Aggravated Life Imprisonment in Turkey

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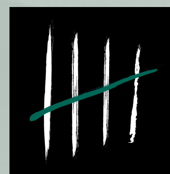

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AGGRAVATED LIFE IMPRISONMENT IN TURKEY

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To my parents
Agron & Dallandyshe

To Istanbul
Where I felt home

In memoriam, Murat
Who first started the correspondence with aggravated life prisoners

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LIST OF ABBREVIATIONS

AKP	Justice and Development Party
BDP	Peace and Democracy Party
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
CAT	Convention Against Torture and Other Cruel Inhuman or Degrading Treatment and Punishment
CISST	Ceza Infaz Sisteminde Sivil Toplum Derengi
CPT	Committee on the Prevention of Torture
DEP	Democracy Party
DP	Democrat Party
DSP	Democratic Left Party
DTP	Democratic Society Party
FETÖ	Fetullah Gülen Terrorist Organisation
GNAT	Grand National Assembly of Turkey
HADEP	People's Democracy Party
HEP	Kurdish People's Labour Party
HPD	Peoples› Democratic Party
HRA	Human Rights Association
HRC	Human Rights Council
HRF	Human Rights Foundation
HRW	Human Rights Law
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IS	Islamic State
KCK	Kurdistan Communities Union
LWOP	Life without parole
MHP	Nationalist Action Party
NUC	National Unity Committee
PKK	Kurdistan Workers' Party
PYD	Democratic Union Party
RPR	Republican People's Party
SMR	Standard Minimum Rules for the Treatment of Prisoners
TCPS	Turkey's Center for Prison Studies
THEA	Turkey's Prison Information Network
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCT	United Nations Country Team
YOK	Board of Education

INTRODUCTION

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." Nelson Mandela

Premise – Background of the Study – Methodology – Overview of the Structure.

Premise

Aggravated life imprisonment in Turkey is an innovative and interesting topic in the light of European and International standards because it must be read in the context of the Turkish penal system, which is, in its turn, informed by the "unique" situation that the Country is experiencing. It is necessary in fact to take in consideration how threats to national security are perceived and how the Turkish Constitution changed over the years. The present study offers a legal overview of this topic combined with the analysis of the role played by monitoring entities with regard to detainees' rights. Finally, the study will focus on a specific case study, i.e. the work of the local NGO Ceza Infaz Sisteminde Sivil Toplum Derengi, an example of national mechanisms of monitoring.

Background of the Study

This MA thesis is the outcome of researches conducted to understand the Turkish penal system and the violations of prisoners' rights within it. At the beginning, considering Turkey's records in the violation of prisoners' rights was difficult to identify the topic and restrict my area of research. Thanks to my internship with Ceza Infaz Sisteminde Sivil Toplum Derengi, a Turkish NGO dealing with prisoners' rights I deepened my knowledge about the different categories of prisoners in Turkey and I choose to focus on aggravated life imprisonment.

The aim of my research was to analyse the conditions of this category of prisoners in the national law and to see if the International and European standards applied to it. In fact, Turkey signed several International Conventions; it is a State member of the Council of Europe and is under the jurisdiction of the ECHR.

During my internship in Turkey, from March to September 2016 an important event happened in the Country, the Coup d'état of July 15. Afterwards, together with my supervisor, Professor Sara Pennicino, we decided to change the research questions and the objectives of the study. The new project is based on the conditions of aggravated life prisoners in a wider perspective. Although the first chapter of my research analyses aggravated life imprisonment in the International and the European legal framework much more space will be given to the national laws and the analysis of the economic, social and political framework of Turkey.

Aggravated life prisoners in Turkey are classified in "ordinary" and "political" prisoners. The first are convicted for crimes such as Murder (Articles 81 and 82 thereof) and Production of and trafficking in drugs (Article 188). The second under the Turkish law are considered as "terrorists" and are condemned for committing Crimes against the security of the State (Articles 302, 303, 304, 307 and 308), Crimes against humanity (Articles 77 and 78), Crimes against constitutional order and its operation (Articles 309 to 315) and those established under the article 125 of the Turkish Constitution.

Conversely to "ordinary" aggravated life prisoners, the "political" ones have no hope for release, meaning that their natural life coincides with their time in prison. To understand the provisions of the criminal law is necessary to have a clear imagine of the Turkish history and political situation and what is considered a threat to the State Security. In addition, after the failed Coup in July 2016 the situation become even more complicated. Turkey declared the State of Emergency and one of the measures adopted was the derogation from the ECHR and the ICCPR. These events are increasing the violations of human rights while the proposal to change the form of Government, from a democratic republic to a presidentialism system can lead to authoritarianism. Considering what happened in the last months, the plotters and those accused to be part of terrorist organizations such as the Kurdistan Workers' Party (PKK) and the Gülenist Organization (FETÖ) will face aggravated life imprisonment. This study purpose is to raise awareness on aggravated life prisoners in Turkey not only from a legal point of view but also considering the hard conditions they face in prison. The violation of human dignity cannot be justified under any circumstance.

The objectives of this research include:

- Evaluating the International, European and National standards on aggravated life imprisonment
- Investigating the legal/rights framework of aggravated life imprisonment in Turkey

• Exploring the threats to the State Security and the changes of the Turkish Constitution

• Assessing possible scenarios after the failed Coup for aggravated life prisoners

• Analysing the national mechanism of monitoring for prisoners‘ rights and the role of national NGOs.

Methodology

The study will use quantitative and qualitative methods of analysis. Accessible documentary data, such as legislation material, sentencing statistics, international reports and newspapers' articles will be analysed. Although quantitative data have seemed of great significance to many social research[1] their "deficiencies are well known"[2]. The Turkish Ministry of Justice do not provide exhaustive information about the prisoners, "although one might expect unquestionably reliable information, organisations such as these can be guilty of holding back information".[3]

For what concern aggravated life prisoners in Turkey there is lack in the literature not only in the English language but also in the Turkish one. The vast majority of information regarding aggravated life imprisonment are gathered from the book of Idil Aydinoglu "Turkiye'de Agirlastirilmis muebbet hukumlusu mahpus olmak". Because of the law on execution of penalties, it is impossible to do qualitative research based on interviews with this category of prisoners. For this reason, to better explain the conditions of aggravated life prisoners I selected the letters addressed to CISST under the "Letters Project". I maintained the anonymity of the prisoners and I choose those that gave more information about solitary confinement, family visits, phone calls, condition of cells etc. Further information for the research has been provided by qualitative research. To comprehend the Turkish penal system, semi-structured interviews has been conducted with the researchers working in CISST. In particular Idil Aydinoglu for what concern the Turkish legislation on aggravated life prisoners and with Eva Tanz for the role of monitoring of NGOs in Turkey and specifically CISST. Moreover, Mustafa Eren, Berivan Korkut, Ezgi Duman, Aysegul Algan helped me to deepen my knowledge about the Turkish Penal System. Because of the political situation it has been difficult to have interviews with other academics. When I changed some of my research questions, I was back in Italy and it became more problematic to reach journalists, NGOs or lawyers.

This research has been conducted in a legal/rights perspective. In Turkey there is a lack of criminal justice researches and my work aims to be a little contribute to its development.

1 Bryman, A. (2004) 'Social Research Methods' 2nd ed. OUP

2 Jupp, V. Davies, P. Francis, P. (2000) Doing Criminological Research. London: Sage Publishing, p.58

3 Blaxter, L. (2010) How to Research. Milton Keynes: Open University Pres

Overview of the Structure

The research is divided in 4 main chapters.

In Chapter 1 will be analysed the life imprisonment and life without parole in the light of the International and European law. The judgments of the ECtHR such as the Vinter and Others vs The United Kingdom or Murray Vs Netherlands represent an important step forward in the jurisdiction as they affirm that even to those sentenced with LWOP must be guaranteed the hope of release. The denial of such rights can be considered as prejudicing the human dignity and an inhuman degrading and cruel treatment.

Chapter 2 will focus on the condition of the aggravated life imprisonment in Turkey. A brief historical overview will be provided to explain the end of the death penalties and the imposition of aggravated life imprisonment. Turkey provides by law a difference between “ordinary” and “political” aggravated life prisoners that do not have parole. In this section the hard conditions in which this category of prisoners lives will be explained also through the witnesses of prisoners.

In Chapter 3 will be explored why the crimes so called “against the State” receive the most severe punishment within the Turkish penal system. This will be explained under the threats to the State Security starting from the Kurdish question in the ‘80s to the FETO organisation of nowadays. While the excursus on the constitution-making will elucidate the new constitution reforms proposed by the Turkey’s ruling party AKP. Finally, the consequences of the failed Coup on prisoners and the Turkish society and politic will be examined.

In Chapter 4 will be analysed the national mechanism of monitoring and the role of the NGOs in it. The system seems to have many flaws, and if the international actors are allowed to visit prisons and to write report on it the same did not happen for the local NGOs that are left out the system. To demonstrate the difficulties in working in the criminal justice in Turkey will be presented the work of the Turkish NGO Ceza Infaz Sisteminde Sivil Toplum Derengi.

