

2020 ASSESSMENT REPORT ON RIGHTS VIOLATIONS, DEVELOPMENTS AND THE CURRENT SITUATION IN İMRALI ISLAND PRISON

INTRODUCTION

1. In terms of the clients **Mr. Abdullah Öcalan, Mr. Hamili Yıldırım, Mr. Veysi Aktaş and Mr. Ömer Hayri Konar** who are held in İmralı F Type High Security Closed Penal Institution, 2020 has been a year that saw the abolition of law, in particular the right to meet with a lawyer, the right to meet with family members, the right to communicate by phone, and the right to communicate via letters, faxes and all other means of communication. Rather than a mere violation of one or more rights this situation is one of “Absolute Isolation” which constitutes a form of systematic torture. As İmralı Island Prison has been the place where the “Prohibition of Torture” is violated most intensely and gravely despite the pandemic conditions declared due to Covid-19/Coronavirus, doubts as to whether the physical and moral integrity of the clients is protected here are increasing with each passing day.
2. As is known, Mr. Öcalan had found the opportunity, even if for a limited period of time, to meet with his lawyers and his family in İmralı Prison in 2019 and his views and assessments had reached the broader public. Social pressure, including even hunger strikes, had effected a limited breakdown of the isolation in İmralı. In this process, the court decision, which had been presented as the obstacle preventing Mr. Öcalan from meeting with his family and lawyers, was revoked upon objection and the Minister of Justice himself stated that there was no obstacle to the lawyer-client consultations and family visitations.¹ Also, the CPT visit whose report was published in 2020 took place during this period.
3. During the 5 lawyer-client consultations and 3 family visitations in 2019, Mr. Öcalan once again demonstrated his capacity and influence with respect to resolving especially the Kurdish issue and the matter of democratization in the Middle East. Especially in all those parts of society that have suffered numerous catastrophies over the last five years, this has strengthened the notion and hope of a “Politics of Keeping Alive” as defined by Mr. Öcalan. However, there was no further opportunity for contact in 2019 following the lawyer-client consultation on 7 August 2019 and the family visitation on 11 August 2019.
4. On February 15, 2020, drawing attention to the dimensions of the system of isolation in İmralı, human rights and legal organizations together with politicians called on the authorities to act responsibly and the public to demonstrate awareness in order to prevent the devastation of 2019 from repeating. In 2019, more than

¹ <https://www.evrensel.net/haber/379547/bakan-abdulhamit-gul-ocalanla-gorusme-yasagi-kaldirildi>

three thousand people had gone on hunger strikes in many parts of the world to protest the system of isolation in İmralı and these protests had evolved into death fasts. 9 people had ended their lives in protest. However, no positive progress was made for the remainder of 2020 and when the year drew to a close, another series of hunger strikes started and Ms. Leyla Güven was arrested once again.

5. The International Peace Delegation to İmralı applied to the Ministry of Justice in order to have a meeting with Mr. Öcalan in İmralı Island Prison in 2020, as it had been the case in previous years. The delegation also visited Asrin Law Office and shared its important findings regarding the nature of the İmralı System with the public. The findings made public on February 17, 2020 by the delegation made up of respected thinkers and scientists like Melanie Gingel, Felix John Padel, Julie Ward, Savannah Taj and Ögmundur Jónasson were very important: *“İmralı is a laboratory for both pressure and democracy. The total lack of human rights and the prevailing isolation in İmralı prison affect the conditions of prisoners throughout the country. At the same time, İmralı could possibly become a laboratory for putting human rights into practice all across Turkey. And not only in Turkey, because Abdullah Öcalan's thoughts are particularly important for the resolution of conflicts in the Middle East and the world in general.”*

