



Association For Access To Dair Trial

"Justice is the pursuit of truth."



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UN 2025 Universal Periodic Review Mechanism (UPRM) Turkey Report and Recommendations

ASSOCIATION FOR ACCESS TO FAIR TRIAL (AYHED)

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AYHED is a non-governmental organization that struggles to contribute to the development of a more just, egalitarian society where all individuals, regardless of their differences, have equal access to justice and benefit from fundamental human rights, where the rule of law prevails, where gender equality is promoted in all areas of life, and where human rights are respected and protected.




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INTRODUCTION

1. The Association for Access to the Right to a Fair Trial (AYHED), established in Turkey in 2019, carries out judicial and legal work for the protection of women/children/LGBTI+ persons, persons with disabilities, refugees, prisoners and human rights defenders whose rights and freedoms are violated in the context of human rights law, as well as strengthening local human rights organizations that struggle against human rights violations and strives for the realization of the rights to access to justice and fair trial. Since its establishment, AYHED has been receiving applications regarding rights violations in prisons and providing legal support to prisoners through its volunteer member lawyer network in many prisons in Turkey.
2. It focuses on recommendation 45.140 "*Intensify monitoring of places of detention and ensure impartial investigations into all allegations of torture and ill-treatment in line with the zero-tolerance policy on torture*", which was made under the heading Conditions of Detention in the previous Universal Periodic Review, Cycle 3, 2020. After Cycle 3, there have been negative developments in the conditions of detention in prisons and the penitentiary system. Law No. 7242 on the Amendment of the Law on the Execution of Criminal and Security Measures and Certain Laws (Coronavirus Measures), which entered into force after being published in the Official Gazette dated 15.04.2020 and numbered 31100, made amendments and tightened the conditions for good behavior by making changes to the rules for evaluating the good behavior of the convict. With the Regulation on Observation and Classification Centers and Evaluation of Convicts issued by the Ministry of Justice in line with this law and published in the Official Gazette on December 29, 2020, Prison Administrative and Observation Boards were established and evaluation decisions were made on the conditional release of prisoners. With these evaluation decisions, "arbitrary" decisions that violate the principle of legality and discrimination according to the types of crimes of prisoners have been made.

EXECUTIVE SUMMARY:

3. In this presentation, it has been observed in our field studies that due to the amendment of the Penal Execution Law in Turkey and the organizational structure of the Administrative and Observation Boards established by the Regulation issued accordingly, the prohibition of discrimination and the principle of legality are violated in violation of the basic principles determined in the execution practice in Turkish prisons and that political prisoners do not benefit from the right to conditional release under various pretexts even if they are in good behavior.

AYHED has organized a network of 25 volunteer lawyers in prisons in Diyarbakır, Çanakkale, Gaziantep, Yozgat, Karabük, İstanbul, Afyon, İzmir, Ankara, Tekirdağ, Bolu, Elazığ, Diyarbakır, Çanakkale, Gaziantep, Yozgat, Yozgat, Karabük, İstanbul, Afyon, İzmir, Ankara, Tekirdağ, Bolu, Elazığ as a result of personal visits and first-hand data collected from prisoners' attorneys and judicial institutions; It focuses on the legal situation and data of prisoners who are not benefited from the right to Conditional Release on abstract and arbitrary grounds despite the completion of their execution in prisons in Turkey, and on the evaluations and solution proposals regarding the violation of the right to Liberty and Security of Person and the legality of these decisions on the basis of the violation of the principles of Discrimination and Legality by the decisions of Administrative and Observation Boards.

CASES WHERE GOOD BEHAVIOR IS REQUIRED FOR CONDITIONAL RELEASE IN EXECUTION OF SENTENCE AND LEGAL LEGISLATION

- 4- Article 89 of the current Law on Execution of Sentences entitled "Evaluation of convicts and determination of good behavior" currently reads as follows "(1) At all stages of their stay in penal execution institutions, convicts shall be evaluated by the administration and observation board every six months at the latest as a basis for the determination of good conduct by the administration and observation board on whether they comply with the rules established for the order and security of penal execution institutions, whether they exercise their rights in good faith, whether they fulfill their obligations completely, whether they are ready to integrate into society according to the improvement programs implemented, whether the risk of re-offending and harming the victim or others is low. (2) In the evaluation to be made pursuant to the first paragraph, the improvement and education-training programs, sports and social activities, culture and art programs, certificates received, reading habits, relations with other convicts and detainees, penal execution institution officials and the outside, remorse for the crime committed, compliance with the rules of the penal execution institution and the working rules within the institution and disciplinary penalties taken are taken into consideration."

