation, severely affecting their physical and mental health. The torture and ill-treatment of political prisoners in these facilities are worsened by the arbitrary treatments by the penitentiary administrations.

The cases of torture and ill-treatment that are subject to this chapter of the report pertain to political prisoners and detainees being kept in closed penitentiary institutions and high-security closed penitentiary institutions (the term 'prisoner' will be used in the chapter to refer to both groups).

Main types of facilities where torture and other forms of ill-treatment against political prisoners occur closed penitentiary institutions and high security closed penitentiary institutions.

According to Article 8 of the Law No. 5275 on the Execution of Penalties and Security Measures, closed penitentiary institutions are "facilities which have internal and external security personnel, which are equipped with technical, mechanical, electronic, or physical barriers against escape, in which the doors of rooms and corridors are kept closed, where contact between convicts who are not in the same room and with the outside world is possible only in such cases as are specified in legislation, where the sufficient level of security is provided, and where individual, group or collective rehabilitation methods can be implemented according to the needs of convicts."

In Article 9 of the same Law, high security closed penitentiary institutions are defined in the same way as the closed penitentiary institutions with the addition "facilities (…) where convicts subject to a tight security regime are accommodated in single or three-person rooms." In this type of penitentiary institution, persons sentenced to aggravated life imprisonment and persons convicted of certain serious crimes listed in the Law, regardless of the length of the sentence, are held. In addition, although not included in this scope, those who pose a danger due to their actions and attitudes and who are determined to be required to be under special supervision and control, and those who disrupt the order and discipline in the institutions they are in or who persistently resist the measures, means, and procedures for rehabilitation are sent to these institutions.

Recently, repression and arrests against dissidents have escalated, leading to overcrowding. Despite the implementation of some penitentiary regulations to reduce overcrowding, these measures have been selectively applied, favoring certain types of crimes, and excluding political prisoners charged with organized crimes. Similarly, there are no measures addressing pre-trial detentions, as the current regulations only pertain to convicted individuals.

In the last four years, despite the release of approximately 200,000 prisoners, excluding political prisoners, based on amendments to the Law on Execution of Penalties in 2020 and 2023, the

[64] https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19150

number of detainees has increased by about 47,000 during the same period. According to the Ministry of Justice, 23 penitentiary facilities of various types were put into service in 2020, 32 in 2021, 22 in 2022, 16 in 2023, and 12 more facilities are planned to be opened in 2024, as stated in the Ministry's performance program for 2024.

Since 2021, 43 new types of penitentiary facilities with a capacity of approximately 19,000 have been constructed, known as 'S Type and 'Y Type High Security Penitentiary Institutions'. The defining feature of these new prisons, where most prisoners are kept in solitary cells and very few in three-person cells, is that their architectural and engineering design, along with daily routines, exacerbate the conditions of isolation. The Y Type Prisons have three floors, six single cells on each floor where inmates are kept in isolation, unable to see one another. Unlike other prisons, these cells do not have their own exercise yards; the exercise yard is located in a different block. Inmates are taken from their cells to another location for exercise, allowing them to spend up to one and a half hour outside their cells each day. The S Type facility consists of single-person and three-person cells. Despite having three floors, unlike Y-Type and High-Security Penitentiary Institutions, the three-person cells are two-storied and have their own exercise yards, making them similar to F-Type Penitentiary Institutions. The single-person cells, on the other hand, are single-storied and do not have their own exercise yards. Inmates in single-person cells are taken elsewhere for exercise. Interviews with prisoners and press reports reveal that prisoners spend at least 22.5 hours a day in solitary confinement, making such practices routine and nearly equivalent to 'solitary confinement'.

According to Law No. 5275 on the Execution of Penalties and Security Measures, prisoners and detainees sentenced to term or life imprisonment are supposed to be kept in a wing or three-person cells, with only prisoners sentenced to aggravated life imprisonment kept alone. However, in the newly built high-security prisons, all prisoners are kept in solitary cells without ventilation, regardless of whether they are pre-trial detainees, or sentenced to determinate, life, or aggravated life imprisonment[65].

