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## 2021 ASSESSMENT REPORT ON RIGHTS VIOLATIONS AND THE CURRENT CONDITIONS IN İMRALI ISLAND PRISON

### I. INTRODUCTION

İmralı F Type High Security Closed Prison is a single-person island prison built specifically for our client, Abdullah Öcalan, in February 1999, completely overriding domestic and international law. The prison has since then been operated based on a special status and through special practices. Under the so-called aggravated execution regime, which we also refer to as the “İmralı Isolation System”, our clients in the prison have been held under conditions of extraordinary isolation for a long time - 23 years in terms of Mr. **Abdullah Öcalan** and seven years in terms of Mr. **Hamili Yildirim**, Mr. **Ömer Hayri Konar**, and Mr. **Veysi Aktaş**.

Despite the fact that these are guaranteed by the constitution, international conventions and domestic legislation, our clients rights to see their lawyers and family members, to communicate with them by telephone, and to communicate with the outside world by letter, fax, and other means of communication have been suspended. In short, İmralı Island Prison is a place where fundamental rights and freedoms have been systematically violated since the day it was established.

**We have NOT BEEN ABLE TO RECEIVE ANY NEWS from our clients on the island since 25 March 2021.** Therefore, we could not obtain any information regarding their health status, detention conditions, measures and developments related to the pandemic, the clients’ legal situation and other issues. The fact that our clients are currently held incommunicado gives rise to serious concerns as to whether their physical and mental integrity is being protected under the present circumstances.

In the wake of the state of emergency that was declared in 2016 and the numerous statutory decrees issued subsequently, a new authoritarian and oppressive regime was constructed in Turkey. This regime brought about a variety of changes in the legal, political, and administrative domains. In this respect, like the previous period, 2021 was characterized by a lack of legal security and predictability and the available legal supervision mechanisms remained ineffective.

### II. THE STATE OF ISOLATION AND INCOMMUNICADO

As in the past, in 2021, the legal guardian, family members and lawyers filed weekly applications with the Bursa Chief Public Prosecutor’s Office, which oversees affairs concerning İmralı Island Prison, in order to visit Mr. Öcalan and the other clients. Similar applications were also made regularly to the prison administration through the prosecutor’s office. **A total of 71 applications** were filed with both institutions by Öcalan’s guardian and all clients’ family members in 2021. All these applications were left without any reply and not a single face-to-face family visit could take place. We did not receive a favorable reply to the applications made on the occasion of public holidays either. Likewise, **a total of 202 applications** were filed with both institutions by the clients’ lawyers throughout the

year but these applications too were left without any reply so that not a single lawyer visit could take place. However, according to Article 59 of Law No. 5275, prisoners have the right to see their lawyers at any time during working hours, that is, for five days a week. According to Article 25 of Law No. 5275, which regulates the aggravated execution regime that was originally introduced specifically for Mr. Öcalan, a family visit needs to take place every 15 days. **However, the de facto and unlawful bans on lawyer and family visits that have been sustained for a number of years now were sustained without any exception throughout 2021 and as a result, not a single family or lawyer visit could take place.**

While these bans were in effect, serious allegations concerning Öcalan's life circulated on the internet in the night of 14 March 2021. **These allegations caused Öcalan's family and lawyers and the public great concern regarding his health, safety, and detention conditions. Written and oral applications were filed requesting the authorities to make sure that family and lawyer visits would take place immediately in order to resolve these concerns.** Between 15.03.2021-25.03.2021, we filed a total of 18 applications – nine each, one every day – for our clients to be allowed to exercise their rights both to see a lawyer and to see their family members and guardians immediately. However, all these applications were left unanswered.

While not permitting any direct face-to-face contact with the clients, the Prison Administration summoned the clients' families to the prosecutor's offices in the places of their residence to make use of their right to make phone calls with the clients. These calls were scheduled to take place at the prosecutor's offices on **25 March 2021**. Mr. Öcalan's conversation with his brother was **interrupted after 3-4 minutes, and the connection could not be reestablished.** The phone call with Hamili Yıldırım also lasted for a very short time. As for Ömer Hayri Konar and Veysi Aktaş, no phone took place since they allegedly refused to answer the phone in protest of the conditions in which they were held.

**During the short phone call, Mr. Öcalan stated that the current state of isolation was unacceptable, demanding that the authorities in charge observed the law, especially respecting their right to see their lawyers, to end this unlawful state of affairs.**

After this interrupted phone call, it has not been possible to make any contact with Mr. Öcalan and the other applicants. All applications for family and lawyer visits are rejected, and the applicants are not provided with any opportunity to communicate by phone or letter.

