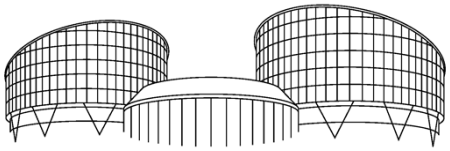

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ÖCALAN v. TURKEY (No. 2)

(Applications nos. 24069/03, 197/04, 6201/06 and 10464/07)

JUDGMENT
(Extracts)

STRASBOURG

18 March 2014

This judgment is final. It may be subject to editorial revision.

In the case of Öcalan v. Turkey (no. 2),

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
Işıl Karakaş,
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 11 February 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in four applications (nos. 24069/03, 197/04, 6201/06 and 10464/07) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Abdullah Öcalan ("the applicant"), on 1 August 2003.

2. The applicant was represented by Mr T. Otty and Mr M. Muller, lawyers practising in London (applications nos. 24069/03 and 197/04); Ms A. Tuğluk, Mr D. Erbaş, Mr I. Dündar, Mr H. Kaplan, Ms M. Tepe, Ms F. Köstak, Mr F. Aydınkaya, Mr Ö. Güneş, Mr I. Bilmez, Mr B. Kaya, Mr Ş. Tur and Mr E. Emekçi, lawyers practising in Istanbul; Mr K. Bilgiç and Ms H. Korkut, lawyers practising in İzmir; Mr M. Şakar and Ms R. Yalçındağ, lawyers practising in Diyarbakır; Mr N. Bulgan, a lawyer practising in Gaziantep; Mr A. Oruç, a lawyer practising in Denizli (applications nos. 24069/03, 197/04, 6201/06 and 10464/07), and Mr R.B. Ahues, a lawyer practising in Hanover. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant complained in general of his conditions of detention in İmralı Prison (at Mudanya, Bursa, Turkey), the restrictions on his communication with members of his family, his life sentence without the possibility of parole and an attempted poisoning.

4. On 3 April 2007 the applications were joined and communicated to the Government. It was also decided that the Chamber would determine the merits of the case at the same time as its admissibility (Article 29 § 1 of the Convention).

The exchange of observations between the parties was completed on 8 March 2012.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, a Turkish national, was born in 1949 and is currently being held in İmralı Prison.

6. The facts of the case up to 12 May 2005 were presented by the Court in the *Öcalan v. Turkey* judgment ([GC], no. 46221/99, ECHR 2005-IV). They may be summarised as follows.

7. On 15 February 1999 the applicant was arrested by members of the Turkish security forces in an aircraft in the international area of Nairobi airport. The applicant was returned to Turkey from Kenya and taken into custody at İmralı Prison on 16 February 1999. The inmates at this prison had meanwhile been transferred to other prisons.

8. On 23 February 1999 the applicant appeared before a judge of the Ankara National Security Court, who ordered that he should be detained pending trial.

A. The trial

9. By a judgment of 29 June 1999, the Ankara National Security Court found the applicant guilty of carrying out acts designed to bring about the secession of part of Turkey's territory and of training and leading a gang of armed terrorists for that purpose, and sentenced him to death under Article 125 of the Criminal Code. It found that the applicant was the founder and principal leader of an illegal organisation, namely the PKK (the Workers' Party of Kurdistan – hereafter "the PKK"). The National Security Court found that it had been established that, following decisions taken by the applicant and on his orders and instructions, the PKK had carried out several armed attacks, bomb attacks, acts of sabotage and armed robberies, and that in the course of those acts of violence thousands of civilians, soldiers, police officers, village guards and public servants had been killed. The court reiterated that the applicant had acknowledged that the Turkish Government's estimate of the number of those killed (almost 30,000) or wounded as a result of the PKK's activities was fairly accurate, that the actual number might even be higher, and that he had ordered the attacks as part of the armed struggle being waged by the PKK. The court did not accept that there were mitigating circumstances allowing the death penalty to be commuted to life imprisonment, having regard, among other things, to the very large number and the seriousness of the acts of violence and the major, pressing threat to the country that those acts posed.

10. By a judgment adopted on 22 November 1999 and delivered on 25 November 1999, the Court of Cassation upheld the judgment of 29 June 1999 in its entirety.

11. In October 2001 Article 38 of the Constitution was amended so that the death penalty could no longer be ordered or implemented other than in time of war or of imminent threat of war, or for acts of terrorism.

By Law no. 4771, published on 9 August 2002, the Turkish Grand National Assembly resolved, *inter alia*, to abolish the death penalty in peacetime (that is to say except in time of war or of imminent threat of war) and to make the necessary amendments to the relevant legislation, including the Criminal Code. As a result of the amendments, a prisoner whose death sentence for an act of terrorism has been commuted to life imprisonment must spend the rest of his life in prison.

12. By a judgment of 3 October 2002, the Ankara National Security Court commuted the applicant's death sentence to life imprisonment.

13. On 20 February 2006 Turkey ratified Protocol No. 13 concerning the abolition of the death penalty in all circumstances.

B. Conditions of detention after 12 May 2005

1. Conditions of detention in İmralı Prison

14. The applicant's conditions of detention in İmralı Prison before 12 May 2005 are described in the judgment of the same date (see *Öcalan*, cited above, §§ 192-196).

15. Furthermore, the applicant was the sole inmate of İmralı Prison until 17 November 2009, when five further individuals were transferred to it; all the prisoners, including the applicant, were then housed in a new block which had just been built.

16. In May 2007 and January 2010, that is to say after the Court's judgment of 12 May 2005, delegations from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") visited İmralı Prison.

(a) Before 17 November 2009

17. Before 17 November 2009 the cell which the applicant occupied alone measured approximately 13 sq. m, and was equipped with a bed, a table, a chair and a shelf. The cell was air-conditioned and had a partially partitioned sanitary annex. There was a window overlooking an enclosed yard and the cell had adequate access to natural light and adequate artificial lighting. In February 2004 the walls had been reinforced with chipboard panels to protect them against the damp.

18. The time granted to the applicant to leave his cell and use the exercise yard (measuring approximately 45 sq. m), which is walled in and covered with mesh, was limited to one hour daily (divided into two 30-minute periods, one in the morning and the other in the afternoon).

19. The applicant was not in sensory isolation or solitary confinement. As he was the only inmate of the prison, his only contacts were with the members of staff working there, who were only allowed to talk to him about subjects falling within the scope of their duties and relating to everyday life in the prison.

20. The applicant had access to books and a radio which could only receive State broadcasts. He was not allowed to have a television set in his cell on the grounds that he was a dangerous prisoner and a member of an illegal organisation, and was prone to commit recurrent disciplinary offences. Nor was he given access to a telephone, for the same reasons.

21. The applicant, who had restricted access to daily and weekly newspapers, was allowed a maximum of three papers in his cell at any one time. The newspapers were often several days old. In fact, he received them once a week, from his family or his lawyers. In the absence of visits from family members and lawyers (owing to the inaccessibility of the island), the applicant often spent long periods without access to recent newspapers. Those papers which he did receive had always been extensively censored.

22. The applicant was allowed to correspond with the outside world under the supervision of the prison authorities. The mail which he received was verified and censored. Correspondence with the outside was occasionally interrupted.

23. The applicant remained in the same cell from the date of his transfer to İmralı Prison – after his arrest on 16 February 1999 – until 17 November 2009, that is to say for almost ten years nine months.

(b) Since 17 November 2009

24. In order to comply with the requests put forward by the CPT and put an end to the applicant's relative social isolation, the governmental authorities built a number of new blocks inside the grounds of İmralı Prison. On 17 November 2009 the applicant and five other inmates transferred from other prisons were moved to these new facilities.

25. Since that date the applicant has been on his own in a cell with an area of 9.8 sq. m (living space), with a further 2 sq. m of sanitary facilities, comprising a bed, a small table, two chairs, a metal cupboard and a kitchenette with a washbasin. The building containing the cells is properly damp-proofed. According to the CPT, although the applicant's cell has a 1 m x 0.5 m window and a partly glazed door, both opening on to an enclosed yard, it has insufficient direct sunlight because of the 6-m-high wall surrounding the yard. The CPT's proposal to lower the wall has not yet been accepted by the Government, whose experts have certified that the cell receives enough natural light.

26. The prison is equipped with a sports room with a ping-pong table and two other rooms with chairs and tables, all three rooms enjoying plentiful natural daylight. Every inmate, including the applicant, has two

hours of outdoors exercise every day alone in the exercise yard reserved for each cell. Moreover, all the prisoners can spend one hour per week alone in a recreation room (where no specific activities are on offer) and two hours per month alone in the prison library. Furthermore, every prisoner takes part in collective activities, including one hour's conversation per week with the other prisoners.

27. Following its visit in January 2010 the CPT observed that the prison regime applied to the applicant was only a very modest step in the right direction, particularly as compared to the regime applied in the other F-type prisons for the same category of convicted prisoners, who could engage in outdoor activities all day long, with non-supervised collective activities with the other prisoners for between three and seven days a week.

28. In the light of these observations, the authorities responsible for İmralı Prison undertook to relax the regime in question, so that the İmralı inmates, including the applicant, can now engage alone in out-of-cell activities for four hours per day, receive newspapers twice (instead of once) a week and spend three hours (instead of one) per week together to talk to each other. All the İmralı inmates can engage, for one hour per week, in any of the following collective activities: painting and handicraft activities, table tennis, chess, volleyball and basketball. According to the prison registers, the applicant in fact plays volleyball and basketball but does not take part in the other activities. The prison authorities also informed the CPT that they were considering providing inmates with two hours per week of additional collective activities (painting/handicraft, board games and sport). The applicant therefore apparently spends a great deal of time outside his cell, that is to say, depending on his choice of collective activity, up to a maximum of 38 hours per week, including a maximum of ten hours in the company of the other prisoners.

29. Since 20 March 2010, in the wake of new technical arrangements, the applicant, like the other İmralı inmates, has been allowed ten minutes' telephone calls to the outside every fortnight.

30. In its report of 9 July 2010 the CPT recommended that the Government should ensure that the applicant could accompany the other inmates for outdoor activities, and that he and the other prisoners could spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful activities of a varied nature. The CPT also recommended allowing the applicant to have a television set in his cell, like all other persons held in high-security prisons. The prison authorities did not act on these latter recommendations on the grounds that the applicant still held dangerous prisoner status and failed to comply with the prison rules, particularly during visits by his lawyers. On 12 January 2012 the applicant was supplied with a television set.

2. Restrictions to visits by the applicant's lawyers and relatives

(a) Visit frequency

31. The applicant has received many visits from his lawyers and relatives, but not as many as he and his visitors would have liked, mainly because of "poor weather conditions", "maintenance work on the ferry boats between the island and the mainland" and "the inability of the boats to cope with prevailing weather conditions".

32. In fact, the old ferry boat *İmralı 9* was still in service but could only sail when there was little wind. The larger ferry boat, *Tuzla*, which the Government had promised when the previous *Öcalan* case was pending before the Grand Chamber of the Court, began operating in 2006. The *Tuzla*, being better suited than the *İmralı 9* to difficult weather conditions, provides more frequent crossings between İmralı Island and the mainland. It sometimes suffers technical breakdowns, entailing repairs which sometimes take several weeks.

33. As regards visits, between March and September 2006, for example, twenty-one out of thirty-one requests for visits were refused. These refusals continued into October 2006, with five out of six requests being refused, and November 2006, with six out of ten requests refused. After a brief improvement in December 2006 (one out of six requests refused), January 2007 (two out of six requests refused) and February 2007 (all four requests granted), visit frequency once again dropped off in March 2007 (six out of eight requests refused) and April 2007 (four out of five requests refused), picking up again in May 2007 (one out of five requests refused) and June 2007 (one out of four requests refused). The number of family visits totalled 14 in 2005, 13 in 2006 and seven in 2007. In fact, between 16 February 1999 and September 2007, the applicant received 126 visits from his brothers and sisters and 675 from his lawyers or advisers.

34. For the remainder of 2007 and in 2008, 2009 and, broadly speaking, 2010, the frequency of visits by lawyers and members of the applicant's family regularly increased. In 2009, for example, forty-two visits out of the fifty-two requested took place on the scheduled date or the day after (because of unfavourable weather conditions).

35. In 2011 and 2012 the ratio of refusals to requests increased significantly. In 2011, for example, the applicant only received two family visits out of the six requested. Again in 2011, he only received twenty-three of the sixty-seven requested visits by his lawyers. Three lawyers' visits took place in January, two in February, five in March, three in April, four in May, four in June and two in July 2011. Between August and December 2011 the applicant received no visits apart from one family visit on 12 October 2011, with thirty-three refusals. The prison authorities explained their refusals by poor weather conditions and ferry breakdowns.

In 2012 the applicant received a few visits from his brother, and none from his lawyers.

(b) Visits by lawyers

36. As a general rule, persons in prison in Turkey can talk to their lawyers on working days, during working hours, without any restrictions as regards frequency over any given period. Since İmralı Island is only accessible by means of the shuttle boat provided by the İmralı Prison administration, the applicant's lawyers' visits, in practice, always took place on a Wednesday, the day of the crossing.

i. Procedure during visits by the applicant's lawyers

37. As a general rule, prisoners can communicate with their lawyers completely confidentially, without supervision. On 1 June 2005, however, Law no. 5275 on the enforcement of sentences and preventive measures came into force, replacing the previous legislation on this matter. Under section 59 of the new Law, if it emerges from documents and other evidence that visits by lawyers to a person convicted of organised crime are serving as a means of communication within the criminal organisation in question, the post-sentencing judge may, at the request of the prosecution, impose the following measures: presence of an official when the convicted prisoner is talking to his lawyers, verification of documents exchanged between the prisoner and his lawyers during such visits, and/or confiscation of all or some of these documents by the judge.

38. On 1 June 2005 the applicant was visited by his lawyers. Just before the interview the prison authorities communicated to the applicant and his lawyers a decision by the Bursa post-sentencing judge applying section 59 of Law no. 5275 to that visit. An officer was therefore present during the interview, the conversation between the applicant and his lawyers was tape-recorded and the documents supplied by the lawyers were submitted to the judge for examination.

39. In order to protest against the new procedure, the applicant interrupted the interview after a quarter of an hour and asked his lawyers to pay no further visits to him until the said procedure had been revoked. He informed the prison authorities that the procedure infringed the confidentiality of the interview between the lawyers and their client and "rendered the visit and the interview pointless in terms of preparing his defence".

40. During subsequent visits an official was in attendance during interviews. Moreover, the conversation between the applicant and his lawyers was again tape-recorded and submitted to the post-sentencing judge for examination.

