



Solidarity With OTHERS

# **The New Form of Torture: Prison Observation Boards Decisions**

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# Executive Summary

During the execution of a prison sentence, above all, the human dignity of the convicted person deprived of liberty must be considered, and the conditions under which persons deprived of their freedom are housed must be adapted to the minimum necessities of life. A person should not be subjected to execution conditions that cause suffering and distress exceeding the level of discomfort inherently involved in being imprisoned.

We claim to protect society from dangerous offenders, yet prisoners with no dangerous behavior are held under strict security measures and subjected to isolation, resulting in inhumane treatment. According to the Observation Board Report, prisoners are categorized as dangerous to society, reflecting enemy criminal law not only through isolation but also by being neutralized and excluded from society.

Between 2018 and 2023, nearly 500 written parliamentary inquiries, largely overlooked by the global community, were submitted by Members of Parliament to the Turkish Grand National Assembly. Shockingly, nearly all of these inquiries received no response, unveiling a significant yet hidden aspect of the Turkish correctional system that has escaped the notice of the international human rights community. The inquiries expose a profound injustice: the aspirations of political prisoners for freedom are crumbling beneath the weight of bureaucratic indifference.

Within the confines of Turkey's prison walls, or rather, in the shadowy corridors of the execution administration, this deep-seated injustice endures. In a nation with tens of thousands of political prisoners a grave human rights violation continues to be. An arbitrary state policy has transformed into a thief which is robbing innocent lives of precious years off their lives.

This executive summary offers a concise overview of the comprehensive report investigating the arbitrary imprisonment of political prisoners in Turkey. The report primarily examines the discriminatory aspects of the Turkish penal system, with a specific focus on the denial of parole and conditional release which primarily affects individuals associated with the Kurdish population and the Gülen movement. It highlights the staggering magnitude of this issue with the help of statistics illustrating the breadth of the problem.

The report highlights a dual punishment endured by political prisoners in Turkey. Apart from being unlawfully imprisoned in the first place, such prisoners face prolonged periods of incarceration, often serving their entire sentences behind bars. This disparity in treatment within the penal system causes legitimate concern about fairness and adherence to international human rights standards.

As a result, this report sheds light on the widespread and systemic challenges that political prisoners in Turkey face regarding their rights to probation and conditional release. These challenges stem from prison observation board reports, which, as Prof. Dr. Şebnem Korur Fincancı, who herself has experience of political imprisonment, points out, have turned into a new form of torture. It calls for urgent reforms to ensure justice, non-discrimination, and compliance with international human rights standards. The recommendations presented provide a roadmap for addressing these critical issues.



**Sebnem Korur Fincancı,**  
@SKorurFincanci, Apr 17:  
"Observation board reports are being used as new tools of torture."

# Methodology

This section outlines our methodology in investigating challenges faced by political prisoners in exercise of their rights to parole and conditional release. The study aims to uncover systematic obstacles and arbitrary practices. We collected and analysed 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 parole 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 to assess how the law is applied to specific persons.
- d) Interviews and Testimonies: Interviews with political prisoners and their relatives has provided us with first-hand qualitative data.

## Data Collection

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

## Data Analysis

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

## Ethical Considerations

We ensured interviewee privacy and anonymity.

## Limitations

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

# Arbitrary Imprisonment of Political Prisoners in Turkey

In recent years, Turkey has witnessed a significant slide in human rights and the rule of law, characterised by the systematic targeting of diverse political groups and individuals, especially the Kurdish population and the Gülen movement.<sup>[1]</sup> This relentless campaign has led to numerous human rights violations, with arbitrary detentions, arrests, and unjust imprisonments as its defining characteristics. While the lives of hundreds of thousands have been thus impacted, tens of thousands have been unjustly labeled as terrorists and deprived of their freedom for political reasons.

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

Prominent Kurdish politicians such as former HDP Co-Chair Selahattin Demirtaş and former Diyarbakır Metropolitan Municipality Co-Mayor Gültan Kışanak are both serving long sentences. Nevertheless, it is crucial to highlight that the overwhelming majority of political prisoners in Turkey, especially those subjected to arbitrary detention and imprisonment, are mostly those who have been associated with the Gülen movement.<sup>[3]</sup>

In its ninety-sixth session held from 27 March to 5 April 2023, the Human Rights Council's Working Group on Arbitrary Detention addressed Opinion No. 3/2023, which pertained to the case of Ali Ünal in Turkey. Over the past six years, the Working Group has noted a substantial increase in cases related to arbitrary detention in Turkey. It has expressed serious concern regarding the recurring patterns observed in these cases and has emphasised that, under specific circumstances, widespread or systematic imprisonment or severe deprivation of liberty that violates fundamental principles of international law may constitute a crime against humanity.<sup>[4]</sup>

## Discriminatory Practices as Further Punishment

Upon closer examination, it becomes apparent that political prisoners in Turkey confront a twofold punishment. Firstly they are imprisoned unlawfully and often based on false or fabricated charges. These individuals endure prolonged legal proceedings that culminate in severe sentences, including a minimum of 6 years and 3 months for alleged membership in a terrorist organisation.

