EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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The Court delivers its Chamber judgment in the case of Öcalan v. Turkey

In today's Chamber judgment in the case of **Öcalan v. Turkey** (application nos. 24069/03, 197/04, 6201/06 and 10464/07), which is not final[1], the European Court of Human Rights held:

by four votes to three that there had been **a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights as to the conditions of Mr Öcalan's detention up to 17 November 2009;

by six votes to one, that there had been **no violation of Article 3** as regards the conditions of his detention during the period subsequent to 17 November 2009;

unanimously, that there had been **a violation of Article 3** as regards his sentence to life imprisonment without any possibility of conditional release;

by four votes to three, that there had been **no violation of Article 8 (right to respect for private and family life)**; and

unanimously, that there had been **no violation of Article 7 (no punishment without law).**

Mr Öcalan, the founder of the PKK (Kurdistan Workers' Party), an illegal organisation, complained mainly about the irreducible nature of his sentence to life imprisonment, and about the conditions of his detention (in particular his social isolation and the restrictions on his communication with members of his family and his lawyers).

In view of a certain number of aspects, such as the lack of communication facilities that would have overcome Mr Öcalan's social isolation, together with the persisting major difficulties for his visitors to gain access to the prison, the Court found that the conditions of detention imposed on the applicant up to 17 November 2009 constituted inhuman treatment. Having regard in particular to the arrival of other detainees at the İmralı prison and to the increased frequency of visits, it came to the opposite conclusion as regards his detention subsequent to that date. In addition, it took the view that in the absence of any review mechanism, the life prison sentence imposed on Mr Öcalan constituted an "irreducible" sentence that also amounted to inhuman treatment. It considered, however, that in view of the Government's legitimate fear that Mr Öcalan might use communications with the outside world to contact members of the PKK, the restrictions on his right to respect for private and family life did not exceed what was necessary for the prevention of disorder or crime. Lastly, the Court rejected Mr Öcalan's argument to the effect that his sentence, after having been commuted, was in practice harsher than that which he had initially received.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

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Principal facts

The applicant, Abdullah Öcalan, is a Turkish national who was born in 1949 and is currently in prison on the island of İmralı (Turkey).

In 1999 Mr Öcalan was placed in police custody and then in pre-trial detention in the prison on the island of İmralı. Identified by the Turkish courts as the founder of the PKK, an illegal organisation, he was found guilty of carrying out acts designed to bring about the secession of part of Turkey's territory and for that purpose leading a gang of armed terrorists responsible for attacks resulting in the death of thousands of people. Under the Criminal Code then in force, Mr Öcalan was sentenced to death in June 1999. In 2002, following the abolition by Turkey of the death penalty in peacetime, his sentence was commuted to an "aggravated" life sentence, that is to say without any possibility of release. Under the new Criminal Code, a life sentence resulting from commutation of a death sentence for acts of terrorism had to be served until the end of the convicted person's life.

Mr Öcalan was held in solitary confinement in the prison on the island of İmralı for nearly 11 years, until 17 November 2009, when five other inmates were transferred there. During that period he remained in the same cell measuring approximately 13 square metres. He was not allowed a television and his contacts inside the prison were limited to prison staff, who were obliged to limit their conversation to the strict minimum required by their work. In addition, he had books and a radio that could receive only State broadcasts and his access to daily and weekly newspapers was restricted.

Since 17 November 2009, following a procedure initiated by the European Committee for the Prevention of Torture (CPT), new buildings have been erected inside the prison complex and Mr Öcalan now occupies a cell measuring approximately 10 square metres. Inmates can now undertake activities outside their cell, and, since January 2012, Mr Öcalan has had a television set. Since a CPT visit in January 2010, Mr Öcalan has also been able to spend three hours – rather than one hour – talking to his fellow inmates, and to engage in various group activities every week.

As regards visits, the doctors who go to the prison to examine Mr Öcalan are never the same ones, and this, according to the CPT, prevents them from building any constructive relationship with their patient. Moreover, owing to weather conditions which prevent boats from ensuring the usual shuttle service between the island and the continent, requests for visits from members of his family and his lawyers have regularly been rejected – while visits became more frequent between 2007 and 2010, the proportion of refusals in relation to requests increased significantly between 2011 and 2012.

