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## 2018 REPORT ON ABUSES OF RIGHTS, LATEST DEVELOPMENTS AND CURRENT STATE OF İMRALI PRISON

### I. INTRODUCTION

2018 has been a year when anti-democratic form of government was institutionalized and deepened in Turkey. The emergency rule, declared on 15-20 July 2016, has been unlawfully rendered permanent by the decree laws which were supposed to be temporary. As it is frequently encountered in the history of 20-year İmralı Isolation System, the most important reflection of this situation was experienced in İmralı Prison. The arbitrary and unlawful isolation until July 15, 2016, continued by the Decree Laws based on the emergency rule. Then, especially in the year 2018, the Decree Laws were transformed into law and isolation continued in disguise of the law. However, it should be noted that the continuation of these practices under the law will not give them legal qualifications and cannot prevent them from being condemned according to universal human rights measures.

In this sense, our clients in İmralı Prison in 2018, Mr. Abdullah Öcalan, Mr. Hamili Yıldırım, Veysi Aktaş and Ömer Hayri Konar's right to meet with a lawyer, the right to meet with family members, the right to speak on the phone and the right to communicate by letter, fax and all kinds of communications have been removed without any exception. This also constitutes "Absolute Isolation" which means systematic torture and is beyond the violation of one right. In this respect, İmralı Island Prison, as a place where the most intense and deepest violation of the Prohibition of Torture happens, has become an area where the doubts over the protection of our clients' physical and mental integrity increase day by day.

### II. APPLICATIONS TO VISIT THE PRISON

After the last visit by lawyers on July 27, 2011, the client-lawyer meetings were prevented in an unlawful and arbitrary manner. These meetings were barred by authorities on the excuse of bad weather conditions or broken boat. After this date, the applications were rejected based on a ruling numbered 2016/56 by Bursa 1st Enforcement Judge on July 21, 2016. The ruling was based on articles 114 / 2-3, 115/1-b, which could not be applied to the prisoners in İmralı as they are all convicted. The relevant articles of Decree Laws 667 and 676, which were subsequently published in contravention of the principle of lawfulness and punishment after the objection, were turned into an automatic basis for the rejection of applications. According to this decision, the clients are banned from communicating with the outside and receiving visitors during **the state of emergency rule**. The applications for visits were blocked until February 28, 2018.

The applications made for the first two months of 2018 were prevented by the decision dated 21.07.2016; on 02.03.2018, Bursa 1st Enforcement Judge has taken another barring decision No. 2018/2 on 02.03.2018. This decision is based on the annexment of the relevant regulations introduced by the Decree Law No. 5237.

In this decision, the enforcement judge decided *to prohibit the admissions of visitors, restrict telephone calls and written communications, prohibit meetings with lawyers and restrict any documents given by lawyers*. Upon appeal to the decision, *the Bursa 1st High Criminal Court decided on 26.04.2018 to reject the objections separately; decided to ban the admissions of visitors for 6 MONTH DURATION, to restrict telephone calls and written communication for 3 MONTHS, to ban their meetings with their lawyers for 6 MONTHS, and to restrict the documents given by lawyers for 3 MONTHS DURATION.*

