



Solidarity With OTHERS

# Locked Injustice: The Struggle for Freedom and Fair Treatment in Turkey's Penal System

September - 2023

Executive Summary.....	3
Methodology .....	4
Arbitrary Imprisonment of Political Prisoners in Turkey.....	5
Discriminatory Execution Practices as Secondary Punishment.....	5
Probation and Conditional Release in Turkey .....	6
Struggles for Release: The Plight of Political Prisoners.....	7
Parliamentary Questions: A Scream for Justice .....	8
International Legal Framework: Obligations Violated by Turkey.....	9
Case Studies: The Quest for Freedom .....	11
Patterns in the Handling of Political Prisoners' Probation and Conditional Release Requests .....	14
Recommendations for Turkish Authorities .....	16
Recommendations for International Entities .....	17
Conclusion .....	18
Footnotes .....	19

# Executive Summary

Between 2018 and 2023, nearly 500 written parliamentary questions, largely unnoticed by international observers, were submitted by MPs to the Turkish Grand National Assembly. Astonishingly, almost none of these questions received answers, revealing a critical facet of the Turkish penitentiary system hidden from the world's human rights community. Within these inquiries lies a grave injustice: the dreams of political prisoners for freedom are disintegrating under the weight of bureaucratic indifference.

Behind Turkey's prison walls, or rather in the obscure corridors of the execution administration, this profound injustice persists. In a country with tens of thousands of political prisoners and over a hundred thousand individuals awaiting imprisonment after their sentences were upheld, a significant human rights violation continues silently. An arbitrary state policy has become a thief, robbing innocent lives of precious years.

This executive summary offers a condensed overview of the extensive report investigating the arbitrary imprisonment of political prisoners in Turkey. The report primarily focuses on the discriminatory dimension of the Turkish penal system, with a particular emphasis on the denial of probation and conditional release experienced by individuals primarily associated with the Kurdish population and the Gülen movement. It emphasizes the vast scale of this issue, with statistics revealing the extent of the problem.

The report underscores a two-fold punishment faced by political prisoners in Turkey. Beyond unjust detentions, these prisoners encounter extended periods of incarceration, often serving their entire sentences behind bars. This disparity in treatment within the penal system is a critical concern and raises questions about fairness and international human rights standards.

The report delves into the probation and conditional release mechanisms in Turkey's penal system. While these mechanisms are meant to promote rehabilitation and reintegration into society, political prisoners face discriminatory practices that hinder their access to these rights.

The report provides in-depth case studies illustrating the challenges faced by political prisoners in obtaining probation and conditional release. These cases reveal systemic patterns, including an undue reliance on assumed organizational ties, misapplication of the burden of proof, arbitrary interpretations of behavior and statements, and inadequate justification for denials.

The report highlights how Turkey's treatment of political prisoners contradicts international commitments and guidelines, including the ICCPR, ECHR, UN Standard Minimum Rules for the Treatment of Prisoners, and UN Standard Minimum Rules for Non-custodial Measures. These standards emphasize non-discrimination, individualized assessments, transparency, and ethical standards in probation and early release mechanisms.

Key recommendations and provisions from the Council of Europe underscore the significance of individualized assessments, fairness, and non-discrimination in probation and early release systems, serving as essential benchmarks for evaluating Turkey's practices.

# Methodology

This section outlines our methodology for investigating challenges faced by political prisoners seeking probation and conditional release rights in Turkey. The study aims to uncover systematic obstacles and arbitrary practices. We collected and analyzed data from various sources.

## Data Sources

- a) Legal Framework and International Standards: We reviewed Turkish laws, international standards, and human rights principles related to prisoner probation and conditional release.
- b) Official Reports and Government Statements: We examined official reports and government statements to understand policies and practices concerning political prisoners.
- c) Court Decisions and Legal Cases: We reviewed court decisions and case law to assess how the law is applied in practice.
- d) Interviews and Testimonies: Interviews with political prisoners and their relatives provided valuable qualitative data.

## Data Collection

We conducted interviews and systematically collected and analyzed official documents, court decisions, and legal texts.

## Data Analysis

Qualitative data were thematically coded, identifying recurring challenges. Quantitative data were statistically analyzed to identify trends.

## Ethical Considerations

We ensured interviewee privacy and anonymity.

## Limitations

The study acknowledges limitations, including data availability and access to political prisoners for interviews.

# Arbitrary Imprisonment of Political Prisoners in Turkey

In recent years, Turkey has been marred by a grave injustice, marked by the systematic persecution of various political groups and individuals, including but not limited to the Kurdish population and the Gulen movement.<sup>[1]</sup> This relentless campaign has given rise to numerous human rights violations, with arbitrary detentions, arrests, and unjust imprisonments as its defining features. While hundreds of thousands have fallen victim to this persecution, tens of thousands have been unfairly branded as terrorists or criminals, resulting in their liberty being unjustly curtailed for political purposes.

Furthermore, statistics reveal the extensive scale of these detentions and imprisonments. Between 2015 and 2021, prosecutors' offices decided on the cases of a staggering 2,217,572 individuals in terrorism investigations. Ministry of Justice data shows that during the same period, public prosecutions were decided for 561,388 individuals, and 374,056 people were convicted by courts in terrorism investigations. Shockingly, among those convicted, 154,970 individuals were sentenced to actual imprisonment, illustrating the depth of the issue.<sup>[2]</sup>

Kurdish politicians like former HDP Co-Chair Selahattin Demirtaş and former Diyarbakır Metropolitan Municipality Co-Mayor Gültan Kışanak have long been imprisoned. However, it's important to note that the vast majority of political prisoners in Turkey, particularly those subjected to arbitrary detention and imprisonment, are primarily affiliated with the Gülen movement.<sup>[3]</sup>