Visits from family members are limited to one hour every fortnight. Except in the case of visits by first-degree relatives, they used to take place in a visiting room with a separation screen until 2010, when Mr Öcalan was able to have direct contact with his brother for the first time. Most of the interviews with his lawyers have taken place in the presence of an official and have been recorded. The authorities considered on several occasions that Mr Öcalan had taken advantage of such visits to transmit instructions to the PKK[2] and imposed disciplinary measures on him – including 20 days of solitary confinement in his cell in 2005 and 2006. A number of Mr Öcalan's lawyers have also been prohibited from representing him and their offices have been searched.

Moreover, in March 2007 his representatives indicated to the European Court of Human Rights that tests carried out on a sample of hair purportedly belonging to Mr Öcalan had revealed the abnormal presence of chrome and sodium.

[2] From the reports made by the authorities, it can be seen that Mr Öcalan has regularly asked his lawyers, during their visits, to pass on his ideas and instructions with a view to the reorientation of PKK policy.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Öcalan complained about his social isolation in the prison on the island of İmralı and his sentence of life imprisonment without any possibility of release. Under Article 8 (right to respect for private and family life), he also complained of restrictions on his telephone communications, on his correspondence and on visits from his relatives and lawyers. Relying on Article 7 (no punishment without law), Mr Öcalan also alleged that on account of the new legislation that had been enacted after his conviction, his sentence had been commuted to one that was harsher in practice. Lastly, relying on Article 2 (right to life), he alleged that he was gradually being poisoned in prison.

The application was lodged with the European Court of Human Rights on 1 August 2003.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Işıl **Karakaş** (Turkey),
Peer **Lorenzen** (Denmark),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar.*

Decision of the Court

Article 3 (in respect of the conditions of Mr Öcalan's detention)

The Court acknowledged that Mr Öcalan's detention presented the Turkish authorities with "extraordinary difficulties": as leader of a wide-scale separatist movement, he was regarded by a considerable portion of the Turkish population as the country's most dangerous terrorist. Similarly, the Government could legitimately fear that his opponents might try to have him killed, or that his followers might try to help him escape. Lastly, Mr Öcalan had remained very active in his contribution to the political debate in Turkey as regards the PKK. The organisation continued to designate him as its main representative and his instructions, transmitted through his lawyers, aroused various reactions – including the most extreme – among the general public. The Court thus understood that the authorities had considered it necessary to take exceptional security measures for his detention.

As regards Mr Öcalan's type of isolation, the Court found that he had little access to information. In particular, the lack of a television in his cell could, until recently, have contributed in the long term to relative social isolation. Similarly, even though following the CPT visits of January 2010 the prison authorities had improved the possibilities of communication between Mr Öcalan and other inmates, he had not been able to receive visits from his family as often as he would have liked, on account of the weather conditions. Lastly, Mr Öcalan was not authorised to have confidential meetings with his lawyers. However, the Court reiterated that the authorities were entitled to impose "legitimate restrictions" on prisoners convicted of terrorist activities in so far as they were strictly necessary to protect society against violence. Accordingly, in respect of the period prior to 17 November 2009, Mr Öcalan's social isolation had not been total but partial and relative. Neither could he be regarded since that date as having been held in serious social isolation.

As to the duration in which Mr Öcalan had been held in social isolation, the Court pointed out that it had lasted from the date of his arrest, i.e. for about 13 years. The length of that period called for a stringent examination as regards its justification, the necessity of the measures taken and their

proportionality in relation to the other possible restrictions, the guarantees secured to Mr Öcalan to avoid arbitrariness and the measures taken by the authorities to ensure that his physical and psychological state allowed them to keep him in isolation.

