

DGI – General Directorate of Human Rights and
 Rule of Law Department of Execution of ECHR Decisions
 F-670575 Strazburg Cedex Fransa
 E-posta: dgi-execution@coe.int
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According to the bylaw of the Diyarbakir Bar Association Committee of Ministers, Rule 9.2, OCALAN (2), KAYTAN, GURBAN and BOLTAN etc. Turkey (Application No. 24069/03, 27422/05, 4947/04, 33056/16) is the additional observation on the implementation of the decisions.

LOGIN

1) 1) Diyarbakir Bar Association, OCALAN (2), KAYTAN, GURBAN and BOLTAN etc. supervised by the Committee of Ministers. 9(2) of the “Regulation of the Committee of Ministers on the supervision of the execution of decisions and friendly settlement conditions” regarding the legislative and judicial situation in Turkey for the implementation of the decisions of Turkey (Application No. 24069/03, 27422/05 ,4947/04, 33056/16) presents its observations and recommendations under Rule No.

2) 2) Bar Associations in Turkey were established within the scope of the Law No. 1136 on Advocacy and are a professional organization in the nature of a public institution, whose members are all lawyers. In addition to the duties imposed on them by the law as a professional organization, they are the institutional organization of lawyers as a part of the judicial system and contribute to the development of law. Bar associations, in Article 76 of the Law No. 1136, "to develop the profession of attorney, to ensure honesty and trust in the relations of the members of the profession with each other and with the business owners, to defend and protect the professional order, morality, dignity, rule of law, human rights, and to meet the common needs of lawyers. It is defined as a professional organization in the nature of a public institution that carries out all the works for the purpose, has a legal personality and continues its activities according to democratic principles. Article 95 of the same Law states that the Board of Directors of the Bar Association is responsible for 'defending and protecting the rule of law and human rights and making these concepts work'.

3) Diyarbakir Bar Association is a bar that continues its monitoring and reporting activities in the field with the centers it has established for legal support due to the fact that it is in a region where violations of rights are very intense. Diyarbakir Bar Association was established in 1927.

4) 4) Diyarbakir Bar Association conducts research on legal problems and rights violations faced by individuals and groups of individuals due to national or international authorities, aims to develop "human rights and freedoms", uses all national and international legal remedies in the most effective way, and acts against all kinds of discrimination and rights. It is an independent non-governmental non-governmental organization that fights against human rights violations, documents and reports violations of rights, and advocates in national and international mechanisms.

ECHR Decision and Enforcement Processes

1. Abdullah Öcalan is currently serving a life sentence on the island of Imrali (Turkey). In 1999, Abdullah Öcalan was sentenced to death in June 1999, in accordance with the Penal Code in force at the time of his trial, defined by Turkish courts as the founder of the PKK. After the death penalty was abolished by Turkey in 2002, Abdullah Öcalan's sentence was commuted to "aggravated life imprisonment" without any possibility of release. According to the new Penal Code, the life sentence resulting from the commutation of the death penalty for "terrorist" acts is life imprisonment without the possibility of release of the convict. Abdullah Öcalan applied to the ECHR against the Republic of Turkey on August 1, 2003. He was sentenced to life imprisonment without the possibility of release and social isolation in the prison on the island of Imrali in the context of Article 3 and Article 8 (private life and He also complained of the restrictions on his phone calls, correspondence and visits by his relatives and lawyers pursuant to the ECHR on 18 March 2014. , unanimously It held that there had been a violation of Article 3, concerning the applicant's sentence to life imprisonment without the possibility of conditional release. This violation arises from the application of Articles 25, 107 and 108 of the Penal Execution and Security Measures Law No. 5275, and the application of the temporary article 2 of the Turkish Penal Code No. 5237 (TCK).
2. Hayati Kaytan, Art. 765 (former) TCK. He was sentenced to aggravated life imprisonment pursuant to provision 125. Kaytan v. In the Turkey decision, the Second Chamber of the ECHR pointed to the right to hope, and Öcalan (2) v. With reference to the Turkish decision, the ECHR art. 3 that it cannot be considered as a hope for proper release, Vinter v. ECHR art. 3 violation will occur at the time of imposing a penalty and that Öcalan (2) v. Turkey stated that there was no special situation for leaving in the mentioned application, and it violated Article 3 of the ECHR.
3. Emin Gurban No. 765 (former) TPC art. He was sentenced to aggravated life imprisonment pursuant to provision 125. The second decision of the ECHR regarding Turkey on the subject in 2015 was Gurban v. Turkey's decision. ECHR Second Chamber, Öcalan v. Turkey (no2) and Kaytan v. In terms of the execution of a life sentence in Turkey's decisions, Turkish Law's ECHR art. 3, stating that there is no special condition requiring departure from the aforementioned decisions in this application, ECHR art. 3 violations. Again in this case, the Second Chamber of the ECHR; ECHR art. He also emphasized that the detection of 3 violations would not raise hopes for the applicant's imminent release.
4. Civan Boltan TCK no. 5237 art. He was sentenced to aggravated life imprisonment in accordance with Article 302. Boltan applied to the ECHR in 2016. As the most recent decision of the ECHR regarding Turkey in the context of the right to hope, Boltan v. In the decision of Turkey, he also stated that Turkey did not object to the fact that domestic remedies were not exhausted due to the fact that the individual application to the Constitutional Court was not applied. ECHR Second Chamber, with reference to previous judgments against Turkey, Turkish Law's ECHR art. 3, stating that there is no special condition requiring departure from the aforementioned decisions in this application, ECHR art. 3 violations.
5. After the ECHR decision, Emin GURBAN applied to the 14th High Criminal Court of Istanbul on 06.04.2018 for the appraisal of the necessity of the decision. With its decision dated 23.05.2018, Istanbul 14 High Criminal Court decided to "Reject it in accordance with Article 2/b of Law No. 4771 and Article 107/16 of Law No. 5275". The appeal against the rejection decision was definitively rejected by the Istanbul 15 High Criminal Court with the decision dated 12.07.2018. Emin GURBAN deputies made an individual application to the Constitutional Court in August 2018, and as of this date, no decision has been made yet.