[65] According to Law No. 5275 on the Execution of Penalties and Security Measures, there are three main types of imprisonment penalties: fixed-term imprisonment, life imprisonment, and aggravated life imprisonment:
1. Fixed-Term Imprisonment: According to Article 1 of the law, it regulates that a prison sentence can be imposed for a specified period determined by the court. The duration and severity of the sentence are determined based on the nature of the crime and criteria established by law.
2. Life Imprisonment: According to Article 3 of the law, this penalty signifies that the defendant is sentenced to imprisonment for the duration of their life, rather than for a specific period. However, in practice in Turkey, life imprisonment is limited to 36 years.
3. Aggravated Life Imprisonment: According to Article 5 of the law, this penalty is applied in cases where aggravating factors are present, and it results in the defendant being sentenced to life imprisonment under a more stringent regime. Aggravated life imprisonment can also be executed for a maximum of 36 years.
While this is the general rule, it should be noted that in the context of aggravated life imprisonment under certain offenses covered by the Turkish Penal Code and the Anti-Terror Law, the 36-year limit is not applied. In these cases, such penalties continue until the end of the convict's life. Further details on this matter are provided in subsequent sections of the report.

The report also raises serious concerns about the conditions at **Imralı Island Prison**, which, despite being under the Ministry of Justice, is unique in its location, status, and administration. Here, violations of the prohibition of discrimination and torture are severe, especially given that no news has been received from prisoners held there for over 38 months and the ongoing incommunicado detention.

1. Isolation Through Restriction or Denial of the Right to Communication, Access to Publications, Sending or Receiving Letters, Parcels

Prisoners are systematically restricted or denied access to the right to make telephone calls, to receive periodical and non-periodical publications, to send or receive parcels, especially to send and receive letters. Any interference with freedom of communication must be deemed 'necessary in a democratic society' and comply with the 'principle of proportionality' set out in Article 13 of the Constitution. As established by the judgements of the Constitutional Court; reasonable grounds that can be used to justify interventions in correspondence sent to or from penitentiary institutions must be justified by case-specific facts and information that can convince an objective observer that the right to communication is being abused within the framework of all the circumstances of the concrete case. Delaying the letters of prisoners, scratching some or all of the letters without justification because they are objectionable is a violation of freedom of communication.

One of the most important means of communication of prisoners is letters, through which the prisoners communicate with their relatives and bring up their complaints and demands. The right to correspond by letter is the most important guarantee of a prisoner's right to communication and information, and accordingly freedom of expression. Moreover, the right to letter is also very important for the prisoner's access to justice. Nevertheless, delaying, or unlawful confiscation of letters is one of the most common incidents. This situation exacerbates the isolation experienced by prisoners. Letters authored by prisoners to their families or vice versa are sometimes withheld without valid justification. Particularly troubling is the prohibition of letters written by prisoners or sent to them in Kurdish, indicating ongoing discrimination against the Kurdish language within prison environments.

Moreover, all correspondence experiences delays in reaching prisoners. Freedom of communication encompasses the right to timely access to information and news, and it is the responsibility of the Penitentiary Institution Administration to ensure prompt delivery of letters. Parcels sent to prisoners by their relatives serve as an important means for meeting their essential needs, such as clothing and shoes. However, in many instances, items sent by families facing financial hardship are arbitrarily withheld from prisoners on the pretext of being sold in the canteen. Furthermore, there are frequent delays in parcel delivery, with some of them taking over a month to be delivered. This situation often results in outcomes that contradict human dignity, leaving prisoners unable to meet important hygiene needs due to exorbitant canteen prices, thus enduring deprivation, and inadequate hygiene conditions.

Access to periodical and non-periodical publications like newspapers, magazines, and books is also restricted or these publications are arbitrarily banned by prison administrations, most of the time, without any administrative decision taken.