In this connection, the Court observed that in 2007 the CPT had expressed its concern about the harmful effects of extending his relative social isolation. In March 2008, finding that no real progress had been made on this point, the CPT initiated the procedure for a public statement. Admittedly, the Government then reacted positively, and from 17 November 2009 onwards, the regime applied to Mr Öcalan gradually departed from social isolation. However, the CPT continued to express its concern about the prolonged lack of a television set in Mr Öcalan's cell – until January 2012 – together with the frequent breaks in his communication with his lawyers. Combined with the "time factor", the long-term deprivation of facilities that could have avoided such a situation was likely to provoke justified feelings of social isolation in the applicant's mind. In addition, while the choice of an isolated island as the place of detention lay with the Government, the authorities were nevertheless required to provide the prison in question with appropriate means of transport to ensure the smooth organisation of visits.

In view of the foregoing, in particular the lack of means of communication such as a television set that would have overcome Mr Öcalan's social isolation, the excessive restrictions on his access to information, the major difficulties for his visitors to gain access to the prison and the inadequacy of the means of sea transport in view of the weather conditions, together with the failure to look for an alternative to isolation, the Court found that the conditions of detention imposed on the applicant up to 17 November 2009 had attained the minimum threshold of seriousness required to constitute inhuman treatment, in violation of Article 3.

As regards the period subsequent to 17 November 2009, the Court found that, having regard in particular to the transfer of other prisoners to İmralı island, to the significant improvement in his communication and activities with the other inmates, to the increase in frequency of visits and the provision of facilities that had alleviated the effects of his relative social isolation (telephone calls since 2010 and a television set in his cell since 2012), the conditions of detention imposed on Mr Öcalan had not attained the minimum threshold of seriousness required to constitute inhuman treatment and there had not therefore been a violation of Article 3.

Article 3 (as regards the sentencing of Mr Öcalan to life imprisonment without any prospect of release)

The Court reiterated that the imposition of a sentence of life imprisonment on an adult offender was not in itself prohibited by or incompatible with Article 3. Similarly, whilst the imposition of an "irreducible" life sentence might raise an issue under that Article, a life sentence did not necessarily become "irreducible" by the mere fact that in practice it might be served in full. In order to determine whether a life sentence in a given case could be regarded as "irreducible", it had to be ascertained whether a life prisoner could be said to have any prospect of release. The requirements of Article 3 were thus satisfied where national law afforded the possibility of review of a life sentence with a view to its commutation, remission, termination or to conditional release. In other words, a life sentence must be "reducible", providing for both a prospect of release and a possibility of review.

In the present case, Mr Öcalan had initially been sentenced to death for particularly serious crimes. Following the abolition by Turkey of the death penalty in peacetime, his sentence was then commuted to an "aggravated" life sentence. Under the new Turkish Criminal Code, that sentence meant that the convicted person would remain in prison for the rest of his life, regardless of any consideration as to the person's dangerousness or any possibility of conditional release, even after a certain term of imprisonment. The Turkish legislation clearly excluded Mr Öcalan's case from the scope of conditional release, and the sentence imposed on him was one of the exceptions governed

by special rules on limitation. Thus, on account of his status as a convicted person sentenced to "aggravated" life imprisonment for a crime against State security, it was clearly prohibited for him to apply for release throughout the duration of his sentence.

Moreover, whilst it was true that under Turkish law the President of the Republic was entitled to order the release of a person imprisoned for life who was elderly or ill, that was release on compassionate grounds, different from the notion of "prospect of release". Similarly, although the Turkish legislature regularly enacted laws of general or partial amnesty, the Court had not been shown that there was such a governmental plan in preparation for Mr Öcalan or that he had thereby been offered a prospect of release. The Court had to consider the Turkish legislation as it was applied in practice to persons sentenced to "aggravated" life imprisonment. That legislation was in fact characterised by the absence of any mechanism that would allow the review, after a certain minimum term, of a life sentence imposed for the crimes committed by Mr Öcalan in order to verify whether legitimate grounds still justified the continuation of his detention. The sentence imposed on him could not therefore be described as "reducible" and there had thus been a violation of Article 3.

Article 8

The Court reiterated that prison authorities had to assist prisoners in maintaining contact with their close family. In the present case, on account of his sentence of life imprisonment in a high-security prison and the special regime applied to him, Mr Öcalan had sustained a limitation in the number of visits from his family. In addition, except for the visits by first-degree relatives, his family visits had taken place up to 2010 in a room with a separation arrangement.

