



LIFE MEMORY FREEDOM ASSOCIATION

Written Contribution on the Situation of Imprisoned Parents with Children with Disabilities
to the 4th Cycle of the Universal Periodic Review
of the Republic of Turkey

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Yaşam Bellek Özgürlük Derneği (YBÖ) is an independent civil society organization operating in Turkey, specializing in the defense and promotion of human rights. Established in 2008 with legal personality, the association prepared a report regarding the United Nations Human Rights Committee's *Alakuş v. Turkey* decision (CCPR/C/135/D/3736/2020).ⁱ It has translated this decision and others, such as *İsmet Özçelik, Turgay Karaman, and I.A. v. Turkey* (CCPR/C/125/D/2980/2017), *Mümüne Açikkollu v. Turkey* (CCPR/C/136/D/3730/2020), *Şeyma Türkan v. Turkey* (CCPR/C/123/D/2274/2013), and *Cenk Atasoy and Arda Sarkut v. Turkey* (CCPR/C/104/D/1853-1854/2008)ⁱⁱ, into Turkish. In addition to its human rights activities, YBÖ provides legal support for applications to United Nations Human Rights Mechanisms and prepares reports regarding issued decisions.

Keywords

1. “Child with disabilities in need of care,” “imprisoned parent”

Introduction

Purpose and Subject

1. This report aims to follow-up the progress of Turkey’s implementation of certain recommendations accepted during its previous Universal Periodic Review and highlight a new issue about the children with disabilities in need of care whose parents are detained or imprisoned.
2. The report discusses decisions of the Constitutional Court, the Court of Cassation, the Regional Courts of Appeal, and First Instance Courts, as well as national human rights institutions. In this context, the report, which aims to inform the UPR working group about Turkey's compliance with international human rights standards, aims to contribute to the evaluation and improvement of the country's human rights policies

Methodology and Plan

3. After identifying the State Party's obligations under international human rights law, the report will provide information on national legal frameworks and institutional infrastructure, highlight issues related to case law and statistics, and conclude with recommendations for resolving the issue.

International Obligations, Constitutional Legal Framework, and Scope of the Issue

4. The State Party is a signatory to the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol, as well as the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol. Article 90 of the Turkish Constitution states that international agreements duly put into effect have the force of law. No appeal can be made to the Constitutional Court against these agreements. In cases of conflict between international agreements on fundamental rights and freedoms and domestic laws, the provisions of international agreements shall prevail.

5. In the recommendations added on 20 June 2020, the EPI urged the State Party to continue its efforts to protect and promote the rights of persons with disabilities, especially children with disabilities.ⁱⁱⁱ It recommended that the State Party take legislative, institutional, and operational measures to promote the rights of persons with disabilities, ensure their inclusion in society, and provide them with adequate healthcare.^{iv} It also called for policies that support the inclusion and active participation of persons with disabilities in society and for the allocation of necessary resources.^v

6. A legal regulation linked to these recommendations concerns children with disabilities whose parents are in prison. The State Party has introduced a law allowing for the postponement of the execution of a sentence for a female convict whose child under 18 requires care due to a disability or serious illness. Article 16/A of the Law on the Execution of Criminal and Security Measures allows the Chief Public Prosecutor to postpone the sentence for up to one year, with four six-month extensions. If the child recovers or the convict violates any conditions, the postponement is revoked, and the sentence is executed.

7. This regulation aims to allow imprisoned mothers to be present for their children with disabilities. It is aligned with the EPI recommendations, as it supports the inclusion and active participation of individuals in their environment and society. However, no similar provision has been made for imprisoned fathers. Children with disabilities whose parents are imprisoned are highly likely to face severe human rights violations and require intensive social protection.

8. While the regulation is a positive step, it creates gender-based discrimination by not including imprisoned fathers. Furthermore, according to online reports, significant issues arise in the application of this regulation, with many cases where it has not been implemented.^{vi}

9. No public statistics are available on the number of children with disabilities whose parents are imprisoned. According to statistics^{vii} from the Ministry of Justice in 2024, there are 356,865 prisoners and detainees in Turkey.^{viii} Data from the Turkish Statistical Institute^{ix} indicate that the disability rate is 4.2% for children aged 0-9 and 4.6% for children aged 10-19. Given these rates, it is estimated that there are thousands of children with disabilities whose parents are imprisoned.

10. On the other hand, there are serious, structural problems of detention and imprisonment in the State party's criminal justice system. In the decisions of the United Nations Human Rights Committee in *Alakuş v. Turkey* (CCPR/ /C/135/D/3736/2020) and *İsmet Özçelik, Turgay Karaman and I.A. /Turkey* (CCPR/C/125/D/2980/2017) of the United Nations Human Rights Committee, *Akgün v. Turkey and Taner Kılıç (2)/Turkey* of the European Court of Human Rights, and *Alakuş v. Turkey* (CCPR/ /C/135/D/3736/2020) of the United Nations Human Rights Committee, and *Yüksel Yalçınkaya v. Turkey* [BD] of the European Court of Human Rights, the serious problems in the State party's criminal law with regard to convictions were cited. The State party has not provided any concrete solutions to the arbitrary detention and sentencing decisions cited in these judgements. Therefore, the scope of the problems of arbitrary detention and punishment is even greater. According to the findings of international human rights mechanisms, tens of thousands of persons who should not be detained or punished are in pre-trial detention or imprisonment.^x

11. There is a lack of legislation and national institutions that automatically protect children of detained and convicted persons, in particular children with disabilities, and meet their needs. Children of detained and convicted persons are usually cared for by other family members and commonly by grandparents. Parents in prison are best placed to meet the special needs of children. However, they are unable to fulfil these needs due to their imprisonment. Because of this situation, the parents suffer a great, intense and severe pain. The situation is desperate. On the other hand, the children suffer greatly, intensely and severely because they do not receive the care they need and are deprived of the support of their parents. The physical and mental condition of the children is deteriorating due to the lack of care. Irreparable problems arise due to the failure to meet the care needs of children. Children experience traumas that they will carry for the rest of their lives.^{xi}

National Human Rights Institutions

12. The State Party has two national human rights institutions: the Human Rights and Equality Institution of Turkey (TİHEK) and the Ombudsman Institution (KDK).

