Stichting Justice Square

REPORT

THE PROBLEMS EXPERIENCED IN THE SUPERVISED RELEASE SYSTEM TURKEY

Unlawful and Discriminatory Practices

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ABOUT US

Stichting Justice Square, founded by Turkish lawyers in Amsterdam, the Netherlands, is a non-governmental organisation that works to raise awareness about basic human rights and rights violations and to fight against them.

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INTRODUCTION

Unlawful and discriminatory state practices, which have become a state policy in Turkey since the 15 July coup attempt, are manifested in various ways in society and state institutions. It has been confirmed by many judgements of the ECtHR that especially political investigations and terrorism trials are concluded with a trial method that is far from the Constitution and universal legal principles. The most prominent these judgements is the Yalçınkaya v. Turkey judgement.[1][2] With the Yalçınkaya judgement, which is an explicit depiction of the ambiguities and arbitrariness in terrorism trials in Turkey, the ECtHR has shown how wrong the Turkish judiciary is in terms of terrorism trials and called for an immediate return to the law. The judgement, which is a turning point and a milestone for the Turkish judiciary and recent terrorism trials, ruled that there had been systematic violations of the principle of legality of offences and punishments under Article 7 and the right to a fair trial under Article 6 of the ECHR.

Unfortunately, many judgements rendered as a result of systematic violations of the Constitution, the ECHR and universal legal principles by the Turkish judiciary have been finalised with the boilerplate reasoning and inadequate justification by the Regional Courts of Appeal and the Court of Cassation. On the other hand, the execution process of these finalised unlawful judgements is also subjected to unlawful and discriminatory practices. It is seen that systematic, planned, unlawful, arbitrary and discriminatory regime practices and decisions have been made in prisons for those whose convictions have been finalised in terrorism trials, especially those belonging to the Gülen Movement.

Convicts of terror crimes are deprived of many rights, especially supervised release and conditional release, in an arbitrary, unlawful, systematic and planned manner in violation of the Constitution and the ECHR. People are prevented from being released from prisons on the grounds of the State of Emergency and some regulations enacted afterwards.

This study, conducted under the auspices of **Stichting Justice Square**, will examine the arbitrary, unlawful, systematic and planned discriminatory practices against terrorism convicts in Turkey, especially in prisons, within the framework of existing national and international legislation. The study will particularly focus on the rights violations arising from the fact that, according to the Law on the Execution of Criminal and Security Measures No. 5275, terrorism convicts, who have one year or less left until their conditional release, are prevented from spending the part of their sentences until their conditional release outside the

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[1] Case of Yüksel Yalçınkaya v. Turkey, Application no. 15669/20, 26.09.2023, https://hudoc.echr.coe.int/eng#{%22appno%22:[%2215669/20%22],%22itemid%22:[%22001-227636%22]}

[2] Popova, Maria: ¨Teacher Yüksel Yalçınkaya v. Turkey¨, 27.12.2023, https://brokenchalk.org/teacher-yuksel-yalcinkaya-v-turkiye/,

prison by applying supervised release measures, due to subjective and unjustified evaluation reports or decisions of Prison Administration and Observation Boards.

Within the scope of the study, cases that are publicised and confirmed by open sources will also be included. In addition, the reports and decisions of national and international institutions and organisations on these cases will also be included where appropriate. However, it should be recognised that there are many cases beyond those mentioned in this report. However, due to the lack of sufficient open sources and the climate of fear in Turkey, victims are afraid to even share the unlawful practices applied against them, so other cases are not included in this report.

I. BASIC PRINCIPLES REGARDING THE BENEFIT OF TERROR CONVICTS FROM SUPERVISED RELEASE AND CONDITIONAL RELEASE IN THE EXECUTION SYSTEM

A. IN GENERAL

In accordance with the Constitution, laws and universal principles of law, sentences must be executed in accordance with the principle of equality in execution, prohibition of discrimination and human dignity. It is a fundamental obligation of the state to ensure that convicts serve their sentences without discrimination and under humane conditions. Although this is the general rule, unfortunately, in Turkey, many convicts whose sentences for terrorism offences are finalised are victimised by not being allowed to benefit from supervised release and even in some cases conditional release[3] rights due to the evaluation reports arbitrarily issued by prison administrations stating that "*the convict is not in good behaviour*".

Law No. 7242, which entered into force on 15 April 2020, made significant amendments to fundamental laws such as the Turkish Penal Code (TCK), the Criminal Procedure Code (CMK), the Law on the Execution of Criminal and Security Measures (Execution Law) numbered 5275, and the Law on the Sentence execution judge.[4] With this Law, which also aims at emptying prisons, regulations in favour of convicts convicted of offences other than terrorism offences and against convicts convicted of terrorism offences have been included.[5]

With the Law No. 7242, Articles 14, 89 and 105/A of the Law No. 5275 on the Execution of Criminal and Security Measures have been amended and the conditions required for the execution of the part of the sentences of terrorist convicts until the date of conditional release by applying parole measures have been added. The provisions of the Law No. 4675 regulating the establishment and powers of the judgeships of execution have also been rearranged and the authority to make decisions on conditional release has been taken from the Heavy Criminal Court consisting of three judges and given to one-person judgeships of execution.

As it is known, after 15.07.2016, the Turkish government and the judiciary started intensive investigations and prosecutions against the so-called "FETÖ" and so far, approximately 150.000 people including members of judiciary, journalists, academics, teachers, doctors, tradesmen, housewives, students, etc. have been convicted as terrorism

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[3] In this study, the term "**parole**" is used to collectively refer to both "**supervised release**" and "**conditional release**" as applied in Turkish law. In cases involving terrorism-related offenses, supervised release allows for the early release of convicts up to one year before they become eligible for conditional release. Individuals benefiting from supervised release are subjected to various obligations and restrictions.

[4] Official Gazette, Law on the Amendment of the Law on the Execution of Criminal and Security Measures and Some Other Laws, Law No. 7242, Date of Adoption: 14/4/2020, resmigazete.gov.tr/eskiler/2020/04/20200415-16.htm

[5] MEDEL: ¨Conditional Release and De Facto Criminal Courts in Turkey¨ https://medelnet.eu/wp-content/uploads/2024/05/conditional-release-report.pdf

offenders.[6] With the Law No. 7242, important amendments were made to many laws, especially the Law No. 5275 on the Execution of Criminal and Security Measures. At this point, it is thought that the purpose of these regulations, which complicate the supervised release process of those who have 1 year or less to be released on conditional release and give wide and arbitrary discretionary rights to the prison administration and observation boards, is to prevent the legal rights of these people.

B. CONDITIONS OF SUPERVISED RELEASE AND CONDITIONAL RELEASE FOR TERROR CONVICTS UNDER TURKISH LAW

Conditional release is an institution that enables the convict, who has served a part of sentence of imprisonment with good behaviour and in compliance with the rules specified by the law, to be released by a decision to be taken by the authority before he/she completes the entire period of imprisonment, provided that it is withdrawn if he/she does not comply with the conditions imposed, and thus to return to outside life or to facilitate the transition to this life.[7] The system that allows the convict to leave the penal institution before the date of conditional release is *supervised release*. Article 105/A of the Law No. 5275 on the Execution of Criminal and Security Measures regulates the general conditions of supervised release.

The conditions for the execution of the part of the sentences of the convicts convicted of terrorism offences until the date of conditional release by applying the supervised release are regulated in Articles 14, 89, 105/A of the Law No. 5275 on the Execution of Criminal and Security Measures and Article 6/ç of the Regulation on Separation to Open Penal Execution Institutions. Conditions for supervised release:

1- Having one year or less remaining until eligibility for conditional release,

2- Meeting the requirements for transfer to an open prison,

3- Being determined to have exhibited good behaviour by the Prison Administration and Observation Board,

4- Being found to have severed ties with the organization to which they belonged, as determined by a decision of the Administration and Observation Board,

5- Submitting a request for the application of the supervised release measures, and

6- A decision being rendered by the execution judge located in the jurisdiction of the Chief Public Prosecutor's Office responsible for the execution of the sentence.

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[6] ""Minister Tunç Explained July 15", 13.07.2023, https://www.adalet.gov.tr/bakan-tunc-15-temmuz-u-anlatti

[7] Dönmezer, Sulhi / Erman, Sahir: Theoretical and Practical Criminal Law, DER publications, 14th edition, Istanbul, 2020, Volume III, p.285

As it can be understood from the above conditions, terrorist convicts who have one year or less to be conditionally released must firstly meet the necessary conditions to be allocated to an open prison. The most important condition for leaving to open penitentiary is that the prison administration and observation board should decide that the convict is in *good behaviour*.

According to Article 14 of the Law No. 5275 on the Execution of Criminal and Security Measures, *"The departure of convicts from closed penal execution institutions to open penal execution institutions is decided as a result of the "good behaviour assessment" made in accordance with Article 89. The decisions of the administration and observation board regarding the separation of those convicted of terrorist crimes, crimes of establishing, leading or being a member of an organisation, crimes committed within the scope of organisation activities from closed penal execution institutions to open penal execution institutions shall be implemented after the approval of the execution judge."*

According to Article 89 of the Law No. 5275 According to Article 89 of the Law No. 5275, the prison administration and observation board shall, at least once every 6 months, review the improvement and education and training programmes, sports and social activities, cultural and artistic programmes, certificates received, reading habits, relations with other convicts and detainees, penal execution institution officials and the outside world, The court evaluates whether the following 5 conditions are fulfilled and makes a decision on whether the convict is in good behaviour or not, taking into account his regret for the crime he committed, his compliance with the rules of the penal execution institution and the working rules within the institution and the disciplinary penalties he received. These conditions are as follows;

1. Sincerely obeying the rules set for the order and security of penal execution institutions,

2. Do not use your rights in good faith,

3. Having fulfilled their obligations in full,

4. Readiness to integrate into the society according to the implemented rehabilitation programmes and

5. Low risk of reoffending and harming the victim or others.

Therefore, in order for the convict to be allocated to an open prison, to benefit from the provisions regarding the execution of the sentence by applying supervised release and conditional release, a decision must be made by the prison administration and observation board that he is in good behaviour as a result of the evaluation made in accordance with the conditions written above.

Pursuant to Article 89 of the Law No. 5275 and Article 22 of the Regulation on the Administration of Penal Execution Institutions and the Execution of Punishment and Security

Measures Pursuant to Article 89 of the Law No. 5275 and Article 22 of the Regulation on the Administration of Penal Institutions and the Execution of Penalties and Security Measures; Under the chairmanship of the chief public prosecutor or the public prosecutor to be designated by the chief public prosecutor, it consists of the director of the institution, the second director in charge of observation and classification, a member of the monitoring board designated by the chief public prosecutor, an expert appointed by the provincial or district directorates of the Ministry of Family and Social Services and the Ministry of Health, an administrative officer, a prison physician, psychiatrist, a psychologist and a staff member from other titles working in the psycho-social assistance service, a teacher, a chief officer of execution and protection, an officer selected by the director of the institution from among the technical staff.

Article 16 of the Regulation on Observation and Classification Centres and Evaluation of Convicts regulates the principles of examination and evaluation of the prison administration and observation board;

" (1) At all stages of their stay in penal execution institutions, convicts shall be subjected to an evaluation by the administration and observation board as a basis for the determination of good behaviour in terms of whether they comply with the rules set for the order and security of penal execution institutions, whether they exercise their rights in good faith, whether they fulfil their obligations completely, whether they are ready to integrate with the society according to the improvement programmes implemented, whether the risk of re-offending and harming the victim or others is low.

(2) In the evaluation, education and training, psycho-social assistance and support programmes, social and sportive activities, cultural and artistic programmes, certificates, 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, compliance with obligations, contribution to the security and order of the institution, disciplinary penalties and awards are taken into consideration.

(3) A "development assessment report" shall be prepared by the management, education and training, psycho-social assistance and security and surveillance services for the convicts whose stay in the penal execution institution is longer than six months. However, if the last period before the date of leaving to open penal execution institution, executing the remaining sentence under supervised release *or direct conditional release from the penal execution institution is a residual period, the evaluation of this residual period is made according to the observation evaluation report prepared by the relevant services.*

(4) An "observation evaluation report" shall be issued by the administration, education and training, psycho-social assistance and security and surveillance services for convicts whose stay in the penal execution institution is more than 60 days and less than six months. However, only the administration and psycho-social assistance services shall prepare an observation evaluation report for the convict whose stay in the penal institution is less than 60 days.

(5) The administration and observation board shall decide on the convict according to the observation assessment and development assessment reports, risk assessment report and all information and documents in the execution files, the details of which are discussed in detail in Articles 30-34. During this evaluation, the boards may interview the convict upon request or ex officio.

