



# --- **POLITICIZING PROBATION IN TURKEY**

**A THREAT TO  
HUMAN RIGHTS AND  
FAIR TREATMENT**

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**SOLIDARITY WITH OTHERS**

## **Table of Contents**

<b>I.</b>	<b>Introduction.....</b>	<b>2</b>
<b>II.</b>	<b>Turkish Probation System and Standards .....</b>	<b>3</b>
	<b>A. Probation's Role in Turkish Law and International Guidelines.....</b>	<b>3</b>
<b>III.</b>	<b>Selective Probation Denial.....</b>	<b>5</b>
	<b>A. Focus on Political Dissidents and Human Rights Implications.....</b>	<b>6</b>
<b>IV.</b>	<b>International Responses and Concerns .....</b>	<b>7</b>
	<b>A. Global Reactions and Human Rights Concerns .....</b>	<b>7</b>
<b>V.</b>	<b>Conclusion.....</b>	<b>9</b>

# Politicizing Probation in Turkey: A Threat to Human Rights and Fair Treatment

## I. Introduction

Probation is a legal sanction which means serving a sentence without going to jail.<sup>1</sup> There are two types of probation. The first is “serving time in jail and then being put on probation after completing jail time.” The second is “going on probation instead of going to jail.” Due to the offender's involvement in probation, jail time is frequently reduced and if probation is successfully completed, the offender is exempt from serving time in jail.<sup>2</sup> In terms of being an alternative to detention and imprisonment, probation is encouraged and recommended to accelerate social rehabilitation and re-integration of the offender into society.<sup>3</sup>

In Turkey, although the implementation of the probation system may be viewed as a successful strategy, especially between 2005 and 2014, the Justice and Development Party (AKP), the current government party since 2002, has politicized the criminal justice system in the last decade, notably the probation system. Despite the active use of the probation system, the jail population has grown significantly since 2005, reaching 230,000 or thereabouts, an increase of 300% within a decade, in addition to the 500,000 probationers in the correctional system. Initially, establishing a probation system was based on both a domestic need for improvements in the Turkish criminal justice system and the requirements of the European Union (EU) and other foreign norms placed on Turkey. However, Turkey's political environment and legal culture have made the probation system possible to be used for punishment and as a form of control, which poses significant issues for the rule of law, individual rights, and public confidence in the court.<sup>4</sup>

Especially, under the State of Emergency rule established following the coup attempt in Turkey on July 15, 2016, the massive purge from all spheres of society (political, education, social, religious etc.) has been carried out against, particularly people who have allegedly ties to the Gulen movement.<sup>5</sup> Although the movement defines itself as “a faith-inspired, non-political, cultural and educational movement,”<sup>6</sup> the government labeled the movement as the “Fethullahist Terrorist Organization” (‘FETÖ’) due to its claimed involvement in the coup attempt. In this regard, any individual who had any ties to the movement has been directly called a ‘terrorist’ and been exposed to discrimination by the government and pro-government sources.<sup>7</sup> This discourse generated by the government has been used as a means of

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<sup>1</sup> The UK Government. (n.d.). Probation. GOV.UK. <https://www.gov.uk/guide-to-probation>

<sup>2</sup> Criminal Justice Degree Hub. (n.d.). What is probation. <https://www.criminaljusticedegreehub.com/what-is-probation/>

<sup>3</sup> Council of Europe. (2019). Council conclusions on alternative measures to detention: the use of non-custodial sanctions and measures in the field of criminal justice (2019/C 422/06). [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG1216\(02\)&rid=1](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG1216(02)&rid=1)

<sup>4</sup> Akgul, A., Akbas, H., & Kule, A. (2019). Probation system in Turkey: an analysis of a public policy formation using multiple streams framework. *International Journal of Comparative and Applied Criminal Justice*, 43(4), 325–340. <https://doi.org/10.1080/01924036.2019.1578673>