Articles 59 / 4-5-7-8 of the Law no. 5275 on the decision of the Supreme Court of Appeal and of the Assize Court, are legalized form of the article 6 of the Decree Law No. 676. The decision that was made according to the article 59 of the Law No. 5275, which was unlawfully enacted, does not hold the applicable circumstances for our clients. As it is understood from the 5-7-8. paragraphs, many legal requirements must be realized in order to decide on the restrictions and prohibitions. However, the ban and rejection, given to the lawyer's application dated 02.03.2018, does not meet any conditions required by Article 59. In order to give a verdict according to this law, a visit by family and lawyer must happen first. In this aforementioned meeting, information, findings and documents should be obtained as required by law. For the prohibition of visits, they should be terminated with the claim that they are conducted against the law and official complaint must be noted. However, since July 27, 2011, even though not a single visit by a lawyer happened, the prohibition was decided unlawfully before any of these conditions were realized. The allegations, made by the enforcement judge and accepted by the Assize Court, the grounds for justification and *the aforementioned disciplinary punishments referred to, were all disciplinary penalties between the years 2005 and 2009*. The six-months-long ban dated 02.03.2018 by Bursa 1st Enforcement Court on visits by family and lawyers was supposed to end on 02.09.2018. However, against the applications for visits, another six-months-long ban was enforced with a decision numbered 2018/4513 on 06.09.2018 by Bursa 1st Enforcement Judge. The reasoning and justification for the decision in question happened to be exactly the same with the decision of Bursa 1st Execution Judge's decision numbered 2018/2 on 02.03.2018.

The restriction decision given by Bursa 1st Enforcement Judge on 02.03.2018 against the applications for visits by family is given without a legal basis. The prohibition of family visits is not regulated in any of Articles 59, 114 and 115 of the Law no 5275. Despite this, the prohibition of visits by family constitutes a very important example of unrecognized law.

The decision dated 02.03.2018 by the Bursa 1st Enforcement Judge that was renewed on 6 September 2018, does not include a ban on family visits. On September 10, 2018, the application for a visit by family was rejected on the grounds of "broken boat" which was given for a long period of time arbitrarily. The next application for a visit by family, which was filed on 17.09.2018, was refused on the grounds that there was a 3-month family visit restriction dated 14.09.2018 and numbered 201871-2-3-4 by the Imrali Prison Discipline Board.

All initiatives by lawyers related to the decisions of the disciplinary board were left ineffective, the files were hijacked and processed, approved and finalized. The files created by Bursa 1st Enforcement Court were approved by Bursa 1st High Criminal Court.

However, the contents of the relevant files were not shared with the lawyers in any way. As soon as the disciplinary board was informed of the decision, the lawyers were not allowed to participate in the file at any stage, although a petition for appeal was submitted. While the Disciplinary Committee and the Execution Judge decision, which possessed the content, was not notified in any way, the decision of the Assize Court, which possessed only the conclusion part, was notified only after a certain time.

The petitions for requests were rejected with unlawful “official reports” instead of a court order. Three different judges overseeing the file have either been transferred or relocated due to health reasons. The necessary objections regarding this process were made on time; criminal complaints were filed against judicial officers who had responsibility.

Although the three-month limitation period has expired on 14.12.2018, the applications by family in the next period of the year have been unlawfully blocked by the a disciplinary board decision that expired on 14.09.2018.

In this context, the total number of **102 applications by lawyers, 46 applications by family members and guardians** in 2018 was rejected. Depending on this situation, three other prisoners, apart from Mr. Öcalan, have also been unable to meet with their family and lawyers since they were transferred to Imrali Prison.

### **III. DEPRIVATION OF COMMUNICATION RIGHTS**

As it is known, the last time Mr. Abdullah Öcalan and the lawyers were able to meet was on July 27, 2011. Since then, the last contact with him was a family visit on September 11, 2016. After this family visit on September 11, 2016, no news of him appeared in 2017 and 2018. In this process, it was not possible to communicate with Mr Öcalan and three other clients through letters, telegraphs or faxes.

As mentioned above, although the visits with the clients in Imralı Prison were prevented, the Bursa 1st Execution Judge, also enforced the restriction of written communication, telephone and sharing of any information or documents, and therefore completely cut the connection of our clients with the outside world. This situation has made it almost impossible to hear from our clients. In 2018, lawyers sent letters about legal developments and applications on 14.08.2018, 20.09.2018, 09.11.2018, 27.09.2018 and 21.12.2018. However, it is not known whether the letters have delivered to them or not.

