

International Initiative Analysis 2

# Turkey crossed the Rubicon



International Initiative  
“Freedom for Abdullah Ocalan–Peace in Kurdistan”

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## About us

On the 15<sup>th</sup> of February, 1999, the President of the Kurdistan Workers' Party, Abdullah Ocalan, was handed over to the Republic of Turkey following a clandestine operation backed by an alliance of secret services directed by their corresponding governments.

Disgusted by this outrageous violation of international law several intellectuals and representatives of civil organisations launched an initiative for the release of Abdullah Ocalan. With the opening of a central coordination office in March 1999 the "International Initiative Freedom for Abdullah Ocalan – Peace in Kurdistan" started its work.

The International Initiative regards itself as a multi-national peace initiative working for a peaceful and democratic solution of the Kurdish question with Kurds and Turks peacefully living together.

Even after his imprisonment Abdullah Ocalan is still regarded as the undisputed leader by a majority of the Kurdish people. Hence it seems reasonable to assume that the solution of the Kurdish question in Turkey will be closely linked to his fate in the future. Many Kurds see him as a safeguard for peace and democratisation. Therefore the Ocalan case needs a feasible perspective for a solution. The International Initiative is committed to play its part by intense lobbying and public relations work. Regular publishing and a balanced policy towards the public are a central part of its work.

## About this document

With our series "International Initiative Analysis" we provide insight into topics regarding the Kurdish issue, human rights developments in Turkey and the Middle East and the situation of Abdullah Ocalan.

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### First Signatories of the International Initiative

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# Turkey crossed the Rubicon

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment. ” (European Convention on Human Rights, Article 3)

“The Turkish authorities are now at a crossroads [...] The CPT is firmly convinced that, whatever the circumstances, there can be no justification for keeping a prisoner in such conditions of isolation for eight and a half years.” (CPT, report on Öcalan’s prison conditions, published in 2008)

## Introduction

While our previous report’s title (“Turkey at the crossroads”) was a quote from CPT’s latest report on Abdullah Öcalan’s imprisonment conditions, we are now confronted with a different situation. The Turkish government has made its choice and crossed the Rubicon. Instead of choosing to improve the imprisonment conditions of the Kurdish leader and thus sending an important signal for peace and reconciliation, they aggravated the prison regime even further leading especially to the worsening of his physical and health conditions.

In the first part of this analysis we aim to give some insight into the new prison conditions of Abdullah Öcalan as of 17 November 2009 which triggered major protests in Kurdistan, Turkey and abroad. The second part deals with the role of Council of Europe’s anti-torture watchdog CPT which has played a major role in shaping the conditions Öcalan is held under. CPT is the only independent institutions that has had access to Imrali prison during the past 11 years and is considered effective in battling torture Europe-wide. In the case of Imrali prison however, the CPT experience has led to rather few results and taken a tragic turn in 2009.

## The Imrali system

On 17 November 2009 several changes have occurred at Imrali prison. Explained to the international public as “improvements”, these changes actually constitute a major worsening of the conditions in this special prison. To understand the overall situation of Imrali and to assess better what has changed and what hasn’t, this section will explain the system of restrictions, security measures and legal exceptions that has become infamous as the “Imrali system”.

## The island

The prison island Imrali has been used as a half-open prison until February 15th, 1999. Since that day, it has been changed into a unique, maximum security prison with only one single inmate: Abdullah Öcalan. Five miles around the island and the airspace above have been declared a military

zone to which any civil access is prohibited. Almost 1000 soldiers are deployed to guard the prisoner. This “maximum security prison” type did not exist before and its status was legalised only retroactively.

The island of Imrali has been chosen especially because it is easy to isolate completely, the consultation with his lawyers and the visits of his family can be prevented under various pretexts, furthermore it is possible to extend the negative imprisonment conditions up to the present day. These are some of the reasons why Imrali has been chosen.

## Cell and exercise yard

Ocalan until recently inhabited a 12m<sup>2</sup> cell with a table, a chair, a bed, a wash basin, a toilet and a shower cabin. He was confined in this cell 23 hours a day. The cell was under non-stop camera surveillance 24 hours a day and could also be watched from the door. As far as we know the room was illuminated all night. He was never allowed to use the adjoining room in which the consultations take place. No cultural or other activities were possible.