During its ninety-sixth session from 27 March to 5 April 2023, the Human Rights Council's Working Group on Arbitrary Detention addressed Opinion No. 3/2023 concerning Ali Ünal in Turkey. Over the past six years, the Working Group has observed a significant surge in cases related to arbitrary detention in Turkey. It expresses deep concern over the recurring pattern characterizing these cases and reminds us that, in specific circumstances, widespread or systematic imprisonment or severe deprivation of liberty that contravene fundamental principles of international law may amount to crimes against humanity.<sup>[4]</sup>

## Discriminatory Execution Practices as Secondary Punishment

Upon closer examination of this issue, it becomes evident that political prisoners in Turkey face a twofold form of punishment. The first dimension of this punishment involves their unjust detention, often on the basis of unsubstantiated or fabricated charges. These individuals are subjected to protracted legal proceedings that result in severe sentences, including a minimum of 6 years and 3 months for alleged membership in an illegal organization.

However, it is the second dimension, concerning their treatment within the penal system, that merits particular concern. In stark contrast to ordinary criminals who, under similar sentences, typically spend only a fraction of their time in closed penal institutions, political prisoners risk being incarcerated for the entire duration of their sentences. To illustrate this disparity more vividly:

### For a prisoner convicted of extortion:

- Sentence Duration: 6 years and 3 months.
- Eligibility for Conditional Release: 3 years, 1 month, and 15 days.
- Eligibility for Probation: 1 month and 15 days.
- Actual Duration of Incarceration (in practice): 1 month and 15 days.

### For a political prisoner:

- Sentence Duration: 6 years and 3 months.
- Eligibility for Conditional Release: 4 years, 8 months, and 10 days.
- Eligibility for Probation: 3 years, 8 months, and 10 days.
- Total Duration of Imprisonment (without probation and conditional release): 6 years and 3 months.

Herein lies the crux of the issue: a political prisoner, sentenced to 6 years and 3 months, may endure the entire duration behind closed bars if denied probation. Even if they ultimately benefit from conditional release, they could still face nearly five years of confinement in a closed penal institution. This glaring contrast highlights the depth of the problem, where political prisoners bear the brunt of prolonged incarceration and/or discriminatory treatment within the Turkish penal system.

The unlawfulness of this practice is striking. Political prisoners are subjected to both arbitrary detentions and protracted periods of incarceration. This dual punishment not only defies the principles of justice and the rule of law but also violates international human rights standards. This practice not only violates international human rights standards but also contradicts the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), specifically Rule 39, which states that no prisoner shall be sanctioned twice for the same act or offense, emphasizing the principles of fairness and due process.<sup>[5]</sup>

## **Probation and Conditional Release in Turkey**

In Turkey, probation and conditional release are essential components of the penal system. Prisoners convicted of terrorism, who've left their groups and have less than a year until conditional release, may transfer from closed to open facilities, as regulated by the Regulation on Separation to Open Penal Institutions, Article 6(2). Well-behaved prisoners in open facilities, with a year or less until their conditional release, can request probation, as stipulated in Article 105/A of the Law on the Execution of Penalties and Security Measures.<sup>[6]</sup> Additionally, conditional release is another option after the probation based on good behavior during imprisonment. Eligibility varies by sentence type, such as aggravated life imprisonment or term imprisonment, with specific time requirements, as specified in Article 107(2).<sup>[7]</sup>

As of August 31, 2022, the Ministry of Justice, General Directorate of Prisons and Detention Houses, Department of Probation reported that there were approximately 250 thousand adults serving their sentences under probation.<sup>[8]</sup> It's crucial to highlight that the magnitude of this number doesn't necessarily indicate the effective functioning of the probation system. In reality, what this suggests is that while prisoners convicted of ordinary crimes can typically exercise their rights, such as probation, political prisoners often face discriminatory treatment and arbitrary hurdles that impede their ability to access these rights. This disparity in treatment within the penal system raises significant concerns about unequal and potentially biased practices against political prisoners.

## **Struggles for Release: the Plight of Political Prisoners**

One critical aspect is the procedure for separating convicts convicted of organized crimes into open penal execution institutions. This process is governed by Article 6/2-ç of the Regulation on Separation to Open Penal Execution Institutions.<sup>[9]</sup> According to this provision, convicts can be considered for transfer to open institutions if they exhibit good behavior and have less than one year left until their conditional release, provided they have left the organization to which they are affiliated.

In practice, the requirement for political prisoners to prove that they have left the organization is applied very strictly and arbitrarily. Prisoners who consistently deny any affiliation with an organization during their trials are required to make a declaration stating they've left the organization to secure a favorable decision. However, this requirement isn't consistently enforced, leading to varying practices across institutions. In most cases, even such a declaration is not sufficient, and arbitrary and forced interpretations are made based on the assumption that the prisoner has not left the organization. Forcing prisoners to declare their departure, even if they deny any involvement, raises legal problems. In fact, the determining ties to an organization should rely on concrete criteria and behaviors, not coerced declarations, to safeguard the prisoner's free will and rights.

On the other hand, some penal execution institutions have cited a letter dated 20.04.2015 from the Ministry of Justice, General Directorate of Prisons and Detention Houses.<sup>[10]</sup> The letter outlines that convicts who declare in a petition that they have left the organization or become neutral should undergo a 60-day observation period to assess their status in accordance with legal provisions. During this time, their organizational connections, interactions with visitors, and communication, such as phone calls and letters, should be closely monitored. The directive also emphasizes the importance of severing ties with high-ranking organization members or active participants during this evaluation process. This is where the inconsistent and arbitrary practices of prison administrations come into focus.

In practice, it's observed that penitentiary institutions often issue decisions of Acceptance or Rejection of a Confirmation of Sincerity. However, it's worth noting that these decisions, particularly concerning political prisoners, tend to be characterized by abstract and arbitrary interpretations that often deviate from concrete facts. Unfortunately, such interpretations frequently lead to rejection, raising concerns about the fairness and consistency of the process, especially for individuals with political affiliations.