(6) The administration and observation board may decide to conduct an investigation or research or to prepare a report about the convict at the last meeting where the evaluation is made before leaving to an open prison and executing the remaining sentence under supervised release *measures or conditional release."*

According to Article 17 of the Regulation on Observation and Classification Centres and Evaluation of Convicts;

" The decisions of the Board shall be written with justification; the way, authority, duration and form of appeal against the decision shall be clearly stated in the decision. In case it is decided that the convict is not in good behaviour in the evaluation regarding separation to open penal execution institution, execution of the remaining sentence by applying supervised release *measures and direct conditional release from the penal execution institution, the date of the next evaluation to be made about the convict shall be clearly stated in the decision. The re-evaluation period cannot be less than three months and more than one year. The rehabilitation plan prepared by the psycho-social assistance service and education and training service for the convict about whom a negative decision is made shall be revised and notified to the convict.*

The reasoned decision of the administration and observation board, which includes the positive good behaviour assessment based on leaving to open penal execution institution, execution of the remaining sentence by applying supervised release *measures and direct conditional release from the penal execution institution, replaces the "reasoned report" written in the eleventh paragraph of Article 107 of the Law No. 5275 and the "evaluation report" and "good behaviour decision" specified in the relevant regulations."*

As it can be understood from the provisions of the Regulation, convicts are subjected to an evaluation by the administration and observation board at all stages of their stay in penal execution institutions, as a basis for determining their good behaviour, whether they comply with the rules set for the order and security of penal execution institutions, whether they use their rights in good faith, whether they fulfil their obligations completely, whether they are ready to integrate into society according to the improvement programmes implemented, whether the risk of re-offending and harming the victim or others is low. These evaluations shall be made within the framework of social, cultural and educational programmes in which convicts participate at all stages of execution duration. In the same way, the convict's remorse for the offence committed, his/her compliance with the rules of the penal execution institution and the working rules within the institution, compliance with obligations, contribution to the security and order of the institution, the disciplinary penalties and rewards received will also be taken into consideration in this evaluation.

These principles set out in the Regulation are the criteria for the prison administration and observation board to make objective evaluations free from arbitrariness. In addition, these evaluations must be based on the information and documents in the convict's file and the decision must be justified. These issues are also a necessity in order to carry out a review of legality and to use the effective appeal process.

C. THE LEGAL NATURE OF THE DECISIONS ON THE DETERMINATION OF THE CONVICTS' SEPARATION FROM THE CRIMINAL GROUP THEY BELONG TO (CONFIRMATION OF SINCERITY)

Article 6 of the Law No. 5275 regulates the principles to be observed in the execution of prison sentences and states that the constitutional rights of convicts may be restricted in accordance with the rules stipulated in this law, without prejudice to the basic purposes of execution, and that the principles of legality and compliance with the law shall be taken as basis in the execution of the sentence and in the efforts for improvement in order to ensure the inviolability of the rights of the convict recognised by law and regulations. However, despite these basic principles in the Law on the Execution of Sentences, in order for terrorism offenders to be transferred from closed to open prisons, and thus to benefit from the provisions on the execution of the sentence and conditional release by applying supervised release**,** in addition to the conditions in the law, Article 6/ç of the Regulation on Separation to Open Penal Execution Institutions stipulates *that "**it must be determined by the decision of the administration and observation board that they have left the criminal group they belong to***".

In addition to this additional condition that makes it difficult for terrorism offenders to be transferred to *open prisons*[8], a new condition was introduced in practice with the letter dated 20.04.2015 and numbered 66607 of the Ministry of Justice, General Directorate of Prisons and Detention Houses, and convicts were asked to declare with a petition that they had left the organisation or had become neutral.

However, according to the seventh paragraph of Article 10 of **the Regulation on Separation to Open Prisons**, *"Even if the convicts do not request, if there is no risk in their accommodation in open institutions and if they meet the conditions specified in this Regulation**, they are sent to open prison institutions ex officio** by the Chief Public Prosecutor's Office upon the decision of the administration and observation board on separation to open institutions***.", it is possible for the administration and observation board to make an ex officio decision that convict has left the organisation or has no ties with the organisation.

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[8] An open-type correctional facility with minimal security measures, allowing eligible inmates certain freedoms such as work release and weekend leaves.

Therefore, if the convict meets the conditions for leaving to an open prison, it is possible to take ex officio action without the need for the convict to make a written or verbal declaration that he/she has left the criminal group or that he/she has no ties with the criminal group and therefore without the need for him/her to request to leave to an open prison.[9] Otherwise, imposing an additional burden that is not included in the law on a convict who is in good behaviour, who has no disciplinary penalty, who has fulfilled the time requirement for leaving to open prison, and who is considered to have a low probability of committing a crime after being released from closed prison would clearly contradict the principle of legality and the hierarchy of norms.[10] This is because there is no provision in the Law that obliges convicts to declare that they have left the organisation or that they have become neutral and therefore to move to an independent ward with a petition. As a matter of fact, in a decision of the Court of Cassation[11] *"...in the grouping of convicts and their accommodation in prison, the prison administration has the right of discretion within the scope of Articles 24 and 63 of the Law No. 5275 and Article 57/1 of the Regulation on the Administration of Penal Execution Institutions and the Execution of Punishment and Security Measures. It is not necessary to move the convict to a ward independent from the ward where the convict is in order to ensure the condition of determining by the decision of the administration and observation board that the convict has left the organisation they belong to, which is necessary for the separation of those convicted of terrorism offences, and that there is no legal obligation in this direction..."*. [12]

II. RECENT CHALLENGES IN THE EXECUTION OF SENTENCES OF TERROR CONVICTS

As a requirement of the rule of law, a convict who is in good behaviour, who has no disciplinary penalty, who has fulfilled the time requirement for leaving to an open prison, and who has no concrete determination that he/she has and/or continues to have ties with an criminal group, should be decided to leave to an open penal execution institution without

[9] Şen, Ersan/ Başer, Berkün Beyza: "How to Determine that the Convicted Person Quit the Criminal Group?", 18.11.2020, https://sen.av.tr/tr/makale/hukumlunun-orgutten-ayrildigi-nasil-tespit-edilir

[10] Aras, Bahattin / Güverçin, Sezgin: Execution Law, Yetkin Publishing, Ankara, 2024, p. 44; Gökçe, Fatih: "The Practice of Probation in the Execution of Organized Crime Sentences and the Problems Encountered in Practice", Ankara Bar Association Journal, Year 2023, No. 1, p. 314

[11] Court of Cassation 1st CD, 2021/10147 E., 2021/12401 K., 17/09/2021 T; 1st CD, 2021/12405 E., 2021/14618K., 03/12/2021 T

[12] Court of Cassation 1st CD., 2021/12405E., 2021/14618K., 03/12/2021 T; 1st CD., 2021/12585E., 2021/14861K., 10/12/2021 T

seeking any other condition.[13] In the execution process, convicts must be able to benefit from their rights in accordance with the constitutional principle of equality and the prohibition of discrimination. This issue is under the obligation of the state. Although these issues are guaranteed in the constitution and laws, it is seen that discriminatory practices, especially against convicted and detained persons convicted of terrorist offences, have turned into a state practice in practice. In the following sections, the problems experienced in prisons, especially with regard to supervised release and conditional release, will be analysed with grave cases.

A. PROBLEMS ARISING FROM THE DECISIONS ON THE DETERMINATION OF CONVICTS' LEAVING THE AFFILIATED CRIMINAL GROUP

These regulations, which are contrary to the principle of legality pursuant to Article 38 of the Constitution and the principles to be observed in the execution of prison sentences in Law No. 5275 and which only make the conditional release of terror offenders more difficult, have brought many legal problems and differences in practice.

While the accusation of membership of an illegal organisation can only be determined by a judicial decision, how will the prison administration and observation board, which is an administrative board, determine whether the convict has left the organisation as a basis for the assessment of good conduct? The Regulation does not regulate how and according to which criteria the administrative and observation board will evaluate the convict's leaving the organisation. This situation has led to conflicting decisions of the prison administration and observation boards, which vary from prison to prison.[14]-[15]

As MP Ömer Faruk Gergerlioğlu explained in the UMT, people are prevented from being released and regaining their freedom on irrational, tragicomic grounds such as *"You used too much water, you danced, you sang songs, you read too many books, you did not take the ALES exam, you did not break away from your friends*" [16]

For example, a convict who was sentenced to 6 years and 3 months in prison on charges of being in contact with the Gülen Movement and who did not want his name to be disclosed, requested his release on supervised release one year before his conditional release after completing his sentence with good behaviour and without any disciplinary penalties.

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[13] Şen, Ersan/ Başer, Berkün Beyza: "How to Determine that the Convicted Person Left the Organisation?" 18.11.2020, https://sen.av.tr/tr/makale/hukumlunun-orgutten-ayrildigi-nasil-tespit-edilir

[14] Sümer, Arif Emre: "Evaluation of the Discriminatory Regulations on the Execution Regime for Organised Crimes in the Light of the Constitutional Court Decisions," Journal of Selçuk University Faculty of Law 30, no. 2 (2022): 652

[15] Şen, Ersan/ Başer, Berkün Beyza: "How to Determine that the Convict Left the Organisation?" 18.11.2020, https://sen.av.tr/tr/makale/hukumlunun-orgutten-ayrildigi-nasil-tespit-edilir

[16] Journal of Minutes of the Grand National Assembly of Turkey, 13th Session, 27 October 2022 Thursday, https://www5.tbmm.gov.tr/tutanak/donem27/yil6/ham/b01301h.htm

However, Tekirdağ T Type Prison Administration and Observation Board rejected the request of a convict who wanted to benefit from supervised release, considering the letters he wrote to Hürriyet and Karar Newspaper writers Sedat Ergin and Taha Akyol about the rights violations he experienced. In its decision, the Board also considered the letter written by the same convict to Namık Kemal Varol, then Deputy Director General of Prisons and Detention Houses, as *'criminal activity'*.

Tekirdağ T Type Prison Administration and Observation Board stated in its rejection decision that *"Although no crime and criminal elements were found in the content of the letters, the convict continues to be in contact with the members of the organisation and it is believed that he has not left the criminal group*". The convict was deprived of his right to supervised release because he exercised his constitutional right to exchange letters, which is under the supervision of the prison administration, although he did not commit any criminal offence. Although the convict did not include any organisational statements in his letters, only his correspondence was accepted as an organisational act. At this point, the Board prevented the convict from benefiting from supervised release because of its prejudiced opinion instead of acting on evidence.

The convicts' appeals against this unlawful decision of the administration and observation board, first to the execution judge and then to the Tekirdağ 1st High Criminal Court, were rejected on the same grounds. Tekirdağ 1. High Criminal Court's rejection decision included the reasons of the Prison Administration and Observation Board and said *"As a result of the examination made by our court, with the decision of the Administration and Observation Board regarding the examination made by the institution within the file; it was determined that the convict had meetings in the form of letters with Süheyla Kılıçarslan, Ersin Kuşku, Oğuz Aslan Özen, Numan Altay, Doğan Sefer, Taha Akyol, Sedat Ergin and Namık Kemal Varol, who were convicted of the crime of being a member of a terrorist organisation, and it was accepted that the meetings with these people would be in the nature of continuing the loyalty within the scope of the organisation, and taking into account the situation that the defendant's departure from the FETÖ / PYD armed terrorist organisation cannot be determined, it* was decided to reject the objection by stating *that the decision given was in accordance with the procedure and the law.* The convict was able to be released after serving his sentence without benefiting from supervised release due to the unjust and unjustified rejection of all his objections.[17]

Another problem is that convicts who deny their affiliation with a criminal group at all stages of the trial, but who are convicted of organised crimes, are required to make a declaration that they have left the organisation, and these convicts who do not fulfil this

[17] Tr724 News, ¨Sending letters to journalists Sedat Ergin and Taha Akyol was deemed 'organisational activity'¨, 1 July 2023, https://www.tr724.com/gazeteci-sedat-ergin-ve-taha-akyola-mektup-gondermek-orgutsel-faaliyet-sayildi/

obligation cannot use their rights to leave the open prison and benefit from supervised release. Requiring convicts who do not admit to organised crime during the trial process, who deny the allegations that they belong to an organisation and/or commit crimes on behalf of the criminal group, to make a statement that they have cut their ties with the criminal group or have become neutral in order to be transferred to an open prison means that the convict retrospectively accepts the crime and is forced to make a statement against himself, which is a violation of Article 38/5. *"No one shall be compelled to make a statement incriminating himself and his relatives indicated in the law or to show evidence in this way"*.[18]