### **IV. THE ATTITUDE OF THE COMMITTEE FOR THE PREVENTION OF TORTURE (CPT)**

During the process of absolute isolation, the Committee for the Prevention of Torture (CPT), which is a body of the Council of Europe and has the authority to visit the prisons in the member states and prepare reports on the rights violations it has determined, has been continuously informed.

During 2018, all kinds of legal and political incidents that occurred, the updates in Imrali Island and of Mr Öcalan, were presented in the form of regular observational reports.

In this sense, the developments between 01 January-25 June 2018, 25 June-10 October 2018 and 12 October-31 December 2018 and the current period were presented to the CPT during face-to-face meetings.

The CPT was only able to share its report on its visit on 28-29 April 2016, on March 20, 2018 after nearly 2 years with the public, on the grounds that Turkey did not give the approval. The CPT stated in this report that not a single lawyer visit has not been allowed since 27 July 2011 and Mr Öcalan's communication with the outside world has not been improved since 2013, and that his situation has further deteriorated. The CPT repeated the call for the necessary steps to ensure that all prisoners held in İmralı Prison are visited by their family and lawyers without any delay. The CPT also expressed that the regime of prisoners, sentenced to aggravated life imprisonment, and the relevant legislations should be completely amended in the light of its notes and recommendation.

However, even though the CPT shared a significant amount of violations after its last visit on 28-29 April 2016, ignoring the political and legal developments in Turkey, the violations that institutionalized the isolation are the very basic shortcomings of it [CPT].

After the last visit of the CPT; there was no news of Mr. Öcalan in 2017 and 2018 as of the date of the short family visit which only happened due to the intense reaction from the democratic public.

However, Turkey's legal system, significantly changed in a negative way and regressed to an antidemocratic ground. The state of emergency rule and the decree law regime were institutionalized and the main place where these changes were enforced was İmralı Prison. The CPT announced its visit in 2016 only two years later in 2018 and did not include the İmralı Prison in its visitation calendar. It neglected its responsibility as a fundamental mechanism to monitor the violations in İmralı Prison.

CPT, the European Convention for the Prevention of Torture (ECPT) within the sovereignty of signatory States, has the authority to visit every place where persons are detained by deprivation of liberty by public authorities; In other words, it has the authority to conduct inspections, researches and investigations in these places (ECPT 1, 2, 7). States Parties are obliged to allow these Committee visits and cooperate with the Committee (Art. 2, 3). In spite of all these developments, the fact that CPT does not use these powers in this process contributes negatively to the development of the İmralı Isolation System.

## **I. ONGOING CASES AND LEGAL ATTEMPTS**

### **A. Pending Constitutional Court and Domestic Law Applications:**

The 20-year-old İmralı Isolation System implemented for Mr. Öcalan is currently being further aggravated in an unlawful and arbitrary manner, and all relevant legislation has been regulated on this basis. The judicial mechanisms in domestic law also develop practices that intensify this unlawful and arbitrary manner. In any case, however, legal attempts continue in order to invite authorities to the way of law, and to overcome isolation. In this frame, the pending Constitutional Court and Domestic Law files;

1- According to Article 25 of the Law on Execution of Sentences, no. 5275, it is possible and necessary to treat medical problems that could not be eliminated under the conditions of execution, in a full-fledged state hospital or a university hospital with the same conditions, and Mr. Öcalan and other İmralı prisoners are blocked from exercising this right. In this sense, an application was submitted to the Bursa Execution Court on July 12, 2013 in order to allow access to the right to health and to end the lawyer prohibitions which have continued for several years. However, the application was rejected. Subsequently, an individual application was submitted to the Constitutional Court with the application no. **2015/12433**, which has still not been finalized.

2- An application was submitted to the Bursa Execution Court to ensure that the conditions of the prison were lawful and that the conditions of the lawyer visitations were satisfied, almost a year after the last lawyer visitation on July 27, 2011. After a long period, Bursa Execution Court rejected the application. Like the application mentioned above, this application was also taken to the Constitutional Court with the number **2015/11221**, but the Constitutional Court has not declared any decision on this application either.