It is however the second aspect, pertaining to their treatment within the penal system that warrants particular concern. Unlike ordinary criminals who serve similar terms typically serve only a fraction of their time in “closed penal institutions”, political prisoners are made to serve their full term. To illustrate:

For a prisoner convicted of extortion:

- Sentence Duration: 6 years and 3 months.
- Eligibility for Conditional Release: 3 years, 1 month, and 15 days into prison term.
- Eligibility for Parole: 1 month and 15 days prison term.
- 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 prison term.
- Eligibility for Parole: 3 years, 8 months, and 10 days prison term.
- Total Duration of Imprisonment (without parole and conditional release): 6 years and 3 months.

The heart of the issue is that: a political prisoner, sentenced to 6 years and 3 months, is likely to spend his full term behind bars if denied parole. Even if he is eventually granted conditional release, he may still face almost five years of imprisonment in a closed penal institution. That highlights the profound nature of the problem, where political prisoners are made to bear extended imprisonment and/or discriminatory treatment within the Turkish penal system.

Political prisoners are, therefore, subjected to both unlawful and prolonged periods of imprisonment. This dual punishment not only violates the principles of justice and the rule of law as defined in international human rights texts such as the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), particularly Rule 39, which says that no prisoner should face double punishment for the same act or offence.<sup>[5]</sup>

## Parole and Conditional Release

Parole and conditional release are integral elements of the Turkish penal system. Prisoners convicted of terrorism, who have disassociated themselves from their groups and have less than a year remaining until conditional release may request a transfer from closed to open prisons. Such transfers are governed by the Regulation on Separation to Open Penal Institutions, Article 6(2). On the other hand, prisoners who have been serving their sentences in open prisons with a year or less until their conditional release may request parole, provided that they have been demonstrating good-conduct as provided by Article 105/A of the Law on the Execution of Penalties and Security Measures.<sup>[6]</sup> Conditional release is another form of early release which following parole the prisoner is released from prison provided that he maintained good conduct throughout his imprisonment. Eligibility criteria for conditional release vary depending on the type of sentence and is subject to specific time requirements as outlined in Article 107(2).<sup>[7]</sup>

In August 31, 2022, the Ministry of Justice, General Directorate of Prisons and Detention Centres, Department of Parole, indicated that there were as of that date roughly 250,000 adults serving their sentences while on parole.<sup>[8]</sup> It's important to emphasise that the sheer volume of this figure does not necessarily reflect the efficient implementation of the parole system. In practice, while individuals convicted of ordinary crimes are normally

allowed to enjoy their rights to parole, political prisoners often experience discriminatory treatment and arbitrary obstacles which interfere with theirs. Such unlawful treatment within the penal system raises concerns regarding the discrimination political prisoners have to suffer while serving their sentences.

## **Obstacles on the Way to Freedom: the Ordeal of Political Prisoners**

The transfer of prisoners convicted of organised crimes into open penal execution facilities is governed by Article 6/2-ç of the Regulation on the Transfer to Open Penal Execution Institutions. [\[9\]](#) Accordingly, prisoners may be assessed for a possible transfer to open institutions if they exhibit good conduct and have less than one year remaining until their conditional release, on the condition that they have severed ties with the organisation to which they were previously affiliated.

In practice, the demand for political prisoners to provide evidence of their disassociation from an organisation is often applied in a very stringent and inconsistent manner. Prisoners who have always denied any affiliation with an organisation during their trial are forced to sign a written declaration affirming that they have severed all ties with the organisation in order to obtain a favourable ruling. There is, however no consistency in its application which results in practices which vary from one prison to the other. In most of the cases, even such a declaration is deemed insufficient and prison administrations make arbitrary decisions based merely on assumption that the prisoner has indeed not severed ties with his criminal organisation. Forcing prisoners as such, even where they have always denied any involvement with their respective organisations is unlawful. In order for prisoners not to be prejudiced, determination of his assumed ties to an organisation should rely exclusively on clearly defined criteria and conduct on his part rather declarations they are coerced to make.