Although the regulation is based on the presumption that the courts conduct fair trials and issue convictions in accordance with the law, it is observed that the courts may issue erroneous and unlawful convictions in the light of the violation decisions of the Constitutional Court and the European Court of Human Rights after the finalisation of the conviction decision or in the light of the evidence that subsequently emerged. In this case, convicts who do not admit that they have committed the offence attributed to them, even if they fulfil all their obligations as long as they remain in prison, will never be able to leave for open prison and will not be able to benefit from supervised release and conditional release. One of the best examples of this is the case of the *"Central Park 5"*, whose TV series *"When They See Us"* was also broadcast. The conditional release requests of the defendants, who were found not to have committed the offence for which they were convicted 13 years later, were repeatedly rejected at the Parole Trial hearings on the grounds that they did not regret the offence they had committed, as they said that they had not committed the offence for which they were convicted.[19]-[20]

There are currently thousands of convicts in prisons in Turkey due to the violations in the Yüksel Yalçınkaya v. Turkey application[21] in which the Grand Chamber of the ECtHR ruled on 26.09.2023 on the merits. These convicts have not accepted the accusations of

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[18] Şen, Ersan/ Başer, Berkün Beyza: "How to Determine that the Convict Left the Organisation?" 18.11.2020, https://sen.av.tr/tr/makale/hukumlunun-orgutten-ayrildigi-nasil-tespit-edilir

[19] New York Times , ¨Youths' Denials in '89 Rape Case Cost Them Parole Chances¨, Oct. 16, 2002

[20] Wikipedia, ¨Central Park jogger case¨, https://en.wikipedia.org/wiki/Central_Park_jogger_case, ¨Ramond Santana, Antron McCray, Kevin Richardson, Yusef Salaam, 14, and Korey Wise, 16, were sentenced to 7-13 years in prison for beating and raping 28-year-old Trisha Meili, who was jogging in the woods of Central Park in New York City on the night of 19 April 1989. In 2002, when Matias Reyes confessed that he was the one who raped Meili and left her to die, and his DNA matched the semen found at the crime scene, the real culprit was revealed and the 5 young people were released. During this period, the 5 young people and their families had very difficult days and were subjected to attacks. These 5 young people have been labelled as notorious criminals and wolf packs in newspapers and televisions, and Donald Trump even took out a full-page advertisement in newspapers saying that he hated these murderers and demanded the reintroduction of the death penalty. These young people have been repeatedly denied parole hearings on the grounds that they did not commit the offence they were convicted of, that they did not regret the crime they committed¨

[21] Yalçınkaya v. Turkey Grand Chamber, B. No: 15669/20, 26/9/2023, https://hudoc.echr.coe.int/?i=001-228393 https://hudoc.echr.coe.int/tur#{%22itemid%22:[%22001-227636%22]

membership of a terrorist organisation etc. at the investigation and prosecution stages. It is both unlawful and unconscionable to say to these convicts, who have been convicted due to the ECtHR's violation decisions and who have never admitted to being a member of an criminal group, *that¨ if you want to leave prison early with conditional release, first admit that you are a member of an organisation and then convince us that you have left the organisation¨* .

Moreover, many prison administration and observation boards decide that those who petitioned to leave the organisation are not of good behaviour on the grounds that their statements are not sincere, and prevent the convicts from being transferred to open prisons and benefiting from supervised release.[22] For example, journalist Mustafa Ünal, Ankara Representative of the shut-down Zaman newspaper, was arrested on 30 July 2016 as part of the investigations launched in Turkey following the 15 July coup attempt and sentenced to 10 years and 6 months in prison on charges of illegal organisation membership.

The Administrative and Observation Board of Silivri Prison No. 9, where the sentence was executed, rejected the request of journalist Mustafa Ünal, who has no disciplinary penalties, is in good behaviour and entitled to supervised release as of 30 May 2023, to benefit from supervised release at its first meeting without any concrete justification. The Prison Administration and Observation Board rejected Ünal's statement *"I have no ties with any criminal group*" on the grounds that Ünal's statement was not *"sincere*" and that he made the statement after he was convicted and that *there was no sufficient opinion about* whether his ties with the organisation continued. In subsequent meetings, Ünal's request for supervised release was rejected on similar grounds. Ünal could only benefit from the last few months of his supervised release and was released on 30 November 2023.

As can be seen in the decision of the Administrative and Observation Board, Administrative and Observation Board decided against Ünal despite the fact that there were no concrete organisational actions and activities in Ünal's prison, no disciplinary penalties and that Ünal explicitly declared in writing that he had no ties with any organisation. However, it is clear from the acceptance of the Administrative and Observation Board that Ünal is in good behaviour and there is no determination that he continues to be in contact with the organisation. While this determination should have been evaluated in favour of the convict and therefore the convict should have benefited from supervised release, it was decided otherwise.[23]

On the other hand, if a determination is made that the person did not leave the organisation, it will have to be accepted that the convicted person committed a new crime of

[22] Decision of the Administration and Observation Board of Silivri L Type CIK Directorate No. 6 dated 26.01.2022 and numbered 2022/355

[23] Politurco, ¨Turkish journalist Mustafa Ünal, who has been imprisoned for 7 years, has been arbitrarily denied his right to parole¨, June 29, 2023, https://politurco.com/turkish-journalist-mustafa-unal-who-has-been-imprisoned-for-7-years-has-been-arbitrarily-denied-his-right-to-parole.html

membership of an organisation while in prison after his/her conviction. Because the offence of membership of an illegal organisation is a continuing offence, and the membership is interrupted with the arrest and detention of the person, and if the person re-establishes hierarchical ties with the organisation after this date and participates in activities that require continuity, diversity and intensity, the offence of membership occurs again.[24]

In this case, the prison administration and observation board, which convenes under the chairmanship of the chief prosecutor or a prosecutor and learns that a new offence has been committed, must report the offence to the competent authorities. Otherwise, they will have committed the offence written in Article 279 of the Turkish Criminal Code No. 5237. However, in practice, after the assessment that the convict has not left the organisation to which he/she is affiliated, a new accusation of membership of an organisation is not made due to the notification to the prosecutor's office and this assessment report.[25]

The legal and sufficient criterion is the low probability of re-offending. A convicted terrorist offender who is assessed to have a low likelihood of re-offending means that he/she has left the organisation to which he/she is affiliated and that it has been concluded that he/she will not keep membership again. Therefore, it would be appropriate to abolish this regulation, which is contrary to the principle of legality, unnecessary and brings with it legal debates.

The right of convicts to execute the part of their sentences until the date of conditional release by means of supervised release in order to ensure their adaptation to the outside world and to maintain and strengthen their ties with their families is prevented by the abstract and arbitrary decisions of the prison administration and observation boards on the convict's lack of good behaviour, especially in accordance with the regulation introduced by the regulation.

B. PROBLEMS ARISING FROM THE DECLERATION OF REMORSE

The criteria of *"being determined by the decision of the administrative and observation board that they have left the criminal group to which they belong"* introduced by the regulation and *"regret for the crime committed"* introduced as an additional condition with the amendment made to Article 89 of Law No. 5275 in 2020 have empowered the prison administrative and observation boards to act as de facto criminal courts, to judge the connections of convicts with so-called terrorist organisations and to use parole as a punitive measure.[26]-[27] In some cases, the

[24] 16th Criminal Chamber of the Court of Cassation, E. 2015/6443, K. 2017/995, 07/03/2017; 16th CD, 2016/7162 E., 2017/4786 K., 18/07/2017

[25] Gökçe, Fatih: "Parole in the Execution of Organisation Crimes and Problems Experienced in Practice", Ankara Bar Association Journal, Y.2023, S.1, p.337

[26] MEDEL: ¨Conditional Release and De Facto Criminal Courts in Turkey¨, https://medelnet.eu/wp-content/uploads/2024/05/conditional-release-report.pdf

[27] BBC News Turkish, ¨Why are requests for 'good behaviour release' rejected in prisons? ¨, 5 March 2021, https://www.bbc.com/turkce/haberler-turkiye-56292598

administration and observation committees even ask questions about whether the convicted person admits to the charges against him/her in the prosecution proceedings, despite the fact that he/she has a final conviction, and decide that convicted persons who do not admit to the charges are not of good behaviour.[28]

In Article 16 of the conclusions and recommendations section of the Rights Monitoring Report on Prisons in Turkey, prepared by the Human Rights Association's Central Prisons Commission in 2022, it was stated and criticised that the administrative and observation boards put themselves in the place of courts.[29]

Again, with the amendment made in 2020, the acceptance of remorse as a criterion in good behaviour decisions, which are the basis for conditional release regarding the execution regime, also contradicts the principles of Turkish Criminal Law. *Remorse* is regulated in the Turkish Criminal Code as a material criminal law institution. *Remorse* is accepted as a *personal reason* that may eliminate the possible punishment or require a reduction in the punishment. The re-evaluation of *remorse*, which falls under the substantive criminal law and is to be evaluated by the judge at the trial stage, by a prison administration and observation board at the execution stage, especially to the detriment of the convict, is also contrary to the *prohibition of double evaluation* under criminal law. In addition, since it is not clear how the declaration of *remorse* will be evaluated by the prison administration and observation board during the execution phase, it is seen that convicts are decided to be not in good behaviour with abstract decisions on the grounds that they do not regret the offence they committed.[30]

A person who does not believe being guilty cannot show remorse. Therefore, it is against both human nature and the law to expect a person who believes that he has been unlawfully convicted and has not committed a crime to regret the crime he has been convicted of, or even to go further and first admit that he has committed the crime of membership, leadership, etc. of the terrorist organisation, and then to inform the prison administration observation board that he has left the organisation he is affiliated with, in order to benefit from conditional release.[31]

One of the exemplary decisions that can be given in this context is the decision of the Elazığ Prison Administration and Observation Board on convicted lawyer Turan Canbolat. He is a lawyer registered to the Malatya Bar Association, was arrested on 27 January 2016 on the

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[28] Keskin T Type CİK. Mü.Administration and Observation Board's decision dated 29/03/2023 and numbered 2023/2602

[29] Human Rights Association, Rights Monitoring Report in Prisons 2022,

[30] Birgün, ¨YARSAV President Arslan's release request¨, 09.04.2024, https://www.birgun.net/haber/yarsav-baskani-arslan-hakkinda-tahliye-talebi-520610

[31] Khalikaprasad, Lovashni: ¨Remorse, Not Race: Essence Of Parole Release?¨, Journal of Race, Gender, and Ethnicity Volume 9 - May 2020 Touro College Jacob D. Fuchsberg Law Center, https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1063&context=jrge

grounds that he acted as a lawyer for people detained or arrested within the scope of investigations launched against the Gülen Movement. On 20 November 2017, Canpolat was sentenced to 10 years imprisonment by the Malatya 2nd High Criminal Court on charges of *"being a member of an armed terrorist organisation"*[32] . After his arrest, Canpolat was continuously subjected to unlawful practices and isolation. This issue was also raised as a question in the European Parliament.[33] He was also visited by the authorities in prison and it was stated that he should be released immediately.[34]

Lawyer Turan Canpolat, who was subjected to all unlawful practices in prison, was also prevented from benefiting from supervised release and conditional release by the Elazığ Prison Administration and Observation Board on grounds that are not in accordance with the law, although he spent the period required for supervised release and conditional release in good behaviour in accordance with the regulations in Law No. 5275.

Although Canpolat was entitled to benefit from supervised release in July 2022, had no disciplinary penalties and was in good behaviour, the Elazığ Prison Administration and Observation Board decided that he was not in good behaviour and therefore could not benefit from supervised release because he did not make *a "declaration of remorse*".

According to Article 13 titled *"Observation and classification centres"* of the Law No. 5275 and the **Regulation on Observation and Classification Centres and Evaluation of Convicts** issued pursuant to Article 89 titled *"Evaluation of convicts and determination of good behaviour"*, the upper threshold score for early recovery of convicts is 80 and the lower threshold score for good behaviour is 45. In other words; in the calculation to be made as explained above, the convict must score at least 45 points in order to be accepted as being in good behaviour, and must exceed 80 points in order to be able to leave the open institution up to 1/10 earlier.