### **III. SUMMARY INFORMATION ABOUT THE CURRENT CONDITIONS IN İMRALI ISLAND PRISON:**

#### **Mr. Abdullah Öcalan:**

- *Held in a solitary cell in İmralı Prison since 15 February 1999;*

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- *Held as the only person in the prison for 12 years; subsequently held in solitary confinement for 23 a day on weekdays and 24 hours a day on weekends;*
  - *His right to see his lawyers was restricted to one hour every week for the first 12 years, but he was constantly prevented from exercising this right;*
  - *Received only five visits from his lawyers between May-August 2019 throughout the 11-year period since 27 July 2011, with the last visit taking place on 7 August 2019;*
  - *Received five visits from his family members since 2014;*
  - *Last face-to-face contact was a visit by his brother on 3 March 2020;*
  - *Placed two phone calls, on 27 April 2020 and 25 March 2021, respectively;*
  - *The phone call on 25 March 2021 was interrupted after a short time and could not be resumed; has not been heard from since.*

**Mr. Hamili Yıldırım:**

- *Not allowed to see his lawyers ever since he was brought to İmralı Prison in May 2015;*
- *Visited by family members on only two occasions in seven years;*
- *Last face-to-face contact was a family visit on 12 August 2019;*
- *Placed two phone calls on 27 April 2020 and 25 March 2021, respectively.*
- *Not been heard from since 25 March 2021*

**Mr. Ömer Hayri Konar:**

- *Not allowed to see his lawyers ever since he was brought to İmralı Prison on 16-17 March 2015;*
- *Visited by family members on only three occasions in seven years;*
- *Last face-to-face contact was a family visit on 3 March 2020;*
- *Allowed to make a one-time phone call on the grounds of the epidemic on April 27, 2020;*
- *According to information given to his family by the prosecutor's allegedly refused to answer their phone call on 25 March 2021 in protest of the conditions in which he was held.*
- *Not been heard from since 27 April 2020*

**Mr. Veysi Aktaş:**

- *Not allowed to see his lawyers ever since he was brought to İmralı Prison on 16-17 March 2015;*
- *Visited by family members on only three occasions in seven years;*
- *Last face-to-face contact was a family visit on 3 March 2020;*
- *Allowed to make a one-time phone call on the grounds of the epidemic on April 27, 2020;*

- *According to information given to his family by the prosecutor's allegedly refused to answer their phone call on 25 March 2021 in protest of the conditions in which he was held.*
- *Not been heard from since 27 April 2020*

#### **IV. OUR APPLICATIONS TO THE COURTS AND THE SECRETLY AND UNLAWFULLY ISSUED RESTRICTION ORDERS**

An application was filed with the **Bursa Execution Judge's Office** on **30.03.2021**, as no results could be obtained from the applications lodged separately on behalf of every applicant with the Bursa Chief Public Prosecutor's Office regarding the establishment of the applicants' fundamental rights and freedoms and the fulfillment of their right to receive routine visits. In this application, we requested that *"the right to receive visits from lawyers, families and legal guardians be respected, the barriers preventing lawyers from accessing possible files be lifted, the requirements of the right to counsel be fulfilled, the right to communicate by phone on a routine basis be guaranteed in line with the legal definition, and the existing barriers to the right to correspondence be removed to enable the applicants to send and receive letters."* However, contrary to the law, our application for the improvement of the applicants' inhumane detention conditions, which constitute a form of ill-treatment systematically sustained for years, was quickly rejected already on the next day. Through this application, we learned that a disciplinary penalty restricting their right to see and communicate with their families had been imposed on the clients on **29.01.2021**. In other words, our requests, which concerned different legal provisions regarding the exercise of the right to receive visits from family members, the right to see a lawyer, and the right to communicate or correspond with the outside world, were rejected solely on the grounds of a disciplinary penalty that had been issued in secret and in an unlawful procedure. However, even provided that it is issued in accordance with the law, a disciplinary penalty may at most restrict family visits for a certain period of time.

Despite this legal regulation, the requests for lawyer visit that were contained in the application<sup>1</sup> were also rejected on the grounds of a "disciplinary penalty" that lacked any legal causality. Detainees and convicts' right to see their lawyers can only be suspended for a certain period of time when the circumstances sought in Article 59 of Law No. 5275 exist and a court decision to this effect is obtained. It is evident that a suspension of this right based on an unlawfully obtained disciplinary penalty contravenes the law. Under certain

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<sup>1</sup> The Law 5275 on the Execution of Penalties and Security Measures

*The right to see a lawyer or a notary*

**ARTICLE 59.-** (1) The convict shall have the right to meet a lawyer up to three times without a power of attorney in the framework of legal practice.

(2) Meetings with a lawyer or a notary shall take place upon presentation of professional identification papers, outside holidays and within business hours, in places allocated for this purpose, out of hearing but within sight for security reasons.