SOME EXAMPLES OF ADMINISTRATIVE AND OVERSIGHT BOARD DECISIONS IDENTIFIED BY THE AYHED VOLUNTEER LAWYER NETWORK;

- 5- Administrative and Observation Board's assessment of a political prisoner sentenced to 9 years imprisonment in Diyarbakır High Security Closed Prison No. 1 "According to the letter

reading unit, it was determined that he exchanged letters with active members of the organization in other prisons, according to the records of the telephone unit, it was determined that he talked about the penal execution institution as "these infidels are making something up later, your sentence is over, they don't let you out", it was concluded that he may engage in organizational activities if he is released, he is not ready to integrate with society, and that improvement efforts should continue."

- 6- **Çanakkale E Type Closed Penal Institution, sentenced to 8 years and 9 months of imprisonment, justification for the decision to postpone the sentence for 6 months:** "Following the amendment of the Law No. 5275 with the Law No. 7242, the convict filed a petition of objection to the time limit despite knowing that the amendments did not cover terrorism offenders, filed a complaint to the execution judge, wanted to put his divorced ex-wife on the visitor list, complained to the execution judge when he was not accepted, his objections were rejected, he filed a criminal complaint to the prosecutor's office with the claim that the personnel working in the execution office did not send his petitions, KYOK was given in the investigation, the convict abused and abused the right to petition defined in the Constitution."
- 7- **Yozgat T Type Closed Prison No. 1, sentenced to life imprisonment, reason for 3 months postponement:** "He was not in a position to evaluate anyone about Abdullah Öcalan, he would only answer questions about himself, he would comment on the question "Is Abdullah Öcalan a traitor?" about himself, in case he was released, his life energy was low, his motivation for attitude and behavior change was low,,,,, the convict did not have any petition to move to the neutral ward..."
- 8- **The reason for the 3-month postponement decision for the convict sentenced to 14 years and 39 months in Karabük T Type Closed Prison:** "The convict's problem solving skills are limited, he does not have a regular family and social environment, the effort and willingness to participate in basic education courses, programs such as courses, training, ward lessons and moral education and guidance studies carried out by the spiritual guidance unit are low, ..."
- 9- **The reason for the 6-month postponement for the convict, who was sentenced to life imprisonment in Sincan Women's Closed Prison:** "Not facilitating the work of the wardens during ward searches, the existence of investigations against her on charges of illegal

organization propaganda and illegal organization membership, not attending the board meeting and not participating in the rehabilitation programs offered by the prison."

- 10- **The reason for the 6-month postponement decision of the convict sentenced to life imprisonment in Bolu F-type High Security Closed Penal Execution Institution:** "It was seen that the lighting lights of the room were unnecessarily lit during daylight hours, the convict did not comply with the saving measures and did not use his rights in good faith,"
- 11- **The reason for the 3-month postponement decision of the convict who was sentenced to 6 years and 3 months in Elazığ T Type Closed Penal Execution Institution:** Although the observation reports prepared for the convict are positive, although there has been no action that requires a disciplinary offense in the last 3 months, it has been determined that the convict stays away from the discourse that the PKK is a terrorist organization, acts as if he has never known, denies the crime, does not regret the crime he committed, cannot contribute to the development of the convict, and as such, the perception of crime has not been formed."
- 12- **The reason for the 8-month postponement for the convict who was sentenced to 15 years, 30 months and 15 days in Şakran Women's Closed Penal Institution:** "She is illiterate, she did not participate in any activities during her stay in the institution such as ceremonies and commemoration programs on national and religious days, she did not use the institution's library, she did not participate in programs and guidance activities such as courses, training, ward lessons and moral education carried out by the spiritual guidance unit."

EVALUATION

VIOLATION OF THE PROHIBITION OF DISCRIMINATION:

- 13- Law No. 7242, on the one hand, tightened the conditions for good behavior, and on the other hand, made a series of changes in terms of some types of crimes (**judicial crimes**), such as early release to open prison and leave from open prison, and many convicts were released from prison en masse and rapidly. In terms of these types of crimes, it is possible to say that while the chance of release was given regardless of good behavior, in terms of some types of crimes (**political crimes**), especially constitutional crimes, the conditions of good behavior were tightened, making it more difficult to leave prison and aggravating the punishment in terms of execution, in other words, it is possible to say that there is no equal

approach among prisoners, some are treated with prejudice and some are indifferent to whether they will re-offend or not. When the determinations made by us and the decisions of the Administrative and Observation Boards are examined, it is clear that the principle of EQUALITY, which is the basic principle in the Execution Law, is not taken into consideration and discriminatory practices are practiced against political prisoners.

