



Freedom of Speech in Prison

Berivan E. Korkut - Hilal Başak Demirbaş



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FREEDOM OF SPEECH IN PRISON

Berivan E. Korkut - Hilal Başak Demirbaş

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PREFACE

The prison population in Turkey has been significantly increasing every day. As a result of this increase, rights violations have grown exponentially and therefore bringing the problems in prisons onto the public agenda has become more crucial than ever. Since 2017, the restrictions on prisoners' rights have been increased due to new laws that have entered into force and the implementation of articles that had not been implemented previously in order to restrict prisoners' rights and partial freedom, while the scope of prohibitory practices without legal basis has also been expanded. The prison system has been adversely affected by this process, which has led to serious deprivation of freedom of speech within prisons. During 2018, these restrictions have steadily increased.

Even though the problems regarding freedom of speech in prisons have recently been brought onto the public agenda mostly with reference to incarcerated journalists, they have still not been discussed sufficiently. It is essential to emphasize that prisoners are entitled to freedom of speech as everyone else and that the conditions for accessing information without any restrictions should be established.

As Civil Society in the Penal System / Turkey's Center for Prison Studies (CİSST/TCPS), we have conducted the *Project on Freedom of Speech in Prison*, with the financial support of the Consulate General of Sweden. In this project we have monitored and reported on the problems regarding prisoners' freedom of speech, by relying on the information obtained from letters sent to us or through our advice line, lawyer visits and the news throughout 2017 and 2018.

Within the scope of the project, the "Freedom of Speech in Prison Workshop" was organized together with Bianet, with the participation of institutions and unions working in the field of freedom of speech as well as associations, initiatives, lawyers' organizations and activists working in the field of human rights and prisoners' rights.¹At the end of the report you can find transcripts from three of the workshop presentations, namely; *Freedom of Speech in Prisons in the 1980s* by Nadire Mater from Bianet, *Breaking the Isolation: Bridging the Inside and the Outside* by Gamze Yentürk from Görülmüştür Initiative and *Problems of Communication in Prisons* by Seda Öz from Dışarıda Deli Dalgalar Initiative.

As a result of the workshop, we prepared a policy document² based on the discussions, ideas and recommendations of the workshop participants, which was later shared with members of parliament, therefore contributing to the efforts to bring this issue to public attention.

Moreover, within the scope of the project, we produced an animated

1 http://bianet.org/bianet/insan-haklari/201058-cisst-ve-bianet-in-gundemi-hapis-hanelerde-ifade-ozgurlugu?bia_source=rss

2 You can find the recommendations made in this policy document, in the Recommendations section below.

video³ which focuses on the problems that prisoners experience in meeting their most basic needs and accessing means of communication. We have tried to make these issues visible and reach different segments of society by disseminating the video via social media platforms and various activities.

While addressing freedom of speech in prisons, we aim to emphasize the restrictions on correspondence by letter, prohibitions on accessing books and other printed media, restrictions on the means of accessing information, the challenges experienced during family visits, problems regarding accessing justice, such as those pertaining to lawyer visits and filing petitions, and finally the minimization of benefiting from social activities. In this book, we hope that the discussion on the possible solutions of the problems of prisoners will positively affect other people who are in one way or another related to prisons but cannot make contact with prisoners and who are therefore also being deprived of their right to freedom of speech. We would like to express our gratitude to the prisoners who have shared their experiences with us during this project, in the hope that this book will help reduce the infringement of rights.

3 <https://vimeo.com/299836726>

**2017-2018
FREEDOM OF SPEECH IN
PRISON REPORT**

1. INTRODUCTION

Freedom of speech is defined in Article 19 of the Universal Declaration of Human Rights in 1948; as well as in Article 19 of the International Covenant on Civil and Political Rights in 1966 and in Article 10 of the European Convention on Human Rights as one of the first-generation human rights. Freedom of speech is not only an essential element of fundamental human rights, but also a fundamental pillar for their protection and empowerment, and therefore plays a central role in the protection of other rights.⁴

Freedom of speech is one of the first-generation rights which are also called classical rights. These include essentially the right to life, the prohibition of torture and ill-treatment, the prohibition of slavery, as well as the right to privacy, freedom of communication and freedom of thought. In accordance with the basic principles of human

4 Tanör, Bülent, “Siyasi Düşünce Hürriyeti ve 1961 Türk Anayasası”, Öncü Kitabevi, İstanbul, 1969, p.27.

rights law, these rights are acquired by birth. All states have the obligation both not to infringe on these rights (*negative obligation*) and to prevent any infringement (*positive obligation*). These obligations aim to provide persons with a private and independent area of action that the state, society and third parties cannot interfere with. On the other hand, rights are not absolute; and how and to which extent this area of freedom can be limited is determined by law and jurisprudence.

Freedom of speech can be defined as the “right to transfer, express, disseminate thoughts and opinions by speech, in writing, in pictures or through other media, to convince others or make them believe [...] the correctness or rightness of one’s thoughts and beliefs, to behave and act according to one’s preferences” or as “the peaceful expression or manifestation of a thought, belief, opinion, attitude or emotion.”⁵

Freedom of speech, which is one of the most fundamental rights, is generally defined together with the freedom of thought and opinion. Freedom of speech includes elements such as not being condemned because of one’s thoughts, having the suitable environment and means for developing ideas freely; sharing, disseminating, indoctrinating thoughts and beliefs among other people and society, and accessing the ideas, thoughts and beliefs of others. In accordance with its positive obligation, the state shall ensure the suitable environment in which such freedom may be exercised and prevent the violation of this right by third parties; and in accordance with its negative obligation it shall not interfere with the exercise of this freedom within the prescribed boundaries.

5 Ibid., p.5.

Freedom of speech is applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society.’⁶Freedom of speech can be restricted, as stated in Article 10 of the Convention; however, these exceptions should be narrowly interpreted, and the necessity of restrictions should be convincingly demonstrated.

Article 10 of the ECHR begins with stating the scope and definition of freedom of speech. Then it explains the possible forms of interference with freedom of speech and the criteria for such interference. Freedom of speech is not unlimited even in democratic societies. However, in cases where freedom of speech will be restricted, the general criteria stated in this article should be sought. The main criteria are; being prescribed by the law while remaining in line with and proportionate to the stated, legitimate objectives. Another significant criterion is that there cannot be any generalized restrictions on freedom of speech. Any form of restriction, condition, limitation or interference regarding the freedom of speech may be exercised only on a particular use of that freedom.

The essence of the right to freedom of speech can never be infringed upon.

In closed institutions where fundamental rights are severely violated, freedom of speech has also been subjected to intense and often uncontrolled restrictions. However, it is necessary to draw attention to the fact that discussing prisons in terms of the right to freedom of speech

6 <http://www.danistay.gov.tr/upload/avrupainsanhaklarisozlesmesi.pdf>

is not an accustomed approach. This may be due to the fact that civil society and rights defenders have to focus more on serious and severe rights violations, or due to an inability to consider prisons in terms of certain rights and freedoms. However, according to the human rights norms about imprisonment which CÍSST/TCPS has embraced institutionally, “persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody” and “restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.”⁷

In this context, freedom of speech continues to exist in areas where persons are deprived of their liberty and it is as important for those who are deprived of their liberty as *for those who are outside*.

Within the scope of the ***Project on Freedom of Speech in Prison***, we aimed to analyze how prisoners exercise their right to freedom of speech and the problems or restrictions they face regarding the exercise of this right. In order to narrow the extent of the issue of freedom of speech, which has been expanded by local, regional and supra-national legal documents and court decisions, we decided to concentrate on the means and practices that enable prisoners to communicate with each other and the outside world in order to reach, share, transmit and disseminate ideas and information. Within this framework, our report consists of the following sections: restrictions on books, periodicals, radio-TV, letters, petitions, visits and telephone calls, social and sports activities, courses and confiscation of documents written by prisoners.

7 European Prison Rules, Recommendation Rec (2006) 2, Part 1 Basic Principles, Articles 2 and 3.

The information we have used in this study was provided by the prisoners themselves during 2017 and 2018, through letters, our advice line, their relatives and their meetings with their lawyers. The fact that civil society organizations working in the field of human rights are not permitted to engage in monitoring activities in prisons leads to various problems. Moreover, since the monitoring activities are carried out with limited resources, obtaining and gathering reliable data and information becomes very difficult. Yet, we have tried to reach different prisons and prisoners with different conditions, despite the problems and challenges experienced by prisoners in sending letters to our association or receiving our letters and petitions. Among 2,685 prisoners who could not explain their problems in letters and therefore demanded a meeting with a lawyer, lawyers from the volunteer lawyer network of CİSST/TCPS have conducted a total of 23 lawyer visitations with prisoners. Although it is difficult to reflect the subjective experience of each person, we have tried to include the experiences of different groups and subjectivities within the study. We have not differentiated among the prisoners we have communicated with on the basis of their religion, language, race, ethnicity, socio-economic status, gender identity, sexual orientation or type of offence.

2. GENERAL OVERVIEW OF 2017-2018

Before reflecting on the effects of the State of Emergency, it is necessary to address the increasing prison population and its consequences since 2005. The prison population in Turkey, which had been approximately 50 thousand in 2005, has regularly increased since then and in 2016 reached 187 thousand. As a result of the coup attempt in July 2016, the number of prisoners has since increased to 214 thousand and the regulations issued by the Decree Law No. 671 has reduced this number to 195 thousand. The new execution law, which entered into force in 2005, extended the period of execution required for release on probation, but this period was reduced back to half of one's sentence by the Decree Law No. 671.⁸ This has been considered to be a partial amnesty. Regarding this regulation, CİSST/TCPS has issued a statement which emphasizes that “ the regulation which has

8 The Law on the Execution of Penalties and Security Measures No. 5275, which entered into force in 2005, had extended the period of execution required for the release on probation from 1/2 of the sentence (Law No.647) to 2/3 of the sentence (Law No. 5275, Article 107/2) on June 1 2005. For example, previously a prisoner who was sentenced to six years had to stay in prison for 3 years in order to benefit from the right to be released on probation, but due to the Execution Law dated 2005, the same prisoner had to stay in prison for 4 years in order to do so. Therefore, the period for the execution of penalties extended, which in turn led to an increase in the number of people in prison.

been implemented due to the high occupancy levels of prisons should be revised and reformulated in a way that is accordant with the principle of equality and based on social consensus and social conscience. Otherwise, it would only be a provisional measure.”⁹

In response to the application of CİSST/TCPS based on the Right to Information Code dated January 7 2014, the Ministry of Justice stated that 119 new prisons with a total capacity of 118 thousand people would be built by the end of 2017. The same document also stated that the prison population had been expected to exceed 250 thousand by the end of 2017. In November 2018, the Ministry of Justice submitted a report to the parliament stating that the prison population was 258,660. Despite this increase in the prison population, the number of prisons has decreased from 651 to 396¹⁰, and between 2000 and 2015, 121 new prisons and 32 additional buildings were built.¹¹ The decrease in the number of prisons in the face of rise in the number of prisoners, should not lead to the conclusion that the capacity of the prisons is less than before. Rather it is necessary to discuss the establishment of campus-type prisons consisting of several prison institutions of high capacity in substitution for the closed-down smaller capacity prisons.

Another significant development during the State of Emergency is the dismissal of all members of the Prison Monitoring Boards by the Decree Law No. 673. The selection and recruitment of new members has disrupted the functioning of the Monitoring Boards.¹²

9 <https://m.bianet.org/bianet/insan-haklari/181552-turkiye-hapishaneleri-son-10-yil-ve-yakin-donemdeki-gelismeler> , accessed on 02.01.2019.

10 <http://www.cte.adalet.gov.tr/#> , accessed on 02.01.2019.

11 Ministry of Justice’s response to the application of CİSST/TCPS based on Right to Information Code, dated January 7, 2014.

12 <http://www.tcps.org.tr/?q=content/k%C4%B1smi-%C3%B6zel-afia-ili%C5%9Fkin-d%C3%BC%C5%9F%C3%BCncelerimizdir>, accessed on 21.11.2018.

3. STATE OF EMERGENCY AND THE CURRENT SITUATION

The declaration of the State of Emergency in 2016 and the subsequent Decree Laws that have drastically transformed state and society relations have also affected the conditions of the prisons and the situation of the prisoners. This process has not only affected the prisoners' spaces of living directly and /or indirectly, but also paved the way for violations and ill-treatment due to the suspension of rights. Based on the complaints we have received from prisoners, we can argue that there has been a dramatic increase in rights violations within the prison system.

While some of the problems experienced in prisons are due to the Decree Laws enacted during the State of Emergency, others are due to the implementation of bylaw articles which have not been implemented previously. At the same time, new bylaws, regulations and general instructions have introduced various new restrictions. The new practices introduced by the Decree Laws during the State of Emergency have been completely abolished since the State of Emergency was lifted. However, the regulations, circulars and general

instructions which were not directly related to the State of Emergency and Decree Laws have continued to remain in effect. These documents are still leading to problems today. Below we will try to briefly address the Decree Laws which have significantly affected the prisons during the State of Emergency period.

