

The Legal and Practical Aspects
of the Right to Hope in Turkey:
The Aggravated Life Sentence
Enforcement Regime



TOHAV
Toplum ve Hukuk Arařtırmaları Vakfı
Foundation for Society and Legal Studies

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The Foundation for Social and Legal Studies (TOHAV) is an independent civil society organization established with the aim of promoting the adoption and implementation of democratic and universal legal principles in all areas of society and state life. The Foundation aims to strengthen an egalitarian, participatory, and libertarian legal understanding that is centered on human dignity, to increase social awareness against rights violations, and to develop grounds for solidarity.

TOHAV conducts research, monitoring, reporting, and publishing activities in the field of law and human rights. It also carries out legal, educational, and cultural work in solidarity with individuals, communities, and institutions. Through its national and international collaborations, it aims to contribute to the establishment of a legal system based on justice, fairness, and human rights.



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This report was prepared as the product of a collective effort based on joint reflection, discussion, and solidarity, with the aim of highlighting the multidimensional problems of the enforcement regime based on aggravated life imprisonment in Turkey in terms of human dignity and the right to hope.

The findings, assessments, and conclusions contained in this report are the product of the institutional work of the Foundation for Social and Legal Studies; all responsibility for the report lies with the Foundation. Therefore, the views and assessments expressed in the report should not be considered as the individual views or responsibilities of the contributors.

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We hope that this study will contribute to discussions on penal and enforcement policies that focus on human dignity and create a common ground for reflection around the right to hope.

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ABBREVIATIONS

ECtHR: European Court of Human Rights

ECHR: European Convention on Human Rights

AYM: Constitutional Court

UN: United Nations

CAT: United Nations Committee Against Torture (Committee Against Torture)

CİSST: Civil Society Association in the Penitentiary System

CMK: Criminal Procedure Code

CPT: European Committee for the Prevention of Torture

ÇHD: Association of Progressive Lawyers

HRC: United Nations Human Rights Committee

İHD: Human Rights Association

ICCPR: International Covenant on Civil and Political Rights

OHAL: State of Emergency

ÖHD: Lawyers for Freedom Association

SPACE: Annual Penal Statistics of the Council of Europe

TBMM: Grand National Assembly of Turkey

TCK: Turkish Criminal Code

TİHV: Turkish Human Rights Foundation

TMK: Anti-Terrorism Law (Law No. 3713)

TOHAV: Foundation for Social and Legal Studies

TURKSTAT: Turkish Statistical Institute

ICC: International Criminal Court

“Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment.”

-European Prison Rules

SUMMARY

This report, prepared by the Foundation for Social and Legal Studies (TOHAV), aims to highlight the structural problems created by the enforcement regime based on aggravated life imprisonment, which replaced the death penalty in Turkey, in terms of human dignity and the right to hope. The study focuses particularly on prisoners serving aggravated life sentences, for whom the possibility of conditional release has been completely eliminated, and shows that this enforcement regime has effectively become a form of punishment that produces “lifelong hopelessness.” The report addresses hope not only as the possibility of release, but as a fundamental human right that preserves an individual’s expectations for the future and their capacity for change and reintegration into society.

This study also emphasizes that the enforcement regime based on aggravated life imprisonment is an issue that affects not only prisoners but also the principle of the rule of law and the future of democratic society. The elimination of the right to hope exceeds the humane and legitimate limits of punishment; it normalizes a concept of justice that condemns individuals to a futureless existence. In this context, the report aims to contribute to strengthening the will for reform in the criminal justice system based on human dignity and to create a social and legal call for the re-establishment of the right to hope in Turkey.

The main objective of the report is to remove the right to hope from being an abstract legal debate and to place it at the center of penal and enforcement policies in Turkey. The as-

essment, conducted in light of the case law of the European Court of Human Rights and United Nations standards, reveals that the current aggravated life imprisonment regime is incompatible with the prohibition of inhuman and degrading treatment; it identifies this problem as a structural human rights violation rather than an individual one. In this respect, the study provides a strong legal and normative basis for monitoring and advocacy activities at both the national and international levels.

The report is not limited to a normative legal assessment; it is also based on a collective documentation process supported by qualitative data obtained through interviews with lawyers, relatives of prisoners, bar associations, and professional organizations. This approach aims to reveal that the aggravated life imprisonment regime is not limited to isolated cases; it is a widespread, persistent, and systematic human rights problem.

Through this report, TOHAV aims to remind Turkey of its obligations under international treaties to which it is a party and to highlight the violations caused by the aggravated life imprisonment regime before the Council of Europe, United Nations mechanisms, and the public. Particularly in the context of decisions under the supervision of the Council of Europe's Committee of Ministers, the report will be used as a monitoring and reporting tool to draw attention to the urgency of legal and

institutional reforms that will guarantee the right to hope.

Finally, this study aims to present Turkey's obligations to international monitoring mechanisms in a concrete, documented, and comparative manner and to serve as a fundamental reference document for advocacy activities to be carried out with key institutions such as the Parliament, the Ministry of Justice, and the General Directorate of Prisons and Detention Houses. Policy notes prepared based on the findings of the report will be shared with relevant international mechanisms, including the United Nations Committee Against Torture and Special Procedures.

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

-International Covenant on Civil and Political Rights

Part One

SCOPE, PURPOSE, AND METHODOLOGY OF THE REPORT

1. Introduction

This report has been prepared to demonstrate that aggravated life imprisonment sentence, which, having replaced the death penalty in Turkey, is estimated to affect over 4,000 prisoners and, together with isolation-based and discriminatory enforcement regulations, leads to prisoners being held in prison “until death,” is incompatible with human dignity and violates the right to hope. Based on the acceptance that the right to hope is a fundamental right that protects an individual’s expectations for the future and their opportunity for change and reintegration into society, this report argues that practices that completely eliminate hope in the criminal justice system are not legally or ethically legitimate. The case law of the European Court of Human Rights

(ECtHR) and the warnings issued to Turkey by United Nations (UN) monitoring bodies also support this assessment.

In this context, the report assesses the right to hope specifically for prisoners who are ineligible for parole because they have been sentenced to aggravated life imprisonment “within the scope of terrorism and constitutional crimes.” The “right to hope” is also addressed in relation to this category, as required by ECtHR criteria. However, due to the length of their sentences and the arbitrariness and unpredictability of the decision-making mechanisms regarding parole, the report also partially addresses the situation of prisoners who are in the status of aggravated life imprisonment and who, despite being eligible for parole under the law, are effectively denied

this possibility through various mechanisms, as well as prisoners who have been sentenced to life imprisonment but whose release is effectively impossible due to “hope-diminishing mechanisms” in practice.

The report is limited to the enforcement regime and excludes whether the trials underlying imprisonment were conducted in accordance with the principles of fair trial.

This study was prepared by the Foundation for Social and Legal Studies with the aim of drawing attention to the necessity and urgency of a reform based on human dignity in penal and enforcement law in Turkey and making a strong call for the necessary steps to be taken to protect the right to hope in both its conceptual and practical dimensions. The observations and analyses in the report are based on the work of civil society organizations in this field, academic studies, reports on the subject, national legislation and international law studies, ECtHR decisions, and the concluding observations of UN bodies. Therefore, the conceptual framework on which the report is based is limited by the framework drawn by positive law-centered international judicial mechanisms and legal authorities.

2. Contributions and Recommendations of the Report

The purpose of this report is to contribute to the effort to transform the right to hope from a theoretical topic of discussion into a

functional value in current legal and political practices. The right to hope is a multi-layered concept that encompasses not only the possibility of individuals achieving freedom but also the right to give meaning to life through expectations, opportunities, and plans. The report aims to contribute to both academic and social debate by presenting this concept in all its dimensions.

2.1. Conceptual Contribution

The report’s first contribution is to clarify the conceptual framework of the right to hope. The right to hope is not merely an individual psychological need, but a fundamental right that must be legally recognized, expressing the protection of the relationship that humans establish with the future. Thus, drawing on international case law, historical background, and ethical philosophy, the report defines the right to hope as an independent category of rights.

This conceptual clarity indicates that the law has a responsibility to protect the future, in addition to its function of punishing the past. The right to hope offers a perspective that will change the direction of legal systems; it is a right that requires the State to take into account not only the crimes committed by the individual in the past, but also their capacity for change and transformation in the future.

2.2. Historical and Legal Contribution

The report recalls historical experiences to demonstrate why the right to hope is a human rights issue, aiming to reveal how death penalties and regimes of hopelessness have destroyed individuals and oppressed societies throughout history.

The case law of the European Court of Human Rights on life imprisonment and the assessments of UN mechanisms have strengthened the legal foundations of the right to hope. Building on these, the report aims to clarify the right to hope within the context of international law, including Article 3 of the European Convention on Human Rights (prohibition of inhuman treatment). Thus, the report aims to serve as a guide not only for the national legal order but also in terms of international human rights norms.

2.3. Democratic and Social Contribution

A democratic society has a duty to protect individuals' sense of confidence in the future. By emphasizing the importance of the right to hope in this context, the report aims to demonstrate that democracy is possible not only through free elections and freedom of expression, but also through the protection of citizens' expectations for the future.

A society composed of individuals who have lost hope becomes alienated from politics,

loses trust in the law, and becomes susceptible to authoritarianism. The right to hope is therefore one of the fundamental criteria of democracy. By highlighting this point, the report reminds us of the responsibility of legal systems to protect confidence in the future.

2.4. Contribution in the Context of Turkey

Specifically in Turkey, as discussed in detail in the relevant section below, the report aims to demonstrate that aggravated life sentences are a manifestation of the death penalty, condemning individuals who continue to exist biologically under this regime to death in legal terms. The report also recalls that the practice conflicts with international human rights standards and has been repeatedly ruled a violation by the European Court of Human Rights.

In this respect, the report is not merely an academic discussion, but also a call for legal and social reform. It emphasizes that fundamental changes must be made to penal and enforcement law in order to protect the right to hope in Turkey, and that the aggravated life imprisonment regime must be reviewed to ensure transparency and accountability.

2.5. Policy and Reform Recommendations

The report puts forward the following key recommendations for the protection of the

right to hope:

- **Conditional Release Mechanisms:** In cases of aggravated life imprisonment, the possibility of review and conditional release after a certain period must be granted.
- **Humaneness of the Penitentiary System:** Isolation practices should be abolished, and programs should be developed to enable prisoners to maintain their social and psychological ties.
- **Transparency:** Data on prisoners serving aggravated life sentences should be regularly shared with the public, and full compliance with international reports should be ensured.

2.6. Conclusion

In conclusion, within the scope of this report, the right to hope is discussed not only as an individual right but also as one of the fundamental elements of social order and democratic legitimacy. This is because a person is human to the extent that they can dream of the future; they are a citizen to the extent that they can connect with society. No punishment, no order, and no power can completely eliminate this fundamental characteristic of the individual.