Another unlawfulness that political prisoners are subjected to is the arbitrary criteria applied in the determination of 'good behavior' and the structure of the board that makes this decision. According to Article 22 of the Regulation on the Administration of Penal Institutions and the Execution of Punishment and Security

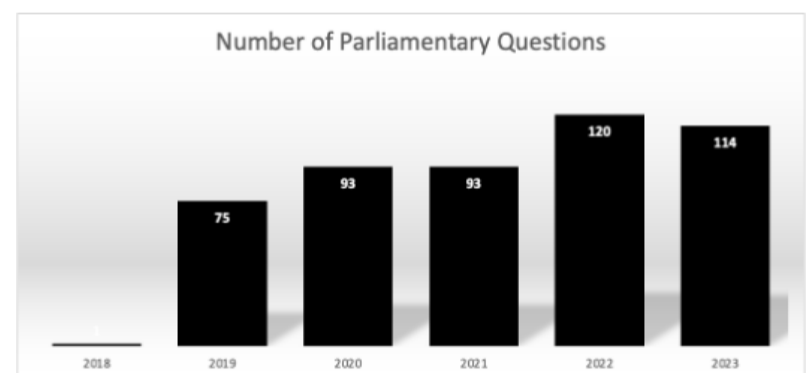
Measures<sup>[11]</sup>, the Administration and Observation Board, which is responsible for the evaluation of open prison, probation and conditional release rights, convenes under the chairmanship of the institution director. The composition of the board consists of the second director in charge of observation and classification, an administrative officer, a prison physician, a psychiatrist, a psychologist, a staff member from other positions of the psycho-social assistance service, a teacher, a chief enforcement and protection officer and a technical staff member selected by the director of the institution. In 2020, an important innovation was introduced with an amendment. The committee in charge of assessing the good conduct of persons convicted of terrorism offenses (pursuant to the third paragraph of Article 89 of Law No. 5275) is chaired by the chief public prosecutor or a prosecutor appointed by the chief public prosecutor. This change, with a prosecutor from outside the prison administration chairing the committee, represents a departure from traditional practice. As a result, the assessment process has moved beyond the prisoner's behavior in prison, with the result that the prisoner's alleged criminal history has become the focus of the assessment. Furthermore, Article 22 authorizes the Chief Public Prosecutor to appoint additional members from the Monitoring Board, the Ministry of Family and Social Services and the Ministry of Health. This provision allows the prosecutor to appoint three additional members to the board from outside the prison administration, raising concerns about the potential for these members to influence the evaluation process by aligning their decisions with the prosecutor's perspective.

In addition to these challenges, it is essential to address the situation concerning Execution Judgeships and High Criminal Courts. These judicial bodies play a crucial role in the appeals process for political prisoners contesting decisions rendered by the Administrative and Observation Board. Regrettably, their approach to such cases has raised legal concerns. Frequently, these judicial entities prioritize procedural formalities while insufficiently delving into the substantive merits of the appeals. This practice has resulted in a recurring pattern of dismissals lacking adequate legal justifications, thereby compounding the hardships faced by political detainees in their pursuit of judicial remedies and justice.

## Parliamentary Questions: A Scream for Justice

Furthermore, since 2018, the staggering scale of the issue at hand has become evident through parliamentary inquiries. Over 500 written parliamentary questions have been diligently submitted by Members of Parliament (MPs) as part of the legislative body's essential oversight mechanisms.

Between 2018 and 2023, a total of 496 written parliamentary questions (471 on probation and 25 on conditional release) were submitted by 13 Members of Parliament (MPs) concerning 544 individuals (509 on probation and 35 on conditional release). These questions sought responses from the Ministers of Justice regarding allegations of probation and conditional release rights violations.





Final Status of the Questions	On Probation	On Conditional Release	Total
Deemed null and void due to the end of the legislative period	24	1	25
Unanswered Announced in Incoming Papers	343	16	359
15-Day Response Time Continues	60	8	68
Answered After Expired	42		42
Answered	2		2

Remarkably, merely 2 of these parliamentary questions received responses within the legal timeframe of 15 days, while 42 responses were provided after the stipulated deadline. Regrettably, 25 inquiries remain pending, and a staggering 427 have gone unanswered.

42 responses were provided within a one-month period between June 16, 2020, and July 17, 2020. Significantly, no parliamentary questions received responses after July 17, 2020. These responses, however, failed to offer concrete answers to the allegations. In the majority of cases, the response merely reiterated that "Probation practices are carried out in accordance with the provisions of the legislation." These answers, signed by the Minister of Justice, lacked substantive content beyond refuting the allegations in the parliamentary questions and asserting that probation practices adhered to legislative guidelines. This pattern indicates a systematic effort to obfuscate the issue. Moreover, it is essential to highlight that the Ministry of Justice has remained conspicuously silent on this matter for the past three years, further deepening concerns regarding the lack of transparency and accountability in the execution of probation and conditional release rights.

A closer examination of the concentrated allegations of violations reveals specific regions and penitentiaries where these concerns are particularly pronounced. Notably, Afyonkarahisar tops the list with 36 reported cases, indicating a significant concentration of probation and conditional release rights violations. Following closely is Sincan with 35 cases, further emphasizing the severity of these issues within these areas. Additionally, İzmir, Antalya, Tekirdağ, Manisa, Tokat, Yozgat, Niğde, and Samsun exhibit notable concentrations, with reported cases ranging from 11 to 22 in each respective region or facility.