41. The applicant's lawyers also lodged an appeal with the Bursa Assize Court against the Bursa post-sentencing judge's decision ordering

attendance by an officer during interviews and the recording of the conversations. By decisions of 27 April and 9 June 2006, the Assize Court dismissed the appeal on the grounds that the impugned measures were geared to preventing the transmission of orders within a terrorist organisation, that they did not affect the applicant's defence rights and that in any case the transcription of the conversations showed that they had not concerned the applicant's defence in any set of proceedings but the internal functioning of the PKK and the strategy to be adopted by this illegal organisation.

42. During the lawyers' visit on 29 March 2006, one of the officers present in the room in which the interview was taking place interrupted the conversation on the ground that it was not confined to preparing the applicant's defence before a judicial authority. The applicant's lawyers filed a complaint against the officer in question for abuse of office. On 21 April 2006 the Bursa public prosecutor's office issued a decision not to prosecute.

ii. Content of the exchanges between the applicant and his lawyers

43. It appears from the records of the lawyers' visits that the conversations very often began with a statement by the lawyers on recent developments concerning the PKK. The applicant consulted his lawyers on changes of persons at the different structural levels of the organisation, the various activities and meetings organised by the PKK bodies (at regional and national levels, and also abroad), the political line adopted by the party leaders, competition among the leaders and losses sustained by armed militants in combating the security forces. The applicant, who presented himself as "the leader of the Kurdish people", commentated all the information provided by his lawyers and mandated them to transmit his ideas and instructions with a view to reshaping the PKK's policies in Turkey (he broadly advocated recognising the rights of the Kurdish minority in a completely democratic Turkey) or in other countries. Moreover, he approved or rejected executive appointments to the various PKK bodies and advised on the party's internal organisation. He also recommended that the PKK lay down its weapons when the Government had ended hostilities and the PKK's demands had been met.

44. At the request of the Bursa public prosecutor, the Bursa post-sentencing judge several times refused to hand over copies of the records to the applicant and his lawyers on the grounds that they contained direct or indirect instructions by the applicant to the PKK, which used them to reshape its strategy and tactics.

45. Since May 2005 the applicant had remained actively involved in the political debate in Turkey on the PKK armed separatist movement, which identified him as its main representative, and his instructions as transmitted through his lawyers had been closely monitored by the general public, prompting a variety of reactions, some of which had been very extreme. A

section of the Turkish population considered him as the most dangerous terrorist in the country, who was still active even in prison. His supporters saw him as their leader and the ultimate head of the separatist movement.

The applicant also stated that he had taken part in negotiations with certain State officials with an eye to resolving the problems posed by the armed separatist movement, but that most of his calls for the discontinuation of the armed conflict had been heard neither by the Government nor by his armed movement.

iii. Examples of disciplinary sanctions imposed on the applicant by reason of his conversations with his lawyers

46. The applicant was placed in solitary confinement on the ground that he had transmitted instructions to the organisation of which he was the leader during his lawyers' visits on the following dates: 30 November 2005, 12 July and 27 September 2006, 4 April, 4 July and 7 November 2007, 9 April and 14 May 2008, and 2 January and 4 November 2009.

47. Therefore, according to the tape recording of the conversation of 30 November 2005 between the applicant and his lawyers, the applicant told his legal representatives how he considered that PKK members could invite citizens of Kurdish origin to demonstrate in order to demand the right to education in the Kurdish language.

48. On 12 December 2005 the İmralı Prison disciplinary board, considering that the applicant's words corresponded to "training and propaganda activities within a criminal organisation", sentenced the applicant to 20 days' solitary confinement. Pursuant to this sanction, the prison administration removed all the applicant's books and newspapers for twenty days.

49. The applicant's appeal against this disciplinary measure was dismissed on 22 December 2005 by the Bursa post-sentencing judge on the grounds that the applicant had incited women and children to organise illegal demonstrations, thus carrying out what might be described as training and propaganda activities within a criminal organisation.

50. On 7 February 2006 the Bursa Assize Court dismissed the appeal lodged by the applicant's lawyers against the decision of 22 December 2005. The Assize Court considered that the impugned decision was in conformity with the law.

51. The applicant was subjected to a further sanction of 20 days' solitary confinement on the ground of a conversation with his lawyers which had taken place on 12 July 2006. His appeals against this decision having been dismissed, he served this sentence from 18 August to 7 September 2006. The applicant's lawyers were not apprised of this sanction until 23 August 2006, when a request for a visit to the applicant was rejected.

(c) Visits by members of the applicant's family

52. Visits by relatives of the applicant (in practice, his brothers and sisters) are limited to one hour every fortnight. These visits originally took place in a visiting room comprising a barrier to separate the prisoner from his visitors, as the visiting areas where the prisoner and his visitors could sit together at a table were reserved for relatives of the first degree under Rule 14 of the Rules on visits to prisoners and detainees. On 2 December 2009 the State Council annulled this provision. Without waiting for this decision to become final, the İmralı Prison Governing Board granted the applicant the right to see his brothers and sisters unseparated by any barrier. On 26 July 2010, therefore, the applicant was able to meet his brother "around a table" for the first time.

53. Where a visit is cancelled owing to weather conditions, the authorities can organise another visit a few days later, at the family's request. In practice, Wednesday visits which are cancelled are not replaced because the visitors have never requested such replacement.

54. Furthermore, visits by family members have not been as frequent as the applicant and his relatives would have wished because of the inadequacy of the available means of transport under unfavourable weather conditions. Almost half of all the visits requested have been rejected owing to shuttle boat breakdowns or poor weather conditions.

3. Proceedings brought against some of the applicant's lawyers

(a) Ban on some lawyers representing the applicant

55. Article 151/3-4 of the new version of the Code of Criminal Procedure, which came into force on 1 June 2005, provides that lawyers who have been prosecuted for crimes linked to terrorism may be banned from representing persons convicted of terrorist activities. This provision is intended to prevent leaders of terrorist organisations who have been convicted from continuing to lead their organisations from their place of incarceration through the intermediary of their lawyers.

56. By a decision of 6 June 2005, the Istanbul prosecutor's office invited the Istanbul Assize Court to apply this measure to some of the applicant's lawyers.

57. By a decision of 7 June 2005, the 9th Assize Court deprived twelve lawyers of their status as counsel to the applicant for a period of one year.

58. On 20 June 2005, the 10th Assize Court of Istanbul dismissed the applicant's appeal against that decision.

(b) Prosecution of some of the applicant's lawyers for acting as messengers between him and his former armed organisation

59. On 23 November 2011, on instructions from the Istanbul public prosecutor's office, the law enforcement agencies arrested and took into

custody 36 lawyers representing the applicant in 16 Turkish departments (including six lawyers representing the applicant before the Court), searched their offices and seized all the documents relating to the applicant. The prosecution suspected the lawyers in question of having acted as messengers between the applicant and the other PKK leaders.

4. Alleged poisoning of the applicant

60. By a letter of 7 March 2007 the applicant's representatives informed the Court that they had asked a Strasbourg medical laboratory to analyse six hairs which they considered to be from the applicant and that the analyses carried out on 5 February 2007 demonstrated the presence of abnormally high doses of chromium and strontium.

61. However, analyses of samples taken directly from the applicant at the prison failed to disclose any trace of toxic elements or elements endangering health.

...

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON GROUNDS OF CONDITIONS OF DETENTION

62. The applicant submitted that his conditions of detention on İmralı Island were inhuman and exceeded the severity threshold deriving from Article 3 of the Convention. He also alleged a violation of Articles 5, 6, 8, 13 and 14 of the Convention, on the grounds of the social isolation imposed on him during his detention in İmralı Prison. The Court considers these complaints primarily under Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

...

B. Merits

1. The parties' submissions

(a) The applicant

81. The applicant pointed out that he had been the only inmate of İmralı Prison for ten years ten months, up until 17 November 2009, when five other prisoners had been transferred. Following this transfer his situation

had not greatly improved: the time granted to prisoners for collective activities was extremely limited, especially as compared with the regime normally applied in the other high-security prisons. The applicant added that his social isolation had been further exacerbated by several prohibitions which were not applied to other convicted persons in Turkey, namely deprivation of a television set and any kind of telephone communication, strict censorship of his correspondence with the outside, and restrictions on access to outdoor exercise. Furthermore, the failure to improve the marine transport conditions was a physical obstacle to visits by his lawyers and family members, and to his access to daily newspapers and books.

82. The applicant also submitted that his state of health was rapidly deteriorating (breathing problems, permanent difficulties in the upper respiratory tracts, unidentified skin allergy, and so on), and asserted that he felt humiliated and degraded by all the said conditions of detention.

83. The applicant took the view that the Government had rejected most of the proposals presented by the CPT and the Human Rights Commission of the Turkish National Assembly geared to reducing the negative effects of his social isolation.

(b) The Government

84. The Government contested that argument. They first of all observed that the applicant had made no allegation of ill-treatment by prison staff.

85. The Government referred to the conclusions presented by the CPT following its January 2010 visit to the effect that the material conditions in the cell and the building in which the applicant was detained were in conformity with the highest international standards in matters of detention. They explained that following the comments from the CPT on the quantity of daylight entering the applicant's cell, a team made up of architects and an ophthalmologist had visited the premises and noted that the cell had sufficient exposure to daylight, making it possible to read and work without any problem during the daytime, without the use of artificial light.

86. Moreover, the Government submitted that when the applicant was not subject to a disciplinary sanction, he had thirty-six and a half hours per week of activities outside his cell, including eight and a half in the company of the other prisoners. When he was subject to a disciplinary sanction – consisting of confinement to his cell – the applicant was allowed two hours per day of out-of-cell activities.

87. The Government also observed that the system of healthcare for the applicant had been completely reorganised in accordance with the CPT's recommendations.

88. The Government asserted that the refusal to allow the applicant to have a television set in his cell or to make telephone calls was due to the recurrent disciplinary offences which he had committed and the resultant sanctions, as well as the danger which he posed; they referred in this regard

to section 4 of Law no. 5275 on the enforcement of sentences and preventive measures.

89. The Government drew attention to the fact that neither the applicant nor his lawyers had appealed against the disciplinary sanctions imposed. They submitted that the national authorities had welcomed the CPT's suggestions and had taken all the necessary steps to apply the optimum international standards of detention to the applicant. They quoted the examples of the transfer of five more prisoners to İmralı, the possibility of engaging in collective activities, the introduction of "around the table" visits, the replacement of visits cancelled owing to poor weather conditions, and the twice-weekly deliveries of newspapers arriving every day.

90. The Government affirmed that the law enabled prison authorities to prevent prisoners from sending or receiving mail which jeopardised law and order and prison security or which facilitated communication with other members of a terrorist organisation.

91. They reiterated in this connection that the applicant had been sentenced to life imprisonment for running an organisation whose attacks had killed and maimed thousands of people and jeopardised the peace and safety of the population. Following the applicant's incarceration, the PKK had continued its armed attacks and terrorist activities. There was reliable evidence that the applicant had been transmitting instructions to members of his organisation, who in fact still considered him as their leader, through the intermediary of the lawyers who visited him every week for the needs of his applications to the Court. The Government pointed out that because of such acts the applicant had been the subject of disciplinary proceedings, leading to disciplinary sanctions preventing him from having a television set and using the telephone; however, those sanctions had apparently not had the required deterrent effect and the applicant had persisted in this behaviour. They asserted that when some of the lawyers had been banned from visiting the applicant because of the transmission of messages to the PKK, some of the new lawyers replacing them had continued to act as messengers between the applicant and his armed organisation. The Government submitted that if the applicant complied with the prison regulations, no further disciplinary sanctions would be imposed on him and he would benefit from the facilities of communication with the outside world as authorised by law.

92. The Government affirmed that telephone calls had been technically possible for İmralı inmates since 20 March 2010 and that the applicant could telephone for ten minutes every fortnight.

2. The Court's assessment

(a) Period of detention to be taken into consideration

93. The Court must first of all determine the period of detention to be taken into consideration in assessing the conformity of the conditions of detention with the requirements of Article 3.

94. It firstly reiterates that within the compass delimited by the decision on the admissibility of the application, the Court may deal with any issue of fact or law that arises during the proceedings before it (see, among many other authorities, *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I; *Chahal v. the United Kingdom*, 15 November 1996, § 86, *Reports* 1996-V; and *Ahmed v. Austria*, 17 December 1996, § 43, *Reports* 1996-VI).

95. The Court secondly reiterates that it considered the conformity with Article 3 of the applicant's conditions of detention from the outset until 12 May 2005 in its judgment of the same date (see *Öcalan*, cited above, §§ 192-196), when it reached the following conclusion:

> "While concurring with the CPT's recommendations that the long-term effects of the applicant's relative social isolation should be attenuated by giving him access to the same facilities as other high security prisoners in Turkey, such as television and telephone contact with his family, the Grand Chamber agrees with the Chamber that the general conditions in which he is being detained at İmralı Prison have not thus far reached the minimum level of severity required to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention. Consequently, there has been no violation of that provision on that account."

96. In the present judgment, the Court can only hear and determine the facts which have occurred since its judgment of 12 May 2005 (application no. 46221/99), up to 8 March 2012 (the date of the latest observations received). It will, however, take into account the applicant's situation on 12 May 2005, particularly with regard to the long-term effects of his particular conditions of detention.

(b) General principles

97. The Court reiterates that Article 3 of the Convention enshrines one of the fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see *El Masri v. "the Former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, § 195, ECHR 2012; *Ramirez Sanchez v. France* [GC], no. 59450/00, § 115, ECHR 2006-IX; and *Chahal,* cited above, § 79).

98. In the modern world, States face very real difficulties in protecting their populations from terrorist violence. However, unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4,

Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports* 1998-VIII). The nature of the offence with which the applicant is charged is therefore irrelevant to the assessment under Article 3 (see *Ramirez Sanchez*, cited above, § 116, and *Indelicato v. Italy*, no. 31143/96, § 30, 18 October 2001).

99. In order to fall within the scope of Article 3, ill-treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, including the duration of the treatment and its physical or mental effects, and also, in some cases, on the sex, age and state of health of the victim, and so on (see, for example, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25). Moreover, to assess the evidence before it in establishing cases of treatment contrary to Article 3, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the Parties when evidence is being obtained has to be taken into account (ibid, § 161).

100. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has also deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). In considering whether a punishment or treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see, for example, *Raninen v. Finland*, 16 December 1997, § 55, *Reports* 1997-VIII). However, the absence of any such object or purpose cannot conclusively rule out a finding of a violation of Article 3 (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX, and *Van der Ven v. the Netherlands*, no. 50901/99, § 48, ECHR 2003-II).

101. In order for a punishment or the treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, for example, *V. v. the United Kingdom*, cited above, § 71; *Indelicato*, cited above, § 32; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99,

§ 428, ECHR 2004-VII; and *Lorsé and Others v. the Netherlands*, no. 52750/99, § 62, 4 February 2003).

102. In this regard, it should be pointed out that measures depriving a person of his liberty are usually accompanied by such suffering and humiliation. Nevertheless, Article 3 requires the State to ensure that all prisoners are detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see *Kudła*, cited above, §§ 92-94, and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI). The Court adds that the measures taken must also be necessary to attain the legitimate aim pursued (see *Ramirez Sanchez*, cited above, § 119).

103. Furthermore, when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

104. One of the main elements of the applicant's allegations in the present case is the length of time he spent in relative social isolation. On that specific point the Court reiterates that a prisoner's segregation from the prison community does not in itself amount to inhuman treatment. In many States Parties to the Convention more stringent security measures exist for dangerous prisoners. These arrangements, which are intended to prevent the risk of escape, attack, disturbance of the prison community or contact with those involved in organised crime, are based on separation of the prison community together with tighter controls (see *Ramirez Sanchez*, cited above, § 138).

105. However, in order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is further extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling as time passes.

106. Furthermore, such measures, which are a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the Prison Rules adopted by the Committee of Ministers on 11 January 2006. A system of regular monitoring of the prisoner's physical and mental condition should also be established in order to ensure that his condition is compatible with continued solitary confinement (ibid., § 139).

107. The Court has already established the conditions under which solitary confinement of a prisoner – even if he is considered dangerous –

constitutes inhuman or degrading treatment (or indeed, under some circumstances, torture), as follows:

> "Complete sensory isolation coupled with total social isolation can destroy the personality and constitutes a form of inhuman treatment that cannot be justified by the requirements of security or any other reason. On the other hand, the prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment."

(see, among other authorities, *Messina v. Italy (no. 2)* (dec.), no. 25498/94, ECHR 1999-V, and *Öcalan*, cited above, § 191, the two cases in which the Court concluded that there had been no treatment contrary to Article 3).

Similarly, the Court found a violation of Article 3 of the Convention in the following conditions of detention:

> "As regards the applicant's conditions of detention while on death row, the Court notes that Mr Ilaşcu was detained for eight years, from 1993 until his release in May 2001, in very strict isolation: he had no contact with other prisoners, no news from the outside – since he was not permitted to send or receive mail – and no right to contact his lawyer or receive regular visits from his family. His cell was unheated, even in severe winter conditions, and had no natural light source or ventilation. The evidence shows that Mr Ilaşcu was also deprived of food as a punishment and that in any event, given the restrictions on receiving parcels, even the food he received from outside was often unfit for consumption. The applicant could take showers only very rarely, often having to wait several months between one and the next. On this subject the Court refers to the conclusions in the report produced by the CPT following its visit to Transdniestria in 2000 (see paragraph 289 above), in which it described isolation for so many years as indefensible.
>
> The applicant's conditions of detention had deleterious effects on his health, which deteriorated in the course of the many years he spent in prison. Thus, he did not receive proper care, having been deprived of regular medical examinations and treatment (see paragraphs 253, 258-60, 262-63 and 265 above) and dietetically appropriate meals. In addition, owing to the restrictions on receiving parcels, he could not be sent medicines and food to improve his health."

(see *Ilaşcu and Others*, cited above, § 438; see also, for a finding of no violation of Article 3 in the case of different conditions of detention, *Rohde v. Denmark*, no. 69332/01, § 97, 21 July 2005).

(c) Application of these principles to the present case

i. Specific nature of the case

108. As regards the present case, the Court observes that in its judgment of 12 May 2005 it found that the applicant's detention posed exceptional difficulties for the Turkish authorities. As the head of a large armed separatist movement the applicant was considered by a large section of the Turkish population as the most dangerous terrorist in the country. This was compounded by all the differences of opinion that had come to light within his own movement, showing that his life was genuinely at risk. It was also a

reasonable presumption that his supporters would seek to help him escape from prison.

109. The Court observes that those conditions have not radically changed since May 2005: the applicant has remained actively involved in the political debate in Turley regarding the PKK armed separatist movement, and his instructions as transmitted by his lawyers (see § 43 above) have been closely monitored by the general public, prompting a variety of reactions, some of which have been very extreme (see § 45 above). The Court therefore understands why the Turkish authorities found it necessary to take extraordinary security measures to detain the applicant.

ii. Physical conditions of detention

110. The physical conditions of the applicant's detention must be taken into account in assessing the nature and duration of his solitary confinement.

111. The Court observes that before 17 November 2009 the cell occupied alone by the applicant had an area of approximately 13 sq. m and contained a bed, a table, a chair and a bookshelf. It was air-conditioned and had a sanitary annex. It had a window overlooking an exercise yard and sufficient natural and artificial light. In February 2004 the walls had been reinforced with chipboard panels to protect them against the damp.

112. The Court also observes that since 17 November 2009 the applicant has been the sole occupant of a cell in the new İmralı Prison building, which was designed also to accommodate other prisoners. His new cell has an area of 9.8 sq. m (living space), with an additional 2 sq. m (bathroom and toilets), and comprises a bed, a small table, two chairs, a metal cupboard and a kitchenette with a wash basin. The building comprising the cells is properly damp-proofed. The applicant's cell has a window measuring 1 m x 0.5 m and a partly glazed door, both of which open on to an exercise yard. The Government, drawing on an expert report indicating that the cell receives enough natural light and on concerns about the applicant's safety, would appear not to have accepted the CPT's proposal to lower the wall.

113. The new building provides the applicant and the other inmates with a sports room equipped with a ping-pong table and two further rooms furnished with chairs and tables, all three of which rooms receive plentiful daylight. In the new building, up until the end of 2009/beginning of 2010, the applicant enjoyed two hours of outdoor activities per day, remaining alone in the exercise yard adjacent to his cell. Furthermore, he was able to spend one hour per week alone in the recreation room (where no specific activities were on offer) and two hours per month alone in the prison library (see paragraph 26 above).

114. In response to the CPT's observations after its January 2010 visit, the authorities responsible for İmralı Prison relaxed the relevant regulations.

The applicant was accordingly authorised to engage alone in out-of-cell activities four hours per day.

115. The Court notes that the physical conditions of the applicant's detention are in conformity with the European Prison Rules adopted by the Committee of Ministers on 11 January 2006. Furthermore, the CPT has also described them as "broadly acceptable". Therefore, no infringement of Article 3 can be found on this account.

iii. The nature of the applicant's isolation

– Access to information

116. Before 17 November 2009 the applicant's cell contained books and a radio which only received State broadcasts. He was not allowed to have a television set in his cell on the ground that he was a dangerous prisoner and a member of an illegal organisation. For the same reasons he had no access to telephones. These restrictions increased the applicant's relative social isolation.

117. Over the same period the applicant was subject to restrictions in his access to the daily and weekly press. In fact, he received newspapers once a week, provided by his family or lawyers. Sometimes, when there were no visits from his relatives or lawyers, he went for weeks on end without any access to the press. The newspapers delivered to the applicant were extensively censored.

118. After 17 November 2009 a number of improvements were made to these conditions. From 2010 onwards the applicant, like the other İmralı Prison inmates, received newspapers twice instead of once a week. Since March 2010 he has also been allowed ten minutes of telephone calls to the outside per fortnight.

119. All in all, the Court observes that the applicant has benefited from moderate access to information, and not all the means of communication have been available at the same time. Censorship of the daily papers delivered to the applicant would appear to be offset by uncensored access to books. Given that access to television is a means of mitigating the harmful effects of social isolation and since the inmates of the other high-security prisons benefit from such facilities without any major restrictions, the Court holds that the restriction imposed on the applicant until recently in this regard, without any convincing justification, was such as to increase his relative social isolation in the long term.

– Communication with prison staff

120. In the light of the reports prepared by the CPT after its visits in 2007 and 2010 (see links in paragraph 72 above, (CPT/Inf (2008)13 for the May 2007 visit, §§ 25-30, and CPT/Inf (2010) 20 for the January 2010 visit, §§ 30-35), the Court observes that for practically the whole duration of his

first eleven years of detention the applicant received daily visits from GPs. A different doctor attended him each time, which the CPT says ruled out any constructive doctor/patient relationship.

121. From May 2010 onwards, following the CPT recommendations, the applicant received doctor's visits either regularly once a month or at his request or as needed. A specific physician was charged with collating all medical data on the applicant's health, assessing the data and ensuring respect for their medical secrecy.

122. The Court also notes that none of the medical certificates issued by the medical officers of the Ministry of Health and none of the CPT visit reports mentioned that the applicant's relative social isolation could have major and permanent negative effects on the applicant's health. It is true that after their visit in 2007 the CPT delegates reported a deterioration in the applicant's mental state as compared with 2001 and 2003. According to the CPT delegates, this deterioration was the result of a state of chronic stress and social and affective isolation, combined with a feeling of abandonment and disillusionment, not forgetting a longstanding ENT problem. Following their visit to İmralı in 2010 after the construction of a new building and the transfer of other prisoners to İmralı Prison, the CPT delegates noted that the applicant's mental state had considerably improved, although he was still slightly vulnerable, a condition which had to be monitored.

123. The Court further observes that the prison staff were authorised to communicate with the applicant, but that they had to restrict conversations to the strict minimum required for their work. Such contact is not in itself capable of lessening a prisoner's social isolation.

– Communication with the other inmates

124. Before 17 November 2009 the only contact which the applicant, as the only inmate of İmralı Prison, could have was with the staff working there, within the strict limits of their official duties.

125. After 17 November 2009, when the applicant and five other prisoners transferred to İmralı from different prisons were moved to the new building, the applicant was authorised to spend one hour per week conversing with the other inmates.

126. In response to the observations made by the CPT following its visit in January 2010, the authorities responsible for İmralı Prison relaxed the rules on communication between the applicant and the other prisoners. Since then the applicant has been allowed to spend three hours, rather than just one, per week with the other inmates for conversation. Moreover, like all the İmralı inmates, he can engage, on request, in the following five collective activities, at a rate of one hour per week for each of the five: painting and handicraft activities, table tennis, chess, volleyball and basketball. He can therefore engage in a total of five hours' collective activities per week. According to the prison registers, the applicant in fact

only plays volleyball and basketball. In 2010 the prison authorities considered giving the applicant and the other prisoners two extra hours per week to engage in other collective activities.

– *Communication with family members*

127. The Court observes that the applicant was visited by members of his family, particularly his sisters and his brother.

128. Even though the prison rules authorise a one-hour visit by close relatives (brothers and sisters in the applicant's case) every fortnight, the visits did not take place as frequently as the applicant and his family would have wished. The fact that the applicant was incarcerated in a prison located on a remote island inevitably caused major problems of access for the family members as compared with high-security prisons on the mainland. The main reasons advanced by the governmental authorities to explain the frequent interruptions in the shuttle-boat services between the prison and the nearest coast highlight the difficulties: "poor weather conditions", "maintenance work on the ferry boats between the island and the mainland" and "the inability of the boats to cope with prevailing weather conditions".

129. Perusal of the dates and frequency of visits actually conducted by relatives and visits refused shows that in 2006 and early 2007 more visits were refused than actually effected. On the other hand, visits increased in frequency in late 2007 and in 2008, 2009 and 2010. In 2011 and 2012, however, the applicant received very few visits from his relatives. In this connection the Court notes with concern that very many visits were blocked by poor weather conditions and technical breakdowns in the shuttle boats, which sometimes necessitated several week's work, despite the fact that the Government had informed the Court, in the case of *Öcalan v. Turkey* which led up to the Grand Chamber judgment of 12 May 2005, that such difficulties would be eliminated by the use of more suitable means of transport (see *Öcalan*, cited above, § 194).

130. As to the conditions under which these visits are conducted, the Court observes that prior to 2010 the applicant could only communicate with his sisters and brother in visiting rooms equipped with a barrier (consisting of glass panels and telephones), because under the prison rules visiting rooms without barriers were reserved for first-degree relatives. This section of the prison rules having been deleted by the administrative courts in December 2009, the applicant and the members of his family who have visited him since 2010 have sat around a table.

– *Communication with lawyers and other persons*

131. The Court observes that the applicant has been visited by his lawyers, sometimes at regular intervals and sometimes sporadically. While the applicant was entitled to see his lawyers once a week (every Wednesday), he was in fact deprived of most of these visits. The prison

authorities adduced poor weather conditions or ferry breakdowns to explain refusals of visit requests.

132. The Court notes that the periods when the applicant was refused lawyer's visits preceded the commencement of proceedings against some of the applicant's lawyers, who had been accused of having acted as messengers between him and the PKK. It notes that the interruptions in visits were more due to the national authorities' concern to prevent communication between the applicant and his former armed organisation that to weather conditions or boat breakdowns.

133. The Court further observes that the applicant was entitled to correspond with the outside world under the supervision of the prison authorities, and that the mail which he received was inspected and censored.

134. It also notes that the applicant was not permitted to have confidential conversations with his lawyers. The records of these conversations were subject to supervision by the post-sentencing judge.

135. The Court concludes that, as a person incarcerated for terrorist activities, the communication between the applicant and his lawyers and his correspondence were subject to greater restrictions than those of persons held in other prisons. Nevertheless, while persons deprived of their liberty for terrorist activities cannot be excluded from the scope of the provisions of the Convention and the essence of their rights and freedoms recognised by the latter must not be infringed, the national authorities can impose "legitimate restrictions" on them inasmuch as those restrictions are strictly necessary to protect society against violence.

– Conclusion on the nature of the solitary confinement imposed on the applicant

136. The Court concludes that for the period up to 17 November 2009, the applicant cannot be said to have been detained in total sensory or social isolation. His social isolation at that time was partial and relative. Since 17 November 2009 (for the remainder of the period under consideration, see § 96 above), the applicant also cannot be deemed to have been maintained in strict social isolation, despite the major *de facto* restrictions to his communication with his lawyers.

iv. Duration of the applicant's social isolation

137. The Court finds that the applicant was kept in relative social isolation from 12 May 2005 to 17 November 2009, that is to say for approximately four years and six months. It should be remembered that on 12 May 2005, when the Court gave its judgment on the previous application lodged by the applicant, the latter, who had been arrested on 15 February 1999, had already been detained in relative social isolation for approximately six years and three months. The total duration of the

detention in relative social isolation was therefore nineteen years and nine months.