For this reason, the right to hope is one of the

most critical tests of legal systems in our time. The aim of the report is to make this right visible, deepen the debate at the legal and social levels, and contribute to the will for reform.

The right to hope is fundamental to humanity; a system that prohibits hope also prohibits the state of being human.

In line with this fundamental emphasis, the report first lays out the conceptual and historical basis of the right to hope; it then analyzes how this right is defined in international law, in light of ECtHR case law and UN documents. Subsequently, it presents findings on how the aggravated life imprisonment regime in Turkey violates the right to hope and examines the discouraging and obstructive role of administrative and supervisory boards in the release of life sentence prisoners. The final section proposes policy and legal reforms to protect the right to hope.

“Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority.”

-Mandela Rules

Part Two

CONCEPTUAL, HISTORICAL, AND NORMATIVE FOUNDATIONS OF THE RIGHT TO HOPE

1. What is the Right to Hope?

1.1. Conceptual Framework of the Right to Hope

Human beings' visions of the future, their capacity to make plans, and their will to live are not merely psychological needs but also constitute a fundamental category of rights. The concept of the "right to hope" was born within this framework. The right to hope expresses that, no matter how difficult the current circumstances may be, the possibility of liberation, improvement, or reintegration into society in the future cannot be completely eliminated. This right is essential not only for the biological survival of the individual but also for the individual to be able to live their life in a manner befitting human dignity.

The ECtHR's decisions have confirmed the existence of this right, particularly in cases involving life imprisonment. The Court has emphasized that life sentences and penal regimes that do not allow for the possibility of review or completely eliminate the possibility of conditional release are incompatible with the prohibition of inhuman and degrading treatment. This is because denying any hope for the future means disregarding the inherent capacity of human beings to change and transform. The right to hope is based on the assumption that even individuals who have committed the most serious crimes can change, show remorse, and be reintegrated into society.

The conceptual basis of the right to hope includes the following questions: When punish-

ing an individual, can the State take away all their possibilities for the future? Is severing a person's connection to life only possible by restricting their physical freedom, or is destroying their hope an equally severe intervention? These questions reveal why the right to hope must be addressed as a human rights issue.

The right to hope is not a concept discussed solely in the context of prisoners. In fact, it is based on the principle of protecting the capacity to form expectations and plans for the future in all areas of human life. In the context of penal law, the right to hope is most often discussed in relation to individuals sentenced to life imprisonment. If no possibility of review or parole is granted to these individuals, the punishment functions as "keeping them alive biologically but killing them legally." Therefore, the right to hope is not only a principle specific to penal law, but also a broader category of rights related to the protection of human dignity.

Conceptually, the right to hope secures the three most fundamental elements of a person's future. These elements can be classified as "expectations, opportunities, and plans." Expectations enable individuals to imagine ways out of their current life circumstances; opportunities guarantee the feasibility of these imaginings; and plans provide the direction necessary for individuals to give meaning to their lives. The complete deprivation of a prisoner or an individual sentenced to severe

punishment from access to these three elements constitutes a violation of the right to hope.

The right to hope is also the right to protect one's identity. Humans are not merely the sum of their past actions; they exist through the dreams they build for the future and their capacity for change. Therefore, the complete deprivation of an individual's access to these three elements constitutes a violation of the right to hope.

The right to hope is also the right to preserve one's identity. A person is not merely the sum of their past actions; they exist through the dreams they build for the future and their capacity for change. Therefore, telling a person "There is no possibility left for you" is to deny not only their freedom but also their humanity. For this reason, the right to hope has an indispensable normative basis for both states and individuals, both legally and ethically.

1.2. Historical and Legal Foundations of the Right to Hope

The origins of the right to hope are more clearly understood when considered alongside humanity's practices of punishment. Throughout history, states and powers have used punishment not only as a response to crime but also to maintain social order, silence dissent, and reinforce authority. In this process, the harshest form of punishment has been to eliminate any possibility for a person's

life and future.

1.2.1. Historical Background

In medieval Europe, chained dungeons, torture methods, and capital punishment were used not only to eliminate individuals but also to intimidate society. The body of the executed person was displayed in public squares to demonstrate “the absence of a future” to the entire community. This was a strategy to suppress not only the individual’s hope but also that of society.

In the modern era, totalitarian regimes in particular have resorted to similar methods. Nazi concentration camps and the “disappearance” policies in Latin America all served the same function. By destroying the individual’s hopes for the future, they eliminated their human existence. From this perspective, destroying hope is the most powerful ideological weapon of punishment.

Against these historical practices, the fundamental purpose of human rights law has been to protect human life, dignity, and visions of the future. Human rights documents have prohibited “the State from completely severing hope from the individual” by introducing rules that limit the legitimacy of punishment.

1.2.2. Modern Human Rights Documents

Developments in the field of human rights in

the 20th century paved the way for the conceptualization of the right to hope. The 1948 Universal Declaration of Human Rights recognized the right of every individual to live in a manner befitting human dignity and prohibited inhuman and degrading treatment in the application of punishment. Subsequently, Article 3 of the European Convention on Human Rights (ECHR), which came into force in 1950, Article 7 of the 1966 United Nations International Covenant on Civil and Political Rights (ICCPR), and the 1987 United Nations Convention Against Torture prohibited torture and ill-treatment in a manner specific to this issue. This absolute prohibition has gradually become one of the most important legal bases for the right to hope in international law.

The global trend towards abolishing the death penalty, particularly since the second half of the 20th century, has made the right to hope more visible. Many countries have abolished the death penalty and replaced it with life imprisonment or aggravated life sentences. However, when these sentences do not allow for conditional release, they effectively amount to “civil death.” In other words, the individual is allowed to live, but no possibility is left for them to build a future.

1.2.3. Contribution of the European Court of Human Rights

One of the most important turning points in the recognition of the right to hope as a

concrete right is the case law of the European Court of Human Rights (ECtHR) on life imprisonment, which is discussed in detail in the relevant section below. The Court has clearly stated that life sentences without the possibility of parole are incompatible with the prohibition of inhuman treatment.

Decisions handed down since the 2010s, in particular, have ensured that this right has a legal basis. The Court has based its decisions on the principle that “human beings have the capacity to change and transform,” stating that keeping an individual in prison for life without any possibility of release is contrary to human dignity. Thus, the right to hope has become not just a theoretical concept but a concrete area of case law in European human rights law.

The principles underlying the ECtHR’s case law on this subject have moved beyond the regional sphere and gained ground globally, with the UN Human Rights Committee and the Committee Against Torture adopting a similar approach. For example, in 2023, the UN Human Rights Committee requested that the United States declare a moratorium on life sentences without parole, which are widely applied. In its August 2024 review report on Turkey, the Committee Against Torture also called for the abolition of this system of enforcement on the grounds that it is incompatible with the principles of the European Convention on Human Rights.

1.2.4. Normative Foundations

Beyond legal documents and case law, the right to hope is also based on philosophical and ethical foundations. As beings capable of designing their future, when deprived of these designs, individuals are stripped of their very essence. The fact that even individuals who have committed the most serious crimes have the capacity to change is one of humanity’s shared values. Therefore, to destroy hope is equivalent to denying an individual’s humanity.

This normative foundation should be a principle that guides not only penal law but the entire legal system, for law is not only a set of rules that regulate behavior but the protector of the relationship that humans establish with the future as well.

1.3. The Importance of the Right to Hope in a Democratic Society

The right to hope is not merely a narrow issue specific to penal law. In fact, it is an indispensable value for the survival of a democratic society. This is because democracy sustains society and the individual not only with the freedoms of today but also with a sense of confidence in the future. An order in which people have no hope for tomorrow opens the door to authoritarianism and oppression. For this reason, the right to hope is one of the most sensitive parameters of democracy.

1.3.1. Hope and the Compact of Citizenship

A democratic society exists not only through individuals' ability to vote or exercise freedom of expression, but also through their sense of having a say in the future. If individuals feel no expectation of improvement, liberation, or justice in the future, their trust in the political system disappears. This undermines the participatory spirit of democracy.

The right to hope secures individuals' existence both as legal and social subjects. For it is only to the extent that people can dream of the future that they remain attached to society. A citizen deprived of hope becomes detached from politics and collective life; this unravels the fabric of a democratic society.

1.3.2. Ethical Penal Policy and the Standard of Hope

In a democratic society, penal policy should be based not only on punishing the individual but also on reintegrating them into society. In this context, the right to hope is the test of the proportionality and humanity of punishment. If a penal system destroys all possibilities for the individual's future, the democratic legitimacy of that punishment becomes questionable.

A growing approach in legal literature argues that the "hope criterion" should be the basis for determining the ethical standards of pun-

ishment. Accordingly, for a punishment to be considered legitimate, the individual must retain at least a theoretical possibility of having expectations about the future. A punishment system that leaves the individual hopeless is unacceptable not only from a humanitarian perspective but also from a democratic perspective.

1.3.3. Hope and Social Trust

The functioning of a democratic society is based on individuals' trust in the law, institutions, and each other. If people believe that the system offers them no way out, this trust is fundamentally undermined. The right to hope is a mechanism that keeps prisoners' trust in society alive.

The fact that a prisoner has the possibility of gaining freedom in the future and knows the necessary conditions and the process involved strengthens not only that individual's trust in the justice system, but also that of society. This possibility demonstrates that the State does not merely punish the individual; rather, it offers a second chance when the conditions are right. Thus, society views the legal system as an instrument of justice, not revenge.

1.3.4. Hope, Change, and Human Dignity

A democratic society believes in the human capacity for change. Human dignity is not a frozen existence at a fixed point; on the contrary, it embodies the possibility of constant

change and development. The possibility that even individuals who have committed the most serious crimes can change their personal circumstances, learn, and build a different life is one of the fundamental values of a democratic society.

Therefore, forms of punishment that destroy hope mean rejecting the individual's human dignity and capacity for change. This is incompatible with democracy itself. Democracy recognizes and protects the individual not only in their current state but also in their potential future state.

1.3.5. The Line Between the Right to Hope and Authoritarianism

The right to hope is one of the dividing lines between authoritarian regimes and democratic systems. Authoritarian regimes consolidate their power by driving opponents and unwanted groups into hopelessness. Endless punishments, arbitrary arrests and convictions, and practices that leave no way out condemn not only individuals but the whole society to hopelessness.

Democratic regimes, on the other hand, aim to protect individuals' prospects for the future by balancing criminal justice with humanity. In this context, the right to hope should be considered not as a privilege granted to prisoners, but as one of the cornerstones of democracy.

1.4. The Right to Hope in the Context of Turkey

The discussion of the right to hope in Turkey is essentially directly linked to the abolition of the death penalty and its replacement with aggravated life imprisonment. This context is of critical importance in terms of both legal regulations and international human rights law.