It is crucial to recognize that the victims themselves have chosen to bring their experiences of victimization to the attention of the parliament, fully aware that their fight for justice may lead to further repercussions. In essence, the majority of victims are reluctant to have their grievances addressed by oversight authorities, such as the parliament, due to concerns about potential government backlash, leading them to forgo their pursuit of justice. Additionally, the lack of trust in this oversight mechanism is noteworthy. As evidenced by the statistics, the number of answered written parliamentary questions does not surpass 8%.

## International Legal Framework: Obligations Violated by Turkey

Early release mechanisms such as probation and parole, based on international human rights standards, aim to promote rehabilitation and reintegration into society. However, in Turkey there is serious discrimination in the application of these measures, particularly for individuals held on political charges, as opposed to other prisoners.

## **International Covenant on Civil and Political Rights (ICCPR):**

Article 10(3) of the ICCPR underscores the reformation and social rehabilitation of prisoners as a primary objective of the penitentiary system. This principle is further emphasized in General Comment No. 21, adopted during the Human Rights Committee's forty-fourth session, which requests detailed information on the operation of the penitentiary system in each state party. Importantly, it stresses that no penitentiary system should be solely retributory; rather, it should fundamentally aim at the reformation and social rehabilitation of the prisoner. [\[12\]](#)

## **European Convention on Human Rights (ECHR):**

Article 5 of the ECHR, which guarantees the right to liberty and security, is applicable to all individuals, including political prisoners. The interpretation of this article has implications for the early release of political prisoners, as it highlights the need for equitable treatment in granting release mechanisms based on risk assessment and rehabilitation potential.

## **UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules):**

The Nelson Mandela Rules advocate for the impartial application of rules without discrimination (Rule 2). Therefore, they extend to political prisoners, who should be afforded the same opportunities for rehabilitation and early release as other inmates. The emphasis on fair and due process in sanctions applies universally, ensuring that political prisoners are not unduly excluded from early release measures. [\[13\]](#)

## **United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules):**

The Tokyo Rules underscore the principle of non-discrimination, emphasizing that non-custodial measures should be applied consistently, regardless of an individual's political affiliations or beliefs (Rule 2.2). The flexible nature of these measures, designed to align with the nature of the offense and the offender's background, should extend to political prisoners. [\[14\]](#)

## **Relevant Recommendations and Provisions from the Council of Europe**

Within the Council of Europe framework, two significant sets of recommendations and provisions stand as crucial references for evaluating probation and early release mechanisms, especially concerning political prisoners, in Turkey.

### Recommendation No. (2003) 22 on Conditional Release<sup>[15]</sup>:

This recommendation highlights the importance of clear and precise criteria for parole eligibility. Article 18 of Recommendation No. 22 (2003) emphasizes the necessity for such criteria, taking into account the unique personalities and social and economic circumstances of prisoners, alongside the appropriateness of resettlement programs. Additionally, Article 20 underscores the need for transparent and equitable criteria, ensuring accessibility for all prisoners who meet the minimum requirements for reintegration into society as law-abiding citizens. The responsibility lies with the authorities to demonstrate when a prisoner does not meet these criteria. These articles serve as vital benchmarks for evaluating Turkey's parole practices, underlining the call for individualized assessments and successful rehabilitation.

### Recommendation CM/REC(2010)1 on Probation Rules<sup>[16]</sup>:

Recommendation CM/REC(2010)1 provides a comprehensive set of principles for supervised relief, stressing fairness, non-discrimination, ethical standards, and accountability. Article 4 emphasizes that

probation institutions must consider the individual characteristics, circumstances, and needs of convicted individuals to ensure fair treatment, devoid of any discrimination. Article 5 underscores that sanctions or measures should not impose undue burdens beyond what is legally stipulated and determined on a case-by-case basis. Article 13 emphasizes adherence to the highest national and international ethical and professional standards in all activities and interventions by probation institutions. Moreover, Articles 14, 99, and 100 advocate for accessible, impartial, and effective complaints procedures, both in legislation and practice, ensuring accountability, transparency, and justice within the probation system.

These recommendations and provisions collectively underscore the significance of individualized assessments, transparency, non-discrimination, and ethical standards in probation and early release mechanisms, forming critical guidelines for evaluating Turkey's treatment of political prisoners and other inmates within its probation and early release systems.

Despite these international commitments and guidelines, Turkey has implemented discriminatory treatment of political prisoners in its application of early release mechanisms. Political prisoners often face arbitrary practices, including the denial of probation and parole rights, which are granted to other categories of inmates.

## **Case Studies: the Quest for Freedom**

Within the complex landscape of Turkey's criminal justice system, the issue of probation and conditional release for political prisoners has emerged as a focal point of concern. This section delves into a series of cases that underscore systemic patterns in the handling of probation and conditional release requests, revealing recurring challenges and contentious practices. These cases illuminate the experiences of individuals with diverse backgrounds and affiliations, yet they collectively shed light on a shared struggle faced by many political prisoners in the country.

### **Case 1: Denied Conditional Release (2023)**

X, a political prisoner convicted for alleged membership in the Gülen movement, found his right to conditional release denied by the Prison Administration and Monitoring Board. The Board's decision, based on the notion that the prisoner did not exhibit 'Good Behavior,' rested on 'unconfirmed intelligence information' regarding X's post-release life plans with his family—information irrelevant to the charges against him. Furthermore, the Board dismissed X's statement of disassociation from the organization as 'insincere,' despite the absence of concrete evidence. The Board also interpreted the prisoner's intent to 'seek his rights' against perceived discrimination as 'accusatory and threatening.' The appeals made to the Execution Judgeship and the High Criminal Court were similarly dismissed without sufficient justification. Consequently, X was unjustly compelled to serve his full sentence in a closed penal institution, deprived of both probation and conditional release rights.