First of all, Decree Law 676¹³ states that “the meetings of convicts who are imprisoned from the crimes defined in Article 220 of the Turkish Criminal Code ... and from the crimes falling into the scope of the Anti-Terror Law ... may be recorded vocally or visually for three months upon the request of chief public prosecutor’s office and the decision of execution judge, the officer may be present in the meeting so as to monitor the meeting between convict and his/her lawyer, document or document templates and files given by convict to his/her lawyer and vice versa and the records they kept on the conversations between them may be seized or days and hours of these meetings may be restricted ... the meeting shall be terminated... the meeting of the convict with his/her lawyer may be banned by execution judge for six months upon the motion of chief public prosecutor’s office.” In this regard, Decree Law No. 676 has violated the right of the prisoner to meet with his/her lawyer as well as the confidentiality of the meeting.

According to Decree Law No. 667¹⁴, prisoners who are imprisoned for ”Crimes Against the Security of the State“, “Crimes Against the Constitutional Order and Crimes against the Functioning of this System”, “Crimes Against National Defense”, “Crimes Against State Secrets and Spying“ as well as those crimes falling under the scope

13 <http://www.resmigazete.gov.tr/eskiler/2016/10/20161029-5.htm>, accessed on,15.12.2018.

14 <http://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm>, accessed on,15.12.2018.

of Anti-Terror law, are subjected to heavy restrictions regarding their right to be visited by their relatives. This Decree Law also states that a prisoner may be visited by his/her spouse, blood relatives and in-laws up to second degree with the permission of the Ministry of Justice and Chief Public Prosecutor's Office and also their visitation rights as well as the right to make telephone calls have been reduced from once a week to once in two weeks.

Decree Law No. 6777¹⁵ Article 4 paragraph 1 has introduced a number of restrictions on the prisoners' right to education: "Those who are held in the penitentiary institutions as a detainee or convict for being a member of a terrorist organization or due to offences committed within the framework of the activities of these organizations cannot take the central exams to be held throughout the country or the exams to be held by or for all kinds of formal and non-formal educational institutions and the public institutions and organizations inside or outside the penitentiary institutions during the period when the state of emergency prevails and they are placed in the penitentiary institutions." Due to this paragraph, political prisoners have been prevented from taking exams inside and outside of prison.

There is no official number regarding the prisoners who are deprived of their right to education during the State of Emergency. The report of CİSST/TCPS, *Being a Student in Turkey*¹⁶, has summarized this problem as follows: The annual report of General Directorate of Prisons and Detention Houses in 2016¹⁷ as well as the response to

15 <http://www.resmigazete.gov.tr/eskiler/2016/11/20161122-1.htm>, accessed on,15.12.2018.

16 http://www.tcps.org.tr/sites/default/files/kitaplar/ogrenci_mahpus_raporu_mayis2018.pdf, accessed on 15.12.2018.

17 http://www.cte.adalet.gov.tr/menudekiler/raporlar/2016_faliyet_raporu.pdf, accessed on 15.12.2018.

the parliamentary question given by Sezgin Tanrıkulu stated that by 2017 there were 2,379 prisoners registered in formal education and 33,268 prisoners registered in non-formal education. In response to the parliamentary question submitted by Gamze Akkuş İlgezdi on August 21, 2017, it is stated that by the end of 2016 there were 36,033 prisoners registered in formal education and 33,268 prisoners registered in non-formal education. The difference between the number of prisoners registered in education and the number of prisoners who can actually continue their education is 33,654. This difference can be considered to be the number of persons who were deprived of their right to education by the Decree Law No. 677.

According to Articles 101 and 103 of Decree Law No. 696¹⁸, prisoners who are sentenced or remanded from the crimes falling within the scope of Anti-Terror Law are required to wear the attires provided them by the administration of the penal institution when they are being taken out of the institution to attend a hearing. Those who are sentenced or remanded from the crimes stipulated in Articles 309 to 312 of the Turkish Criminal Code No. 5237, namely “Violation of the Constitution” and “Crimes against Government”, shall wear dry almond-colored coveralls, while those who are sentenced or remanded from other crimes falling under the scope of Anti-Terror Law shall wear gray-colored coveralls. Therefore, we can see that this Decree Law concerning the uniform dress code prescribes an exceptional implementation. Provisions of this Article are not to be applied for juveniles and pregnant women. The Decree Law, which is based on a binary gender system, does not include an additional article about LGBTI+ prisoners. Although the Decree Law states

18 <http://www.resmigazete.gov.tr/eskiler/2017/12/20171224-22.htm>, accessed on,15.12.2018.

that the bylaw stipulated in the article shall be put into force within one month, the bylaw has not been issued and the law has not entered into force yet. Currently, the uniform dress code is not being implemented anymore.

As we have mentioned above, although some of the problems experienced in prisons during the State of Emergency are directly related to the Decree Laws, some of them are due to regulations, bylaws and/or de facto practices. The increase in the prison population has caused various problems before and after the State of Emergency. The authorities have tried to solve this problem by increasing the number of bunk beds in the rooms and wards. However, despite this measure, during the last two years many prisoners reported that they had to sleep on mattresses on the floor, which in some cases had been overflowing out of the wards or were put in front of the toilets, and that the workshops had been converted into wards. This change and transformation have not only led to many problems, but they have also made it impossible for prisoners to live in hygienic spaces and have therefore caused various health problems. One of the most common problems is the delays experienced in prisoners' transfer to the infirmary and/or hospital. Based on the complaints sent to our association, we can say that the forced transfer of prisoners to different prisons has increased in 2017-2018. Political prisoners have often reported that after being transferred to a different prison they were subjected to strip search; which they had rejected on the grounds that "there is no justified reason for it", and that because of their attitude they had been exposed to violence. On the basis of the complaints received from prisoners during the State of Emergency, we can list the problems as follows:

- Searches are made very frequently and quite provocatively.

- Prisoners are kept under constant psychological pressure due to the searches that are conducted in the form of sudden raids late at night.
- A uniform haircut is obligatory.
- Prisoners are asked to roll-call standing up and given disciplinary sanctions if they do not accept it and/or they have been beaten in every search.
- Prisoners are commanded to walk in a single row, in a military order in the hallways.
- Prisoners are prevented from benefitting from daylight and fresh air, since the upper side of the yard is enclosed with wire.
- The doors to the yard are opened late and closed early deliberately.
- There has been a serious decline in the variety and quality of food.
- Meals are not given in adequate quantity.

In addition to the problems experienced by all prisoners, there have also been various other problems and violations experienced by prisoners with special needs, with whom we are also working. Here we should emphasize that this study attempts to analyze the changes in regulations and bylaws as well as the problems affecting all prisoners, and therefore does not distinctively address prisoners with special needs in detail.

4. METHODOLOGY AND EVALUATION

Within the scope of the project carried out in 2018, we have monitored and reported on the letters sent to our association throughout 2017 and 2018 in terms of the problems experienced by prisoners regarding the freedom of speech.

In 2017, a total of 2,196 letters were sent to our association by 1,498 prisoners from 158 different prisons. Since it is not possible for us to retrospectively examine all letters, we needed to limit our sample. We chose 1,000 letters through random sampling from all letters sent to our association during 2017 and 2018. These 1,000 selected letters were sent by 312 prisoners from 76 different prisons. Here, we should note that prisoners could send more than one letter throughout the year. We categorized prominent problems reported in the letters sent to our association in 2017, which then facilitated the examination of letters that we received in 2018.

In 2018, we received a total of 1,660 letters from 2,373 prisoners from 204 different prisons. All letters we received during this period have been scanned and categorized as part of our currently ongoing

project. When all letters are considered, of 1,660 letters we received during 2018, 399 prisoners from 74 different prisons reported problems regarding freedom of speech.

If we compare 2017 and 2018, we can observe that while the number of prisoners increased in 2018, the number of letters decreased. The main reason for this situation, which we address in more detail later in the report, is the confiscation of letters written by prisoners to civil society organizations. Prisoners whose letters were confiscated informed their families who then informed us about their problems via our advice line. Additionally, both the lawyers provided by our association and the prisoners' own lawyers have reported the complaints that could not be delivered by letter. During this period also, most letters written by CISST/TCPS were not given to prisoners.

Freedom of Speech in Prisons in 2017



NUMBER OF PRISON

76



NUMBER OF PRISONERS

312



NUMBER OF LETTERS

1000

NUMBER OF COMPLAINTS REGARDING DIFFERENT MEANS OF EXPRESSION



10 BOOKS



47 NEWSPAPERS



46 PERIODICALS



2 TV



8 RADIO



27 LETTERS RECEIVED



52 LETTERS SENT



144 FAMILY VISITS



24 TELEPHONE CALLS



5 LAWYER



50 PETITIONS



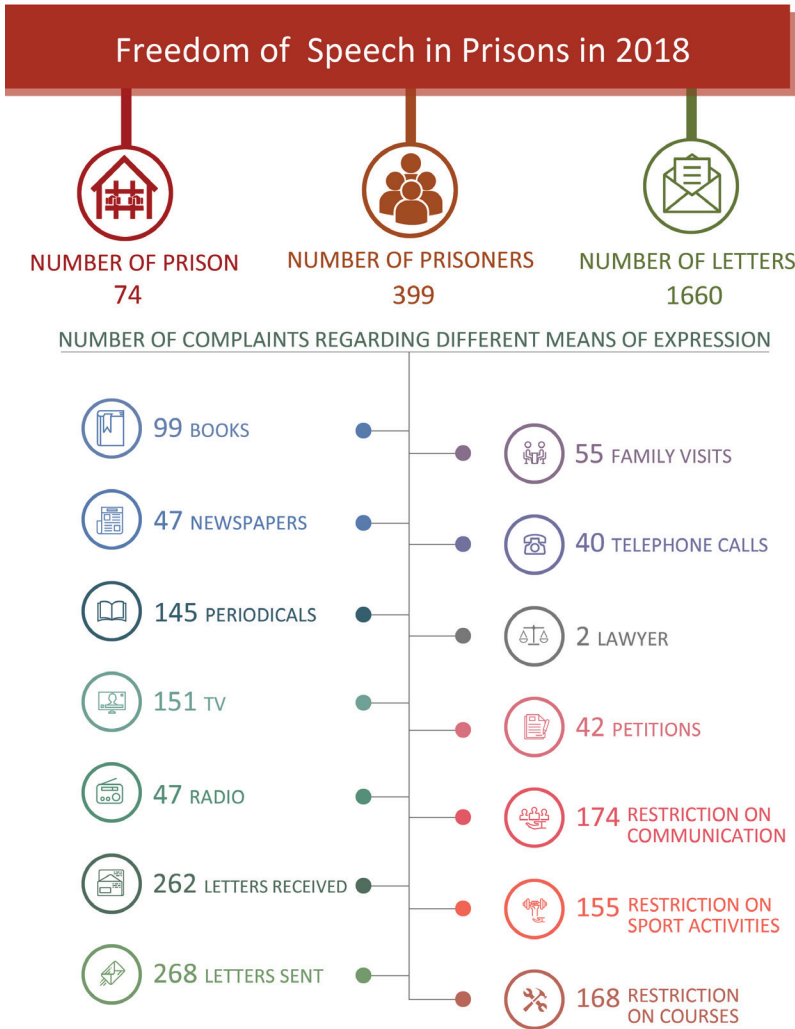
63 COMMUNICATIONS



63 SPORT ACTIVITIES



39 COURSES



As can be seen in the two infographics above, in all 1,000 letters we examined from 2017, we received 678 complaints about freedom of speech. In 2018, we identified 1,655 complaints out of 1,660 letters sent to us.




We have referred to the problems reported in the letters as *complaints*, and the applications to the administrative authorities about these complaints as *human rights applications*. We asked prisoners who wrote these complaints whether they wanted us to make human rights applications. Over the course of the project, we have submitted human rights applications to the following institutions: the Ministry of Justice, the General Directorate of Prisons and Detention Centers, the Parliamentary Human Rights Inquiry Committee, City-based Human Rights Boards, City-based Prison Monitoring Boards, the Presidential Communication Center and the National Institution of Human Rights and Equality of Turkey.

In 2017, 296 human rights application requests were received and a total of 2,072 applications were submitted to the seven different institutions mentioned above. Although there was a decrease in the number of letters that we have received in 2018, the number of complaints actually increased. However, while we received a total of 1,655 complaints in 2018, the number of prisoners who asked us to make human rights applications on the basis of these complaints drastically declined. During this period, 139 human rights application requests were received, and 973 human rights applications were submitted to seven different institutions.

As mentioned above, although the number of complaints increased in 2018, the number of requests for human rights applications decreased. Therefore, it is possible to argue that prisoners had started to think that they could not get any results from their applications related to freedom of speech and that the applications would not change the practices in the prisons.

We have also observed that non-political prisoners tend to make

fewer complaints than political prisoners regarding the right to freedom of speech. Of the 312 prisoners who reported their complaints in 2017, 70% could be classified as political and 30% as non-political prisoners; of the 399 prisoners who applied in 2018, 88% were political and 22% were non-political prisoners. The higher rate of political prisoners in comparison to non-political prisoners should be understood with reference to the fact that the changing implementations and practices mainly concerned the political prisoners.