<sup>5</sup> Aydin, H., Langley, W. (2021). Introducing Human Rights in Turkey. In: Aydin, H., Langley, W. (eds) *Human Rights in Turkey. Philosophy and Politics - Critical Explorations*, vol 15. Springer, Cham. [https://doi.org/10.1007/978-3-030-57476-5\\_1](https://doi.org/10.1007/978-3-030-57476-5_1)

<sup>6</sup> Gulen Movement. (n.d.). What is the Gulen movement. <https://www.gulenmovement.com/gulen-movement/what-is-the-gulen-movement>

<sup>7</sup> Balcioglu, E. (2021). Human Rights in Turkey: Past, Present and Future. In: Aydin, H., Langley, W. (eds) *Human Rights in Turkey. Philosophy and Politics - Critical Explorations*, vol 15. Springer, Cham. [https://doi.org/10.1007/978-3-030-57476-5\\_2](https://doi.org/10.1007/978-3-030-57476-5_2)

legitimization of human rights violations against the movement and its members and normalized and routinized these violations in the eyes of the public.<sup>8</sup>

This report is descriptive and details problems and human rights violations related to the probation system faced by people allegedly linked to the Gülen movement. It is imperative that policymakers and the international community understand that the Turkish government has cracked down on the Gulen movement through unjust and unfair actions and the violation of international human rights norms. These concerning conditions, which began at the beginning of the 2010s, are still present and pose a serious threat to the movement on both a local and global scale.

In this report, the focal point will be the violation and abuse of the probation system by the government and politically motivated legal mechanisms against the Gulen movement. In this framework, firstly, the implementation and transformation of the probation system in Turkish law will be discussed under a general trajectory. Secondly, the cases demonstrating the violation of the probation system will be analyzed. Then, international response and concerns regarding the problem in the implementation of the probation system will be examined. Lastly, the report will conclude with a brief summary.

## **II. Turkish Probation System and Standards**

### **A. Probation's Role in Turkish Law and International Guidelines**

In 1840, the first Ottoman Penal Code and subsequent penal legislation had some practices in conformity with the notion of probation. These practices, in the Ottoman Empire, in line with the notion of probation in Turkey went into force in 1926 and originally found a place in the Turkish Penal Code No. 765.<sup>9</sup> Since then, the modern Turkish criminal justice system has undergone many changes because of weak legal procedures, challenges, and EU obligations. In this context, the Turkish Penal Code was changed in September 2004, the Law on the Execution of Sentences and Security Measures was enacted in December 2004, and the Law on Probation Services was ratified and institutionalized in the criminal justice system by the Parliament in July 2005, among many other laws and regulations.<sup>1011</sup> All of these developments had a substantial impact on the criminal justice system and the rationale and decision-making structure of the professionals (police, prosecutors, and judges). Following the passage of this legislation, the probation system was legally established.<sup>12</sup>

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<sup>8</sup> Caman, M.E. (2021). Authoritarianization and Human Rights in Turkey: How the AKP Legitimizes Human Rights Violations. In: Aydin, H., Langley, W. (eds) Human Rights in Turkey. Philosophy and Politics - Critical Explorations, vol 15. Springer, Cham. [https://doi.org/10.1007/978-3-030-57476-5\\_9](https://doi.org/10.1007/978-3-030-57476-5_9)

<sup>9</sup> Eryalçın, T. & Birinci, M. (2021). Türkiye ve Avrupa'da Denetimli Serbestlik Sisteminin Yönetim Yapısı . Sosyal Çalışma Dergisi, 5 (2), 171-182. Retrieved from <https://dergipark.org.tr/tr/pub/scd/issue/67855/948732>

<sup>10</sup> Denetimli Serbestlik Daire Başkanlığı. (n.d.). Denetimli serbestlik tanımı. Denetimli Serbestlik Daire Başkanlığı. <https://cte-ds.adalet.gov.tr/gorevlerimiz>

<sup>11</sup> Akgül, A., Akbas, H., & Kule, A. (2019). Probation system in Turkey: an analysis of a public policy formation using multiple streams framework. International Journal of Comparative and Applied Criminal Justice, 43(4), 325–340. <https://doi.org/10.1080/01924036.2019.1578673>

<sup>12</sup> Ibid.