### **Case 2: Denied Probation (2022)**

Another person associated with the Gülen movement was deprived of his right to probation by a decision of the Prison Administration and Monitoring Board. After a 60-day observation period, the prisoner's transfer to a neutral room was considered and ultimately his placement in such a ward was approved. Despite the prisoner's wish to serve the remainder of his sentence under conditions of probation, the decision-makers were unable to reach a satisfactory conclusion that the prisoner had severed his ties with the alleged terrorist organization, in

line with the reports from the relevant bodies. Consequently, the Board concludes that the necessary conditions for confirming the prisoner's sincerity in leaving the organization were not met. Despite the prisoner's clear statement that he had severed his ties with the organization with which he was allegedly associated, this important statement was inexplicably excluded from the assessment process. Rather than providing concrete reasons, the decision-makers based their decision solely on subjective 'convictions', deviating significantly from established facts and legal principles, in an arbitrary manner.

### **Case 3: Denied Probation (2022)**

In another disconcerting instance involving a political prisoner associated with the Gülen movement, the Prison Administration and Monitoring Board took a deeply arbitrary stance by refusing to certify the sincerity of the prisoner's departure from the organization. The Board's rationale for this decision hinged on a problematic interpretation of several factors. Firstly, they pointed to the prisoner's perceived lack of effective remorse during their trial, using it as evidence to assert that the prisoner had not genuinely severed ties with the organization. This assessment, derived from the trial process, was wielded as a pivotal determinant in the decision-making process, despite its tenuous connection to concrete evidence. Additionally, the Board scrutinized the absence of data regarding the prisoner's phone calls, which was attributed to the restricted visitation protocols during the Covid-19 pandemic. However, their subsequent reasoning takes a concerning turn. The decision explicitly stated: "However, it is known that the convicts and detainees are careful not to engage in any organizational activities because they know that their phone calls, incoming and outgoing letters, and closed and open visitor meetings are examined and monitored by our penal execution institution." This statement reveals a deeply problematic and prejudiced perspective. It suggests that the Board utilized the absence of data against the prisoner as justification for rejecting the sincerity certification, resorting to a forced and arbitrary interpretation of the situation. Lastly, in a particularly absurd twist, the Board concluded that the prisoner's mere application to benefit from probation was evidence of their continued active membership in the organization. In essence, the prisoner's legitimate attempt to exercise a legal right was leveraged against them, serving as the sole basis for a grave decision that unilaterally determined the prisoner's ongoing affiliation with the organization, without any supplementary evidence or sound reasoning. In the meantime, the prisoner's appeal to the Execution Judgeship was rejected without justification. Moreover, the Board's decision attempted to place the burden of proof squarely on the prisoner, citing an article in the Code of Civil Procedure as a basis for this stance. However, it is essential to underscore that the Code of Civil Procedure cannot be aptly applied to the prisoner in this case, as there is no civil case at hand. Furthermore, both national legislation and a European Commission Recommendation explicitly assign the burden of proof to the Board, emphasizing their responsibility to substantiate decisions regarding prisoners' probation and conditional release rights.

### **Case 4: Denied Probation (2022)**

In yet another case involving a political prisoner associated with the Gülen movement, we encounter an alarming pattern of inconsistent and arbitrary decision-making. The prisoner had been relocated to a neutral ward. Throughout this period, the prisoner's conduct was commendable. He maintained a spotless record devoid of any disciplinary penalties. Moreover, his interactions with institution officials remained respectful and courteous. Examination of his incoming and outgoing letter correspondences and the present date revealed no expressions associated with terrorism. Equally significant was the scrutiny of his phone records, which demonstrated that the prisoner's conversations primarily revolved around ordinary, day-to-day topics. These discussions failed to yield any trace of affiliation with the alleged terrorist organization. Furthermore, a thorough review of the visitor records highlighted that the prisoner's family, including his wife, mother, father, mother-in-law, and children, frequented his visits. No red flags regarding ties to a terrorist organization surfaced from these interactions. During an interview with the convict, he adamantly distanced himself from the alleged organization. He explicitly stated that he had and disassociated himself entirely from the organization. He expressed deep regret over any

previous association. However, in a perplexing twist, the Prison Administration and Monitoring Board asserted that no concrete evidence had been garnered to confirm the prisoner's departure from the organization. They contended that no situation had transpired that would definitively attest to the sincerity of his disassociation. The decision also invoked the alleged public knowledge that the organization in question persisted in its activities, emphasizing its 'exceptional ability to conceal its presence and influence individuals'. It further noted that the organization remained incompletely dismantled and was endeavoring to establish itself within penal institutions. Consequently, the Board declined to form a positive and definitive opinion on the sincerity of the prisoner's departure from the organization. Ultimately, the Board emphasizing that individuals associated with terrorist organizations should be subjected to observation until a definitive opinion could be formed. Furthermore, the prisoner's appeals to the Execution Judgeship and subsequently to the High Criminal Court met with unwarranted rejection, both lacking adequate justification.

### **Case 5: Denied Probation (2022)**

In another disheartening case, the evaluation of an imprisoned individual associated with the Gülen movement presents a perplexing situation. This individual, married with two children, actively maintains family connections through visits, letters, and phone calls, demonstrating a host of commendable behaviors and attributes. They possess a high school degree, engage in sports, exhibit respectful and cooperative conduct, and even pursue hobbies such as reading, painting, and music. What's more, he express profound remorse for his past association with the alleged organization. During interviews, this individual convincingly conveys their sincere desire for reintegration into society upon release, complete with concrete plans, including securing employment in their field as a computer technician and moving into a new home with their family. Significantly, they meticulously adhere to institutional regulations, actively participate in collective activities, and maintain a consistently clean and organized living environment. However, despite these overwhelmingly positive indicators, the evaluation inexplicably falls short of granting probation. Instead, it leans on vague assertions regarding the individual's alleged reluctance to sever ties with the organization, even though their conduct throughout incarceration and clear intentions for reintegration suggest otherwise.