	2017	2018
 Number of Complaints	678	1655
 Number of HRA* Requests	296	139
 Number of Submitted HRAs	2072	973

HRA: Human Rights Applications

Among the non-political prisoners, we can argue that LGBTI+ prisoners are the ones who have reported most the violations of their right to freedom of speech. On the other hand, it has been observed that non-political prisoners have generally refrained from expressing their problems. This attitude can be due to several factors such as being afraid of taking disciplinary sanctions, not wanting to have problems with the administration and the expectation of possible amnesty.

Political prisoners have generally written on behalf of the whole ward or the whole prison instead of writing about their own personal problems, which in turn made it difficult for us to make evaluations while examining the letters. If we consider the financial bur-

den of writing the same problem separately, this method seems to be plausible. However, it has also posed a serious challenge for us in determining the extent of certain problems.

Since the political prisoners deliver their complaints collectively or in the name of the whole ward, in the complaints we have received, it becomes difficult for us to understand exactly how many people have complaints. Prisoners who wrote letters from the wards that have made collective complaints have indicated that their friends had already conveyed their complaints in the previous collective complaint. This situation has prevented us from observing the developments after the deliverance of collective complaints and detecting which complaints persist. Moreover, the lack of personal information of prisoners in collective complaints has prevented us from identifying the number of people the complaint includes. Therefore, problems reported in collective complaints were considered collectively as the problems of all signatory prisoners. However, where a writermakes generalizations about the problems and reports his/her problems only by giving reference to the experience of his/her friends without providing any reliable information in the letter, we chose not to include this type of complaint in our data set.

Human Rights Applications in Prison in 2017



NUMBER OF PRISON

76



NUMBER OF PRISONERS

312



NUMBER OF LETTERS

1000

NUMBER OF HUMAN RIGHTS APPLICATIONS REGARDING DIFFERENT MEANS OF EXPRESSION



58 BOOKS



26 PERIODICALS



2 RADIO



46 RECEIVED / SENT LETTERS



53 TELEPHONE CALLS



31 PETITIONS



80 RESTRICTION ON COURSES

Freedom of Speech in Prisons in 2018



NUMBER OF PRISON

74



NUMBER OF PRISONERS

399



NUMBER OF LETTERS

1660

NUMBER OF COMPLAINTS REGARDING DIFFERENT MEANS OF EXPRESSION



99 BOOKS



47 NEWSPAPERS



145 PERIODICALS



151 TV



47 RADIO



262 LETTERS RECEIVED



268 LETTERS SENT



55 FAMILY VISITS



40 TELEPHONE CALLS



2 LAWYER



42 PETITIONS



174 RESTRICTION ON COMMUNICATION



155 RESTRICTION ON SPORT ACTIVITIES



168 RESTRICTION ON COURSES

The data on freedom of speech and the problems stated in the letters, which we have explained above in infographics, will be analyzed according to the following categories: Lawyer Visits, Letters, Visits and Telephone Calls, Radio-TV, Petitions, Social and Sports Activities and Courses. We should also emphasize that these letters may concentrate on one subject or may refer to various subjects, and that a prisoner may deliver complaints on his/her own or may write a letter together with other prisoners.

Within the scope of the project, petition samples and instructions were prepared and sent to prisoners in order to enable prisoners to initiate legal proceedings in front of a court of law, including the Constitutional Court.

4.1. Restrictions on Lawyer Visits



One of the most important changes introduced by the Decree Laws, as we have already mentioned with reference to the State of Emergency, is the restrictions on lawyer visits. These regulations infringe upon the essence of accessing justice and attorney client confidentiality, which are the basis of the right to a fair trial, and therefore prevent prisoners from obtaining information about their case files and accessing legal information through their lawyers. At the same time, this situation has led prisoners to feel under pressure during their meetings with their lawyers.

Article 36 of the Constitution entitled Freedom to Claim Rights states that; “Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures.”¹⁹ With regard to the same issue, Article 149²⁰ of the Turkish Criminal Procedure Code states that “The suspect or accused may benefit from advice of one or more defense counsels at own defense at any stage during the investigation or prosecution; in cases where the suspect or accused has a legal representative, he may also choose a defense counsel on his behalf...

19 https://global.tbmm.gov.tr/docs/constitution_en.pdf

20 https://sherloc.unodc.org/res/cld/document/tur/2005/turkish_criminal_procedure_code_html/2014_Criminal_Procedure_Code.pdf

The right of a lawyer to consult with the suspect or the accused, to be present during the interview or interrogation, and to provide legal assistance shall not be prevented, restricted at any stage of the investigation and prosecution phase.” Article 154 of the same law also states that; “Any suspect or accused at any time shall have the right to an interview with a defense counsel in an environment where other individuals are unable to hear their conversation; a power of attorney is not required. Written correspondence by these individuals to their defense counsel is not subject to control.”

Article 6 of Decree Law No. 676 has substantially restricted these regulations. The Decree Law states that; in the event that information, finding or document, which implies that safety of society and penal institution is endangered, terror organization or other criminal organizations are directed, orders and instructions are given to these organizations or secret, open or encoded messages are transmitted by their comments, is obtained, as for the meetings of convicts who are imprisoned from the crimes defined in ... Fourth, Fifth, Sixth Parts of Turkish Criminal Code ... and from the crimes falling into the scope of the Anti-Terror Law ..., the meetings may be recorded vocally or visually for three months upon the request of the chief public prosecutor’s office and the decision of execution judge, the officer may be present in the meeting so as to monitor the meeting between convict and his/her lawyer, document or document templates and files given by convict to his/her lawyer and vice versa and the records they kept on the conversations between them may be seized or days and hours of these meetings may be restricted. Judge of Execution may evaluate a prisoner in terms of his/her observance of rules, the danger he/she constitutes to society or penal institution and his/her development in rehabilitation studies and may extend the specified period of the decision for another three months. The

law does not restrict the authority to extend the decision for three months, and states that it can be extended several times. If one of the actions stated above in the Decree Law has been observed during the meeting with the lawyer, the meeting of the prisoner with his/her lawyer may be banned by execution judge for six months upon the motion of the chief public prosecutor's office. With regard to the prisoners on remand, paragraph 11 of Article 6 states that "at the investigation phase, peace criminal judge, at the prosecution phase court shall be authorized to render decision according to the provisions of this article." Therefore, the meetings of prisoners on remand with their lawyers can also be recorded, restricted and banned for up to six months.²¹

Restricting lawyer-client confidentiality, which is one of the basic principles of criminal law, or totally depriving the person from meeting with his/her lawyer, is a highly controversial practice. Information we have received from prisoners about the effects of these regulations, which directly infringe upon one's right to a fair trial, has caused concerns about the existence of arbitrary practices. In the letters sent to CİSST/TCPS, it is reported that the lawyer visitations of all prisoners who were imprisoned from the crimes falling into the scope of Anti-Terror Law have been recorded without any justification. Restricting the prisoner's meeting with his/her lawyer, thus damaging lawyer-client confidentiality, has also prevented the detection of possible violations of rights.

We should also emphasize that not only prisoners but also lawyers

21 <http://www.judiciaryofturkey.gov.tr/The-Law-on-the-Execution-of-Penalties-and-Security-Measures-is-available-on-our-website>. For detailed information see Duman, E., (2017) Ohal KHK'ları ve Hapishaneler, Birikim, Sayı:335, Mart 2017, İstanbul.

have been affected by these restrictions, since their professional activities have been directly obstructed, and the inability to meet with their clients adequately limits their access to information. Moreover, as also reported in the press, lawyers have sometimes been subjected to ill-treatment.²² These practices have therefore made it impossible to overcome the problems stemming from the lack of independent monitoring activities through lawyer visitations, as we have mentioned. Prisoners had difficulties in expressing their problems in the institution during the meetings with their lawyers, which are listened to or recorded, and this situation prevents the lawyers from obtaining reliable information on rights violations as well as informing the public of these problems. Besides this, lawyers' meetings with their clients have been prevented for a period of time on the basis of the restrictions on lawyer visitations, and sometimes this period can last more than six months, due to consecutive banning decisions. In the reports about the lawyer visits that are made within the scope of this project, it was stated that in Silivri Closed Penal Execution Institution, some prisoners explained that they have not met with their lawyers for a lengthy period of time due to consecutive banning decisions.

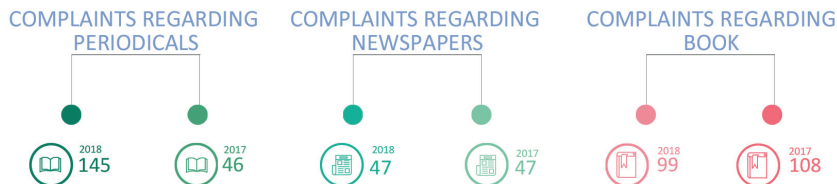
Another significant point is that the restrictions introduced by the Decree Law were later approved in the Grand National Assembly of Turkey and codified. This process was carried out differently from the conventional lawmaking processes. Some paragraphs of Article 6 of Decree Law No.676 and Article 59 of The Law on the Execution of Penalties and Security Measures, No. 5275 have been changed.²³

22 <https://www.evrensel.net/haber/306407/cezaevine-giden-avukatlar-darp-ve-tehdit-edildik>, accessed on 14.03.2019.

23 <https://m.bianet.org/bianet/insan-haklari/180140-khk-ile-avukat-gorusune-kisitlama-getirildi>, accessed on 14.03.2019.

"The third part of the first section of Article 20/1 of The Law on the Execution of Criminal and Security Measures No.5275 explicitly stipulates about the lawyers' visits to prisoners. However, the administration is preventing me from meeting with my lawyer. They tell me; 'If you don't have a case going on, you can't see your lawyer.' Normally, I have cases that are proceeding. So, this restriction is illegal according to the law. I want to make a complaint about it."

4.2. Restrictions on Periodical and Non-Periodical Publications



Prisoners’ rights to receive information and communicate with the outside world are limited and subject to control. Prisoners can access only those publications with an “ISBN” number issued by the Ministry of Culture and Tourism, and which are not ordered to be seized or prohibited by the courts. Similarly, periodicals are also subject to control, and publications that are not ordered to be seized or prohibited by the courts, are given to prisoners. In other words, there is no possibility for prisoners to obtain any printed publication which is ordered to be pulled off the shelves or prohibited by the courts.

A prisoner’s right to benefit from periodical and non-periodical publications is defined in Article 62 of Law No. 5275:

(1) The convict shall have the right to benefit from periodical and non-periodical publications on condition that they are not prohibited by the courts and that he pays their price.

(2) Newspapers, books and other printed works published by official institutions, universities, professional organizations in the status of a public body, and foundations and non-profit associations to which the Council of Ministers has granted tax exemption – provided that their publica-

tions are not prohibited by the courts – shall be given to convicts freely and without charge. The textbooks of convicts attending education shall not be subject to control.

(3) Publications containing news, writings, photographs or comments which endanger the security of the institution or which are obscene shall not be given to convicts.

The Council of Europe's Recommendation Rec (2006) 2, of the Committee of Ministers to member states on the European Prison Rules²⁴ emphasizes that a prisoner's communication with the outside world is crucial, but it also states that these rights can be restricted by court orders:

Prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case.

Article 62 of Law No. 5275²⁵, defines accessing periodical and non-periodical publications as a right and then indicates the restrictions that can be imposed on this right and authorizes the prison administration to prohibit publications that endanger the security of the institution or that are obscene. The fact that the limits of this authority have not been defined in the law may lead to excessive restrictions on the prisoner's right to access information. However, this article

24 European Prison Rules, Recommendation Rec (2006) 2. Accessed on 12.02.2019.

25 <http://www.judiciaryofturkey.gov.tr/The-Law-on-the-Execution-of-Penalties-and-Security-Measures-is-available-on-our-website>

does not authorize the executive authority to censor but gives it discretionary power only in exceptional cases. On the other hand, the implementation of the law, together with the new regulations and bylaws which have entered into force, lead prisoners to have serious problems in accessing periodical and non-periodical publications and other means of mass communication.

Based on the complaints that our association received in 2017 and 2018, we can say that various books, periodicals and newspapers which are not ordered to be prohibited are not allowed in prisons and there are serious difficulties in accessing periodical and non-periodical publications. Numerous books that were previously allowed in prisons have been considered objectionable during the State of Emergency and there has been a significant increase in book restrictions. For example, the books that were previously allowed by the reading committee have been considered objectionable and therefore confiscated during ward searches, or while prisoners are transferred to different institutions. Another practice that we have been informed about is the confiscation of books based on the words mentioned in the index section, regardless of the content of the book.

These restrictions and confiscations are not only specific to books, but they also include periodicals. Many newspapers and periodicals are prohibited in penal institutions. Yeni Yaşam newspaper, which has been published legally and for which there is no court judgment prohibiting its distribution, is not accessible in many prisons. Accessing daily newspapers such as Birgün, Evrensel and Cumhuriyet has also been seriously restricted. We have been informed that not only newspapers and periodicals that include political articles but also culture and art magazines were not allowed in many penal institutions.