Since Turkey has been a member of many international organizations such as the United Nations (UN)<sup>13</sup> and the Council of Europe (CoE)<sup>14</sup>, and a candidate country for the EU,<sup>15</sup> from a theoretical point of view, Turkey's criminal justice system is in coherence with international agreements and rules regarding the criminal justice framework, legal procedures, and their implementation.<sup>16</sup> In the judicial transformation process and the establishment of the probation system in Turkey, the European Prison Rules, adopted by CoE, which seek to recommend and determine incarceration policies and practices of imprisonment, as well as recommendations on judicial and penal policy by the EU, the CoE and the UN (in particular the United Nations Office on Drugs and Crime - UNODC) have played a key role.<sup>17</sup>

Turkish probation system provides important services within the criminal justice system, but each function requires a wide range of activities and responsibilities. The primary purpose is to enforce probation sentences set by the court and to monitor probationers. The second function of probation is to rehabilitate and reintegrate ex-offenders into society. Another responsibility is to assist the courts and prepare reports for the judicial decision-making process. One other main objective of the Turkish probation system is to reduce the overcrowding in prisons and jails, similar to other countries where probation is a part of the criminal justice system.<sup>18</sup>

However, although the main reason for probation to be recommended by the CoE is “to contribute to a fair criminal justice process, as well as to public safety by preventing and reducing the occurrence of offenses”<sup>19</sup> and the probation system is regarded as an alternative way to incarceration, the number of prisoners has increased rapidly and overpopulation in prisons has become a problem in Turkey.<sup>20</sup> The system generates additional prisoners in the criminal justice system, instead of reducing crime.<sup>21</sup>

Additionally, besides overcrowding in the prison system, the probation problem has grown to such an extent that the population of probationers exceeds the prison population<sup>22</sup> and cannot be managed by the 5000 people working in this sector.<sup>23</sup> Especially, since the coup

<sup>13</sup> Ministry of Foreign Affairs. (n.d.). The United Nations Organization and Türkiye / Republic of Türkiye Ministry of Foreign Affairs. <https://www.mfa.gov.tr/the-united-nations-organization-and-turkiye.en.mfa>

<sup>14</sup> Council of Europe. (n.d.). Turkey - member state - portal - www.coe.int. Portal. <https://www.coe.int/en/web/portal/turkey>

<sup>15</sup> European Commission. (n.d.). Türkiye. European Neighbourhood Policy and Enlargement Negotiations (DG NEAR). [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/turkiye\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/turkiye_en)

<sup>16</sup> Akgul, A., Akbas, H., & Kule, A. (2019). Probation system in Turkey: an analysis of a public policy formation using multiple streams framework. *International Journal of Comparative and Applied Criminal Justice*, 43(4), 325–340. <https://doi.org/10.1080/01924036.2019.1578673>

<sup>17</sup> Canton, R. (2010). European probation rules: What they are, why they matter. *EuroVista: Probation and Community Justice*, 1, 62–71.

<sup>18</sup> Mandiraci, B. (2015). Penal policies and institutions in Turkey: Structural problems and potential solutions. (Alex Balistreri, Trans.). Istanbul: TESEV.

<sup>19</sup> Council of Europe. (2010). 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>20</sup> Sevdiren, O. (2011). Alternatives to imprisonment in England and Wales, Germany and Turkey: A comparative study. Heidelberg: Springer Science & Business Media.

<sup>21</sup> Akgul, A., Akbas, H., & Kule, A. (2019). Probation system in Turkey: an analysis of a public policy formation using multiple streams framework. *International Journal of Comparative and Applied Criminal Justice*, 43(4), 325–340. <https://doi.org/10.1080/01924036.2019.1578673>

<sup>22</sup> European Commission. (2013). Enlargement Strategy and Main Challenges 2013-2014. [https://www.ab.gov.tr/files/ardb/evt/turkey\\_2013\\_progress\\_report.pdf](https://www.ab.gov.tr/files/ardb/evt/turkey_2013_progress_report.pdf)