1.4.1. Abolition of the Death Penalty and the Emergence of Aggravated Life Imprisonment

As discussed in detail in the relevant section below, the death penalty was completely abolished in Turkey with the constitutional amendments made in 2004, and "aggravated life imprisonment" was added to the Turkish Criminal Code (TCK). Although this regulation was initially presented as a reform in favor of human rights, in terms of its practical application it effectively constitutes "civil death." This is because aggravated life imprisonment replaced the death penalty; rather than ending the individual's life, however, it aims to keep them in a state of "lifelong despair."

While the death penalty ends a person's future in an instant, the aggravated life sentence prolongs this process into years of uncertainty. Thus, the severity of the punishment is felt not through the certainty of death, but through the continuity of hopelessness. For

this reason, aggravated life imprisonment is a different manifestation of the death penalty – in other words, a “living death.”

1.4.2. Legal Regulations and Possibilities for Release

Under the Turkish Criminal Code, the possibility of conditional release for those sentenced to aggravated life imprisonment is extremely limited. In some types of crimes, this possibility is completely eliminated. For example, in cases of terrorism or crimes against state security, convicts are not granted any possibility of release.

This means that the individual has no options whatsoever for the future. However, a fundamental principle of international human rights law states that even if a life sentence is imposed, there must be a possibility of review and conditional release after a certain period of time. An examination of the penal system in Turkey reveals that, for the crimes listed above, the fact that individuals sentenced to aggravated life imprisonment have no possibility of release from prison under any circumstances clearly contradicts international human rights principles.

1.4.3. European Court of Human Rights Decisions and Turkey's Obligations

The ECtHR has ruled on violations in four separate applications to date concerning the application of aggravated life imprisonment

in Turkey. These decisions and the standards developed are detailed in the relevant section below. The ECtHR has ruled that regulations that do not provide for the possibility of conditional release, or that exist only in theory but are not applied in practice, violate the prohibition of inhuman and degrading treatment.

Although Turkey is bound by the European Convention on Human Rights to implement these rulings and bring its legislation into line, no comprehensive reform has been undertaken to date, with only partial changes being made. This situation leaves Turkey open to criticism in the international arena.

1.4.4. The Severity of the Enforcement Regime and the Problem of Isolation

In Turkey, aggravated life imprisonment does not only mean indefinite imprisonment; it is also defined by extremely harsh conditions of imprisonment. As a result of the regulations in the penal enforcement law, prisoners who are particularly excluded from the right to hope are mostly held in solitary confinement, their social interactions are restricted, and they are deprived of education or opportunities for reintegration into society.

This regime of isolation violates the right to hope not only in terms of the possibility of release, but also in terms of the humane conditions of daily life. This is because hope is not only about the possibility of liberation; it

is also about humane living conditions. Long-term isolation erodes the psychological and social existence of the individual and renders them incapable of imagining a future.

1.4.5. International Criticism and the Issue of Transparency

International human rights committees have repeatedly requested data and examples of practices concerning prisoners serving aggravated life sentences in Turkey, but the Ministry of Justice has failed to provide up-to-date information for a long time. This situation has led to criticism regarding the lack of transparency in the enforcement regime and data related to the regime.

The lack of transparency is not only a violation of international obligations but also a factor that undermines public trust in the justice system. This is because the justice system gains legitimacy not only through its decisions but also through the accountability of its practices.

1.4.6 The Social Dimension of the Right to Hope

In the Turkish context, the violation of the right to hope is not only a problem for prisoners. When society sees that the criminal justice system operates on the logic of “living death” rather than reintegration into society, it loses its faith in the rule of law. This situation erodes the hope for the future of both individuals and society as a whole.

Therefore, the right to hope is not only a matter with technical implications for the penal system in Turkey, but also of critical importance in terms of democracy, the rule of law, and social security.

2. The Right to Hope in International Law

1. Historical and Normative Origins

1.1. The Phased Abolition of the Death Penalty and New Questions

Modern penal law began to systematically abandon the death penalty in the second half of the 20th century. This process has developed on three main levels:

- From the perspective of the United Nations (UN):
- Article 3 of the 1948 Universal Declaration of Human Rights, declaring that everyone has the “right to life,” created the first normative basis for the restriction of the death penalty.
- Article 6 of the 1966 International Covenant on Civil and Political Rights did not completely ban the death penalty but subjected it to strict limitations. The second Optional Protocol to the same article (1989) envisaged the complete abolition of the death penalty.
- Since 2007, the UN General Assem-

bly has repeatedly adopted resolutions calling for a “moratorium on the death penalty.”

1. From the perspective of the Council of Europe:

- The European Convention on Human Rights (ECHR) of 1950 did not prohibit the death penalty; however, Protocol No. 6 (1983) abolished the death penalty in peacetime.
- Protocol No. 13 (2002) prohibits the death penalty in all circumstances, including war and states of emergency. Today, all 46 member states of the Council of Europe have ratified this protocol.
- The abolition of the death penalty is a prerequisite for membership in the Council of Europe. Belarus is the only country on the European continent that still applies the death penalty. As enforcements are carried out through non-transparent processes, which are clearly incompatible with the conditions of Council of Europe membership, Belarus has never been accepted as a member of the Council.

2. From the perspective of the European Union:

- Article 2 of the Charter of Fundamental Rights of the European Union absolutely prohibits the death penalty.

- Within the framework of the European Union’s enlargement policy, candidate countries are required to abolish the death penalty. Turkey has carried out a gradual reform process between 2001 and 2004 with the aim of abolishing the death penalty as part of its process of harmonization with the European Union. With the amendments made in 2001, the death penalty was abolished for almost all types of crimes in the criminal legislation and was largely replaced by aggravated life imprisonment. During this period, the death penalty was retained only for certain constitutional crimes. The 2002 constitutional amendment further narrowed this area. Reforms in 2004 completely abolished the death penalty by amending Article 38 of the Constitution. Provisions relating to the death penalty were removed from the Turkish Criminal Code and all other special laws; in the same year, Protocols 6 and 13 of the European Convention on Human Rights were ratified, bringing Turkey into line with its international obligations.
- As a result of this historical process, with the abolition of the death penalty, life imprisonment was introduced as the most severe punishment. However, due to the nature of life imprisonment, which cannot be reviewed or reduced in any way, it has created a situation equivalent to “living death” for prisoners. At

this point, the concept of the “right to hope” comes to the fore in legal literature.

1.2. Normative Foundations of the Right to Hope in International Documents

The right to hope has not been codified as a written right. However, it is nourished by a cross-normative field that emerges from the combined interpretation of various international documents.

- Article 3 of the European Convention on Human Rights prohibits torture and inhuman or degrading treatment, and the European Court of Human Rights (ECtHR) has derived the right to hope from this article in its *Vinter and Others* and *Öcalan* (No. 2) decisions. This is because the prisoner's having no possibility of release eliminates human dignity in the long term.
- The Mandela Rules, on the other hand, approach the purpose of punishment not as isolating prisoners from society but rather as preparing them for their future lives as individuals respectful of the rule of law. This normative orientation strengthens the human basis of the right to hope.
- Although the UN Committee Against Torture (CAT) and the UN Human Rights Committee (HRC) do not di-

rectly refer to the right to hope in their decisions, they emphasize that “enforcement regimes that create hopelessness” are incompatible with the prohibition of torture.

The right to hope takes shape as the intersection of the normative principles in these documents. In particular, the concepts of a review mechanism that is practicable, accessible, and within a reasonable time have become a common principle in international documents.

1.3. Human Dignity and the Right to Hope: Legal Theory and Philosophical Dimension

The main basis of the right to hope is the doctrine of human dignity. From a Kantian perspective, a human being can never be viewed as a mere means; even if an individual commits the most serious crimes, they must have a chance for the future. Since Locke and Rousseau, punishment has been based on the violation of the contract between the individual and society. However, terminating the contract in a completely irreversible manner, banishing the individual from society for life, is incompatible with the idea of a social contract. Therefore, the right to hope is not merely a technical issue of enforcement law, but an essential requirement of law's function to protect human dignity.

In its 1977 decision examining aggravated life imprisonment, the German Federal Con-

stitutional Court clearly stated that keeping a convict in prison until death without any review is incompatible with human dignity. The Court emphasized that human dignity is a value that must be absolutely protected by the State and that the State therefore has no authority to turn a person into a “hopeless and permanently excluded” being. In the specific case, it was concluded that the system allowing the prisoner to spend the remainder of their life in prison without any possibility of conditional release was contrary to the law. Accordingly, it was made mandatory to reassess everyone sentenced to aggravated life imprisonment after they have served at least 15 years. This review involves an objective examination of the prisoner’s dangerousness and potential for reintegration into society. Thus, the Court has concretely ruled that even individuals who have committed the most serious crimes cannot be denied the possibility of change, development, and reintegration into society, thereby establishing the right to hope as an essential element of human dignity within the legal system.

2. European Court of Human Rights Case Law: Judicial Construction of the Right to Hope

Although the right to hope is not specifically recognized as a separate right under the European Convention on Human Rights, it has been developed by the ECtHR’s case law within the scope of Article 3 of the Convention (prohibition of torture and inhuman

or degrading treatment). The Court has interpreted this right in connection with the obligation to protect the human dignity of individuals sentenced to life imprisonment.

According to the ECtHR, a system that offers no possibility of release during the term of the sentence is incompatible with human dignity and violates Article 3 of the Convention.

The ECtHR’s case law on the right to hope has developed in three stages. It can be classified as the *Kafkaris* decision, which set out the basic principles; the landmark *Vinter and Others* decision; and the *Öcalan No. 2*, *Kaytan*, *Gurban*, and *Boltan* decisions, which identified systemic problems.

2.1. Kafkaris/Cyprus Decision

The first step in the judicial construction of the right to hope was taken by the ECtHR in its *Kafkaris v. Cyprus* decision. The applicant argued that his life sentence was in practice non-commutable; the Court found that, while theoretically possible under the Cypriot enforcement regime, the practice was uncertain and unpredictable. This judgment is significant in that it was the first time the Court explicitly distinguished between “*de jure*” (in law) and “*de facto*” (in practice) commutability. While it was the first judgment to outline the fundamental parameters of the right to hope, it also developed detailed standards regarding the content and procedure of commutability.

2.2. Vinter and Others v. the United Kingdom Decision

In the Vinter decision, which forms the cornerstone of the Court's case law on the right to hope, it was clearly stated that a life sentence alone does not violate Article 3 of the Convention, but when it becomes a sentence without the possibility of reduction, it is incompatible with the prohibition of inhuman and degrading treatment. In this decision, the ECtHR emphasized that the possibility of reduction must exist both in law (*de jure*) and in practice (*de facto*). It also established as a standard that the review must be based on a realistic, accessible, regular, and transparent mechanism. The Court set as a reference point that the first review must take place within 25 years at the latest and clearly stated that political mechanisms based on pardon cannot replace the right to hope. This approach ensured that the right to hope was recognized as an independent category of rights in European human rights law and guided subsequent cases.