Another problem in accessing periodical and non-periodical publications is the prohibition on receiving publications that are sent directly to prisoners from the outside. While previously the publications that are sent through mail or submitted to the institution by their families/lawyers during their visits had been given to prisoners, this situation changed after 2017. According to the decision of the Board of Education issued simultaneously in various prisons in Turkey, prisoners are prevented from receiving publications delivered via mail or submitted to the institution by their families.

For example, as a response to the application of a group of prisoners in the Bolu F-Type Prison, the Judge of Execution in Bolu on 13.03.2017 states:

*“The Board of Education of Bolu F-Type High-Security Closed Penal Execution Institution’s decision no 2017/28 dated 03.03.2017, which is the subject of objection, states that ; **“The books, periodicals and newspapers and similar articles sent from the outside via mail or brought by relatives to the convicts/prisoners on remand are not allowed (...)”**”*

Due to this regulation, prisoners are now obliged to pay directly for the publications they want to read. The prisoner must submit a list of the publications he/she wants to the correctional officer in charge and ask for the publications to be purchased through his/her own personal account.²⁶ These publications requested by the prisoners are purchased from the bookstore or dealer that is contracted by the administration. This decision has caused two fundamental

26 <http://www.resmigazete.gov.tr/eskiler/2005/07/20050713-14.htm> , accessed on 19.03.2019.

problems. First, paying the price of the books they request leads to financial difficulties for the prisoners. This practice prevents prisoners in poor economic conditions from accessing publications. With this decision, the prisoners now have to both meet their basic daily needs and pay for the publications with their deposited money. The decision of Bolu Judge of Execution mentioned above addressed this problem and decided to cancel this implementation;

“It is evident that the decision of the educational board about the prohibition of the books, periodicals, newspapers and similar publications which are brought to the convicts/prisoners on remand by their relative, concerns the essence of the right and nullifies it. As stated in the petitions of the convicts/prisoners on remand, they do not have any income and they do not have any financial resources for purchasing books or publications. They are able to obtain publications such as books, periodicals and newspapers most of the time through their relatives or publishing houses which send them for free. Therefore, such an implementation would prevent them from accessing any publications. Since the decision in question abolishes the convicts/prisoners on remand’s right to obtain publications, whereby the restriction on this right will infringe on the essence of it, this decision must be cancelled.”

Compelling the prisoners to pay for the books they request, has also prevented others from sending them discounted or secondhand books as well as the solidarity campaigns of sending books to prisoners. This situation has created a financial burden not only for the prisoners but also for their relatives who financially support them.

The second important problem is that the books demanded by the prisoners are usually not available from the specific bookstores and dealers contracted by prisons. In the letters sent to our association, it is reported that the requested publications are not available in contracted bookstores, the prison libraries are insufficient, the administration has not taken any measures in this regard and there is no way to obtain the requested books. The same situation also applies to periodicals and newspapers. The prisoners' right to request books from different bookstores or large distribution companies other than the contracted bookstores and to obtain the publications they want has been prohibited in practice.

Another implementation regarding periodical and non-periodical publications is the restriction on the number of books that can be kept in prison wards. However, this restriction is not legally based on a change made in the laws and regulations, but on a decision taken in all institutions simultaneously. For example, after our three applications dated 13.09.2018, 19.09.2018 and 20.09.2018, the response of the Tarsus District Governorship dated 04.10.2018, states that:

“The excessive number of books that are kept by the prisoners on remand/convicts staying in our institution cause problems in the searches. If the number of these books are not limited they can be used for different purposes in the future; considering the physical and security conditions of the institution, the prisoners on remand/convicts are allowed to keep 8 (eight) personal books and 3 (three) library books in their rooms; if the person is a student there shall be no restriction on the number of textbooks, provided that they keep with them a reasonable number of books (...)”

These adjustments, which are generally regarded as ‘secret’ or part

of the internal regulations of the institution, are not shared with the public. Based on the narratives of prisoners and the responses to our applications, we can argue that this practice started during the State of Emergency and according to the restrictions, the number of books that are allowed to be kept by prisoners ranges between 5 and 10.

On the basis of this practice, prisoners are told that the books that are considered as extra are taken to the warehouse and that they can exchange books on demand. On the other hand, the complaints sent to our association have stated that the book exchange demands have not been met for a very long time. As mentioned above, the fact that these regulations are internal regulations and not shared with the public makes conducting a comprehensive analysis impossible.

In discussing all these problems and practices, it is important to underline that the books in prison libraries are very few in number, they are not sufficient in variety and prisoners cannot access the books they want. The fact that prisoners cannot borrow books from the city and university libraries, but only from the prison library, is another factor that further restricts their rights.

"However, while we could get 7 books before, now we can get only 3 books. When new books arrive, we can't get those new books without giving up the books we already have."

"Due to the State of Emergency, not only receiving books but also sending them is prohibited."

"We have been deprived of access to periodical and non-periodical publications (periodicals, newspapers, etc.). We cannot read them due to the arbitrary, unjustified prohibitions."

"We cannot get our newspapers if there is any news concerning the prisons in them. Yeni Yaşam newspaper is not allowed, but we can get Evrensel and Cumhuriyet newspapers."

"We cannot benefit from impartial media organizations. We can only read Cumhuriyet and Sözcü newspapers in our ward. Even though we have repeatedly requested Birgün and Evrensel newspapers, they are not given to us on the grounds of the State of Emergency. But we know that these newspapers are available in other prisons. Here, even the Fox TV broadcast has been cut off."

"Our books, which are not allowed and about which we are still struggling through written and verbal means, were confiscated and held in pledge by the institution. In fact, there's no such thing as a quota system. While the constitutional definition of quota and duration regarding the books can only apply to the books that belong to the library of the prison administration, this institution applies this article in an arbitrary way to our personal books, which belong to us."

"When we were transferred here, none of the books that we brought with us were given back to us. We were subjected to a quota restriction according to which one is allowed to keep only seven books with him/her. We haven't been able to get a single book since the day we arrived here. Since we are closely interested in books and often do research, we told them that we do not accept this restriction that allows for only seven books per person and that the prison implements this quota arbitrarily, but our demands have not been met. There is no such restriction in the constitution. The prison administration is trying to implement it arbitrarily on the basis of its internal regulations."

"The books that are sent to us are not delivered to us immediately as before. I mean, they did not give us the books even after inspection, due to an article passed last year. We have a significant problem in this regard; even if an ambassadors send us books, when they will give them to me is not clear."

"Even though our situation is relatively good for the moment, it does not mean that there are no problems or hardships. For example, the books that our families send to us are sent to the police department for reasons such as 'security, control', so we can have these books only after five or six months. Sometimes it takes much longer. Besides, letters written in Kurdish are not delivered to us, while other letters are delivered so late that they lose their relevance. Sometimes our petitions get lost, and this can naturally lead to injustices."

"One of our main problems now is the issue of Kurdish. Although for a long time we have been applying to various relevant authorities to solve this problem, we could not get any result yet. When we give our works written in Kurdish to the prison administration to send them out, they tell us that there is no translator etc. and give them back to us. Apart from that, we as aggravated life prisoners, have been deprived of many things."

"We are still experiencing similar problems and hardships regarding the prison conditions. For example: we are allowed to engage in sports activities only one hour a week on our own, only with the people from our own ward. Other than that, there is no social activity that we are allowed to participate in. Our demands are not recognized and met, because of our political identity. The restrictions that were put into practice during the State of Emergency still continue here. As we have already shared with you before, we cannot receive

any books, we can only receive them as gifts on special occasions and days. In addition to this, we cannot read any books, periodicals or Yeni Yaşam newspaper, which is available in other prisons."

"I have been engaged in distance learning for ten years. During the time I have spent in Kırıkkale and Ankara F-Type prisons, the administrations in there have not provided me with anything except giving me a place (class) and UYAP internet line. Therefore, I have bought the necessary materials and equipment such as computer, printer, external disk, education CDs and so on, on my own (with the contribution of the school and caring people) through the administrations. Since it is impossible to benefit from the internet except the school course page, I have been provided with all the resources I needed in these studies (especially for homework, projects, research and foreign language education) through the administrations. Although the restrictions that are imposed on education by Decree Law No. 677 after the July 15 coup attempt are supposed to be limited to only [taking] exams, I have not been able to benefit from any of these materials and resources for more than two years now, they are still being retained."

"About two months ago, our notebooks were taken from us. They are being held by the letter-reading committee. And also, we can't send the notebooks out."

"Apart from monthly routine searches, there are frequent raids in which private and special belongings are thrown around, messed up, our notebooks are confiscated and if any objection is raised about these practices, arbitrary disciplinary penalties are imposed. This is torture, a crime of torture, a violation of human rights."

4.3. Restrictions on Letters



European Prison Rules²⁷ states that “Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organizations and to receive visits from these persons.”

Regarding the communication and visitation rights of prisoners, Law No. 5275 Article 68²⁸ regulates that;

(1) Subject to the restrictions specified below, the convict shall have the right to receive letters, fax messages and telegrams sent to him, and to send letters, fax messages and telegrams at his own cost and expense. (2) Letters, fax messages and telegrams sent by the convict or arriving for him shall be inspected by the letter-reading committee or, if this committee does not exist, by the highest authority of the institution. (3) Letters, fax messages and telegrams endangering the order and security of the institution, holding

27 European Prison Rules, Recommendation Rec (2006) 2. Accessed on 12.02.2019.

28 <http://www.judiciaryofturkey.gov.tr/The-Law-on-the-Execution-of-Penalties-and-Security-Measures-is-available-on-our-website>

up officers as a target, serving for communication between members of terrorist or interest-seeking criminal organizations or other criminal organizations, containing false and untrue information which would lead to panic among people and in institutions, or containing threats or insults, shall not be delivered to the convict. They shall not be sent if they are written by the convict. (4) Letters, fax messages and telegrams sent by the convict to official authorities or to his lawyer for the purpose of defense shall not be subject to inspection.

According to this article, any correspondence of prisoners except those sent to official authorities, i.e. any correspondence sent by prisoners or arriving for them, is subject to the inspection of the prison administration. The inspection is carried out by the letter-reading committees in prisons. However, letter-reading committees are not authorized to confiscate the correspondence. They are only obliged to send the correspondence to the disciplinary committee of the prison. Disciplinary committees may confiscate the letter in cases where the letter is considered objectionable partially or totally. The prisoner must be notified in writing about the decision to confiscate the letter.

Evidently, Article 68 is open to interpretation. Since the conditions under which letters are to be confiscated are not clearly stated and open to interpretation, the letter-reading committees and disciplinary committees have the authority to censor and prevent correspondence. For instance, most of the letters sent to our association have been confiscated on the basis of the above-mentioned article, which states that letters “*containing false and untrue information which would lead to panic among people and in institutions, or containing*

threats or insults, shall not be delivered to the convict. They shall not be sent if they are written by the convict.”

First of all, which criteria will be used in order to define the activities that would lead to panic is not stated in the article. Likewise, how the seditiousness of the transmitted information is to be proven is also unclear. Besides this, if the prisoner were not to tell the truth, in any case the ensuing investigation carried out on the basis of his/her application would reveal the allegations to be unfounded. In addition, since one of the fundamental means of communication used by prisoners to inform the outside world about the violation of their rights, is correspondence by letter, this restriction deprives prisoners of communication with the outside world regarding the violation of their rights and especially of the opportunity to ask for support from civil society organizations.

For prisoners, correspondence is one of the most fundamental means of communication with the outside world. Therefore, the restrictions on letters are among the most severe obstacles for the prisoners in terms of benefitting from the right to freedom of speech.

According to the various applications and complaints we have received, the practice of confiscating letters has increased during the State of Emergency. Moreover, letters which are not sent via express mail service frequently fail to reach their addresses. The absence of a tracking number for the letters that are not sent by express mail service makes it impossible to follow up on their whereabouts and make an application about them afterwards. Therefore, prisoners have had to send their letters via express mail service, in order to ensure that they arrive at their destination. Since the price of express mail service is higher, using this service has led prisoners to reduce

the number of letters they send. In addition, prisoners have also reported that they exercise self-censorship and abstain from expressing their problems freely in letters or applications to various authorities, in order for their letters not to be confiscated and to reach their destination.

Another significant problem is that recently the prisoners have been faced with disciplinary sanctions or legal prosecutions on the basis of their letters, which have been considered objectionable and thus confiscated. Article 68 of the Law on the Execution of Penalties and Security Measures defines the conditions under which letters may be confiscated:

(3) Letters, fax messages and telegrams endangering the order and security of the institution, holding up officers as a target, serving as communication between members of terrorist or interest-seeking criminal organizations or other criminal organizations, containing false and untrue information which would lead to panic among people and in institutions, or containing threats or insults, shall not be delivered to the convict. They shall not be sent if they are written by the convict.