CHAPTER I

LIFE IMPRISONMENT AND LIFE IMPRISONMENT WITHOUT PAROLE IN THE INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK

"There is a way to be Good again"
The Kite Runner, Khaled Hosseini

1.1 Introduction. – 1.2 Life imprisonment and life imprisonment without parole. - 1.3 International Criminal Tribunals: How are the perpetrators of the most atrocious crimes sentenced? 1.4 Life Imprisonment and the Council of Europe. - 1.5 Life imprisonment and the prohibition of inhuman degrading and cruel treatment in the international standards. - 1.6 The imposition of life imprisonment under the European Convention of Human Rights: ECtHR case law -1.7 Concluding remarks

1.1 Introduction

In the vast majority of the countries worldwide life imprisonment has been adopted in lieu of the death penalty. A new question raised within the international jurisdiction: Is the mere imposition of life imprisonment an inhuman, degrading and cruel treatment?. The ECtHR through its judgments has answered to this query. It is not the imposition of life imprisonment to create a condition of inhuman, degrading and cruel treatment but the continued detention without the prospect of release. In this Chapter the concepts of life imprisonment and life imprisonment without parole will be introduced. I will try to explain the changes in the international jurisdiction from the imposition of the death penalty to the fixed term of 30 years established by the ICC for the most atrocious crimes. This approach is not adopted by some Member States of the Council of Europe that continue to convict prisoners with life imprisonment without parole, denying offenders any hope of revision of their previous judgments. Indeed, with the purpose to determine if the imposition

of life imprisonment represents a cruel, inhuman or degrading treatment an overview of the most important international instruments will be provided. The denial of the prospect of release might be considered a violation of the human dignity and a degrading treatment.

Life imprisonment will be examined above all considering it within the Member States of the Council of Europe. The actual practices will be analysed through the critics and the interpretations of the Strasbourg Court, in particular with the study of the case-law Vinter and others vs The United Kingdom and Murray vs The Netherlands. To conclude, the steps forward made by the Council of Europe are relevant to examine the resolutions and the recommendation of the Committee on Ministers on long term and life imprisonment.

1.2 Life imprisonment and life imprisonment without parole

In the past, life imprisonment has been linked with death penalty and it has become an alternative to it as punishment for the most atrocious crimes.[4] When the rapid abolition of the death penalty throughout much of the western world during the latter half of the twentieth century was considered "one of the signal achievements of liberal idealism",[5] life imprisonment turn out to be the "most severe penal punishment" in those countries where the death penalty does not apply.[6]

The term "life sentence" has divergent meanings in various countries. States impose life sentence for a wide range of offences and also different are the laws that foreseen the possibility of release. Although in certain countries, "degrees of legislated determinacy are attached to life sentences, in general such sentence are, by their nature indeterminate".[7] Some misunderstandings might emerge from the expression "life imprisonment". It does not mean imprisonment for the whole natural life of the prisoner but it might happen cases in which the fixed-term imprisonment exceed the limit of life span. The nature of the imposition of life imprisonment can be mandatory or discretionary under the different national laws. While in some countries life imprisonment is one of the possible punishments that the judge might freely decide, other countries for certain types of crimes set by law the imposition of life sentence. In this context the judge has no power of choice. The mandatory life imprisonment might raise issue for the violation of human rights .There is the risk that not taking in consideration the individual case it might be not proportionate while the discretionary method examines case by case. Life imprisonment provides by law the release for prisoners. The conditions of such release usually include the assessment of the prisoner's behaviours in prison, the

4 25th General Report of the CPT http://www.cpt.coe.int/en/annual/CPT-Report-2015.pdf
5 Van Zyl Simit, D. (2001), Abolishing life imprisonment? Punishment and Society, SAGE Publications London, Thousand Oaks , CA and New Delhi, Vol 3(2) , pp 299-306
6 United Nations Office at Vienna, Crime prevention and Criminal Justice Branch 1994 https://www.penalreform.org/wp-content/uploads/2013/06/UNODC-1994-Lifers.pdf
7 Ibid

expectation that he /she will live and orderly life, whether the harm or injury had been compensated, his/her attitude towards treatment, or the opinion of the prison director.[8]

The sentence of life imprisonment without parole means to be in prison for the whole natural life. It represents the penultimate[9] penalty in that States that the death penalty was abolished. Although the terminology varies across jurisdictions, e.g. "natural life", "whole-life tariff" or "life without the possibility of release". LWOP is the most commonly used and most coherent description of the sentence.[10] LWOP is not a widespread practice, such disposition applies in few countries within Europe. This sentence is considered "death by incarceration" as opposed to "death by execution" that relates to the death penalty.[11] Tallack suggests that LWOP is a form of barbaric and cruel punishment. He believes that "absolute life-imprisonment is not such much a substitute of capital punishment, as a slower and more disadvantageous method of inflicting it".[12] This sentence is a "unique" form of punishment that can lead to cruel, inhuman or degrading treatment but also to the violation of human dignity. It represents a "permanent exclusion" of the individual from society, and it has been linked to a "civil death".[13] The imposition of LWOP is also an attractive option to governments who require a punishment that equals the death penalty in its "exclusionary and incapacity effect but eliminates the risk of wrongful executions". It has been reported that many prisoners would prefer the death penalty given the alternative of spending the rest of their life in prison, often in harsh conditions.[14]

LWOP is justified under the principles of Public Protection, Retributive Punishment and Deterrence. The main argument for those who sustains LWOP in respect of the Public Protection relies on the dangerousness that the convicts may represent for the society after their release. According to the supporters of this practice, the goals that LWOP may, achieve, are several: not only the protection from dangerous offenders and the prevention of future crimes but consequently "restores public faith in the efficacy of the system".[15] While research conducted afterwards revealed that there is not such a thing as an "infallible prediction" on the offender's future behaviours.[16] Subsequent research revealed that the offenders did not represent a significant threat to society. We cannot conclude from these data that their execution would have protected or benefited society.[17]

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8 Bruszt, A (2009), Right to hope? Legal analysis of life imprisonment without parole, Central European University, Department of Legal Studies, CEU e TD Collection

9 Wright, J. (1990), Life Without Parole: The view from Death Row, Criminal Law Bulletin 27, pp 334-357, p.339

10 Appleton, C. and Grøver, B. (2007), Brit J. Criminol (2007) 47, pp597– 615, p.598

11 Johnson, R. and McGunigall, S.(2008), Life without Parole, America's Other Death Penalty, The Prison Journal, Volume 88,Number 2 ,pp 328-346, p.328

12 Tallack, W.(1888), Penological and Preventive Principles , Wertheimer , Lea and Co, London

13 Appleton, C. (2015), Life Without Parole , Oxford Handbooks Online, http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935383.001.0001/oxfordhb-9780199935383-e-25?print=pdf , p. 2

14 Ibid pp.6-9

15 Supra Note 5

16 Ibid

17 Marquart, J. and Sorensen, J. (1997), 'A National Study of the Furman-Commuted Inmates: Assessing the Threat

The imprisonment until death has some negative effects within the prison system such as the aging of the prison population and the creation of "super-inmates".[18] Second, LWOP is justified for being a retributive punishment. If the death penalty was abolished a replacement sanction of "sufficient" gravity has to be provided by law.[19] It is a common thinking that murders deserve the most severe punishment because of their offences. In adopting this approach policy makers do not consider that in depriving the prisoner of the hope of release they "resort another form of death sentence".[20] Moreover, the principle of proportionality shall apply in the judicial punishments. In delivering the sentence the judicial authority shall consider the gravity and dangerousness of the offence committed but also draws a prospect of release. Third, LWOP might have deterrence as effect. According to the supporters of LWOP, it is a warning for the members of society to not commit offences that lead to this punishment. They often do not consider the physical, psychological or social damages that this sentence may cause to prisoners. The severity and the inhumanity of the sentence LWOP cannot find justification under the concept of deterrence. According to Blair, there is "little evidence that punishments imposed on convicted offenders have any impact on the behaviour of potential offenders".[21] In general, the policy of deterrence can have effect "if it is enforced with a sufficient degree of certainty on persons who, in the course of their conduct, calculate the probable penal consequences".[22]

1.3 International Criminal Tribunals: How are the perpetrators of the most atrocious crimes sentenced?

The imposition of a sentence that denies any hope of release is considered a violation of the human dignity. This argument become stronger considering that the ICC establishes by law a maximum term of 30 years of imprisonment even for the most atrocious crimes (genocide, crimes against humanity, ethnic cleansing). Life imprisonment applies only in cases of "extreme gravity". In order to understand how the ICC came to this final result an overview of the sentences of the International Criminal Tribunals will be provided. The analysis of the different approaches adopted by these Tribunals sign also the development of the international criminal law. This section will present how has been judged the violation of the international humanitarian law and the breaches of the 1949 Geneva Convention.

to Society from Capital Offender , Oxford University Press pp.174

18 Blair, D. (1994), A matter of life and death: Why Life Without Parole should be a sentencing option in Texas, American Journal of Criminal Law,22 pp 191-214, p. 213

19 Supra Note 5

20 Haines, H. (1996), Arguments against Capital Punishment: The Anti-Death Penalty Movement in America 1972 – 1994. Oxford: Oxford University Press

21 Supra note 5 p.202

22 Hood, R. (2002), The Death Penalty: A Worldwide Perspective , Oxford University Press, p.212

1.3.1 The International Military Tribunal of Nuremberg

The creation of the Nuremberg Tribunal[23] is "the first attempt by the international community to prosecute the authors of atrocious crimes that shock the conscience of humankind and seem to roll back to square one the concept of international protection of human rights".[24] The Tribunal was set to punish who acted as an individual or as a member of an organisation in committing crimes against peace[25], war crimes[26] and crimes against humanity.[27] The article 27 of the Charter of the International Military Tribunal of Nuremberg lays down the form of punishments "death or such other punishment as shall be determined by it to be just". In this case the adoption of death penalty for heinous crimes is imposed in the judgments of Tribunal. For the first time, individual responsibility for grave breaches of the Geneva Convention 1949 is established in the international criminal law. The Judges delivered the following sentences: twelve death penalties and seven sentences that include imprisonment for terms ranging from 10 years to life imprisonment.[28]

1.3.2 International Criminal Tribunal for the Former Yugoslavia

The International Criminal Tribunal for the Former Yugoslavia (ICTY) represents a further step made by the international community in the punishment of offenders of grave crimes. Contrary to the Nuremberg Tribunal and thanks to the influence of the UDHR and the ICCPR, this Tribunal rejected death penalty as a form of punishment even for the most atrocious crimes.