The exercise yard, which he could use one hour a day, was 42m<sup>2</sup>, surrounded by 4m high walls covered with iron plates. The whole yard was covered with wire netting above, the ground was covered. There was no access to any sports equipment or training ground.

Since 1999, CPT had criticised this whole setting as “claustrophobic” and demanded a “complete review” of the situation.

On 17 November 2009, Ocalan has been moved into a newly built cell which is only half the size of the cell he inhabited so far. From press reports, published photographs and first hand information by Mr Ocalan himself, it is understood that the new cell is no more than 6-7 m<sup>2</sup> in size, while the exercise yard has been reduced to 24 m<sup>2</sup>. This yard can only be reached from his cell, so it cannot be used together with other prisoners. It was this aggravation of the conditions that triggered widespread protests by Kurds in early December 2009 during which one man was shot dead by the police.

## Food and health

Unlike other prisoners he is not allowed to enrich his nutrition with additional food bought at own expenses. The way food is given is used as a means of psychological pressure.

Ocalan has suffered from manifest respiratory problems for a long time. In prison additionally problems with the musculoskeletal system appeared. All applications for an exhaustive treatment have been rejected as well as requests to alleviate the situation by allowing the use of a new bed or an orthopaedic chair. The air conditioner in the old cell affected his already damaged respiratory system negatively. Ocalan has undergone an operation because of polyposis.

The “Imrali System” has devastating consequences for Ocalan’s health. He has no opportunity to get an exhaustive treatment for his health problems, instead he is being held in a life-endangering situation. After its latest visit in May 2007, CPT has stated that

The results of the psychiatric examination of Abdullah Öcalan showed a distinct deterioration of his mental state since 2001 and 2003. This deterioration is connected

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with a situation of chronic stress and prolonged social and emotional isolation, coupled with a feeling of abandonment and disappointment. It should also be noted that some of these symptoms are linked to the ENT ailment mentioned above.<sup>1</sup>

CPT also found levels of strontium, barium and magnesium significantly elevated above the normal values but determined no danger to life. Nevertheless CPT stated that it wants to monitor blood and urine samples for a period of 12 months.

The new cell has an even worse airing system than the old. Ocalan described the airing as “suffocating” and causing severe sleep disturbances. He is experiencing painful cramps in hands and body. He described the new cell as a “death pit” and himself as “half-dead”.

When we recall the statement of the then Secretary General of the National Security Council, General Tuncer Kilic, during a speech in 2002 that Ocalan was “being killed little by little deliberately” the present situation shows that although the death penalty has been abolished, it is now being executed piecemeal.

### **Access to media and communication**

Ocalan is allowed to use a small transistor radio which is limited to one channel of the state radio, broadcasting music most of the time. Due to delays in repairing and delivering of batteries it happens that he cannot use the radio for long periods of time.

His access to newspapers is restricted to seven papers a week. Sometimes these are delayed, not delivered at all or old papers are given to him. The newspapers are often censored by way of cutting out articles. His bookshelf has been taken away from him, he is only allowed to have one book at a time in his cell.

Until today, he is completely deprived of the right to use a telephone which all other prisoners in Turkey enjoy.

He is not allowed to write letters, not even to his lawyers. He cannot receive letters from outside the prison, only letters from other prisoners are sometimes delivered. These then contain blackened out passages and are mostly unreadable. Letters containing threats and insult however are delivered to him.

He has never had access to a television set. While there was not given any reason for this for many years, recently the authorities claimed that he was deprived of this right as a disciplinary punishment during the last two years. While the new prison setting is said to include a television set, until now this has not been made available to Mr Ocalan, again due to “disciplinary punishments”. Given the past experience with these punishments and the radio set, it seems very unlikely that there will be change to this negative situation.

### **Visits of family and lawyers**

Family visits have been reduced to 30 minutes every two weeks. There is no open visit without a separating panel, all talk is over telephone. Sometimes there are no consultations or visits for months, leading to a complete social isolation.

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<sup>1</sup>Quoted from: Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 22 May 2007, published on 6 March 2008

He is strictly forbidden to speak with anyone in his mother language Kurdish. As soon as someone speaks Kurdish the visit or consultation is cancelled immediately. He is not allowed to handshake or touch any other person in any other way.