We have observed that prison administrations often refer to a letter which the General Directorate of Prisons and Detention Centres of the Ministry of Justice has sent. [\[10\]](#) The letter asks prison authorities convicts who submit a petition stating that they have disassociated themselves from their respective criminal organisations or they have assumed a neutral stance toward them should undergo a 60-day observation period to evaluate their status in accordance with legal regulations. Throughout this period, their organisational affiliations, interactions with visitors, and communication, including phone calls and correspondence, should be closely scrutinised. The directive also underscores the significance of severing connections with high-ranking organisation members or active participants during this assessment process. It is within this context that the varying and capricious practices of prison administrations become evident.

In practice, it has been observed that correctional institutions frequently render judgments of either "Acceptance" or "Rejection" regarding the Confirmation of Sincerity. It is important to highlight that these decisions, especially when it comes to political prisoners, often involve vague and arbitrary interpretations that frequently diverge from concrete evidence. Regrettably, such interpretations commonly result in rejections, giving rise to apprehensions about the impartiality and uniformity of the process, particularly for individuals with political affiliations.

Another form of unlawfulness to which political prisoners are exposed pertains to the arbitrary criteria employed in assessing "good conduct" and the composition of the committee responsible for making this determination. As outlined in Article 22 of the Regulation on the Administration of Penal Institutions and the Execution of Punishment and Security Measures [\[11\]](#), The Administration and Observation Board, responsible for evaluating open prison placements, Parole, and conditional release rights, convenes under the leadership of the institution's

director. The composition of the board includes 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 within the psycho-social assistance service, a teacher, a chief enforcement and protection officer, and a technical staff member selected by the institution's director.

In 2020, a significant amendment brought about an important change. The committee responsible for assessing the good conduct of individuals convicted of terrorism offences, as stipulated in the third paragraph of Article 89 of Law No. 5275, is now chaired by the chief public prosecutor or a prosecutor designated by the chief public prosecutor. This alteration, where a prosecutor from outside the prison administration assumes the chairmanship, marks a departure from conventional practice. Consequently, the assessment process has shifted its focus from the prisoner's conduct in prison to the individual's alleged criminal history.

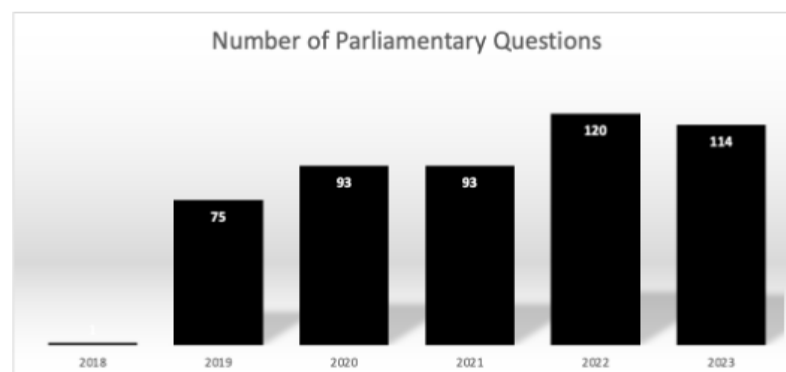
Additionally, Article 22 authorises the Chief Public Prosecutor to appoint extra members from the Observation Board, the Ministry of Family and Social Services, and the Ministry of Health. This provision permits the prosecutor to designate three additional members to the board from outside the prison administration, prompting concerns about the potential influence of these members on the evaluation process and the alignment of their decisions with the prosecutor's perspective..

Moreover, it is imperative to confront the issue surrounding Execution Judgeships and High Criminal Courts. These judicial bodies hold a pivotal role in the appeals process for political prisoners who challenge decisions made by the Administrative and Observation Board. Unfortunately, their handling of such cases has given rise to legal concerns. Frequently, these judicial entities give precedence to procedural formalities at the expense of thoroughly examining the substantive merits of the appeals. This practice has led to a recurring pattern of dismissals that lack sufficient legal justifications, further exacerbating the challenges faced by political prisoners in their quest for judicial redress and justice.

## Parliamentary Questions: A Scream for Justice

Parliamentary questions (PQs) which MPs have been putting to the government from as early as 2018 show the extent of the problem. Almost 500 written PQs have so far been submitted by members of the Turkish Parliament as part of the legislatures function to monitor human rights abuses.

Since 2018 a total of 496 written PQs (471 of which concerns parole while the rest concern conditional release) were submitted by 13 different members of the Parliament in connection with 544 prisoners (509 concerning Parole and 35 concerning conditional release). The inquiries have all been addressed to the Minister of Justice in request of an official response regarding allegations of violations of parole and conditional release rights.