Under Article 62 of the Law on the Execution of Penalties and Security Measures (CGTİHK), prisoners are entitled to access publications unless they have been banned by the courts. According to the statements of prisoners, they are prevented from using many newspapers, books and magazines although they are not banned. In this context, for example, access to opposition publications such as Yeni Yaşam Newspaper, Evrensel newspaper, Yeni Yaşam, Umut, Atılım, and Yeni Demokrasi are systematically prevented from entering prisons, despite prisoners' requests. Some prisons issue banning orders on all newspapers weekly, contrary to the law, while others withhold newspapers from prisoners without providing any justification.

In many prisons, prisoners are forced to pay for the periodicals and non-periodicals they want to read directly and buy them from places contracted by the prison administration. Most of the publications requested by prisoners are not available in the places contracted by the prison administration. This situation constitutes a serious obstacle for prisoners to access to publications.

Moreover, there is a growing trend of book bans in many prisons. Books sent via cargo or deposited by visitors are withheld from prisoners without justification. It has been observed that prisoners can only receive books through the Turkish Post Office (PTT) by using funds from their own accounts, and they are limited to receiving just one book as a gift from outside on occasions such as birthdays, religious holidays, and official holidays.

In addition to these issues, the arbitrary restriction of political prisoners' access to phone calls is prevalent in many closed and high-security prisons. Furthermore, the frequency of phone calls is often diminished, and video calls are not available in many instances. For instance, in Yozgat T Type Closed Prison No 2, while regular prisoners are permitted to utilize their video call privileges for half an hour, political prisoners' requests for video calls have been consistently denied. Similarly, in Urfa Closed Prison No 1, the right to video calls is withheld, and the weekly phone call allowance is limited to ten minutes, falling short of the legal duration. Likewise, in Kayseri T Type Closed Prison No 1, political prisoners are also deprived of the right to video calls.

2. Isolation Through the Restrictions on Socialisation, Visits and Use of Common Areas

Isolation within prisons has intensified significantly, particularly due to the lack of implementation of common area activities such as conversations and sports, as well as the communication rights outlined in the law. Prisoners' connections with the outside world and with fellow inmates have been severely curtailed, leading to an acute sense of isolation in the prisons covered by the report.

In high security prisons, prisoners are under more intense isolation conditions. The recently opened Y and S Type prisons, constructed as high-security facilities similar to F Type prisons, where political prisoners and those convicted under the Law on Combating Terrorism No. 3713 are held,

follow a social isolation model. Y-type prisons are high security prisons and prisoners are kept in single rooms. Their average capacity is around 300-400 people. They are designed for convicts sentenced to aggravated life imprisonment. Y-type prisons are prisons where measures are one step more stringent than F and S-type high security prisons. F and S type high security prisons are designed as 2 storeys, S type prisons are also high security prisons and prisoners stay in single rooms. Their average capacity is around 500-550 people.

All three types of High-Security prisons (F-type, Y-type, and S-type) represent a prison model characterized by intensified isolation practices that starkly contradict principles of human well-being.

However, High Security and S Type Prisons were constructed in a way to provide an even more aggravated isolation and isolation than F Type Prisons. The solitary and three-person room setups, coupled with the mere one-hour allocation for outdoor time, inflict severe physiological and psychological harm on prisoners compelled to spend 23 hours confined to their rooms. The punitive nature of cell-type confinement not only induces psychological disturbances but also precipitates physical ailments, including musculoskeletal issues and weakened immune, respiratory, and pulmonary systems, exacerbated by the room's humidity and poor ventilation.

Visitation protocols in many prisons adhere to legal stipulations, albeit with limitations. For instance, Urfa Closed Prison No. 1 allows only forty to forty-five minutes for visits.

The severity of social rights restrictions, compounded by arbitrary enforcement arising from disparate administrative attitudes within correctional facilities, is notable. For instance, Yozgat T Type Closed Penitentiary Institution No. 2 permits only 40 minutes of sports per week, with no provision for courses, workshops, or similar social activities. In these penitentiary institutions, the absence of even the regulated common area activities has turned incarceration into additional punishment Putting an end to this practice and enabling prisoners to maintain their social relationships by communicating with each other through activities such as sports and conversations, as well as opening workshops and courses to facilitate their personal development, is necessary.