Those security measures had, however, been ordered in accordance with the provisions of legislation concerning the regime applying to prisoners who were considered dangerous, and they were thus in accordance with the law. Those measures also pursued legitimate aims, namely the protection of public safety and the prevention of disorder and crime. Moreover, as in many States parties, the regime under Turkish law governing contacts with family members for convicted persons held in a high-security prison sought to minimise the risk of their maintaining links with their original criminal environment. In the present case, the Government's fear that Mr Öcalan might use communication with the outside world to make contact with PKK members had been justified. The Court could not therefore doubt the necessity of applying a special detention regime to Mr Öcalan.

As to the weighing in the balance of the applicant's individual interest in communicating with his family and the general interest in restricting his contacts with the outside world, the Court noted that the prison authorities had sought to assist Mr Öcalan in maintaining contacts with his family. Visits were authorised once a week without any limitation of the number of visitors, and, since 2010, they had no longer been taking place in a room with a separation screen. Lastly, he was also authorised to use the telephone for ten minutes every fortnight. Consequently, the restrictions on Mr Öcalan's right to respect for his private and family life had not exceeded what, in a democratic society, was necessary for the protection of public safety and the prevention of disorder and crime. The Court accordingly found that there had been no violation of Article 8.

Article 7

Firstly, Mr Öcalan had argued that his sentence to capital punishment, at the time when it was still in force, had been equivalent in practice to a prison sentence of a maximum term of 36 years. In his submission, on account of a moratorium in force since 1984, death sentences had no longer been enforced, with the result that convicted persons sentenced to death were in fact sentenced to imprisonment and were eligible for release after 36 years. Consequently, he alleges that commuting his initial sentence to a whole life sentence without any possibility of conditional release – after the abolition of capital punishment – was tantamount in practice to inflicting on him a harsher sentence retroactively in breach of the requirements of Article 7.

The Court found, by contrast, that since Mr Öcalan had been convicted of the most serious crimes under the Turkish Criminal Code, and in view of the general debate in Turkey on the question whether he should have been executed before the decision to abolish the death penalty, the risk of the death sentence being enforced in his case had been real. In reality, the risk of execution had existed until the commutation of his sentence. Moreover, according to the Turkish legislation in force before the abolition of the death penalty, individuals sentenced to death had been able to benefit from conditional release after 36 years only if the enforcement of the sentence had been formally refused by Parliament. In the present case, however, the death sentence handed down against Mr Öcalan had never been the subject of a formal decision of rejection by Parliament. It followed that the Court could not uphold Mr Öcalan's argument that, at the time of his conviction, the death sentence he had received was equivalent in practice to 36 years' imprisonment.

Secondly, Mr Öcalan alleged that his death sentence had first been commuted to an "ordinary" life sentence – with the possibility of conditional release – , but had later become an "aggravated" life sentence without such a possibility, and in his submission this again was tantamount to the retroactive application of a harsher criminal law.

The Court thus sought to ascertain whether, at a given time, the successive reforms of Turkish legislation leading to the abolition of the death penalty had in fact opened the way to a possibility of release for persons serving life sentences after a minimum term of imprisonment. In this connection, the law of 2002, which had for the first time abolished the death penalty and replaced it with a life sentence, indicated clearly that the sentence as thus commuted applied until the end of the convicted person's life, without any possibility of conditional release. The subsequent legislation had merely endorsed that principle, with the result that at the time the death penalty was abolished no legislative instrument had provided Mr Öcalan with the possibility of conditional release after a minimum term of imprisonment. Accordingly, the Court found that there had been no violation of Article 7.

Article 2

Having regard to all the material in its possession, the Court did not find any appearance of a violation of the relevant Convention provisions and thus rejected this part of the application as being manifestly ill-founded (Article 35 §§ 3 and 4).

Just satisfaction (Article 41)

The court held that Turkey was to pay Mr Öcalan 25,000 euros in respect of costs and expenses.

Separate opinions

Judges Raimondi, Karakaş and Lorenzen expressed a joint partly dissenting opinion.

Judges Sajó and Keller expressed a joint partly dissenting opinion.

Judge Pinto de Albuquerque expressed a partly dissenting opinion.

These opinions are annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.