According to article 83 of the law enforcement code every prisoner has the right to name three persons that are not relatives who can visit him. This right is denied to Mr Ocalan.

The consultation with his lawyers have been reduced first to one hour twice a week first and then to one hour a week. The consultations are often prevented from happening, the average consultation time is one hour every two weeks. During all consultation an officer of the ministry of justice is sitting between Ocalan and his lawyers and tape-recording every word, thus removing even the slightest impression of a confidential legal communication. This is the more striking since the European Court of Human Rights (ECtHR) found the overhearing of one single consultation with the lawyers already a breach of Article 6 of the European Convention on Human Rights (ECHR).

## **Surveillance technology**

Imrali prison is a maximum security prison that uses the latest available technology for the first time in Turkey. Every part of the island that the lawyers could see is under surveillance of a camera system, all entrances are secured with number codes and retina scans. The hands are laser scanned for traces of explosives. Thus the prison is being monitored electronically and with the latest technology.

## **Extralegal space**

The Imrali prison is also juridically a special area. In Turkey the prisons are under the control of the ministry of justice. Imrali prison, however, is being controlled by a crisis squad which is subordinated to the National Security Council. The crisis squad is an extraordinary body which can be set up transitionally for a time-span of six months in case of disasters according to the constitution. In the case of Imrali, the crisis squad has become a permanent institution. The crisis squad does not have an official bureau, no telephone and no transparent mode of operation but acts completely covertly. Because of this mode of operation, no legal proceedings against its decisions are possible. Neither are the reasons for its existence declared nor if or when it will ever be suspended.

## **The courts**

The visible part is shouldered by the courts. They are acting merely formally and have no real decision-making power. At the same time there are efforts to produce certain systematic and a legal fundamental for the practises that have been in action since 1999 and that have changed several times since. There are several amendments that have been produced exclusively for Ocalan and are implemented only against him. This can be clearly observed from the debates in parliament. The Turkish legal system contains by now a bunch of legal regulations that are called the "Ocalan laws".

## The situation of defence

An example for the “Ocalan laws” is the June 1st, 2005 amendments. The law enforcement law was amended to allow that

“upon request of the chief prosecutor and by decision of the execution judge an officer may be present in the consultation [of the inmate with his lawyers] and the documents that these persons hand over to the lawyers or the lawyers hand over to these persons may be examined.”

The very same day this amendment has been put into practise. Ever since, all communication between Ocalan and his lawyers are completely and openly tape-recorded – not only with one, but with three tape recording devices.

On the same day a new code of criminal procedure came into effect. According to it, it is possible to

“bar lawyers that carry out the defence or a mandate of persons who are in detention or have been sentenced from the defence or their mandate if an investigation because of an offence is initiated that falls under the same article.”

Thus already one week later twelve of Ocalan’s defence lawyers have been debarred from the defence, among them all those who have been involved into the case from day one. This clause has also been at first used solely against Abdullah Ocalan. Later three more lawyers have been barred for three years and one of the twelve for a second time. Some cases against several of his lawyers are pending. Against 26 of his lawyers a case has been filed because they called their client “Mr Ocalan” in written applications to authorities. Farcically, this is regarded as “glorification of a criminal”.

The lawyers can also not bring any documents into the consultation to discuss them with their client. They are strip-searched several times before and after a consultation in a humiliating and debasing manner, something that is unique to this prison in Turkey. Thus the lawyers are subject to various psychological repressions which interferes with their ability to do their duties.

The new “room” in which the consultations now take place makes communication particularly difficult. The room is too small for three lawyers, the distance between lawyers and client is about 3 meters and an officer of the ministry of justice is sitting on a separate table between lawyers and client. All sides of the consultation room are open and surrounded by soldiers who also listen to the conversation.<sup>2</sup>

These are just a few of many examples of how Ocalan’s legal defence is rendered almost impossible.

## Arbitrary regime and disciplinary punishments

In practise consultations with the defence lawyers and visits of family members are arbitrarily inhibited, Ocalan has no access to freely available publications, cannot use his rights to use television or telephone, have visits without a glass panel and write/receive letters. Above all, since 2005 he

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<sup>2</sup>A photograph of this absurd setting can be found at <http://www.freedom-for-ocalan.com/images/imrali-consultation-room.jpg>

frequently receives 20-day cell confinement penalties, which is isolation within the isolation, five of which have been implemented until 2007<sup>3</sup>. In 2008 alone, he spent 120 days in cell confinement. During these penalties he cannot use the exercise yard, listen to the radio, receive newspapers, letters or family visits. These punishments are imposed and executed without the lawyers being notified so they cannot object or appeal. The reasons given for them have nothing to do with misbehaviour, they are exclusively based on opinions expressed during the consultation with the lawyers—which normally should be confidential anyway.