Recently, there has been an increase in security investigations against the names that prisoners want to register as visitors. If there is an investigation against the person who wants to be written as a visitor with the allegation of opposition to Law No. 2911 on Assemblies and Demonstrations, that person is not accepted as a visitor by the administration. Although there are regulations in the relevant laws regarding security investigations, the way these processes are applied in practice is arbitrary.

3. İmralı Prison as a particular case of Isolation practices

The conditions in Imrali Prison should also be mentioned here as an example of a severe isolation practice in terms of the way it was built and its conditions. Imrali Prison was built as a solitary island prison for Abdullah Öcalan who was handed over to Türkiye in 1999. The island prison was

declared a military exclusion zone, extending to a certain distance from sea, land, and air. Öcalan endured 10 years and 9 months of solitary confinement within its confines. Later, on November 17, 2009, five prisoners were transferred to the island prison when it was converted to an F Type penitentiary institution[66]However, they were relocated to other prisons in March 2015. Despite this, five different prisoners were subsequently transferred back to island prison. By December 26, 2015, two of them were once again transferred to other prisons. Presently, only four prisoners remain in the island prison: Abdullah Öcalan, Hamili Yıldırım, Ömer Hayri Konar, and Veysi Aktaş.

Situated as an island prison in the Marmara Sea within the Mudanya district of Bursa, this institution falls under the administration of the Ministry of Justice. Despite its official oversight, the unique location, status, management approach, systematized practices, and the actions of the judiciary within this facility raise significant concerns regarding potential violations of anti-discrimination and anti-torture protocols, particularly regarding the conditions of detainment for prisoners.

Abdullah Öcalan, Hamili Yıldırım and Ömer Hayri Konar are being held in İmralı High Security F Type Prison as aggravated life imprisonment prisoners, which is defined as life imprisonment without the prospect of release according to Turkish legislation, and Veysi Aktaş as life imprisonment prisoner, which requires a minimum of 30 years in prison. Despite the provision outlined in Article 59 of Law No. 5275 granting lawyers the right to freely meet with prisoners during working hours, such liberties are not extended to Imralı. Instead, lawyers are compelled to submit written applications to the Bursa Chief Public Prosecutor's Office. Once approved, access to the island is facilitated via a designated boat accompanied by prison officials.

Shortly after 1999, although prisoner Abdullah Öcalan had the right to receive continuous visits on weekdays, his lawyer visits were limited to one day and one hour a week in practice, in violation of the law. However, this de facto situation has never been respected. The de facto rule was violated by invalid justifications such as ‘the vessel is out of order’, ‘the weather is bad’, ‘the captain is on leave’. These conditions worsened after July 27, 2011, when he was not able to meet with his lawyer for 8 years. On July 21, 2016, the Office of the Judge of Execution in Bursa decided to ban Öcalan, Aktaş, Yıldırım and Konar from lawyer visits, family visits, telephone, letter and all other communication rights and all ties with the outside world during the state of emergency (Annex-1). These bans are based on provisions that can never be applied to convicts. Although these bans started to be imposed for 6-month periods in February 2018, they continued to be imposed collectively without interruption. These bans have continued via decisions of Imrali Disciplinary Board under different pretexts and until today, they have been repeatedly imposed at least 20 times without interruption.

[66] The F-type penitentiary institutions refer to a type of prison facility in Turkiye characterized by its high-security measures and individual cells or three-person rooms for inmates. These prisons were introduced at the beginning of 2000s to replace older, overcrowded prisons and typically feature smaller, isolated cells designed to limit communication among prisoners and to enhance security measures.

The bans on lawyers, which were fixed for a period of 6 months in February 2018 by the Judge of Execution, have then been continued almost uninterruptedly. The right to make phone calls has also been banned by the decisions of the administration and observation board taken repeatedly every6 months. Since these 'legal' processes were carried out in secrecy, in a manner contrary to the law, not all of the information could be accessed.