<sup>23</sup> Akgul, A., Akbas, H., & Kule, A. (2019). Probation system in Turkey: an analysis of a public policy formation using multiple streams framework. *International Journal of Comparative and Applied Criminal Justice*, 43(4), 325–340. <https://doi.org/10.1080/01924036.2019.1578673>



attempt in 2016, there have been several changes in criminal law that have resulted in new laws and decrees that have blurred the lines between investigations, arrests, and the practices of probation services.<sup>24</sup> In this regard, in Turkey, “the probation system over the years has become similar to an overflowing trash bag.”<sup>25</sup>

Furthermore, the AKP, the ruling party in Turkey, has transformed the probation system into a form of penal populism.<sup>26</sup> The judicial system and the rule of law have been undermined and politicized by the government, which paved the way for increasing the intensity of authoritarianism.<sup>27</sup> In order to gain support and votes and encourage punitive populism, the governing party abused the probation system by using it as a type of amnesty and pardon in the judiciary system. They created space in the jails for the coup attempt suspects and other opposition groups by using the probation system for criminal offenders instead of political criminals. Moreover, the probation system has arisen as a “control mechanism” for suspects and defendants that can be used for suppression over especially dissenters, which causes problems for “the rule of law, individual liberties, and public trust with regard to the judiciary”.<sup>28</sup>

Emergency decrees issued between 20 July 2016, and 20 July 2018 caused the dismissals of 150,348 public servants, including judges, prosecutors, state officials, teachers, bureaucrats, medical doctors, and academics without any investigation. Many of them were arrested for the alleged link with the Gulen Movement.<sup>29,30</sup> Although the CoE Committee of Ministers particularly recommended countries party to the agreement, including Turkey, to adopt probation or other measures in lieu of imprisonment for first-time offenders<sup>31</sup> and it is known that the vast majority of these people dismissed has a clean criminal record, the Turkish government has chosen to imprison these people. This situation demonstrates that a condition of authoritarianism has developed in Turkish political life and its judicial system as a result of human rights violations and the court system's disregard for due process.

### III. Selective Probation Denial

Selective probation denial has surfaced in the context of the implementation of the probation system and mostly affected political dissidents and government opponents. This aspect of the issue concerns and points out not only the independence of the judiciary and impartial implementation of the system but also the human rights implications of the system.

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid, (p. 335).

<sup>26</sup> Ibid.

<sup>27</sup> Tahiroglu, M. (2020). How Turkey's Leaders Dismantled the Rule of Law. *The Fletcher Forum of World Affairs*, 44(1), 67–96. <https://www.jstor.org/stable/48599281>

<sup>28</sup> Akgul, A., Akbas, H., & Kule, A. (2019). Probation system in Turkey: an analysis of a public policy formation using multiple streams framework. *International Journal of Comparative and Applied Criminal Justice*, 43(4), 325–340. <https://doi.org/10.1080/01924036.2019.1578673>

<sup>29</sup> Gergerlioğlu, Ö.F. (2021). Imprisoned Women and Children in Turkey: Human Rights Violations Under the State of Emergency. In: Aydin, H., Langley, W. (eds) *Human Rights in Turkey. Philosophy and Politics - Critical Explorations*, vol 15. Springer, Cham. [https://doi.org/10.1007/978-3-030-57476-5\\_18](https://doi.org/10.1007/978-3-030-57476-5_18)

<sup>30</sup> Aydin, H., Langley, W. (2021). Introducing Human Rights in Turkey. In: Aydin, H., Langley, W. (eds) *Human Rights in Turkey. Philosophy and Politics - Critical Explorations*, vol 15. Springer, Cham. [https://doi.org/10.1007/978-3-030-57476-5\\_1](https://doi.org/10.1007/978-3-030-57476-5_1)

<sup>31</sup> Council Of Europe Committee of Ministers. (1965). *SUSPENDED SENTENCE, PROBATION AND OTHER ALTERNATIVES TO IMPRISONMENT*. Council Of Europe. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016804cd7b6](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804cd7b6)

