

Aggravated solitary confinement in Turkey. A form of institutionalised torture.

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Last January 2023, 36 international jurists, journalists and politicians from 8 countries were part of the *International Delegation Against Isolation* that travelled to Turkey to hold meetings with civil society organisations and political circles regarding the prison situation¹. The Delegation was divided into three groups travelling to different cities: Ankara, Amed and Istanbul. The three groups met on 28 January in Istanbul for an *International Forum against Isolation*.

The visit was followed by a report prepared by the Delegation: "Solitary Confinement and Isolation Policies in Turkey", released in March 2023. This text reflects some of the visit's conclusions and the subsequent monitoring of the current situation of prisons in Turkey concerning aggravated solitary confinement.

General human rights context in Turkey.

Turkey is experiencing an alarming rollback of freedoms. Human rights defenders, journalists, members of the political opposition and especially Kurdish people continue to be subjected to unfounded investigations, prosecutions and arbitrary convictions. For years, the number of prisoners has exceeded the capacity of Turkish prisons with high levels of overcrowding. Anyone who opposes and dissents against the government is likely to be imprisoned. This repressive situation has to be seen parallel with a substantial economic crisis, where inflation reached 60 per cent in 2023.

According to data from the *Council of Europe Annual Penal Statistics 2022* (Aebi et al., 2023), in January this year, there were 303,945 people in prison in Turkey, exceeding the estimated prison capacity of 270,008 people, making it the country with the highest prisoner-to-population ratio in Europe (355/100,000 inhabitants). According to the report *Prison Global Trends* (Penal Reform International, 2022), Turkey built between July 2016 and March 2021 a total of 131 new prisons and planned to increase its prison capacity by 266,800 places by 2024.

A recent statement by the Human Rights Foundation of Turkey (TIHV), the Human Rights Association (IHD) and the Human Rights Section of the Turkish Medical Association (TTB) on World Day Against Torture 2023² estimated that at least 87 people had died in Turkish prisons in bizarre circumstances without proper investigation.

The position of President Erdogan's government towards the Kurdish people has hardened over the years. Between 2009 and 2014, a 'peace process' was opened to end an armed conflict that has claimed tens of thousands of lives over the past 40 years since the PKK (Kurdistan Workers' Party) guerrillas launched an armed struggle for independence for Turkey's approximately 20 million Kurdish people. Although the claim is now limited to more political and cultural rights, Erdogan's government continues to pursue a military solution, increasing attacks on PKK guerrilla bases in Iraq. It has also increased pressure on the leftist Kurdish HDP (Peoples' Democratic Party), imprisoning its leaders and carrying out various legal manoeuvres to outlaw it. Thus, in January 2023, before the last elections, the party's accounts were blocked as a precautionary measure by the Constitutional Court, alleging links with the PKK and thus hindering the election campaign and preventing it from receiving the aid provided for by Turkish law³, which led to international protests, including from Amnesty International⁴, which considered that the closure of the HDP party would violate the right to freedom of expression and association.

On the night of 15-16 July 2016, there was an allegedly thwarted armed mobilisation by some factions of the Turkish Armed Forces aimed at overthrowing President Erdogan. The mobilisations took place mainly in Ankara and Istanbul. The Turkish government stated from the beginning that the cleric Fethullah Gülen, leader of the Hizmet Movement, an Islamic

1 See information and report <https://anfenglish.com/human-rights/international-delegation-against-isolation-presents-new-report-66286>

2 https://ihd.org.tr/en/wp-content/uploads/2023/06/sr2023June_IHD-HRFT-TMA.pdf

3 <https://hdp.org.tr/en/turkey-s-constitutional-court-suspends-payment-of-treasury-funds-to-the-hdp/17044/>

4 <https://www.amnesty.org/en/wp-content/uploads/2023/04/EUR4466632023ENGLISH.pdf>

Photograph of the macro-prison built in 2020 in Adana province.



movement with significant political, social and religious influence in the country, was responsible for this situation. From exile, the cleric accused the president of having carried out a fake self-coup operation that allowed him to increase the persecution against the followers of the Hizmet movement. Gülen has been living in the United States since the 1990s. In the following days, 7,453 people deemed “coup supporters” were arrested, 7,000 police officers were suspended from their posts, and 2,700 judges and prosecutors were dismissed, representing almost a fifth of the judiciary. In addition, 450 members of the courts at different levels were arrested and taken to prison⁵. Since then, the purge has continued, and in 2018, the UN Office of the High Commissioner for Human Rights reported that 4,240 judges and prosecutors had been arrested and removed from office⁶.