The law does not prescribe any measures other than the prevention of the letters that are considered objectionable. These confiscated letters should not be considered to constitute a propaganda offense because they could not leave the institution and reach anyone. For the crime of propaganda to be committed there must be publicity. The judicial authorities can qualify a speech as a crime only if the thought in question has reached the public. However, since the declaration of the State of Emergency, we have witnessed an increase in

the number of prisoners indicating that they had been legally persecuted because of their letters, which are in turn confiscated.

"It seems absurd, but doesn't my letter itself explain sufficiently the state of 'freedom of speech'? They want to put us in a situation where we cannot even make jokes, thinking that jokes can be a reason for the confiscation of letters. In a way, they want to expand and intensify the mechanism of self-censorship, so that they can cover up all kinds of rights violations in prisons."

"We have been facing problems concerning our right to send and receive letters, a right which is also stated in the document you sent. For a long time, we have not been able to get any information about the letters we send or which are sent to us. Such practices that had started with the State of Emergency continue. Our right to send and receive letters, which is practically our only means of communication, has been prohibited. Sometimes, we can receive registered, express delivery letters etc. But even those we can only receive every few weeks, if we can get them at all. Normal letters, in practice, cannot be sent or received in any way."

"Normally, in all the prisons one is allowed to write letters in one's own language or in any language he/she wants. Here, first they told me that I can write either in Turkish or in English. Then the letters I wrote in my own language, Persian, or the letters written by my family members who necessarily write in Persian since they do not speak any other language, were sent to Ankara due to the lack of translators in this prison. Believe me, my sister once had a personal problem, she wanted to write me about it. It took more than 6 months for her to reach me. If I write her back in the same language, I can correspond with her only once in a year."

"I'm drawing cartoons and sending them out by mail. 2 years ago, I was prosecuted [because of my cartoons]. Except for that, I have not experienced any problems. Although the judge of execution decided that I should be allowed to send my cartoons out, in accordance with the decisions of the ECHR and the Constitutional Court, the prosecution confiscated them and filed a lawsuit against me. I was acquitted but during that 1.5-year period they prevented me from sending my cartoons out. Another friend had also been prevented from sending out a story she wrote. Probably, she is going to write you about it."

"Some of the letters that we wanted to send were prevented arbitrarily because the opinions, evaluations about politics, economics etc. expressed in the letters were considered objectionable. Some of our friends have been subjected to disciplinary sanctions and put on trial for absurd reasons such as "insulting the president" or, being a "member of an illegal organization."

4.4. Restrictions on Visits and Telephone Calls



European Prison Rules states that, *“The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.”*

Regarding the visitation rights of prisoners in Turkey, The Law on the Execution of Penalties and Security Measures, Article 83/(3) states that, *“Visits shall be of two types, open and closed, with their conditions and durations specified in the Regulation issued by the Ministry of Justice.”* Under the conditions specified by the prison administration, prisoners have the right to be visited every week, which amounts to four visits, consisting of one open visit and three closed visits, per month.

The law states that the duration of the visits cannot be less than half an hour and more than one hour, apart from some exceptional cases such as those of juveniles or in the case of rewarding practices. The duration is calculated on the basis of the moment when the prisoner and the visitors actually meet and the moment when the conversation is actually over.

As mentioned above, within the context of State of Emergency, Decree Law No. 667 introduced restrictions on the visitation rights of the prisoners’ relatives. According to the regulation made by the

Ministry of Justice and the Chief Public Prosecutor, prisoners are only allowed to be visited by their spouses, blood relatives and in-laws up to second degree, and their right to make telephone calls has been reduced from once a week to once every two weeks. This practice ended after the State of Emergency was lifted.

According to the complaints we received, we can say that the duration of visits has been kept at its minimum and the complaints about this issue have been increasing. Although the minimum duration of visits is defined by the law as half an hour, the visits had been usually allowed to last for one hour before 2017. Since the families of the prisoners are often coming from cities which are far away from the prison location, keeping the duration of the visits short leads to serious problems. Prisoners have frequently stated that the practice has been continuing since 2017 and that this situation has led to grievances of both their families and themselves.

The regulations also stipulate how both the visitors and the prisoners are to be searched during their visits.²⁹ The law emphasizes that these searches shall not vilify one's reputation, be disrespectful to human dignity or be inconsistent with the aim of conducting the search. Conversely, many prisoners have indicated in their complaints that the searches have recently been disrespectful to the dignity of the visitors. For this reason, some of the prisoners stated that they did not want their families to come and visit them. At the same time, some family members of the prisoners have also told us that they did not want to make visits because of these searches. Prisoners have also said that their families and relatives had been traumatized after the

29 https://www.tbmm.gov.tr/komisyon/insanhaklari/belge/um_hukumluziyaret.pdf, accessed on 12.03.2019.

visits as a result of being searched in such a way. This practice causes the prisoners and their families to experience uneasiness and stress during these short periods of time in which they are able to see each other, as well as preventing the visits from taking place in a peaceful environment.

Regulations about the restriction on visitation rights are often described in bylaws. The meeting of prisoners with their visitors cannot be prohibited unless the prisoner is punished with deprivation of visitations or confinement in a cell. In the case of juveniles, even if they have received disciplinary sanctions, their meetings with their parents and siblings cannot be restricted. By right, the deprivation of visitations must be imposed as an exceptional punishment in a way that does not break prisoners' social ties with their families and relatives. However, the recent complaints we have received from prisoners reported that the imposition of deprivation of visits can last for months, their right to accept visitors have been prohibited and they have been subjected to de facto isolation.

Another issue, about which complaints have been increasing recently, concerns the forced transfer of prisoners to prisons that are far away from their families. There is no explicit provision about this issue in the law and it is not legally ensured that the person shall be kept in an institution close to his/her family. Only in the circular, *The Allocation of Penal Execution Institutions, Transfers and Other Provisions*, is it stated that the transfer process shall be carried out by "taking into account aspects such as [the prison's] capacity, category, population, conditions of order, security, proximity to family and social environment." Transferring prisoners to prisons that are at a great distance from their families has effectively prevented them from exercising their visitation rights. Rejecting the prisoners' re-

quests to be transferred to the cities where their families live in order to be able to exercise their visitation rights, similarly, gives rise to deprivation of rights.

There has also been an increase in complaints about the restrictions on the rights of prisoners to have non-kin visitors, which is limited to three people, during the State of Emergency period. Prisoners stated that they are not allowed to meet with the people they had listed as visitors, on the basis of Article 9 of the regulation.³⁰ They stated that the names they put on the list were frequently denied visitation access “on the grounds that they could not pass the security investigation” and so were prevented from realizing their intended visit.

In this article, since the criteria according to which someone is “considered objectionable” are not defined, the decision was totally left to the interpretation of the law enforcement officers who are in charge of the investigation. Yet the law enforcement authorities do not provide any information as to the reasons why they disallow certain people from making visits and have not made a legal statement on this issue. Therefore, it becomes increasingly difficult for individuals to resort to any objection mechanisms.

As stated in Decree Law No. 667, the right to make telephone calls was reduced from once a week to once every two weeks during the period of the State of Emergency. Prisoners can communicate with their relatives, who are legally permitted to do so, for 10 minutes

30 “The administration of the penal execution institution, if it is deemed necessary, shall conduct investigations, which will be carried out by law enforcement officers, about the reported visitors regarding whether or not it is inconvenient for them to visit. Those who are considered objectionable are not allowed to make visits and a new visitor is asked to be chosen.”

a week after they have prepared the necessary documents. This is explained in Article 4 (g) of the Bylaw on the Telephone Calls of Sentenced and Remanded Prisoners in Penal Execution Institutions and Detention Centers with their Relatives.

“The convicts or prisoners on remand shall be taken from his or her room or ward to the phone, by a team of 3 people consisting of the chief correctional officer and execution and protection officers in charge. The convict or prisoner on remand starts his/her conversation by saying his/her name and last name. He/she continues his/her conversation by asking the correspondent on the phone to repeat his/ her name, surname and phone number.”

Although it has been defined in the regulation, this article concerning prisoners’ telephone calls, which had not been implemented until 2017, started to be implemented during the State of Emergency. This practice has been defined by political prisoners as “giving an oral report to the officers during the phone call” and is generally rejected by them because it is considered degrading. Prisoners were frequently interrupted when they did not comply with this regulation during the telephone call, and in some cases were faced with various disciplinary sanctions.

Before exercising the right to make telephone calls, the prisoner is obliged to inform the prison administration about the telephone number and residence address of his/her relative and provide the documents proving their kinship. Prisoners can make telephone calls after issuing these documents. Therefore, the administration has already got the relevant and necessary information about the people to whom the prisoner can talk on the phone. Given that the

administration has already been provided with the information and documents about the people on the phone prior to the telephone call, the requirement to give an additional oral report to the officers during the phone call has negative psychological effects on families. Due to this practice, it is reasonable to state that political prisoners could not exercise their rights to make telephone calls throughout 2017 and 2018.

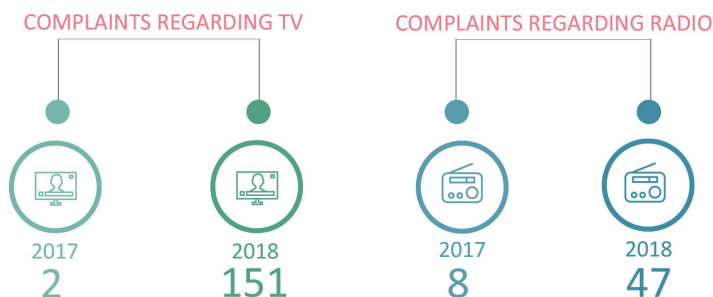
In addition to the problems we have mentioned so far, one of the most significant recent problems is the increase in disciplinary sanctions given to prisoners. The disciplinary sanctions restricting the right to communicate in particular have led to the long-term detachment of prisoners from the outside world. Many prisoners stated that they have been held in de facto isolation due to these penalties.

We can say that the sanctions that deprive prisoners of receiving or sending letters/faxes, telephone calls, and open or closed visits, have been more frequently imposed since 2017. Moreover, considering the frequently imposed penalty of confinement in a cell, it is possible to say that prisoners are prevented from having substantial relationships with each other and with the outside world. The frequent and consecutive imposition of penalties that deprive prisoners of the right to communicate has especially prevented family members and prisoners from receiving information about each other. Both the families and the prisoners have suffered from these mis-implementations.

"While generally political prisoners have the right to make telephone calls once a week, here we have the right to make telephone calls only once in two weeks. We're not even allowed to take pictures. The open visits of the family, which are normally once a month, are also held once every two months. And we can't see any of our relatives who are not first-degree."

"My sister has been deprived of open visits. They don't put her petitions into process. They do not respond to her petitions, and when we ask them, they say that "there is no application." Yet my sister has been applying for two years."

4.5. Restrictions on Radio and TV Broadcasts



The prisoners' right to receive radio and television broadcasts and to use the internet is regulated by Article 67 of the Law on the Execution of Penalties and Security Measures.³¹ The article regulates first of all the establishment of a central broadcasting system in penal institutions, so that the prisoners can have access to radio/television broadcasts available in this system. In those institutions where there is no central broadcasting system, the prison administration is obliged to ensure that prisoners have access to radio and television broadcasts by means of an independent antenna, on the condition that technical measures are in place to prevent certain types of broadcasts. In three-person or single rooms, one can keep a 15-inch TV. In the ward system, it is under the initiative of the prison administration to allow a TV with a larger screen, depending on the size of the ward.

We have received various complaints from prisoners about how the administration decides which TV broadcasts will be made accessible. First of all, one of the main problems we observe is that only a

³¹ <http://www.judiciaryofturkey.gov.tr/The-Law-on-the-Execution-of-Penalties-and-Security-Measures-is-available-on-our-website>

limited number of TV channels are available, and these channels are the ones that are requested most by the prisoners in that particular institution. Therefore, prisoners can watch only a limited number of TV channels which do not speak to their specific preferences and interests, especially since the news and documentary channels which are not so popular, are not included in the broadcasting list. Therefore, one's right to receive information from different sources has also been restricted. Recently, while many local channels have been completely removed from the broadcasting list, in some prisons it is not even possible to watch mainstream channels such as Fox TV and CNN Türk.

The law also grants the right to obtain a battery-powered portable pocket radio that receives only FM frequency and listen to it with headphones. Although only the FM frequency is stated in and allowed by the law, until 2017 it was possible to also receive AM frequency on the radio. Preventing the prisoners from listening to radio channels that are not prohibited and available all around the world, is a serious violation of rights. Above all, this practice deprives them of the right to access the international press.

In the case of foreign prisoners in particular, who have a very limited access to publications and broadcasts in their mother tongue and who do not have access to TV broadcasts from their home countries, being unable to receive AM frequency channels is a very serious problem. Due to this implementation, foreign prisoners have no longer been able to access the news in different languages via AM frequency.

"On 11.2018 the prison director and his guards entered the ward for their frequent routine search. During the search, our radios were confiscated. The reason for this practice was the bylaw that prescribes the confiscation of all the radios with AM frequency. However, the tragi-comic thing is that there is no radio with AM frequency in our ward. All radios with FM frequency were taken from us, as if they were with AM frequency. We bought those radios from the prison canteen. Every time we buy a radio, it is already being controlled immediately. If a radio receives AM frequency, it is disabled and only then is it given to us. Although the prison administration knows very well that we do not have any radio with AM frequency, our radios were confiscated, thanks to the arbitrary attitude of the prison administration."