2.3. Turkey Decisions

a. Öcalan v. Turkey (No. 2) Decision

The turning point in the jurisprudence on the right to hope for Turkey is the 2014 Öcalan (No. 2) decision. The Court found that there was no real possibility of conditional release for persons sentenced to aggravated life imprisonment under Turkish Criminal enforce-

ment law; that exceptional mechanisms such as presidential pardons and parliamentary pardons could not replace the protection of the right to hope due to their uncertainty and dependence on political discretion. Therefore, it was decided that Turkey had violated Article 3 of the Convention, and the issue was referred to the Committee of Ministers for monitoring the implementation of the decision. The decision revealed that the aggravated life sentence regime in Turkey constitutes a structural human rights problem rather than an individual one.

b. Kaytan v. Turkey Decision

The Kaytan decision, issued in 2015, confirmed the principles set out in the Öcalan (No. 2) decision and clearly established that the enforcement regime in Turkey offers no real prospect of hope for prisoners serving aggravated life sentences. The Court reiterated that the presidential pardon mechanism cannot replace a regular, accessible, and independent review process and ruled that Article 3 of the Convention had been violated. Thus, the ECtHR identified deviations from fundamental standards in Turkey's current system for the second time.

c. Gurban Group v. Turkey Decision

In its 2016 Gurban decision, the ECtHR once again found that Turkey's aggravated life imprisonment regime was incompatible with Article 3 of the Convention.

In its 2016 *Gurban* decision, the Court once again emphasized that the regime of aggravated life imprisonment in Turkey is incompatible with Article 3 of the Convention. Referring to the earlier *Öcalan* (No. 2) and *Kaytan* judgments, it found that the legislation did not provide for any review or conditional release, and that the applicant therefore had no prospect of release, concluding that there had been a violation. The decision also clearly reminded national authorities that they must establish a review mechanism in line with the standards developed in *Vinter* and *Others* case law.

This finding not only revealed an individual rights violation but also exposed the structural problems of the aggravated life sentence regime. Thus, the *Gurban* decision reinforced that the right to hope has become a systemic obligation for Turkey that goes beyond individual applications. In this respect, the decision occupies a central place in the ECtHR's case law specific to Turkey and constitutes a landmark decision that gives its name to the group of decisions submitted to the Committee of Ministers for review (*Öcalan* No. 2, *Kaytan*, *Gurban*, *Boltan*).

d. Boltan v. Turkey Decision

In its 2019 *Boltan* decision, the ECtHR stated that Turkey had not implemented any structural reforms following the *Öcalan* (No. 2) decision and that the problem had ceased to be individual in nature and had become

general and systematic. This finding marked another turning point, showing that Turkey's aggravated life imprisonment regime was increasingly at odds with the standards of the European Convention on Human Rights. The Court reiterated that a system that actually works, not just a theoretical one, must be established to give effect to the right to hope.

e. Other Important Decisions

Following the *Vinter* and *Others* decision, the Court examined practices in different countries and reinforced its standards regarding the right to hope. These cases contributed to the development of detailed criteria regarding the commutability of life sentences and the nature of review mechanisms.

For example, in the *Murray/Netherlands* (2016) and *Matiošaitis/Lithuania* (2017) decisions, it was emphasized that it is not sufficient for the review mechanism to be merely provided for by law; it must be a system that actually functions, is accessible, and takes into account the individual progress of the convicted person and their reintegration into society. On the other hand, the *Hutchinson/United Kingdom* (2017) decision found that the reforms made by the United Kingdom after the *Vinter* decision were sufficient and no violation was identified. This approach shows that the Court grants states a certain margin of appreciation in systems where minimum standards are met.

Furthermore, in the *László Magyar/Hungary* application, the Court stated that a pardon mechanism based solely on the discretion of the head of State and lacking judicial safeguards was not sufficient in terms of the right to hope. In the *Petukhov/Ukraine* (No. 2) (Grand Chamber) decision, it was established that the possibility of reducing a sentence cannot be denied solely on the basis of the seriousness of the crime committed; the prisoner's development over time and their capacity for reintegration into society must be taken into account. In the *Bodein/France* decision, no violation was found because the conditional release and review system in France is accessible and equipped with judicial safeguards. The Court thus provided a concrete example of a compliant model. Furthermore, applications such as *Marcello Viola* (No. 2)/Italy and *Bancsók and László Magyar* (No. 2)/Hungary emphasized the necessity of procedural safeguards (legal assistance, reasoned decision, judicial review, right to reapply) in review processes.

This body of decisions confirms that the right to hope has become an established standard in the case law of the ECtHR and that states are obliged to establish not only formal regulations but also functioning, transparent, and secure mechanisms.

2.4. Standards Established by the European Court of Human Rights for Guaranteeing the Right to Hope

The ECtHR case law discussed above has demonstrated that the right to hope is not merely an abstract concept, but a right that must be guaranteed by concrete standards as an integral part of Article 3 of the Convention. In its approach developed in the *Kafkaris*, *Vinter*, *Murray*, *Matiošaitis*, *Hutchinson*, and *Turkey* judgments, the Court has established the following fundamental principles:

- **Reducibility requirement:** Aggravated life imprisonment or life imprisonment sentences are compatible with the ECHR only if they are legally (*de jure*) and factually (*de facto*) reducible and reviewable. A purely theoretical possibility is not sufficient; the system must provide the prisoner with a real opportunity for review and release.
- **25-year rule and periodic review:** In the *Vinter* judgment, the Court established as a point of reference that life imprisonment sentences must be reviewed no later than 25 years later. Following the initial review, if the request is rejected, periodic reviews should be conducted at reasonable intervals. The ECtHR's emphasis on 25 years refers to the relevant provisions of the International Criminal Court (ICC), established by the Rome

Statute, to which 121 states, including most member states of the Council of Europe, are parties.

- **Universality:** The right to hope is a universal standard applicable to all prisoners sentenced to life imprisonment, regardless of the type of crime or the identity of the prisoner. Because it is based on the principle of human dignity, this right cannot be limited to specific categories.
- **Content of the mechanism:** The review process should take into account the significant changes in the prisoner's life and their capacity to return to society. It should assess whether the enforcement of the sentence is still based on legitimate penological grounds (such as punishment, deterrence, public safety) (Murray/Netherlands).
- **Nature of the mechanism:** The review body does not necessarily have to be judicial; however, it must be independent, predictable, and subject to clear rules, and its discretionary power should not be unlimited (Iorgov/Bulgaria (No. 2), T.P. and A.T./Hungary). This body must be independent of political authority and its decisions must be subject to judicial review.
- **Presidential pardons or inadequacy of political mechanisms:** The ECtHR has

emphasized that exceptional and political means such as presidential and parliamentary pardons do not constitute sufficient guarantees for the right to hope (Öcalan (No. 2), Kaytan).

- **Procedural guarantees:** Procedural guarantees such as the prisoner's effective participation in the process, legal aid, reasoned judgment, and judicial review must be provided. Otherwise, the review mechanism becomes ineffective (Matiošaitis/Lithuania).
- **Obligation to Reform:** In the Hutchinson decision, the Court found the reforms undertaken by the United Kingdom after the Vinter decision to be sufficient and did not find any violation.

This shows that states can only comply with the Convention if they establish a system that functions effectively, not just on paper.

2.5. Comparative Law: European Practices and Different Models

It is seen that the standards relating to the guarantee of the right to hope are supported not only by the case law of the ECtHR but also by the penal and enforcement systems of the member states of the Council of Europe. Comparative law studies reveal both positive practices and worrying shortcomings, making concrete opportunities for compliance visible for Turkey. The "whole life order" regime ap-

plied in the United Kingdom was found to be contrary to the Convention by the ECtHR in the *Vinter* decision, and the reforms undertaken after the decision were addressed in the *Hutchinson* decision and deemed sufficient. This example shows that the Court has adopted the provision of a review mechanism within 25 years as a fundamental standard. In Germany, the system providing for the review of life sentences after 15 years has been positively evaluated by the ECtHR in terms of regular supervision and predictability criteria. In France, a judicial review is conducted after minimum sentences ranging from 18 to 22 years. In the *Bodein* decision, the Court acknowledged that the French system rarely applies “real life sentences” and effectively recognizes the right to hope, while also confirming the European trend towards a review after 25 years. Lithuania restructured its system after the *Matiošaitis* decision; it introduced a periodic and transparent review mechanism based on reasoned decisions, open to judicial review, after 20 years of imprisonment. These changes were positively received by the Committee of Ministers. Slovakia also implemented structural reforms that meet the requirements of the right to hope; it established a judicial review process after 25 years, to which both the prisoner and third parties can apply. The Netherlands, while providing a framework for the right to hope with a multi-stage review initiated after 25 years and an amnesty application process in the 27th year, has been criticized for the absolute discretion of the executive branch in decisions, the lack of

transparency in the system, and the extremely limited practice of release. Hungary has made legal changes in line with ECtHR judgments; however, it is still far from offering a structure compliant with the Convention due to excessively long waiting periods of 40 years, an amnesty system open to political control, and a lack of procedural safeguards.

In Italy, the *ergastolo ostativo* regime, which came to the fore particularly with the *Marcello Viola* (No. 2) judgment, is a concept specific to Italian penal law. Literally, it means a preventive (*ostatif*) life sentence. In Italian law, prisoners sentenced to life imprisonment for crimes such as “terrorism, mafia, and organized crime” could not benefit from conditional release unless they cooperated with the state, or in other words, did not confess or provide information. This situation points to a structural problem that eliminates the right to hope. In general, many member states of the Council of Europe have regulations recognizing the right to hope. Common elements in these systems include judicial review at the end of a certain period, regular monitoring, appeal and review procedures, clear and predictable criteria, and limitations on the arbitrary discretion of the administration. Turkey’s current aggravated life imprisonment regime is moving in the opposite direction of these common standards; it effectively and legally denies prisoners the right to hope. Comparative experience once again demonstrates that the right to hope is not an exceptional but a universal and enforceable obligation.

“Every prisoner must be informed about the current legislation and
their rights.”

-Mandela Rules

Part Three

TURKEY'S REQUEST FOR AGGRAVATED LIFE IMPRISONMENT: CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK

1. Abolition of the Death Penalty

- Law No. 4771 of August 3, 2002, abolished the enforcement of death sentences in peacetime.
- With this law, the sentences of those condemned to death were converted to life imprisonment or aggravated life imprisonment.
- At the same time, as part of the European Union harmonization process, the abolition of the death penalty was linked to Turkey's international obligations.
- Law No. 5218 of July 14, 2004, completely removed the death penalty from Turkish legislation.
- Article 38 of the Constitution has also been amended, and the death penalty is not foreseen in any way, including in times of war and states of emergency.
- Thus, aggravated life imprisonment has become the most severe punishment in the system in Turkey.
- According to Article 104/16 of the Constitution, the President has the power to "mitigate or abolish sentences due to

chronic illness, disability, and old age.” However, this mechanism is individual, exceptional, and humanitarian in purpose; it cannot replace the independent and regular review required by the ECtHR. The Court established this in the *Öcalan/Turkey* (No. 2) judgment. Although the death penalty has been abolished, the aggravated life imprisonment regime that has been implemented in its place does not offer any prospect of conditional release, and therefore effectively means “condemnation to death while alive.”