The State of Emergency was “lifted” in 2018. However, the measures taken between 2016 and 2018 aimed at purging

the Administration and the Security Forces, banning protests and strikes, and the detention of thousands of people were extended through the adoption of Law n° 3713, the new “Anti-Terrorism Law”. This law was passed without parliamentary control and introduced a range of approved measures, such as extending police detention for up to 12 days, extending the grounds for banning demonstrations and protests, authorising governors to limit entry and exit from cities, prohibiting public events, and declaring extraordinary security measures.

There are two sectors in which the maintenance of the state of exception has been visible. One is the rights of so-called minorities, not only LGTBIQ+, migrants, and religious dissidents, but also directly against the feminist movement. On the other hand, concerning workplace practices, with the formal and *de facto* ban on strikes and unionisation, thousands of trade unionists were imprisoned.

During these years of increasing repression, the Parliament has introduced reforms to existing laws that have further restricted freedom of expression on the internet; Pride marches have been banned in several provinces, with hundreds of arrests during demonstrations. Turkey remains outside the Istanbul Convention, with the consequences for women’s rights, particularly concerning the fight against gender-based violence.

5 <https://www.amnesty.org/en/latest/press-release/2016/07/turkey-human-rights-in-grave-danger-following-coup-attempt-and-subsequent-crackdown/>

6 OUNHCR (2018) Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East. New York. <https://www.law.berkeley.edu/php-programs/courses/fileDL.php?fID=12971>

Certain professions are particularly targeted by state repression. The Special Rapporteur on the Independence of Judges, Diego García Sayán, published a report⁷ in which he notes that in Turkey, the Public Prosecutor's Office systematically investigates and brings charges against lawyers under the Anti-Terrorism Law by associating lawyers with the alleged crimes of their clients. Between 2016 and 2022, more than 1,600 lawyers have been prosecuted, and 615 have been placed in pre-trial detention under the Anti-Terrorism Law. A total of 474 lawyers have been sentenced for crimes of membership of a "terrorist organisation" (art. 314 of the Criminal Code). The Bar Association of Diyarbakir (Kurdistan area of Turkey) has seen 68 of its members prosecuted in recent years. The former presidents of the Bar Association, Fethi Gümüş and Mehmet Emin Aktar, were sentenced to seven years and six months and six years and three months in prison under the same law.

Following a press release in 2020 by the Ankara Bar Association in which anti-LGBTBIQ comments by the Director General of Religious Affairs were considered hate crimes, Erdogan changed the electoral system of the bar chambers through Law 7249 to dilute the power of the most critical sector⁸.

The same has been confirmed for journalists. Since 2012, Turkey has been considered one of the world's biggest prisons for journalists, according to the *Committee to Protect Journalists*. In 2020, it ranked 165 out of 180 in the press freedom ranking compiled by Reporters Without Borders. The government has arrested hundreds of journalists, closed dozens of media outlets, and persecuted various communicators⁹. Reporters Without Borders already warned in its 2022 Report that 90% of the national media are in the hands of the government, something that could be seen in the last elections in 2023. The vote count varied when the figures were consulted in national and independent media.

Many health professionals are also imprisoned for giving their opinion or providing medical care to alleged members of Turkish armed groups. Dr. Sebnem Korur Financi, president of the Turkish Doctors' Association (TTB), was arrested in the early hours of 26 October 2022. The reason for her arrest was her statements on television calling for an independent investigation into allegations of the alleged use of chemical weapons by the Turkish armed forces in the Kurdistan region of Iraq. Financi is a leading forensic doctor in international torture research and

a well-known human rights activist. She was sentenced to two years and eight months for "terrorist propaganda". Numerous international organisations called for her release¹⁰, which finally took place in January 2023 by a court in Istanbul.

The extension of such widespread repression against such diverse sectors can only be understood (in a case where there is no civil war) in a context of generalised and widespread repression, assumed as natural or inevitable by society. This is usually done based on the identification of another as the culprit of this repression and with the need for this repression to be maintained to avoid the supposed danger caused by the sectors of society accused of being separatist.

Aggravated solitary confinement as a form of torture: the situation of Abdullah Öcalan and other Kurdish prisoners and their imprisonment in Imrali prison.

PKK leader Abdullah Öcalan was arrested in 1999 in Kenya and first sentenced to death that same year. Then, in 2002, his sentence was commuted to life imprisonment when capital punishment was abolished in Turkey.

Since then, he has been held in solitary confinement on the island of Imrali. Öcalan has been deprived of his liberty for more than 24 years in conditions of *aggravated solitary confinement*¹¹.