Although Canpolat's threshold score was 66 in the rejection decision, which was given 6 days before Canpolat could benefit from supervised release, this issue was not mentioned in the decision. Therefore, although Canpolat had no disciplinary penalty as of 26 July 2022 and had the required score for good behaviour, Canpolat was not benefited from supervised release on an unlawful ground. The statement of effective remorse is taken into consideration during the prosecution phase and the person's punishment is determined accordingly. Many people who think that they have not committed a crime and therefore have nothing to express effective remorse for have been punished despite this. It is clearly unlawful for the prison administration to force a convict who has not made a statement of remorse at the trial stage to

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[32] The Arrested Lawyers Initiative: ¨Persecution of a Decent Lawyer: The Case of Turan Canpolat¨, 9 May 2020,

[33] European Parliament: Parliamentary question - E-006788/2020, Case of the lawyer Turan Canpolat in prison in Turkey, 11.12.2020

[34] Observatoire International Das Avocats: Judicial Observation Report, ¨7 th hearing in the trial of the murder of Bar President Tahir Elçi Dyarbakir - Wednesday 5 July 2023 & visit of lawyer Turan Canpolat in detention Elazig - Thursday 6 July 2023, https://protect-lawyers.org/wp-content/uploads/Rapport-Annexes-EN.pdf

make a statement of remorse at the execution stage. Moreover, the expression of remorse is not a necessary condition for the assessment of good behaviour.

The same unlawful practices as in the case of supervised release were also applied to conditional release. As in the case of supervised release, a few days before Canpolat's conditional release, the Elazığ Prison Administration and Observation Board cancelled Canpolat's good behaviour decision and prevented him from benefiting from conditional release. In the decision stating that lawyer Turan Canpolat was not in good behaviour, it was clearly stated that Canpolat met all the legal conditions, was above the threshold of the development score required by the legislation, had no disciplinary penalties, and participated in the activities offered by the prison. Despite this, it was decided that he was not in good behaviour because ***"even though he met all the conditions, he did not accept the offence attributed to him and thanked his former ward mate for helping his earthquake victim family to move".*** The Prison Administration and Observation Board based its decision on Canpolat's answer "*I did not commit a crime*" to the question *"do you regret it*" and decided that Canpolat *"does not regret the crime he committed*" and that *"he is likely to commit a crime again*" if released. Although the Administrative and Observation Board is an administrative board, it signed a decision that retried the convict on unlawful grounds. The administrative and observation board decided that Canpolat would not benefit from conditional release based on prejudices rather than concrete acts of good behaviour of the convict[35]

C. UNJUSTIFIED DECISIONS OF THE PRISON ADMINISTRATION AND OBSERVATION BOARD

Decisions of prison administration and observation boards must be justified. However, when the decisions are analysed in general, it is seen that they are not supported by concrete and controllable evidence and that the convicts are not in good behaviour by writing the regulations in the law or regulation verbatim. In many prisons, prison administration and observation boards;

- The convict did not submit a petition stating that he had left the organisation to which he was affiliated and therefore it was considered that he had not left the organisation to which he was affiliated,[36]-[37]

[35] TR724, "Lawyer Turan Canpolat's right to conditional release was also usurped", 27 July 2023, https://www.tr724.com/avukat-turan-canpolat-bir-senelik-denetimli-serbestlik-suresi-bitmesine-ragmen-hala-tahliye-edilmiyor/

[36] https://mezopotamyaajansi35.com/tum-haberler/content/view/161521

[37] Constitutional Court's Bayram Kaya Decision (2), B. No: 2020/28211, 6/10/2022; Silivri CİK Directorate Administration and Observation Board's decision dated 03.07.2020

- There was not sufficient evidence that the convict had left the organisation to which he belonged,[38]
- No concrete evidence was found that the convict had left the organisation to which he belonged, and he not share any information about the organisation,[39]
- The convict's statement that he left the organisation he was affiliated with was not sincere, and it was evaluated that his statements were misleading statements aimed at benefiting from supervised release,[40-41]
- The convict does not admit his guilt and therefore does not regret the offence,[42-43]
- The convict refused to move to an independent ward,[44-45]
- Not ready to integrate into society,[46-47]
- Risale-i Nur books from the prison library, which are not prohibited for reading,[48]

and convicts convicted of terrorism offences cannot benefit from the provisions on the execution of the sentence and conditional release by applying supervised release.

It is understood from many public complaints that, especially with the amendments made in 2020 to Articles 89 and 105/A of the Law No. 5275, which started to be implemented as of 2021, prison administration and observation boards have been using their discretionary powers in an arbitrary and manifestly unreasonable manner and making decisions about terrorism convicts as not being in *good behaviour* without any concrete justification. This situation causes serious disappointment and sadness to convicts and their longing relatives who are waiting for them to be reunited with their families and loved ones and to adapt to the

[38] Decision No. 2023/1941 dated 11.05.2023 of the Administration and Observation Board of Kocaeli T Type CIK Directorate No. 2

[39] Decision of the Administration and Observation Board of Maltepe L Type CIK Directorate No 1 dated 19.01.2023 and numbered 2023/14

[40] Silivri No. 6 L Type CIK Directorate Administration and Observation Board's decision dated 26.01.2022 2022/355

[41] Marmara No. 6 L Type CIK Directorate. Decision of the Administration and Observation Board dated 26.05.2023 and numbered 2023/4280

[42] Bianet, ¨NEW 'GOOD CONDITION' PRACTICE IN CONDITIONAL RELEASE: University students not released because they were "unrepentant", 13 January 2021, https://bianet.org/haber/universiteliler-pisman-olmamis-diye-tahliye-edilmedi-237495

[43] Keskin T Type CİK. Mü.Administration and Observation Board's decision dated 29/03/2023 and numbered 2023/2602

[44] Artı Gerçek, ¨Convicts whose sentence has expired is not released on the grounds of 'not moving to the Independent ward', 10 May 2021, https://artigercek.com/guncel/cezasi-biten-tutuklu-bagimsizlar-kogusuna-gecmedigi-gerekcesiyle-tahliye-163737h

[45] Özgür Politika, ¨70-year-old prisoner pressured to 'independent ward', 5 April 2022, https://www.ozgurpolitika.com/haberi-70-yasindaki-tutsagabagimsiz-kogus-baskisi-161551

[46] MEDEL: ¨Conditional Release and De Facto Criminal Courts in Turkey¨

[47] Eskişehir L Type CİK Directorate Administration and Observation Board's decision dated 01.02.2023 and numbered 2023/1020

[48] Tr724 News, "Supervised release denied for not reading books other than 'Risale' in prison", 22 December 2021, https://www.tr724.com/cezaevinde-risale-disinda-kitap-okumadigi-gerekcesiyle-denetimli-serbestlik-hakki-reddedildi/

outside world as soon as possible, and who comply with prison rules, do not receive disciplinary penalties, participate in rehabilitation programmes, meet the time requirement for conditional release.[49]

The European Association of Judges and Prosecutors for Freedom and Democracy (President of Magistrats Européens pour la Démocratie et les Libertés-MEDEL) published a report entitled *"Conditional Release and De facto Criminal Courts in Turkey"* on its official website, The report stated that the rights of convicted terrorism offenders in Turkey, especially after 2020, to have the part of their sentences until the date of their conditional release executed by means of supervised release were prevented by arbitrary, abstract and unjustified decisions of prison administration and observation boards acting as a de facto criminal court, and gave the case of former Constitutional Court rapporteur Murat Arslan, who was convicted in Sincan T-type prison, as an example.[50] It was stated in the report that Mr. Arslan's right to parole was denied on completely arbitrary and abstract grounds, that there was not a single material fact supporting the decisions, only abstract and unverified statements.

The President of MEDEL, the President of the Association of European Administrative Judges (AEAJ), the President of the European Association of Judges (EAJ) and the President of *Judges for Judges* wrote on 29.04.2024 to the Minister of Justice of the Republic of Turkey, stating that Mr. Arslan, despite having fulfilled all the legal prerequisites for conditional release, continues to be unjustly detained without justification, that a large number of prisoners in the Sincan Penal Institutions, including Mr. Arslan, face unjustified obstacles to conditional release, despite having fulfilled the criteria laid down by law, and that their requests
that they were rejected on unproven arbitrary grounds. It was also stated in the letter that discriminatory practices exist between prisons in Turkey, that Sincan Prison is known for its

[49] BBC News Türkçe, ¨Why are requests for 'release on good behaviour' rejected in prisons? ¨, 5 March 2021, https://www.bbc.com/turkce/haberler-turkiye-56292598; Artı Gerçek, ¨66political convicts are not released despite having completed the execution of their sentences, 21 November 2021, https://artigercek.com/guncel/haklarindaki-cezalarin-infazini-tamamlamalarina-ragmen-66-siyasi-tutuklu-tahliye-186934h; Kronos, ¨HDP requested a parliamentary investigation for "arbitrary execution burnings", https://kronos37.news/hdp-keyfi-infaz-yakmalar-icin-meclis-arastirmasi-istedi/; Bianet, ¨ŞARTLI TAHLİYDE YENİ "İYİ HAL" UYGULAMASI: University students not released because they were "unrepentant", 13 January 2021, https://bianet.org/haber/universiteliler-pisman-olmamis-diye-tahliye-edilmedi-237495

[50] Murat Arslan's application for release on conditional release was rejected in April 2023 and he was kept in prison for another year. The application for conditional release made by Arslan's lawyer on 5 April 2024 was again rejected by the Administrative and Monitoring Board. In the rejection decision, it was stated that "the convict acted in accordance with all the rules of the penal institution and was in good behaviour". However, it was emphasised that the convict was not ready to integrate into the society, did not make efforts to integrate into the society and to reach a sufficient level of recovery, and that the risk of re-offending or harming the victim or others was not low. It was also stated that no assessment was made in favour of the convict's remorse for the crime he had committed and that he would not take the risk of harming others. As a result, the right to parole was taken away on completely arbitrary and abstract grounds. There is not a single fact supporting the judgements, only abstract, unverified statements.

habit of denying parole without a valid justification, whereas other prisoners with similar backgrounds transferred to different penal institutions are granted such rights, that this discriminatory practice contradicts the principles of impartiality and equality before the law and that the parole requests of all prisoners should be handled in a fair and transparent manner.[51]

One of the thousands of members of the judiciary arrested after 15 July, former Supreme Court of Appeals member Hüsamettin Uğur is one of the convicts whose right to supervised release and conditional release is arbitrarily denied. Hüsamettin Uğur, a former member of the Supreme Court of Appeals, who has been subjected to constant pressure since he was transferred to Afyon T Type Prison in February 2021 and has been threatened with death by the wardens, was also arbitrarily denied his right to supervised release by the prison administration and observation board. In May 2023, although he was eligible for supervised release, he was deprived of his right to supervised release on arbitrary and unlawful grounds based on a negative report arbitrarily issued by the Afyon T Type Prison Administration and Observation Board, and was released after his supervised release period expired. According to the statement made by Uğur's lawyer, Hüsamettin Uğur, who was expected to be released in May 2023, was deprived of his freedom because he was given 44.25 points instead of 45 points in the good behaviour evaluation decision left to the arbitrary discretion of the Prison Administration and Observation Board. The local courts, which evaluated the objections made, rejected the objections on the basis of the same reasoning.[52]

For example, Ömer Faruk Değerli, who was dismissed from his job as a philosophy teacher at Çorum Anatolian Imam Hatip High School, was arrested on 4 September 2016 as part of investigations against the Gülen Movement. As a result of the trial, Değerli was sentenced to 9 years and 4 months in prison. Ömer Faruk Değerli was sentenced to 9 years and 4 months in Çorum L Type Penal Institution. Although he completed his prison sentence with good behaviour and without any disciplinary penalties, his request for supervised release was rejected by the Prison Administration and Observation Board. On 1 September 2022, Ömer Faruk Değerli was interviewed for supervised release by the Çorum L Type Prison Administration and Observation Board and the reason for the rejection is very grave. The Board:

¨In addition to the interview dated 01/09/2022, the aforementioned convict did not provide information, a decision was taken on 02/09/2022 that the convict did not leave the organisation, this

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[51] https://www.rechtersvoorrechters.nl/uploads/2024/04/20240409-Letter-to-Minister-of-Justice-about-Murat-Arslan.pdf;https://medelnet.eu/letter-to-the-turkish-minister-of-justice-medel-eaj-aeaj-and-judges-for-judges-in-support-of-murat-arslan/

[52] Tr724 News, ¨Afyon T Type Prison administration's arbitrary obstruction of former Supreme Court of Appeals member Hüsamettin Uğur's right to supervised release, 3 September 2023, https://www.tr724.com/afyon-t-tipi-cezaevi-yonetiminden-eski-yargitay-uyesi-husamettin-ugurun-denetimli-serbestlik-hakkini-keyfi-engelleme/

decision became final after the evaluation of the Execution Judge and the Heavy Criminal Court, ***he could not clarify the question of how he provided for his children and his wife****, this situation cannot be explained by the ordinary course of life, Considering that* ***the*** *convict* ***avoided sharing information about his wife and children who are wanted for membership of the organisation*** *with his attitudes and behaviours, tried to prevent the dissolution of the organisation in this way, continued his secretive attitude in the last interview and did not make a sincere confession, the convict did not form a positive complete opinion that he left the organisation and for the reasons stated above, "his sincerity about leaving the organisation is not confirmed; Considering the lower limit in the reassignment of the convict's observation period, the convict's sincerity regarding leaving the organisation is not certified until 01.03.2023" and* rejected Değerli's request to benefit from supervised release each time on the grounds that *"it was decided to try him for 3 (three) months until 01.03.2023"*.[53] As can be seen, Değerli, who was granted supervised release on 13 September 2022, was not granted supervised release because he did not provide information about his wife and children.