2. “Life Imprisonment Until Death” Sentence: Critical Points in Legislation

Turkey became acquainted with aggravated life imprisonment after the abolition of the death penalty. With the legal amendment made in October 2001, the death penalty was abolished except for “war threat and terrorism crimes”. Then, in August 2002, the death penalty was completely abolished for all crimes except those committed during “war and imminent threat of war”. As a result of these regulations, in 2001, death sentences other than “terrorism crimes”; and in 2002, all death sentences in Turkish prisons were converted to aggravated life imprisonment. However, after the abolition of the death penalty, until 2005, when the enforcement regime for aggravated life imprisonment was legalized, it was not clear which enforcement regime those

sentenced to this punishment would be subject to. During this process, the conditions of enforcement for these prisoners in terms of their detention in prison did not change. The enforcement regime of aggravated life imprisonment sentence is regulated by Article 25 of the Law No. 5275 on the Enforcement of Penal and Security Measures.

- According to Article 25 of the Penal Enforcement Law, convicts sentenced to aggravated life imprisonment are held in high-security closed correctional institutions; they are housed in single cells and have limited visitation and activity rights.
- Article 107 of the Penal Enforcement Law regulates conditional release periods. Accordingly, 30 years must be served for an aggravated life imprisonment sentence, and 36 years for multiple aggravated life imprisonment sentences and additional periods. However, Article 107/16 of the Penal Enforcement Law completely abolishes the right to conditional release in crimes against the constitutional order and the security of the State. This provision (107/16) leads to the destruction of the right to hope. Because for some prisoners, there is no legal possibility of conditional release. The violations pointed out by the ECtHR in the *Öcalan/Turkey* (No. 2) and *Kaytan/Turkey* judgments stem from this article.

- Article 107/16 of Law No. 5275: “The provisions of conditional release shall not apply in the event of conviction to heavy life imprisonment for committing, as part of the activities of an illegal organization, one of the crimes included under Section Four headed “Crimes Against the Security of the State”, Section Five headed “Crimes Against the Constitutional Order and the Functioning of this Order”, and Section Six headed “Crimes Against National Defense”, in Part Four, Part Two of the Turkish Criminal Code (Law No. 5237).”
- Temporary Article 2/1 of Law No. 5275: “Terrorist criminals whose death sentences are converted to heavy life imprisonment under Law No. 4771 dated 3 August 2002 Concerning the Amendment of Various Laws, as amended by Article 1 of Law No. 5218 dated 14 July 2004, and terrorist criminals who are sentenced to heavy life imprisonment, shall not be entitled to benefit from the provisions of conditional release. They shall serve their sentences throughout their lives.”
- Article 17 of the Law No. 3713 on Combating Terrorism: “Terrorist offenders, whose death penalties have been converted into aggravated life imprisonment via Law on Making Changes in Different Laws dated 3/8/2002 and numbered 4771 which has been amended with article 1 of law dated 14/7/2004 and numbered 5218 and whose death penalties have been converted into aggravated life imprisonment or who convicted aggravated life imprisonment cannot benefit from conditional release. Aggravated life imprisonment is applied to these people until they die.”
- Article 5 of the Law No. 3713 on Combating Terrorism states that the sentences to be given under this law will be increased by half, and stipulates that aggravated life imprisonment will be imposed instead of life imprisonment. Under this law, those sentenced to aggravated life imprisonment serve their sentences in the form of “remaining in prison until death.”
- Article 47 of the Turkish Criminal Code states: “Aggravated life imprisonment continues for the life of the convict and is served under a strict security regime as specified in the law and regulations issued by the President.”

3. Data Deficiencies and Transparency Issues

Official data does not provide the public with regular, detailed, and up-to-date statistics on the number and profile of convicts serving aggravated life sentences in Turkey. International monitoring highlights this data deficiency.

The Committee of Ministers and the UN Committee Against Torture have requested concrete numerical information from Turkey; however, Turkey's responses have been limited. This situation is a constant subject of criticism before the ECtHR and the Committee of Ministers.

The most up-to-date data on the number of prisoners serving aggravated life sentences in Turkish prisons was shared by the Ministry of Justice in 2014; due to the passage of time, this data has become outdated. The Council of Europe's Annual Penal Statistics (SPACE) reports for the last five years have included data on prisoners serving life sentences and aggravated life sentences provided by the Ministry of Justice, but have not shared specific data on aggravated life sentences with no hope of release. At the 80th session of the Committee Against Torture, held in Geneva on July 16-18, 2024, Fatih Güngör, Deputy Director General of Prisons and Detention Centers, stated that the number of prisoners serving aggravated life sentences constituted 1.24% of the total prison population. However, it was noted that this assessment only included those with finalized sentences and did not include those in the investigation or prosecution phases; therefore, it did not fully reflect the overall impact nationwide. As a result of this ratio, civil society organizations conducting field-specific studies have assessed that there are "more than 4,000 prisoners serving aggravated life sentences" in Turkey.

The Committee of Ministers of the Council of Europe also drew attention to the lack of data on aggravated life imprisonment convicts with no hope of release in the Gurban Group review and recommended that this information be presented concretely by September 2025. Furthermore, the Committee recommended a review of the penal practices related to aggravated life imprisonment. To ensure statistical accuracy, it is essential that the Ministry of Justice and TURKSTAT (Turkish Statistical Institute) develop a transparent data publication policy and disclose classified data by group (at the investigation and trial stages).

4. Aggravated Life Sentence Enforcement Regime and the Abdullah Öcalan Effect

4.1. Abolition of the Death Penalty and Its Replacement with the Aggravated Life Sentence Enforcement Regime

It is an undeniable fact that the historical and normative process regarding the aggravated life imprisonment regime is directly linked to the trial and enforcement of Abdullah Öcalan's sentence. The death sentence handed down against Öcalan in 1999 was not actually carried out because Turkey was in the process of aligning itself with the European Convention on Human Rights. Strong international pressure to abolish the death penalty within the context of Turkey's relations with the Council of Europe and the European Union

led to its replacement with aggravated life imprisonment. Indeed, following the abolition of the death penalty, both the normative definition of aggravated life imprisonment and its designation with the harshest enforcement regime were largely shaped within the political and legal context created by the Öcalan case, and also, it has entered the literature as the beginning of the “civil death” process. This situation has created the ground for discussing aggravated life imprisonment today in the context of the right to hope, human dignity, and Article 3 of the European Convention on Human Rights. The legal regulations in place before and during Öcalan’s extradition to Turkey in 1999, and examples of their application, are important in terms of whether the “life imprisonment” sentence, subsequently included in the legislation, is in accordance with fundamental legal norms and values. During the transition from military to civilian rule, the last two death sentences in the history of the Republic of Turkey were carried out in 1984. Following these enforcements, Turkey declared a moratorium on the application of the death penalty and halted all enforcements. Since October 1984, the Council of Europe has recognized and registered the Republic of Turkey as a state applying a moratorium on the death penalty. Furthermore, the Republic of Turkey, along with 41 other member states of the Council of Europe, signed the final declaration unanimously adopted at the Council of Europe summit of heads of state and government on October 11, 1997, which stated that “participants

called for the worldwide abolition of the death penalty and insisted on the continuation of existing moratoriums on enforcements in Europe.” (Declaration of Conclusions of the Second Summit of Heads of State and Government of the Council of Europe; Strasbourg, 10-11 October 1997)

The moratorium was implemented by keeping death penalty cases pending in a preliminary committee without bringing them to the agenda of the Turkish Grand National Assembly (TBMM). According to legal procedure, files concerning finalized death sentences were sent by the Ministry of Justice to the Prime Ministry, and after this process, the files, referred to as a “Prime Ministry Memorandum,” were sent to the TBMM Presidency, from where they were forwarded to the Justice Committee. After the memorandum was discussed in the Justice Committee, the report prepared for the enforcement of the death penalty was debated and voted on in the TBMM General Assembly. If accepted, it was submitted to the President for approval. After the President approved it and it was published in the Official Gazette, the sentence was carried out. However, death penalty files that came to the TBMM have been kept pending in the Justice Committee since 1984 without being brought to the agenda. Since that date, no death penalty files have been presented to the TBMM agenda; no vote was taken regarding acceptance or rejection.

As a result, between 1984, when the moratorium was declared, and 1999, the year Öcalan was brought to Turkey, no parliamentary decision regarding the application of the death penalty was taken.

This created a legal vacuum in the situation of those sentenced to death. How they would be punished and how the enforcement regime would be applied is only possible by examining the legal regulations and practices of that period.

The maximum penalties of that period were determined by the amendment made to Article 19 of the Law No. 647 on Enforcement of Sentences, dated July 13, 1965, which regulates conditional release, pursuant to the temporary article of Law No. 3267 dated March 11, 1986. Accordingly; “Those sentenced to death by a decision of the Grand National Assembly of Turkey not to carry out their sentences shall be conditionally released, even without a request, if they have served 30 years, those sentenced to life imprisonment shall be conditionally released if they have served 20 years, and those sentenced to other penalties restricting personal liberty shall be conditionally released if they have served half of their sentence and are deemed to be of good conduct according to the Regulations.”

In 1991, temporary articles were added to Law No. 3713, creating arrangements that could be defined as a partial amnesty. Under

temporary article 4, for crimes committed before April 8, 1991, the death penalty for prisoners accused of political crimes was reduced to 20 years, and life imprisonment to 15 years. Under the same regulation, for crimes committed after April 8, 1991, the death penalty was set at 36 years, and life imprisonment at 30 years. Consequently, the death penalty itself, which was not at risk of being implemented due to binding decisions to which Turkey was a party and the moratorium it declared, was carried out through imprisonment for a certain period. This was not a decision taken through a vote in parliament, but rather an enforcement through imprisonment within the upper limits stipulated in the laws. Within the scope of these legal regulations, in 1999, the year Öcalan was brought to Turkey, although the death penalty was not carried out, in practice, no one, including those sentenced to death, was held in prison for more than 20 years under a single trial.