Family Contacts in 2020

6. Our clients, who were held in İmralı Prison in 2020, were able to contact the outside world twice, including a family visit on 3 March and a phone call on 27 April. These meetings, like the previous ones, took place under extraordinary conditions as a result of public concerns and intense pressure.
7. The family visit on March 3, 2020 took place only after news about a fire that had broken out on İmralı Island on February 27, 2020; whereas the phone conversation on April 27, 2020 marked the first time in the 21 years in İmralı Prison that the right to communicate by phone was granted and this was due to the pandemic. The phone call whose duration was limited to 20 minutes was the last contact with our clients in İmralı Prison. During the phone call, Mr. Öcalan described the unpredictability characterizing İmralı, saying, *“Right now I'm fine, but I don't know what will happen in the future.”*
8. Despite the restrictive conditions, Mr. Öcalan did his best to lay down his sensitivities and predictions regarding social issues in both contacts. The accurateness of his predictions becomes even clearer as we enter 2021.
 - **Mr. Öcalan's made remarkable evaluations at the family meeting on March 3:**
“Right now Turkey is resting on a two-legged table; without a third leg this table will collapse. And this third leg is the Kurds. The table cannot stand on

two legs, but it can if there is a third leg. They won't be standing without the Kurds. And this they know. But they are trying to create Kurds in their own image. But that did not and will not work out."

- **In the phone call on April 27, Mr. Öcalan shared the following evaluations:**
"They are trying to have Kurds crush Kurds. There is nothing to gain from this policy for Kurds and no benefit for the population of Turkey either. No political structure should be under the illusion that fomenting war between the Kurds will make them stronger and that they will be awarded a state in return. It is the unity among the peoples and within a given people that is right and will pay off.

My message applies to everyone. Today, both the Kurds and the Middle East have no need for a new war or for more bloodshed. What is needed is peace and unity. My most important message is Unity and Peace in the true sense."

CPT Report

9. On 5 August 2020, the European Committee for the Prevention of Torture (CPT) published its report on its visit to İmralı Prison that it conducted in the scope of its visits to Turkish prisons between 6-17 May 2019. The CPT made it clear that the system and isolation in İmralı Prison continued at the time of the visit and that this was unacceptable. The relevant sections of the CPT report are quoted below;

"As a result, all prisoners were being held in solitary confinement for most of the time (i.e.159 hours out of 168 hours per week, including 24 hours per day at weekends). In the CPT's view, such a state of affairs is not acceptable. As indicated in the report on the 2016 visit, there can be no legitimate security considerations to justify the imposition of the above-mentioned restrictions regarding prisoners' association during outdoor exercise and other organised activities. The Committee calls upon the Turkish authorities to take steps without further delay to ensure that all prisoners held at İmralı Prison are allowed to associate together during daily outdoor exercise, as well as during all other out-of-cell activities.

The CPT once again calls upon the Turkish authorities to carry out a complete overhaul of the detention regime applied to prisoners sentenced to aggravated life imprisonment in Turkish prisons, in the light of the precepts set out in paragraphs 82 to 84 of the report on the 2013 visit. To this end, the relevant legislation should be amended accordingly.

The CPT urges the Turkish authorities to take the necessary steps to ensure that all prisoners at İmralı Prison are effectively able, if they so wish, to receive visits from their relatives and lawyers. To this end, an end should be put to the practice of imposing a ban on family visits for 'disciplinary' reasons. Further, the Committee requests the Turkish authorities to provide – on a monthly basis– an account of the visits which all prisoners held at İmralı Prison have received from their family members and lawyers."

10. Upon this report of the CPT, on 24.10.2020, the Permanent Committee of the Parliamentary Assembly of the Council of Europe approved the report of the Monitoring Committee for the lifting of the isolation in İmralı.

Turkey's Response to the Report of the CPT: New Bans

11. The last time lawyers had been prevented from İmralı Prison based on an official ban was in the application dated 19 April 2019. The justification presented in this case was the restriction order issued by the Bursa 1. Execution Judgeship on 13.03.2019. This was the last decision regarding the restriction of lawyer visits to İmralı Prison. Except for the five lawyer meetings that took place after April 19, 2019, no response was given to the lawyers' applications for meetings.
12. In 2019, requests for visits by families and guardians were periodically rejected in copy-paste style responses based on variously dated disciplinary decisions, numbered 2019/1-2-3-4-5-6-7 respectively. The first three applications for family and guardian visits in 2020 were also denied based on the last disciplinary decision of 2019. There was no response to the applications for family and guardian visits after the application dated 20.01.2020, nor was any decision issued on this matter.
13. After the report of the CPT mentioned above, three separate orders concerning the right to hold a lawyer-client consultation, right to receive a visitation from a family member or guardian, and the right to communicate by telephone were suddenly issued in September 2020. On September 7, a ban restricting the right to communication by phone was issued and a ban on lawyer-client consultations on September 23, as well as a ban on family and guardian visitations was issued on September 30 were issued. Thus, the CPT report was responded to with bans, further aggravating the condition of isolation.