The right to supervised release is prevented on unjust and unlawful grounds due to the decision of the prison observation and administration board, which has been transformed into a court that retries convicts. Since the good behaviour decisions of prison administration and observation boards for convicts in similar situations vary from prison to prison, convicts, relatives of convicts and lawyers of convicts search for prisons that give good behaviour decisions based on concrete and auditable grounds and request transfer to these prisons despite the serious economic cost for the convict. However, most of these requests are rejected.

D. LACK OF AN EFFECTIVE DOMESTIC REMEDY AGAINST THE DECISIONS OF THE PRISON ADMINISTRATION AND OBSERVATION BOARD

Against the decision of the prison administration and observation board that the convict is not in good behaviour, the convict may file a complaint to the execution judge within 15 days from the notification of the decision within the framework of the procedures and principles written in Articles 5 and 6 of the Sentence execution judge Law No. 4675. The decision rendered by the Heavy Criminal Court upon objection is final and there is no way of appeal. However, some decisions may be reviewed by the Court of Cassation in case the Chief Public Prosecutor's Office of the Court of Cassation applies for reversal in favour of the law as an extraordinary remedy.

An individual application can be made to the Constitutional Court against the decision of the Heavy Criminal Court within 1 month following the notification of the decision. In case

[53] Tr724 News, "Teacher, who has been imprisoned for 7 years, is not released on the grounds that 'he did not report his wanted wife'", 7 March 2023, https://www.tr724.com/7-yildir-cezaevinde-tutuklu-olan-ogretmen-aranan-esini-ihbar-etmedigi-gerekcesiyle-tahliye-edilmiyor/

the Constitutional Court decides inadmissibility, an application can be made to the European Court of Human Rights within 4 months following the notification of the decision.

Although these are the application authorities regarding the decisions on supervised release, there are problems arising from the unlawful and arbitrary practices of the application authorities.

a. Problems Arising from the Sentence Execution Judges

Pursuant to Article 105/A of the Law No. 5275, upon the request of convicts in good behaviour, the execution of the part of their sentences until the date of conditional release by applying supervised release may be decided by the execution judge in the place where the chief public prosecutor's office is located, taking into account the evaluation report prepared by the penal execution institution administration.

Against the decision of the prison administration and observation board that the convict is not in good behaviour, the convict may file a complaint to the execution judge within 15 days from the notification of the decision within the framework of the procedures and principles written in Articles 5 and 6 of the sentence execution judge Law No. 4675.

Upon the complaint application, the execution judge shall decide on the file within one week without holding a hearing; however, when deemed necessary, he/she may conduct an ex officio investigation on the transaction or activity subject to the complaint and request information and documents from those concerned before making a decision; written opinion of the public prosecutor related to the penal execution institution and detention centre will be taken. At the end of the investigation, if the execution judge does not deem the complaint to be justified, he/she shall reject it; if he/she deems it to be justified, he/she shall decide on the cancellation of the decision or the action taken or the suspension or postponement of the activity.

In practice, it is seen that the sentence execution judges decide to execute the part of the sentences until the date of conditional release by applying supervised release measures in respect of the convicts who are decided to be in good behaviour by the prison administration and observation boards, and that the request of the convicts who are decided to be in good behaviour by the prison administration and observation board is not decided to be rejected.

Again, in practice, the complaints of convicts who are judged not to be *in good behaviour* by the prison administration and observation boards are not accepted to a great extent. Sentence execution judges mostly reject the complaints on the grounds that *¨the prison administration and observation board decided that the convict was not in good behaviour after observing the convict, that the decision was in accordance with the procedure¨* without evaluating the reasoning

of the decision of the prison administration and observation board and without discussing whether it used its discretionary right arbitrarily.[54]

For example, Bakırköy 1st Sentence Execution Judge rejected the applicant's complaint on 22/7/2020 with the reasoning *that "...Although the convict requested to be released by applying supervised release measure; in the supervised release evaluation report dated 22/7/2020 issued for the applicant, who was convicted of the crime of being a member of an armed terrorist organisation, it was ruled that it was not concluded that the convict left the organisation to which he belonged, and as such, the legal conditions for the convict did not occur...".*

However, it is also seen that sentence execution judges, albeit exceptionally, decide to accept the complaint by deeming the findings based on the decision of the administration and observation board insufficient. Below, 3 sample decisions are shared, and the justifications written in these decisions are valid for all convicts who comply with the rules of the prison administration, who have no disciplinary penalties, and who have no concrete evidence that they will commit a crime again.

For example, Silivri 1st Sentence Execution Judge, which evaluated the complaint (appeal), decided on 7/7/2020 to accept the complaint, considering the findings based on the decision of the Administration and Observation Board as insufficient. The reasoning of the decision is as follows":

"...Pursuant to Article 6/2-ç of the Regulation on Separation to Open Penal Execution Institutions, in order for those convicted of terrorism and organised crimes to be separated to open penal execution institutions, an opinion must be formed in the administration and observation board of the institution that they have left the organisation, and this opinion, which will be positive or negative, must be supported by some concrete data. ***Although in the decision of the relevant board, it was decided to reject the request of the convict because he did not make a statement and behaviour indicating that he left the organisation; the fact that the convict did not make a written statement to the relevant units of the institution that he left the organisation is not sufficient in itself to form the opinion that the convict's connection with the organisation continues.*** *It is necessary to monitor convicts convicted of terrorism and organised crime throughout their stay in the institution and observe whether their links with the organisation continue or whether they still sympathise with the organisation. In this process, it is important to observe whether the convicts convicted of terrorism and organised crimes have encountered any situation that may lead to the opinion that their connections with the organisation continue in the letters, faxes, etc. sent to them and in the phone calls they have made. In the examination of the letters and faxes sent to the convict who objected to the Board's decision from outside the institution and the letters and faxes that the convict wanted to send, it was understood that there were no organised expressions written in their content, that there*

[54] Kocaeli Execution Judge's decision dated 04.08.2023 and numbered 2023/4060

were no conversations containing organised expressions in their telephone conversations, and that they did not receive disciplinary punishment by shouting slogans or taking action in favour of the organisation, like those arrested and convicted of some terrorism offences. A convicted person can show that he/she is still connected to the organisation or that he/she still sympathises with the organisation by his/her active behaviour within the institution, but he/she can also show that he/she has left the organisation and taken a neutral position only by not taking any action or attitude in favour of the organisation. Those convicted of terrorism and organised crimes can only be separated to open penal execution institution one year before their conditional release date if the administration and observation board reaches an opinion that they have left the organisation (With the 3rd paragraph of the Provisional Article 6 added to the Law No. 5275, a decision of supervised release can be made directly for the convicts who are in closed penal execution institution in terms of crimes committed until 30/03/2020 if they meet the conditions. As convicts can benefit from the provisions of supervised release after 30/03/2020, they should be informed by the institution where they are housed that they should be taken to an independent ward in order to be subjected to an observation to determine whether they have separated from the organisation and taken a neutral position. With the decision of the administration and observation board taken without such information, the decision to reject the convict's request due to the fact that there is no conviction that he has left the organisation on the grounds that the convict has not made a written/verbal statement addressed to the relevant units and services of the institution that he has left the organisation is not considered as a decision made as a result of a correct evaluation ... [the decision was made]."[55]

Kırıkkale Execution Judge's Office also issued a decision on 17.04.2023, "... *In the assessment of good behaviour, questions were asked as to whether the convict accepted the accusations against him in the prosecution proceedings despite the fact that he had a finalised conviction;* ***The statements of the convict, who was not obliged to accept the accusations against him at any stage, the statements of the convict, who was not obliged to accept the questions asked in this way in the current good conduct assessment, were intended to defend himself****, these statements alone were not sufficient for the opinion that he was not remorseful, and there was no situation such as not accepting the terrorist organisation as an organisation, or making a statement that he was not remorseful although he accepted that he was carrying out organisational activities,* ***interview statements should not be aimed at making a confession of guilt, but whether the convict is ready to integrate with the society in line with the issues specified in the regulation, it should be aimed at determining his good behaviour,*** *it should be possible to determine why the convict is judged to be unrepentant, if there is any other issue and evidence research, this situation should be fixed and auditable with reports, it has been understood that the decision made in the relevant board decision that the convict is not in good behaviour is far from grounded justification, therefore, it was necessary to decide on the acceptance of the complaint."*

[55] (*Bayram Kaya (2)*, B. No: 2020/28211, 6/10/2022, § ...) Silivri 1st Execution Judge's decision dated 7/7/2020

Antalya 2nd Sentence execution judge issued a decision on 14.01.2022 on the complaint of H. Ç's complaint, "*When the decision of the Administrative Observation Board subject to objection by our judgeship, the bases of the decision and all execution documents and the evaluation made by the board about the convict are evaluated, Antalya S Type Closed Execution Institution Administrative Observation Board Presidency's decision dated 09/12/2021 and numbered 2021/729 decided that the convict did not have good behaviour and that the conditional release of the convict was not appropriate, but the* ***facts that constitute the basis for*** *this* ***opinion*** *about the convict* ***were not revealed*** *in the decision, Although it is accepted that the result of the observation of the institution and the board about the convict is a right of discretion, considering that the evaluation to be made in this way without justification* ***will remove the legal controllability****, the convict's objection is accepted and the decision of the Antalya S Type Closed Execution Institution Administration Observation Board is abolished"*.[56]

However, this decision of the Antalya Execution Judge was not implemented by the prison administration and observation board. The Antalya S Type Closed Prison Administration and Observation Board, which did not implement the decision of the Execution Judge in favour of H.Ç, convened for the second time on 20 January and asked H.Ç to submit a *"petition to move to a neutral ward and to leave the organisation*". H.Ç did not accept this request of the Board, the Antalya S Type Closed Prison Administration and Observation Board prevented H.Ç's release by issuing a second *"not in good behaviour*" decision despite the previous decision of the judge on the grounds that H.Ç *"had not cut his ties with the organisation*". H.Ç.'s lawyer then applied again to the Antalya Sentence Execution Judge for the cancellation of the decision and the Sentence execution judge accepted H.Ç.'s second complaint and cancelled the decision of the Administration and Observation Board. Upon this decision, the Administration and Observation Board of Antalya S Type Closed Execution Institution convened for the third time and this time decided that *"conditional release is appropriate since he is in good behaviour*".[57]

b. Problems Arising from the Heavy Criminal Courts

The complainant or the relevant public prosecutor may appeal against the decisions of the execution judge within seven days of notification in accordance with the provisions of the Code of Criminal Procedure. The objection shall be lodged to the Heavy Criminal Court where the sentence execution judge's jurisdiction is located. The decision rendered by the Heavy Criminal Court upon the objection is final and there is no way of appeal.

[56] Antalya 2nd Execution Judge's decision dated 14.01.2022 (Hasan Çelik)
[57] https://mezopotamyaajansi35.com/tum-haberler/content/view/161521

In practice, it is common for the heavy penal courts to reject convicts' objections against the decisions of the sentence execution judges rejecting the complaint without sufficient justification, stating that the decisions of the sentence execution judge and the prison administration and observation board are in accordance with the procedure.[58] Although the heavy penal courts are generally the final appeal authority against the decisions of the sentence execution judges, it is seen that they carry out a procedural control and do not take into account the objection issues. Therefore, it is seen that it is an ineffective domestic remedy far from the legality control.

c. Legitimisation of Unlawful Decisions by the Court of Cassation

The Court of Cassation, upon the application of the Chief Public Prosecutor's Office of the Court of Cassation for reversal in favour of the law as an extraordinary remedy against the final decisions of the Heavy Criminal Courts on the conditional release of convicts, carries out the legal review of the conditional release of the convicts.