6. After the ECHR decision of February 2019, Civan Boltan requested a retrial at the Diyarbakır 7th High Criminal Court for the execution of the decision and the suspension of its execution. Diyarbakır 7th High Criminal Court stated on 21.01.2020 that the problem was structural and legal, and that the ECHR also proposed a legal amendment and decided to reject the request for a retrial and stay of execution without a legal change.

7. At the meeting of the Committee of Ministers held on 11-12 March 2015, the *Öcalan v. Turkey* (No. 2) case was classified under “Enhanced Supervision Cases”. It still continues to be monitored under enhanced surveillance.

8. Regarding the *Öcalan*, *Kaytan*, *Gurban* and *Boltan* decisions, no individual measures have been taken to remedy the consequences of the violation, since the structural execution system caused a violation. In fact, the application for a retrial filed as a result of the ECHR's decision of violation for Civan BOLTAN was rejected on the grounds that it could not be carried out without legal amendments. In terms of domestic law, it is seen that individual measures have not been taken to remedy the violation. Contrary to what was determined in the ECHR decision, the execution process continues without any hope for all applicants.

In line with the principles of the ECHR, 4 principles that cannot be found in Turkish Law;

9. **Legal Deductibility of the Penalty:** In terms of the types of crimes against the constitutional order, aggravated life imprisonment is imposed and requires life imprisonment in accordance with the execution regime. Article 17/2 and 17/3 of the Anti-Terror Law No. 3713, and Articles 106/9, 107/13, 108/3, 110/4 of the Law No. 5275 on the Execution of Penalties and Security Measures, regarding the aggravated life imprisonment, on the prohibition of conditional release. are provisions. The right of hope is not compatible with the requirement of "legal deductible" due to the prohibitions on conditional release according to categorical crime types in the Turkish legal system.

10. **The Enforcement of the Sentence Is Convenient for the Resocialization of the Convict and the End of the State of Danger:** *Harakchiev and Tolumov v. Bulgaria*, *Murray v. Netherlands*, *Petukhov v. Ukraine*, *Matiosaitis and others v. In the Lithuanian decisions*, the ECHR, while making violation decisions within the framework of the right to hope, also counted among the reasons that the execution regime in the relevant countries does not provide resocialization opportunities for life imprisonment convicts. In Turkish law, TCK m. According to Article 48, aggravated life imprisonment shall be served throughout the life of the convict and in accordance with the strict security regime specified in the legislation. Therefore, aggravated life imprisonment is a punishment that limits the convict's enjoyment of rights and freedoms and deepens the isolation of the convict. The principles of this strict security regime are the Execution Law m. It is regulated in provision 25. Execution Law m. In accordance with the relevant legislation, especially the provision 25, it is striking that a strict regime is applied in matters such as visits, employment, communication and physical activities. It is seen that aggravated life imprisonment is an inhuman treatment due to the discriminatory and criminal type execution regime, asocialization as a long-term prison sentence and thus anti-humanitarian effect.