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

Unfortunately the government answered only 2 of the PQs within the legal timeframe of 15 days while another 42 were answered after the legal deadline. 25 PQs are still being considered and an astonishing 427 have simply been ignored by the government.

Between June 16, 2020, and July 17, 2020 a total of 42 PQs were answered, notably however, no PQs were answered after July 17, 2020. The government's responses, however, did not actually answer any of the questions. In most of the cases, the answers simply said that " matters concerning parole were being carried out in accordance with the provisions of the relevant legislation." Signed by the Minister of Justice, they lack any meaningful content and merely refute all allegations of wrongdoing. This recurring pattern suggests a systematic effort to obscure the issue.

Furthermore, it is essential to note that the Ministry of Justice has conspicuously refrained from addressing this matter for the past three years, deepening concerns about the lack of transparency and accountability in the implementation of parole and conditional release laws.

A detailed examination of the violations reveals specific regions and prisons where they appear to occur more often. For instance, Afyonkarahisar is on top of the list with 36 reported cases which indicate a systematic violation of parole and conditional release rights. Sincan follows with 35 separate cases. Prison administrations in İzmir, Antalya, Tekirdağ, Manisa, Tokat, Yozgat, Niğde, and Samsun are also higher on the list with between 11 to 22 reported cases.

It should be noted that the prisoners themselves have brought the violation of their parole and conditional release rights to the attention of the parliament, fully aware that their pursuit of justice may result in further violations. That is the most common reason why victims are quite hesitant to have their grievances voiced by MPs or human rights organisations as they fear undue reaction from the government. Furthermore, the lack of trust in public bodies is quite clear whose duty is to address such issues is quite clear. After all the Minister of Justice has so far answered only 8% of the questions addressed to him.

## International Conventions: Turkey Breaches its Obligations

Early release mechanisms such as parole and conditional release aim to facilitate rehabilitation and reintegrate the prisoner back into society. Nevertheless, in Turkey they are implemented in a discriminatory manner, especially at the expense of political prisoners.

International Covenant on Civil and Political Rights (ICCPR):

Article 10(3) of the ICCPR places significant emphasis on the reformation and social rehabilitation of prisoners as a core objective of the penitentiary system. This principle is further highlighted in General Comment No. 21, which was adopted during the Human Rights Committee's forty-fourth session. The comment specifically calls for comprehensive information on the functioning of the penitentiary system in each state party. Crucially, it emphasises that no penitentiary system should be solely focused on retribution; instead, its fundamental goal should be the reformation and social rehabilitation of the incarcerated individuals. [\[12\]](#)

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

Article 5 of the ECHR, which safeguards the right to liberty and security, applies to all individuals, including political prisoners. The interpretation of this article carries implications for the early release of political prisoners, as it underscores the necessity for fair treatment when considering release as well as the carrying out of a risk assessment and taking into account the prisoner's potential for rehabilitation.

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

The Nelson Mandela Rules advocate for the unbiased application of rules without any form of discrimination (Rule 2). Consequently, these rules extend to political prisoners, who should be provided with equal opportunities for rehabilitation and early release as any other inmates. The stress on fairness and due process in sanctions applies universally, guaranteeing that political prisoners are not unfairly excluded from early release measures. [\[13\]](#)

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

The Tokyo Rules emphasise the principle of non-discrimination, highlighting that non-custodial measures should be consistently applied, regardless of an individual's political affiliations or beliefs (Rule 2.2). The adaptable nature of these measures, which should be implemented according to the nature of the offence and the offender's background, should be extended 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 parole and early release mechanisms, especially concerning political prisoners in Turkey.

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

This recommendation highlights the significance of having well-defined and specific criteria for eligibility for parole. Article 18 of Recommendation No. 22 (2003) emphasises the importance of such criteria, considering the unique personalities and social and economic circumstances of prisoners in addition to his suitability for transfer. Furthermore, Article 20 emphasises the necessity for transparent and fair criteria that ensure all prisoners meeting requirements successfully reintegrate back into society as law-abiding citizens. The responsibility falls on the authorities to show that a prisoner has indeed failed to meet such criteria. The articles in question serve as crucial benchmarks for assessing the implementation of parole laws in Turkey, emphasising the call for individualised assessments and effective rehabilitation.