General Applications for Prison Visits

14. Until 23 September 2020, none of the applications for lawyer-client consultations filed with İmralı Prison in 2020 were answered. After September 25, applications for lawyer visits were rejected based on the decision issued by the Bursa 2. Execution Judgeship on 23.09.2020, which included a six-month restriction. This decision was created in a copy-paste manner, simply changing date and number of the above-mentioned restrictions issued by the Bursa Enforcement Judge in 2019 and earlier.
15. As far as applications for family and guardian visitations are concerned, the first three applications until 20.01.2020 were rejected based on the decision of the İmralı Prison Disciplinary Board dated 21.10.2019. Starting from 25.01.2020, no response was given to any of the applications until 04.12.2020. The application filed on 04.12.2020 was rejected based on the decision of the İmralı Prison Disciplinary Board

dated 30.09.2020. No information has yet been provided to the lawyers regarding the content of this decision. Moreover, this information was not provided despite the fact that in this period applications for family and guardian visits had been filed regularly from 30.09.2020 to 04.12.2020 and two separate lawsuits had been filed due to the baseless restrictions. Information regarding the decision of the disciplinary board was shared only after the mandatory period for the continuation of the legal process had expired. Thus, the file was clearly hidden from the lawyers and the clients were prevented from using an effective legal remedy.

- 16. None of the 96 applications for lawyer-client consultations submitted in 2020 were granted. 68 of these applications remained unanswered; 28 applications were not granted on the grounds of court decisions. Out of 50 applications for family and guardian visits, 40 applications were left unanswered and 9 applications were rejected based on the decision of the disciplinary board. One application for a family visit was granted.**

Inability to Exercise the Right to Communication and Correspondence

17. In the face of a global pandemic, contact with our clients in İmralı Prison has become even more important. As lawyers, we extensively filed applications to be able to communicate with our clients face-to-face as well as by phone. In this regard, we also filed applications with the Constitutional Court and the ECHR requesting the courts to take interim measures. The requests for interim measures were rejected, but the application regarding the merits is still ongoing.
18. On 27 April 2020, the right to telephone was granted for the first time in İmralı Island Prison. Our clients' phone conversations with their families, which were limited to 20 minutes in duration, were the first ever to take place in the history of İmralı Prison. However, no other opportunity for communication was granted after that date.
19. Within the scope of the right to communicate by phone 65 and 39 applications were submitted in 2020 on behalf of the lawyers and the families respectively. Of the applications made on behalf of lawyers 37 were not answered and 28 were rejected based on court decisions. Of the applications made on behalf of the families 34 were not answered and 4 were rejected based on court decisions. On April 27, the single phone call mentioned above took place.
20. In circumstances where opportunities for communication are restricted to such an extent, great efforts were made in 2020 to communicate by letter, but serious problems occurred in this respect too. There is no information as to the fate of the total of 30 letters sent regularly by lawyers on various dates. In turn, given the policy of "absolute noninformation," it is impossible for any letters to make it out of İmralı Prison.