"When we were transferred here, they took my, M.'s and B.'s radios, disabled the long frequency and medium frequency and then charged us for this operation. For each radio, they charged us 15 TL. Later, during a room search they took B.'s radio to control it again and they charged him again 20 TL and took that money from his account. However, they had already disabled the long and medium frequency of that radio."

"TV broadcasts that we can watch are limited. For example; we cannot watch any dissident TV channels like Fox TV."

"We have not been allowed to watch CNN TURK news channel for nearly more than a month. The administration has removed it, and now for the last two weeks we cannot watch NTV either. They did a survey so to say, all the rooms we are staying at asked for CNN, NTV and Haber Turk channels. Yet still news channels were deliberately removed."

4.6. Restrictions on Petitions



The right to petition is protected by Article 74 of the Constitution and granted equally to everyone living in Turkey. In this regard, Article 68/4 of the Law on Execution of Penalties states that; “*Letters, fax messages and telegrams sent by the convict to official authorities or to his lawyer for the purpose of defence shall not be subject to inspection.*” In addition, the bylaw No. 45/1 of the General Directorate of Prisons and Detention Houses states in paragraphs 4 and 5 of the “Other Provisions” section³²;

“Petitions to the execution judges or competent and official institutions regarding the applications of prisoners on remand and convicts shall be sent to the relevant authorities without delay.”

The most significant problem about this issue is that the prisoners do not receive any document number to track their petitions. Without this document number, the prisoner has no other way to prove that he/she has filed the petition in question and make any requests to get a reply to it. Not only are many prisoners not given docu-

³² www.cte.adalet.gov.tr/menudekiler/mevzuat/genelge/cik_nakil.doc, accessed on 01.02.2019.

ment numbers, but also their petitions have not been responded to in writing, with the legal period to do so has already expired. These practices have led prisoners to be concerned about the fact that especially their complaint petitions have not been sent to the relevant institutions and authorities.

If the petitions are addressed to an official institution, the penal execution institution is not authorized to control and prevent the correspondence. Even if the petitions constitute a criminal offense, the prison administration does not have the authority to control such correspondence since the official institution receiving the petitions would take the necessary measures in such cases. However, recently, prisoners have started to be faced with disciplinary investigations and disciplinary sanctions due to the content of their petitions.

"Then, my petitions were not sent out, I mean they only send out the petitions that suit them, and others they do not."

"When we write a petition in this ward and put everyone's name on it, our petition is not accepted and is given back to us."

"My sister has been deprived of open visits. They don't put her petitions into process. They do not respond to her petitions, and when we ask them, they say that 'there is no application.' Yet my sister has been applying for two years."

4.7 Restrictions on Social and Sport Activities and Courses



European Prison Rules emphasizes that prisoners should be allowed to spend time outside the cell, for a period of time that is adequate and necessary for enjoying social interaction, improving their physical fitness and taking part in recreational activities.

Law No. 5275 also states that prisoners are permitted to take part in social and sport activities according to their individual needs, depending on the capacity and density of the institution. However, the criteria according to which this need and its limits will be determined are not clearly defined in the law. Moreover, due to the recent increase in the prison population that far exceeds the capacities of prisons, prisoners can benefit from social and sport activities and courses at the minimum level and in some prisons, they cannot benefit from any of these activities at all.

The problems that have arisen can be summarized as follows; the right to conversation with prisoners staying in different wards has been abolished and limited to one's own ward, the prisoners have not been permitted to benefit from social, sport activities and courses at all or permitted only for a limited duration, and the requested courses were not organized.

"Restrictions on the use of common areas are still maintained. They do everything in their power to limit social interactions. Since the State of Emergency law came into force, chat groups do not change. Normally, every month we shall go out with a different group of people for conversation and sport activities, but we have not been allowed to do that for more than two years."

"Moreover, even though we have been remanded for 387 days, we have never been allowed to go in the open air or to the football field."

"We are being obliged to go out for social and sport activities only as a single room. While we have the right to engage in social activities at least 8 hours per week together with 9 to 10 people, we have been deprived of this right."

In conclusion, during the *Project on Freedom of Expression in Prison* we have monitored and reported on the complaints of prisoners conveyed to our association through our consultation hotline and lawyers. We shared the outcomes of the workshop we organized with the people and institutions that are interested in and can contribute to the subject. In addition, participants from Bianet, Görülmüştür and Dışarıda Deli Dalgalar presented their reports and ideas on freedom of speech. Together with the institutions and people who participated in the workshop, we discussed the possible recommendations and demands that we can formulate with regard to the existing problems. In this context, the policy document, which includes the prominent issues and our recommendations, was prepared during the workshop and shared with members of parliament.

Below you can find the recommendations regarding freedom of speech in prisons, that we, together with the participants of the workshop, have come up with, as well as the transcriptions of the presentations from the workshop.

RECOMMENDATIONS

- The books and periodicals that are not prohibited and are not ordered to be seized should be allowed in prisons, apart from exceptional situations.
- These prohibitions should not be implemented differently in each prison and measures should be taken in this respect.
- The scope of restrictions should be defined clearly, and discretionary power should be regulated in favor of rights and freedoms.
- All periodicals that are not ordered to be seized, should be given to prisoners.
- Radio broadcasts other than those on FM frequencies should be allowed.
- Prisoners should be allowed to watch TV channels which have not been closed by RTÜK and which are available all-around Turkey.
- Foreign prisoners' access to publications in their native language should be legally ensured.

- The restrictions on the number of books that can be kept in the wards should be lifted.
- The books that arrive by mail or are brought by family members should be allowed and delivered to the prisoners.
- Prisoners should not be obliged to purchase books through their canteen by paying the price themselves.
- Measures should be taken about the widespread implementation of disciplinary penalties regarding communication, in order to prevent long-term isolation.
- The practice of giving oral reports to officers during phone calls should be removed from the regulations.
- Prisoners should be legally ensured that they are kept in prisons near the cities where their families live.
- In cases where prisoners stay in prisons that are far away from their families, it should be legally ensured that family visits last longer and cannot be restricted.
- It should be ensured that there is no exceptional practice regarding the confiscation of prisoners' letters.
- It should be ensured that the staff in the letter-reading committee has the necessary and sufficient knowledge and competency to carry out their duties within their prescribed scope.
- A document numbering system through which prisoners can follow the letters and petitions they send should be established.
- A legal basis that allows prisoners to send sealed letters to civil society organizations should be established.

FREEDOM OF SPEECH IN PRISON WORKSHOP

FREEDOM OF SPEECH IN PRISONS DURING the 1980s

Nadire Mater

I asked a close friend of mine what she would say about the freedom of speech in prisons at first glance. She just looked at me with such an impression, like she was saying “what kind of a question is that?” I got embarrassed. After a short pause, “the thing is” she said, “there is no such thing, it does not exist.” Then she continued; “In the prison, there is no freedom of speech, but only struggle.”

Admittedly, when you think about the prisons during the 1980s and 1990s the first thing that comes to mind is the struggle; resistance, the death fasts (hunger strikes), massacres, deaths and so on. This statement, “there is no freedom of speech, but only struggle”, which belongs to the 1980s, is still valid today, but there are also differences. The history of Turkey, both before and after the establishment of the Republic, is also a history of prisons. We read and learn about the prisons through memoirs, research and novels. We have heard and experienced them. And of course, about the other prisons around the world too...

If you think about prisons, imprisonment and freedom of speech together - I have never been a prisoner, I was just outside the door – it seems to be an absurdity. Just look at the slogan here; “The prisoners have the right to freedom of speech, it cannot be restricted.” In Turkey the making of this slogan took a very long time. Therefore, what I have just called an absurdity seems to be so only from the present perspective, at that time it was not. Because when we discussed the problems of prisons in Turkey during the military rule of September 12, 1980 and even before, people would tell us “After all, it is not Hilton, it is a prison” in the sense of saying “of course things are going to be that way” and as if we are making a fuss for nothing. Any one of us could have easily adopted such a stereotypical stance, which has been frequently used in official statements.

What were the conditions of prisons during the 1980s?

With the exception of prison wards, a left-wing and a right-wing prisoner were made to stay together in cells. This practice was called “recombine – reconcile.” The suppression of speech starts at this point.

Visits, for example in Mamak Military Prison, generally lasted five minutes. And in fact, these five-minute visits could be reduced to two minutes by the correctional officer - who is in a position of power – in an arbitrary way. The visits were conducted under the surveillance of four soldiers, two of whom were accompanying the visitor and the other two the prisoner. Since you communicated by phone during the visits, when they said “two minutes is enough” the line was just cut off and you could not continue. They could cut off the conversations if they heard anything they did not like. On the

way to the prison, you could never be sure if you would be able to see your relatives. You could be told that “There is a visiting ban” or “He/she is in interrogation.” “Being in interrogation” meant that new arrests had been made in his/her case, so he/she had been interrogated by the police again.

The letters could reach the prisoner weeks or months later; as with the letters written by the prisoner to you. You could never be sure when the ban would end or when it would start again.

Anybody who has seen the “Examined” stamp knows it. This stamp signifies your relationship to someone imprisoned, making it public for a third party. For the person who was outside, thus, the contact address was a significant issue. And it still is, it is a subject of struggle. The “Examined” stamp also means for the correspondents that communication is not exclusive to two of them. There are also examples of censored letters which became hard to read and understand, but even if you could not understand the letter, you could realize that the situation inside the prison had gotten worse.

Unfortunately, the prohibitions on accessing means of communication continue. The words of my friend “there is no freedom of speech, but only struggle”, rightfully portrays the situation; even before you ask why there is a prohibition, even before you start to say a word you are exposed to beating, to violence.

In general, during the rarely sustainable “normal” times, you had the right to write one letter per week. The prisoners were not allowed to write more than a page. Speaking about letters only from the political point of view would be inadequate, since writing a letter is a personal thing between the writer and the correspondent. No one wants their letters to be read by others, regardless of what is writ-

ten in them. If you want others to read what you have written you prefer other means of communication, right? It is not inaccurate to say that before the censorship mechanism, a kind of self-censorship mechanism starts to function under these conditions.

Another issue closely related to freedom of speech is being able to access periodical publications, books and so on... During the 1980s books were prohibited in prisons for a very long time. Later on, textbooks were allowed. However, how would they decide if the book in question is a textbook for educational purposes? For the students a document was requested from their schools stating that "this person is a student of this school and this book is a textbook of the class he/she attends." For example, for Orhan Pamuk's book *A Strangeness in My Mind*, if the person is a student at the faculty of architecture, one of the instructors can provide a document about the book's relation to urban transformation. For the same book, probably one can get a document from the department of food engineering since "boza" [a traditional drink] plays a leading role in the book. I wonder if an archeology student can obtain a copy of *There is a Strangeness in My Mind* in the prison. I don't know. It depends on the instructors. On the other hand, it was not possible for all the instructors to provide such documents back then, is it possible today? I can not recall what the non-student prisoners did.

If we continue like this, step by step, probably 'the courtrooms' can be said to be the place providing the greatest freedom of speech to prisoners. We can talk about a certain kind of freedom in the courtrooms, albeit partial, including political defense. One can defend his/her ideas, cause or organization. If the defense counselor was expelled from the hearings twice in a row, he/she could not attend the trial proceeding anymore. The panel of judges could silence the

prisoners arbitrarily. When a legal defense presented without any interruption was later published as a book, a new trial could be opened or if the person was free, he/she could be imprisoned again.

The list and examples could be longer, but we should say that inside and outside the prisons there has always been resistance and struggle, in different ways and to different extents, against the violation of rights and for the freedom of speech, which is the special topic for this meeting. After September 12 the struggle of the prisoners' mothers, who were expressing the problems and trying to make the demands heard in front of every prison from Diyarbakır to Istanbul, in the streets and in front of the National Assembly, took a pioneering role. Human Rights Association was established in this way. Mothers were always taking the risk of imprisonment into consideration, so they were always trying to protect young women by keeping them at a distance from the protests.

Now, considering all we have passed through; the significance of stating "The prisoners have the right to freedom of speech, it cannot be restricted" today is evident. In Turkey everyone can be imprisoned at some point, it is quite possible, as the history of Turkey shows. The president in charge today was also a prisoner in the past.

Throughout the last decade, Turkey has witnessed a vast variety of political prisoners including the Commander of the Turkish Armed Forces and university rectors whose imprisonment differ from the accustomed, routine prosecution of leftists and Kurds.

This has also emphasized the significance of the struggle for rights. For instance, the families – consisting mostly of women - of people prosecuted in the "Ergenekon" and "Balyoz" trials, have resorted to methods such as sit-in protests, weekly watches, press releases in

front of the prisons, which have been established in the course of the struggle for rights up to then.

In terms of political prisoners, the violation of the rights of the prisoners, who are prosecuted and investigated within the scope of “Fetullahist Terrorist Organization / Parallel State Structure” trials, cannot be expressed and made public adequately either by the prisoners or their relatives.