VIOLATION OF THE PRINCIPLE OF LEGALITY;

14- In the decisions of the Administration and Observation Board, it was claimed that the prisoner was in the same ward with the persons convicted for the same type of crime as him and that he was in a biased ward with a definition that is not in the law. However, Articles 23 and 24 of the Law No. 5275 on the Execution of Criminal and Security Measures regulate the classification of prisoners into groups when they are admitted to the institution. According to this classification, there is a separate classification as "terror crimes" and it is a legal obligation that prisoners in the same crime types stay in the same prison and in the same wards reserved for these crime types. It is at the discretion of the Prison Administration which prisoner will stay in which ward and with which prisoner. While the prison administration decides to keep prisoners with the same crime types in the same wards as a legal obligation and can change this decision at any time, the Administration and Observation Board makes negative evaluations in the conditional release evaluations on the grounds that the prisoner stays in a "biased" ward in the same ward with prisoners with the same crime types. In the Turkish Penal Execution System, there is no such system as a biased ward in the functioning of the prison administration. This evaluation is "arbitrary" and clearly violates the principle of legality.

15- In a situation where good behavior is not granted on the grounds that the convict does not adapt to the prison order, it is a requirement of the principle of justification to reveal the concrete reason for the incompatible behavior of the convict. If there is no concrete reason, the decision should be defined as a violation of the law, not as a discretion. According to Turkish legislation, all judicial and administrative decisions must be justified. **Although the fact that the prisoner did not benefit from the effective remorse provisions in the criminal proceedings in which the original crime for which he was convicted was the subject of the trial was not "not counted among the criteria for good behavior", the fact that the Administrative and Observation Board relies on this justification in its decisions to reject conditional release is an "arbitrary attitude" and constitutes a violation of the principle of**

legality. In addition, "being asked to submit a written petition stating that he/she left the organization or regretted it" at the time of the release of the prisoner who is in good behavior and entitled to conditional release is not counted among the criteria for being in good behavior, and not releasing the prisoner on this ground clearly violates the principle of legality.

16- According to the data released by the Ministry of Justice on June 12, 2024, the number of convicts who were found to be in good behavior by the Administrative and Observation Boards in 2024 was 119,000, while 8,521 convicts were rejected for good behavior. However, according to the data of the Ministry of Justice dated July 1, 2024, the number of people held in prisons in Turkey is 342,526 and therefore the number announced by the Minister cannot be accurate. For this reason, the Minister's statement at the meeting that "we see that 94% of the decisions are positive" does not make any sense. In its one-year prison report released on June 1, 2024, the Human Rights Association stated that at least 426 prisoners were prevented from being released periodically from the date the Regulation was implemented until the end of 2023.

RECOMMENDATIONS ;

17- First of all, **the differences in conditional release and probation provisions between judicial crimes and political crimes should be abolished.** In addition, if the purposes of execution defined in the Law are to be achieved, all the facilities that judicial offenders benefit from, such as crowded wards, social activities and video calls, should be applied to political offenders without discrimination. The isolation conditions of political offenders in high security prisons should be ended.

18- The Prosecutor should not take part in the Prison Administration and Observation Boards established to determine good behavior, it should be transformed into a purely administrative structure, **and representatives from the Bar Association and Human Rights Organizations should also take part in this board.**

19- -The convict's lawyer should be allowed to attend the meeting of the Administration and Observation Board regarding the determination of good behavior, if he/she wishes to do so.

- 20- **After appealing to the Execution Judge and the High Criminal Court against the report on well-being, the possibility to apply to legal remedies such as Appeal and Appeal should be introduced**, and all these decisions should be examined by the Supreme Court of Appeals as files to be examined as a priority in order to ensure equal application in all prisons.
- 21- **The criteria introduced into the law after 2020, which are ambiguous and open to interpretation, should be abolished, and** the pre-2020 criteria (sincerely obeying the rules set for the order and security of the prison, exercising their rights in good faith, fulfilling their obligations completely, being ready to integrate into society) should be reverted to.
- 22- Whatever the criteria, decisions should not be made based on the subjective opinions of the members of the Administrative and Monitoring Board, including their own political views and prejudices, and the Ministry of Justice should constantly monitor the decisions of this board, which is an administrative structure.
- 23- Particularly **in terms of political crimes, questions that force political prisoners to admit guilt and feel remorse should not be included in the committees**, and the committees should not work like a special court established to keep political prisoners in prison longer.
- 24- **Special reasons such as the illness and age of prisoners should also be taken into consideration when determining good behavior, and the determination of good behavior and** the non-application of conditional release should not constitute a new obstacle to the right to access to health for ill prisoners.