### **Case 6: Denial of Probation or Conditional Release for Kurdish Political Prisoners (2023)**

In a written parliamentary question (no. 3326) submitted to the Grand National Assembly of Turkey on August 15, 2023,<sup>[17]</sup> HDP Mardin MP Beritan Güenş Altın shed light on a disturbing situation involving a group of Kurdish political prisoners incarcerated in Sincan Women's Closed Prison. These individuals found themselves entangled in a web of arbitrary decisions by the Administration and Observation Boards, which resulted in their continued imprisonment despite their eligibility for probation or conditional release.

1. M.K., the Co-Mayor of Ağrı Municipality, remained incarcerated due to her refusal to comply with the remorse demanded by the Administrative and Monitoring Board. This refusal was cited as a failure to meet the criteria for "good behavior."
2. S.E., a former Co-Mayor of Varto District, faced denial of release on the basis of lingering doubts about her dissociation from the organization and her perceived low motivation to abstain from criminal activities after release.
3. J.A. was slated for release on October 27, 2021, but the Administration and Observation Board repeatedly obstructed her release, citing her lack of repentance and her reluctance to move to an independent ward.
4. Ö.D., who had been arrested in 2016 on charges of "membership in an illegal organization" while serving as Ağrı Provincial Co-Chair, remained behind bars. Her assertion that she had "nothing to regret"

when questioned about her involvement in the organization was used to justify her continued incarceration.

5. The decision against R.E., a never-married woman, included charges of "intentional murder of her husband" and "extortion" that were not related to her. Authorities argued that her release would pose a security threat to the deceased man's family and relatives.

6. N.Y. faced repeated delays in her release because she failed to appear for interviews, declined participation in rehabilitation programs, showed no signs of improvement, and was deemed ill-prepared to reintegrate into society. The Board believed there was no assurance that she wouldn't re-offend.

7. H.Y. encountered postponements in her execution date due to activities such as shouting slogans, singing anthems, going on hunger strikes, and displaying organizational behaviors.

8. R.K. had her execution postponed four times on the grounds that she was "not ready to integrate into society."

9. Z.H.B., Co-Mayor of Karayazı Municipality, faced scrutiny for her failure to provide satisfactory answers to questions such as "Why did you become Co-Mayor from HDP?", "How did they convince you?", "What kind of work did you carry out?", "Do you regret it?", and "What do you plan to do when you get out?" Her execution was deemed unsuitable for the security of society.

10. S.D. remained incarcerated due to her lack of remorse, her stay in an organized ward, her failure to appear before the Administration and Observation Board, and her perceived high tendency toward radicalization.

11. M.Y., imprisoned for 30 years, was acquitted in one case, yet her release was denied due to the ongoing nature of another case.

12. S.D., another prisoner with a 30-year sentence, faced a denial of her execution on the grounds of her failure to "repent."

## **Patterns in the Handling of Political Prisoners' Probation and Conditional Release Requests**

When examining the handling of probation and conditional release requests for political prisoners in Turkey, several recurring patterns become evident. These patterns reveal a systemic challenge in the decision-making process, which affects a significant number of individuals in similar circumstances:

- **Persistent Reliance on Assumed Organizational Ties:** Across multiple cases, a recurring pattern emerges where decision-makers consistently rely on the presumption that political prisoners maintain active ties with alleged terrorist organizations. These decisions are often devoid of concrete, verifiable evidence supporting such affiliations. Instead, they are shaped by subjective interpretations and perceived associations.

- **Misapplication of the Burden of Proof:** A notable systemic challenge is the misapplication of the burden of proof. In several instances, the onus of demonstrating eligibility for probation and conditional release is inaccurately placed on the prisoners themselves. This contradicts both national legislation and international recommendations, which explicitly designate the responsibility for proving the suitability of such releases to the relevant administrative boards.
- **Arbitrary Interpretations of Behavior and Statements:** The decision-making process is frequently marred by arbitrary interpretations of political prisoners' behaviors and statements. For instance, expressions of seeking one's rights or the utilization of legal provisions, such as probation, are sometimes unjustly considered as evidence of ongoing organizational affiliation. These interpretations often diverge from established facts and legal principles.
- **Excessive Reliance on Assumptions and General Knowledge:** Many decisions seem to disproportionately rely on assumptions regarding the persistence and covert nature of the organizations in question. Rather than scrutinizing concrete evidence related to prisoners' actions, they lean on general assumptions about the organizations' activities. This is often used as a justification for denying probation and conditional release.
- **Inadequate Justification for Denials:** Appeals to higher judicial authorities, such as Execution Judgeships and High Criminal Courts, frequently result in rejections that lack adequate justification. These decisions lack transparency in terms of articulating the rationale behind denying probation or conditional release. As a consequence, prisoners are left with limited insight into the reasoning behind these rulings and limited avenues for appeal or redress.
- **Underestimation of Positive Behavioral Indicators:** A concerning trend observed in numerous cases is the underestimation of prisoners' positive behavioral indicators. This includes factors like educational pursuits, participation in constructive activities, and consistent adherence to institutional regulations. Despite these positive markers of rehabilitation and readiness for societal reintegration, decision-makers may deny probation, prioritizing perceived organizational ties over a comprehensive assessment of an individual's preparedness for reintegration into society.

In summation, a comprehensive analysis of these patterns exposes a systemic challenge in the treatment of political prisoners in Turkey. The prevailing system tends to lean towards rejecting probation and conditional release requests, often resting on vague, subjective, and arbitrary interpretations of prisoners' behavior and alleged affiliations with particular organizations. These decisions are frequently reached without a clear evidentiary basis, and there are instances where the burden of proof is erroneously shifted onto the prisoners themselves, contrary to established legal norms. Consequently, a troubling trend emerges where political prisoners face disproportionate obstacles in accessing their rights to probation and conditional release.