The extent of their contact with the outside world since March 2015 is as follows:

- Abdullah Öcalan has only sporadically been allowed to see his lawyer for the past 13 years, 2 (visits were allowed on 2 May 2019, 22 May 2019, 12 June 2019, 18 June 2019 and most recently 7 August 2019).
  - Since 6 October 2014, only 5 family visits were allowed (11 September 2016, 12 January 2019, 5 June 2019, 12 August 2019 and most recently 3 March 2020).
  - He made 2 phone calls on 27 April 2020 and 25 March 2021. The last phone call on 25 March was interrupted very shortly after the start of the conversation and the call could not be continued.
  - Neither his lawyer, nor his family have been able to contact him since 25 March 2021.
- Hamili Yıldırım has never been allowed to meet with his lawyers. He had 2 family visits in total and 2 phone calls on 27 April 2020 and 25 March 2021.
- Ömer Hayri Konar was never allowed to meet with his lawyers. He received 3 family visits in total. On 27 April 2020, he was allowed to make one phone call during Covid-19 pandemic. On 25 March 2021, the family was informed by the prosecutor's office that he did not appear for the phone call allowed on the grounds that he was protesting the conditions in which he was being held. The family is not in a position to verify this claim.
- Veysi Aktaş has never been allowed to meet with his lawyers. He received 3 family visits in total. On 27 April 2020, during Covid-19 pandemic, he was allowed to make one phone call . On 25 March 2021, the family was informed by the prosecutor's office that he did not show up for the phone call, claiming that he was protesting the conditions in which he was being held. The family is not in a position to verify this claim.

Since March 25, 2021, there has been no communication from the four prisoners in İmralı. Despite exhaustive administrative, legal, and diplomatic efforts, no information has been obtained regarding their status. No visits, phone calls, or correspondence have been permitted, leaving their condition unknown.

Isolation through the Utilization of Disciplinary Sanctions

It's important to highlight the situation at Imralı Island Prison where disciplinary sanctions are imposed to the prisoners under the context of deprivation of visitation.

Prisoners are denied the right to receive family visits due to disciplinary penalties issued by the Disciplinary Board of Imrali Penitentiary Institution. These penalties, which involve a three-month ban on visitors, are imposed under the pretext of prisoners engaging in social activities such as

chatting and walking together during recreational time. This justification appears to be aligned with Article 43/2-e of Law No. 5275, which pertains to the penalty of visitation deprivation.

The prioritization of the deprivation of visitation penalty, considered one of the most severe and definitive sanctions, without prior application of milder disciplinary measures, lacks clear justification. The absence of specific criteria guiding the decision to impose such a severe and conclusive sanction, especially when the law suggests a progressive approach to disciplinary actions, raises questions about the fairness and proportionality of the disciplinary process.

Moreover, the simultaneous application of disciplinary sanctions to all four prisoners, constituting the entire population of Imralı Prison, and the uninterrupted nature of these sanctions, coupled with the denial of other rights facilitating contact with the outside world, can be seen as imposing collective, cruel, and inhumane punishments. Such actions contravene Article 38/2 of Law No. 5275, which prohibits any form of cruel, inhuman, and degrading punishment for disciplinary offenses. According to the Minimum Standard Rules for the Treatment of Prisoners, disciplinary sanctions or restrictive measures should never impede contact with family members. Any limitation on communication with family should be strictly necessary to maintain security and order and should only be applied for a limited duration (Minimum Standard Rules for the Treatment of Prisoners, Article 43(3)). Therefore, the imposition of the deprivation of visitation penalty without adequate justification or consideration of alternative measures appears to violate both domestic and international standards regarding the treatment of prisoners.

Article 43(3) of Law No. 5275 specifies that the deprivation of the right to receive visitors, as outlined in this provision, does not extend to meetings with lawyers and legal representatives. However, despite this explicit exemption, all weekly visit requests submitted by Öcalan's legal representative to both the Bursa Chief Public Prosecutor's Office and the İmralı Prison Administration remain unanswered. Notably, the decisions issued by the Office of the Execution Judge have consistently failed to provide any justification for this blatant violation of the law.