The International Tribunal[29] was established in 1993 by the United Nations "to prosecute persons

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23 The International Military Tribunal at Nuremberg was established pursuant to Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 82 U.N.T.S. 279. The Charter of the International Military Tribunal at Nuremberg is set out in id. at 284. The proceedings are reported in Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 October 1945-1 October 1946 (1947-1949)

24 Tomuschat, C.(1994), International Criminal Prosecution: The Precedent of Nuremberg Confirmed, Criminal Law Forum, Vol. 5 Nos. 2-3 ,pp 237-247, cit.p.238

25 Art.6(a) CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing

26 Art.6(b) WAR CRIMES: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity

27 Art.6(c) CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated

28 Wright, Q.(2007) The law of Nuremberg Trial , The American Journal of International Law, Vol. 41, No. 1 (Jan., 1947), pp. 38-72 http://www.jstor.org/stable/2193853?seq=1#page_scan_tab_contents

29 The statue of the International Criminal Tribunal for the former Yugoslavia is an annex to the report of the Secretary General Pursuant to paragraph 2 of the Security Resolution 808 (3 May 1993)

responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute".[30] The Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions 1949.[31] Although life imprisonment is the most severe punishment, the terms are not defined. Under the article 24 the Trial Chamber "shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia". The data delivered by the ICTY more than 180 individuals have been held for different periods of time, of this number 141 were accused of war crimes, 36 were detained witnesses, and 13 were accused or convicted of contempt of court.[32] According to Van Zyl Smit "the Court is trying to avoid to impose life imprisonment by sentencing the convicted person to fixed-long term that entails similar period of detention".[33]Article 27 of the Statute of the ICTY provides that the period of imprisonment shall be served in a State designated by the International Tribunal. One weak point of the Tribunal is the different national law of the States where the convict is imprisoned. While in article 28 of the Statue of the ICTY emerges the disparity situation of pardon or amnesty, "If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal accordingly". The President of the International Tribunal, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law".

1.3.3 International Criminal Tribunal for the Rwanda

The International Tribunal for Rwanda[34] was created to "prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and neighbouring States, between 1 January 1994 and 31 December 1994".[35] The Tribunal has sentenced 93 individuals considered responsible for serious violations of international humanitarian law committed in Rwanda in 1994. Those indicted include high-ranking military and government officials, politicians, businessmen, as well as religious, militia, and media leaders.[36] The most severe punishment that this Tribunal imposed was life imprisonment. Contrary to ICTY, the ICTR under the article 27 states "only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law".

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30 Art.1 of the Statue of the International Criminal Court for the former Yugoslavia

31 Ibid, art 24

32 International Criminal Tribunal for the Former Yugoslavia, http://www.icty.org/en/about/detention

33 Van Zyl Smit, D.(2002), Taking life imprisonment seriously, The Hague ; London, New York: Kluwer International Law, pp 187

34 Security Council Resolution 955 (1994)

35 Art. 1 of the Statue of ICTR http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatuteInternationalCriminalTribunalForRwanda.aspx

36 ICTR http://unictr.unmict.org/

1.3.4 International Criminal Court

The Permanent International Criminal Court was established in 1998 consequent the adoption of Rome Statue. The jurisdiction of the permanent Court is of last resort, it complements and not substitutes the national legislation. The Court has the power to exercise its jurisdiction over individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity, the crime of aggression.[37] The penal punishment that the Court may impose is imprisonment for a specified number of years, which may not exceed a maximum of 30 years while the imposition of life imprisonment is allowed only in case of "extreme gravity of the crime and the individual circumstances of the convicted person".[38] In addition, the article 110 §3 establishes that even when the life sentence is imposed, the sentence must the revised when the prisoner has served 25 years of the sentence. Rule 145§3of the Rules of Procedures and Evidences sets that imprisonment may be imposed when justified by the extreme gravity of the crime. The Court has no discretion in determining whether or not to review the sentence, but has discretion in establishing whether or not to reduce prisoner's sentence. The willingness of the offender to co-operate with the Court in its investigations and proceedings and other positive actions established in the Rule of Procedures and Evidences represent for the person convicted a possibility for the reduction of the sentence.[39] According to the Rule 223 of the Procedures and Evidences the reducing of the sentence is applicable when from the convicted there is the genuine dissociation from the crime. The reduction of the punishment shall consider effects on the stability of the society and the families of the victims. The mental and physical health and the age of the person convicted as well as the prospect of resocialization influence the decision of the judges. From the analysis of the disposition of the Rome Statue and the Rules and Evidences of the ICC are important step forward in the international criminal law with the aim to meet the differences between the Member States. If the adoption of death penalty is considered unacceptable in respect of human life, dignity and rights, the imposition of life imprisonment is a practice that lead to cruel, inhuman or degrading treatment for the prisoners. To conclude the ICC created new disposition for the punishment of the most dreadful crimes. It is the first permanent tribunal and the only one ad hoc that has the jurisdiction to decide on the release or the reduction of the sentence. If the international criminal law reached this result it is evident that in the national framework much more needs to be done to assure the respect of human dignity.

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37 Art.5 Rome Statue https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

38 Art.77 § 1 of the Rome Statue

39 Mujuzi, J.D. (2013) , International Criminal Law Review 13(2013),pp 1037-1045

1.4 Life Imprisonment and the Council of Europe

To comprehend how the sentences of life imprisonment and life imprisonment without parole can lead to inhuman, degrading and cruel treatment is useful to analyse the jurisdiction of the Council of Europe. The notion of life imprisonment was introduced within the Member States of the Council of Europe during the 1990s following the ratification of Protocol 6 of the European Convention on Human Rights. With the exception of Belarus, since 2013 Europe is a death penalty free-zone in law. The last execution of death penalty took place in 1997.[40] However, it has been commuted with life imprisonment. If at the begging life imprisonment was perceived as a fair punishment for the gravest crimes nowadays the suffering that this condition may cause is not justified under the human rights perspective. In 2014, according to the latest available data in in Europe, 27,000 inmates were sentenced with life imprisonment. Taking in consideration a sample of 22 countries of the Council of Europe emerge that from 2004 to 2014 the number of life-sentenced has increased of 66%. The 2015 Report of the CPT highlights the different treatment of life sentenced prisoners concerning education, work, recreational activities and contact with the outside world between the different states. In addition, life aggravated prisoners are separated from the other categories of prisoners in Armenia, Azerbaijan, Bulgaria, Georgia, Latvia, Moldova, Romania, the Russian Federation, Turkey and Ukraine. In some countries life-sentenced prisoners are locked up in their cells (alone or in pairs) for 23 hours per day and are not allowed to associate even with life-sentenced prisoners from other cells (including during outdoor exercise). They cannot work within prisons and no activity is addressed to them. In other countries is an usual practice to handcuffed or strip searched the person sentenced with life imprisonment or when they have to go outside their cells are accompanied by officers.[41]

Countries without Life Imprisonment

There are currently nine countries where life imprisonment does not exist: Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. The maximum term of imprisonment in these countries ranges from twenty-one years in Norway to forty-five years in Bosnia and Herzegovina. In Croatia in a case of cumulative offences, a fifty-year sentence.

Countries with Life Imprisonment

In the vast majority of Member States of the Council of Europe, in cases of life imprisonment a mechanism for reviewing the sentence after the prisoner has served a certain minimum period of the sentence defined by law exists. The eligibility for parole is provided by law in two-thirds of the Member States of the Council of Europe even if it varies from one State to the other State:

Albania (25 years), Armenia (20), Austria (15), Azerbaijan (25), Belgium (15 with an extension to

40 Supra Note 1
41 Ibid

19 or 23 years for recidivists), Bulgaria (20), Cyprus (12), Czech Republic (20), Denmark (12), Estonia (30), Finland (12), France (normally 18 but 30 years for certain murders), Georgia (25), Germany (15), Greece (20), Hungary (20 unless the court orders otherwise), Ireland (an initial review by the Parole Board after 7 years except for certain types of murders), Italy (26), Latvia (25), Liechtenstein (15), Luxembourg (15), Moldova (30), Monaco (15), Poland (25), Romania (20), Russia (25), Slovakia (25), Slovenia (25), Sweden (10), Switzerland (15 years reducible to 10 years), the former Yugoslav Republic of Macedonia (15), and Turkey (24 years, 30 for aggravated life imprisonment and 36 for aggregate sentences of aggravated life imprisonment).

Life imprisonment can be mandatory or can depend on the pronouncing of the judge. Iceland, Lithuania, Malta, the Netherlands and Ukraine make no provision for the parole. Even if this practice is not provided by the national law, prisoners can apply for ministerial, presidential or royal pardon. In Iceland, although it is still available as a sentence, life imprisonment has never been imposed. Some States do not provide the possibility of parole, they apply LWOP. England and Wales as well as Bulgaria, Hungary, France, Slovakia, Switzerland and Turkey have a system of parole but for certain type of offences the parole is not available.[42] The denial of parole seemed to be a practice that does not respect the principles of the ECHR. If from one side the public protection remain a crucial point, from the other one shall be considered that the imposition of LWOP and the destruction of any hope dehumanise prisoners. CPT has expressed serious concerns for the imposition of LWOP in Europe, all sentences should be subject to a "meaningful review at some stage, based on individualised sentence-planning objectives defined at the outset of the sentence, and reviewed regularly thereafter".[43] The prospect of revision of the sentence might have a positive influence on prisoners favouring a good behaviour and conduct.