138. In view of the length of that period, a rigorous examination is called for by the Court in order to determine whether it was justified, whether the measures taken were necessary and proportionate in the light of the available alternatives, what safeguards were afforded the applicant and what measures were taken by the authorities to ensure that the applicant's physical and mental condition was compatible with his continued solitary confinement (see *Ramirez Sanchez*, cited above, § 136).

139. For the period preceding 17 November 2009, the restrictions placed on the applicant were comparable to those imposed on Mr Ramirez Sanchez, whose application was the subject of a Grand Chamber judgment finding no violation of Article 3 of the Convention (ibid., particularly §§ 125-150). While Mr Ramirez Sanchez had been placed for a certain length of time in an area of the prison where inmates had no possibility of meeting one another or of being in the same room together, the applicant was the only inmate of the prison and therefore could only meet physicians and staff members on a day-to-day basis. He was visited by members of his family and his lawyers when marine transport conditions so permitted.

140. The Court accepts that the placement and maintenance of the applicant in such conditions of detention were motivated by the risk of escape from a high-security prison, the concern to protect the applicant's life against those who hold him responsible for the deaths of a large number of people and the desire to prevent him from transmitting instructions to his armed organisation, the PKK, which still considered him as its leader.

141. Nevertheless, the Court already held in *Ramirez Sanchez* that it would be desirable for alternative solutions to solitary confinement to be sought for persons considered dangerous and for whom detention in an ordinary prison under the ordinary regime is considered inappropriate (ibid., § 146).

142. The Court observes that the CPT, in its report on its visit from 19 to 22 May 2007, expressed similar concerns about the negative effects of prolonging conditions which were tantamount to relative social isolation. Finally, in March 2008, in the absence of any real progress on this matter by the Government, the CPT initiated the procedure of issuing a public statement, as provided for in Article 10 § 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment.

143. The Court notes the Government's positive reaction with interest. In June 2008 they decided to construct a new building inside İmralı Prison in order to comply with the standards required by the CPT in relation to the applicant's detention, and in October 2008 they held high-level negotiations on this matter with CPT representatives. The building work was completed

in summer 2009, and in November 2009 the applicant and other prisoners transferred from other prisons were moved to the new building.

144. The Court finds that the regime applied to the applicant from November 2009 onwards gradually moved away from social isolation. His communication with the other inmates, which was initially very limited, progressed as the Government accepted most of the CPT's relevant suggestions. In March 2010, in the light of these developments, the CPT discontinued the procedure which it had decided to initiate two years previously under Article 10 § 2 of the Convention for the Prevention of Torture.

145. The Court notes the CPT's concern about the possible long-term effects of the prolonged lack of a television set in the applicant's cell (until 12 January 2012) and of the frequent interruptions in his communication with his lawyers and relatives. All these facilities help prevent prisoners', and therefore the applicant's, social isolation. Prolonged absence of such facilities, combined with the "time" factor, that is to say over thirteen years' incarceration in the applicant's case if the beginning of his detention is taken as the starting point, is liable to cause him a justified feeling of social isolation.

In particular, the Court holds that although the choice of a remote island as the applicant's place of detention was a matter for the Government, they are duty-bound, in such cases, to ensure that the prison in question has appropriate means of transport in order to facilitate the normal operation of the regulations on visits to prisoners.

v. Conclusions

- *Prior to 17 November 2009*

146. The Court reiterates that in its judgment of 12 May 2005 it took note of the CPT's recommendations that the applicant's relative social isolation should not be allowed to continue for too long and that its effects should be attenuated by giving him access to a television and to telephone communications with his lawyers and close relatives (see *Öcalan*, cited above, § 195). It also reiterates that in the same judgment it pointed out that the general conditions in which the applicant is being detained at İmralı Prison had not reached the minimum level of severity required to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention (see *Öcalan*, cited above, § 196). However, the Court now notes that the applicant's social isolation continued until 17 November 2009 under more or less the same conditions as those observed in its 12 May 2005 judgment.

In its assessment of the applicant's conditions of detention prior to 17 November 2009, the Court takes account of the conclusions set out by the CPT in its report on its May 2007 visit (see § 72 above) and its own

findings, particularly the extension to nineteen years and nine months of the period during which the applicant was the prison's only inmate (see paragraph 137 above), the lack of communication media to prevent the applicant's social isolation (protracted absence of a television set in the cell and of telephone calls – see paragraphs 116 and 119 above), excessive restrictions on access to news information (see paragraphs 116, 117 and 119 above), the persistent major problems with access by visitors to the prison (for family members and lawyers) and the insufficiency of the means of marine transport in coping with weather conditions (see paragraph 129 above), the restriction of staff communication with the applicant to the bare minimum required for their work (see paragraphs 123 and 124 above), the lack of any constructive doctor/patient relationship with the applicant (see paragraph 120 above), the deterioration in the applicant's mental state in 2007 resulting from a state of chronic stress and social and affective isolation combined with a feeling of abandonment and disillusionment (see paragraph 122 above), and the fact that no alternatives were sought to the applicant's solitary confinement until June 2008, despite the fact that the CPT had mentioned in its report on the May 2007 visit the negative effects of prolonging conditions tantamount to social isolation (see paragraph 122 above). The Court concludes that the conditions of detention imposed on the applicant during that period attained the severity threshold to constitute inhuman treatment within the meaning of Article 3 of the Convention.

147. There has accordingly been a violation of Article 3 of the Convention in relation to the applicant's conditions of detention up to 17 November 2009.

- *After 17 November 2009*

148. In its assessment of the period subsequent to 17 November 2009, the Court takes into account, in particular, the physical conditions of the applicant's detention, the Government's positive reaction in the light of the procedure initiated by the CPT under Article 10 § 2 of the Convention for the Prevention of Torture, which resulted in the transfer of other prisoners to İmralı Prison (see paragraph 143 above), the improvement in the applicant's access to news and information during this period (see paragraph 118 above), the substantial reinforcement of communication and collective activities between the applicant and the other inmates in response to the CPT's observations following its visit in January 2010 (see paragraph 126 above), the increased frequency of visits authorised and the quality of the applicant's conversations with his family, without any glass barrier (see paragraphs 129 and 130), and the provision of facilities mitigating the effects of the relative social isolation (telephone contact since March 2010, television in his cell since January 2012). The Court concludes that the conditions of detention imposed on the applicant during this period did not

attain the severity threshold to constitute inhuman treatment within the meaning of Article 3 of the Convention.

149. There has accordingly been no violation of Article 3 of the Convention on the ground of the conditions of detention imposed on the applicant during the period after 17 November 2009.

The Court stresses that the finding of no violation of Article 3 of the Convention cannot be interpreted as an excuse for the national authorities not to provide the applicant with more facilities for communicating with the outside world or to relax his conditions of detention, because as the length of time he has spent in detention increases, it may become necessary to grant him such facilities in order to ensure that his conditions of detention remain in conformity with the requirements of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE RESTRICTIONS PLACED ON VISITS BY AND COMMUNICATION WITH FAMILY MEMBERS

150. The applicant complained of a violation of his right to respect for his family life on the basis of some of the facts which he presented under Article 3 of the Convention, that is to say the restrictions imposed on his contact with members of his family, telephone calls, correspondence and visits.

151. Article 8 of the Convention provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

152. The Government contested that argument and broadly reiterated the observations presented under Article 3 of the Convention concerning communication between the applicant and the members of his family. They pointed out that the applicant could communicate with his relatives subject to the restrictions imposed by legislation concerning high-security prisons and the execution of sentences (that is to say, in the present case, life imprisonment. They add that where a disciplinary sanction was imposed on the applicant for failing to comply with the prohibition on transmitting messages to his former armed organisation, this had an impact on the exercise of the right to receive visits.

...

B. Merits

154. The Court reiterates that any detention which is lawful for the purposes of Article 5 of the Convention entails by its nature a limitation on private and family life. However, it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him in maintaining contact with his close family (see *Messina v. Italy (no. 2)*, cited above, § 61).

155. In the present case, the Court stresses that the applicant, who was sentenced to life imprisonment in a high-security prison, is subject to a special detention regime which involved restricting the number of family visits (once a week, on request) and, up until 2010, imposed measures to monitor the visits (the prisoner was separated from his visitors by a glass panel).

156. The Court considers that these restrictions undoubtedly constitute an interference with the applicant's exercise of his right to respect for his family life as secured by Article 8 § 1 of the Convention (see *X v. the United Kingdom*, no. 8065/77, Commission decision of 3 May 1978, Decisions and Reports 14, p. 246).

157. Such interference is not in breach of the Convention if it is "in accordance with the law", pursues one or more legitimate aims under paragraph 2 of Article 8 and may be regarded as a measure which is "necessary in a democratic society".

158. The Court notes that the security measures were imposed on the applicant in accordance with the provisions of the legislation on the regime for prisoners considered dangerous, particularly Law no. 5275 on the execution of sentences and preventive measures, and that they were therefore "in accordance with the law". It also considers that the measures in question pursued aims which were legitimate for the purposes of Article 8 § 2 of the Convention, namely the protection of public safety and the prevention of disorder and crime.

159. As regards the necessity of the interference, the Court reiterates that in order to be necessary "in a democratic society", interference must correspond to a pressing social need and, in particular, must be proportionate to the legitimate aim pursued (see, among other authorities, *McLeod v. the United Kingdom*, 23 September 1998, § 52, *Reports* 1998-VII).

160. The Court notes that the regulations on contacts with families for life prisoners in high-security prisons tend to limit the existing relations between the persons concerned and their original criminal environment in order to minimise the risk of their maintaining personal contacts with the criminal organisations. The Court reiterates that in its judgment of 12 May 2005 (see *Öcalan*, cited above, § 192) and in paragraph 132 above, it considered the Government's concerns justified, as they feared that the

applicant might use his communications with the outside to resume contact with members of the armed separatist movement of which he was the leader. The Court is not in a position to assess whether the circumstances of the applicant's detention had radically changed between 2005 and the date of the said restrictions on communication.

161. The Court also reiterates that many of the States parties to the Convention have stricter security regimes for dangerous prisoners. These regimes are based on stepping up surveillance of communications with the outside in respect of prisoners posing a particular threat to internal order in the prison and law and order outside.

162. In the light of these arguments, the Court cannot doubt the need for the special detention regime as applied to the applicant.

163. As regards striking a balance between the applicant's individual interest in communicating with his family and the general interest of limiting his contact with the outside, the Court notes that the prison authorities attempted to help the applicant as far as possible to remain in contact with his immediate family, authorising visits once a week without any limit on the number of visitors. Furthermore, from 2010 onwards the prison authorities, further to the CPT's recommendations, allowed the applicant to receive his visitors seated at a table (see, conversely, *Trosin v. Ukraine,* no. 39758/05, §§ 43-47, 23 February 2012). The case file also shows that ten minutes of telephone calls are authorised per fortnight. Correspondence between the applicant and his family is functioning normally, apart from the inspections and censorship carried out in order to prevent exchanges relating to PKK activities.

164. In the light of these considerations, the Court considers that the restrictions on the applicant's right to respect for his family life did not exceed those which are necessary in a democratic society for the protection of public safety and the prevention of disorder and crime, within the meaning of Article 8 § 2 of the Convention.

There has therefore been no violation of Article 8 of the Convention on this account.

III. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

165. The applicant further complained of a violation of Article 7 of the Convention, which provides:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

A. The parties

166. The applicant submitted that the commutation of the death penalty into life imprisonment without parole infringed Article 7 of the Convention, such commutation having resulted from a legislative amendment made subsequently to his conviction (under Law no. 4771, which came into force on 9 August 2002). Prior to this amendment, persons sentenced to the death penalty whose execution had not been approved by the National Assembly had remained in prison for a maximum term of thirty-six years.

In particular, the applicant would appear to have put forward two separate arguments: firstly he submitted that when he had been sentenced to the death penalty, the latter had, from the outset, been equivalent to a maximum prison term of thirty-six years, because in 1984 Turkey had declared a moratorium on the enforcement of the death penalty; secondly, the applicant would seem to be saying that after the abolition of capital punishment, the death penalty to which he had been sentenced was commuted first of all into an ordinary life sentence (with a possibility of release on parole after a specific minimum term) and then, much later on, into aggravated life imprisonment (with no possibility of parole until the end of his life).

167. The applicant also contended that the social isolation to which he had been subjected had not been set out in any legislation and amounted to an infringement of his rights under Articles 6 and 7 of the Convention.

168. The Government contested that argument. They first of all affirmed that under the legislation in force before the applicant's conviction, persons sentenced to the death penalty, where execution of the penalty had been formally rejected by Parliament, had been eligible for parole after a period of thirty-six years. However, Parliament had never taken a decision rejecting the execution of the death penalty imposed on the applicant. Under Law no. 4771 of 9 August 2002, Parliament had abolished the death penalty and replaced it with a "reinforced life sentence" that is to say a life sentence to last for the remainder of the person's life without any possibility of parole. This principle had been followed in all the subsequent legislation on sentencing for crimes of terrorism (including Law no. 5218, which had abolished the death penalty and amended a number of laws, the new Law no. 5275 on the execution of sentences and preventive measures, and Law no. 5532 amending specific provisions of the Anti-Terrorism Law). The Government submitted that it had been clear to the applicant, at all stages in proceedings, that his conviction under Article 125 of the Criminal Code initially involved the death penalty and later on, following the abolition of this penalty, a life sentence without parole.

B. The Court's assessment

...

2. *Merits*

(a) General principles

171. The guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 92, 17 September 2009; *S.W. v. the United Kingdom*, 22 November 1995, § 34, Series A no. 335-B; and *C.R. v. the United Kingdom*, 22 November 1995, § 32, Series A no. 335-C).

172. Article 7 § 1 of the Convention does not confine itself to prohibiting the retrospective application of criminal law to the detriment of the defendant. It also embodies in general terms the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*). While it prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy (see, among other authorities, *Kafkaris v. Cyprus* [GC], no. 21906/04, § 138, ECHR 2008, and *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 145, ECHR 2000-VII).

173. It follows that offences and the relevant penalties must be clearly defined by law. The Court must therefore verify that at the time when an accused person performed the act which led to his being prosecuted and convicted there was in force a legal provision which made that act punishable, and that the punishment imposed did not exceed the limits fixed by that provision (see *Scoppola (no. 2)*, cited above, § 95; *Coëme and Others,* cited above, § 145; and *Achour v. France* [GC], no. 67335/01, § 43, ECHR 2006-IV).