# Recommendations for Turkish Authorities

## Ministry of Justice

- Review and Revise the Legal Framework: Conduct a comprehensive review of the legal framework related to probation and conditional release for political prisoners to ensure alignment with international human rights standards. Additionally, it is recommended that the practice of establishing a separate Administrative and Observation Board for terrorism offenses be terminated, as it may contribute to concerns regarding impartiality and fairness in the evaluation process.
- Implement Transparent and Objective Criteria: Develop clear and objective criteria for determining eligibility for probation and conditional release, eliminating arbitrary decision-making.
- Ensure Compliance with International Standards: Consistently apply international human rights standards, recommendations, and guidelines, such as those provided by the United Nations and the Council of Europe, in the process of evaluating probation and conditional release requests.
- Remove Burden of Proof from Prisoners: Shift the burden of proof from prisoners to the authorities responsible for evaluating their requests, in line with international standards.
- Establish Oversight Mechanisms: Create independent oversight mechanisms to monitor and assess the decision-making process related to probation and conditional release, ensuring transparency and accountability.
- Provide Adequate Training: Offer specialized training to prison staff, members of the Prison Administration and Monitoring Board, and legal professionals on human rights principles, international standards, and the fair application of probation and conditional release.

## General Directorate of Prisons and Detention Houses

- Ensure Fair Treatment: Implement fair and consistent treatment of all prisoners, regardless of their affiliations or charges, in line with international human rights principles.
- Collect and Publish Data: Systematically collect, analyze, and publish data related to probation and conditional release decisions, ensuring transparency and accountability.

## Prison Administrations

- Fair Application of Rules: Ensure the just and equitable application of prison rules, avoiding any form of discrimination based on political affiliations.
- Respect for Human Rights: Uphold prisoners' human rights, including the right to a fair trial, adequate medical care, and access to legal counsel.
- Regular Monitoring: Continuously monitor and evaluate the conditions of prisons, guaranteeing that they meet international standards for the treatment of prisoners.



# Recommendations for International Entities

## European Union (EU):

- Demand Answers and Transparency: The EU must unequivocally demand answers from the Turkish government regarding the 500 written parliamentary questions on political prisoners. The absence of responses is a blatant disregard for accountability and transparency.
- Public Condemnation: Publicly condemn Turkey's actions, highlighting the grave injustices faced by political prisoners. Use diplomatic channels to express the EU's strong concern and demand immediate action.
- Engage in High-Level Diplomacy: Engage in high-level diplomatic efforts with Turkish authorities to stress that the EU will not tolerate these human rights abuses within its vicinity and that they will have serious consequences for EU-Turkey relations.

## European Commission:

- Monitoring and Reporting: The European Commission should establish a robust monitoring and reporting mechanism dedicated to tracking and exposing human rights violations within Turkey's penitentiary system, particularly regarding political prisoners.
- Conditionality: Make EU financial assistance conditional on tangible improvements in Turkey's treatment of political prisoners and adherence to international human rights standards.
- Press for Legal Reforms: Advocate for comprehensive legal reforms in Turkey, emphasizing individualized assessments, fairness, and non-discrimination in probation and early release mechanisms.
- Humanitarian Aid and Assistance: Offer humanitarian aid and assistance for political prisoners, including legal support, medical care, and psychological counseling, to alleviate their suffering while in custody.

## UN Entities:

- International Scrutiny: The United Nations should intensify its scrutiny of Turkey's human rights record, particularly in relation to political prisoners. This scrutiny should be conducted with urgency and thoroughness.
- Invoke International Agreements: Leverage international agreements to hold Turkey accountable for its violations and emphasize the need for non-discrimination, transparency, and ethical standards in probation and early release mechanisms.
- Emergency Session: Convene an emergency session of the United Nations Human Rights Council to address the alarming situation in Turkey's prisons, sending a clear message that the international community will not tolerate such abuses.
- Create a Task Force: Establish a specialized UN task force to investigate and document the extent of human rights abuses against political prisoners in Turkey, producing a detailed report for the international community.

These recommendations aim to promote transparency, fairness, and adherence to international human rights standards in the evaluation of probation and conditional release requests in Turkey, ultimately ensuring justice and respect for human rights for all prisoners.

## Conclusion

In the quest for freedom, political prisoners in Turkey face a formidable challenge. This study has unveiled a disturbing pattern of obstacles and arbitrary practices hindering the fair application of probation and conditional release rights.

Our analysis reveals that the denial of these rights is often based on subjective interpretations, unconfirmed intelligence, and inconsistent decision-making. These actions not only infringe upon individual liberties but also undermine the principles of justice and human rights.

Despite international standards and legal frameworks, the system's shortcomings persist. The burden of proof placed on prisoners, the disregard for concrete evidence, and the use of unrelated factors all contribute to an alarming cycle of denial.

To achieve a just and equitable system, it is imperative that Turkish authorities reevaluate and reform the process of granting probation and conditional release. Objective and transparent criteria, as well as adherence to international norms, must guide these decisions.

In conclusion, the protection of human rights and the principles of justice must remain paramount. A society that upholds these values benefits all its citizens. It is our hope that this study sheds light on the pressing need for change and serves as a catalyst for reform.

# Footnotes

<sup>[1]</sup> The Gülen movement is a social and faith-inspired movement founded by Turkish scholar Fethullah Gülen. It is important to note that the term 'FETÖ - Fethullahist Terrorist Organization' was coined by the Turkish government to describe the Gülen movement as a terrorist organization. However, this classification is widely debated internationally, with many recognizing that it is a fabricated label used for political purposes. The Gülen movement has not been designated as a terrorist organization by either the UN or the EU. The Turkish government's classification of the Gülen movement as a terrorist organization has faced significant international scrutiny and criticism due to concerns over its validity and fairness. Political persecution of members linked to the Gülen movement on terrorism charges has been widely condemned.