The Council of Europe has contributed not only with the reports of the CPT but also with the adoption of resolutions and recommendations of the Committee of Ministers on long-term imprisonment and life imprisonment. Of particular relevance on this issue are the recommendation 76(2) and 2003(23), the two most appropriate and complete documents for this category of prisoners.

Resolution 76(2) on the Treatment of Long-Term Prisoners, (February 17, 1976), regards also to life imprisonment. It states that the review of the sentence for conditional release shall be guaranteed "as early as possible"[44] while the sentence is justified only if "necessary for the protection of the society".[45] The States shall adopt all the necessary legislative and administrative measures to promote "appropriate treatment",[46] "education and vocational training",[47] and guaranteed the con-

42 Vinter and Others vs The United Kingdom, Applications nos. 66069/09, 130/10 and 3896/10, §68, 9 July 2013
43 Ibid
44 Council of Europe (1976) Resolution 76(2), para. 9
45 Ibid, para 1
46 Ibid, para 2
47 Ibid ,para 4-5

tact with the outside world as the work outside the institution.[48] For the first time, the Resolution 76(2) examines also the effects that such sentence has on the mental health of the prisoners, for this reason more studies shall "promote multidisciplinary teams, comprising inter alia psychiatrists and psychologists, on the effects of long-term sentences on the prisoner's personality, having particular regard to the effects of diverse prison conditions".[49] To conclude, Member States of the Council of Europe shall promote also the growth of public awareness on these prisoners and the training of the staff.

Recommendation 2003(22) affirms "the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners".[50] The Explanatory Memorandum on the Recommendation states "Firstly, no one can reasonably argue that all lifers will always remain dangerous to society. Secondly, the detention of persons who have no hope of release poses severe management problems in terms of creating incentives to co-operate and address disruptive behaviour, the delivery of personal-development programmes, the organisation of sentence-plans and security. Countries whose legislation provides for real-life sentences should therefore create possibilities for reviewing this sentence after a number of years and at regular intervals, to establish whether a life-sentence prisoner can serve the remainder of the sentence in the community and under what conditions and supervision measures".[51]

Recommendation 2003(23) sets the standards for the Management of Prison Administration for life sentences and other long-term prisoners.

The individualisation principle: each life sentence shall be based on an individual sentence planning. It might consider age, intellectual capacity, education level, social background, social circumstances, etc. The individual sentence planning might reflect the needs but also the risks that each prisoner represent.[52]

The normalisation principle: it is considered the "countermeasure" of the traditional prison system. It implies to examine the prison's routine and to consider if it must apply to the everyday life in the outside world. The life prisoners shall be subject only to the measures that are considered necessary for their safety and orderly confinement.[53]

The responsibility principle: It foresees the opportunity for the prisoners to take not only the responsibility for their decisions but also their consequences. The full understanding of this principle is significant to lead to an effective change in prisoners' attitudes and behaviours.[54]

48 Ibid, para 9
49 Ibid para 14
50 Recommendation 2003(22), para 4a
51 Supra Note 39, para 62
52 Recommendation 2003 (23), para 34
53 Ibid, para 35
54 Ibid, para 38

The security and safety principle: It establishes a careful assessment on the dangerousness of the prisoners and it shall be recognised at the beginning of the sentence planning. It is necessary to distinguish whether the prisoners pose a risk of harm to themselves, to other prisoners, to those working in prison or to visitors.[55]

The non-segregation principle: After the consideration of the risk assessment, life prisoners shall not be segregated just because of their sentence. They shall be allowed to associate with other prisoners. Some prisoners of this category are also considered "good prisoners" by the prison administration.[56]

The progression principle: it refers to the possibility for the prisoners to move within the prison's system through the adoption of a correct behaviour. It represents also an antidote to the mental deterioration of prisoners.[57]

Recommendation 2003(23) aims to create a safe, secure and ordered space within the prisons and to increase the well-being of the prisoners. Life sentenced prisoners shall participate in a regime of activities such as work, education, sports, cultural activities and hobbies "not only help pass the time", but are also "crucial" in promoting social and mental health well-being". In addition, the skills that inmate may acquire during such activities will be useful not only during the imprisonment but above all after the custodial part of the sentence.[58]

1.5 Life Imprisonment and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

In this section I will explain through the analysis of the international declarations and conventions as the respect of the human dignity is the basis of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment for life imprisonment and LWOP.

For the first time, in 1949 the Geneva Convention established the notion of "humanely treated"[59] concerning the treatment of prisoners. Although it regarded war's prisoners, the Convention set new lawful standards in the respect of prisoners' dignity. Subsequently, the UDHR states that the "inherent dignity and the equal and inalienable rights of all members of the human family"[60] applies also to prisoners. Although the article 5 affirms the "prohibition of torture, inhuman treatment or punishment" there is not an exact definition of the terms. Being the UDHR a resolution of the General Assembly of the UN is not legally binding. This document has acquired the status

55 Ibid, para 39
56 Ibid, para 42
57 Ibid, para 44
58 Supra Note 1, para 79
59 Convention (III) relative to the treatment of Prisoners of War. Geneva, 12 August 1949
60 Art.1 UDHR

of customary law meaning that the Member States shall adopt the necessary legislative and administrative measures to fulfil its dispositions.

The Standard Minimum Rules for the Treatment of Prisoners[61] addressed specific guidelines for the treatment of prisoners reaffirming the dignity of prisoners as human beings. This implies assuring to prisoners human and respectful conditions within the prison such as accommodations, heating, ventilation, food, education or work, punishment under the law, contact with the outside world. According to the SMR the protection of the society can only be achieved the ex-prisoner after its period of imprisonment is not only willing but able to lead a new abiding and self-supported life. This goal may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners.[62] References to rehabilitation are also included in Rules 24 and 62 (noting and treating any physical or mental defects, which might hamper rehabilitation), Rule 63 (on open conditions), Rule 64 (assistance after release), Rule 67 (classification and individualisation), Rule 75(2) (work), Rule 80 (relations with those outside prison).

The International Covenant on Civil and Political Rights (ICCPR) is a legally binding document of the UN that covers not only the physical punishment but also the psychological as a form of cruel, inhuman or degrading and treatment or punishment.[63] According to article 10 of the ICCPR "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

Moreover, the case law Ireland vs The United Kingdom of the Strasbourg Court defines what is considered as degrading treatment "such as to arose in [its] victims feeling of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical and moral resistance".[64] Any form of punishment might cause a certain embarrassment in prisoner's dignity but according to the ECtHR the punishment to be considered humiliating cause: "the suffering or humiliation must go beyond an inevitable element of humiliation or suffering associated with a given form of punishment".[65] In conclusion, when the punishment exceed its educational purpose

61 Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

62 Standard Minimum Rules for the Treatment of prisoners http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx

63 Art. 7 of ICCPR

64 Ireland vs The United Kingdom, Application N.5310/71, 18 January 1978

65 Labita vs Italy, Application no. 26772/95 ,§120, 6 April 2000

it became a "punishment within the punishment" turning into a degrading measure that do not respect the dignity of prisoners.

Despite the notion of torture was adopted in the international law in the past is only in 1984 thanks to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment that it was created a definition. Torture is: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

The arise of awareness on the treatment of prisoners favoured the creation of the Special Rapporteur on Torture.[66] His/her work consists in reporting cases of torture or inhuman, degrading, and cruel treatment or punishment. As soon as the Special is informed about a case of torture against an individual or a group of persons, he /she demands to the national authorities to take positive measures to end the violations. The "urgent appeal" implicates "corporal punishment such as prolonged incommunicado detention, solitary confinement, torturous condition of detention, denial of medical treatment and adequate nutrition, imminent deportation to a country where there is a risk of torture etc.".[67] The Special Rapporteur visits are made under the country invitation. He/she has free access to places of detention, imprisonment and interrogation with the aim to write reports useful to give general recommendations.