11. **Procedural Guarantees of the Convict in the Process of Reviewing the Penalty:** The right of hope necessitates the existence of a mechanism for the review of the sentence. Within the scope of the changes in Turkish Law with the Law No. 7442, which entered into force on April 15, 2020, and the Regulation on the Evaluation of Convicts with the Observation and Classification Centers dated 29.12.2020; For example, the structure of the administrative and observation boards consisting of the

personnel of the penitentiary institution, the limited involvement of the convict in the evaluation process, and the inadequacy of procedural safeguards are the first noticeable problems. Likewise, the criteria "whether the prisons comply with the rules set for the purpose of order and security, whether they use their rights in good faith, whether they fully fulfill their obligations" are criteria that should not play a leading role in the evaluation of good behavior regarding conditional release.

12. For a life sentence to remain in compliance with Article 3, both the possibility of release and the possibility of supervision must exist. It has been clearly stated in European and international law that all prisoners, including those sentenced to aggravated life imprisonment, should be given the possibility of rehabilitation and the opportunity to be released when recovery occurs. After the imposition of aggravated life imprisonment, a domestic legal mechanism should be established to ensure periodic reviews.

13. Convicts serving aggravated life imprisonment should know at the beginning of their sentences what they must do to be released, under what conditions they will be released, and when their sentences will be examined and requested to be examined. However, domestic law does not appear to provide the necessary mechanism for examining life sentences or the possibility of release.

14. Deductibility of the Sentence: Finally, an effective application mechanism should be established for the convicts who fulfill the conditions for the reduction of the sentence, and the previous sentence should be abolished within the scope of objectively determined criteria, resulting in an effective result, namely release. However, the changes in Turkish Law with the Law No. 7442 and the Administration and Observation Boards established within the scope of the Regulation on Observation and Classification Centers and the Evaluation of Convicts dated 29.12.2020, do not operate the conditional release institution in terms of crimes within the scope of offenses subject to aggravated life imprisonment.

FINDINGS

15. The ECHR's decision of violation covers the re-examination of the conviction decision, which has become final within the scope of the right to hope, by establishing a domestic legal mechanism. For Civan BOLTAN, in the retrial held after the violation decision, it was stated by the Diyarbakır 7th High Criminal Court that a legal change was necessary for the implementation of the violation decision. In this context, it is seen that the decision of violation necessitates legal amendment in order to eliminate the structural problem.

16. 13. With regard to general measures, in terms of the types of crimes against the constitutional order in the Turkish Penal Code, aggravated life imprisonment reflects the condition of life imprisonment. Within the scope of the same articles of the law, in terms of the types of crimes against the constitutional order within the scope of domestic law, trials continue every other day, and execution regimes are implemented with the conviction decision subject to the violation.

17. 14. Since the access to data and statistical information regarding the problematic in the audit process before the Committee can be obtained by the official authorities in the country, and these figures are refrained from being given to the public and relevant NGOs, it is imperative to request data on aggravated life sentences from Turkey in order to see the table..

18. Pursuant to the principles set forth in the ECHR judgments, conditional release should be made possible as a rule for all convicts without any discrimination in Turkish Law. The fact that there is no possibility of reducing the sentence directly or indirectly according to the crime committed, and the changes in the prisoner during the execution process are not taken into account, shows that the non-discriminatory, fair and equal execution regime is not implemented. It is necessary to make changes

in the provisions on categorical conditional release bans in terms of certain types of crimes in order to eliminate the consequences of the violation that is the subject of this application, and to establish a domestic legal mechanism for the re-examination of the finalized convictions.

SUGGESTIONS

19. The violation decisions of the ECHR consider the life-long execution of aggravated life imprisonment in terms of the types of crimes against the constitutional order, within the scope of inhuman treatment. In order to eliminate the consequences of the decision of violation, the execution regime and legal provisions should be brought into compliance with the contract law,

20. Imprisonment by deprivation of liberty is itself a punishment. Therefore, the regime applied to convicted prisoners should not aggravate the inherent distress of imprisonment. In this context, in accordance with Articles 25 and the following of the Execution Law No. 5275, the implementation of the execution regime should be improved,

21. Ocalan(2), Gurban, Kaytan and Boltan class action to be followed up with advanced audit procedure,

22. Considering that the violation decision can be remedied by a law amendment, but aggravated life imprisonment decision continues to be given according to the types of crimes in force, a new updated Action Plan is requested from the Government of Turkey in order to eliminate the structural problem,

23. In the revised new Action Plan, due to the nature of the violation decision, general measures are requested to be submitted,

24. Statistical information regarding aggravated life imprisonment is requested from the Turkish Government, “how many people are sentenced to aggravated life imprisonment in the country, how many people have been sentenced to this sentence according to years, in which years the relevant provisions have been finalized, how many years of aggravated life imprisonment have been received from the Turkish Government. request to be given information including that they are held in prison,

25. In Turkish Law, we recommend that the criteria that will be the basis for probationary release examinations be determined clearly.

**President Of The Diyarbakir Bar Association
Lawyer Nahit EREN**