With these cell confinement punishments the state since 2005 has established an instrument that is above the law and will show its real effect under the current prison regime. Assuming that at some point Ocalan will be able to meet with his fellow inmates, a cell confinement penalty now will mean to throw him back into total isolation again. This means that the numerous cell confinement penalties from 2005-2009 were only the forerunner of things to come.

## **The new situation since November 2009**

On 17 November 2009 Ocalan has been moved into a cell in the newly erected prison building. Five other prisoners were also transferred to the new facility. This has been announced as a huge “improvement” of the situation and lifting of the isolation by the Turkish government which explicitly stated the reason for this change: external pressure through the CPT. The world’s press were enthusiastic and hailed Prime Minister Erdogan.

But the reality on the ground is very different. Abdullah Ocalan’s old cell was 13m<sup>2</sup> and was already criticised as “claustrophobic” by the CPT. His new one is only half the size, 6-7m<sup>2</sup>. The extremely bad ventilation is endangering Ocalan’s health by aggravating his pulmonary disease even further. This can be regarded as life threatening, and it was exactly this threat that triggered the protests of early December 2009 in Kurdistan and abroad.

Furthermore, the isolation has not been lifted at all—Ocalan has not yet seen any of his new fellow inmates.

## **CPT’s role and recommendations**

As a member state of the Council of Europe, Turkey has an obligation to follow the recommendations of the Council’s anti-torture watchdog CPT. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) has been involved in shaping the conditions of Imrali prison almost since day one. They visited Imrali Closed Prison and its only inmate Abdullah Ocalan four times up to the present day<sup>4</sup>. As a result of these visits the CPT has each time made numerous recommendations which Turkey has failed to comply with<sup>5</sup>.

## **The latest report (2007-8)**

The latest visit to Imrali island took place on 19-22 May 2007, the report on this visit was transmitted to the Turkish authorities on 23 July 2007 and published on 6 March 2008. CPT clearly

<sup>3</sup>Executed from 12 May 2005, 7 August 2006, 13 April 2007, 16 July 2007 and 19 November 2007 on

<sup>4</sup>CPT visited Imrali in 1999, 2001, 2003 and 2007

<sup>5</sup>All reports and the replies of the Turkish authorities are available at <http://www.cpt.coe.int/en/states/tur.htm>

puts the emphasis on the devastating effects of total isolation of the prisoner. Quoting its own 2004 report, it reiterates

“However, the Committee also clearly indicated that ”the issue of paramount importance to the CPT is finding means of ending Abdullah Öcalan’s isolation, which has now lasted for more than four years.” (CPT, 2004)

The effects of the isolation become clear from the psychological evaluation. According to CPT the psychological situation has deteriorated massively under isolation:

“The results of the psychiatric examination of Abdullah Öcalan showed a distinct deterioration of his mental state since 2001 and 2003. This deterioration is connected with a situation of chronic stress and prolonged social and emotional isolation [...]”

Until 2003, it may have been disputable whether four years of isolation must be counted as a violation of article 3 of the European Convention on Human Rights. The Court had also in its 2005 decision reasoned that until 2003

“ [...] the general conditions in which he is being detained at Imralı Prison have not thus far reached the minimum level of severity required to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention.”

In its latest report however, CPT leaves no doubt that the total isolation that Abdullah Öcalan has been subjected to for more than nine years now, is a violation of article 3 of the European Convention on Human Rights.:

“[...] the situation of **indisputable isolation** to which the prisoner has been subjected since 16 February 1999 [...]”

“The CPT is firmly convinced that, **whatever the circumstances, there can be no justification for keeping a prisoner in such conditions of isolation for eight and a half years**. It calls upon the Turkish authorities to **completely review** the situation of Abdullah Öcalan, with a view to integrating him into a setting where contacts with other inmates and a wider range of activities are possible. ” (CPT, 23 July 2007)

This is the the strongest emphasis the CPT has ever made on isolation.