Legal Processes and Proceedings

21. İmralı Prison is literally a legal black hole. New practices are developed periodically, but none of them are actually subject to legal review. For instance, the reasons like “ferryboat breakdown” or “adverse weather conditions” that were arbitrarily fabricated to prevent visits and consultations from taking place during one period, have been replaced by disciplinary board and court decisions created in a copy-paste manner.
22. While the contents of the files had generally been concealed from lawyers in local mechanisms in the past, basic information on the files such as their decision numbers and notification dates started to be hidden from the lawyers more recently. While it had previously been anticipated that effective applications could not be made without knowledge of the contents of the file, the aim at the current stage is to prevent lawyers from preparing subject-specific applications altogether. A legal isolation is put into effect in order to ensure the continuity of the absolute isolation which is enforced to the highest degree in physical terms.
23. Not only at the level of local authorities but also at the level of higher judicial and control mechanisms processes are retarded and the illegal system is left exempt from control. This brings into view that the İmralı system of isolation as an extra-legal zone has come to life within an international concept. The ECHR, in the Grand Chamber decision dated May 12, 2005, which determined that several rights had been violated, decided that Mr. Öcalan should be tried again with domestic legislation due to its determination that he had been deprived of his right to defense and not been tried in an independent and impartial court. However, a procedure of “opening a file” that did not exist in the national legislation was run and thus the requirements of the ECHR decision were avoided and no retrial was conducted. Constituting a precedent, this practice was accepted by both the ECHR who rendered the decision and the Committee of Ministers who was responsible for its implementation. The consensus on illegality thus achieved has formed the basis for recent attempts to have ECHR decisions annulled in many cases. Likewise, there was no development regarding the requirements arising from the ECHR’s determination dated 18 March 2014, that, in accordance with its case law, “being held in prison until death without any prospects of being released” violated human rights. This has led to the emergence of thousands of new practices in the Turkish Penal System.
24. The Constitutional Court’s identified a violation of the freedom of thought and expression in its examination on the merits of the application filed regarding the prohibition of the book written by Mr. Öcalan. Despite this decision of the Constitutional Court on 25 June 2014, local authorities have once again resorted to issuing bans. These practices, which render void the principle that Constitutional Court decisions be binding on local authorities, have been accompanied by many similar practices at the current stage. These examples show that these practices

against the person of Mr. Öcalan which are met with silence are not limited to İmralı Prison but that they have become detrimental to the Turkish legal system in its entirety over time.

25. In addition, the fact that nothing is undertaken to remedy violations determined by the court and that the process regarding other files is being retarded further encourages authorities to act unlawfully. The fact that the application made in 2011 regarding the isolation has not been concluded by the ECHR is an obvious example of this. Despite the reports of the CPT outlined above, the policy of not allowing lawyer and the family visits has been arbitrarily continued with for 21 years.
- 26. In 2020, apart from the ongoing legal processes in local courts, 19 applications were submitted to the Constitutional Court and 1 application to the ECHR regarding our clients in İmralı Prison. As of the end of 2020, the number of ongoing files regarding the practices in İmralı Prison was 39 at the Constitutional Court and 7 at the ECHR. The request before the Committee of Ministers of the Council of Europe filed in 2014 for the relevant proceedings to be run due to the nonfulfillment of the requirements arising from the ECHR's decision that the aggravated execution regime constituted torture is still pending.**

CONCLUSION

27. With its practices that lack any precedent, İmralı Island Prison continues to maintain its unique status. The İmralı system of isolation and torture is shaped not only by the Turkish legal system but also by the illegal practices of the international legal system. The fact that Turkey is ignoring the decisions and reports of the ECHR and CPT as the legal mechanisms of the Council of Europe to which Turkey is a party based on different treaties, is a matter of responsibility for the Council of Europe too. Installing and developing a system of isolation and torture to such an extent is only possible with the approval or connivance of international institutions.
28. The İmralı System undoubtedly reflects the choice to pursue policies towards the solution of the Kurdish Question or not. Because, as one of the most burning and fundamental problems in the Middle East, the solution of the Kurdish Question on a democratic basis is disturbing all powers that currently benefit from war-based policies. Against the tensions created by the nation-state that has led peoples to crush each other for centuries, Mr. Öcalan has developed solution of the democratic nation and turned it into a project of the Kurdish people's coexistence with their neighboring peoples in a common geographic region.
29. For this reason, the İmralı system of isolation and torture connotes the isolation of the possibility of a democratic solution embodied in the person of Mr. Öcalan. For it cannot be denied that despite the conditions of absolute isolation, Mr. Öcalan is

persistently trying to raise the possibility of a solution at every opportunity. Every contact with him has repeatedly confirmed this.

30. An important development in 2020 was that October 10 was adopted as global "Freedom for Öcalan Day" by the International Freedom for Öcalan Initiative. All over the world, Kurds and their friends have shared the demand for freedom for Mr. Öcalan.
31. Undoubtedly, in order to overcome the İmralı System of Isolation, it is first of all required that the universal fundamental rights of every human being be recognized, family and lawyer visits be granted, and those anti-democratic practices directly related to isolation be ended. However, this system, which constantly updates and produces itself, can only be overcome in a true sense if Mr. Öcalan and the Kurdish people who are united in his person, like other peoples and human beings, enjoy equality and freedom in legal terms. As Asrin Law Office, we call on everyone to contribute to the struggle for democratic law and justice.

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