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circumstances, the law allows for a restriction of a prisoner's right to see a particular lawyer, but in İmralı Prison our clients are banned from seeing all their lawyers.

As far as the request for a family visit in our application is concerned, the authorities simply ignored the unlawful nature of the disciplinary penalty imposed by the İmralı Disciplinary Board, not even considering to examine it from a legal perspective.

More than six months have passed since the decision of 7 September 2020 to restrict our clients' right to communicate for a period of six months, which was cited as the reason for rejecting our request to be allowed to communicate with them via phone. There is no article in domestic law – this also includes Article 42 of the Execution Law No. 5275 as one of the relevant legal provisions – that would allow for a restriction of the right to communicate by telephone for more than three months. To date, we have not received any response to the objection raised against this decision of the Execution Judge.

After the last interrupted phone call, numerous attempts were made throughout the year to reach and hear from the clients and to visit them and meet them face to face. Since all our requests for family, guardian and lawyer visits made to the Bursa Chief Public Prosecutor's Office and to the Prison Administration through the prosecutor's office and the letters sent to our clients at regular intervals remained without result, **we filed another application with the Bursa Execution Judge's Office on 22 November 2021**. In this application, we made it very clear that due to unlawful practices and legally entirely baseless administrative and judicial decisions, our clients were completely deprived of the means that would enable them to engage in contact with the outside world (e.g., lawyer and family visits, the right to communicate by telephone and correspondence, etc.). We been explained that the simultaneous and constant interference with all mechanisms ensuring the clients' contact with the outside world, disabling these mechanisms as a whole, contravened national and international legislation and constituted a violation of the prohibition of inhuman and ill-treatment. We also indicated to the judge's office that the degree of isolation prevailing in the prison amounted to a form of solitary cell-confinement that is described as a state of “**incommunicado**” detention in different resolutions adopted by the United Nations Human Rights Committee and in the observations made by the CPT directly regarding the conditions in İmralı Prison. “Incommunicado” detention means that the detainee or convict is completely prevented from any contact with the outside world and therefore cannot communicate with anyone, including his/her family, friends, and lawyers. This state of detention creates the conditions that may lead to the emergence of all kinds of violations, since they are left to the mercy of the administration and there is no control due to the nature of the situation. Since prisoners are at the mercy of the administration and, due to the very nature of the circumstances, there is no oversight, incommunicado detention creates conditions under which all kinds of violations can occur.

Even though, according to domestic legislation, the Execution Judges' duties include examining and reviewing complaints concerning prisons' operation in accordance with the law, the compliance of penal execution services with basic human rights, and the remedying of violations in this respect, all our requests were dismissed once again. Through the notice

of rejection regarding our application, we learned that two separate bans had previously been issued in terms of Mr. Öcalan and the other clients. Accordingly, on **18 August 2021**, the disciplinary board of İmralı Prison had issued a disciplinary penalty restricting the clients' right to receive visits from their families for three months, and on **12 October 2021**, the Bursa Execution Judge had issued a ban restricting the clients' right to see a lawyer for a period of six months.

Thereupon, we requested for the disciplinary board's decision restricting family visits and the court orders prohibiting lawyer visits to be repealed, for a sample of the decisions to be notified to the clients' lawyers, and for the lawyers to be allowed to examine the files containing the said decisions, but the Execution Judge's Office rejected these requests on illegal grounds. The lawyers were informed that the disciplinary penalties against all clients, who were prevented from seeing their lawyers through unlawful means and methods and not allowed to receive legal aid, had become final without any objection having been raised.

**On 24 December 2021, an application was lodged with the Constitutional Court for the court to order an injunction** against the criminal administrative and judicial procedures and practices placing our clients in a state of incommunicado. We requested the Constitutional Court to order an injunction to bring an immediate end to the "incommunicado" detention and establish the conditions for contact with the clients to take place as soon as possible. In the application, we explained that the type of "incommunicado" detention that the clients are subjected to gravely violated the prohibition of torture. However, the Constitutional Court did not consider the total suspension of all rights and the total ban on all contact with the outside world unlawful, rejecting our request for an injunction on 12 January 2022. Although this was an urgent application concerning an injunction, the court's decision was notified to the lawyers only on 31 January 2022.

The reason why fundamental rights and freedoms have been constantly violated in İmralı Island Prison, since the day it was established, to an extent breaching the prohibition of torture and all applications to the court for the elimination of these violations remain without result is that the prison administration and the judiciary act contrary to their duties which are determined by the law. Meanwhile, the principle of the rule of law required that state organs, like individuals, must act within the legal order. Like every public official, they have to act within the limits drawn by the law. It is a negative obligation not to prevent the exercise of rights and a positive obligation to end any violations that may occur. **But despite the fact that various legal applications are filed, the rights and rules contained in Law no. 5275, the constitution, and the ECHR are not applied in terms of Mr. Öcalan and the other clients. Due to the action of the judiciary, these applications do not yield any results.** Acting outside the law according to the person and situation concerned instead of abiding by the constitution and domestic legislation undoubtedly constitutes a crime.