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

Recommendation CM/REC(2010)1 provides a comprehensive set of principles for supervised release, with a strong emphasis on fairness, non-discrimination, ethical standards, and accountability. Article 4 highlights the importance of parole institutions considering the individual characteristics, circumstances,

and needs of convicted individuals to ensure equitable treatment without any form of discrimination. Article 5 underscores that sanctions or measures should not impose excessive burdens beyond what is legally stipulated and determined on a case-by-case basis. Article 13 stresses the importance of adhering to the highest national and international ethical and professional standards in all activities and interventions by Parole institutions. Furthermore, 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 parole system.

These recommendations and provisions collectively emphasise the importance of individualised assessments, transparency, non-discrimination, and ethical standards in parole and early release mechanisms, serving as essential principles when assessing Turkey's treatment of prisoners as far as their rights to parole and early release are concerned.

Despite these international commitments and guidelines, Turkey has implemented discriminatory treatment of political prisoners in its application of early release mechanisms. Political prisoners often experience arbitrary treatment including the denial of their parole and conditional release rights which other prisoners seem to enjoy.

## **Prison Observation Boards Decisions: a Newly Emerging Method of Torture**

Şebnem Korur Fincancı, the President of the Turkish Medical Association and a forensic medicine expert, has drawn public attention to a new method of torture in prisons by stating that observation board reports are being used as tools of torture. In her evaluation of a prisoner whose release was obstructed by an observation board report, Fincancı highlighted that these reports are commonly used for torture in prisons, showcasing the widespread use of torture.

Globally, the function of prison observation boards in penal systems is to assess prisoners' behavior and their eligibility for privileges such as conditional release and supervised freedom. Naturally, these boards are intended to positively contribute to the rehabilitation process by providing incentives for good behavior and rehabilitation among prisoners. However, recent observations and prepared reports indicate that these evaluations are being used not for execution but for punitive purposes.

Evaluations included in example reports raise concerns that in some provinces, prison observation boards are being used not only as an evaluation tool but also to unjustly extend prisoners' incarcerations. Such practices not only undermine justice and rehabilitation principles but also constitute a form of psychological torture. Prolonged and uncertain detention, exacerbated by reports that ignore apparent progress or are used punitively, causes significant psychological distress among prisoners. This distress is further increased by the lack of transparency and accountability in many observation boards' operations.

The prepared observation board reports are causing physical and mental suffering to some prisoners, amounting to torture. Since prisoners are unable to defend themselves physically and mentally due to their incarceration, the public officials who prepare these reports could face prison sentences ranging from 8 to 15 years, according to Article 94, Paragraph 2 of the Turkish Penal Code.

# Case Studies: the Quest for Freedom

This chapter examines a series of cases which highlight systemic trends within the Turkish prison system of the handling of parole and conditional release requests submitted by prisoners and highlights the obstacles and discrimination they experience. The cases provide an insights into the problems prisoners from different backgrounds and affiliations face.

## Case 1: Conditional Release Denied (2024)

Lawyer Ali Odabaşı, formerly the Responsible Editor of Zaman Newspaper, has been unjustly held at Sincan T Type Prison for approximately eight years. Initially arrested and subsequently detained, his first incarceration lasted 15 months, after which he was released only to be rearrested three months later and returned to prison. Despite significant lack of evidence throughout the trial process, Odabaşı was accused of being a member of a terrorist organization and sentenced to 6 years and 3 months in prison, with an additional arbitrary charge of fraud adding two more years. Although Odabaşı completed his required prison time one and a half years ago, his release on supervised freedom has been obstructed. On November 22, 2023, when he was due for conditional release, the Prison Administration and Observation Board extended his sentence by three months using the arbitrary justification that he could not adapt to society, and later, this period was further extended by another six months. Odabaşı's health has also deteriorated significantly while in custody. He has undergone four surgeries and requires urgent surgery due to a tear in his abdominal lining, yet his access to healthcare under prison conditions has been inadequate. Furthermore, the prison administration has consistently rejected his requests for transfer and ignored his complaints.

## Case 2: Conditional Release Denied (2023)

X, a political prisoner who was convicted of alleged affiliation with the Gülen movement, had his conditional release rights denied by the Prison Administration and Observation Board. The Board's decision, which hinged on the belief that the prisoner had not demonstrated 'Good Conduct,' relied on 'unverified intelligence information' regarding X's future plans with his family upon release—details that were irrelevant to the charges against him. Additionally, despite a lack of concrete evidence, the Board dismissed X's declaration that he had disassociated himself from the organisation on the grounds that it was 'insincere.' The Board also interpreted the prisoner's intention to 'assert his rights' for the discrimination he had been experiencing as 'accusatory and threatening.' Appeals to the Judge of Execution and Assize Court met with similar dismissals lacking adequate justification. Consequently, X was unjustly made to serve his whole prison term in a closed penal institution after being denied both parole and conditional release.