174. The term "law" implies qualitative requirements, including those of accessibility and foreseeability (see *Kafkaris*, cited above, § 140, and *E.K. v. Turkey*, no. 28496/95, § 51, 7 February 2002). These qualitative requirements must be satisfied as regards both the definition of an offence and the penalty the offence carries (see *Achour*, cited above, § 41). The individual must be able to know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable (see, among other

authorities, *Scoppola (no. 2)*, cited above, § 94; *Kokkinakis v. Greece*, 25 May 1993, § 52, Series A no. 260-A; and *Cantoni v. France*, 15 November 1996, § 29, *Reports* 1996-V). Furthermore, a law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among other authorities, *Cantoni*, cited above, § 35, and *Achour*, cited above, § 54).

175. The Court notes that the principle of retrospectiveness of the more lenient criminal law, considered by the Court in *Scoppola (no. 2)*, as guaranteed by Article 7, is embodied in the rule that where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant (see *Scoppola (no. 2)*, cited above, § 109).

176. In its decision in the case of *Hummatov v. Azerbaijan* ((dec.), nos. 9852/03 and 13413/04, 18 May 2006), the Court approved the parties' shared opinion that a life sentence was not a harsher penalty than the death penalty.

(b) Application of these principles to the present case

177. The Court notes that the parties agree that on the date of their commission, the crimes of which the applicant was accused were subject to the death penalty under Article 125 of the Criminal Code, to which penalty the applicant was in fact sentenced. The legal basis for the applicant's conviction and sentence was therefore the criminal law applicable at the material time, and his sentence corresponded to that prescribed in the relevant provisions of the Criminal Code (see, to the same effect, *Kafkaris*, cited above, § 143). The Court also notes that the parties agree that life imprisonment is a more lenient penalty than the death penalty (see, to the same effect, *Hummatov*, cited above).

178. The parties' submissions primarily concern, first of all, the mode of execution of the death penalty before it was abolished, and secondly, the events following the commutation of the applicant's death penalty to "life imprisonment", and the interpretation of the latter sentence.

179. The Court will first of all examine whether the death penalty imposed on the applicant was equivalent from the outset to a prison sentence of a maximum of thirty-six years, owing to the moratorium on the enforcement of the death penalty in Turkey since 1984.

180. The Court reiterates that it has previously found that, since the applicant had been convicted of the most serious crimes contained in the Turkish Criminal Code, and given the general political controversy in Turkey – prior to the decision to abolish the death penalty – surrounding the question of whether he should be executed, it was not possible to rule out

the possibility that the risk of the sentence being implemented was a real one. In fact, the risk remained until the Ankara National Security Court's judgment of 3 October 2002 commuting the death penalty to which the applicant had been sentenced to life imprisonment (see *Öcalan*, cited above, § 172).

181. Furthermore, the Court observes that, as the Government pointed out, under the legislation in force before the abolition of the death penalty in Turkey, persons sentenced to this penalty could be released on parole after a period of thirty-six years only where the enforcement of the said penalty had been formally rejected by Parliament. The fact is that the applicant's death penalty was never submitted to Parliament for approval and was never the subject of a formal parliamentary decision rejecting it.

It follows that the Court cannot accept the applicant's contention that the penalty imposed on him had amounted, from the outset, to a thirty-six year prison sentence.

182. Secondly, the Court will consider the argument that the death penalty imposed on the applicant was commuted following the abolition of that penalty, first of all into an "ordinary" life sentence and then, much later and in breach of Article 7 of the Convention, into "aggravated" life imprisonment, without any possibility of parole.

183. On this matter, the Court notes first of all that the Turkish Criminal Code clearly prohibits retrospective application of a provision laying down a "more severe penalty" and the principle of retrospective enforcement of the "more lenient penalty".

184. The Court will then consider whether the successive reforms of Turkish criminal legislation during the process of abolishing the death penalty cleared the way for allowing the applicant to be released after a specified period of imprisonment.

185. It notes that Law no. 4771 of 9 August 2002, which for the first time provided for the abolition of the death penalty and replaced it with life imprisonment, clearly states that this latter penalty must consist of actual incarceration of the sentenced persons for the remainder of his life, without any possibility of release on parole. The Court also notes that Law no. 5218 of 21 July 2004 on the abolition of the death penalty confirms the provisions of Law no. 4771, while also stipulating that the possibility of parole as provided for in the legislation on the enforcement of sentences does not apply to life sentences passed on persons who were initially sentenced to the death penalty for terrorist offences, and that such persons must serve their prison sentence until the end of their lives. The laws amending the Criminal Code and the Law on sentence enforcement only confirmed this principle.

186. It follows that, at the time of the abolition of the death penalty, no law or statute provided the applicant with the possibility of release on parole after a minimum period of incarceration. The fact that different terms

(reinforced life imprisonment, aggravated life imprisonment) were used in the various laws on the matter does not alter this finding.

187. The Court will also consider the applicant's complaint regarding the lack of legislation against the social isolation imposed on him up to 2009. It reiterates that the social isolation in question was not imposed under any decision taken by the authorities to confine the applicant in a cell in an ordinary prison, but rather resulted from a concrete situation, namely the fact that the applicant was the only inmate in the prison. This highly exceptional measure, which consisted in earmarking an entire prison for a single prisoner, did not form part of a detention regime geared to punishing the applicant more severely. It was motivated solely by the concern to protect the applicant's life and to prevent the risk of escape linked to the conditions prevailing in ordinary prisons, including high-security establishments. The Court takes the view that this was such an extraordinary measure that a State could not be reasonably expected to provide details in its legislation on the regime to be applied in such cases.

188. Moreover, the applicant, who had been wanted for serious offences carrying the death penalty, did not contend before the Court that he could not have foreseen that he would be incarcerated under exceptional conditions should he be arrested.

189. In conclusion, the Court finds that there has been no violation of Article 7 of the Convention in the present case.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE LIFE SENTENCE PASSED ON THE APPLICANT WITHOUT POSSIBILITY OF RELEASE ON PAROLE

190. The applicant submitted that his life sentence without parole, in conjunction with the social isolation imposed on him, constituted a violation of Article 3 or Article 8 of the Convention. He also stated that a life sentence which took no account of the prisoner's possible good conduct or rehabilitation, associated with a strict prison regime, attained the level of severity required by Article 3 of the Convention to constitute inhuman punishment.

191. The Government contested that argument. They referred to the nature of the crimes of which the applicant had been convicted and stressed the applicant's overriding responsibility for the campaign of violence which his former organisation had conducted and which had claimed the lives of thousands of individuals, including many innocent civilian victims. The Government reiterated that the applicant had been sentenced to the death penalty, which the Turkish legislature had subsequently commuted into life imprisonment without parole. As regards the allegation concerning social isolation, the Government affirmed that the applicant was receiving visits and engaging in collective activities with the other prisoners within the

limits permitted by the legislation applicable to this category of prisoner (the fact that he had initially been the only inmate of İmralı Prison had not been the result of any decision to isolate him but had been geared solely to protecting his life). According to the Government, the applicant had been subjected to disciplinary sanctions – for transmitting messages to a terrorist organisation or for any other disciplinary offence – in exactly the same way as all the other prisoners.

...

B. Merits

193. The Court reiterates that the imposition of a life sentence on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention (see *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09, 130/10 and 3896/10, § 106, ECHR 2013 (extracts), and *Kafkaris*, cited above, § 97).

194. At the same time, the imposition of an irreducible life sentence on an adult may raise an issue under Article 3 (see *Vinter and Others* [GC], cited above, § 107; *Nivette v. France* (dec.), no. 44190/98, ECHR 2001-VII; *Stanford v. the United Kingdom* (dec.), no. 73299/01, 12 December 2002; and *Wynne v. the United Kingdom* (dec.), no. 67385/01, 22 May 2003).

195. However, a life sentence does not become irreducible by the mere fact that in practice it may be served in full. As the Court pointed out in its *Vinter and Others* judgment (§ 108):

> "... no Article 3 issue could arise if, for instance, a life prisoner had the right under domestic law to be considered for release but was refused on the ground that he or she continued to pose a danger to society. This is because States have a duty under the Convention to take measures for the protection of the public from violent crime and the Convention does not prohibit States from subjecting a person convicted of a serious crime to an indeterminate sentence allowing for the offender's continued detention where necessary for the protection of the public (see, *mutatis mutandis*, *T. v. the United Kingdom*, § 97, and *V. v. the United Kingdom*, § 98, both cited above). Indeed, preventing a criminal from re-offending is one of the 'essential functions' of a prison sentence (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 72, ECHR 2002-VIII; *Maiorano and Others v. Italy*, no. 28634/06, § 108, 15 December 2009; and, *mutatis mutandis*, *Choreftakis and Choreftaki v. Greece*, no. 46846/08, § 45, 17 January 2012). This is particularly so for those convicted of murder or other serious offences against the person. The mere fact that such prisoners may have already served a long period of imprisonment does not weaken the State's positive obligation to protect the public; States may fulfil that obligation by continuing to detain such life sentenced prisoners for as long as they remain dangerous (see, for instance, *Maiorano and Others*, cited above)."

196. In fact, in determining whether a life sentence in a given case can be regarded as irreducible, the Court has sought to ascertain whether a life prisoner can be said to have any prospect of release. Analysis of Court case-law on this point shows that where national law affords the possibility of

review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient to satisfy Article 3 (see *Vinter and Others* [GC], cited above, §§ 108 and 109).

197. In its Grand Chamber judgment in the case of *Vinter and Others*, the Court set out the main reasons why, in order to remain compatible with Article 3, a life sentence must provide both a prospect of release and a possibility of review:

> "111. It is axiomatic that a prisoner cannot be detained unless there are legitimate penological grounds for that detention. As was recognised by the Court of Appeal in *Bieber* and the Chamber in its judgment in the present case, these grounds will include punishment, deterrence, public protection and rehabilitation. Many of these grounds will be present at the time when a life sentence is imposed. However, the balance between these justifications for detention is not necessarily static and may shift in the course of the sentence. What may be the primary justification for detention at the start of the sentence may not be so after a lengthy period into the service of the sentence. It is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that these factors or shifts can be properly evaluated.
>
> 112. Moreover, if such a prisoner is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable. If anything, the punishment becomes greater with time: the longer the prisoner lives, the longer his sentence. Thus, even when a whole life sentence is condign punishment at the time of its imposition, with the passage of time it becomes – to paraphrase Lord Justice Laws in *Wellington* – a poor guarantee of just and proportionate punishment ...
>
> 113. Furthermore, as the German Federal Constitutional Court recognised in the *Life Imprisonment* case ..., it would be incompatible with the provision on human dignity in the Basic Law for the State forcefully to deprive a person of his freedom without at least providing him with the chance to someday regain that freedom. It was that conclusion which led the Constitutional Court to find that the prison authorities had the duty to strive towards a life sentenced prisoner's rehabilitation and that rehabilitation was constitutionally required in any community that established human dignity as its centrepiece. Indeed, the Constitutional Court went on to make clear in the subsequent *War Criminal* case that this applied to all life prisoners, whatever the nature of their crimes, and that release only for those who were infirm or close to death was not sufficient ...
>
> Similar considerations must apply under the Convention system, the very essence of which, as the Court has often stated, is respect for human dignity (see, *inter alia*, *Pretty v. the United Kingdom*, no. 2346/02, § 65, ECHR 2002-III, and *V.C. v. Slovakia*, no. 18968/07, § 105, ECHR 2011)."

198. In the same judgment (*Vinter and Others*), the Court, having considered the relevant European and international material which currently confirms the principle that all prisoners, including those serving life sentences, must have a possibility of reforming and rehabilitating and the prospect of release if such rehabilitation is achieved, drew a number of specific conclusions on life sentencing in the light of Article 3:

> "119. ... the Court considers that, in the context of a life sentence, Article 3 must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.
>
> 120. However, the Court would emphasise that, having regard to the margin of appreciation which must be accorded to Contracting States in the matters of criminal justice and sentencing ..., it is not its task to prescribe the form (executive or judicial) which that review should take. For the same reason, it is not for the Court to determine when that review should take place. This being said, the Court would also observe that the comparative and international law materials before it show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter ...
>
> 121. It follows from this conclusion that, where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention.
>
> 122. Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 in this regard. This would be contrary both to legal certainty and to the general principles on victim status within the meaning of that term in Article 34 of the Convention. Furthermore, in cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified, future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release. A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration."

199. In the instant case, the Court first of all reiterates its above-mentioned finding that since 17 November 2009, the applicant's relative social isolation – which has been gradually reduced thanks to the improvements made by the Government in line with the CPT's recommendations – has not attained the level of severity required to constitute a violation of Article 3 of the Convention.

200. It remains to be determined whether, in the light of the foregoing observations, the life sentence without parole imposed on the applicant can be regarded as irreducible for the purposes of Article 3 of the Convention.

201. The Court reiterates that the applicant was initially sentenced to capital punishment, for particularly serious crimes, namely having organised and conducted an unlawful armed campaign which caused a great many deaths. Following the promulgation of a law abolishing the death penalty

and replacing death sentences which had already been imposed with sentences to aggravated life imprisonment, the applicant's sentence was commuted by decision of the Assize Court, applying the new legal provisions, to aggravated life imprisonment. Such a sentence means that the applicant will remain in prison for the rest of his life, regardless of any consideration relating to his dangerousness and without any possibility of parole, even after a specific period of incarceration (see paragraph 182 above regarding the Court's findings on the complaints under Article 7 of the Convention).

202. The Court notes in that connection that section 107 of Law no. 5275 on the enforcement of sentences and security measures clearly excludes the applicant's case from the scope of release on parole, as he was convicted of crimes against the State under a provision of the Criminal Code (Book 2, Chapter 4, sub-chapter 4). It also notes that under Article 68 of the Criminal Code the sentence imposed on the applicant is one of the exceptions which are not subject to the statute of limitations. As a result, current legislation in Turkey clearly prohibits the applicant, in his capacity as a person sentenced to aggravated life imprisonment for a crime against the security of the State, from applying, at any time while serving his sentence, for release on legitimate penological grounds.

203. Furthermore, it is true that under Turkish law, in the event of the illness or old age of a life prisoner, the President of the Republic may order his immediate or deferred release. Nevertheless, the Court considers that release on humanitarian grounds does not correspond to the concept of "prospect of release" on legitimate penological grounds (see, to similar effect, *Vinter and Others*, § 129).