Unfortunately, the Supreme Court of Appeals does not review the legality of the decisions of the Court of Cassation regarding the good behaviour of terrorism offenders and tries to legitimise the unlawful decisions made by the prison administration and observation boards. As a matter of fact, in a decision of the Cassation Court "*The convict, who was found to be a member of the FETÖ armed terrorist organisation by a court decision and sentenced, with his petition dated 01/06/2020, declared that he did not accept the membership of the organisation in any way and that he had no ties with the said organisation and requested to be transferred to the neutral ward, whereupon the current situation of the convict was first decided to evaluate the current situation of the convict by observing the situation of the convict by the decision of the aforementioned Penal Execution Institution Administration and Observation Board dated 01/06/2020 and numbered 2020/2724, and during the specified period, the convict met with the Institution officials and was observed,* ***However, when the phone calls and letters of the convict during his stay in the institution were examined, it was stated that there was no concrete data indicating that he had left the terrorist organisation, and a decision was made to reject the confirmation of his sincerity regarding his leaving the organisation,*** *As it is* ***understood that*** *the said assessment was made on the basis of the interviews and observations made by the administration during the execution of the sentence, and that* ***the convict, who declared that he had no ties and affiliation with the organisation, did not share any information about the organisation in question,*** *it was not deemed inappropriate to decide to accept the objection as written instead of rejecting it.*"[59]

The Court of Cassation, in its decisions of a similar nature, has stated that the convict, who does not accept that he is a member of an illegal organisation and insists that he did not

[58] The decision of Bakırköy 1st Heavy Criminal Court on 30/7/2020 upon the objection of B.K.
[59] Court of Cassation 1st CD, . 2021/12596 E, .2021/15300 K, 27/12/2021 T

commit the crime attributed to him, should the fact that the convict complied with the prison rules and improvement programmes, did not have any disciplinary penalties, fulfilled the legal time requirement for conditional release and requested to be transferred to the neutral ward by declaring that he was no longer affiliated with the organisation in accordance with the regulation introduced by the regulation was not deemed sufficient and that he did not share any information about the organisation, The court upheld the decisions of the prison administration and observation boards that the convict *was not in good behaviour* on the grounds that the examination of the phone calls and letters of the convict during his stay in the institution did not reveal any concrete evidence that he had left the terrorist organisation.[60]

These decisions of the Court of Cassation are both legally and conscientiously problematic. In the Law on Execution of Sentences and even in the relevant regulations, there is no condition such as *"sharing information about the organisation to which he/she belongs"* for the conditional release of the convict. Despite this, it is unlawful for the Court of Cassation to uphold the arbitrary decisions of the prison administration and observation boards on the grounds that the convicts *"do not share information about the organisation to which they are affiliated"*, which have no legal basis, instead of overturning them.

In fact, *"sharing information about the criminal organisation to which* one is *affiliated"* is included in the effective remorse regulation regulated in the Turkish Criminal Code in material criminal law. Effective remorse is accepted as *a personal reason* that may eliminate the possible punishment or require a reduction in the punishment. For convicts who benefit from effective remorse, the decision of good behaviour *(confirmation of sincerity)* is not sought before the supervised release application.[61]

Therefore, it is not only unlawful but also unconscientious to deny the convict, who could have received a reduction in his sentence if he thought that he had committed the imputed offence and shared information about the organisation to which he belonged, the right to conditional release during the execution phase of the sentence on the grounds that he did not share information about the organisation, even though it is not included in the Law No. 5275.

¨Again, the Court of Cassation deemed the decisions of the prison administration and observation boards that *"the convict was not in good behaviour as there was no concrete evidence that he had left the terrorist organisation when his phone calls and letters were examined during his stay in the institution* be appropriate. It is not legally acceptable to expect a convict who says that he is not a member of an organisation to prove that he is not a member of an organisation and to put the burden of proof on the convict. First of all, according to the universal principles

[60] Court of Cassation 1st CD, 2021/8298 E.,.2021/11584 K., 30.06.2021 T.

[61] Özdemir, Orhan: "The Departure of Convicts to Open Penal Execution Institutions after the Law No. 7242, Journal of Justice, no: 67, (November 2021), p. 386.

of law, it is the prison administration, which observes the convict, who must provide concrete evidence that the convict has not left the organisation. The convict is constantly under the supervision of the prison administration. The prison administration monitors the prisoner's phone calls, letters and behaviour. The staff of the psycho-social assistance service and the education and training service talk to the convict and observe his behaviour. In short, the prison administration has the means to assess the convict's good behaviour and to justify it with concrete and auditable evidence. For example, the actions of the convict who shouts slogans in favour of the organisation, praises the organisation in his letters, supports the illegal actions of the organisation in his phone conversations can be recorded in a way open to inspection and can be used as a justification in good conduct decisions. On the contrary, although there is nothing concrete in the words and actions of the convict to show that the connection with the organisation continues, it is not a justification in accordance with the law, reason and conscience to decide that *"there is no concrete data that the convict left the terrorist organisation during his stay in the institution and therefore he is not in good behaviour".*

d. Constitutional Court's Failure to Review Individual Applications on the Merits

The principles of the rule of law, equality, non-discrimination, legality, reasoned decisions, non-arbitrary use of discretion by the administration, and non-arbitrary deprivation of liberty of individuals, which have been explained in detail in the sections above, have been recognised by both the prison administration and observation boards. The Constitutional Court, despite violations by the sentence execution judges and heavy penal courts, which are supposed to carry out legal and proper supervision, renders inadmissibility decisions without going into the merits of the matter in individual applications concerning the possibility of convicts to spend the part of their sentences until their conditional release outside the prison by applying supervised release measures.

Although the Constitutional Court has decided inadmissibility without going into the merits of the case in each of the 3 judgements we give as examples below, as can be seen, its justifications are contradictory among themselves.

For example, the Constitutional Court, in its **Halis Yurtsever** decision dated 29/11/2018[62] in summary; *"For the implementation of the supervised release measure, after the duration of the imprisonment sentence and the condition of being separated from prison is fulfilled, the execution judge, who is applied upon the good behaviour report of the penal execution institution administration, must decide to apply the measure. Therefore, since the decision on the supervised release measure is within the discretionary power of the authorised execution judge, it is not guaranteed under the first sentence of the second paragraph of Article 19 of the Constitution. In the concrete case, the*

[62] Constitutional Court Halis Yurtsever Decision, B. No: 2015/17595, K.T: 29/11/2018, https://kararlarbilgibankasi.anayasa.gov.tr/BB/2015/17595;

decisions subject to the application are related to the rejection of the request for separation to an open prison. Even if the applicant had been separated to an open prison, there is no clear and visible violation of the right to personal liberty and security, since supervised release cannot be directly applied to him without a good behaviour report prepared by the execution institution and the decision of the execution judge."

In the decision of the Constitutional Court dated 15/12/2021 on **Mustafa Takyan**[63] in summary; *"The applicant was convicted and the criminal proceedings were finalised and ended. The issue of whether the applicant, who is subject to the decision of the Execution Judge, meets the conditions for leaving the applicant to an open prison and benefiting from supervised release, is directly related to the way the applicant's sentence is executed. In other words, the issues related to the request to benefit from supervised release are entirely related to the form of the execution law and have nothing to do with the substance of the offence or the amount of the sentence. Therefore, it is clear that the violation claims of the applicant regarding his request to be separated to an open prison and to benefit from supervised release for a period when he was not under criminal charge does not constitute a criminal charge in the criminal sense, and therefore the dispute subject to the application does not fall within the scope of the criminal dimension of the right to a fair trial. In this case, it is concluded that the complaints regarding the right to a fair trial expressed within the framework of the dispute subject to the application, which is understood not to be in the nature of a criminal charge, fall outside the common protection area of the Constitution and the Convention and cannot be made subject to an individual application. For the reasons explained,* the *application must be declared inadmissible due to lack of jurisdiction in terms of subject matter without examining the other admissibility requirements."*

The Constitutional Court summarised in the **Bayram Kaya** decision dated 06.10.2022;[64] *"Article 105/A of the Law No. 5275 determines the form of the execution regime of the convicts within the framework of the discretionary power of the execution judge and the obligations to be determined and enables them to spend part of their sentences outside the penal execution institution by applying the supervised release. Pursuant to the aforementioned rule, the execution judge may reject the request for the application of the measure even if the convict's request and the legal conditions are met. Therefore, there is no obligation for all convicts to serve all or part of their imprisonment sentence by applying the supervised release within the scope of Article 19 of the Constitution. However, non-application of the supervised release provisions to convicts who fulfil all the conditions stipulated in the legislation to benefit from supervised release would be incompatible with Article 19 of the Constitution, which prohibits arbitrary deprivation of liberty.*

"In the concrete case, the Administrative and Observation Board of the Penal Institution concluded that there was no conviction that the applicant had left the organisation in line with the evaluation report prepared on 22.7.2020. The objection to this decision of the Administrative and Observation Board was rejected by the Bakırköy Execution Judge and the Heavy Criminal Court.

[63] Constitutional Court Mustafa Takyan Decision, [SC], B. No: 2020/27974, K.T: 15/12/2021,
[64] Constitutional Court Bayram Kaya Decision (2), B. No: 2020/28211, K.T: 6/10/2022,

Therefore, the competent authorities concluded that the applicant did not fulfil the conditions for benefiting from supervised release. The competent execution judge has discretionary power to decide on supervised release measures. In the concrete case, it is not the case that the Execution Judge is obliged to apply this measure without any discretionary authority. It is also not the case that the applicant was not released even though he fulfilled the conditions of supervised release. Therefore, it is concluded that there is no clear and visible violation of the right to personal liberty and security. For the reasons explained, the application must be declared inadmissible for manifestly lacking grounds."

The Constitutional Court, in the justification of the above-mentioned Bayram Kaya judgement, stated that the non-application of the provisions of supervised release to convicts who fulfil all the conditions stipulated in the legislation to benefit from supervised release would be incompatible with Article 19 of the Constitution, which prohibits arbitrary deprivation of liberty, but unfortunately, in its decisions so far, it has not been an effective remedy for the violations of the rights of convicts by issuing inadmissibility decisions without going into the merits of the case.

e. Avoidance of Human Rights and Equality Institution of Turkey from conducting audits

Some of the convicts applied to the Human Rights and Equality Institution (TİHEK) of Turkey, which was established by Law No. 6701, stating that since the good behaviour decisions of the prison administration and observation boards for convicts in similar situations vary within the same prison or from prison to prison, this situation is contrary to the principle of equality and that they are discriminated against.

According to Law No. 6701, the duties of the Institution are to examine, investigate, adjudicate and monitor the results of human rights violations ex officio; to examine, investigate, adjudicate and monitor the results of violations of the prohibition of discrimination ex officio or upon application; and to examine, investigate, adjudicate and monitor the results of applications of persons deprived of their liberty or taken under protection within the scope of the national prevention mechanism.

In accordance with this law, convict B.E.Ç was entitled to conditional release as of 28/05/2023 in accordance with the Law No. 5275, despite this, he was deprived of his freedom in violation of the law, convicts and other convicts who served their sentences for crimes of the same nature as him were released on the specified conditional release date by the administrations of closed penal execution institutions, but he was not released although he met the conditions in the law, that his good behaviour was confirmed by the Decision of the Administration and Observation Board, but the penal execution institution determined that he was not in *good behaviour* when he was to be released, although it had previously evaluated that he was in good behaviour, that good behaviour is an essential element of conditional release, therefore, the amendments made to Article 89 of the Execution Law mean the amendments made to the elements of conditional release. Article 89 of the Execution Law

means a change in the elements of conditional release, it is subject to the principle of legality in crime and punishment in accordance with the prohibition of retroactivity pursuant to Article 7 of the Turkish Penal Code and Article 38 of the Constitution, the regulation of a condition that is not included in the Constitution and Law No. 5275 with Article 6/ç of the Regulation on Separation to Open Prison constitutes a violation of the principle of legality, Law No. 7242, Article 89 of the Execution Law and Article 16/ç of the said Regulation. and Article 16 of the aforementioned Regulation are to his detriment, for this reason, the good conduct assessment to be taken into account in the conditional release to be applied to him should be made according to the Regulation on Observation and Classification Centres dated 17/06/2005, not according to the Regulation dated 29/12/2020, and his good conduct assessment should be made according to the 89th article of the Execution Law No. 5275 and Article 16 of the new Regulation. He claims that his good behaviour assessment was made according to the criteria of *"not having a low risk of re-offending and harming the society, regret for the crime he committed"* which is included in Article 89 of the Execution Law No. 5275 and Article 16 of the new Regulation but not in the old regulation, that conditional release is not a grace, on the contrary, it is an execution institution that must be applied for the convict if the conditions are met and a right based on public interest, that not benefiting from this institution is a violation of the principle of equality and the right to personal liberty and security, and he demands that his victimisation be eliminated by applying the provisions in his favour.

In its decision dated 28.11.2023 and numbered 2023/947, the 1st Chamber of the Institution decided that the reasons, subject matter and parties of the application were the same as an application that had already been examined and investigated by the Institution, that it did not meet the conditions for examination and therefore inadmissible.