Therefore, a criminal complaint was filed against all judges and prosecutors whose action within the scope of the İmralı Isolation System contravenes the law to the Board of Judges and Prosecutors on 22 December 2021 and to the Bursa Chief Public Prosecutor's Office on 27 December 2021. There has not yet been any development in respect of these criminal complaints made on account of misconduct in office as per Article 257 and the restriction of the use of rights as per Article 298 of the Penal Code No. 5237.

**V. OTHER APPLICATIONS AND DEVELOPMENTS REGARDING THE STATE OF ISOLATION AND INCOMMUNICADO:**

In 2021, we made several applications and calls to action to national and international public and civil organizations and institutions regarding the state of incommunicado prevailing in İmralı Prison. Since we have not been able to hear from the clients in the meantime, these applications and calls remain valid until date.

In this regard, four separate applications were made at regular intervals throughout the year to the European Committee for the Prevention of Torture (CPT), which is responsible for preventing, detecting, and eliminating torture and inhuman and ill-treatment within the borders of the Council of Europe. In these applications, we provided detailed information to indicate that the detention conditions in İmralı Island Prison exceeded ill-treatment, that the aggravated life sentence regime and the practices violating the prohibition of torture and the prohibition of discrimination were systematically sustained, and that a condition of “**incommunicado**” detention had emerged after 25 March 2021 since we were unable to hear from our clients. For these reasons, we requested the CPT to urgently conduct de facto visits to İmralı Island Prison to carry out observations and inspections, and to adopt coercive measures and execute the relevant procedures to end the visit bans and improve the detention conditions. However, the CPT did not take any action against the İmralı Isolation System in 2021, thus remaining entirely ineffective.

We separately applied to several public institutions, including the Bursa Execution Judge's Office, the Ministry of Justice, the Directorate of Prisons and Detention Houses, the Department of Human Rights under the Ministry of Justice, the Parliamentary Commission of Inquiry on Human Rights, and the Human Rights and Equality Institution of Turkey.

We sent petitions to the Union of Turkish Bar Associations and the bars of Adana, Adıyaman, Ankara, Antalya, Batman, Bingöl, Bitlis, Bursa, Dersim, Diyarbakır, Edirne, Elazığ, Erzurum, Eskişehir, Gaziantep, Hakkari, İstanbul, İzmir, Kars, Mardin, Mersin, Muş, Siirt, Şırnak, Şanlıurfa, Tekirdağ, Trabzon, and Van, who all have the duty to defend and bring into force the rule of law and human rights, requesting them to take action against the absolute isolation imposed on the clients.

In addition, we sent petitions to various national civil society organizations, including Civil Society in the Penal System (CISST), the Progressive Lawyers' Association (ÇHD), the Association for Monitoring Equal Rights (ESHID), Truth Justice Memory Center, the

Human Rights Association (IHD), Lawyers for Freedom (ÖHD), the Federation of Legal and Solidarity Associations of the Families of Detainees and Convicts (MED-TUHAD-FED), the Society and Legal Research Foundation (TOHAV), the Turkish Medical Association (TTB), and the Human Rights Foundation of Turkey (TIHV).

We also sent petitions to a number of international civil society organizations, including European Democratic Lawyers (AED-EDL), Lawyers for Lawyers, the Council of Bars and Law Societies of Europe (CCBE), the European Bars Federation (FBE), the European Association of Lawyers for Democracy and Human Rights (ELDH), the World Organisation Against Torture (OMCT), Human Rights Watch (HRW), the Association for the Prevention of Torture (APT), the Turkey Human Rights Litigation Support Project, the International Federation for Human Rights (FİDH), the International Association of Democratic Lawyers (IADL), the International Service for Human Rights (İSHR), and Amnesty International.

A petition was filed with the **Ministry of Justice**, requesting the ministry to bring an immediate end to the current state of affairs and allow the applicants to engage in physical contact with their families and lawyers, further asking for an appointment with the minister to discuss how the unlawful state of isolation of the applicants could be ameliorated. However, the Ministry has not responded to this petition until date.