4.2. Discrimination and Violation of the Principle of Equality in the Application of Aggravated Life Sentences

With Abdullah Öcalan's imprisonment in the İmralı high-security island prison in February 1999, his situation became a subject of debate in almost every legal regulation and amendment made in Turkey, and often exceptional arrangements were made specifically for him. Special clauses were added to prevent Öcalan from benefiting from amnesty, conditional release, or sentence reduction provisions that

everyone else benefited from, which created a situation incompatible with the principle of equality in law. The Law No. 4453, dated August 28, 1999, granted amnesty for crimes committed up to April 23, 1999, but excluded articles 125, 168, and 169 of the Turkish Criminal Code (TCK), under which Öcalan was tried. Subsequently, Law No. 4610, dated December 8, 2000, again introduced regulations regarding conditional release and postponement of trials, but this time, while Article 169 of the Turkish Criminal Code (TCK) was included, articles 168 and 125, which are of the same nature, were excluded. This distinction has been interpreted as a discriminatory practice directly targeting Öcalan's situation. The same law introduced a 10-year reduction for convicts sentenced to life imprisonment, but again excluded Article 125. Despite a previous Constitutional Court decision that annulled a similar distinction, this regulation was not brought before the Constitutional Court for annulment during the presidency of Ahmet Necdet Sezer. Local courts dismissed the claims of unconstitutionality regarding Article 125 as not serious, thus preventing the matter from being brought before the Constitutional Court. However, similar objections were accepted for other articles, and the Constitutional Court issued numerous annulment decisions. With Law No. 4758 of May 21, 2002, many crimes that had been excluded were re-regulated, and convicts were included in the scope of conditional release. Despite this, Article 125 was again excluded, and many convicts remained

within its scope. With Law No. 4771 of August 3, 2002, death sentences were commuted to life imprisonment. However, Article 1/B of the same law stipulated that conditional release provisions would not apply to "terrorist offenders," thus ensuring life imprisonment for life. This regulation eliminated acquired rights and violated the principle that "laws detrimental to the accused cannot be applied retroactively." The Penal Enforcement Law No. 5275 reinforced these regulations, effectively legalizing the aggravated enforcement regime already in place for Öcalan. However, many rights granted to all detainees and convicts under Law No. 5275 were not effectively applied to Öcalan. Rights such as telephone calls, access to television, and communication with third parties were denied to him. This situation led to the already discriminatory regulations being applied even more severely. Exceptions were also made for Öcalan in the regulations that opened the way for retrial following ECtHR decisions. The retrial process established by Law No. 4771, through temporary provisions, excluded Öcalan's application. Later, Law No. 4793 and subsequently Law No. 5271 maintained the same obstacle. While a retrial should have taken place following the ECtHR's decision of May 12, 2005, this process was effectively closed by the legal obstacles put into effect. During the same period, regulations were also implemented allowing the presence of a third party during lawyer-client meetings, recording the meetings, and banning lawyers from representing clients. These regulations

directly targeted Öcalan, seriously violating his right to defense and attorney-client confidentiality. From 2011 onwards, lawyer-client meetings were effectively prevented, with official justifications such as “the coaster is out of order” or “adverse weather conditions” lacking credibility. The European Committee for the Prevention of Torture (CPT) reports indicated that these practices were political, not legal. Following the July 15, 2016 coup attempt, the State of Emergency measures imposed resulted in the prohibition of all communication rights for Öcalan and other prisoners in İmrâlı, including access to lawyers, family, and guardians; communication channels such as telephones, telegrams, and letters were cut off. These *de facto* practices were later extended to all prisons through decrees and laws, severely restricting the right to defense and communication. Consequently, almost every law and regulation enacted since Öcalan’s arrival in İmrâlı Prison in 1999 has been made with his situation in mind. This process reveals a situation where the most fundamental principles of penal law—equality, the prohibition of discrimination, and the principle that “laws detrimental to the accused cannot be applied retroactively”—have been violated, and personalized regulations have been implemented in a chain reaction. Despite the ECtHR’s 2014 Öcalan (No. 2) ruling, which defined the unconditional application of aggravated life imprisonment as torture, Turkey has not taken steps in this direction, but rather has continued the *de facto* isolation and aggravated enforcement regime. Therefore, Öcalan’s

situation has become one of the most striking examples of how penal law and human rights principles are exceptionalized for political reasons in Turkey.

The aggravated life imprisonment system in Turkey is clearly in contradiction with international human rights standards because it completely eliminates the possibility of conditional release. Öcalan’s conditions of imprisonment constitute one of the most prominent examples of this violation. The aggravated life imprisonment conditions to which Öcalan is subjected are not only limited to the absolute elimination of the possibility of release; they also include being held under an absolute isolation regime, reinforced by being deprived of lawyer and family visits for many years. This situation constitutes a violation of Article 3 of the Convention which prohibits torture. Furthermore, the recommendations of the Council of Europe’s Committee of Ministers and the CPT to Turkey have demonstrated that this enforcement regime is incompatible with human dignity. Considering all these reasons, the practice of solitary confinement must end. However, in Turkey, starting on October 23, 2024, Öcalan was again allowed to meet, albeit on a limited basis, with his lawyers and family. This development, at first glance, may seem like a relaxation of solitary confinement conditions, as it represents the actual exercise of one of the most fundamental rights of a person serving an aggravated life sentence.

It must be emphasized, however, that the granting of this right was not a natural consequence of the penal regime or in accordance with the requirements of the rule of law. The granting of Öcalan's right to meet with his relatives and lawyers was not a recognition of a right based on universal legal standards, but rather a consequence of the needs and directions of the political process. In other words, access to family and lawyer visits, a fundamental right for prisoners serving aggravated life sentences, has been made possible not by ending isolation conditions, but by the determining influence of political dynamics. Therefore, while this development is important in terms of recognizing individual rights within the context of the right to hope, it does not eliminate the structural problems of the aggravated life sentence regime in Turkey. On the contrary, it reveals an enforcement practice where political processes, rather than universal principles of law, are decisive. This situation continues to contradict Turkey's obligations under Article 3 of the European Convention on Human Rights, which prohibits ill-treatment; Article 8, which regulates the right to respect for family and private life; and the jurisprudence of the ECtHR.

Recently, discussions about the "right to hope" have resurfaced in Turkey. The source of these discussions has been the political and legal assessments conducted in the public sphere regarding Öcalan. The right to hope is a matter that concerns all prisoners sentenced

to aggravated life imprisonment, the harshest penalty, and is therefore linked to universal human rights and the principles of the rule of law. As emphasized in the jurisprudence of the European Court of Human Rights, the absolute and indisputable nature of life imprisonment is incompatible with human dignity and the principle of "hope for life." Every prisoner, regardless of the severity of the crime committed, has the right to be evaluated based on the possibility of reintegration into society after a certain period. In this context, the "right to hope" is not only a matter of the possibility of access to freedom; it is also a reflection of human dignity and the right to reintegration into society.

Although the increasingly harsh political atmosphere in Turkey in recent years has led to these discussions being addressed from a narrower security perspective, the issue has much broader legal and humanitarian dimensions at its core. Therefore, the struggle for the right to hope and the demands for its recognition require that all prisoners under aggravated life imprisonment status be addressed within a common and inclusive framework. This approach is important both for compliance with international human rights standards and for the establishment of the principles of justice and equality within Turkey's own legal system.

“All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.”

-European Prison Rules

Parth Four

THE EFFECTS OF AGGRAVATED LIFE IMPRISONMENT REGIME:

HUMAN RIGHTS AND HEALTH DIMENSIONS

1. The Effects of the Enforcement Regime on the Psychological and Physical Health of Aggravated Life Prisoners

Solitary confinement and aggravated life imprisonment regimes can have serious negative effects on both the psychological and physiological health of prisoners. Studies show that between 33% and 90% of prisoners subjected to solitary confinement may exhibit serious symptoms. These symptoms can range from insomnia and headaches to anxiety, depression, hallucinations, and psychosis. The negative effects of solitary confinement generally

begin within a few days, and the effects increase as the duration of the application increases.

Prisoners subjected to aggravated life imprisonment may be more severely affected by these effects than other prisoners due to prolonged isolation and lack of social contact. According to civil society data and field research that have been made public, these prisoners are not allowed direct sunlight in their cells; they spend most of their days under artificial light. Small cells, inadequate ventilation, and closed doors restrict breathing and movement, forcing prisoners to spend most of the

day sitting. This situation can lead to musculoskeletal problems, chronic headaches, circulatory disorders, and other physical health problems.

From a psychological perspective, the inability to communicate with other people for extended periods creates serious problems for prisoners serving aggravated life sentences. particular emphasis is placed on the lack of conversation and social interaction during contacts with prisoners. The absence of anyone else to communicate with can make the use of certain cognitive abilities impossible, triggering memory and concentration problems. This also leads to depression and anxiety. The closure of prisons to civil society and academic oversight prevents external observation of the prisoners' psychological state. The fact that human psychology is a fundamental part of health must also be reflected in prison conditions. Investigating and identifying the psychological problems experienced by prisoners serving aggravated life sentences under these conditions is of great importance in understanding the destructive impact of the penal regime on prisoners. According to legal regulations, the enforcement of sentences for prisoners serving aggravated life sentences cannot be interrupted; except for medical examinations and necessities, health measures are implemented within the institution as much as possible. However, even if prisoners need treatment outside the institution, they are expected to remain in solitary confinement.

This situation makes access to healthcare difficult and can constitute an obstacle to receiving necessary care and treatment.

Consequently, both psychological and physiological health problems arising from the enforcement regime of prisoners serving aggravated life sentences should be considered separately from other prison-related illnesses. These practices are clearly contrary to both international human rights standards and the fundamental health and human dignity of prisoners.

2. International Legal Principles on Isolation and Solitary Confinement

There are clear limitations on solitary confinement in international law. According to the UN Mandela Rules (Article 44), solitary confinement is the separation of a prisoner from human contact for 22 hours or more per day, and if this punishment exceeds 15 days, it is considered "extended solitary confinement". Article 43 of the same set of rules states that indefinite or longer than 15 days of solitary confinement are prohibited. Article 45 emphasizes that solitary confinement can only be applied in exceptional circumstances, should be kept as short as possible, and should not become part of the prisoner's sentence.

The European Prison Rules also introduce similar regulations. Paragraphs 2 and 3 of Article 43 of this text stipulate that prisoners

held in solitary confinement must undergo daily medical examinations, and this must be done under medical supervision. Furthermore, according to Article 60, solitary confinement can only be applied for very short periods.

In conclusion, international regulations accept solitary confinement only as a last resort for dangerous or aggressive individuals and for a maximum of fifteen days. During this period, prisoners must be examined daily by doctors, both physically and psychologically.

The European Committee for the Prevention of Torture (CPT) emphasizes that in some cases, solitary confinement can be considered inhuman and degrading treatment, and therefore all forms of solitary confinement should be kept as short as possible. The CPT's June 2013 report on Turkey stated that aggravated life imprisonment, with its restrictions on prisoners being allowed only one hour of outdoor exercise per day and lacking meaningful human contact, constitutes solitary confinement. The fact that solitary confinement, prescribed as a disciplinary punishment under Turkish law, has become the norm for prisoners serving aggravated life sentences actually means the normalization of "punishment within punishment." Thus, this practice, which is no longer a temporary punishment for specific behaviors within the prison, transforms into an additional sanction that goes beyond the restriction of liberty for those serving aggravated life sentences.