## Turkey’s reaction

From the beginning Turkey has not complied with CPT’s recommendations in regard to isolation. The reason why Turkey has chosen this approach is not neglectfulness. According to CPT Turkey is doing so “deliberately and knowingly”:

“[This] is the course they have **deliberately and knowingly** chosen since 1999, with the consequences described above” (paragraph 32)

This remains true to the present day. The first official reaction to the report came from Cemil Cicek, government spokesman and former Minister of Justice. He underlined that the isolation would be continued and thus left no doubt that Turkey will once again ignore CPT’s recommendations.

Turkey is clearly determined not to fulfil the recommendations of the CPT. This particular stance of Turkey is in clear violation of the European Convention on Human Rights. Furthermore it undermines the purpose and the position of the CPT.

## Overall evaluation

Since February 16th, 1999 the imprisonment conditions have continuously deteriorated. The number of consultation with lawyers and family visits, the time for outdoor exercise, the working conditions for the defence—all of these have been restricted further and further over time, facilities like the air condition have been changed to his disadvantage. None of the demands concerning the prison conditions that CPT has brought forward since its first visit in 1999 have been met.

Focusing on the isolation, the main achievement of CPT's efforts from 1999 to 2008 was to ensure more or less regular visits of the lawyers from 2008 on. In all other areas CPT recommendations were ignored by Turkey. Also in 2008 CPT met in an unprecedented manner with representatives of the Turkish general staff and the government. It seems that at that meeting Turkey has discussed the plans of the new prison with CPT. The Turkish government now claims that CPT has approved of the new prison building and thus the new imprisonment conditions.

If this is true, CPT bears the responsibility for this "horse trade". All of the announced improvements in the conditions have not yet materialised and are only promises so far that can be taken away arbitrarily at any moment. On the other hand, the massive reduction of the size of the cell and the exercise yard are very concrete and permanent.

The changes of 17 November 2009 mark a distinct worsening of the prison conditions. All possible improvements like social contacts and recreational activities are only hypothetical and have not yet materialised. Furthermore, the ongoing practise of arbitrary "disciplinary punishments" which cannot be challenged in any way and serve to take away all rights makes all hopes for improvement obsolete. The only real change is the cut in size of cell and exercise area, for a man who has already been living under extreme serious isolation for almost 11 years and who is sentenced to an aggravated life sentence.

Thus, the Imrali prison is still a legal no-man's island, governed by pure arbitrariness. Rightly it is also being called the "European Guantanamo", although it precedes Guantanamo.

## Conclusion

Instead of complying with CPT's recommendations for the imprisonment conditions of Abdullah Ocalan, Turkey has chosen to aggravate his conditions even further by cutting down the size of his cell and making it more claustrophobic. All other kinds of discrimination against Ocalan, from the restrictions of his legal defence to the access to press, from the ban on letters to the arbitrary punishments continue to date.

CPT on the other hand seems to be engaged in a horse trade. CPT traded the Turkish promise for a lifting of the isolation against a smaller cell and exercise area. The committee should state clearly whether it has agreed to the current conditions or whether it has been deceived by the Turkish state authorities. In either case it has proven to be unable to effectively prevent isolation torture and inhumane treatment.

CPT either does not have the will or the power to make Turkey implement its recommendations. Furthermore, even the violations found by the European Court for Human Rights like the violation of defence rights have not been addressed to the present day. Turkey continues to violate the European Conventions on Human Rights in Imrali every day.

## **Demands**

- A new building does not change the fact that Imrali prison has the lowest standards of all prisons in Turkey. Imrali prison, the “European Guantánamo” has to be closed down.
- Abdullah Ocalan’s isolation and the discrimination against him must be ended. He has to be relocated from Imrali island which constitutes the material basis for the isolation. His health and his security have to be guaranteed elsewhere.
- The special “Ocalan laws” and the discrimination that comes along with them have to be abolished. His right to have an effective defence has to be guaranteed.
- CPT must immediately organise a delegation to Imrali and publicly condemn Turkey’s way of dealing with its recommendations, otherwise it will lose all credibility.
- The Parliamentary Assembly of the Council of Europe (PACE) should send its own delegation to observe the situation on Imrali Island.



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