3- **a-** The state of emergency declared on July 20, 2016 indicated its first application in Bursa İmralı Prison with the Bursa 1<sup>st</sup> Execution Court decision dated July 21, 2016. An application has been made to the Constitutional Court on **October 27, 2016**, after the rejection of the objections for a rescission of the decision, which no legal arrangement permits, however no decision has been made to date.

**b-** On August 21, 2017, a criminal complaint was submitted to the Council of Judges and Prosecutors against the chair and the members of the Bursa 1<sup>st</sup> Execution Court and Bursa 2<sup>nd</sup> High Criminal Court, who made the decision mentioned above. Similarly, another complaint was filed to the Council of Judges and Prosecutors as the prosecutor rejected the visitation demands, although no "lawyer restrictions" were effective. However, no progress has been made in this regard.

**c-** On October 19, 2017, an application was submitted to the Bursa Penal Institutions and Prisons Monitoring Committee for revision and reporting of the detention conditions, and for ensuring the legal conformity of the conditions. This application is also up-to-date, but no progress has been made.

4- After July 15, 2016, it was intensely stated by many sources that İmralı Prison and our client Mr. Öcalan were at the target of the coup leaders. This situation led the public to justified concerns about Mr. Öcalan's health and safety. In order to address these concerns, an application demanding temporary injunction was submitted in order to allow for an immediate visitation to our client. The Constitutional Court dismissed the temporary injunction request, but the substantial decision has not yet been made.

5- The decision for the restriction of visitation, correspondence, and communication given by Bursa 1<sup>st</sup> Execution Court on March 2, 2018 which unlawfully disconnected Mr. Öcalan with the outside world was revised, approved, and finalized by the Bursa 1<sup>st</sup> High Criminal Court decision dated April 26, 2018, numbered 2018/647. As explained above, the



application was made to the Constitutional Court on June 06, 2018, no. **2018/15703**, regarding this completely unlawful decision. No progress has been made regarding the application yet.

**6-** After the expiration of the decision dated March 2, 2018, a new restriction decision was made by the Bursa 1<sup>st</sup> Execution Court with the same content as the decision dated September 6, 2018, no. 2018/4526. This decision was also approved and finalized as-is by the Bursa 1<sup>st</sup> High Criminal Court with the decision dated September 17, 2018, no. 2018/1416. With regard to this decision, another application was submitted to the Constitutional Court on the October 19, 2018, no. **2018/30824**. The Constitutional Court has not made a substantive decision, while rejecting the request for measure with the 1<sup>st</sup> section 2<sup>nd</sup> commission decision.

**7-** The lawyers were not included in the file in the legal proceedings carried out in Bursa Execution Court, and in the decisions by the İmralı Prison Disciplinary Board dated September 14, 2018, numbered 201871-2-3-4, which caused Mr. Öcalan and other clients' restriction on family visitations for 3 months, despite the fact that objections including power of attorney were submitted in the first stage. No information or documents were shared with the lawyers and the file was almost "hijacked" to be approved. While the process of Constitutional Application regarding the files continued, a complaint and a criminal complaint were submitted to the Chief Public Prosecutor's Office of Bursa and the Council of Judges and Prosecutors on December 17, 2018, due to unlawful and arbitrary procedures.

**8-** The decision to restrict family visitations continued to be implemented after December 14, 2018, despite the fact that it had expired. An application for rescission was submitted to Bursa 1<sup>st</sup> Execution Court, on the grounds that mentioned decisions could not be enforced due to expiration and could not include the legal representative. Following the rejection of the request by the Execution Court with the decision dated December 21, 2018, no. 2018/6132, the decision was appealed, but no progress has been made regarding the objection.