In conclusion, the way in which aggravated life imprisonment is applied is clearly contrary to the rules established in human rights law.

The CPT states in all its reports that solitary confinement causes serious mental and physical harm to prisoners. Solitary confinement can lead to stress, anxiety, and physical health problems due to the lack of social interaction throughout the day and prolonged isolation. Therefore, solitary confinement should only be applied for short periods, and the prisoner should be under constant medical supervision. If the prisoner's mental or physical health is negatively affected during the punishment, the practice should be terminated immediately. This practice is important both in terms of human rights rules and the protection of the health and human dignity of prisoners.

3. Aggravated Life Imprisonment and Conditions of Detention

International regulations aimed at protecting prisoners against the negative effects of long-term imprisonment emphasize that prisoners should have the opportunity to reintegrate into society and be rehabilitated within the framework of respect for human dignity during the sentencing process. In this context, documents such as the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) and the European Prison Rules clearly state that prisoners should

be assessed according to their individual risk situations and that a fair environment should be provided in which they can maintain hope of regaining their freedom throughout their sentence.

This approach is also supported by documents such as the recommendations adopted by the Council of Europe on “Reintegration into Society for Prisoners Serving Long-Term Sentences” and “Conditional Release”. These documents emphasize the need for necessary arrangements to ensure that prisoners are held in conditions that comply with human rights, that they are reintegrated into society through reintegration processes, and that the psychological effects of long-term imprisonment on prisoners are minimized.

European Committee for the Prevention of Torture (CPT) In its 11th general report, the CPT noted that there has been an increase in the number of prisoners sentenced to life imprisonment and other long-term detentions in many European countries. In some of its visits, the CPT found that the physical conditions, activities, and opportunities for contact with people of such detainees are very negative. In addition, many of these detainees are subjected to special restrictions that further worsen the negative conditions of long-term imprisonment. Examples of such restrictions include the permanent separation of the prisoner from the prison population, the handcuffing of their hands every time they leave their cell, the prevention of communication

with other prisoners, and the limitation of their right to visits. The CPT sees no justification for imposing restrictions indiscriminately on all convicts with the same type of sentence, without regard to the individual risks (or lack thereof) posed by the prisoners.

Long-term imprisonment can have various socially isolating effects on convicts. Long-term detainees, in addition to being in prison, may suffer from various psychological illnesses (including loss of self-esteem and impaired social skills) and may ultimately tend to become increasingly detached from the society to which almost all will eventually return. In the CPT’s view, practices concerning convicts with long-term sentences should aim to positively and proactively mitigate these effects. The relevant international documents indicate that prisoners should be held under conditions that protect their physical and psychological health, and guarantee that prisoners sentenced to aggravated life imprisonment should also be held under conditions consistent with human rights without discrimination. However, the existing legal regulations that constitute a violation of the right to hope have not been changed, and the discriminatory practices applied to these prisoners without any legal justification continue.

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

-International Covenant on Civil and Political Rights

Part Five

THE BINDING NATURE AND IMPLEMENTATION OF ECtHR DECISIONS IN TURKISH DOMESTIC LAW

The Republic of Turkey, as a party to the European Convention on Human Rights, has accepted the jurisdiction of the ECtHR. The Convention was opened for signature in 1950 and entered into force in 1953. The ECtHR was established to monitor the compliance of signatory countries with the Convention. Turkey signed the Convention on November 4, 1950, and ratified it with Law No. 6366 dated March 10, 1954.

Although the right of individual application

to the Court and the compulsory jurisdiction of the ECtHR were accepted at different times, the recognition of the right of individual application to the Court by the Republic of Turkey was made possible with the adoption of Protocol No. 11 to the Convention in 1997. With this protocol adopted in 1997, the jurisdiction of the Court was accepted as permanent. This protocol was published in the Official Gazette dated June 20, 1997, numbered 23025, and entered into force for Turkey on November 1, 1998.

According to Article 90, paragraph 5 of the Constitution of the Republic of Turkey, international agreements duly put into effect have the force of law. In cases of conflict arising from the fact that international agreements concerning fundamental rights and freedoms as well as laws contain different provisions on the same subject, the provisions of the international agreement shall prevail. In practice, if there is a conflict between a legal provision and the provisions of an agreement concerning fundamental rights and freedoms, the provisions of the agreement must prevail. This rule is an implicit abrogation rule, eliminating the applicability of legal provisions that conflict with the provisions of the Convention regarding fundamental rights and freedoms (Constitutional Court, Akat Ekşi decision (Akat Ekşi Decision, 2013/2187, 19.12.2013, Paragraph 44)).

In cases where the relevant legal provision conflicts with the Convention provision, the lower courts deciding the dispute must not base their decisions on the legal provision that conflicts with the ECHR and other international human rights treaties, but must take into account the provisions of the international convention that should be applied in accordance with Article 90 of the Constitution in relation to the dispute in question (Akat Ekşi Decision, 2013/2187, 19.12.2013, Paragraph 45).

ECtHR decisions are binding on the Repub-

lic of Turkey. This is enshrined in the Constitution. For those sentenced to aggravated life imprisonment as is the case with Öcalan (No. 2) decision, neither Article 107/16 of Law No. 5275 nor Article 17/3 of Law No. 3713 can serve as the basis for the enforcement of the sentence by reference to Article 90 of the Constitution.

With the ECHR, contracting states promise to recognize the rights and freedoms covered by this Convention to everyone within their jurisdiction. When a violation of the Convention occurs, it is a fundamental obligation to bring the legislation into conformity with the Convention if the violation stems from legislation, or to bring the practice into conformity if the violation stems from practice. The ECtHR has stated that its judgments not only serve to resolve the dispute brought before it, but also, in a broader sense, ensure the protection and development of the Convention's norms, and in this way contribute to states as high contracting parties respecting the commitments they have undertaken (Court of Justice, Ireland/United Kingdom, 18.01.1978, A25, Pr. 154; Guzzardi/Italy 06.11.1980, A39, Pr. 86).

The ECtHR emphasizes that, within the context of Article 46 of the Convention, states are obliged to be bound by the judgments of the ECtHR regarding applications to which they are parties (Del Rio Prada/Spain [GC], Application No: 42750/09, 21.10.2013, Pr. 137).

According to the ECtHR, this includes not only the obligation of the respondent state to pay the compensation awarded under Article 41 of the Convention when it finds a violation, but also the obligation to take individual and/or – if necessary – general measures in domestic law to remedy the violation it has found and to compensate the applicant in such a way as to bring them as close as possible to the situation they would have been in if the Convention had not been violated (*Del Rio Prada/Spain*, Pr. 137).

“Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.”

-Mandela Rules

Part Six

REFLECTIONS OF ECtHR DECISIONS AND THE COMMITTEE OF MINISTERS' ONGOING MONITORING PROCESS IN TURKISH DOMESTIC LAW

ECHR judgments are binding; however, their implementation is subject to the supervision of the Committee of Ministers. In the wake of the Öcalan (No. 2), Kaytan, Gurban and Boltan rulings, the implementation of these decisions has been subject to qualified supervision. The Committee has persistently demanded concrete legal and institutional reforms regarding these decisions, which are characterised as those of the Gurban Group. However, the action plans presented by Turkey to date have mostly been limited to reiterating existing legislation; neither a roadmap nor a functional review mechanism has been established. The Committee has noted this shortcoming on numerous occasions and has requested that Turkey share concrete data, in-

cluding detailed statistics.

The Committee's 1419th (2021) and 1507th (2024) meetings, the following points are particularly noteworthy: The complete exclusion of those convicted of serious crimes under the Anti-Terrorism Law and the Turkish Criminal Code from conditional release is clearly incompatible with the case law of the European Court of Human Rights.

- The government has taken no steps towards establishing an independent and judicially supervised review mechanism that would take into account prisoners' individual circumstances and progress made during their sentence.

- While the scope of the aggravated life sentence regime, which cannot be reviewed, is quite broad, and independent reports indicate that more than 4,000 prisoners may be in this situation, the authorities in Turkey have failed to meet the Committee's requests for data, and the lack of transparency has deepened.

Due to the fact that Turkey has not taken any steps in the intervening period, the Committee has taken the monitoring process for Turkey to another dimension by issuing an exceptional Interim Decision dated 17 September 2025 and numbered CM/ResDH(2025)264.

In this context, the following can be said about the supervision process of the Committee:

- The absence of a review mechanism in the aggravated life sentence regime has been identified as an ongoing structural problem.
- The ECtHR's *Vinter, Öcalan* (No. 2), *Kay-tan, Gurban and Boltan* judgments, along with positive examples from Council of Europe member states, constitute the reference standards to which Turkey must conform.
- In particular, the following are minimum requirements: a review must be carried out within 25 years at the latest, this must be repeated at regular intervals,

an independent, impartial and judicially supervised, accessible monitoring mechanism must be established, the individual circumstances of each prisoner must be assessed, and procedural safeguards must be provided.

The Committee's decision also notes the Rule 9.2 notifications submitted by TLSP, ELDH, MAF-DAD and LLG; and, from Turkey, by ÖHD, İHD, TİHV, TOHAV, ÇHD, CİSST and the Diyarbakır Bar Association. In this respect, it demonstrates that the contributions of civil society have been taken into account. These notifications indicate that the reform is limited to the establishment of a "mechanism" and that the mechanism should be qualified in terms of efficiency and accessibility.

The Interim Decision has imposed an obligation on Turkey to report concrete steps by June 2026. Thus, the time pressure on Turkey has increased, and it has been clearly stated that the consequences at the political and international levels will be severe.

Ultimately, this interim decision constitutes a threshold point for Turkey. If no reforms are made, it will be confirmed that the case law of the European Court of Human Rights is being systematically violated. Such a situation will create the basis for Turkey to face an increasing risk of isolation both at the European Council level and in the international arena.

“Prisoners may not be subjected to torture, cruel, inhuman or degrading treatment or punishment, regardless of the reason.”

-Mandela Rules

Part Seven

PROBLEMS IN PRACTICE: ADMINISTRATION AND OBSERVATION BOARDS

1. Introduction

Aggravated life imprisonment in Turkey creates problems not only with the texts of the law, but also with the implementation of criminal execution regime and the functioning of release on probation. While there is no possibility of release for prisoners who received an aggravated life sentence for “terrorism and crimes against the constitutional order”, prisoners who received aggravated life sentences for other crimes may be released at the end of a certain period of time. However, the extension of sentences for prisoners in this category by administrative observation board decisions has become “hopeless” for their lives.

One of the most important institutions that directly affect the execution process in Turkey’s penal system in Turkey is the Administration and Observation Boards. These boards repeal the Regulation on Observation and Classification Centres published in the Official Gazette dated 17 June 2005 and numbered 25848, and are established by the Regulation on Observation and Classification Centres and the Assessment of Convicts enacted as of 1 January 2021 following its publication in the Official Gazette on 29 December 2020 .