The turning point for the treatment of prisoners is signed by the creation of the Mandela Rules [68] in 2015, 60 years after the first draft of SMR, are a step forward in the treatment of prisoners. The new rules are based on respect of human dignity[69] and the prohibition of any form of degrading and inhuman treatment. The new standards make available the establishment of files in which shall be present any information for what regards the prisoners in order to avoid violations of human rights or cases of ill treatment. The Mandela Rules can be divided in 8 substantive areas: respect for the prisoners' inherent dignity, medical and health services, disciplinary measures and sanctions, investigation of deaths and torture in custody, protection of vulnerable groups, access legal representations, complaints and independent inspections and training of the stuff. These rules take in consideration different categories of prisoners and the different needs that may arise from their conditions. No aspect of the prisoners life and rights within the prison is left behind.[70] New practices

66 UN Resolution 1985/33
67 Special Rapporteur on Torture http://www2.ohchr.org/english/issues/torture/rapporteur/appeals.htm
68 UN-Doc A/Res/70/175, 17 December 2015
69 Rule 1 of the Mandela Rules
70 Rule 11

have been set to respect the psychological sphere of the prisoners. To avoid depression, self-harm or suicides the convicted shall maintain the contact with the outside world.[71] The Mandela Rules focus also on the rehabilitation and reintegration case to case and pre-release of the prisoners within the society. This process must be followed by the judicial authority and the social aid“.[72] The rehabilitation shall involve also "education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release".[73] The dispositions remain generic even if they call for "efficient aftercare" by the governmental or private agencies. Although the international instruments set the rules to respect prisoners' dignity, in some countries they do not apply with effective measures. Prisoners that are more affected are those sentenced with life imprisonment and LWOP. In the last years, several national Constitutional Courts had to answer whether the imposition of life imprisonment and LWOPs represent a violation of human dignity and may create a condition of inhuman, degrading and cruel treatment. France and Italy explicitly suggested that an offender sentenced with life imprisonment has a fundamental right to be considered for release. Indeed, the Federal Constitutional Court of Germany recognised that a life sentence that had been fully implemented invariably entailed the loss of human dignity and the denial of the controversial right to rehabilitation. A release mechanism had been set up in Germany to ensure that life sentences were not implemented in a way that undermined human dignity by suppressing all hopes of release. Furthermore, it was a general requirement of international human rights law that a convicted person should not be deprived of a second opportunity to return to society, following a non-problematic serving of his punishment and sentence and the completion of a rehabilitation procedure.[74] To comprehend the trait d'union between human dignity and the imposition of life imprisonment and life imprisonment without parole is necessary to analyse the case law of the ECtHR that create new standards in the European law.

1.6 The imposition of life imprisonment under the European Convention of Human Rights: ECtHR case-law

With the purpose to analyse whether the mere imposition of a mandatory life imprisonment is considered a violation of human dignity and may raise a condition of inhuman, degrading and cruel treatment an overview of the most significant judgments of the ECtHR rights will be provided in this section. ECtHR has received several applicants claiming that the imposition of life imprison-

71 Rule 58
72 Rule 87
73 Rule 92
74 Kafkaris v. Cyprus, App. No. 21906/04, ECtHR, 12 February 2008, para. 82.

ment without the possibility of release represents a violation of the Article 3[75] of the ECHR. In this section I will try to answer to the following questions: When a life sentence is considered irreducible? Is the mere imposition of life imprisonment a violation of the article 3 of the ECHR? Which are the innovations that the case law of the ECtHR has introduced through their judgments?.

With the aim to answer these questions I will analyse the judgments Vinter and others vs United Kingdom[76] and Murray vs The Netherlands[77]. Both represent a judicial reference for an indeterminate number of cases. In the last years the ECtHR has taken important steps to assure from a jurisdictional perspective the human dignity and human rights of prisoners. The Grand Chamber states: "In accordance with Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity". According to the Court "an irreducible life sentence raises an issue under Article 3 in circumstances where it may result in an offender being detained beyond the term that is justified by the legitimate objects of imprisonment". Indeed, the Court also affirms "the existence of a system providing for consideration of the possibility of release is a factor to be taken into account when assessing the compatibility of a particular life sentence with Article 3". A clear trend has emerged in favour of a mechanism guaranteeing a review of life sentences. Although, the Court of Strasbourg does not establish the maximum term of revision, it suggests it may be identified in 25 years after its imposition.[78]

1.6.1 Vinter and others vs the United Kingdom

In Vinter and Others vs the United Kingdom, the Grand Chamber of the ECtHR established that lifers have the right to a prospect of release and a review of their sentence. Two principles established in this judgment require changes in the enforcement of whole life orders that prevent some prisoners sentenced to life terms from being considered for release. (1) Implicit in the right to a prospect of release is a right to an opportunity to rehabilitate oneself. (2) Implicit in the right to review of the continued enforcement of a life sentence is a right to a review that meets standards of due process.[79]

To understand the innovation that this judgment has introduced is necessary to start from an overview of the background of the national jurisdiction in the United Kingdom. Since the abolition of death penalty in England and Wales,[80] the sentences of murders is commuted in mandatory life imprisonment by the trial judge that must set a minimum term for the life imprisonment. The Section 29 of the Crime Sentence act of 1997 set that the State Secretary shall impose the tariff periods

75 Article 3 of the ECHR "No one shall be subject to torture and other inhuman and degrading treatment"
76 Vinter and Other vs The UK, Applications nos. 66069/09, 130/10 and 3896/10,9 July 2013
77 Murray vs The Netherlands, Application no. 10511/10, 26 April 2016
78 C. Appleton, 2015, Life Without Parole , Oxford Handbook Online, September 2015
79 Van Zyl Simt, D., Whethearby, P., Creighton, S., (2014), Whole life sentence and the tide of the European Human Rights Jurisprudence : What is to be done?, Human Rights Law Review, 2014, 14, 59–84
80 The Murder Abolition of the Death Penalty Act 1965,section 1(1)

for those sentenced with life imprisonment considering the suggestions of the Trial judge and the Lord Chief Justice.

In the sentence R (Anderson) v. the Secretary of State for the Home Department, [81] the House of Lords established that disposition incompatible with the article 6 of the Convention. The approval of the Criminal Justice Act in 2003 and in particular of sections (269-277) and Schedules 21 and 22 to that Act. Section 269 in particular establishes that whole life tariff has to be decided by the trial judge. The minimum term that the prisoners have to spend in prison before being eligible for release is decided by the trial judge taking in consideration the seriousness of the offence.

When the offence committed is "exceptionally high" the appropriate starting point is a whole life tariff.[82] Paragraph 4(2) provides that the following cases would normally fall within this category: (a) the murder of two or more persons, where each murder involves any of the following: a substantial degree of premeditation or planning, the abduction of the victim, or sexual or sadistic conduct; (b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation; (c) a murder done for the purpose of advancing a political, religious or ideological cause; (d) a murder by an offender previously convicted of murder.

Under the paragraph 5(2) are considered "particularly high"[83] the following offences: (a) the murder of a police officer or prison officer in the course of his duty, (b) a murder involving the use of a firearm or explosive, (c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death), (d) a murder intended to obstruct or interfere with the course of justice, (e) a murder involving sexual or sadistic conduct, (f) the murder of two or more persons, (g) a murder that is racially or religiously aggravated or aggravated by sexual orientation, or (h) a murder falling within paragraph 4(2) committed by an offender who was aged under 21 when he committed the offence.

Considering these offences, it is established that the minimum term of revision is thirty years. Under the Schedule 22 whole life tariff prisoners are allowed to apply to the High Court to demand for a consideration of early release. Prior to the entry into force of 2003 Act was the Secretary of the State (after the recommendations of the trial judge and the Lord Chief Justice) to decide on the possibility of release for prisoners sentenced with the whole life tariff.

After the analysis of the national law it is necessary to examine the merits and the decision of the case law Vinter and Others vs the United Kingdom. .Mr Vinter, Mr Bamber and Mr Moore had been convicted with whole life tariff. For the first applicant the judge states that because of his offences Mr Vinter "fell into that small category of people who should be deprived permanently of

81 R (Anderson) v. the Secretary of State for the Home Department, [2003] 1 AC 837
82 2003 Criminal Justice Act, Schedule 21, para 4(1)
83 Ibid, para 5

their liberty." His sentence passed from the mandatory life sentence to a whole life order.[84] Subsequently, the Court of Appeal rejected his appeal for determining a minimum term of a mandatory life sentence under the Schedule 21 of the 2003 Act. The Court found that the imposition of whole life tariff was appropriate for someone already convicted for murder. Mr Bamber and Moore had been sentenced with whole life tariff before the enouncement of the 2003 Act .The trial judge recommended to the State Secretary a "minimum term" to serve 25 years in prison while the Lord Chief Justice added the comment "for my part I would never release him".[85] The High Court as well as the Court of Appeal dismissed the appeals of the applicant. Mr Moore after the recommendation of the trial judge, the State Secretary convicted the applicant with the whole life tariff for murder. As in Bamber, the High Court rejected the appeal involving the crime "two or more persons, sexual or sadistic conduct and a substantial degree of premeditation, under schedule 21 the starting point was a whole life order".[86] All the three prisoners appealed to the ECtHR affirming that the mere imposition of the LWOP without any prospect of release is a violation of the article 3 of the ECHR.

In Kafkaris vs Cyprus [87] the Court found that "the imposition of a whole life sentence would not constitute inhuman and degrading treatment in violation of Article 3 per se, unless it were grossly or clearly disproportionate". When exists a violation of the article 3 of the ECHR is necessary to distinguish between three different types of life imprisonment: (i) a life sentence with eligibility for release after a minimum period had been served; (ii) a discretionary sentence of life imprisonment without the possibility of parole (that is, a sentence which is provided for in law, but which requires a judicial decision before it can be imposed);(iii) a mandatory sentence of life imprisonment without the possibility of parole (that is, a sentence which is set down in law for a particular offence and which leaves a judge no discretion as to whether to impose it or not).[88]

For the first type of sentence it was clearly reducible and do not represent a violation of the article 3. For what concern the second type the Court states: "Normally, such sentences are imposed for offences of the utmost severity, such as murder or manslaughter. In any legal system, such offences, if they do not attract a life sentence, will normally attract a substantial sentence of imprisonment, perhaps of several decades. Therefore, any defendant who is convicted of such an offence must expect to serve a significant number of years in prison before he can realistically have any hope of release, irrespective of whether he is given a life sentence or a determinate sentence. It follows, therefore, that, if a discretionary life sentence is imposed by a court after due consideration of all relevant mitigating and aggravating factors, an Article 3 issue cannot arise at the moment when it is imposed".