## A. Focus on Political Dissidents and Human Rights Implications

The selective application of the probation system has caused some groups of people to suffer more. As a result of the so-called "changes" introduced in the immediate aftermath of the coup attempt, while a large number of prisoners serving sentences of less than 4 years were released due to the lack of capacity in prison for political criminals,<sup>32</sup> thousands of people were jailed just because of having alleged affiliation to the Gulen Movement. According to the World Population Review, Turkey is the 7<sup>th</sup> country with the number of 291,198 in terms of total prison population in the world.<sup>33</sup> Over 88 thousand more persons were put in jails and other criminal institutions between 2014 and the end of 2017, bringing the total to over 200 thousand.<sup>34</sup>

During the COVID-19 pandemic, the government set most prisoners free without receiving any amnesty. The alleged legislation set people temporarily freed from custody, confirmed their position as on leave, and imposed a new probation time formula to protect these people from the pandemic. More than 122,000 prisoners were out on COVID-19 leave. It was anticipated that this new legislation would prevent at least 70,000 of them from going back to jail. However, those charged with "crimes against the state," a broad category that is used to imprison dissidents, were exempt from these probation regulations.<sup>3536</sup>

In cases, particularly involving members of the Gulen Movement, although it was observed that the person served his sentence with good behavior and had positive motivation towards his life and family after his release, authorities did not allow this person to exercise his probation rights. Since individual responsibility and self-control consciousness in terms of staying away from crime and not committing crime again are effective in the tendency of the person to commit a crime, these people were not granted supervised probation rights on the grounds that there was not enough conviction as to whether the person had left the organization and whether he would commit crime again.

In another case, although the prisoner has not been subjected to any disciplinary action during his imprisonment; although he did not discuss anything related to the Gulen movement in his phone conversations with his wife and family; although this person claimed that the Gulen movement had caused him a lot of material and moral damage; although he said that he has no connection with this organization of which the defendant is alleged to be a member, since the Gulen movement continues that the members of this organization are experts in

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<sup>32</sup> Akgul, A., Akbas, H., & Kule, A. (2019). Probation system in Turkey: an analysis of a public policy formation using multiple streams framework. *International Journal of Comparative and Applied Criminal Justice*, 43(4), 325–340. <https://doi.org/10.1080/01924036.2019.1578673>

<sup>33</sup> World Population Review. (2023). Top 10 Countries with the most people in prison. Incarceration rates by country 2023. <https://worldpopulationreview.com/country-rankings/incarceration-rates-by-country>

<sup>34</sup> Yüksel, E. (2018, December 12). Türkiye'nin Cezaevi istatistikleri: Doğruluk Payı. Doğruluk Payı. <https://www.dogrulukpayi.com/bulten/turkiye-nin-cezaevi-istatistikleri>

<sup>35</sup> Stockholm Center for Freedom. (2023, July 6). AKP government to expand probation to release thousands from prison except political prisoners. <https://stockholmcf.org/akp-government-to-expand-probation-to-release-thousands-from-prison-except-political-prisoners/>

<sup>36</sup> Akyavaş, R. (2020, April 20). Turkey Parole Law releases thousands of prisoners – but excludes journalists. Free Turkey Journalists. <https://freeturkeyjournalists.ipi.media/turkey-parole-law-releases-thousands-of-prisoners-but-excludes-journalists/>

disguising themselves and manipulating people; the fact that these members are educated, equipped and can assume all kinds of identities, this individual was deprived of the right to probation on the grounds that there was no concrete evidence that this person had left this movement.

Additionally, turning to another case, although it was determined that a prisoner was not involved with any information and documents related to the Gulen movement, the court rejected his application for probation on the grounds that his application was evaluated and based on this evaluation, decided that his request for probation was not sincere, and he was still an active member of the movement.

In another example, although it was stated by the authorities that the prisoner had not been observed to be in any negative situation, although he had complied with the prison rules; although he regretted his involvement in the movement, and was believed to be sincere about it; although it was stated by the authorities that he adapted to the requirements of collective life and had no coercive attitudes and behaviors, the court rejected the request for probation on the grounds that it could not reach a positive conclusion that he was ready to integrate with the society and that he would not commit crime again within the scope of the organization, and that there was no definite opinion as to whether he had completely severed his ties with the organization.