204. It is also true that the Turkish legislature has, at fairly regular intervals, adopted general or partial amnesty laws (the latter type of law grants release on parole after a minimum term) in order to help resolve major social problems. However, there is no evidence before the Court that such a plan is being prepared by the Government to provide the applicant with a prospect of release. The Court must concern itself with the law as applied in practice to prisoners sentenced to aggravated life imprisonment. That legislation is characterised by a lack of any mechanism for reviewing, after a specified minimum term of incarceration, life sentences imposed for crimes such as those committed by the applicant with a view to verifying the persistence of legitimate reasons for continuing his incarceration.

205. As regards the argument that the applicant was sentenced to life imprisonment without parole because he had committed particularly serious terrorist crimes, the Court reiterates that the provisions of Article 3 of the Convention allow for no derogation and prohibit inhuman or degrading punishment in absolute terms (see paragraphs 97-98 above).

206. In the light of these findings, the Court considers that the life sentence imposed on the applicant cannot be deemed reducible for the

purposes of Article 3 of the Convention. It concludes that in this context the requirements of this provision were not fulfilled in respect of the applicant.

207. There has accordingly been a violation of Article 3 of the Convention on this point.

Nevertheless, the Court considers that this finding of a violation cannot be understood as giving the applicant the prospect of imminent release. The national authorities must review, under a procedure to be established by adopting legislative instruments and in line with the principles laid down by the Court in paragraphs 111-113 of its Grand Chamber judgment in the case of *Vinter and Others* (quoted in paragraph 194 of this judgment), whether the applicant's continued incarceration is still justified after a minimum term of detention, either because the requirements of punishment and deterrence have not yet been entirely fulfilled or because the applicant's continued detention is justified by reason of his dangerousness.

...

FOR THESE REASONS, THE COURT

...

2. *Holds*, by four votes to three, that there has been a violation of Article 3 of the Convention as regards the complaints concerning the conditions of detention prior to 17 November 2009;

3. *Holds*, by six votes to one, that there has been no violation of Article 3 of the Convention as regards the complaints concerning the conditions of detention after 17 November 2009;

4. *Holds*, by four votes to three, that there has been no violation of Article 8 of the Convention as regards the complaints concerning the restrictions on visits by and communication with family members;

5. *Holds*, by six votes to one, that there has been no violation of Article 7 of the Convention;

6. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention as regards the complaints concerning the imposition of a life sentence without any possibility of release on parole;

...

Done in French, and notified in writing on 18 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint partly dissenting opinion of Judges Raimondi, Karakaş and Lorenzen;

(b) partly dissenting opinion of Judges Sajó and Keller;

(c) partly dissenting opinion of Judge Pinto de Albuquerque.

G.R.A.
S.H.N.

JOINT PARTLY DISSENTING OPINION OF JUDGES RAIMONDI, KARAKAŞ AND LORENZEN

We voted with the majority on all the salient points, but we cannot concur with the conclusion that the applicant's conditions of detention up to 17 November 2009 were in breach of Article 3 of the Convention.

In its judgment of 12 May 2005 the Grand Chamber of the Court concluded – unanimously – that the general conditions under which the applicant had been incarcerated had not, at the time of the judgment, attained the severity threshold to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention, and that consequently there had been no violation of that provision. It considered that it had been established that the applicant's detention had created exceptional difficulties for the Turkish authorities and that it was understandable that they should have deemed it necessary to adopt extraordinary security measures in this case. The Grand Chamber, moreover, had regard to the fact that the applicant's cell had incontrovertibly been equipped with quite impeccable amenities and that he could not be deemed to have been kept in sensory isolation or solitary confinement. Although it did consider, in line with CPT's recommendations, that the long-term effects of the applicant's relative social isolation should be mitigated by providing him with the same amenities available to other inmates of high-security prisons in Turkey, including television and telephone communication with his family, it did not consider it necessary to adopt the relevant measures in the short term in order to avoid violating Article 3.

Up to 17 November 2009 the applicant's living conditions at the prison remained unchanged, particularly as regards access to television and telephone calls. The CPT's recommendations were only followed at a later juncture. We consider, nonetheless, that in the specific circumstances of the present case, the fact that the detention continued under the same conditions for some four-and-a-half years cannot justify an assessment different from that of the Grand Chamber in the previous case. We note that the Government have (albeit rather dilatorily) observed the CPT's recommendations, and that from June 2008 onwards the applicant must have known that his conditions of detention were going to change considerably with the construction of the new building. We also attach importance to the fact that there is no evidence that the applicant's conditions of detention have seriously damaged his health.

For these reasons we consider that those conditions did not amount to a violation of Article 3 of the Convention.

PARTLY DISSENTING OPINION OF JUDGES SAJÓ AND KELLER

(Translation)

1. With all due respect to our colleagues, we cannot support the majority's position that there has been no violation of Article 8 of the Convention in the present case. We take the view that the restrictions placed on family visits are contrary to the law.

2. Although any detention which is lawful for the purposes of Article 5 of the Convention entails by its nature a limitation on private and family life, it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him in maintaining contact with his close family (see *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X, and *Ouinas v. France*, no. 13756/88, Commission decision of 12 March 1990, Decisions and Reports (DR) 65, p. 265). That also applies in the case of a dangerous prisoner subject to a special detention regime: the Court has found on several occasions that limiting the number of family visits constitutes an interference with prisoners' right to respect for their family life and that such interference must be "in accordance with the law", pursue one or more of the legitimate aims set out in Article 8 § 2 and be regarded as a measure which is "necessary in a democratic society" (see *Messina (no. 2)*, cited above, § 63; *Schiavone v. Italy* (dec.), no. 65039/01, 13 November 2007; and *X v. the United Kingdom*, no. 8065/77, Commission decision of 3 May 1978, DR 14, p. 246).

3. In accordance with section 25 of Law no. 5275 of 13 December 2004 on the enforcement of sentences and provisional measures (cited in paragraph 67 of the judgment), the applicant can receive family visits once a fortnight, each visit lasting a maximum of one hour. This legal basis implies that the applicant is entitled to see members of his family approximately twenty-five times per year.

4. The total number of visits by relatives amounted to fourteen in 2005, thirteen in 2006, seven in 2007 and two between January and October 2011 (see paragraphs 33 and 35 of the judgment). Between 16 February 1999 and September 2007 the applicant should have had some 190 visits. In fact, the number of visits which actually took place was much lower. Even though the applicant received 126 family visits between 16 February 1999 and September 2007, there were long periods of time when he never saw his relatives.

5. We are not convinced that the reasons mentioned by the Government (poor weather conditions, maintenance work on the ferry boats between the island and the mainland and the inability of the boats to cope with prevailing weather conditions – see paragraph 31 of the judgment) can explain the many refusals to authorise visits. Almost half of all the visits

requested were refused on the grounds that the boat had broken down or that the weather conditions were poor (see paragraph 54 of the judgment).

6. In our view, the significant discrepancy between the number of visits provided for in national law and the number of visits actually carried out was unjustified, which is why we consider that there has been a violation of Article 8 of the Convention in the present case.

PARTLY DISSENTING OPINION OF JUDGE PINTO DE ALBUQUERQUE

1. In the *Öcalan* case the European Court of Human Rights (the Court) is again faced with the question of principle of the compatibility with the European Convention on Human Rights (the Convention) of life sentences without parole imposed on mentally fit offenders[1]. There are two novelties in this case in comparison to the *Vinter* judgment[2]. This time the point at issue is the sentence applied to the convicted leader of a terrorist organisation, and the scope of the case also includes the very strict prison regime applied to the applicant, and in particular the restrictions in his access to relatives and legal assistance and the lack of proper medical care. The discussion of the fundamental problem of a life sentence has, in the present case, the benefit of the knowledge of the particulars of the prison regime applied to the applicant from June 1999 to March 2012[3]. Both reasons would have sufficed to justify my separate opinion. But there is a third reason. In view of the reaction to *Vinter*, the Court could and should have taken the opportunity to clarify the meaning of its standard in this matter. That is also the purpose of this opinion.

Incompatibility of life sentence with international law

2. The applicant was convicted and sentenced to the death penalty in 1999 in an unfair trial, according to the Grand Chamber's judgment of 2005[4]. In spite of a clear statement by the Grand Chamber that a retrial should be provided to the applicant, and his subsequent request to that effect, no retrial ever occurred. Neither the Committee of Ministers nor the Court addressed the question of the failure to implement the Grand Chamber judgment of

[1] The subject of this opinion therefore does not cover any form of life internment of offenders who are not responsible for their actions, i.e. persons who are not mentally capable or "insane".

[2] See *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09, 130/10 and 3896/10, 9 July 2013.

[3] I regret that the applicant's four applications lodged before the Court in 2003, 2004, 2006 and 2007 were joined and that it took the Court more than ten years to deal with these joined applications. The Court's procrastination, combined with the decision to join the applications not only made it extremely difficult to assess facts which had occurred a long time ago, but indeed allowed for serious ongoing violations whose prolongation could have been avoided. Having regard to the fact that the majority considered that the period of time under assessment by this Court started on the date of delivery of the judgment proffered on the application no. 46221/99 and only ended with the last observations submitted to the Court in the present joined case, the Court was faced with the Herculean task of evaluating how the prison authorities and the competent appellate courts of the respondent State dealt with the applicant for seven years, from May 2005 to March 2012 (see para. 96 of the judgment).

[4] *Öcalan v. Turkey*, no. 46221/99, ECHR 2005-IV.

2005[5]. In practical terms, the Grand Chamber's findings on the unfairness of the applicant's conviction remained without effect, owing to the fact that both the Court and the Committee of Ministers refrained from exercising their competences[6]. The death penalty was subsequently replaced by life imprisonment without parole.

3. Criminal punishment of mentally fit offenders may have one or more of the following five purposes: (1) positive special prevention (resocialising the offender), i.e. preparing the offender to lead a law-abiding life in the community after release; (2) negative special prevention (incapacitating the offender), i.e. avoiding future breaches of the law by the sentenced person by keeping him or her away from the community; (3) positive general prevention (reinforcing the breached norm), i.e. strengthening social acceptance of and compliance with the breached provision; (4) negative general prevention (deterring would-be offenders), i.e. avoiding future breaches of that provision by other members of the community; and (5) retribution, i.e. ensuring atonement for the guilty act by the offender.

4. In *Vinter*, the Grand Chamber held that a "whole life order" (i.e. an irreducible life sentence) irretrievably breaches Article 3 of the Convention, because it contradicts the resocialisation purpose[7]. In fact, an irreducible life sentence is *per se* incompatible with international law, insofar as it disregards the clear prohibition set out in Article 37 (a) of the United Nations Convention on the Rights of the Child and Article 9 of the Inter-American Convention on extradition, and the international obligation of resocialisation of offenders sentenced to prison terms laid down in Article 10 (3) of the International Covenant on Civil and Political Rights, Article 5 (6) of the American Convention on Human Rights, and Article 40 (1) of the United Nations Convention on the Rights of the Child[8]. As the US Supreme

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[5] In its decision of inadmissibility of 6.7.2010, on application no. 5980/07, the Court held that it lacked jurisdiction. Prior to that decision, the Committee of Ministers had already decided to close its examination under Article 46, para. 2, although it also stated that this decision in no way prejudged the Court's examination of new complaints (Resolution CM/ResDH(2007)1).

[6] On the Court's and the Committee of Ministers' shared responsibility for controlling the execution of the Court's judgments, see my separate opinion in *Fabris v. France*, no. 16574/08, 7 February 2013.

[7] The Grand Chamber explicitly accepted the German Federal Constitutional Court's understanding of resocialisation as a *sine qua non* of prison sentences, including life imprisonment (see *Vinter*, cited above, paras. 113-118; see the Federal Constitutional Court judgment of 21.6.1977, and along the same lines, the Italian Constitutional Court Judgment No. 274 of 27.9.1987 and the French Constitutional Court Decision No. 93-334 DC of 20.1.1994).

[8] Consequently, an individual sentence plan, with a comprehensive and updated risk and needs assessment, for inmates sentenced to life or long-term imprisonment (that is, a prison sentence or sentences totalling five years or more) is an international positive obligation of States Parties under Article 3 of the Convention (see my separate opinion in *Taukus v. Lithuania*, no. 29474/09, 27 November 2012).

Court once put it, "a sentence of life imprisonment without parole, however, cannot be justified by the goal of rehabilitation. The penalty forswears altogether the rehabilitative ideal. By denying the defendant the right to re-enter the community, the State makes an irrevocable judgment about that person's value and place in society."[9] In blunt terms, an irreducible life sentence is akin to inhuman treatment because of the desocialising and therefore dehumanising effects of long-term imprisonment. In fact, this also holds true for any kind of open-ended, indeterminate sentence, any fixed-term sentence which exceeds a normal life span, or any extremely long fixed-term. Human dignity is incompatible with these forms of punishment. Restricted access to, or even denial of, drug treatment and vocational and educational programmes for life prisoners only aggravates the inherent inhumanity of the penalty.

5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76

[9] See *Graham v. Florida*, 560 U.S. 48 (2010). Although the argument was used for minors, it has exactly the same legal and moral strength when applied to responsible adult offenders.

[10] On the history of prison reform in Portugal in comparison with other European countries, see my book "Portuguese and European Prison Law" (in Portuguese), Coimbra, 2006, and specifically on the 1884 reform, see pages 82 to 90. Portugal was presented to the world as a model by British prison reformer and secretary of the Howard Association, William Tallack, in his far-sighted "Penological and preventive principles", 1889, pages 162 and 163. In its comments on the second edition of this work, the American Journal of Sociology, volume I, 1895, page 791, considered that "The author is most favourably situated for catching the best thought of the age."

[11] See for example the UNODC Homicide Statistics 2013.

of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVVII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].

6. Life imprisonment may pursue, and indeed achieve, the life-long incapacitation of the offender (negative special prevention), the presumption being that the offender's specific dangerousness requires that he or she be kept away from the community for as long as possible , namely for the rest of his or her life. But this presumption is based on a faith in highly problematic prediction scales that are closer to a form of divinatory anticipation of the future than to a scientific exercise, as the experience of many "false positives" has shown. Moreover, the net-widening effect of the concept of dangerousness of the offender, which has gone so far as to include "personality disorder", "mental abnormality" or "unstable character", blurs the borderline between responsible mentally fit offenders and irresponsible mentally unfit offenders, with the serious risk of mislabelling offenders[14]. Worse still, this presumption borders on

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[12] Norway cannot be counted among these countries. Life imprisonment in peace time was abolished in 1981 and was replaced by imprisonment for a maximum of 21 years. Furthermore, certain dangerous offenders may be punished with preventive detention, which cannot exceed 21 years (Article 39 e of the Civil Criminal Code). However, the court may prolong this penalty by up to five years at a time where the convict is still considered dangerous. This means that life incarceration may be applied in the case of repeated five-year prolongations.