## Case 3: Parole Denied (2022)

Another individual associated with the Gülen movement was denied parole by a decision from the Prison Administration and Observation Board. Following a 60-day observation period, the possibility of transferring the prisoner to a “neutral room” was considered and eventually approved. Despite the prisoner's desire to complete the remainder of his sentence under parole, the decision-makers were unable to arrive at a satisfactory conclusion that the prisoner had actually and effectively severed his connection to the alleged terrorist organisation. Consequently, the Board decided that the prisoner had failed to demonstrate that he had sincerely disassociated himself from the organisation. Although the prisoner had clearly stated that he had cut ties with the organisation

he was accused of being affiliated with, his statement was inexplicably excluded from the assessment process. Instead of providing concrete justifications, the decision-makers based their ruling solely on subjective 'beliefs,' arbitrarily ignoring evidence as well as the law.

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

In another case involving a political prisoner associated with the Gülen movement, the Prison Administration and Observation Board arbitrarily refused to conclude that the the prisoner actually disassociated himself from the organisation. The Board's reasoning for this decision was built on a problematic interpretation of several factors. Firstly, they pointed out to the prisoner's perceived lack of effective remorse during his trial, using it as evidence to argue that the prisoner had not genuinely severed ties with the organisation. This was taken as the pivotal determinant in the decision-making process, despite its tenuous connection to concrete evidence.

Additionally, the Board scrutinised the absence of data regarding the prisoner's phone calls, which was attributed to the restricted visiting protocols during the Covid-19 pandemic. In its decision the Board said: "However, it is known that the convicts and prisoners are careful not to engage in any organisational activities because they know that their phone calls, incoming and outgoing letters, and contact and non-contact visits are monitored by our penal execution institution." This statement reveals a deeply problematic and prejudiced perspective. It suggests that the Board utilised the absence of data against the prisoner as justification for finding him insincere in his declaration that he had disassociated himself from the organisation and relied. On its arbitrary interpretation of the situation instead.

Lastly, the Board concluded that the prisoner merely applying for parole was enough evidence of his continued membership in the organisation. Essentially, the prisoner's legitimate attempt to exercise a legal right was used against him serving as the only ground that his affiliation continued. The prisoner's subsequent appeal to the Judge of Execution was dismissed without proper reasoning.

The Board's decision attempted to place the burden of proof on the prisoner, referring to an article in the Code of Civil Procedure. It is however essential to note that the Code of Civil Procedure did not apply in the prisoner's matter, as it was not a civil matter. Furthermore, both domestic legislation and a European Commission Recommendation explicitly place the burden of proof on the Board, emphasising their responsibility to substantiate decisions regarding prisoners' Parole and conditional release rights.

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

In another case involving a political prisoner associated with the Gülen movement, we encounter a troubling pattern of inconsistent and arbitrary decision-making. The prisoner had been relocated to a neutral ward, and during this period, his conduct was exemplary. He maintained a clean disciplinary record. Moreover, his interactions with institution officials were respectful and courteous. An examination of his incoming and outgoing letters, as well as his phone records, revealed no indication of involvement with a terrorist organisation. Furthermore, his visitor records showed that his family, including his wife, mother, father, mother-in-law, and children, regularly visited him and they gave no reason to conclude that the prisoner himself continued to have links to any terrorist organisation.

During an interview with the prison administration the prisoner clearly said that he had completely disassociated himself from the alleged organisation and expressed deep regret over any previous association. The Prison Administration and Observation Board, however, concluded that it had no evidence which prove with certainty that the prisoner had actually done so. The board's decision also relied on the controversial open source information that the organisation itself continued to operate and had an 'exceptional ability to conceal its

presence and influence individuals. It further noted that the organisation had not yet been completely dismantled and it was attempting to establish itself within penal institutions.

The Board concluded any prisoner associated with a terrorist organisation should continue to be observed until a definitive opinion as to his ties with that organisation could be formed. Furthermore, the prisoner's appeals to the Judge of Execution and to the Assize Court were dismissed without proper reasoning. This case is a clear example of the arbitrary and inconsistent application of parole and conditional release laws for political prisoners.

#### **Case 6: Parole Denied (2022)**

The prisoner who was married with two children, actively maintained family connections through visits, letters, and phone calls, demonstrating commendable conduct. He held a high school degree, engaged in sports activities, exhibited respectful and cooperative conduct and had various hobbies such as reading, painting, and music. He expressed profound remorse for his past association with the alleged organisation. During interviews, the prisoner convincingly expressed his sincere wish to reintegrate back into society upon his release and talked about his future plans such as working as a computer technician and moving into a new home with his family. He completely followed the rules, actively participated in group activities and kept his cell clean and organised. Despite all the evidence the Board found that the prisoner was reluctant to disassociate himself from the organisation.