84 Supra Note 72, para 18
85 Ibid, para 21
86 Cited in Vinter and Others vs the United Kingdom , para 30
87 Kafkaris v. Cyprus [GC] 21906/04, Judgment 12 February 2008
88 Supra Note 72 para 44

The violation of the article 3 may arise only when (i) the applicant's continued imprisonment could no longer be justified on any legitimate penological grounds; and (ii) that the sentence was irreducible de facto and de jure. For the third type of sentence, a mandatory sentence of life imprisonment without parole, the Chamber found that, although greater scrutiny was required as to whether it was grossly disproportionate, such a sentence was not per se incompatible with the Convention and an Article 3 issue would only arise in the same way as for a discretionary sentence of life imprisonment without parole.[89]

The Court holds that has been a violation of the article 3 of the ECHR in respect of each applicants. The applicants claimed also the violation of the article 5(4) of the ECHR that follow: "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful". This claim was considered inadmissible. As provided in Gillberg v. Sweden[90] the Grand Chamber reaffirmed that this complaint falls outside its scope. It holds that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the first applicant.

To conclude the Court delivered: (a) that the respondent State is to pay the first applicant, within three months, EUR 40,000 (forty thousand euros), to be converted into pounds sterling at the rate applicable at the date of settlement, in respect of costs and expenses, plus any tax that may be chargeable; (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.[91]

The Vinter and Others vs United Kingdom judgment has a significance that is much more relevant that the simple procedural reform that examine the lawfulness of a continued detention of prisoners sentenced with life imprisonment. The Grand Chamber found limits to a state's power to punish to be inherent in the prohibition on inhuman or degrading treatment and punishment. At its core is the recognition of the human dignity of all offenders. The completely denial of this opportunity is inherently degrading and therefore prohibited.[92]

The judgment provides that no matter the crime committed by the offenders when they are serving their sentence they shall have the opportunity to be rehabilitated with the prospect to be a reintegrated as a responsible member within the society.

Rehabilitation, the Grand Chamber explained, is not possible without the prospect of release: "In cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious

89 ibid
90 Gillberg v. Sweden [GC], no. 41723/06, § 53, 3 April 2012
91 Supra note 72 para 139
92 Supra note 75

to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified, future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release".[93] The Grand Court was also clear in determining that in cases in which the convicted represent a serious risk for the society, they could be detained in prison with a whole life tariff and with no prospect of release.

In the analysis of Vinter and Others vs United Kingdom the concurring opinion by judge Power-Forde went far beyond the "right to hope". "The judgment recognises, implicitly, that hope is an important and constitutive aspect of the human person. Those who commit the most abhorrent and egregious of acts and who inflict untold suffering upon others, nevertheless retain their fundamental humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, someday, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and, to do that, would be degrading".[94]

The Vinter judgment sets also a new purpose to achieve in the European penal policy. It marks the beginning of a new era, the recognition of the rehabilitation while prisoners are serving their sentence and the end of the imposition of long prison sentences. As declared by the CPT reports about Romania and Switzerland "it is inhuman to imprison a person for life without any realistic hope of release".[95] If one can have doubts about the importance of the rehabilitation and the prospect of release it is useful to see what Vinter wrote to the Guardian about his condition of whole life tariff prisoner. His letter represent a significant witness. He said: "I am young and fit and I have maybe got another 50 years of life left. I actually pray for a heart attack or cancer". Moreover, he explained his agreement against the whole life tariff in this way: "I am sitting in the segregation unit and have been for a number of weeks. I was involved in a stabbing (not fatal) on the wing. You see how I can admit in a letter to an offence as serious as that. It is because the judge when he sentenced me to natural life gave me an invisible licence that said that I can breach any laws I want, no matter how serious, and the law cannot touch me. I am above the law. I said to the governor, do not waste any money on investigations, just give me another life sentence for my collection. They don't mean anything any more".[96] Afterwards, Vinter stabbed in the eye Roy Withing and was condemned of a five year jail term to serve in addition to his sentence of whole life tariff. The witness of Vinter should be a warning signal for the policy makers and the prison administration. When prisoners are without hope and any prospect of release they became "super-inmates", beyond the law. It is difficult to have

93 Supra Note 72 para 122
94 See Vinter and others Vs The United Kingdom, Concurring opinion of judge Power
95 CPT, Report on the visit to Bulgaria from 4 to 10 May 2012, CPT/Inf (2012) 4 December 2012 at para 32; see also CPT, Report on the visit to Switzerland from 10 to 20 October 2011, CPT/Inf (2012) 25 October 2012 at 26
96 The Guardian, https://www.theguardian.com/law/2012/dec/05/whole-life-prison-sentence-human-rights (accessed 10 October 2016)

any kind of improvement of their behaviours because they have the awareness that the longer their live, the longer they will stay in prison. The only way to get out prison for them is death.

1.6.2 Murray vs The Netherlands

The applicant, James Clifton Murray[97] was a Dutch national that was born in 1953 and died in 2014. He was sentenced with life imprisonment in 1980 in Curaçao (part of the Kingdom of the Netherlands). Murray was guilty for the murder of a 6 year old nice of his ex-girlfriend as revenge for the end of the relationship and the Court of Netherlands Antilles imposed a life sentence for him. The First Court of Appeal sentenced the offender with life imprisonment and not with 20 years of imprisonment even after the psychiatric report that summarised his mental condition because of the possibility of recidivism. His appeals for pardon addressed to the Governor were always dismissed. In 2011, the Joint Court considered that his detention still "served a reasonable purpose", due to the lack of treatment, the risk of recidivism remained significant. Subsequently, Murray lodged an application to the ECtHR for the violation of the article 3 of the ECHR. He claimed that there are no provision and no instruments that implement "*de facto*" the reducibility of the sentence for those suffering of mental health. The pardon was granted after the deteriorating of his health condition. He passed away on 26 November 2014.

First, the third section of the ECtHR in 2013 determined that there were no violation of the article 3 because the revision of life sentence made by the Joint Court of Justice in 2011 was enough to respect de facto and the jure reducibility of the sentence under the article 3 of the ECHR. Second, before his death the applicant lodged another application to the Grand Chamber that dealt again with the indeterminate sentence. In Murray, the Court emphasizes that "a prospect of release and a possibility of review, both of which must exist from the imposition of the sentence and even if the States have a margin of appreciation in establishing what measure to take in order to guarantee that a prisoner cannot be detained unless there are legitimate criminal grounds for incarceration, which include punishment, deterrence, public protection and rehabilitation".[98]

The Grand Chamber delivered a violation of the article 3 of the ECHR. The Court states that the reducibility of life imprisonment is not only procedural but also shall be assured *de facto.* The Court enounces that the reducibility de jure is not enough: "in assessing whether the life sentence is reducible de facto it may be of relevance to take account of statistical information on prior use of the review mechanism in question, including the number of persons having been granted a pardon".[99]

97 All the information provided in this section are part of the judgment Murray vs the Netherlands, Application no. 10511/10, 26 April 2016

98 Supra note 73 para 100

99 Ibid

According to the Court, the procedure of review shall not be only "*de jure*" but shall apply also "*de facto*". Murray vs The Netherlands represents the most significant contribution to the emergent European law on life imprisonment, entails more than the careful consideration of when and how to release life-sentenced prisoners. The Court determined "A life prisoner must be realistically enabled, to the extent possible within the constraints of the prison context, to make such progress towards rehabilitation that it offers him or her the hope of one day being eligible for parole or conditional release. This could be achieved, for example, by setting up and periodically reviewing an individualised programme that will encourage the sentenced prisoner to develop himself or herself to be able to lead a responsible and crime-free life".[100] The Court remarks that these category of offenders "have certain mental health problems; they may for instance have behavioural or social problems or suffer from various kinds of personality disorders, all of which may impact on the risk of their reoffending".[101] This risk shall be kept under control through the creation of specific assessments that promote the rehabilitation and reduce the risk of dangerousness for the society. In cases in which there is a lack of adequate treatment for prisoners with mental health problems there is a violation of the article 3 of the ECHR. To prisoners must be offered the necessary medical, psychological and psychiatric help. According to the Court of Strasbourg, the States have the prerogative in addressing the specific instruments for the rehabilitation of prisoners with mental health problems. If the Vinter and others vs The United Kingdom introduced the "right to hope", Murray vs The Netherlands highlights that this right shall be convert in a practical and effective rights.

1.7 Concluding remarks

The aim of this chapter was to provide an overview of the International and European standards for the treatment of prisoners sentenced with life imprisonment and LWOP. I analysed the judgments of the international tribunals to demonstrate the development of the international criminal but also weakness of the national laws.

The ECtHR established that the sentence of LWOP is a violation of the article 3 of the ECHR. The Court has abandoned its initially ambivalent position on life imprisonment and LWOP and is now critical of it. The right to hope now has a structure and a process.

As the Judge Judge Pinto de Albuquerque states "the Grand Chamber of the Court has reached in Murray a point of no return in its standard-setting function of protection of human rights of prisoners in Europe.[102]

100 Ibid, para 103
101 Ibid ,para 107
102 Ibid para 13-15

CHAPTER II
AGGRAVATED LIFE IMPRISONMENT IN TURKEY

How many others are in this place?
I do not know.
I am alone far from them,
They are all together far from me.
To talk anyone besides myself
is forbidden.
So I talk to myself.