[13] In *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 85, ECHR 2002-VI, the Court attached "less importance to the lack of evidence of a common European approach to the resolution of the legal and practical problems posed, than to the clear and uncontested evidence of a continuing international trend", quoting the legal situation in non-European countries.

[14] As Justice Blackmun once said, there is no equitable system to identify effectively the

arbitrariness in the case of automatic or mandatory penalties, such as in the case of automatic application of life sentence to certain types of offences, regardless of the particular circumstances of the offender, or to certain types of repetitive offenders, regardless of the specific gravity of the crimes committed. The goal of eliminating arbitrariness and discrimination from criminal law enforcement can never be achieved without securing a fundamental component of fairness: individualised sentencing. Automatic or mandatory penalties are the opposite of an individualised response to crime.

7. If life imprisonment conflicts with the purpose of resocialisation of the offender and the basic principle of individualised sentencing, the next question to be put is whether pure incapacitation of the offender is tolerable in a democratic society. The question is not rhetoric. Life imprisonment may work, and indeed has worked in the past, as a privileged instrument of abuse of civil liberties. Montesquieu rightly argued that the length of prison penalties is in direct correlation to the more or less liberal nature of State: "*Il serait aisé de prouver que, dans tous ou presque tous les Etats d'Europe, les peines ont diminué ou augmenté à mesure qu'on s'est plus approché ou plus eloigné de la liberté*." ("It would be an easy matter to prove, that, in all, or almost all, the governments of Europe, penalties have increased or diminished in proportion as those governments favoured or discouraged liberty.") Labelling political opponents as "public enemies" and punishing them with life imprisonment has been an irrefutable temptation in many States in the past, and still is today. Recent history provides two good examples. "Preventive detention" (*Sicherungsverwahrung*), which provides for the extension of the prison term imposed on mentally fit offenders in accordance with their dangerousness, was introduced into German law by the Nazi regime, and was used and abused to target all those who opposed the regime or simply did not fit into the Nazi pattern of a lawful citizen. The other universally known example is former President Nelson Mandela, who in 1962 was convicted of conspiracy to overthrow the State and sentenced to life imprisonment in the Rivonia Trial. But political opponents are not the sole target of a penal policy aimed at long-term incarceration of those considered as "highly dangerous to society". History has also taught that many other social groups, like members of racial, ethnical and religious minorities have felt particularly severely the detrimental effects of punitive policies centred on life-long imprisonment. The over-representation of these groups in the prison population serving life sentences is a clear sign of a disproportionate State reaction to crime. And this temptation is not the monopoly of totalitarian regimes. Democracies have also been mesmerised

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"worst of the worst" (*Collins v. Collins*, 510 US 1141 (1994). The argument was made with regard to those deserving the death penalty, but it could also be applied to those sentenced to life imprisonment. In fact, Justice Blackmun's excellent opinion could be transposed wholesale to the case of life imprisonment.

by the populist rhetoric of life sentence as the only effective means of the fight against the "worst of the worst" [15].

8. Finally, pure retribution is presented as the ultimate purpose of life imprisonment. Under the assumption that the offence is so heinous that it can never be atoned for, the only way to punish the offender is to deprive him or her of liberty for the rest of his or her natural life[16]. The heinousness of the crime calls for life-long retribution. The community indulges its thirst for revenge by imposing a sentence on a par with or worse than death itself[17]. The state declines any interest in human life other than the prisoner's strict bodily survival. Being seen as a "beast", a "predator" or a "monster" who should "rot in jail", the prisoner is compared, subliminally and sometimes even explicitly, to an animal, a being "unfit for or beyond rehabilitation". Infinity is not enough jail time for him or her. The impulse to impose life imprisonment converges, in its blind retributivism, with the impulse to impose the death penalty. To put it bluntly, the life prisoner suffers "civil death"[18]. Life imprisonment is justified in the "delayed death penalty" logic, thus reducing the prisoner to a mere object of the executive's power[19].

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[15] Again, see the remarkable argumentation of Justice Blackmun in his dissent joined to *Collins v. Collins*, 510 US 1141 (1994), where he referred to a disproportionate capital sentencing policy "infected by racial prejudice". Justices Potter Stewart, Byron White and William O. Douglas had already stressed the same point in *Furman v. Georgia*, 408 U.S. 238 (1972). Justice Stewart even talked about "legal systems that permit this unique penalty to be so wantonly and so freakishly imposed." These strong statements against the death penalty could also be made against life imprisonment.

[16] That was precisely the approach taken by the England and Wales Court of Appeal in its judgment of 14.2.2014, paragraphs 49 and 50: "A court must only impose a whole life order if the seriousness is exceptionally high and the requirements of just punishment and retribution make such an order the just penalty."

[17] This line of reasoning is as old as mankind: "He who is kind to the cruel is cruel to the kind." Solon observed that true justice will not be achieved until those who have not been victimised by crime are just as indignant as those who were victimised. This vision overlooks the fact that prison is not a place to treat people indignantly and cruelly. And by concentrating on the need for revenge and resent, it distracts from the state obligation to provide the proper means for victims of crime to recover from their loss.

[18] Here are two illustrations: New York's statute provides that "[a] person sentenced to life imprisonment is civilly dead." (New York Code, § 79-a) and the Rhode Island's statute that "Every person imprisoned in the adult correctional institutions for life shall, with respect to all rights of property, to the bond of matrimony and to all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place at the time of conviction." (Rhode Island General Laws, § 13-6-1 (2002)).

[19] As Beccaria has said long ago, a life sentence is a punishment worse than death itself: "If it be said that permanent penal servitude is as grievous as death, and therefore as cruel, I reply that, if we add up all the unhappy moments of slavery, perhaps it is even more so" (On Crimes and Punishments, 1764). The argument was repeated by John Stuart Mill, in his infelicitous speech in favour of capital punishment, of 21.4.1868. It should be added that Mill's ideas evolved and later on he rejected both life imprisonment and the death penalty.

9. This reasoning is not tolerable in a democratic society. Neither the "exceptionally high dangerousness" of the offender nor the "heinousness of the crime" provides a legitimate ground for life imprisonment. Any State interference with liberty must be limited by the principles of proportionality and necessity, of which the principle of the least intrusive interference is one of the corollaries[20]. Prison is, precisely, the *ultima ratio* state instrument of interference with the liberty of citizens. It must be used when no other state measure is adequate, to the least extension possible both in its length and severity, and in proportion to the gravity of the *actus reus* and the *mens rea*[21]. The gravity of the offender's objective conduct and the degree of his personal culpability are the absolute limits of proportionate sentencing, and the calibration of any penalty must match these limits. If this moderate form of retributivism is still commensurate with a democratic society, life imprisonment is not, since it is an unrestrained, unnecessary and disproportionate State reaction to crime. The conclusion is not different in the case of a reducible life sentence, in so far as the sentence service only terminates on his or her death, and he or she may be recalled to prison many decades after release.

10. A categorical rule against life imprisonment is demanded by the universal acknowledgement of the principle of resocialisation of offenders sentenced to prison and the emerging consensus on the prohibition of life imprisonment. This rule would not only avoid the proven pernicious consequences of life imprisonment, but would also constrain states to take seriously their international obligation to enable prisoners to serve their prison sentence in a constructive, rehabilitative manner, and accordingly to guarantee the necessary financial and human resources for doing so[22]. Such

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[20] For example, section 153 (2) of the English Criminal Justice Act 2003.

[21] "All punishments which, by their excessive length or severity, are greatly disproportioned to the offences charged", in *Weems v. United States*, 217 U.S. 371, 349 (1909). Or as the South African Constitutional Court elaborated in *S. v. Dodo*, 2001 (3) SA 382 (CC) 303 (S. Afr.), "Where the length of the sentence, which has been imposed because of its general deterrent effect on others, bears no relation to the gravity of the offense, the offender is being used essentially as a means to another end and the offender's dignity is assailed. So too where the reformative effect of the punishment is predominant and the offender sentenced to lengthy imprisonment, principally because he cannot be reformed in a shorter period, but the length of imprisonment bears no relationship to what the committed offence merits."

[22] Human Rights Committee General Comment no. 21 (1992), para. 10, that "No penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner."; Rules 57, 60, 61 and 65 of the U.N. Standard Minimum Rules for the Treatment of Prisoners (1957, amended 1977), Principle no. 10 of the U.N. Basic Principles for the Treatment of Prisoners (1990), and Principle no. 6 of the Committee of Ministers Recommendation Rec(2006)2. It should be added that today resocialisation is not understood, as in the classical medical analogy, as a "treatment" or "cure" of the prisoner which aims at the reformation of the prisoner's character, but as a less ambitious, yet more realistic task: his or her preparation for a law-abiding life after prison. There are three reasons for this: firstly, it is problematic that states have the

categorical rule, while reflecting the inherent human dignity of every human being and the "evolving standards of decency that mark the progress of a maturing society"[23], would affirm the moral superiority of a democratic society over those offenders who do not respect its basic tenets, precisely when such moral superiority is most needed, i.e. when faced with the most vicious acts that humans are capable of. As Justice Stevens put it in his concurring opinion in *Graham*, "punishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time"[24]. That time has come for life imprisonment.

Recognition of the right to parole in international law

11. In the light of *Vinter*, States must establish a mechanism to review the justification of continued imprisonment according to the penological needs of the prisoner sentenced to a "whole life order". If a parole mechanism must be available to those convicted of the most heinous crimes, it must *a fortiori* be available to the other prisoners. In other words, the Convention guarantees a right to parole, including for those convicted of the most serious crimes[25]. This means that prisoners have a vested and enforceable right to be paroled if and when the legal requisites of parole are present, not that all prisoners should necessarily be granted parole. Moreover, parole is not a release from the sentence, but a modification of the form of state interference with the sentenced person's liberty, by way of supervision of his or her life at large. And this supervision may take a very stringent form, with strict conditions attached, according to the needs of each paroled person.

12. While the Contracting Parties to the Convention do have some discretion in regulating the parole mechanism, their margin of appreciation must remain under the Court's supervision. Otherwise, unrestrained

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constitutional power to "reform" the character of an adult; secondly, it is doubtful that such reform is feasible, and thirdly, it is even more uncertain that such reform can be established.

[23] This felicitous expression is from Chief Justice Warren writing for the majority in *Trop v. Dulles*, 356 U.S. 86 (1958) and has been repeated, among others, by Justice Thurgood Marshal, also writing the opinion of Court in *Estelle v. Gamble*, 429 U. S. 97, 102 (1976).

[24] *Graham v. Florida*, 560 U.S. 48 (2010). See along the same progressive line of reasoning President Costa's opinion in *Léger v. France*, no. 19324/02, 11 April 2006, President Bratza's opinion in *Kafkaris v. Cyprus (GC)*, no. 21906/04, 12 February 2008, and President Spielmann's opinion in *Léger v. France (GC)*, no. 19324/02, 30 March 2009.

[25] That is exactly the meaning of Principle 4.a of the Committee of Ministers Recommendation 2003(22) of 24.9.2003. In other words, *Vinter* in fact overruled the previous case-law of the Court according to which the Convention does not confer a right to parole (see *Szabo v. Sweden (dec.)*, no. 28578/03, ECHR 2006-VIII, and *Macedo da Costa v. Luxembourg (dec.)*, no. 26619/07, § 22, 5 June 2012).

discretion could provide a practical way of nullifying their international obligation to guarantee the possibility of parole. There are thus three basic requirements for effective protection of the prisoner's right to parole under the Convention. First of all, the parole mechanism must be placed under the authority of a court or at least under full judicial review both of the factual and the legal elements of the decision. Any parole mechanism that gives a governmental or administrative authority the last word on the review of the sentence would put the liberty of the prisoner in the hands of the executive and devoid the judiciary of its ultimate responsibility, thus entrusting judicial powers to the executive and breaching the principle of separation of powers. That would fly in the face of a democratic system where deprivation of liberty is the most important task of judges, not the executive. Hence, a review by a minister or any subordinate official of the administration is not sufficiently independent to comply with both universal and European human rights standards[26]. Moreover, decisions to keep prisoners in or recall them to prison must be taken with all procedural guarantees, including affording prisoners the right to an oral hearing and to adequate access to their files[27].

13. Secondly, the parole review must take place within a pre-determined, reasonable timeframe[28]. The legal regime for sentence reducibility must be in place at the time of imposing the prison sentence. Where the law does not establish a "minimum term" (or tariff) of service of the penalty before parole is considered, the trial court is required to set it, but this period must not be so long as to be tantamount to a *de facto* bar on the review of the prisoner's sentence during his or her natural life. Neither the law nor the courts may establish a minimum term to be served such as to turn the reducible sentence into a disguised form of irreducible life sentence, such as, for example, a whole or natural life tariff. Where parole is not granted in the first review, the prisoner's situation should be reviewed at reasonable, fairly frequent intervals[29]. For the same reason, recalled prisoners should also benefit from the same review at regular intervals[30].

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[26] See, at the European level, *Weeks v. the United Kingdom*, no. 9787/82, §§ 58 and 69, 2 March 1987, and *T. v. the United Kingdom*, no. 24724/94, § 121, 16.12.1999; the Committee for the Prevention of Torture (CPT) Report (2007) 55, of 27.6.2007; and Judgment no. 204/1974 of the Italian Constitutional Court of 27.6.1974. At the universal level, see Article 110 (4) and (5) of the Rome Statute and Rules 223 and 224 of the Rules of Procedure and Evidence.

[27] See paragraph 32 of Committee of Ministers Recommendation 2003(22) of 24.9.2003, and *Osborn v Parole Board* [2013] UKSC 61.

[28] See para. 9 of the Committee of Ministers Resolution 76(2) of 17.2.1976, and para. 5 of the Committee of Ministers Recommendation 2003(22) of 24.9.2003.

[29] See *Weeks*, cited above, § 58, Committee of Ministers Resolution 76(2) of 17.2.1976, para. 12; Committee of Ministers Recommendation 2003(22) of 24.9.2003, para. 21; CPT report on Hungary, February 2007, para. 33, Life imprisonment, UN Crime Prevention and Criminal Justice Branch's Report (1994), UN Document ST/CSDHA/24, para. 49; and the Committee on the Rights of the Child General Comment no. 10, para. 77.