The relevant parts of the CPT's report on its visit to İmralı Prison on 6-17 May 2019, published on 5 August 2020, emphasize the incompatibility of this total ban on contacts with the outside world (including correspondence) resulting in incommunicado imprisonment[67]. The CPT also underlined the fact that following the lifting of the state of emergency, the official justification for refusing family visits appears to be rather specious. “Since the lifting of the state of emergency, decisions have been taken every three months by the Disciplinary Board of Imralı Prison (on the basis of Section 43, paragraph 2 (e), of the LESSM) to impose on all prisoners the disciplinary sanction of prohibition of family visits for a period of three months for having committed the disciplinary offence of ‘hindering sports activities’ by spending time in the open air during ‘sports activity hours’ without actively exercising the type of sports that had been scheduled for those hours. In

[67] Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 17 May 2019, https://rm.coe.int/16809f20a1

this regard, the CPT stressed that any restrictions on family contacts as a form of disciplinary punishment should be applied only when the offence relates to such contacts, which is obviously not the case in the present situation."

The decisions issued by the Office of the Judge of Execution cite Articles 59/5 and 59/8 of Law No. 5275 as grounds for the restriction of prisoners' meetings with their lawyers for a period of 6 months, although the conditions outlined in article 59 of Law no 5275 are not fully met in the current cases. The complaints raised by prisoners regarding restrictions on their right to see a lawyer extend beyond isolated incidents and instead represent systematic practices that persist without interruption. According to the law, the conditions required for imposing a ban decision must be met sequentially: there must be a scheduled lawyer meeting, a decision to monitor this meeting with technical equipment, and the presence of an officer during the meeting. Any decision to restrict lawyer meetings in the absence of these conditions being met, constitutes a clear violation of the law. Even in cases where a final restriction order is issued, it is not permissible to completely prohibit the convicted person from contacting their lawyer. Instead, it is mandatory to promptly assign another lawyer to ensure legal representation. However, this obligation has consistently been neglected, resulting in prisoners being entirely deprived of legal support. In essence, while the law permits restrictions and partial prohibitions on lawyer visits, the actions of the execution judges go beyond this allowance and severely restrict the prisoners' right to legal counsel.

Furthermore, another clear violation of the law is evident in the fact that three of the four prisoners did not have a single visit from a lawyer in nine years.

Failure to Monitor the Practices in İmralı Prison: Incommunicado

Due to the state of incommunicado in Imrali Island Prison, which has been going on for more than 38 months, unfortunately no monitoring mechanism can function regarding the current practices and the situation of the prisoners. All the restrictions and banning decisions imposed on the prisoners' communication with the outside world, family and lawyer visits, telephone or other means of communication have been carried out secretly in violation of the law.

According to Article 5 of the Law No. 4675 on the Office of the Judge of Execution; '...The convict or detainee or his/her spouse, mother, father, child with the power of discernment or sibling, defence counsel, legal representative or penal execution institution and detention centre monitoring board may apply for a complaint, provided that it is related to themselves.' Pursuant to Article 6 of the same law, 'Upon a complaint against a disciplinary penalty, the judge of execution shall render his decision after receiving the defence of the convict or detainee and after collecting and evaluating the other evidence requested. The convict or detainee may present their defence together with or through their lawyer, provided that they are present and submit their power of attorney.' After the execution of the prisoner's sentence begins, the lawyer also acts as

an important guarantee against violations of rights that have occurred and may occur (Öcalan v. Turkey, 18.03.2014, EctHR, Annotation of Judge Pinto).

Everyone has the right to seek the assistance of counsel of their own choosing to assert, protect, and defend their rights at all stages of criminal proceedings (Havana Rules, Article 1). Governments are responsible for establishing effective procedures and mechanisms that ensure everyone within their jurisdiction has access to counsel in a manner that is effective and equal and meets their needs (Havana Rules, Article 2). It is the duty of public authorities to ensure that counsel has access within a reasonable time to any relevant documents, files, or records in the hands or under the control of the authorities that are necessary for the preparation of the defense and to enable counsel to provide effective legal assistance to their clients. Counsel shall be provided with such access as soon as possible (Havana Rules, Article 21).