Nazim Hikmet , Letter from a Man in solitary

2.1 Introduction – 2.2 From the Death penalty to aggravated life imprisonment – 2.3 Political prisoners and ordinary prisoners – 2.4 Penal system and F-type prisons - 2.5 Solitary confinement – 2.6 Main related issues – 2.7.Concluding remarks

2.1 Introduction

In order to develop my research on torture, inhuman degrading and cruel treatment as well as the violation of human dignity I took as country-study Turkey, Member State of the Council of Europe and under the jurisdiction of the ECHR. It must be declared that during the draft of this Master Thesis, being Turkey under the State of Emergency the ECHR is suspended. The choice to examine Turkey is based on country's records in violating prisoner's rights and the poor conditions within the prisons. With the purpose to restrict my field of work I decided to analyse the category of political and ordinary aggravated life prisoners, the one suffering more for inhuman treatment. Human rights organizations denounce that prisoners frequently lack adequate access to potable water, proper heating, ventilation, and lighting. The continued practice of solitary confinement, the lack of human contact

and the consequent physical and mental health problems characterise their daily routine. According to the Human Rights Foundation in Turkey episodes of torture and ill treatment are widespread and in the vast majority of the cases they represent an unwritten rule for the prisoners.

Torture in Turkey is not a problem limited to the period of detention. Torture is systematically applied in Turkey as an administrative practice. Whoever is deprived of his/her freedom is under permanent threat of torture from the very minute of detention. The very existence of threat of torture is itself a method of torture. Torture is not just a method of obtaining information. It is at the same time an arbitrary way of punishment. One of the main purposes of torture is to punish the criticisms and political activities, and to frighten and manipulate the whole society through terrorism. This starts with those who have been prosecuted and subjected to torture and then spreads to and pinches the whole society.[103]

Furthermore, in August 2008, following a parliamentary inquiry, Turkey's Justice Minister Mehmet Ali Şahin[104] admitted that almost 5,000 people had submitted complaints to judicial bodies over torture and ill-treatment at the hands of police and gendarmerie between 2006 and 2007. Especially over the last 30 years, prisons in Turkey have made the news as places where rights are violated, hunger strikes are carried out, and violence or torture are employed. Following the 1980 coup, prisons became the space where State power could be most easily observed, a place now connected with a growth of political prisoners. With these in mind, some affirmed that prisons had become a space where the state sought to apply social control against individuals who did not accept the official state ideology or simply held other political beliefs.[105]

Having Turkey signed and ratified several declarations, multilateral agreements and covenants the State must implement the national law and the effective remedies to maintain its international commitment. For instance, under the UDHR rights within its penal system Turkey has to guarantee that prisoners/inmates will not be subject to ill- treatment. The adoption of the ICCPR favoured the recognition of the "right to life" and the consequent abolition of the death penalty. In addition, the SMR and the Mandela Rules set important standards to fulfil in Turkey. In the international arena Turkey receives "external inputs" in the process of reform also by the Council of Europe and the EU having the Status of "candidate". For example, the membership in the Council of Europe foreseen for Turkey periodical country-visit from the CPT but also to take the necessary judicial and effective measures in line with the judgments of the Court of Strasburg.

103 Medical Foundation for Care of Victims of Torture, Staying Alive by Accident: Torture Survivors from Turkey in the UK, Medical Foundation, London, 1999, p. 23

104 Akkaya, B. 'Zero Tolerance Policy' on Torture Ends in Fiasco, Today's Zaman.com, 27 August 2008, http://www.todayszaman.com/tzweb/detaylar.do?load=detay&link=151354

105 Mandiraci, B.(2015), Penal Policies and Institutions in Turkey: Structural Problems and Potential Solutions, TESEV Democratization Program Policy Reports Series
http://tesev.org.tr/wpcontent/uploads/2015/11/Penal_Policies_And_Institutions_In_Turkey_Structural_Problems_And_Potential_Solutions.pdf

Since 1998 the EU has also been conducting check-control visit through the Delegation of the EU authorized by the European Commission. The annual reports embrace different areas such as human rights, law justice, economic and also the penitentiary system. This chapter will examine the "unique" situation of aggravated life prisoners in Turkey not only from a legislative perspective but will also provide through the witnesses of the letters of prisoners addressed to the Turkish NGO Ceza Infaz Sisteminde Sivil Toplum Derengi (Civil Society in the Penal System) the conditions their face within penal institutions.

I refer to the Turkish case as "unique" in Europe because of the distinction between "ordinary" and "political" aggravated life prisoners. If the treatment and punishment are the same for the two categories, one important factor distinguish them, the possibility of parole. For ordinary aggravated life prisoners the parole is eligible by law after 36 years of imprisonment while the political or "terrorist" as the Government call them will never have it. Contrary to the judgments of the ECtHR the possibility of release is denied to this category. If in the Member States of the Council of Europe the life without parole is established by law for cases of murder, the Turkish penal code foresees this punishment for crimes against humanity (article 77 and 78), production and trafficking in drugs(article 118), crimes against the security of the State (Articles 302, 303, 304, 307 and 308); or Crimes against constitutional order and its operation (Articles 309 to 315).It emerges that the so called "crimes against the State" are more severely punished in Turkey than the crimes against the individuals. The aim of this chapter is to provide information about the conditions of aggravated life prisoner in Turkey and to raise awareness about the ongoing violations.

2.2 From the death penalty to aggravated life imprisonment

Life imprisonment has always been part of the legislation of the Republic of Turkey. Life imprisonment with parole was practiced along with death penalty until 1984. The last prisoner to be executed with the punishment of death penalty was Hıdır Aslan that dates back on 25 October 2005.[106] The imposition of the capital punishment in Turkey goes through two trial phases of judgment. It is duty of the First Court to examine the offences and establish if under the principle of law death penalty shall be imposed. Afterwards, the Supreme Court decides to approve or reject the judgment. When the Supreme Court rejects it, the case-law goes back to the First Court for a re-examination under the suggestions of the Supreme Court. In cases in which the Supreme Court accepts the decision of the First Court or when after the re-examination the two opinions coincide, the National Parliament has to ratify it. As we said before the last execution in Turkey was in 1984 while the process that lead to the total abolition of such sentence was quite long. Prisoners were still sentenced with the capital punishment and their files were in parliament even if they were not

106 The history of the last execution in Turkey ,25 May 2003, http://www.radikal.com.tr/haber.php?haberno=76202

discussed. In Ocalan vs Turkey[107] the ECtHR states that even if the files were not examined by the parliament, it does not mean that the execution will not apply effectively in the future. Alongside with on-going debates on the abolition of the death penalty in European countries, Turkey declared that death penalty was on moratorium. Turkey is a member of the Council of Europe since the 13th of April 1950 and this membership caused several critics to Turkey for the sentence of death penalty still present in the national territory. Protocol No. 6 to the Convention provides (Article1): "The death penalty shall be abolished. No one shall be condemned to such penalty or executed". Article 2 of Protocol No. 6 states: "A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law"[108]. While the Protocol No. 13 to the Convention[109], which provides for the abolition of the death penalty in all circumstances It follows hereto: "Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings".

In its Opinion No. 233 (2002) on the Draft Protocol to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances the Parliamentary Assembly of the Council of Europe referred to: "its most recent resolutions on the subject, Resolution 1187 (1999) on Europe: a death-penalty free continent, and Resolution 1253 (2001) on the abolition of the death penalty in Council of Europe Observer states, in which it reaffirmed its beliefs that the application of the death penalty constitutes inhuman and degrading punishment and a violation of the most fundamental right, that to life itself, and that capital punishment has no place in civilised, democratic societies governed by the rule of law".[110]

In addition, the sentence of death penalty is not justified even under the menace of terrorism. Article X § 2 of the "Guidelines on human rights and the fight against terrorism" created by the Committee of Ministers of the Council of Europe on 11 July 2002 follows: "Under no circumstances may a person convicted of terrorist activities be sentenced to the death penalty; in the event of such a sentence being imposed, it may not be carried out".

It was during the membership negotiations with the European Union that Turkey decided to join the movement towards the abolition of the death penalty .Turkey has been made constantly aware that its human rights standards present the largest barrier to entry, particularly in the case of the EP. The EU Presidency, and especially the EP, were exceptionally active in ensuring that the death sentence on PKK leader Abdullah Öcalan was commuted and that the PKK gave up its armed struggle.

107 Ocalan vs Turkey, Application no. 46221/99, 12 May 2005
108 Ibid para 58
109 Article 1 of the Protocol no. 13
110 Supra Note 105

It was absolutely clear that Turkey had to move beyond its 1984 moratorium and abolish the death penalty before it can even began to negotiate membership.[111] The year 2001 signs the first step in the direction of the total abolition of death penalty. The article 15 of the Code 4709 states that death penalty was allowed only during war or close threat to war and towards terrorists activities.[112] By Law no. 4771, which was published on 9 August 2002, the Turkish Grand National Assembly resolved, inter alia, to abolish the death penalty in peacetime (that is to say except in time of war or of imminent threat of war) and to make the necessary amendments to the relevant legislation, including the Criminal Code. As a result of the amendments, a prisoner whose death sentence for an act of terrorism has been commuted to aggravated life imprisonment must spend the rest of his life in prison.[113] For the first time ,with the introduction of 4771 code "punishment until death" entered into Turkish law. Moreover, in the same code was legislated no probation for aggravated life prisoners who committed acts under the titles of crimes against the constitution, the state and the nation.