The prison on the Sea of Marmara was emptied to house him as the only prisoner. It was only in 2015 that three other Kurdish prisoners were transferred: Hamili Yıldırım, Ömer Hayri Konar, and Veysi Aktaş. They have been in total isolation for years, with no contact with their lawyers or families.

Öcalan is held in solitary confinement in his cell for 23 hours a day. The European Court of Human Rights has ruled that there was a violation of Article 3 about his situation of aggravated and indefinite solitary confinement on Imrali Island and the impossibility of appealing his verdict¹².

Throughout his stay in this prison, according to his legal team, Öcalan's and other prisoners' visiting rights have been systematically violated. From 2014 to 2023, Öcalan has only been allowed five visits from his family. The last person to see him was his brother on 3 March 2020. In 24 years, he has been able to communicate with the outside world via telephone only twice: on 27 April 2020 and 25 March 2021. During the last call, the connection was lost after 2 minutes of connection and

7 A/HRC/50/36: Protection of lawyers against undue interference in the free and independent exercise of the legal profession - Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán | OHCHR

8 Ibid A/HRC/50/36

9 <https://cpj.org/europe/turkey/>

10 <https://www.amnesty.org/en/documents/eur44/6317/2022/en/>

11 https://www.freeocalan.org/assets/downloads/english/forms/2022_Assessment_Report.pdf

12 Case of ÖCALAN V. TURKEY. Application 46221/99. https://www.hr-dp.org/files/2013/09/09/CASE_OF_OCALAN_v_TURKEY_.pdf

Photograph of Imrali Prison.

could not be re-established. This is the last time he has been in contact with him. In turn, Öcalan last saw his lawyers on 7 August 2019. The other three prisoners have also been unable to see their lawyers since they arrived in prison in 2015. In 2022, the family made 49 requests to the authorities to visit Öcalan, which were unanswered.¹³

These restrictions on fundamental rights are always based on applying administrative sanctions for “behavioural problems”, which are renewed every six months. These decisions rarely reach the lawyers’ team so that they can appeal due to the total lack of communication¹⁴. In addition, the lawyers have lodged appeals in practically all judicial instances, including the Constitutional Court and the Public Prosecutor’s Office. They have also made countless requests to European bodies to visit the Imrali prison and to pronounce themselves on this situation. The European Committee for the Prevention of Torture (CPT) visited Imrali prison in September 2022. Its report has not yet been published, and no details of the visit have been disclosed despite numerous appeals by the family to know the state of health and detention conditions in which Mr Öcalan is being held.

The treatment of the Kurdish leader mirrors the treatment of society. The justification for this type of imprisonment based on the alleged dangerousness of politically dissident sectors adds to the exceptional measures applied to the community. Concerning prison policy, it is important to note two additional elements: aggravated life imprisonment and the expansion of so-called F-type prisons.

Aggravated life imprisonment

In 2002, Turkish Law No. 4771 abolished the death penalty except during times of war or threat of war. In 2004, Turkey declared the total abolishment of capital punishment in the constitution. Meanwhile, death penalty sentences were replaced with aggravated life imprisonment sentences. For the first time, the law specified a prison sentence with no hope of release in terms of those convicted on charges of “terrorism”. So, it means more severe punishment for those tried for political reasons.

Life imprisonment has always been a feature of Turkish law. The last person to be executed by the death penalty was Hidir Aslan on 25 October 2005. Recently, Erdogan has publicly taken a position in favour of reintroducing the death penalty¹⁵.

¹³ Ibid ref 10

¹⁴ Ibid 10

¹⁵ World Coalition Against Death Penalty. Turkey : The risk of reinstatement of the death penalty <https://worldcoalition.org/>

For those sentenced to life imprisonment, there is the possibility of parole. Persons considered political prisoners must serve $\frac{3}{4}$ of their sentence before they have the option of parole.

In contrast, persons not considered political prisoners are eligible for parole after serving two-thirds of their sentence. This means non-political prisoners would be suitable for parole after serving 24 years of imprisonment. In case of disciplinary sanctions, this time can be increased up to 30 years. On the other hand, political prisoners will serve at least 30 years and, in the case of sanctions, 36 years. However, this possibility is eliminated in aggravated life imprisonment, and the person must remain imprisoned until death and under strict security measures.

In Aggravated Life Imprisonment (A.L.I.) system, the person is sentenced to a regime that further restricts the convict's ability to exercise their rights and freedoms and deepens the isolation of the convict. The principles of this strict security regime are laid out in Article 25 of the Execution Law. A rigorous rule is applied in employment, communication, and physical activities.