All these cases demonstrate that the probation system in Turkey is not used properly as it has to be. Especially, people who are allegedly linked to the Gulen movement are deprived of their probation rights. Politically motivated judges and prosecutors have abused their legal power to serve the interest of the government based on groundless and arbitrary presumptions, instead of independent and fair judgment. This situation is contrary to the international agreements to which it is a party and points out clearly a violation of human rights.

## **IV. International Responses and Concerns**

### **A. Global Reactions and Human Rights Concerns**

Regarding the imprisonment issue, the principle of legality of decisions is not merely satisfied with the existence of domestic law.<sup>37</sup> The contracting parties to the European Convention on Human Rights (ECHR) have the obligation to ensure that the state bodies observe the principle of legality in their activities, which requires compliance with the ECHR, encompassing the rules and principles discerned thereof.<sup>38</sup>

Pursuant to the ECHR regime, Art. 5(1) ECHR protects the right to liberty subject to certain limitations and justifications according to the subsections of the provision.<sup>39</sup> Although

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<sup>37</sup> *Plesó v. Hungary* App no. 41242/08 (ECtHR, 2 October 2012), para 59.

<sup>38</sup> *Ibid.*

<sup>39</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953)(referred as the ECHR), art. 5(1) and art. 5(1)(a)-(f).



Art. 5(1) ECHR gives the right to liberty of a person, when the provision is read in alignment with Art. 5(3) ECHR, it still allows detention on remand of any person who is reasonably suspected of having committed an offense.<sup>40</sup>

Art. 5(1)(a) ECHR allows for conviction determined by a competent authority.<sup>41</sup> However, the European Court of Human Rights (ECtHR) has declared through a purposive approach that not only the initial arrest but also the detention which continues must be justified by adequate grounds.<sup>42</sup> Additionally, the duration of the detention after the conviction must be justified by the state authorities and the duration must not exceed a reasonable time.<sup>43</sup> The criterion of reasonableness should be assessed considering all circumstances of the case.<sup>44</sup> This criterion suggests that there should be a continuing need for the detention,<sup>45</sup> and the persistence of a reasonable suspicion is a *sine qua non* for the validity of continuing detention.<sup>46</sup>

In addition to the principle of lawfulness, Art. 5(1) ECHR implies and preserves the principle of proportionality and the principle of protection against arbitrariness.<sup>47</sup> The requirements that arise under the principle of arbitrariness vary depending on the context.<sup>48</sup> Probation is needed to enhance the protection of certain human rights under the ECHR regime.<sup>49</sup> Probation might be considered as a method to avoid any arbitrary detention in light of these principles.<sup>50</sup> It is considered to be a punitive mechanism, which can concurrently administer rehabilitative integration of offenders into society.<sup>51</sup>

According to the Council of Europe, there is an increase in the sanctions and measures that integrate offenders into the community in Europe between January 2021 and January 2022.<sup>52</sup> The study conducted by the Council contains data on 48 probation administrations in Council of Europe member states.<sup>53</sup> Turkey is among the probation administrations with the highest probation rates with 419 probation decisions per 100.000 inhabitants.<sup>54</sup>

Although certain countries might adopt probation as an alternative measure to imprisonment, the underlying purpose of the high amount of probation is a concern in Turkey. Such concerns stem from the fact that approximately 1 percent of Turkey's population is either

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<sup>40</sup>Jacobs, F. G., A., W. R. C., Ovey, C., Rainey, B., & McCormick, P. (2021). *The European Convention on Human Rights*. Oxford University Press.

<sup>41</sup>ECHR, art. 5(1)(a).

<sup>42</sup>*Selahattin Demirtas v. Turkey no 2* App no. 14305/17 (ECtHR, 20 November 2018), para 193.