Despite national and international norms and principles, disciplinary penalties and other restrictive measures imposed on prisoners are not mentioned, notified, or disclosed even after routine requests for family and lawyer visitations. These violations continue even in court proceedings, where lawyers are not allowed access to documents concerning their clients on the grounds of confidentiality. Restrictions and disciplinary penalties imposed on prisoners are documented without access to their lawyers, despite requests. Requests by prisoners' lawyers for proper power of attorney and access to UYAP (National Judiciary Informatics System) records and file samples are denied on general and abstract grounds.

In summary, these processes are carried out by the Offices of the Judge of Execution by withholding files from lawyers, refusing to provide samples or notifications, and concluding applications made within the deadline after finalization. Requests by lawyers for UYAP records are denied, and decisions are made by the Offices of the Judge of Execution that disciplinary penalty decisions and enforcement judiciary decisions will not be provided to lawyers. There is no legal regulation in Law No. 4675 and Code of Criminal Procedure No. 5271 allowing for the confidential conduct of files or keeping decisions or evidence closed to lawyers' scrutiny. Arbitrary, special, and discriminatory decisions are systematically made.

As crimes against prisoners are a central policy decision, those responsible are not prosecuted for abuse of office (Turkish Penal Code Article 257), obstructing the exercise of rights (Turkish Penal Code Articles 298 and 121), and crime reports are closed without further investigation. The State violates paragraph 3 of Article 2, 12 and 13 of the CAT.

Non-investigation of complaints

The detention conditions of the prisoners in Imrali Prison are not only contrary to national legislation and international legal documents but also constitute a violation of the provisions of the International Covenant on Civil and Political Rights of the United Nations (hereinafter referred to as the Covenant). Despite all the applications, objections, and attempts made to the Imrali Prison administration, Bursa Chief Public Prosecutor's Office, Bursa Enforcement Courts, and most

recently to the Constitutional Court, no results have been obtained. All applications have been rejected.

Prisoners complain about being held incommunicado, which is prohibited under Article 7 of the Covenant, as well as about the prison conditions and the lack of investigation into these matters. Prisoners are dependent on the administration's compliance with both positive and negative obligations regarding access to rights. In addition to the right to accept lawyer and family visits in accordance with international treaties and national legislation, they also have the right to communicate by telephone, receive and send letters.

Even special restrictions imposed by a judicial authority should still allow for a minimum acceptable level of communication, including those, as stated in Recommendation Rec (2006) 2 of the Committee of Ministers of the Council of Europe to Member States on the European Prison Rules, which may include special restrictions imposed by a judicial authority. However, prisoners are deprived of means to communicate with the outside world, either in practice or due to administrative and judicial decisions lacking legal basis (such as lawyer and family visits, telephone, and correspondence rights). The conditions of not being able to hear from them at all after March 25, 2021, are conditions that harm their physical, mental, and psychological integrity. The fact that this practice occurs as a result of administrative or judicial decisions does not make it legally compliant with the current situation.

The findings made by the CPT indicate that the said decisions were politically motivated and not in compliance with the law. It is stated that "...the situation worsened with the emergence of a form of solitary confinement where detainees were not allowed to meet anyone. As repeatedly emphasized in the dialogue with the Turkish authorities by the CPT, such a situation is unacceptable and clearly violates various relevant international human rights documents and standards" as it is stated to have characteristics of incommunicado conditions.

The stress and suffering caused by being held in detention indefinitely without any contact with family, lawyers, or the outside world, as repeatedly pointed out by the Committee, constitute treatment incompatible with Article 7 of the Convention. In addition to the inevitable suffering caused by being held in isolation, it is not known how detainees are treated by their families and lawyers. The isolation from the outside world eliminates the possibility of receiving assistance, leading to feelings of depression and helplessness in the detained person, and a sense of impunity and the desire to act with impunity in those applying the treatment.

Article 7 of the Convention unequivocally prohibits anyone from being subjected to torture or to cruel, inhuman, or degrading treatment or punishment. In furtherance of this provision, Article 10 of the Convention regulates that everyone deprived of their liberty is entitled to be treated with humanity and with respect for the inherent dignity of the human person. Even if the conditions are below the current level of violence in Imrali Island prison, the unlawful restriction of rights and the frequent prevention of connections with the outside world, including visits, would constitute a violation of Article 10 of the Convention.