Related to the prison conditions and problems of aggravated life prisoners¹⁶, the main difference is the execution regime imposed. According to law No. 5275, article 25 an aggravated life prisoner's rights are one hour of fresh air, visitation and phone right every 15 days. The law stipulates solitary imprisonment in a "single" room. Prisoners' connection with other prisoners is minimal. Usually, prisoners can have visits weekly of up to 3rd-degree family members and three friends they can list. An aggravated life prisoner can be visited only by relatives up to 2nd degree, including parents, grandparents, husband or wife...but they are not allowed to be visited by friends. The possibility of not being married before or being divorced can aggravate the isolation. Furthermore, gay or lesbian couples do not have the right to a visit in their entire life. By law, prisoners sentenced to aggravated life imprisonment are supposed to be housed in a "room" built for one person, but the truth is that they spend 30 years to all of their lives in cells that are made for disciplinary punishment. According to the letters sent to the Turkish Civil Society in the Penal System Association (CISST) from prisoners, the available space is one to two square meters when there is a bed or basic furniture, making it impossible to walk around. There is no direct sunshine or air stream, no place to dry clothes, and the toilet in the cell is beside the place to cook. Through the lack of movement, there is a quick health deterioration: rheumatism and arthritis are increased, among other sedentarism pathologies. Loneliness and almost total iso-

lation have severe effects on mental health, including memory loss, difficulty in speaking and communicating, loss of senses, insomnia, and schizophrenia.

There are enormous difficulties in accessing statistical information about aggravated life imprisonment prisoners. In the "Communication from NGOs (26/07/2021) in the *Gurban group v. Turkey* (Application No. 4947/04) to the Committee of Ministers of the Council of Europe",¹⁷ the Association of Lawyers for Freedom and Human Rights Foundation of Turkey mentioned that until 2014, there were 1.453 people sentenced to A.L.I. in the Republic of Turkey. They have submitted several applications to the Ministry of Justice General Directorate of Prisons and Detention Houses. They have repeatedly asked the Ministry how many convicts are serving a sentence of aggravated life imprisonment in Turkey, how many of them were unable to benefit from conditional release, and how many had been serving their sentence for more than 25 years without answer. Also, CISST has formulated similar questions to the Ministry without any response since 2014. The estimated figures come from the Public Prosecutor's Office, that, only in 2019, proposed an aggravated life imprisonment sentence in 1.462 cases, and Turkish courts rendered a verdict on A.L.I. in almost the double of cases: 2.926 people.

Persons sentenced to A.L.I. are denied any right to hope because they are not eligible for parole, which is a form of psychological torture in itself. This is to be added to the extreme conditions of solitary confinement. The ECtHR has condemned Turkey several times for this¹⁸, which has not led to changes.

Type F and S Prisons

Prisons in Turkey can be classified into open and closed prisons. Within the latter are three levels: high, standard and low security.

Type F Prisons correspond to high-security prisons and usually house persons accused/convicted of terrorist offences as political prisoners. In the late 1990s, Turkey started to build prisons based on the American cellular system to increase the isolation of prisoners.