Although the Institution has stated in its decision that the reasons, subject matter and parties of the application are the same as an application that has been previously examined and investigated by the Institution, the fact that there is no previous application made by the applicant to the Institution and also, if there is a similar application before, the decision of inadmissibility, which does not even coincide with the material fact, should be referred to the relevant decision, shows that the decision is clearly contrary to the law.

As can be seen, the Institution, which is in charge of ex officio or upon application to examine, investigate, decide and monitor the results of inequality, non-discrimination and human rights violations, has not eliminated the inequality and violation of rights caused by arbitrary decisions of prison administration and observation boards.[65]

[65] Decision of the 1st Chamber of the Human Rights and Equality Institution of Turkey dated 28.11.2023 and numbered 2023/947

E. VIOLATION OF SUPERVISED RELEASE AND CONDITIONAL RELEASE RIGHTS OF PATIENT CONVICT IN VIOLATION OF THE LAW

Although prisons are institutions where the final sentence is executed for convicts, with the discriminatory practices that started after 15 July, they have turned into revenge centres of the Erdoğan regime. Unlawful practices such as harbouring arrested or convicted people in inhumane conditions, subjecting them to isolation in solitary cells, restricting their right to receive visitors and telephone calls, depriving them of social and cultural activities, not providing adequate health facilities,[66] not allowing them to benefit from supervised release and conditional release despite their conditions, not postponing the execution of sick prisoners are the most serious hate-motivated and discriminatory prison practices of this period.

As explained in the section above, it is seen that many political prisoners, especially those convicted for belonging to the Gülen Movement, are systematically and deliberately not benefited from these rights despite the conditions of supervised release and conditional release. At this point, the arbitrary and unlawful decisions of the administrative and observation committees have been legitimised by the local courts, the Court of Cassation and the Constitutional Court through a conscious choice of not conducting effective legal supervision.

After 15 July, all the practices of discriminatory regime policies have unfortunately been brutally exhibited in prisons. The most serious of all these practices is that sick prisoners and convicts are left to die by being deprived of access to treatment and health facilities with an ill-intentioned policy. Hundreds of people were first arrested and then left to die in prisons despite being too seriously ill to stay in prison or having chronic severe illnesses. These convicts, who were not released due to their illnesses, were not benefited from supervised release and conditional release rights on unlawful grounds. It is as if sick convicts were asked to die in prison.

In this section, cases of sick convicts whose supervised release and conditional release rights are arbitrarily violated will be discussed. However, although there are many grave cases beyond the ones mentioned in this section, due to the large number of cases and the lack of sufficient open sources, only pilot cases will be included for now.

a. Dismissed and Imprisoned Judge Mustafa Başer's Persecution

Prisons are one of the places where the discriminatory regime in Turkey has shown its effects most brutally. Public officials motivated by hate and discriminatory policies have resorted to torture, ill-treatment and discriminatory practices against inmates on the grounds that they are members of the Gülen Movement. Although there are conditions for supervised

[66] Aras, Bahattin: ¨The Right of Convicts and Detainees to Accommodation in Conditions Suitable for Human Dignity¨, Yaşar Law Journal, Volume:4, Issue:2, Year:2022, p.5 vd

release and conditional release due to conviction, people are systematically and deliberately denied these rights on the grounds that they are members of the Gülen Movement. Although the legal conditions are appropriate and they have not committed a single act in violation of the conditions of good behaviour in prison, there are discriminatory practices against convicted citizens on the allegation of being a member of the Gülen Movement.

In this context, dismissed judge Mustafa Başer, who has been detained in Sincan F1 Prison since 1 May 2015, is not benefiting from his right to supervised release, which he is legally entitled to, even though he was entitled to supervised release 1 year ago and has bladder cancer. Although he is entitled to conditional release as of 27 September 2022 after a serious surgery, he is not benefited from this right either. Although thousands of prisoners in the same position in prisons benefit from supervised release and conditional release, dismissed judge Mustafa Başer is not benefiting from these legal rights. In the current situation, Mustafa Başer's cancer has relapsed for the third time.[67]

HDP Kocaeli MP Ömer Faruk Gergerlioğlu submitted a parliamentary question on the issue. In the case subject to the study, Mustafa Başer, a dismissed judge, is subjected to discriminatory and hateful practices because he decided on the release of the police officers who carried out the 17/25 December operations involving ministers of the current government. As if it is not enough that he is unlawfully serving his sentence in solitary confinement, he is deliberately left to die as a severe cancer patient out of revenge and hatred. The prison administration and members of the judiciary, who are in a position to decide on this issue, decide against him purely out of hatred. Although Mr. Başer is a stage 3 cancer patient, he is deliberately left to die with this hate motive.

b. 84 Years Old Seriously Convict Halil Karakoç Arbitrarily Deprived of Supervised release

Halil Karakoç, who was detained 10 days after the coup attempt on 15 July 2016, was arrested on 01.08.2016 on the charge of *"Being a Member of an Armed Terrorist Organisation"* on the grounds of his connection with the Gülen Movement and was put in Manisa T-type Penal Institution and was released on 17.11.2017. Karakoç was sentenced to 7 years and 6 months of imprisonment as a result of the trial held at Manisa 2nd High Criminal Court and his sentence was upheld by the Court of Cassation and finalised. Karakoç was detained at the address where he was residing on 06.01.2021 on the charge of *"Being a Member of an Armed Terrorist Organisation"* due to his finalised sentence and was sent to prison.

[67] Samanyolu Haber, "His illness relapsed for the third time in prison: Başer's son calls on authorities to apply the law", 11.01.2023, https://www.shaber3.com/cezaevinde-hastaligi-3-kez-nuksetti-baser-in-oglu-yetkilileri-hukuku-uygulamaya-cagirdi-haberi/1404643/,

Although 84-year-old Karakoç has many diseases such as heart, diabetes, prostate and similar diseases and is in need of serious care, he was not released because the Forensic Medicine Institution reported *that he could stay in a rehabilitation hospital or in prison.* Although he had a heart attack in prison, Karakoç was not released.[68] Despite these serious illnesses, he served his sentence in good behaviour and applied for supervised release in May 2024. However, the prison administration and observation board rejected the request for supervised release of Karakoç, who is seriously ill and elderly, without any concrete justification and without any concrete action preventing him from benefiting from supervised release.

As the ECtHR has emphasised in a number of judgments, Article 3 of the Convention cannot be interpreted as imposing a general obligation to release a prisoner on medical grounds or to transfer him to a public hospital, even if he is suffering from a particularly incurable illness. It does, however, require the State to ensure that prisoners are held in conditions compatible with human dignity, that the manner and method of applying the measure do not subject them to an intensity of distress or hardship exceeding the threshold of unavoidable suffering associated with imprisonment, and that their health and welfare are adequately safeguarded in respect of requests for the imposition of a sentence of imprisonment, for example by providing them with the necessary medical assistance *(Grimailovs v. Latvia, 2013, § 150; Yunusova and Yunusov v. Azerbaijan , 2016, § 138)*. Thus, in particularly serious cases, situations may arise where the proper administration of criminal justice may require recourse to remedies in the form of humanitarian measures *(Enea v. Italy [GC], 2009, § 58*). At this point, Halil Karakoç has not been treated and cared for in humane conditions and he cannot be released even though he has completed his execution. Within the framework of the ECtHR's point of view, it would be a measure in accordance with human dignity for Karakoç, who served his sentence in good behaviour, to benefit from supervised release within the scope of his treatment. However, this humanitarian measure is not applied to Karakoç, as is the case in many prisons and for many sick convicts.

c. Deprivation of the Right to Supervised release and Conditional Release of Lawyer Ali Odabaşı, Who Underwent 4 Surgeries in Prison

Especially as a result of the investigations that started after 15 July, many people were unjustly arrested and unlawfully punished. People who were punished without a fair trial in accordance with universal law, the Constitution and the law were subjected to the same unlawfulness during the execution process. One of the victims of these practices is lawyer Ali Odabaşı, former Managing Editor of Zaman Newspaper, which was appointed a trustee by the Erdoğan regime after the 17/25 December operations and closed down after 15 July.

[68] Tr724 News, ¨84-year-old ill prisoner Halil Karakoç had a heart attack in prison: He takes 14 medicines a day", 14 July 2023, https://www.tr724.com/84-yasindaki-hasta-mahpus-halil-karakoc-cezaevinde-kalp-krizi-gecirdi-gunde-14-ilac-kullaniyor/

Although Odabaşı has undergone four serious surgeries in prison, both his right to supervised release and his right to conditional release have been taken away.

Odabaşı, who was arrested within the scope of investigations against the Gülen Movement, was sentenced to 6 years and 3 months in prison for being an illegal organisation member. On 22 November 2022, he was deprived of this right on unlawful grounds by the Sincan T Type Prison Administration and Observation Board, despite being eligible for supervised release, having good behaviour conditions and having no disciplinary penalties.

Odabaşı's right to supervised release was usurped and his right to conditional release was also taken away. As of 22 November 2023, although Odabaşı had spent the time required for conditional release in good behaviour as per Law No. 5275, the Prison Administration and Observation Board decided to keep him in prison for 3 more months on the abstract and unlawful grounds ***that he would not be able to 'adapt to society***' if released. In the subsequent review, an extension decision was made for another 3 months. On 20 February 2024, Odabaşı, who was expected to be released on conditional release on 20 February 2024, was once again prevented from being released on conditional release due to the decision that he was not in good behaviour one day later.[69]

Odabaşı, who underwent 4 surgeries in prison, had serious health problems. During the pandemic period, he was hospitalised in Dışkapı State Hospital due to internal abdominal rupture. After the operation, he was kept in bed with his arm handcuffed to the bed. One day later, he was discharged and sent to prison. Odabaşı, who had such severe health problems, still has the same health problems. Although Odabaşı has spent most of his time in prison struggling with illnesses and has not been subjected to any disciplinary penalties, the prison administration and observation board arbitrarily usurped Odabaşı's right to conditional release.[70]

d. Deprivation of Supervised release of İsmet Özçelik, who was kidnapped from Malaysia, for Making Rosary from Olive Pits Despite Being Sick

İsmet Özçelik, an educator living in Malaysia for many years, was illegally abducted by MIT and brought to Turkey. On the same date, other educators were also abducted by MIT in Malaysia. In its Özçelik and Karaman judgement, the UN Human Rights Committee concluded that the detention in Turkey of two Turkish nationals abducted from Malaysia by Turkish intelligence did not meet the criteria of reasonableness and necessity and violated

[69] Kronos, ¨Sincan Prison arbitrarily keeps lawyer Ali Odabaşı in prison¨,11 April 2024, https://kronos37.news/tutuklu-avukatin-esi-sincan-cezaevine-sesleniyorum-esimin-yasam-hakkiyla-oynuyorsunuz/

[70] International Journalists Association (IJA), ¨Zaman Former Managing Editor Ali Odabaşı Arbitrarily Detained', 13 May 2024,

their right to liberty and security under Article 9(1-3) of the UN Covenant on Civil and Political Rights.[71]

Özçelik, who suffers from heart disease and diabetes, was sentenced to 9 years and 11 months in prison in the case he was tried within the scope of Gülen Movement investigations.[72] İsmet Özçelik, whom MIT kidnapped from Malaysia and brought to Turkey in 2017, was making rosary beads by piercing olive pits with a plastic fork-like tool allowed by the prison administration, as many prisoners and convicts do. A report was issued against Özçelik by the prison officials. Özçelik was given a disciplinary punishment of 15 days in solitary confinement due to this report. Özçelik was sentenced to 10 months imprisonment for making rosary beads by piercing olive pits in prison. İsmet Özçelik, who is also a diabetic and heart patient, was prevented from benefiting from supervised release on the grounds of this arbitrarily opened disciplinary investigation 6 days before he was to benefit from supervised release, although he served his sentence with good behaviour and without disciplinary punishment.[73]

e. Adil Somalı Died While Waiting for Supervised release

Adil Somalı, who was arrested in Ödemiş district of İzmir within the scope of investigations against Gülen Movement, was released after one year of imprisonment. Somalı, a father of two children who supports his family by selling vegetable and flower seeds in Ödemiş, was sentenced to 6 years and 3 months in prison. Upon the finalisation of the prison sentence, Adil Somalı was sent back to prison. As of 11 July 2024, he was entitled to benefit from supervised release. Therefore, he was transferred to open prison. Somalı requested to benefit from supervised release in Ödemiş T Type Prison, but when the Administration and Observation Board did not convene, his stay in prison was automatically extended. Somalı, who learnt that his stay in prison was extended, had a convulsion and fell into a coma. Somalı was taken to hospital and died on 20 July 2024 at the age of 58.[74]

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[71] UN Human Rights Committee, Communication No 2980/2017, İsmet Özçelik and Turgay Karaman v. Turkey, UN Doc. CCPR/C/125/D/2980/2017, 23 September 2019, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F125%2FD%2F2980%2F2017&Lang=en

[72] Advocates of Silenced Turkey (AST): "Global Purge: 144 Abductions Conducted By The Turkish Government In Turkey And Abroad", June 23, 2021, https://silencedturkey.org/global-purge-1-144-abductions-conducted-by-the-turkish-government-in-turkey-and-abroad

[73] Stockholm Centre for Freedom, ¨Man imprisoned on Gülen links to spend 10 more months behind bars for making prayer beads¨, November 8, 2023, https://stockholmcf.org/man-imprisoned-on-gulen-links-to-spend-10-more-months-behind-bars-for-making-prayer-beads/

[74] Kronos, ¨He was selling vegetable seeds: Shopkeeper who was prevented from being released died in prison", 23.07.2024, https://kronos37.news/sebze-tohumu-satiyordu-tahliyesi-engellenen-esnaf-cezaevinde-hayatini-kaybetti/

F. THE EUROPEAN COURT OF HUMAN RIGHTS' PERSPECTIVE ON THE ISSUE

The European Court of Human Rights (ECtHR) has consistently held that execution proceedings do not relate *to* a *"criminal charge*" within the meaning of Article 6 of the ECHR and therefore the right to a fair trial does not apply to them. Applications concerning these proceedings are therefore rejected on the grounds that the matter complained of does not fall within the scope of the right to a fair trial *(Montcornet de Caumont v. France (c.f.), No. 59290/00, 13.5.2003; Hudec v. Slovakia (c.f.), No. 4123/02, 24.10.2006; Beier v. Germany (c.f.), No. 20579/04, 22.1.2008)*.