<sup>43</sup>Jacobs, F. G., A., W. R. C., Ovey, C., Rainey, B., & McCormick, P. (2021). *The European Convention on Human Rights*. Oxford University Press.

<sup>44</sup>*McKay v. United Kingdom* App no. 543/03 (ECtHR, 3 October 2006), para 41.

<sup>45</sup>*McKay v. United Kingdom* App no. 543/03 (ECtHR, 3 October 2006), para 44.

<sup>46</sup>*Merabishvili v. Georgia* App no. 72508/13 (ECtHR, 28 November 2017), para 222; See also *Buzadji v. The Republic of Moldova* App no. 23755/07 (ECtHR, 5 October 2016), para 102.

<sup>47</sup>*Simons v. Belgium* App no. 71407/10 (ECtHR, 28 August 2012), para 32.

<sup>48</sup>*James, Wells and Lee v. The United Kingdom* App no. 25119/09, 57715/09 and 57877/09 (ECtHR, 18 September 2012) paras 191-95; Saadi v. the United Kingdom App no. 13229/03 (ECtHR, 29 January 2008) paras 68-74.

<sup>49</sup>Patel, P. (2005). Focus on the article of the ECHR. *Judicial Review*, 10(2), 303-310.

<sup>50</sup>Canton, R. (2013). The point of probation: on effectiveness, human rights and the virtues of obliquity. *Criminology & Criminal Justice*, 13(5), 577-593.

<sup>51</sup>*Ibid.*

<sup>52</sup>Council of Europe. (2023, July 6). *Significant increase in sanctions and measures without deprivation of Liberty in Europe: Space II annual statistics for 2022*. Portal. <https://www.coe.int/en/web/portal/-/significant-increase-in-sanctions-and-measures-without-deprivation-of-liberty-in-europe-space-ii-annual-statistics-for-2022>

<sup>53</sup>*Ibid.*

<sup>54</sup>*Ibid.*

imprisoned or on probation.<sup>55</sup> Council of Europe's previous studies indicate that both the imprisonment and probation ratios are simultaneously high, which demonstrates that probation is not adopted as an alternative measure.<sup>56</sup> In other words, probation has been imposed as an alternative sanction or as a tool for different purposes.<sup>57</sup> Especially, when considering the situation of people who are deprived of using their probation rights due to arbitrary and groundless pretexts, it is noticed that probation is used as a means of arbitrary enforcement by politically motivated legislative bodies and powers.

## V. Conclusion

Probation can be used as a form of punishment and control because of Turkey's political climate and legal culture, which raises serious concerns for the rule of law, individual rights, and public trust in the judiciary.

The judicial system and the rule of law have been undercut and politicized by the government, which has allowed authoritarianism to become more intense despite the fact that Turkey's criminal justice system complies with international agreements and rules regarding the criminal justice framework, legal procedures, and their implementation. The probationary period has been made into a type of punitive populism by the AKP. Additionally, the ruling party misused the probation system by exploiting it as a sort of amnesty and pardon in the judicial system in order to acquire support, votes, and foster punishing populism.

Some groups of individuals have endured greater suffering as a result of the probation system's selective application. Instead of exercising independent and impartial judgment, politically driven judges and prosecutors have exploited their authority to suit the interests of the government. Particularly, those with claimed ties to the Gulen movement were denied the opportunity to supervised probation since there was insufficient proof that they had left the group and would not commit a crime again.

Despite the fact that the ECtHR has stated through a purposive approach that not only the initial arrest but also the detention that continues must be justified by adequate grounds; the duration of the detention after the conviction must be justified by the state authorities; and the duration must not exceed a reasonable time; probation is used as a method of arbitrary enforcement by legislative bodies and powers with political motivations in Turkey.

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<sup>55</sup>Stockholm Center for Freedom. (2021, June 9). *1 Pct of Turkey's population is in prison or on probation: Study*. Stockholm Center for Freedom. <https://stockholmcf.org/1-pct-of-turkeys-population-is-in-prison-or-on-probation-study/>.

<sup>56</sup>Ibid.

<sup>57</sup>Ibid.

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