Its basis is formed by the provisions on ‘observation and classification centres’ in Article 13 and ‘assessment of convicts and determination of good conduct’ in Article 89 of Law

No. 5275 on the Enforcement of Criminal Sentences and Security Measures.

The purpose of the regulation is explained in the first section as follows: ‘It covers provisions relating to the observation and classification of prisoners, their distribution to institutions appropriate to their circumstances, and the assessment of their good behaviour based on the rehabilitation activities applied and their resulting attitudes and behaviour.’ In other words, it is a regulation that establishes a committee with broad powers to determine the entire process from the moment prisoners first enter prison until the moment they are released.

2. Structure of the Board and How it works

In accordance with the regulation, the committee shall consist of a majority of administrative staff, including the institution director as chair, the deputy director, an administrative officer, a prison doctor, a psychiatrist, a psychologist, a social worker, a teacher, the chief officer of enforcement and security, and one official selected from among the technical staff (Regulation on the Management of Penal Institutions, Article 22).

In addition to this structure within the Board, “those sentenced to a total of ten years or more imprisonment, as well as those convicted of terrorist crimes, crimes of establishing, managing, or being a member of an organization, crimes committed within the scope

of organizational activities, intentional homicide crimes, crimes against sexual integrity, and crimes of manufacturing and trafficking narcotics or stimulants” shall be subject to open prison placement, supervised release, and conditional release. It is further stipulated that the public prosecutor or a public prosecutor designated by the public prosecutor shall chair the administration and observation board. (Execution of Sentences Law, Art. 89/3)

One of the most important points regarding the structure of the Board is that the structure of the Administration and Observation Board, which is equipped with such decisive powers, consists largely of prison personnel, although it has the authority to make decisions regarding the rights that prisoners can benefit from during their stay in the penitentiary institution and makes evaluations that directly affect the release dates. Although the law specifies that the public prosecutor will be involved in the process in limited and exceptional circumstances, the fact that the board generally consists solely of officials affiliated with the prison administration demonstrates that the board’s impartiality and independence cannot be ensured.

3. Good Conduct Assessment

The most critical function of the boards is the good conduct evaluation, which directly affects the release processes of prisoners. The regulation bases this assessment on criteria such as compliance with institutional order,

good faith use of rights, fulfillment of obligations, participation in education and rehabilitation programs, social and cultural activities, reading habits, relations with prison staff, remorse, rewards, and disciplinary penalties (Observation and Classification Centers Regulation, art. 3).

Most of these criteria are ambiguous and subjective. In particular, the criterion of “remorse” does not exist in execution law. Although “effective remorse” is regulated as a mitigating factor during the trial phase (Turkish Criminal Code, Article 168), no such institution exists in sentencing law.

4. Legal Issues

- The main legal problems regarding the Administration and Observation Boards include:
- The problem of objectivity and impartiality: Since the majority of the committee consists of prison staff, the authority to impose disciplinary sanctions and assess good behavior is concentrated in the same individuals.
- Lack of legal certainty: Due to unclear criteria, prisoners cannot predict in advance which of their behaviors will affect their release.
- Lack of judicial oversight: The boards act as courts in deciding on condition-

al release, but lack independent judicial oversight.

- Violation of the prohibition of discrimination: The fact that the same behaviors can be interpreted differently by different boards leads to arbitrariness in practice and discrimination against prisoners based on the crime they committed and the punishment they received.

5. Results in Practice

In practice, the release of many prisoners has been blocked due to the negative decisions of these committees; this has been reflected in the public sphere through lawyers, bar associations, and civil society organizations. Furthermore, the reasons for this arbitrary blocking are quite absurd. To list some examples that have been reported in the press: reasons such as how much water the prisoner uses, the prisoner being kept away from their family and therefore unable to receive visits, how many books the prisoner takes from the library, or the prisoner’s low energy levels can be used as arbitrary grounds for preventing release.

Additionally, the number of individuals affected is unknown as the General Directorate of Prisons and Detention Centers has not released official data.

6. Recommendations

Administration and Observation Boards,

with their current state, are organs that lack a legal basis and limit the freedoms of prisoners with unpredictable and arbitrary decisions. Therefore:

- Parole in cases of fixed-term imprisonment should be determined by judicial safeguards, not administrative
- The discretionary and arbitrary powers of the Administration and Observation Boards to obstruct the parole process should be restructured; parole assessments for fixed-term imprisonment should be removed from the jurisdiction of these boards. Practices that result in prisoners serving aggravated life sentences being held in prison for their entire lives should be abolished, and an enforcement regime that guarantees prisoners' 'right to hope' should be adopted.
- Instead of these committees, which have become a mechanism that violates prisoners' rights to liberty and security, prisoners' release processes should be judicially guaranteed under court supervision.
- The structure of the boards should be fundamentally changed to ensure the participation of independent legal experts.
- The criteria for good conduct should be made clear, specific and measurable.

- Decisions should be made transparent and statistical data should be shared with the public.

- Boards should be transformed into bodies that facilitate prisoners' rights to conditional release rather than obstructing them.

As a result, the current structure of the Administration and Observation Boards assessments produces both legal violations and discrimination; it is incompatible with the right to personal freedom and security. The structure of the current Administration and Observation Boards must be completely changed; instead of preventing the release of prisoners, they must become a mechanism that facilitates releases in a manner that supports prisoners' 'right to hope'.

This report demonstrates that the execution regime based on aggravated life imprisonment in Turkey has become not only an individual but also a structural human rights issue, and that this regime is incompatible with human dignity. Presented as a human rights advancement following the abolition of the death penalty, this system has effectively become a regime of lifelong despair. The report examines the right to hope in its conceptual, historical, and legal foundations, demonstrating that its implementation in Turkey systematically violates this right.

“This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.”

-European Prison Rules

Part Eight

CONCLUSION

As stated in the introductory section, the right to hope is not limited solely to the possibility of gaining freedom; it is the right to preserve the bond that a person establishes with the future, their capacity for change, and their ability to reintegrate into society. In this respect, the right to hope draws an ethical limit to the punitive function of law. The state cannot condemn an individual forever based on their past actions; it is also obliged to consider their future potential. As emphasized in the report, this right is an integral part of the principle of human dignity and recognizes that a person exists not only through their past actions but also through their potential for the future.

In international law, this understanding is rooted in Article 3 of the European Convention on Human Rights (prohibition of inhuman and degrading treatment). As stated in the introductory chapter, the right to hope is not limited solely to the possibility of gaining freedom; it is the right to preserve the bond that a person establishes with the future, their capacity for change, and their ability to reintegrate into society. From this perspective, the right to hope sets an ethical limit on the punitive function of law. The state cannot condemn an individual forever based on their past actions; it is also obliged to consider their future potential. As emphasized in the report,

this right is an integral part of the principle of human dignity and recognizes that a person exists not only through their past actions but also through their potential for the future. This understanding is firmly established in international law under Article 3 of the European Convention on Human Rights (prohibition of inhuman and degrading treatment). The line of jurisprudence shaped by the ECtHR in its decisions in *Kafkaris*, *Vinter*, *Murray*, *Matiošaitis*, *Petukhov*, *Marcello Viola*, and others has established that life sentences can only be considered compatible with human dignity if they are both legally (*de jure*) and effectively (*de facto*) commutable. According to the Court, if a person has no possibility of release under any circumstances, this means denying their capacity for change and reducing them solely to their past. Therefore, review mechanisms must be initiated within 25 years at the latest, repeated at regular intervals, and take into account the individual's personal development and social ties.

In Turkey, the *Öcalan* (No. 2), *Kaytan*, *Gurban*, and *Boltan* rulings have established a clear and settled body of case law that the aggravated life sentence regime eliminates the right to hope. The Court found that mechanisms that offer no possibility of conditional release or exist only in theory violate Article 3 of the Convention, and that presidential pardons cannot replace a regular, accessible, and independent review process. This finding demonstrates that the problem is structural

rather than individual in nature.

The Committee of Ministers of the Council of Europe, within the framework of the Gurban Group, which monitors the implementation of these violations, has called for comprehensive reform to address this structural problem in its assessments of Turkey. The Committee stated that Article 107/16 of Law No. 5275 on the Enforcement of Criminal Sentences and Security Measures, and the related practices, effectively eliminated the right to hope; it requested Turkey to establish a review and conditional release system in line with ECHR standards. Despite this, Turkey has not taken the necessary steps.

The section of the report on comparative law and practice examples shows that in these countries, life imprisonment does not mean hopelessness; it is balanced by processes that assess the individual's capacity for change and reintegration into society.

Most Council of Europe member states have an independent and judicial review mechanism at the end of a certain period. In these countries, life imprisonment does not mean hopelessness; it is balanced by processes that assess the individual's capacity for change and reintegration into society. In contrast, Turkey's aggravated life imprisonment regime continues in a manner incompatible with human dignity, both in terms of conditional release and conditions of imprisonment. Long-

term isolation, arbitrary “good conduct” assessments, and opaque practices continue to produce a structure that violates prisoners’ human dignity and severs their ties to society.

This picture, when considered alongside the number of prisoners subjected to this regime, demonstrates that the right to hope has become not only an individual issue in Turkey, but also a democratic and societal one. For a society is democratic to the extent that it can preserve its citizens’ belief in the future. A legal order that eliminates hope condemns not only prisoners but also society to hopelessness. The purpose of law is not revenge but justice and the preservation of human possibility.

In this context, the steps Turkey must take are clear. In line with the case law of the European Court of Human Rights and the standards of the European Convention on Human Rights, in order to protect the right to hope:

- A mechanism for independent, transparent, and regular review should be established at the end of a specified period for aggravated life sentences;
- The right to conditional release should be granted without exception to all prisoners;
- Conditions of detention based on isolation should be abolished, and living con-

ditions consistent with human dignity should be provided;

- Execution and prison data should be shared with the public in a regular and accessible manner, thereby ensuring social oversight and compliance with international obligations.

These steps are not only required by ECHR rulings, but also test Turkey’s claim to be a state governed by the rule of law. The right to hope is a principle that preserves the humanity of punishment and represents the conscience of the law. A system that eliminates it denies the individual’s humanity; society replaces justice with helplessness.

In conclusion, this report defends the right to hope not merely as a legal term, but as an indispensable principle for the continuation of humanity and democracy. For a person is only human to the extent that they can dream of the future; society is only just to the extent that these dreams are possible. A regime that prohibits hope also prohibits human dignity. Therefore, guaranteeing the right to hope is a prerequisite for protecting both human dignity and Turkey’s democratic future. Abduloğlu, Z., & Bayramoğlu, F. (1997). *Uyku ve uyku bozuklukları*. Genel Tıp Dergisi, 161.

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General living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.

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