**9-** A most fundamental right and freedom of Mr. Öcalan, the right to freedom of communication includes the right to respect for his private life and his freedom of expression, as well as his right to speak to his lawyer on telephone. However, the application to the Constitutional Court dated September 19, 2016 and numbered **2016/21369**, due to the fact that Mr. Öcalan was deprived of his right to speak on the phone is still pending.

**10-** The application issued to the Constitutional Court on **February 15, 2016**, in order to remove the decision by Van 1<sup>st</sup> Criminal Court of Peace (formerly 1<sup>st</sup> Court) to ban and recall Mr. Ocalan's legitimate ECHR defenses titled "Civilization," "Capitalist Civilization," and "Sociology of Freedom" which were internationally publicized, is still pending. Against the ban on the fifth book of this defense series, the Constitutional Court decided on June 25, 2014 that Mr. Öcalan's freedom of expression was violated, however the ban was reintroduced by domestic courts, violating the Constitution.

## **B. Pending ECHR Applications:**

The European Court of Human Rights has ruled on violations of two of the most fundamental issues related to the prosecution of Mr Öcalan. And those are decisions regarding Retrial and Aggravated Life Sentence. However, the fact that other applications have been ignored by being dragged out and that decisions are made solely on the answers of the government in cases which include clear violations causes a negative contribution to the intensification of the İmralı Isolation.

In fact, the rejection decision by ECHR in 2018, about the application n 12261/10, on the physical intervention suffered by Mr. Öcalan in his cell in 2008, made an impact on this above-mentioned direction. Such a decision was made, even though it was clear in the case file that an effective investigation process was not carried out. Mr. Öcalan's testimony was not present at any stage of the file, and the claims of representing lawyers were not taken into consideration during the investigation. Two years after the incident, during CPT's visitation Mr. Öcalan's demand for the continuation of the legal proceedings, his calm approach and the fact that he did not specifically mentioned the physical intervention were used as justification for a rejection. Moreover, the fact that İmralı Prison staff were changed because of these and other similar problems in 2009 was ignored. For these reasons, ECHR's decision in this file is controversial and subject to criticism.

The ECHR, a most powerful authority for the implementation and supervision of universal human rights measures in terms of positive law, needs to comply with its mission. In this context, the ECHR files pending for ECHR examination are;

1- The lawyer prohibition, which is in its 7<sup>th</sup> consecutive year, has started on July 27, 2011. After the first 3 months of prohibition of visitation, in October 2011, as domestic applications were ineffective, the application no. **74751/11** was submitted to the ECHR, on behalf of Mr. Öcalan and five other clients staying with him at that time. Despite subsequent notification and the questions about the application, the ECHR has not taken any steps in this file. No lawyer visitations have been performed since July 27, 2011, as lawyer visitation prohibition is in its 8<sup>th</sup> year. The ECHR needs to decide regarding the issue without further delay.

2- The ECHR held that the 1999 proceedings, which were carried out after the delivery of Mr. Öcalan to Turkey with an international plot, violated Mr. Öcalan's right to a fair trial. Article 311 of the Code of Criminal Procedure regulating the right to retrial was revised particularly to prevent Mr. Öcalan from exercising this right. In order to reinstate the rights of hundreds of files which were affected negatively by the 2003 legal regulation, which was made only to prevent Mr. Öcalan's benefit, the law was regulated once more on April 11, 2013. However, in this regulation, an exception was introduced to prevent only Mr. Öcalan's benefit. As such a personally customized legal regulation constitutes a violation the Constitutional rule of equality, and it cannot take precedence over Mr. Öcalan's right to retrial, applications were submitted to domestic courts and the Constitutional Court, and when they remained ineffective, the application no. **34836/16** was submitted to the ECHR and is still pending.