#### **Case 7: Denial of Parole 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 voiced the troubling situation of a group of Kurdish political prisoners detained in Sincan Women's Closed Prison. Their imprisonment was extended by a series of arbitrary decisions by the Administration and Observation Boards although they met the criteria for parole or conditional release.

1. M.K., the Co-Mayor of Ağrı Municipality was refused early release because she refused to express remorse as demanded by the Administrative and Observation Board. Her refusal was cited as a failure to meet the criteria for "good conduct."
2. S.E., a former Co-Mayor of Varto District was denied release as the Board could not be sure that she had genuinely disassociated herself from the organisation and that she was perceived to be lacking enough motivation that she would refrain from criminal activities after her release.
3. J.A. was scheduled for release on October 27, 2021, but her release was repeatedly obstructed by the Administration and Observation Board, citing her lack of repentance and reluctance to move to an independent ward.
4. Ö.D., who had been arrested in 2016 on charges of "membership in an illegal organisation" while serving as Ağrı Provincial Co-Chair. Her statement that she had "nothing to regret" when questioned about her involvement in the organisation was used as justification for her continued imprisonment.
5. The verdict against R.E., who had never been married, included charges of "wilful murder of her husband" and "extortion" which were not relevant to her. Authorities argued that her release would pose a security threat to the dead man's family.

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 reason to believe that she wouldn't re-offend.
7. H.Y. his term was extended due to conduct such as shouting slogans, singing anthems, going on hunger strikes and organisational activities.
8. R.K. had her prison term was extended for four times on the grounds that she was "not ready to integrate into society."
9. Z.H.B., Co-Mayor of Karayazı Municipality, was found not to be able 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 release was considered a risk for public security.
10. S.D. remained incarcerated due to her lack of remorse, her stay in an organised ward, her failure to appear before the Administration and Observation Board, and her perceived tendency toward radicalisation.
11. M.Y., imprisoned for 30 years, she was acquitted in a file, yet she was denied release was denied due to another pending case.
12. S.D., another prisoner sentenced to 30 years in prison was denied release from prison on the grounds that she showed no "remorse."

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

When the handling of prison administrations of parole and conditional release requests of political prisoners is examined, a number recurring patterns become evident. These patterns reveal a systemic problem in the decision-making process, which affects a significant number of prisoners in similar circumstances:

- **Persistent Reliance on Assumed Organisational Ties:** Decision-makers often rely on the presumption that political prisoners maintain active ties with alleged terrorist organisations, even when concrete evidence supporting such affiliations is lacking. This reliance on assumptions rather than concrete proof raises concerns about the fairness of the decision-making process.
- **Misallocation of the Burden of Proof:** A prominent systemic challenge lies in the improper allocation of the burden of proof. In numerous instances, there is an erroneous expectation that prisoners themselves must demonstrate their eligibility for parole and conditional release. This violates both the domestic laws and international rules which clearly specify that the responsibility for establishing the suitability of such a release rests only with the relevant administrative boards.

- **Arbitrary Interpretations of Conduct and Statements:** The decision-making process is frequently injured by inconsistent interpretation of the conduct of political prisoners. For instance, actions like seeking one's rights or using legal provisions such as parole is unlawfully interpreted as evidence of ongoing affiliation with a criminal organisation. Such interpretations are often detached from established facts and legal principles.
- **Over Reliance on Assumption and Open Source Information:** Many decisions appear to excessively depend on assumptions that the organisations in question continued to operate and its members hide their affiliation to it. Instead of examining concrete evidence related to a prisoner's conduct, these decisions often rely on assumptions about the activities of these organisations. This is frequently cited as a rationale for rejecting Parole and conditional release.
- **Lack of Proper Reasoning:** Appeals to higher judicial authorities, such as Judges of Execution and Assize Courts, often result in denial which lack proper reasoning. These decisions lack transparency in terms of elucidating the reasoning behind the denial of parole or conditional release. Consequently, prisoners are left with little or no information as to reasons behind Board decisions which itself makes it difficult for them to appeal against them.
- **Undervaluation of Positive Conduct:** A concerning trend observed in numerous cases is the undervaluation of positive conduct exhibited by prisoners. This encompasses factors such as engagement in educational activities, active participation in constructive pursuits and consistent adherence to institutional regulations. Despite these positive indicators pointing towards rehabilitation and readiness for reintegration back into society, decision-makers deny parole, giving precedence to perceived organisational links over a comprehensive assessment of the prisoner's readiness to reintegration into society.