Also, an application was made to the **Parliamentary Investigation Committee on Human Rights**, in which we pointed out the current state of uncertainty and the continuing serious human rights violation in İmralı Prison, demanding that an on-site investigation be carried out in the prison and that physical contact with the applicants be ensured to put an end to this alarming situation immediately. The Commission contented itself with noting that *“the request for an on-site investigation was referred to the competent sub-committee pending decision”* and that *“information regarding the clients’ situation has been requested from the Ministry of Justice and the Directorate of Prisons and Detention Houses.”*

We also contacted several bar associations, including the **Union of Turkish Bar Associations** and the **Diyarbakır Bar Association**. The Diyarbakır Bar Association then applied to the Ministry of Justice for the necessary permissions to make observations and examinations regarding the fundamental rights and freedoms, especially the living conditions of the applicants in İmralı Prison. In this application, the Diyarbakır Bar Association also requested that the applicants held in İmralı Prison be provided with their right to see their lawyers and family members and to communicate with the outside world. However, the Ministry of Justice did not respond to this application

In 2021, different relevant persons, groups, and institutions became aware of the fact that rather than practices targeting one particular person, the İmralı Isolation System constitutes an overall administrative mechanism that was first invented on the island from where it spread to the whole country and society. Many human rights organizations released



a number of statements against the harsh conditions of isolation in İmralı Island Prison and took different initiatives to bring the conditions of detention in line with human rights.

Led by the Association of Lawyers for Freedom (ÖHD), 768 lawyers released an open call to the public to ensure that Mr. Öcalan's legal rights would be established, allowing him to see his lawyers.

Also, **a joint call to action and application to the CPT** was made by the Association of Lawyers for Freedom (ÖHD), the Progressive Lawyers' Association (ÇHD), the Human Rights Association (IHD), the Human Rights Foundation of Turkey (TİHV), the Society and Legal Research Foundation (TOHAV) and Civil Society in the Penal System (CISST). The institutions criticized the CPT for not visiting İmralı Prison during its visit to Turkey between 11-25 January 2021, demanding the committee to follow up on the fulfillment of the recommendations outlined in its report of 5 August 2020 and conducting another visit to İmralı Prison and issuing a report on this visit.

## **VI. VIOLATION OF THE ABSOLUTE PROHIBITION OF TORTURE** ***“NO ONE SHALL BE SUBJECTED TO TORTURE OR TO INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.”***

The main purpose of the prohibition of torture is to ensure the preservation of human dignity and to **protect the physical and mental integrity of persons under any circumstances**. The prohibition of torture is guaranteed by the European Convention of Human Rights, the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, and many other human rights instruments. In addition to the prohibition of torture, inhuman or degrading treatment or punishment is also prohibited in the scope of Article 3 of the European Convention of Human Rights. As is often reiterated by the ECtHR, Article 3 enshrines one of the most fundamental values of democratic societies. Member states should therefore respect this provision and **take all necessary measures to ensure that it is effectively implemented within their jurisdiction**.

It is a universal basic human rights criterion, as expressed in Article 1 of the ECHR, that except for being deprived of his/her liberty by a lawful court decision, every prisoner should have all other rights. Imprisonment must be carried out in a way that is compatible with human dignity and cannot exceed the natural minimum conditions of restriction. **However, for many years, Mr. Öcalan and our other clients have been subjected to conditions of isolation that far exceeded these natural restrictions**. In addition to these conditions of detention, which qualify as inhumane treatment, they have not been heard from since 25 March 2021. All ties of our clients with the outside world have been severed, and no information can be obtained on any issues such as their health status, legal status, detention conditions, and conditions related to pandemic measures. **The current circumstances violate the prohibition of torture. Therefore, our clients are subjected to torture and inhumane punishment and treatment.**

**The Committee for the Prevention of Torture (CPT)** has visited the İmralı Island Prison eight times and published reports on these visits. In all reports, the CPT stated that the conditions of detention in İmralı needed to be corrected because they violated the prohibition of torture. In the report on its 2019 visit to the İmralı Island Prison, the CPT noted that the violation of the prohibition of torture had become aggravated. Establishing that the disciplinary punishments imposed on Mr. Öcalan and the other clients were lacking any legal causality, that the reasons cited as a basis for the disciplinary punishments were not credible, that these punishments were politically motivated, and that aggravated life imprisonment sentence contained a discriminatory provision, the report made recommendations for the improvement of the worrisome detention conditions. The CPT further requested Turkey to ensure family and lawyer visits to each of our 4 clients held in İmralı Island and to inform the relevant institutions about these visits on a monthly basis. (CPT report dated 5 August 2020).

In the same report, the CPT found that the total ban on contact with the outside world imposed on all prisoners held at İmralı Prison resulted in a type of incommunicado imprisonment. It was stressed that such a state of affairs is not acceptable and clearly contravenes various international human rights instruments and standards. (CPT report dated 5 August 2020, para. 48).