3- The ECHR, in its decision dated March 18, 2014 (**Unified File Application No: 24069/03, 197/04, 6201/06 and 10464/07**) sentenced Turkey, stating that the aggravated life sentence passed against Mr. Öcalan, which regulates that he will stay in prison for life, violated the under Article 3 of the Convention on cruel and unusual punishment and ill-treatment. Currently there are hundreds of convicts in Turkish prisons under the status of aggravated life sentences. After the Court's said decision, the Turkish Government has taken no action so far, although they are required to revise the sentence, and amend it in the light of ECHR decisions. The legal requirement of this decision is the abolition of life imprisonment through legal regulations. In this respect, the lawyers continue their efforts before the AK Committee of Ministers, who are responsible for following the decisions of the ECHR. AK CM has taken the decision by the ECHR about Mr. Öcalan into a process of monitoring. Written applications were submitted to the Committee of Ministers on June 6, 2016, June 5, 2017 and June 25, 2018, and face to face meetings were held to ensure the fulfillment of the ECHR decision. Although such attempts were made in both applications and meetings, and despite the fact that almost 5 years have passed after the violation decision Turkey has failed to fulfill the requirements of the ECHR decision, and the ECHR was demanded to determine this failure.

4- Four separate applications by Mr. Abdullah Öcalan to the ECHR in 2003, 2004, 2006 and 2007 were unified and was settled to a decision as a single file, announced on March 18, 2014. While the ECHR accepted certain articles, which requested a ruling of violation, some other articles were not included in the evaluation. Due to the fact that the appeal to the Grand Chamber had a 3-month definite time-limit, an application was submitted to the Constitutional Court for a temporary injunction to allow a visitation to Mr. Öcalan to discuss the decision and its content under the right to defense. However, when the Constitutional Court rejected the file no. 2014/5264, the file was transferred to the ECHR on September 28, 2018.

## II. CONCLUSION

- The prohibition on lawyer's visitations of the clients in İmralı Prison has been continuing since July 27, 2011 and they were not heard from after September 11 2016, consistently in the years 2017 and 2018. The prohibition of visitation and any sort of communication through any means implemented by court decisions further aggravated the isolation. In this sense, 2018 was a year of increasing distress and concern for the İmralı Isolation System in terms of both the laws that entered into force and the produced court precedent.

- At a time of such a blockage in the domestic law, the ECHR groundlessly rejected the application for physical intervention without considering any of the allegations, but have not made a decision regarding the lawyer visitations which are blocked since July 27, 2011. Such an attitude by the ECHR leads to the further aggravation of İmralı Isolation.

- The CPT, who visited the İmralı Prison on April 28-29, 2019, could only make a statement about their visitation two years after. Although the content of the statement reveals a number of violations, the timing of the disclosure and its disregard for violations that intensify the isolation have contributed to the aggravation of the İmralı Isolation. The fact that CPT did not make another visitation to İmralı Prison, ignoring the legal and political





**ASRIN HUKUK BÜROSU**

**Adres:** Asmalı Mescit Mah. Şehbender Sok.  
**No:**18/3 Beyoğlu/İstanbul  
**Tel:** 0212 292 95 50, **Faks:** 0212 292 95 53  
**Mail:** ahb\_iletisim@yahoo.com.tr

developments experienced since the last meeting, makes the CPT one of those responsible for the lack of news from İmralı for such long periods.

- The Committee of Ministers of the Council of Europe does not determine the situation of Turkey's failure to introduce legal regulations to remove the violations stated by ECHR decisions for long years, therefore encouraging Turkey to not apply the ECHR decisions.

- In the light of these mentioned conditions, the national and international law institutions do not fulfill their own missions and remain silent against the situation developing in İmralı, causing the İmralı Isolation System to intensify.

- In addition to all these situations, there is also a democratic legal struggle against İmralı Isolation System that intensifies with antidemocratic and unlawful implementations. We, Asrin Law Office, invite all sensitive communities to contribute to this democratic legal struggle against the İmralı Isolation System, and invite all national and international legal institutions to act in accordance with their responsibilities within the universal human rights and law.

**ASRIN LAW OFFICE**