In conclusion, a comprehensive examination of these recurring patterns reveals a systemic issue in the handling of political prisoners in Turkey. The current system tends to incline towards the denial of parole and conditional release requests, often relying on vague, subjective, and arbitrary interpretations of prisoner conduct and alleged links to specific organisations. These determinations are frequently made without evidence and the burden of proof is unlawfully placed on the prisoner. Consequently, a disconcerting pattern wherein political prisoners encounter disproportionate barriers in exercising their rights to parole and conditional release emerges. As a result, political prisoners are encountering unlawful behavior that causes them physical and mental suffering in accessing their rights to parole and conditional release, and this situation is being recorded as a new method of torture.

## Recommendations to Turkish Authorities

### Ministry of Justice

- Review and Revise the Legal Framework: Conduct a comprehensive review of the legal framework related to Parole and conditional release for political prisoners to ensure alignment with international human rights standards. It is also recommended that establishing a separate Administrative and Observation Board for terrorism offences be aborted, 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 Parole 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 Parole 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 accordance with international standards.
- Establish Control Mechanisms: Create independent control mechanisms to monitor and assess the decision-making process related to Parole and conditional release, ensuring transparency and accountability.
- Provide Adequate Training: Offer specialised training to prison staff, members of the Prison Administration and Observation Board and legal professionals on human rights principles, international standards, and the fair implementation of Parole and conditional release.
- Take Action Against Torture: Steps must be taken to ensure criminal accountability for public officials who prepare observation board reports, which have become a new method of torture.

#### **General Directorate of Prisons and Detention Centres**

- Ensure Fair Treatment: Implement fair and consistent treatment of all prisoners regardless of their affiliations or charges in accordance with international human rights principles.
- Collect and Publish Data: Systematically collect, analyse and publish data related to Parole 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.
- Constant Monitoring: Continuously monitor and evaluate the conditions of prisons, guaranteeing that they meet international standards for the treatment of prisoners.

## **Recommendations to International Bodies**

#### **European Union (EU):**

- Demand Answers and Transparency: The EU must unequivocally request an explanation from the Turkish government regarding the 500 written parliamentary questions on political prisoners which were never

addressed by the government. The absence of response 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 and make sure that they understand that the EU will not tolerate such human rights abuses in a country which is seeking accession and that they will have serious adverse consequences for EU-Turkey relations.

#### **European Commission:**

- Observation 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, emphasising individualised assessments, fairness and non-discrimination in the implementation of Parole and early release.
- Humanitarian Aid and Assistance: Offer humanitarian aid and assistance to political prisoners, including legal support, medical care, and psychological counselling.

#### **UN Entities:**

- International Scrutiny: The United Nations should intensify its scrutiny of Turkey's human rights record, particularly in relation to political prisoners. A thorough scrutiny should be conducted urgently.
- Utilise International Agreements: Harness international agreements to ensure Turkey is held responsible for its transgressions and underscore the importance of upholding non-discriminatory, transparent, and ethical principles within Parole and early release procedures.
- Emergency Session: Convene an emergency session of the United Nations Human Rights Council to address the alarming situation in Turkey's prisons and send a clear message that the international community will not tolerate such human rights violations.
- Create a Task Force: Establish a specialised 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 help bring transparency, fairness, and adherence to international human rights standards in the evaluation of Parole and conditional release requests in Turkey and ensure that all prisoners, political or otherwise are treated fairly and with respect.

# Conclusion

In the quest for freedom, political prisoners in Turkey face a formidable challenge. This study has revealed a model of a new method of torture that obstructs the fair implementation of rights to probation and conditional release.

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 reassess and reform the rules and procedure concerning Parole and conditional release. Decisions on parole and conditional release should be made in accordance with objective and transparent criteria as well as international principles

To summarise, safeguarding human rights and maintaining justice should always be a priority. Such principles benefit every member of society. We trust that this report will highlight the urgent necessity for transformation and acts as a catalyst for positive change.

# Footnotes

[1] 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.

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

[3] 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 prisoners 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>)

[4] 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.)

[5] 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)

[6] 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 Parole 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 conduct 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>

[7] Article 107: (1) In order to benefit from conditional release, the convict must spend the execution period in the institution in good conduct. (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>

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

[9] 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=KurumVeKurulusYonetmeligi&mevzuatTertip=5>

[10] '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-orgutten-ayrildigi-nasil-tespit-edilir>

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

[12] 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)

[13] 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)

[14] 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)

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

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

[17] [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)