Both the Constitutional Court and European Court of Human Rights have significant rulings concerning the prisons; even though they are not numerous, they can set precedents. I think this further increases and emphasizes the significance of the struggle of human rights defenders. In fact, even the media institutions, which drag their feet about reporting the conditions and rights violations in prisons, sometimes had to write about the violations in the prisons.

I will end my speech with a short note. Still, the ones whose voices are heard the least, who make their voices heard the least are the non-political prisoners. Probably, their conditions can be considered as the toughest part of the struggle. Let's look there.

BREAKING THE ISOLATION; BRIDGING THE INSIDE AND THE OUTSIDE

Gamze Yentür

Custodial penalties are the ones that deprive individuals of their liberty. In the context of this workshop the most relevant type of these custodial penalties is imprisonment. There should be concrete and strong evidence for ruling an imprisonment sentence. The other significant step after a court imposes an imprisonment sentence is the question of how the penalty will be executed. In this presentation, we will look at prisoners' freedom of speech and the scope of this freedom at the stage of the execution of penalties.

The Execution of Penalties

In terms of the execution of the sentence, first we have to look at the legal framework. The legislation is very clear on this issue. In the law it is written that;

“The basic principle of execution

Article 2. – (1) The rules concerning the execution of penalties and security measures shall be implemented without discrimination between convicts as regards race, language, religion, denomination, nationality, color, gender, birth, philosophical belief, national or social origin, political or other opinion, economic power or other social status, and without prioritizing anyone.

(2) In the execution of penalties and security measures, there shall be no cruel, inhuman, degrading or humiliating treatment.”³³

As the law states, the penalty must be executed under the most appropriate conditions possible. Unfortunately, the practices do not conform to the law. The state especially has the idea of rehabilitating political prisoners. People’s thoughts and beliefs are considered to be pathological. Here, the aim is to change the thoughts of political prisoners. And the desire to change thoughts has now also become a means of revenge.

When we examine the history of prisons in Turkey, we can see that this means of revenge has pretty severe consequences. As a result, thousands of rights violations have taken place in prisons. Moreover, the consequences are not only limited to the rights violations but also prisoners have been killed during the operations of the state. In Turkey the most significant period started with the establishment of F-Type prisons. In this period, the issue of isolation and treatment

33 <http://www.judiciaryofturkey.gov.tr/The-Law-on-the-Execution-of-Penalties-and-Security-Measures-is-available-on-our-website>

had begun to be discussed. Particularly in the context of freedom of speech, we think that the issue of isolation is significant. It is necessary to examine isolation within this framework.

Isolation is a situation that creates negative effects on the psychological and physical wellbeing of the person due to being cut off from prison life as well as the outside world, and due to lack of communication. In other words, it is a process in which a person is made to live in an enclosed space without using any common areas and communicating with other prisoners.

In Turkey, there is no clear legal definition regarding isolation. Yet, at this point we can underline three forms of implementation that are in practice. First, when an individual enters the prison, they are taken into the observation rooms. This is a method used to determine the prisoner's ward. While in some prisons, observation rooms are designed for more than one person, others are designed as consisting of cells for only one prisoner. How many days and under which circumstances you will remain under observation is up to the prison administration. These cells are quite unhealthy. In addition to being physically unhealthy, there is no means of communication in these cells. Under such conditions, where the basic hygiene rules are disregarded, prisoners have a high chance of getting a disease or getting infected.

Secondly, next to the observation rooms, there are places where prisoners are put due to disciplinary sanctions. During the execution of disciplinary sanctions, the prisoner is deprived of communication and visits. According to the current news and information we get, prisoners have been frequently subjected to confinement in a cell. In addition to these, there are upgraded versions of the cells called

sponge-covered rooms, whose existence had been denied for quite some time. Their existence was brought to light when a prisoner on remand in İzmir Şakran Prison damaged the sponges of the room where he was placed, and the prison took legal action against him with the charge of “damaging public property.” The interior of these rooms is covered with sponges and have no sound or air flow. Inside the room, there is only a toilet.

The third and last form concerns the case of aggravated life prisoners. Aggravated life prisoners serve all their prison time on their own. Their conditions are also very severe in many other respects. They are subject to intense restrictions, such as limits on family and friend visits or on sending and receiving letters.

These three concrete implementations we have talked about, to a great extent reveal what is at stake in isolation. In particular the first two forms of implementation deprive prisoners of the means of communication and visitors. For example, Didem Akman, who is an aggravated life prisoner in Şakran Prison, has been frequently subjected to deprivation of all communication means for 3 months. Since the administration cannot execute disciplinary sanctions consecutively, they must leave a day between each 3 months. Therefore, Didem can only send or receive letters on that particular day. Akman, who has been sentenced with aggravated life imprisonment and is thus experiencing extraordinary restrictions, is being kept in total isolation due to such disciplinary sanctions.

“ [In isolation] you lived like a diver in a diving bell in the black sea of this silence, for that matter like a diver who has guessed that the cable to the outside world has snapped and that he will never be hauled out of the silent deep. There

*was nothing to do, nothing to hear, nothing to see, nothingness was everywhere around me all the time, a completely dimensionless and timeless void... This truly indescribable state of affairs continued for four months. Now four months is easy to write: so many letters, no more, no less! It's easy to say: four months—two syllables. ... But there's no way to describe, to gauge, to delineate, not for someone else, not for yourself, how long time lasts in dimensionlessness, in timelessness, and you can't explain to anyone how it eats at you and destroys you, this nothing and nothing and nothing around you, always this table and bed and washbasin and wallpaper, and always the silence, always the same guard pushing food in without looking at you, always the same thoughts in that nothingness revolving around a single thought, until you go mad.*³⁴

Implementations practiced without the order of the prosecution are not legal. And even if they are legal, isolation is not acceptable. Isolation is a way of repunishing prisoners within the prison and its results are the same as torture. It leads to physical and psychological damage. The damages caused by isolation were also analyzed and identified by scientists. It has various harmful consequences. For example; during this process, the nervous system breaks down. One may lose track of the concept of time, experience loss of identity etc. So, how do political prisoners protect themselves against these effects?

They try to minimize the impacts of isolation on themselves. The

34 Stefan Zweig – Satranç Kitabı. (...) <https://www.zeit.de/kultur/2016-08/tecrit-sartlari-can-dundar>

Stefan Zweig, Chess Stories, New York: New York Review Books, 2006.

most important thing here is; find means and areas to express and improve themselves. It is exactly at this point that the ability to produce and express becomes very crucial. Because only in this way they can resist the isolation. Prisoners express themselves through writing letters, books, texts etc. Here isolation, which has become a means of revenge as we have mentioned at the beginning; comes into play again in different ways, through latent or explicit practices it also turns into a means of preventing production.

Prisoner's Freedom of Speech During the Execution of Penalties

The law clearly indicates that; “Every prisoner on remand and convict has the right to communication.” As we have mentioned at the beginning, for many years the prisons in Turkey have been places where human rights violations, tortures and executions have been taking place. But especially with the declaration of State of Emergency, a period of multifaceted change and transformation had begun. Prisons have become an area of economic profit as well as the pressures on and the restrictions against political prisoners have increased. Various rights are restricted and/or prohibited by the Decree Laws, which were supposed to be legislated to deal with the coup attempt. The imposition of a uniform dress code came up again. The regulations of the Decree Law were not applied in the same way everywhere, or the State of Emergency was used as an excuse by the prison administrations for oppressing prisoners. The visits of the families and the lawyers were prohibited, the visits of the lawyers were recorded with camera, newspapers and books are prohibited and allegations of assault and torture began to be raised. In the context of prisoners' freedom to express themselves, we focus

on issues such as; the restrictions on the visits of visitors and lawyers, letters, conversations between the prisoners, books and the right to education.

If we examine them one by one;

Restrictions on visitors, visits and courses

During the hours determined by the prison administration, prisoners staying in different cells go out to the common area. In this common area they find the opportunity to meet and converse with each other. However, recently going out to the common area was prohibited by the prison administration [in Şakran, İzmir] with various excuses, especially with the excuse of the State of Emergency. Prisoners who have been deprived of their right to go out to the common areas together; therefore, became unable to communicate with anyone other than the two other people in their cells. Courses were also cancelled. This situation affected the productive activities of prisoners. Their right to make art was also taken away.

Video recording of meetings with the lawyers during lawyer visits and the inspection of the correspondence between the prisoner and the lawyer by the officers were attacks on both the right of defense and the freedom of prisoners to express themselves. The lawyer visits were limited to one hour per week. Even; lawyers were prohibited from representing their clients in certain matters. For example; lawyers from ÇHD (Contemporary Lawyers' Association) and HHB (Law Office of the People) who were recently released and then scandalously arrested again, were dismissed from some of their clients' files.

Visits of family members and others which should be once a week,

had started to be held once in two weeks during the State of Emergency, and in some prisons, family and friend visits were prohibited until the end of the State of Emergency period. Visiting and telephone rights were prohibited by giving too many disciplinary sanctions. For example; due to the prohibitions in certain areas of Şırnak, prisoners in Şırnak Prison were unable to see their relatives for 5-6 months.

Deprivation of the right to education

We may also consider the deprivation of the right to education in the context of freedom of speech. A person expresses him/herself through his/her fields of interest and profession. The right to education as a constitutional right, was restricted by the Decree Law. Those who are charged with “being a member of a terrorist organization” or with “crimes committed within the framework of the activities of these terrorist organizations” were not allowed to take even the examinations that were conducted inside the prison.

Confiscation of books and letters, prohibition of dissident publications

The newspapers such as Cumhuriyet, BirGün, Evrensel and Gündem were included in the list of prohibited publications. Halk TV, FOX TV broadcasts were not allowed. Book prohibitions have become one of the biggest problems. Books were not given to prisoners arbitrarily or book purchases were restricted. So much so that; in Gebze Prison Rojbin Perişan could not even get the book she herself wrote, since the book was considered objectionable.

Görölmüştür³⁵ Team and Freedom of Speech

As we have said letters, books, paintings etc. are the most important means of expression for prisoners. This is exactly what we as a team is concerned with. In other words; unlike other initiatives, our team is established in order to facilitate the self-expression and production of prisoners. We try to announce and make public, every item of news about the prisons and the rights violations against prisoners as much as we can. But our main concern is to enable prisoners to express themselves. To establish a bond and become a bridge between the inside and the outside... To find correspondents for prisoners to write letters; to publish their creations such as their stories, poetry, cartoons etc.

We publish the magazines, books and stories written by the prisoners we communicate with. We try to update their addresses and try to make them public as much as we can. However, due to the recent increase in prison transfers that become a form of exile, we have difficulties with updating addresses. A prisoner may have to change 3 prisons in 3 months. We have done two photography projects together with the Red photography group. In our first exhibition, photographers took photos and prisoners commented on them. In the second one, prisoners dreamed, and photographers took photos of their dreams. Both were exhibited in many cities of Turkey and abroad. Our exhibitions still continue. It was very influential for both the prisoners participated in the project, the photographers who took photographs for the project and the people who visited

35 The term 'görölmüştür' (examined), literary meaning that something is seen, is an official expression used by the prison administration and stamped on the letters in order to state that the letter in question is examined and read by the prison administration.

the exhibition. Our photographer friends who had participated in the project continue to correspond with the prisoners with whom they establish a bond. Friends who visit the exhibition, witness the reality of the prisons, which they had considered to be a distant reality, and try to support us.

From time to time, we organize postcard and book sending activities and campaigns. We prepare and print postcards and calendars and send them to prisoners. Recently this was restricted too. Only one blank postcard is acceptable. The reason behind the restriction is ridiculous; “if the prisoner has more than one postcard, he/she can use it in a commercial way.” Prisoners, who want to make their pale and single-colored cells more colorful, ask for different, especially colorful postcards. Even if the books were not received by prisoners, we stubbornly continued to send them. Books remain in the prison accounts of prisoners and we publicly expose the prisons where books are not allowed. We promote the books written by the prisoners. For example; aggravated life prisoner Hasan Şahingöz prepares a magazine called “Ümüþ Eylül” by his own hands, and we publish it on our website as an e-magazine. Especially during the state of emergency, letters either came late, not given or disappeared. We received some of the letters 6 months later. This has been a little bit troubling for us, but we’ve tried our best and insisted on the letters that we call “katık” [a basic food eaten with bread]. In the letters we receive from prisoners; they write that they censor themselves in order not to lose their right to correspondence. Letters that were written in languages other than Turkish were kept in letter-reading committee for months, on the grounds that there was no translator. We try to do all of these, to break off isolation even a little bit. Since one of the most important needs of a person is to communicate and express him/herself.

I want to end my conversation with the words of Meral Çiçek, who had spent most of her life in prison. *“We were waiting for the autumn, so that the leaves would fall, and the wind would carry some of them to our yard. Then we would dry them up and put them inside the letters. Humanity should learn, be told what it means to wait for the autumn so that we can have a leaf.”*³⁶

36 Selvi Tunç “Cezaevlerinin O’hali,” Bianet, August 13, 2016 <http://bianet.org/biamag/biamag/177740-cezaevlerinin-o-hali>

PROBLEMS OF COMMUNICATION IN PRISONS

Seda Öz

“Dışarıda Deli Dalgalar”³⁷ is a citizen initiative which was established to act in solidarity with the political prisoners in Turkey’s prisons.