United Nations Human Rights Committee's (Committee) General Comments and decisions, along with the Standard Minimum Rules for the Treatment of Prisoners, provide explanatory guidance to these provisions of the Convention. All rules should be applied without discrimination.

The Human Rights Committee clarified its position on incommunicado detention in General Comment No. 20. According to this, measures ensuring effective protection of detained individuals should include provisions against incommunicado detention (General Comment No. 20, para. 11).

On the other hand, Article 7 does not allow for any limitations. The Committee confirms that even in extraordinary circumstances mentioned in Article 4, the application of Article 7 of the Convention cannot be suspended, and its provisions must always be in effect. Similarly, the Committee emphasizes that even in cases involving a public authority or a high-ranking official's orders, the violation of Article 7 of the Convention or the mitigation of obligations cannot be justified (General Comment No. 20, para. 3).

The prohibition in Article 7 applies not only to actions causing physical pain but also to actions causing mental suffering to the victim. Additionally, according to the Committee, the prohibition should encompass corporal punishment, excessive penalties given in response to any offense, or imposed as educational or disciplinary measures (General Comment No. 20, para. 5).

The Committee has put forth the view that solitary confinement can be a severe punishment with serious psychological consequences and should only be deemed reasonable in urgent circumstances (Concluding Observations on Denmark, (2000) Un Doc. CCPR/CO/70/DNK, Pr. 12.). The Committee concluded that Article 7 was violated in a case where the petitioner was subjected to incommunicado detention for a month without access to a doctor, lawyer, or family (Concluding Observations on the US, (2006) Un Doc. CCPR/C/USA/CO/3, Pr. 33.).

In the Benali/Libya case, the Committee acknowledged that three instances of incommunicado detention, lasting from several weeks to two years, constituted a violation of Article 7, which regulates the prohibition of torture (Benali/Libya, 1805/2008, November 1, 2012, Pr. 6.5.). Similarly, in the Polay Campos/Peru case, one year of incommunicado detention was considered "inhuman treatment" (Polay Campos/Peru, 577/1994, November 6, 1994, Pr. 8.6). It is recognized that the use of solitary confinement is often associated with regimes of incommunicado detention and/or enforced disappearance or secret detention.

When determining whether a violation of Article 7 has occurred, both subjective and objective elements are considered. In the Vuolanne/Finland case (Comm. No. 265/1987, Pr. 9.2.), the Committee specifies when an act falls within the scope of Article 7. "Depending on the circumstances of the case, ... the duration and manner of the treatment, the sex, age, and health of the victim, as well as the physical and mental effects of the treatment, are all covered."

Despite being 75 years old, Öcalan has spent the last 25 years under solitary confinement conditions in İmralı. Additionally, his chronic respiratory conditions have been reflected in CPT reports. Veysi Aktaş, who is younger, at 55 years old, has been deprived of his freedom for over 30 years, including the last 9 years without contact with the outside world in İmralı prison.

Yıldırım, at 70 years old, and Konar, at 65 years old, have also been continuously held in high-security prisons, including the last 9 years without contact with the outside world in İmralı, for a minimum of 20 years.

Despite this, they have not been heard from for over 38 months. The current conditions of their detention constitute a violation of Article 7. When no news was received from the prisoners, their lawyers submitted an incommunicado application to the United Nations Human Rights Committee in July 2022. On September 6, 2022, the UN HRC accepted the lawyers' request for interim measures and instructed the Government "…to allow the prisoners to meet with their lawyers without any restrictions." Due to the Government's failure to comply with this decision, the UN HRC reminded the Government of this decision on January 19, 2023. The final decision on the merits of the application has not yet been made by the UN HRC, and the process is ongoing.

Despite the passage of a considerable amount of time since the UN decision, there has been no change in the conditions of detention for the prisoners.

The length and uncertainty of not receiving any news indicate a cumulative situation of violation. In addition, the conditions of detention for the prisoners, being closed off from independent mechanisms of oversight, are considered as a factor providing grounds for the possibility of new instances of ill-treatment.