13. No decisions related to children with disabilities whose parents are imprisoned have been found on TİHEK's website^{xii}. Additionally, TİHEK has ruled that requests for the postponement of sentences are outside its jurisdiction.^{xiii}

14. Similarly, no decisions on this matter are found on KDK's website,^{xiv} and KDK has also ruled that such requests fall under judicial authority and are thus inadmissible.^{xv}

15. Neither national human rights institution has issued any decisions, activities, or reports related to this issue.

Judicial Attitudes

16. Since 2012, the Constitutional Court has been reviewing individual applications and has accumulated significant case law. However, there are serious concerns about the consistency and effectiveness of its decisions regarding international human rights law.

17. No decision related to children with disabilities whose parents are imprisoned has been found on the Constitutional Court's website.^{xvi}

18. The number of such cases submitted to the Constitutional Court is unknown, as data on

all individual applications are not available. However, in an individual application filed on 7 December 2023 (2023/105802), regarding the urgent and tragic situation of a child with disabilities, no decision has yet been made.

19. In the judgements available on the website of the Court of Cassation^{xvii} and shared with the public, no judgements were found regarding children with disabilities in need of care whose parents are convicted or detained in prison. There is no website where all judgements of the court of appeal and first instance can be accessed. In the research conducted on the internet, no decision of the Court of Cassation, Court of Appeal or Court of First Instance on children with disabilities in need of care whose parents are convicted or detained in prisons could be found.

20. The behaviour of judicial bodies is not in line with obligations under international human rights law and EPI recommendations on the rights of persons with disabilities.

Conclusion

21. Children with disabilities whose parents are imprisoned are at high risk of severe human rights violations and require intensive social protection. No statistical data, judicial decisions, or reports from national human rights institutions are available on this issue. Available sources suggest that the situation is arbitrary and does not comply with international human rights standards.

Recommendations

22. The State Party should continue its efforts to protect and promote the rights of persons with disabilities, particularly children with disabilities.

23. The State Party should provide statistical data on the postponement of sentence applications related to imprisoned parents of children with disabilities.

24. The State Party should make decisions regarding these postponement applications publicly available.

25. The State Party should extend the right to apply for sentence postponement to fathers of children with disabilities.

26. The State Party should establish an independent mechanism to monitor the situation of children with disabilities whose parents are imprisoned and regularly share information with the public.

27. The State Party should take all protective measures for children with disabilities whose parents are imprisoned.

ⁱ See available at: <https://yasambellekozgurluk.org/eskisehirden-cenevreye-hak-arayisi-mukadder-alakus-raporu/>

ⁱⁱ See available at: <https://yasambellekozgurluk.org/turkiye-basvurulari-ile-ilgili-birlesmis-milletler-insan-haklari-komitesi-tarafindan-verilmis-tum-kararlar/>

ⁱⁱⁱ A/HRC/44/14 and A/HRC/44/14/Add.1, recommendations 45.136 (Azerbaijan), 45.137 (Pakistan), 45.282 (Bhutan), 45.283 (Chad), *et al.*

^{iv} A/HRC/44/14 and A/HRC/44/14/Add.1, recommendations 45.280 (Sudan), 45.288 (Oman).

^v A/HRC/44/14 and A/HRC/44/14/Add.1, recommendations 45.278 (Djibouti)

^{vi} See available at: <https://www.patreon.com/posts/yusuf-kerim-daha-88017213?l=es> ;
<https://aktifhaber.com/gundem/gergerlioglu-yusuf-kerim-maddesi-eksik-kanunlasti-olacak-sey-degil.html>

^{vii} See available at: <https://data.tuik.gov.tr/Search/Search?text=engellilik%20oran%C4%B1>

^{ix} See available at: <https://data.tuik.gov.tr/Bulten/Index?p=Adrese-Dayal%C4%B1-N%C3%BCfus-Kay%C4%B1t-Sistemi-Sonu%C3%A7lar%C4%B1-2023-49684&dil=1>

^x See available at: <https://hudoc.echr.coe.int/?i=001-228009>

^{xi} See available at: <https://yahader.org/files/Ebeveyni%20Hapiste%20Olan%20C3%87ocuklar%20Raporu.pdf>

^{xii} See available at: <https://www.tihek.gov.tr/kategori/pages/kararlar>

^{xiii} TİHEK 1. Daire Kararı Başvuru Numarası: 2024/507 Karar Numarası:2024/649, 04.07.2024.

^{xiv} See available at: ^{xiv} <https://kararlar.ombudsman.gov.tr/Arama/Index>

^{xv} KDK SAYI : 2021/10877-S.21.17501 Başvuru No: 2020/103888, 26.07.2021.

^{xvi} <https://kararlarbilgibankasi.anayasa.gov.tr/>

^{xvii} See available at: <https://karararama.yargitay.gov.tr>