The **United Nations Human Rights Committee**, in its communication on the case of *Berzig v. Algeria*, stated that “incommunicado detention creates an unacceptable risk of violation of the right to life since victims are at the mercy of their jailers who, by the very nature of the circumstances, are subject to no oversight.” (UN Human Rights Committee, *Berzig v. Algeria*, Comm. No. 1781/2008, paraç 8.4.). Because “*the life of the disappeared person, which is under the responsibility of the state, is under a constant and serious threat.*”

In its resolution “Torture and Other Cruel, Inhuman or Degrading Treatment”, dated **23 April 2003**, the **United Nations Commission on Human Rights** stressed that “[...] *incommunicado detentions not only pave the way for the practice of torture but also constitute a form of cruel, inhuman and degrading practice in itself.*”

The aggravated execution regime in İmralı Island Prison that is imposed in accordance with the “legal regulation” itself violates the prohibition of torture. The ECtHR established in its decision in the case of *Öcalan v. Turkey (No. 2)* dated 18 March 2014 that the aggravated execution regime violates the prohibition of torture guaranteed by Article 3 of the ECHR. In this decision, it was held that the violation occurred when the legal regulation was introduced, not at the time of the court’s judgment. **In other words, it was established by an international decision that the aggravated execution regime of İmralı has been a regime of torture since the beginning.**

## VII. VIOLATION OF THE RIGHT TO COMMUNICATION

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*“Everyone has the right to demand respect for their communication and correspondence.”*

**The right to demand respect for the right to communication, as well as for private and family life, is guaranteed under Article 25 of the Law No. 5275, Article 22 of the Constitution, Article 8 of the ECHR, and many other international conventions which Turkey is a party to.** The right to communication includes the right of every individual to approach others in order to establish and develop relations with them and the outside world, that is, the right to a “private social life.” This includes one’s physical, psychological, or mental integrity, one’s privacy, and one’s identity and autonomy. The guarantees provided by Article 8 of the ECHR are primarily aimed to ensure that each individual’s personality develops in their relations with other people without any outside interference. It is an important part of the prisoner’s right to respect for his/her family life and the right to correspondence that prison authorities assist prisoners in maintaining contact with their family members and lawyers.

**Our clients, who are deprived of their right to receive visits despite the fact that this right is granted by the existing laws, also continued to be denied the right to communicate by telephone, letter, and fax.** The last contact with them was a phone call. During the period covered by this report, our clients were not allowed to communicate with their family members via phone. Furthermore, lawyers and family members were not informed by the judicial and administrative authorities about the basis of this interference with the clients’ communication rights.

Since we could not receive any news from our clients, who were held in absolute isolation, we tried to reach them by sending registered letters with return receipt on different dates throughout 2021. **As in earlier periods, we did not receive any written reply to our most recent letters. No information could be obtained about whether these letters were received by the clients or not.**

## **VIII. VIOLATION OF THE RIGHT TO FAIR TRIAL**

The right of defence as part of the right to a fair trial continues to be effective throughout the imprisonment of the clients because other than the right to personal liberty, prisoners enjoy the same rights as other individuals. Accordingly, under Article 6/1 of the ECHR, the right to see a lawyer is connected to a number of legal, social, and existential aspects.

Mr. Öcalan and the other clients have the right to hire a lawyer, to benefit from a lawyer’s assistance, to receive legal advice, and to apply to any court with the help of a lawyer while tens of their applications are pending before the Constitutional Court and the ECtHR and during the future applications to be made to remedy the violations arising from their detention conditions and the aggravated execution regime they are subjected to. The right to consult a lawyer is within the scope of the right to a fair trial in order to ensure that the execution process is legally supervised and maintained in accordance with the law.

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However, in İmralı, visits by lawyers are hampered, and legal initiatives against the systematic violation of rights are prevented by illegal means.

Administrative or judicial decisions regarding the restriction of rights that are already unlawfully restricted within the İmralı Isolation System have been rendered in complete secrecy, especially since September 2018. When the first of the disciplinary punishments prohibiting family visits, which began to be imposed in 2018, was notified to the lawyers in due time, the lawyers were able to exercise their right to appeal against the punishment within the legal term. Seeing that the lawyers exercised their right to appeal, the administrative and judicial authorities notified the following disciplinary punishments only to the clients and, contrary to the principle of publicity, started hiding them from the lawyers. Later, the court decisions to ban lawyer visits, like disciplinary punishments, were issued in a confidential manner and not notified in any way.

It was only possible to become aware of these ban decisions long after the disciplinary punishments to ban family visits imposed by the disciplinary board and the ban on lawyer visits issued by the court had become final and the legal period for an appeal had expired. Before, during, and after the ban decisions, the clients' lawyers and families were not informed, although they repeatedly applied to visit them. It is by chance that we learn about disciplinary punishments imposed in the responses received in respect of different applications made by the lawyers for the establishment of the clients' violated rights. Once informed about the punishment in this or similar ways, we file requests to be permitted to examine the relevant files, to obtain copies of documents in the files, and to receive notifications within the scope of the publicity of the proceedings, the presumption of innocence, the right of defense and the right of access to the court. However, these requests have so far been arbitrarily rejected for political and abstract reasons, without showing any provision as a legal basis, and the files and decisions were hidden from the lawyers.