The ECtHR, in an application in which a complaint was made about the inability to benefit from amnesty or conditional release, stated that the Convention does not establish a right to a conditional release decision, either as a requirement or as an authorisation, and that the issue does not fall within the scope of the right to a fair trial *(Jankauskas v. Lithuania, B. No: 59304/00, 16/12/2003).* However, the ECtHR, in its Yusuf Orhan v. Turkey judgement, which we will discuss below, and in other judgements, assessed the issue within the scope of the right to liberty and security protected by Article 5 of the ECHR.

The Yusuf Orhan v. Turkey judgment (No. 38358/22, 6.12.2022) concerns the denial of right to parole as a result of the prison administration's decision that the person had not been found to have left the organisation and was therefore not of good behaviour.

In its judgment, the Court stated that the Prison Administration and Monitoring Board clearly has some margin of appreciation in determining whether a convict has actually left the organisation and whether the request to be removed from the ward containing members of that organisation and transferred to another ward (the neutral ward) reflects a genuine departure from the organisation or whether the request is merely aimed at obtaining benefits such as conditional release by claiming to have left the organisation insincerely.

The ECtHR noted that conditional release was not automatic in nature, that the authorities were not obliged to grant such a request to the applicant automatically and that they had a margin of appreciation in this respect.

In Orhan v. Turkey, the ECtHR ruled for inadmissibility, stating that there was no indication that the authorities, in exercising this power, had arbitrarily and manifestly unreasonably assessed whether the convict had left the organisation to which he belonged. In other words, the ECtHR stated that the prison administration and observation boards had a margin of appreciation in deciding whether the convict was in good behaviour, but could not exercise this margin of appreciation in an arbitrary and manifestly unreasonable manner.

G. OPINIONS AND CRITICISMS OF NATIONAL AND INTERNATIONAL HUMAN RIGHTS ORGANISATIONS REGARDING THE SUPERVISED RELEASE PRACTICES IN TURKEY

In thousands of cases, such as the examples given above, prison administration and observation boards have arbitrarily and discriminatorily usurped many rights of terror convicts, especially supervised release and conditional release. This issue is also expressed by many institutions and organisations active in the field of human rights. Especially the situation of convicts who are deprived of supervised release despite being seriously or chronically ill has been mentioned in many reports.

In this context, Amnesty International'**s** report *"Turkey: Convicts' Release Law Must Not Discriminate"* dated 31 March 2020), the Turkish government passed a law to release up to 100,000 prisoners to reduce overcrowding during the pandemic, but excluded many prisoners wrongfully detained under Turkey's anti-terrorism laws. The report criticises the selective nature of the releases, which disproportionately affect political prisoners, journalists and human rights defenders who continue to be at risk in overcrowded and unsanitary conditions. Amnesty International says that these exceptions are discriminatory and fail to address human rights violations in the Turkish penitentiary system.

Amnesty International has published other reports on the situation of ill prisoners in Turkey. In these reports, serious criticism is expressed about the failure to allow sick prisoners to benefit from supervised release. It is noted that the number of ill prisoners in prisons has increased especially since 2016, following the 15 July coup attempt. The report states that sick prisoners face difficulties in accessing medical intervention and that conditions in prison worsen their health. Amnesty International emphasises that Turkey should extend supervised release for sick prisoners. Amnesty International raises significant concerns about the supervised release system in Turkey, particularly in the context of the COVID-19 pandemic.[75]

In several reports, Human Rights Watch (HRW) has highlighted the discriminatory use of the supervised release system in Turkey, often excluding those detained under vague and broad anti-terrorism charges. According to HRW, these discriminatory practices have led to criticism that Turkey uses the legal system to suppress dissent and punish political opponents under the guise of counter-terrorism. HRW emphasises that this discriminatory application of parole exacerbates already poor conditions in Turkish prisons and constitutes a gross violation of international human rights standards.[76]

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[75] Amnesty International: ¨Turkey: Convicts' release law must not discriminate", 31 March, 2020, https://www.amnesty.org/en/documents/eur44/2058/2020/en/

[76] HRW: Turkey Should Protect All Prisoners from Pandemic, March 23, 2020, https://www.hrw.org/news/2020/03/23/turkey-should-protect-all-prisoners-pandemic

Both organisations call on the Turkish government to apply the supervised release law fairly and ensure that all prisoners are considered for release, particularly those at higher risk due to ill health or wrongful detention.

In its report titled *"Rights Monitoring Report on Prisons in Turkey 2023"*, which was made public on 1 June 2024, the Human Rights Association criticised the fact that the committees established by the *"Regulation on Observation and Classification Centres and Evaluation of Convicts*", which entered into force after being published in the Official Gazette No. 31349 on 29/12/2020, take themselves as a court and make evaluations about the good behaviour of prisoners; and in this way, they decide whether the convicts will benefit from the rights of conditional release and supervised release. According to the report, the observation boards make abstract and subjective comments while deciding whether convict are of good behaviour or not, and they also ask political convict to declare that they repent. Due to these decisions, hundreds of political convict are deprived of their rights to supervised release and conditional release.[77]

In the Report on *"Human Rights Violations in Turkey in the Year 2023 with Data"* published by the Human Rights Foundation of Turkey on 10 December 2023, it is stated that imprisonment has become an essential technique of governance for the political power as a result of the political power's use of the law as a means of pressure and intimidation. In the report, it is stated that beatings, all kinds of arbitrary treatment and arbitrary disciplinary penalties, solitary confinement, exile and transfers applied for various reasons (such as strip search, handcuffed examination, standing roll-call) have reached unprecedented levels in recent history. It was also emphasised that violations in access to health, food, water and hygiene materials in prisons constitute torture and other ill-treatment.[78]

Lawyer Kaya Kartal, President of the Association for Solidarity for Human Rights and Oppressed People (MAZLUMDER), stated that there is a serious arbitrariness in both supervised release and the release of sick prisoners, that the Forensic Medicine Institution has an arbitrary attitude towards sick prisoners, that even people who cannot be kept in prison are not released; but on the other hand, when it comes to¨ *the whites of the state*¨ , they can easily issue reports and release them, for example, generals convicted in the 28 Subat trial were released. Kartal stated that especially in recent years, there has been an attitude towards burning both supervised release and conditional release periods regarding political prisoners, and that while many people with much more serious offences were released with the new

[77] Human Rights Association: ¨Rights Monitoring Report on Prisons in Turkey 2023¨ , 01/06/2024, https://www.ihd.org.tr/wp-content/uploads/2024/06/2023-Y%C4%B1l%C4%B1-Hapishane-Raporu.pdf

[78] Human Rights Foundation of Turkey: ¨Vererilerle 2023 Yılında Türkiye'de İnsan Hakları İhlalleri¨, 10 December 2023,

regulation enacted in the Parliament, political convict were unfortunately burned their supervised release by taking away their rights on simple grounds.[79]

Similarly, DEM Party MP Dr Ömer Faruk Gergerlioğlu, known for his work in the field of human rights, frequently expresses the view that arbitrary decisions are made in supervised release. Again, Istanbul MP Mustafa Yeneroğlu, Head of Law and Justice Policies of the Democracy and Initiative Party, emphasises that serious violations of rights have been experienced in the field of criminal law in Turkey for a long time and that prison administrations continue to punish people despite the expiry of the supervised release period and that these issues are contrary to the principles of criminal execution law.

CONCLUSION

When we look at the discriminatory practices faced by convicts convicted of terrorism offences in relation to supervised release and conditional release in a holistic manner, it is seen that the problem started to be experienced largely after the amendments made to the Law on Execution in 2020. In 2020, the underlying reason behind the amendments made to the Law on Execution of Sentences and the use of discretionary powers of prison administration and observation boards against convicts was that the legal supervised release and conditional release periods of convicts by the Turkish judiciary on "FETÖ" charges had begun to expire.

Violations of rights arise from discriminatory practices as well as legislative reasons. It is observed that prison administration and observation boards use their discretionary powers arbitrarily, exceeding their limits. The arbitrariness is based on systematic discriminatory practices against those convicted of terrorism offences.

As stated by the ECtHR, it is natural for prison administration and observation boards to have some margin of appreciation when making decisions on the good behaviour of the convict. However, the discretionary power should never be used arbitrarily in a matter that directly affects the duration of a person's stay in prison (for example, the period for which the right of discretion will be used for a convict sentenced to 10 years imprisonment is 2 years and

[79] Independent Turkish, "Allegation of 'arbitrary practice in supervised release'... Activists: The practice got out of hand, arbitrariness increased", 9 August 2023,

6 months) and their freedom, and the decisions made should be justified with concrete, auditable legal evidence. When the justification of the decision is read, justified and concrete justifications should be presented that a reasonable majority of people would say¨ *the decision is correct*¨. However, in practice, it is observed that prison administration and observation boards do not justify their decisions with concrete, auditable legal evidence, and are content with writing the statements written in the legislation as they are.

It is observed that prison administration and observation boards force convicts who do not accept the charges against them during the investigation and prosecution phase to accept the charges against them during the execution phase of the sentence and punish those who do not accept the charges by issuing a decision that they are not in good behaviour.

It is observed that the sentence execution judges and heavy penal courts, which are in charge of checking the legality and appropriateness upon complaints and objections against the decisions of the prison administration and observation boards that the convict is not in good behaviour (*confirmation of sincerity*), mostly reject the complaints and objections by stating that the administration and observation board made a decision based on observation within the scope of discretionary authority. The Constitutional Court, on the other hand, has ruled inadmissibility without even going into the merits of the matter in individual applications regarding the possibility of convicts to spend the part of their sentences until their conditional release outside the prison by applying supervised release measures.

Although there are many legal institutions in Turkish legislation (Sentence execution judge, High Criminal Court, Court of Cassation, Constitutional Court and even partially the Human Rights and Equality Institution of Turkey) that could theoretically prevent these violations of rights, unfortunately, it is seen that these institutions mostly turn a blind eye to these violations of rights caused by the prison administration and observation boards, do not carry out an effective legality and appropriateness control, and lack of this control has encouraged the prison administration and observation boards to make arbitrary decisions.

As a result, as a result of arbitrary judgements of lack of good behaviour against convicts without any concrete legal justification and the lack of effective legal and appropriateness review of these judgements, convicts cannot benefit from the right to supervised release and conditional release provided by the Execution Law No. 5275, their stay in prison is prolonged, and they are deprived of their liberty due to these arbitrary judgements.

It is thought that this problem, which is in a sense politically based, experienced by convicts convicted of terrorism offences, especially after 2020, can be solved to a significant extent with the change in the government's policy on this problem, the effective legality and appropriateness control of the decisions of the prison administration and observation boards that the convict is not in *good behaviour* (certification of sincerity), and the removal of the regulation in Article 6/2-ç of the Regulation on Separation to Open Prison, which is contrary to the principle of legality, from the relevant regulation.