<sup>[2]</sup> Solidarity With Others, Terror Crime Statistics, 2015-2021, <https://www.solidaritywithothers.com/terror-crime-statistics>

<sup>[3]</sup> On July 28, 2023, Minister of Justice Yılmaz Tunç provided the following information on cases related to the Gülen movement: 693,162 people were subjected to judicial proceedings. There are currently 67,893 ongoing investigations and 26,667 ongoing lawsuits. So far, decisions have been made about 253 thousand 754 people. 122 thousand 632 were convicted. There are currently 15 thousand 539 convicts and detainees in prisons. Of these, 12 thousand 108 are convicted, 2 thousand 605 are on remand, and 826 are under arrest. There are arrest warrants for 30 thousand 672 people in total. (Milliyet, "Bakan Tunç açıkladı: 19 bin kişi cezaevine geri dönecek!", 28.07.2023, <https://www.milliyet.com.tr/gundem/bakan-tunc-acikladi-19-bin-kisi-cezaevine-geri-donecek-6982570>)

<sup>[4]</sup> UN Human Rights Council Working Group on Arbitrary Detention, A/HRC/WGAD/2023/3, Distr.: General 3 May 2023, Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023, Opinion No. 3/2023 concerning Ali Ünal (Türkiye), <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGAD-2023-3-AEV.pdf> (For other opinions: opinions No. 66/2020, para. 67; No. 67/2020, para. 96; and No. 84/2020, para. 76.)

<sup>[5]</sup> UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): Rule 39 - 'No prisoner shall be sanctioned except in accordance with the terms of the law or regulation referred to in rule 37 and the principles of fairness and due process. A prisoner shall never be sanctioned twice for the same act or offence.' [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-book.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf)

<sup>[6]</sup> Article 105/A: (1) To ensure the adaptation of convicts to the outside world, In order to ensure that they maintain and strengthen their ties with their families, the execution of the part of their sentences until the date of conditional release by applying probation measures may be decided by the execution judge in the place where the chief public prosecutor's office conducting the procedures regarding the execution of the sentence is located, taking into account the evaluation report prepared by the penal execution institution administration, upon the request of convicts in good behavior who are in open penal execution institutions or children's education centers and who have one year or less to be conditionally released., <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.5275.pdf>

<sup>[7]</sup> Article 107: (1) In order to benefit from conditional release, the convict must spend the execution period in the institution in good behavior. (2) Those sentenced to aggravated life imprisonment may benefit from conditional release if they have served thirty years, those sentenced to life imprisonment twenty-four years and those sentenced to other term imprisonment half of their sentences in the execution institution., <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.5275.pdf>

<sup>[8]</sup> <https://rayp.adalet.gov.tr/resimler/581/dosya/agustos-2022-istatistikleri02-09-202212-04-pm.pdf>

<sup>[9]</sup> Article 6(2)-ç: (2) In order to be allocated to open Institutions, ... ç) also Those convicted of terrorism and organized crimes, who are determined by the decision of the administration and observation board to have left the organization they belong to, have less than one year left until the date of conditional release, <https://www.mevzuat.gov.tr/File/GeneratePdf?mevzuatNo=16564&mevzuatTur=KurumVeKuruluyonetmeli&mevzuatTertip=5>

<sup>[10]</sup> 'How to Determine Whether a Convict Has Left the Organization?' by Prof. Dr. Ersan Şen and Av. Beyza Başer Berkün, published on November 18, 2020. Available at: <https://sen.av.tr/tr/makale/hukumlunun-orguten-ayrildigi-nasil-tespit-edilir>

<sup>[11]</sup> <https://www.mevzuat.gov.tr/MevzuatMetin/21.5.2324.pdf>

<sup>[12]</sup> HRI/GEN/1/Rev.9 (Vol. I), HUMAN RIGHTS COMMITTEE, Forty-fourth session Adopted: 10 April 1992, General Comment No. 21, "Article 10 (Humane treatment of persons deprived of their liberty) (Replaces general comment No. 9).", [https://ccprcentre.org/page/view/general\\_comments/27783](https://ccprcentre.org/page/view/general_comments/27783)

<sup>[13]</sup> The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-book.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf)

<sup>[14]</sup> United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (General Assembly resolution 45/110), [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_Non-custodial\\_Measures\\_Tokyo\\_Rules.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_Non-custodial_Measures_Tokyo_Rules.pdf)

<sup>[15]</sup> Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole), <https://rm.coe.int/16800ccb5d>

<sup>[16]</sup> Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cfbc7](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cfbc7)

<sup>[17]</sup> [https://cdn.tbmm.gov.tr/KKBSPublicFile/D28/Y1/T7/WebOnergeMetni/b331b67a-cd9c-4c6a-9574-8ffd3b462d5d.pdf?TSPD\\_101\\_R0=08ffcef486ab2000731799fe791c65b2aa0157311081cf6fb0fceb7db621a9800bc5cf66c89576010872708d5714300061341a792919fc06c1b0c6e6d193f1c5e1f142e069ffd6131549449fd842eda000c70c3b2dc8352c6529be46619eb3ca](https://cdn.tbmm.gov.tr/KKBSPublicFile/D28/Y1/T7/WebOnergeMetni/b331b67a-cd9c-4c6a-9574-8ffd3b462d5d.pdf?TSPD_101_R0=08ffcef486ab2000731799fe791c65b2aa0157311081cf6fb0fceb7db621a9800bc5cf66c89576010872708d5714300061341a792919fc06c1b0c6e6d193f1c5e1f142e069ffd6131549449fd842eda000c70c3b2dc8352c6529be46619eb3ca)