The initiative has started to work in February 2008. It does not have any intention of institutionalizing itself and politicizing its field of activity. On the contrary, since politicization turns prisons into uninhabitable places, it approaches the problem of prisons on a humanitarian basis, and adopts the goal of opening channels, establishing links and bridges, and creating projects that can support sentenced or remanded prisoners. Dışarıda Deli Dalgalar initiative does not discriminate between institutions and groups working on prisons, rather it aims to work in solidarity in order to raise aware-

37 Dışarıda deli dalgalar can literally be translated as ‘crazy waves outside.’ It is a line from the poem Hapishane Şarkısı [Prison Song], written by famous leftist writer Sabahattin Ali when he was in Sinop prison. There is also a very popular folk song which was composed from this poem.

ness about the problems and system of isolation in prisons. While conducting studies that center around the problem of prisons, the initiative is open to all democratic people and groups and does not prioritize any political perspective. Dışarıda Deli Dalgalar, works on a voluntary basis without the expectancy of any benefit or advantage whatsoever, thereby it prefers to create a culture of sisterhood and friendship, and conceives giving voice to the prisoners as its main concern and reason of being.

Dışarıda Deli Dalgalar comes together by organizing gatherings at various times, sends books, stationery materials, clothes and letters to “people behind bars” by means of its modest fund created on its own, thereby aiming to communicate with all captives³⁸regularly, knowing the moral and spiritual importance of surprising them in these ways.

The activities of Dışarıda Deli Dalgalar fundamentally consist of organizing gatherings, establishing bridges and making projects that brings the inside to the outside and vice versa. On this basis, more than a hundred gatherings have been organized since 2008, and these meetings have hosted various activities. These gatherings are the main activities of Dışarıda Deli Dalgalar in which volunteers come together and send letters and books to their friends in prisons. In this regard, so far numerous books have been sent to prisons and these activities continue. In addition to the monthly gatherings, numerous books are collected and sent to prisons, handmade postcards are made, and wall calendars are printed at the end of each year as a celebration of the New Year.

38 The word captive rather than prisoner is used here to translate ‘tutsak’ in order to remain loyal to the preference and emphasis of the original text.

While *Dışarıda Deli Dalgalar* makes projects that establish bridges between the inside and outside, it gives special importance to ensuring their permanence. In this context and to this end, various printed works have been prepared and published.

One of these is a collectively-written story book. Photographs taken by our photographer friends were sent to our friends in prison, and they were asked to write stories about these photographs. The book, *Kıyıya Vuran Dalgalar* [Waves Hitting the Shores] has succeeded in becoming a symbolic bridge between the outside and the inside. The second edition of the book was published within a short period of time, and the book-signing activities organized with the solidarity of various authors received great attention from readers.

In order to encourage, popularize and make visible the practices of cartoon-drawing in prisons, the works of the cartoonists inside were collected and edited with the support of various cartoonists outside. As a result, a cartoon book called *Papucu Yarım* was published and book-signing sessions were organized.

In order to draw attention to the unfavorable conditions experienced by aggravated life prisoners who are staying in single cells in which the isolation is most severe, 16 people who are staying alone in these single cells were asked to write stories. In 2014, these stories were published in the book called *Korkma Kimse Yok* [Don't be Afraid, Nobody is Here]. Many activities about this book have also been carried out.

Projects that bridge, establish a link between, inside and outside by publishing the works of people in prisons and delivering them to readers continue. As a matter of fact, many people whose stories were published in the first book have gone on to publish their own individual books in the following years.

Moreover, the paintings of the sentenced or remanded prisoners were exhibited in various painting exhibitions organized by Dışarıda Deli Dalgaların in order to create interest in this area.

The ultimate goal of Dışarıda Deli Dalgalar initiative can be summarized with the slogan, “Either you come here, or we come there!” Dışarıda Deli Dalgalar initiative focuses on prisons. Giving voice to those in prisons constitutes its main object. Our priority is enabling the ways in which those in prisons address the problems and rights violations they experience directly to society, without our mediation. We think that it is of great importance to make the voices of sentenced or remanded prisoners heard, to convey this voice to society in order to raise awareness against isolation, Because isolation is a system based on preventing their voices from reaching out to the outside and therefore to people. When the warmth of humanity touches upon the freezing and inhuman conditions of the cells in F-type prisons, it can destroy those walls. This is actually the function of the letters, the books that we send out of the blue. Seeing the name of a person you didn’t know before on the envelope, the confusion and the shock you experience, the various questions that come to mind, the hope that warms you, leads you to put pen to paper and paves the way for relating to others and breaking the loneliness of the single cells. It is as if somebody is telling you that, “We know you’re there. We are aware of your existence”, and this means a lot under the conditions of single cells. Because the ones who want to render the political prisoners docile in the system of isolation resort to the language of the ice-cold walls of the cells and the language of solitude in order to state the following; “No one knows you’re here. No one is even aware of your existence.” Our books, our letters, our names, our greetings invalidate that statement. Because through these, we tell those in prisons that “No matter what, no matter what

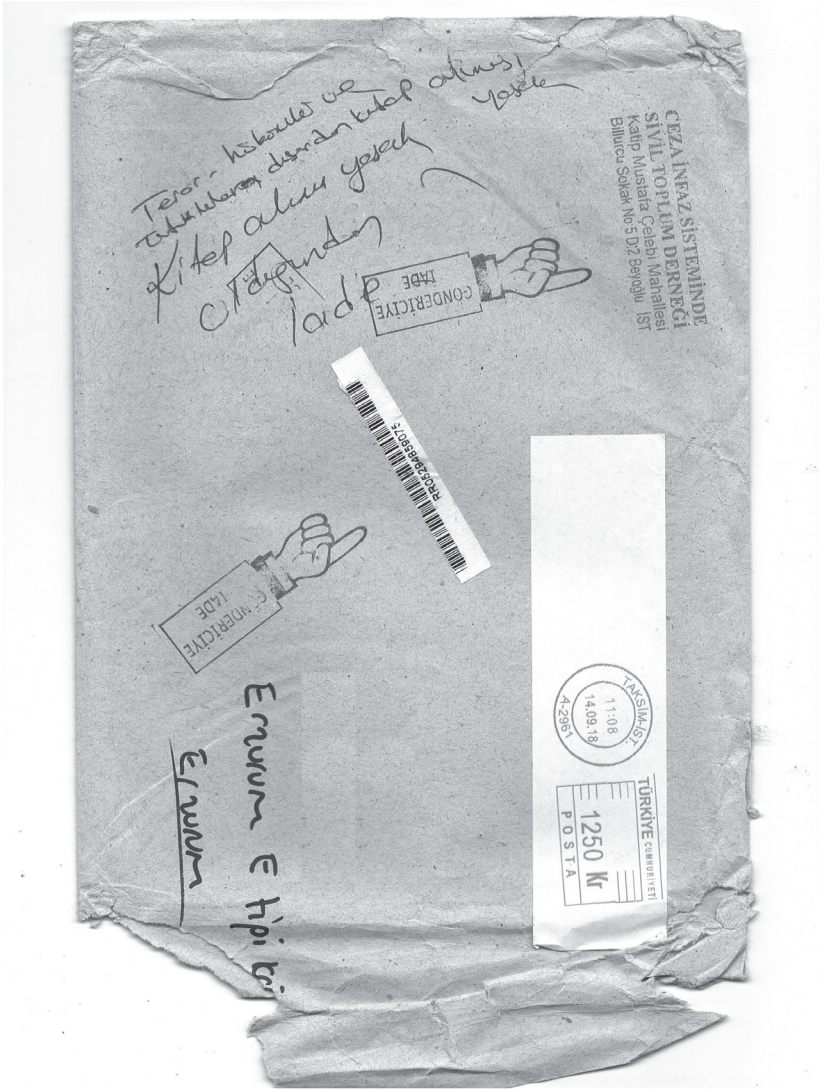
your circumstances are, we are aware of your existence.” And this message has a really significant effect. The sense of meaninglessness that people are drawn into in the face of the consuming slowness of time, in the context of solitude and isolation, disappears. And therefore, “meaning” is produced again, you find something meaningful again thanks to a person you do not know.

In the letters received by the volunteers of *Dışarıda Deli Dalgalar*, there is a serious increase in the complaints regarding the conditions of isolation which have deteriorated especially in recent years. We are witnessing that even the legal rights of sentenced or remanded prisoners have been arbitrarily deprived or restricted. They cannot get any results from their petitions to the authorities who are supposed to deal with the complaints about rights violations in prisons, they cannot reach the press or media and they cannot even reach their families in time due to the restrictions on communication or visits that can last for months. The problems regarding isolation and prisons are getting worse day by day, and the habitats of sentenced or remanded prisoners have been shrinking every day and consequently they are deprived of any space for living. In this sense, the period we are living in is worrisome. *Dışarıda Deli Dalgalar*, which has been working hard to deal with the problems of prisons, especially from a humanitarian perspective, have been going through the toughest times of all these 11 years. Books are prohibited, letters disappear or get sent back. Arbitrary prison transfers have become a form of torment. The system of isolation must be immediately abolished. Using isolation and deprivation of rights as a way of repunishing prisoners within the prison should be abandoned and the legal rights of sentenced or remanded prisoners need to be recognized urgently.

APPENDIX



An envelope on which it is stated that the mail which includes a publication is sent back.



An envelope on which it is stated the prisoners, who are imprisoned from the crimes falling within the scope of the Anti-Terror Law, are deprived of receiving books which are sent to them, so the mail is sent back.

"I hope that this letter will reach you and you take care of our problems and make the necessary applications and take the necessary actions. We are not allowed to participate in any kind of social activity (sports, hobbies, workshops, courses, cinema, etc.). Until a month ago we had been allowed to engage in sport activities for 45 minutes a week perfunctorily. They don't consider even that as necessary anymore. We go out of the ward only for making telephone calls and visits. In every search, the correctional officers provoke us by taking our personal stuff away even though we bought them from the prison canteen. There is a restriction on books, and they even prohibit and confiscate the books that they themselves had already examined and given us. Periodicals, weekly newspapers and so on are given to us after months. Due to the restriction on books, we are (frequently) writing petitions about book exchange but they respond too late. Sometimes a book or magazine that comes in a package via mail is not given to us, due to reasons such as 'it has been lost, we can't find it, maybe we gave it to someone else.' Stationery materials (notebooks, pens, etc.), bed linen, hooded clothes sent by our families are not given to us. Stationery materials sold in the prison canteen are both high priced and low quality, not usable. Our families, who are coming from hundreds of kilometers away, are not allowed to visit us if they are late by 5-10 minutes. Families have to wait at the door for hours. No more than three people are allowed to take photographs. This practice continues although the State of Emergency has been lifted. Some of our items and stuff that are kept in the warehouse and we use frequently are given to our families

without any notice. Letters always arrive and are delivered late, and sometimes they disappear. The letter we send to a prison which is 20 meters away, is delivered after months. There is also a waiting-postponement problem, where it takes months to go to a hospital. At some departments-polyclinics, we are forced to get handcuffed examination-treatment. Our radios are confiscated during the searches. Collecting the radios which are sold in the canteen, for control purposes, is an arbitrary practice."

"The third part of the first section of Article 20/1 of The Law on the Execution of Criminal and Security Measures No.5275 explicitly stipulates about the lawyers' visits to prisoners. However, the administration is preventing me from meeting with my lawyer. They tell me; 'If you don't have a case going on, you can't see your lawyer.' Normally, I have cases that are proceeding. So, this restriction is illegal according to the law. I want to make a complaint about it."

"We cannot benefit from impartial media organizations. We can only read Cumhuriyet and Sözcü newspapers in our ward. Even though we have repeatedly requested Birgün and Evrensel newspapers, they are not given to us on the grounds of the State of Emergency. But we know that these newspapers are available in other prisons. Here, even the Fox TV broadcast has been cut off."

"Some of the letters that we wanted to send were prevented arbitrarily because the opinions, evaluations about politics, economics etc. expressed in the letters were considered objectionable. Some of our friends have been subjected to disciplinary sanctions and put on trial for absurd reasons such as "insulting the president" or, being a "member of an illegal organization."

"On 11.2018 the prison director and his guards entered the ward for their frequent routine search. During the search, our radios were confiscated. The reason for this practice was the bylaw that prescribes the confiscation of all the radios with AM frequency. However, the tragi-comic thing is that there is no radio with AM frequency in our ward. All radios with FM frequency were taken from us, as if they were with AM frequency. We bought those radios from the prison canteen. Every time we buy a radio, it is already being controlled immediately. If a radio receives AM frequency, it is disabled and only then is it given to us. Although the prison administration knows very well that we do not have any radio with AM frequency, our radios were confiscated, thanks to the arbitrary attitude of the prison administration."



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