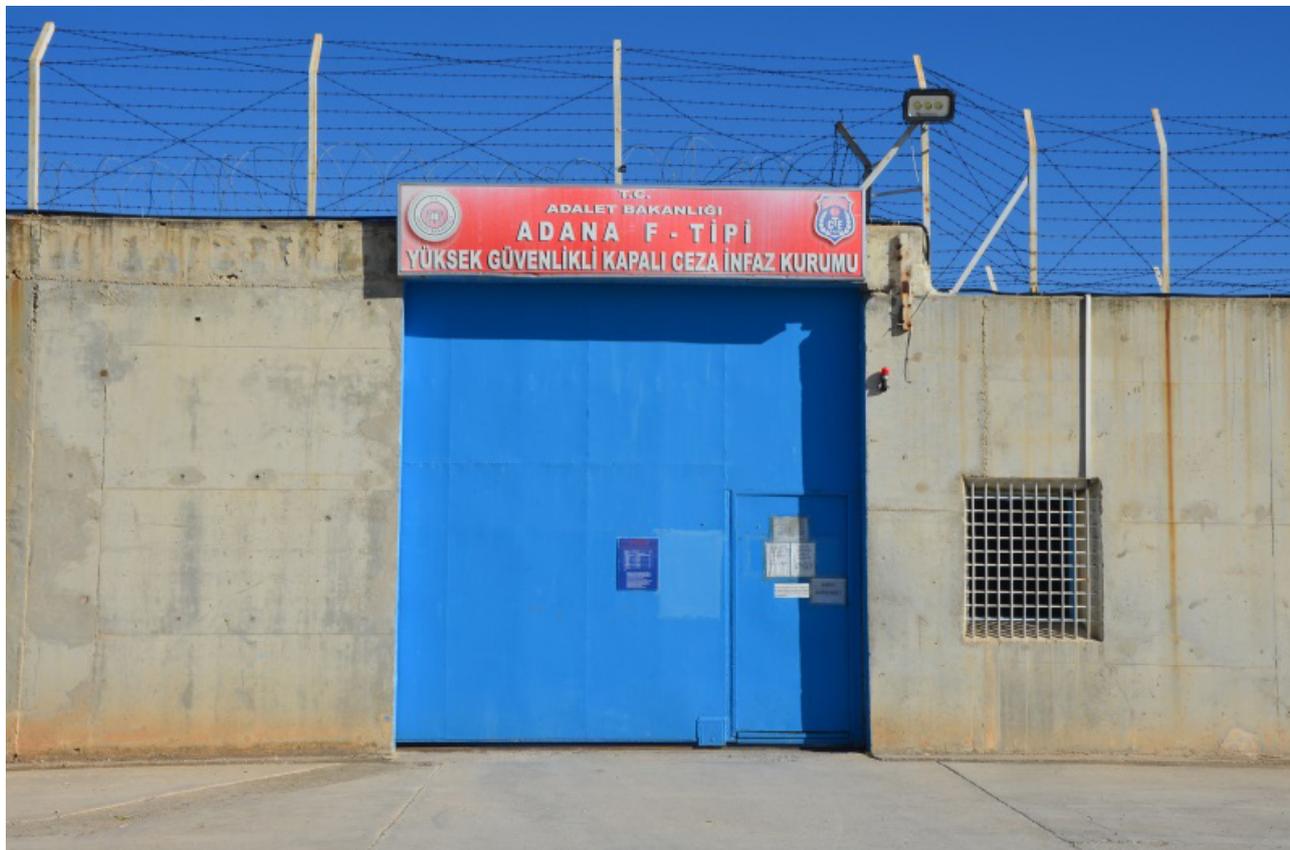
Type F prisons have a standard structure of three main corridors, four prisoner modules and one administrative module. They have 57 cells for 1 or 2 persons and 108 for three. The cells are smaller than in other prisons. All the space in the prison is monitored by cameras 24 hours a day, except for the cells. In the centre, there is a control area from which everything is

wp-content/uploads/2021/08/doc-2page_turquie_EN_V3.pdf

16 CISST "Addressing Prisoners with Special Needs: Life Imprisonment" <https://cisst.org.tr/reports/addressing-prisoners-with-special-needs-life-imprisonment/>

17 [https://hudoc.exec.coe.int/#%22execidentifier%22:%5B%22DH-DD\(2021\)766E%22%5D](https://hudoc.exec.coe.int/#%22execidentifier%22:%5B%22DH-DD(2021)766E%22%5D)

18 *Öcalan v. Turkey*; *Gurbert v. Turkey*; *Kaytan v. Turkey*

Entrance to the F-type prison in Adana.

monitored. Human rights organisations have severely criticised this type of prison because of the extreme isolation imposed on the prisoners. Also, the appalling unsanitary conditions are detrimental to the prisoners' health since the same small space is used for bathing, showering, rubbish collection, eating and sleeping.

Since 2021, Type-S prisons have been increasingly opened. These are also maximum security prisons with an even more restrictive system than F-type prisons and are intended to replace them. More than one-third of the people in these prisons are political prisoners. Compared to F-type prisons, Type-S prisons have a majority of single cells; there are cameras even inside the cells, including images of the space for toilets and showers inside the cell. Prisoners are not allowed to engage in activities, there is no access to outside information (press, radio), and the system of visits is extremely restricted.

With the increase in the construction of Type-S prisons, it can be asserted that the policy of solitary confinement continues to grow and harden, evolving into forms that are, following the Nelson Mandela Rules and the recommendations of the

Rapporteur against Torture, intrinsically conditions of institutional torture.

The Delegation concluded, after their visits and interviews, that practices at Imrali Prison have transcended the definition of isolation and have reached the point of *absolute incommunicado confinement*.

The situation makes it imperative to define this aggravated solitary confinement as a specific type of inhuman detention, not only as a health and legal but also as a political problem.

References

- Aebi, M. F., Cocco, E., & Molnar, L. (2023). *Prison Populations* (Issue December 2022). https://wp.unil.ch/space/files/2023/06/230626_SPACE-I_2022_FinalReport.pdf
- Penal Reform International (2022). *Global Prison Trends 2022*. https://cdn.penalreform.org/wp-content/uploads/2022/05/GPT2022.pdf?mc_cid=636b5bec02&mc_eid=12936458d1

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