Examining the files and taking copies of documents are not prohibited under any circumstances in any article of the Law No. 4675 on Execution Judges. Article 153 of the Code of Criminal Procedure that is cited by the Law on Execution Judges regulates the lawyer's authorization to examine the files and to make copies of the documents. According to this provision, concealing disciplinary investigations is not possible under current conditions, and it is a requirement of law for lawyers to be able to examine the disciplinary files and take copies of the decisions or evidence in the files. Moreover, the principle of equality of arms requires that judicial processes are carried out openly, that the parties can learn about the accusations at stake, and that copies of the relevant documents may be obtained the files examined. In this respect, the fact that the clients are in a disadvantageous position vis-à-vis the prosecution violates the right to a fair trial.

It has also been impossible to make any applications from the outside regarding the clients whose ties with the outside world have been severed, that is, their lawyers too have been prevented from taking legal action against the violations they have been observing from outside. The rights to defense, a fair trial, access to a court, and remedy have altogether been violated by the administrative and judicial authorities who prevent the lawyers from

fulfilling their duties and responsibilities in terms of their clients whose fundamental rights and freedoms stipulated in domestic laws, the constitution and other conventions have already been violated.

## **IX. LACK OF EFFECTIVE REMEDY**

The past 23 years have clearly shown that the judiciary is one pillar of the İmralı Isolation System. For 23 years, the Bursa Chief Public Prosecutor's Office and the Bursa Execution Judge's Office, which are the competent authorities supervising the İmralı Island Prison execution regime, have systematically issued various restriction and prohibition orders. They have approved all disciplinary punishments and dismissed almost every appeal. All applications made to the Board of Judges and Prosecutors regarding judges and prosecutors' violation of their duties and responsibilities were stalled, thus perpetuating the unlawful situation in the prison. Until today, the attitude of all administrative and judicial authorities regarding the rights violated in İmralı Prison and the domestic legal applications made against these violations has evolved into a permanent administrative practice.

This systematic administrative practice is based on political decisions made particularly in respect of İmralı Island Prison and Mr. Öcalan. As explained above, this administrative practice was recklessly sustained in 2021, apparently without the slightest fear of breaching any legal responsibilities. İmralı is characterized by a degree of social, cultural, and psychological isolation from the outside world that is unheard of. The administrative-political attitude, which perpetuates the severe state of isolation in İmralı Island Prison, has influenced all legal processes. Across Turkey, Europe, and the world, İmralı Island Prison is the place of confinement where isolation, i.e., inhumane conditions, reaches its most severe extent.

In 2021, in addition to the applications made in domestic law, **19** applications were made **to the Constitutional Court** and **5 to the European Court of Human Rights** regarding the serious human rights violations in İmralı. Along with these applications, today, **79 individual applications** are pending before **the Constitutional Court** and **12 applications** are pending at **the European Court of Human Rights**, on behalf of each of our 4 clients, regarding İmralı Island Prison. The number and content of the applications in question speak to the scope and gravity of the isolation system executed in İmralı Prison. At the same time, it shows that no national or international judicial authority has been able to exert a decisive influence on the İmralı Isolation System.

## **X. EXECUTION REGIME OF THE AGGRAVATED LIFE IMPRISONMENT**

The execution regime of aggravated life imprisonment is regulated in Article 25 and Article 107 of Law No. 5275. It is stated that the prison sentence will continue throughout the person's life without any pause. In addition, according to these regulations, persons can

benefit from the fundamental rights and freedoms at a minimum level during their imprisonment. The ECtHR ruled in its judgment in the case of *Öcalan v. Turkey (No. 2)* that these legal regulations are in violation of the prohibition of torture and stated that they must be amended in order to make them legal.

An application was filed to the Bursa Execution Judge's Office on 01.10.2021 for the execution of the ECtHR's judgment in *Öcalan v. Turkey (No. 2)*. It was requested from the court to apply to the Constitutional Court for the abolishment of Article 107/16 of Law No. 5275 and Article 17/4 of Law No. 3713, which constitute an obstacle to conditional release, due to their unconstitutionality. In addition, it was stated that Öcalan was held in conditions contrary to the prohibition of torture for 23 years, as determined by the ECtHR judgment, and it was demanded that his detention be terminated without further prolongation in terms of social, political, and legal aspects, and to ensure his freedom. However, the Execution Judge's Office rejected this application, ignoring the ECtHR's findings and observations regarding violations of the ECHR contained in its judgment. Thereupon, an application including the same requests was lodged with the Constitutional Court on 03.12.2021.