14. Thirdly, the criteria for assessing the appropriateness of parole must be established by law in a clear and foreseeable manner and be based primarily on special preventive considerations, and secondarily on general preventive considerations[31]. Considerations of general prevention alone should not be used to justify refusal of parole or recall to prison. The criteria should not be limited to the prisoner's mental or physical infirmity or closeness to death. Such "compassionate grounds" are clearly too restrictive[32]. That was the case with section 30 of the Crime (Sentences) Act 1997 and the indeterminate sentence manual ("lifer manual"). Recently, the Court of Appeal of England and Wales found that the Court did not prevent imposition of whole life orders for "heinous crimes", since the law of England and Wales did provide for reducibility as the conditions set out in the lifer manual, although "exceptional", were not too restrictive and indeed had a "wide meaning that can be elucidated, as is the way the common law develops, on a case by case basis". In other words, the Court of Appeal held that the Grand Chamber was wrong in its interpretation of section 30 of the Crime (Sentences) Act 1997 and the lifer manual[33]. This opinion raises rather serious linguistic, logical and legal questions: what does "compassion" have to do with "risk assessment", the "prospect of the offender's resocialisation" or the "lack of continuing penological grounds for continued imprisonment"? Is the "wide meaning" of compassionate grounds so wide that is has no connection with the plain meaning of the word "compassion"? What can be more unpredictable than a discretionary legal provision to release in exceptional circumstances which is converted into an obligation to release with a "wide meaning"? What can be more unclear than "exceptional grounds" with a "wide meaning"? It is evident that the review mechanism provided for by section 30 of the Crime (Sentences) Act 1997 and the lifer manual in the interpretation of the Court of Appeal is not "a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds"[34]. The existence of a clear and predictable legal

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[30] See Report CPT (2007) 55 of 27.6.2007.

[31] See Committee of Ministers Resolution 76(2) of 17.2.1976, para. 10; Committee of Ministers Recommendation 2003(22) of 24.9.2003, paras. 3, 4 and 20; and Committee of Ministers Recommendation 2003(23) of 9.10.2003, para. 34.

[32] See Report CPT (2007) 55, of 27.6.2007.

[33] See para. 29 of the Court of Appeal's judgment of 14.2.2014. To put it bluntly, the Court of Appeal is saying that it was right in *Bieber* and that the Court was wrong in *Vinter*.

[34] See para. 119 of the *Vinter* Grand Chamber judgment. In fact, the relevant provision is headed "Compassionate release on medical grounds", which plainly shows what section 30 was intended for. The Court of Appeal's interpretation of this provision simply does not square with the meaning of the concept of "compassion" in Western culture (see the Oxford dictionary's definition of compassion as "the sympathetic pity and concern for the

framework which enshrines the right to parole of all prisoners, including those who have committed the most "heinous crimes", is an international obligation of member States, and compliance with international human rights law does not hinge on how shocking the factual circumstances of each case are. Hence, the Court of Appeal's final statement, namely "our decision on each case turns on its specific facts and cannot be seen as a guide to any similar case", does not absolve the State from the international obligation to respect the Court's judgments. To think otherwise would have seismic repercussions. The Convention is not an *à la carte* commitment, and the European system of protection human rights would collapse if it started to be understood that way.

The applicant's life imprisonment

15. The applicant suffered over ten years of extremely strict solitary confinement, from February 1999 to November 2009[35]. The applicant's prison regime included complete isolation from other prisoners[36], lack of any specific labour, educational or recreational activities, prohibition of correspondence, telephone communication and television, censorship of literature and newspapers, prohibition

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sufferings or misfortunes of others", based on the Latin ***compassio***, or suffer with). Indeed, the Court of Appeal's contention that the "wide meaning" of compassion encompasses "legitimate penological reasons" has already been presented by the Government to the Court and explicitly rejected by the Grand Chamber in para. 129 of the *Vinter* judgment.

[35] The lack of exhaustive and reliable information on the applicant's prison regime made a conscious judicial evaluation of the real situation on the ground very complicated. In fact, the majority's reasoning is full of assumptions and presumptions based on parsimonious documentary evidence produced by the respondent Government. The Court was given no clear and exact picture of the number of hours the applicant actually spent with other prisoners or engaging in leisure and sports activities, the number of visits by family members, lawyers and medical doctors requested, effected and refused, the *modus operandi* of these visits, how often conversations between the applicant and his lawyers were interrupted and lawyers were prevented from exchanging documents/notes with the applicant, the number of lawyers prohibited from acting on behalf of the applicant and contacting him and the reasons therefor, the number of phone conversations between the applicant and people outside the prison requested, effected and refused, how often the applicant's correspondence was censured or even interrupted, or the number of disciplinary sanctions and security measures imposed, appealed against, upheld, quashed and enforced. In any case, the Court did dispose of some reliable evidence. In view of the fact that the applicant repeatedly contested the documents of the prison authorities, I consider that the only credible evidence before the Court is the one provided by the CPT, and the Government's evidence when supported by CPT reports.

[36] In fact, the applicant was the only inmate of the Imrali prison until November 2009, when five other prisoners were transferred to that prison. The applicant had one hour's conversation with the other prisoners per week. Later on, this allowance was increased to three hours per week.

of visits other than by some family members and lawyers and prohibition of the use of the Kurdish language during visits. When serving successive disciplinary penalties of solitary confinement, he had no access to visits[37]. In its 2008 report, after describing the dramatic effects on the psychological situation of the prisoner, the CPT concluded that to "keep detained a person in these conditions for 8 and half years does not have any justification"[38]. In its 2010 report, the CPT acknowledged that the situation was better, but the new conditions were a "very modest step in the right direction", and it particularly criticised the prohibition of all contact with other prisoners during outdoor exercise, the exclusion from receiving "table visits" from members of his family, the prohibition of accumulating unused visiting periods and the prohibition of telephone contact with his relatives.[39] It noted that the applicant's prison regime was much more severe than the one applied to other prisoners of the same category incarcerated in F-type prisons. The applicant's discriminatory prison regime was exacerbated by the fact that most of the requested visits by his relatives and lawyers had been rejected.

16. On the specific topic of medical care, the CPT noted that "various specific recommendations repeatedly made by the Committee concerning the provision of health care remain unimplemented."[40] Firstly, the applicant was subjected to a superficial medical check every day, "which is not only unnecessary but also potentially counterproductive." Secondly, the establishment of a meaningful doctor/patient relationship remained impossible due to the constantly changing visiting doctors. In practice, the general practitioners changed weekly and were never the same. Further, during a period of nine months prior to the CPT visit, there had been twelve psychiatric consultations by five different psychiatrists and eleven visits by eleven different specialists in internal medicine, as well as a number of additional visits by various other specialists. Thus, it was possible that the applicant had been seen by almost 90 different doctors in a year. Thirdly, it was particularly worrying that the visiting doctors did not communicate with each other, and that there was no co-ordination of medical consultations whatsoever. Usually, doctors wrote a report at the end of each visit which was then simply forwarded to the prison director. This, moreover, constituted a "breach of medical confidentiality", the CPT concluded.

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[37] The Government admit that there is no difference between solitary confinement and the normal confinement other than the visits by relatives and lawyers.
[38] CPT 2008 report, para. 33.
[39] CPT 2010 report, paras. 19, 21, 25 and 28. Most of these facts had already been referred to in the CPT reports of 2008 and 2003.
[40] CPT 2010 report, para. 33. Previous critiques on the medical care provided to the applicant were made in the CPT's 2007 report, para. 33.

17. The respondent State has effectively made an effort to accommodate some of the CPT critiques, especially concerning the material conditions of the prison. Yet the criticism in the CPT's 2010 report regarding poor access to natural light in all the cells has not yet been dealt with[41].

18. Based on the factual findings referred to, I conclude that throughout the period under scrutiny, the applicant's solitary confinement regime combined with his extremely limited contact with the outside world and in particular the scant access to his relatives and deficient medical care has reached such a degree of severity as to be in breach of Articles 3 and 8[42].

The applicant's access to lawyers

19. Any detained or imprisoned person has three basic rights from the very beginning of incarceration: the rights of access to a lawyer and to a doctor and the right to have the fact of one's detention notified to a relative or another third party of one's choice. The right of access to a lawyer must include the right to talk to him in private, although this should not prevent the replacement of a lawyer who acts criminally, participates in a criminal act or impedes the proper conduct of the proceedings. Similarly, the right of access to a lawyer should apply no matter how "serious" the offence of which the person detained is suspected. Indeed, persons suspected of particularly serious offences can be among those most at risk of ill-treatment, and therefore most in need of access to a lawyer. Consequently, the question whether restrictions on the right of access to a lawyer are justified should be assessed on a case-by-case basis, not determined by the category of offence involved[43]. If lawyers are essential during the investigation and the trial of a case, they are even more so during the execution of the sentence. Access to lawyers is crucial in the phase of the service of the prison sentence, because they can provide independent supervision of the prison regime applied, the disciplinary sanctions imposed and the special measures of restraint and security adopted and the whole panoply of prohibitions, restrictions and obligations attached to the condition of an inmate, and when necessary act in order to reinstate the human rights of the prisoner. Lawyers are indispensable guarantors of human-rights-compliant service of prison terms.

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[41] CPT 2010 report, para. 10. Previous remarks on this subject can be found in CPT 2006 report, paras. 48-51, and the CPT 2008 report, paras. 11-12.

[42] Para. 149 of the majority's reasoning does explicitly recognise the insufficiency of the prison regime and the contacts with the outside world after 17.11.2009, but falls short of a finding of a violation of article 3. Worse still, the majority's conclusion of no violation of Article 8 and its reasoning in para. 163 contradict its conclusion in para. 146, where it took account, precisely, of the "major" restrictions on the access to the applicant's relatives as a ground for finding a violation of Article 3.

[43] See the 21st General Report (CPT/Inf (2011) 28, paras. 18-25, and the Committee of Ministers Recommendation Rec(2006)2, paras. 23.4 and 23.5.

20. Like the requests for family visits, the majority of requests for visits by the applicant's lawyers have been refused with the following reasons: either bad weather or no boat connection to the island available. The applicant's lawyers have also faced another ground for refusal of visit requests: suspicion of terrorist complicity by lawyers[44]. Lawyers' visits have often been interrupted and conversations between the applicant and his lawyers recorded. Documents and other material exchanged between the applicant and his lawyers have been controlled and lawyer's notes confiscated. Mail between the defendant and his lawyers has been censored. Lawyers have been denied access to the applicant's disciplinary proceedings and to the relevant files. Finally, lawyers have even been prohibited from representing the applicant for long periods of time; some were even detained and others had their offices searched and professional files apprehended[45].

21. According to section 59 of Law no. 5275, in conjunction with section 84 of the relevant Regulation of 6.4.2006, the examination of documents, files, notes or records of lawyers is decided by a judge, this decision being open to appeal. There is no specific provision for eavesdropping on or recording conversations between the lawyer and the prisoner[46]. Article 151 of the Code of Criminal Procedure as amended by Law no. 5353 of 2005 provides for the prohibition of a lawyer for one or even two years, and his or her replacement by another lawyer appointed by the Bar Association. The broad, vague wording of the provision raises problems, but even accepting it for the sake of argument, no evidence has been submitted to the Court that the applicant's lawyers were involved in any such criminal activities such as to justify their prohibition, let alone any conviction of his lawyers on that account. With regard to access to the disciplinary file, and specifically to the prisoner's written defence submissions during the appeal proceedings, the competent judicial authorities have rejected such requests on the basis of Article 153 § 2 of the Code of Criminal Procedure, which provides that access to the case file and the possibility of receiving a copy of the file may be restricted when detrimental to the ongoing investigation. This provision of criminal procedure is designed to protect the interests of criminal investigations, and its use in a disciplinary context is unacceptable.

22. Finally, with regard to the difficulties of access to the island, the Government have two choices: if they want to detain the applicant on an island, they have to provide the necessary means of transport, possibly including more boats when the existing ones are not available, or a

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[44] The majority did not address several thorny questions put explicitly by the applicant and communicated by the Court to the respondent Government, such as the alleged prohibition of the applicant's lawyers from acting on his behalf and contacting him.

[45] 2010 CPT report, para. 26, and 2008 CPT report, para. 24.

[46] The Government's contention that section 59, no. 4, of Law no. 5275, as amended in 2005, provides for this, is not convincing, in view of the clear letter of the law.

helicopter in the event of adverse sea conditions[47]; if the Government cannot or do not want to provide these additional means of transport, then they have to place the applicant in the continent. What they cannot do is to keep him on an island without providing the means of access to it.

23. In sum, the above-mentioned violation of Article 3 is aggravated by the prohibition on the applicant's lawyers' acting on his behalf or contacting him, the systematic prohibition of confidential contact with lawyers, the systematic recording of all conversations between the applicant and his lawyers without a clear legal basis, the systematic prohibition of lawyers' access to the disciplinary proceedings and the disciplinary files, depriving the applicant of any legal assistance, and the confiscation of records of interviews between the applicant and his lawyers written by the lawyers[48].

Conclusion

24. Prisons should not be like the gates of Hell, where the words of Dante come true: *Lasciate ogne speranza, voi ch'intrate* ("Abandon all hope, ye who enter here"). The Convention requires an approach to resocialisation and parole based on prisoners' rights, in so far as their rights to resocialisation and parole go hand in hand with the States Parties' obligations to pursue the former and guarantee the latter. The applicant has been serving a life sentence without parole since 1999. In the period of time under scrutiny in this judgment (May 2005 to March 2012), the applicant's life sentence has been implemented with extreme severity, infringing the applicant's rights under Articles 3 and 8. In order to make good these breaches of the Convention, the respondent State must not only improve the applicant's prison regime, improve access to family and lawyers and provide proper medical care in line with the CPT's recommendations, but also introduce a legal mechanism of parole for prisoners in the same situation as the applicant, which provides for a regular, judicial review of incarceration on the basis of their penological needs. But Turkey could go a step further, by joining those countries which have long ago abolished life imprisonment for mentally fit offenders. In so doing, Turkey would be setting a powerful example for all mankind.

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[47] There is a helicopter to the island available for State officials, but not for lawyers.

[48] See *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 630-649, 25 July 2013. Comparing the restrictions imposed on the relationship between the applicant Öcalan and his lawyers by the Turkish State with those applied in the relationship between the applicants Khodorkovskiy and Lebedev and their lawyers by the Russian State, one cannot but conclude that the former were much more severe than the latter.