Following its judgment in the case of *Öcalan v. Turkey (No. 2)*, where it established that the aggravated life sentence prescribing imprisonment until death violates the prohibition of torture, the ECtHR has rendered similar violation judgments in the cases of *Kaytan v. Turkey*, *Gurban v. Turkey*, and *Boltan v. Turkey*.

Thereupon, the Committee of Ministers of the Council of Europe started to monitor the execution process of four ECtHR judgments. But even though Turkey did not implement the ECtHR judgments, the Committee of Ministers did not include this issue in its agenda for 7 years. Following the communications submitted by ÖHD, İHD, TİHV, and TOHAV concerning the non-implementation of the ECtHR judgment, the Committee of Ministers finally decided to put these four judgments on its agenda.

The Committee of Ministers of the Council of Europe, which is responsible for ensuring that the violations found in the judgment are eliminated, established once again in its interim resolutions made in the meeting held on 30 November – 2 December 2021 that the violation of the prohibition of torture has been continuing and that Turkey has not shared the available information concerning the issue and not taken the measures required for the implementation of the judgment. It further stated that all legal and other necessary measures should be taken without delay for materializing a mechanism for the review of aggravated life imprisonment after a certain minimum period of time. Turkey was requested to take all necessary steps as soon as possible and inform the Committee of Ministers about the developments until September 2022. The aggravated execution regime, which was developed specifically for Mr. Öcalan before it was applied throughout Turkey and which

constitutes a form of torture, needs to be changed. The implementation of this judgment is only possible if Mr. Öcalan, who has been held in severe isolation for 23 years, is released.

## **XI. FINDINGS AND CONCLUSION**

1. Located on İmralı Island in the Marmara Sea within the borders of Turkey's sovereignty, İmralı F Type High-Security Closed Prison is operated based on the İmralı Isolation System, a system violating the prohibition of torture, fundamental rights and freedoms, universal principles and rules, and democratic values. Mr. Abdullah Öcalan has been subjected to conditions of torture for 23 years, with the most severe conditions prevailing today. Mr. Konar, Mr. Aktas, and Mr. Yıldırım were included in this system and subjected to torture and inhuman practices during the 7 years they were held in İmralı Island Prison.
2. In 2021, we did not hear from Mr. Öcalan and the other clients. The state of isolation reached the most severe level. **We have not received any news from the clients since 25 March 2021. Since then, all their ties with the outside world have been completely severed.**
3. All the applications of their family members and lawyers have remained without result. Not a singly visit has been permitted. It has not been possible to reach them by phone or letter either.
4. Throughout 2021, the prohibition of torture under Article 3, the right to a fair trial under Article 6, the right to respect for private and family life and communication under Article 8, the right to an effective remedy under Article 13, and Article 18 of the ECHR, which sets forth the limitations on use of restrictions on rights and freedoms, have all been violated.
5. By failing to fulfill their negative and positive obligations, the relevant authorities of the İmralı Isolation System have committed crimes.
6. The 23-year history of İmralı has clearly shown that whenever security policies were prioritized as the dominant approach to the Kurdish issue, this has been paralleled by an aggravation of the isolation imposed on those held in İmralı Island Prison. This has been most profound over the course of the last 6-7 years.
7. Likewise, the aggravation of the state of isolation in İmralı leads to the abolition of rights and freedoms in Turkey. Today, there is a cause-effect relationship between the deteriorating conditions in the country and the absolute isolation/incommunicado detention in İmralı. Our absolute inability to receive any news from our clients in İmralı, who are denied all kinds of contact with the outside world, the country is going through a multi-layered social, cultural, political, legal, and economic crisis.

8. Thus, the İmralı Isolation System, which is based on a complete disregard for the obligations stipulated in the Constitution, the ECHR, and other legal instruments, leads to the construction of a society outside the law and democracy in Turkey.
9. On the other hand, whenever Mr. Öcalan partake in dialogue with society, these have been moments of hope and relief for all the peoples of Turkey.
10. Mr. Öcalan has always declared that he is in favor of a democratic, constitutional, and peaceful solution to the Kurdish issue. During the 23-year İmralı process, Öcalan played a historical role by building a remarkable politics of peace and life against those opposing dialogue and resolution. Against these forces, this peace in dignity, as envisaged by Mr. Öcalan, will pave the way for Turkey's democratization and turn the Middle East into a more livable region.
11. All political, social, and legal parameters require that family and lawyer visits to Mr. Öcalan and the other clients take place and that we hear from them immediately, that conditions of freedom and safety are created, and that a policy of dialogue and negotiation is pursued regarding the Kurdish issue.

**ASRIN LAW OFFİCE**