They target our ideas, emotions, behaviours, biology, sociality and soul in an easy method. Despite they removed death penalty they found a way to kill aggravated life prisoners day by day not only in their body but also in their soul. Next to the date of release for lifers is written with big letters UNTIL DEATH. This is the reason why the system of punishment is terrible, it means dying everyday Through the execution they can kill us just once but in this way they are killing us slowly everyday. (A. R. A. Bolu F-Type)[114]

Afterwards the abolition of the death penalty in 2004 the Article 46 § 1 of the Turkish Criminal Code[115] defines the principal forms of punishment:

a) Heavy life imprisonment [116]
b) Life imprisonment[117]
c) Imprisonment for definite period[118]

For prisoners sentenced with life imprisonment, there is parole for both political and ordinary prisoners. However, according to the Turkish law, there is a basic rule that differentiates political and non-political prisoners. Political prisoners must finish ¾ of their sentence before the possibility of

111 Manners, I. (2002), Normative power Europe: a contradiction in terms ?, Journal of common market studies , Volume 40, Issue 2 June 2002, Pages 235–258

112 Art. 15 of the Code 4709 "Turkiye Anayasasin Maddelerinin Degistirilmesi hakkinda Kanun" https://www.tbmm.gov.tr/kanunlar/k4709.html

113 Supra Note 107

114 Aydınoğlu, I.(2016), Türkiye'de Ağırlaştırılmış Müebbet Hükümlüsü Mahpus Olmak, Ceza İnfaz Sisteminde Sivil Toplum Derneği, pp25

115 Law Nr. 5237,Passed On 26.09.2004,(Official Gazette No. 25611 dated 12.10.2004)

116 The Turkish legislation use the term heavy life imprisonment instead of aggravated life imprisonment. I will use the second term

117 Art.48 of the law 5237

118 Art.49 of the law 5237

parole, whereas non-political prisoners are released with parole after 2/3 of their sentence. Ordinary life prisoners have parole after 24 years in case of three disciplinary punishments sentence increase to 30 years while for political prisoners the terms are 30 years and 36 years.[119] The conditions of prisoners sentenced with life imprisonment are similar to the rest of the prison population. They are accommodated with other prisoners in room types cells, have human contact with the other prisoners and benefit of open air until the sundown. They can take part in all the activities, educational training and work within prisons. Life prisoners can also maintain the relationships with their families or friends. By law are allowed weekly visits up to 3 degree family members and 3 friends. They can see contemporary until 3 persons each time. The visits are divided in this way: 3 closed and 1 open .The closed means that there is a barrier division between the inmate and the visitors while in the open one is allowed the physical contact.[120] Until today, the situation of aggravated life prisoners is worse than any other prisoners in Turkey. In fact, three important case law has been examined by the ECtHR after the claiming of the applicants for their condition.[121]

According to Ministry of Justice the number of aggravated life imprisonment was 1453 in February 2014.[122] Furthermore, of these 126 were convicted for "terror and other organized crime" and 1327 for other crimes.[123] According to the law and information gathered by CISST/TCPS, death penalty prisoners had the same conditions with other prisoners, until the imposition of aggravated life imprisonment penal regime on 2005. The conditions regarding the sentence were enacted in 2005 by the article 25 of the Law on Execution of the Sentence and Security Measures 5275. A letter of one prisoner explained in simple worlds the passage from the death penalty to aggravated life imprisonment.

At the end of the year, my capital punishment was approved by the Court of Cassation (by a vote of two to three) and my file was sent to the National Assembly. My personal file was hold in the Parliament. When the capital punishment was removed, aggravated life imprisonment replaced it (…) I wrote above that I had been in prison for 23 years. I had spent these years with the other prisoners until 2005. However, after 2005, I was taken to a solitary confinement. I am staying alone for 11 years. Now, cells have got used to me and so do I. Is that really so? That's true that the cell has got used to me but what about me? According to me, this punishment and penal system are completely revenge-oriented. It is inhuman and this can kill you." death penalty to aggravated life imprisonment and how their condition in prison changed. (N.Ö. Kırıkkale F-type).[124]

119 Art.107 of the Law on the Execution of Sentence and Security Measures 5275

120 Article 5(d) Hukumlu ve Tutuklularin ziyaret edilmeleri Hakkinda Yonetmelik https://www.tbmm.gov.tr/komisyon/insanhaklari/belge/um_hukumluziyaret.pdf

121 Ocalan vs. Turkey (Applications nos. 24069/03, 197/04, 6201/06 and 10464/07), Kaytan vs. Turkey (Application no. j27422/05), Gurban vs. Turkey (Application no. 4947/04)

122 Information gathered through inquiry send by CISST to MoJ under the Right to Information Act 2014.

123 ibid

124 Supra note 114, p.31

The Turkish Criminal Code[125] establishes the offences punished by law with aggravated life imprisonment. A prisoner shall be sentenced with life imprisonment if he/she is engaged in one of the following offences.

a) Crimes against humanity (Articles 77 and 78 of the Turkish Criminal Code);
b) Murder (Articles 81 and 82 thereof);
c) Production of and trafficking in drugs (Article 188 thereof);
d) Crimes against the security of the State (Articles 302, 303, 304, 307 and 308 thereof);
e) Crimes against constitutional order and its operation (Articles 309 to 315 thereof).

The main principles of the regime for the execution of aggravated life imprisonment[126] are set out below: a) The convict shall be accommodated in a single room, b) He shall have the right to walk and do exercises in the open air for one hour a day, c) Depending on risk and security considerations and on his effort and good behaviour in rehabilitation and treatment activities, the time for which he goes out and does physical exercises in the open air may be extended and he may be allowed, to a limited extent, to have contacts with convicts who stay in the same unit with him, d) He may carry out an artistic or occupational activity which is possible where he lives and which is considered appropriate by the administrative committee, e) In circumstances where it is considered appropriate by the administrative committee of the institution and once every fifteen days, he may make a telephone call to the persons specified in (f) below for up to ten minutes, f) He may be visited by his spouse, descendants and ascendants, siblings and guardian for up to one hour a day and with intervals of fifteen days, on the days, at the times and under the conditions specified, g) He may in no case be employed outside the penal execution institution or granted a leave, h) He may not participate in any sport and rehabilitation activity other than those specified in the internal regulations of the institution, i) The execution of his sentence may not be suspended in any manner. All health measures to be implemented for the convict shall be implemented in the penal execution institution except for medical tests and requirements or, if this is not possible, in the single-person and high-security convict room of a fully-equipped state or university hospital.[127]

2.3 Political and ordinary prisoners sentenced with aggravated life imprisonment

The Cambridge dictionary defines political prisoner as "someone who is put in prison for expressing disapproval of their own government, or for belonging to an organization, race, or social group not approved of by that government".

125 Supra Note 115
126 Art.107 Law Nr. 5275
127 It must be underlined that in the Execution of the sentence it is never used the pronoun She. The law has no a gender perspective

In 2012 the Parliament Assembly of the Council of Europe passed resolution no.1900.[128] According to the article 3 of this resolution, it can be considered a political prisoner who fulfils one of the following criteria**:** a) the detention has been imposed solely because of their political, religious or other beliefs, as well as non-violent exercise of freedom of thought, conscience and religion, freedom of expression and information, freedom of peaceful assembly and association, and other rights and freedoms guaranteed by the ICCPR or ECHR**;** b)the detention has been imposed solely for activities aimed at defending human rights and fundamental freedoms; c)the detention has been imposed solely on the basis of gender, race, colour, language, religion; national, ethnic, social or class origin; birth, nationality, sexual orientation and gender identity, property or other status, or on other basis, or due to their firm links with communities united on this basis. A person is not to be regarded as a political prisoner, if, under the above circumstances, the person has committed: a) a violent offence against persons, except in cases of self-defence or necessity; b) a hate crime against a person or property; or the person has called for violent action on national, ethnic, racial, religious or other grounds.[129]

For what concern Turkey, authorities usually refer to all political prisoners as "extremist militants" or "terrorists". Since the early 1980s the Turkish Government stated that there were 7,500 "extremist militants".[130] After the Coup d'état in 1980 there has been a legal division between the "ordinary criminals" and "terrorist" or "political". In Turkey since 1983 "terrorists" or "political" prisoner are accommodated into special designated prisons.

The article 1 and 2 of the Law on Fight Against Terrorism of Turkey[131] define the terms terrorism and terrorist. The article 1 states terrorism as "Any criminal action conducted by one or more persons belonging to an organisation with the aim of changing the attributes of the Republic as specified in the Constitution, the political, legal, social, secular or economic system, damaging the indivisible unity of the State with its territory and nation, jeopardizing the existence of the Turkish State and the Republic, enfeebling, destroying or seizing the State authority, eliminating basic rights and freedoms, damaging the internal and external security of the State, the public order or general health, is defined as terrorism". While the article 2 defines as terrorist: "Any person, who, being a member of organisations formed to achieve the aims specified under Article 1, in concert with others or individually, commits a crime in furtherance of these aims, or who, even though does not commit the targeted crime, is a member of the organisations, is defined as a terrorist offender. Persons who, not being a member of a terrorist organisation, commit a crime in the name of the organisation, are also considered as terrorist offenders and shall be punished as members of such organisations". Indeed, the article 3 of the Turkish Constitution affirms that "The State of Turkey, with its territory and nation, is an indivisible entity" while the article 14 (as amended on October 3, 2001; Act No.4709) sets "None of the rights

128 See: http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19150&lang=en
129 ibid
130 Amnesty International Report 1985
131 Law on fight Against Terrorism of Turkey, Act. Nr. 3713 https://www.ecoi.net/file_upload/1226_1335519341_turkey-anti-terr-1991-am2010-en.pdf

and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation".

The main difference between political and ordinary prisoners consist in the aim and the target of their actions. The political prisoners target the state institutions, the constitution or the military. Their acts are considered more dangerous because affect the well-being of the whole society. The ordinary prisoners commit crime against the individual for personal reasons and interests and in the vast majority of the cases they have some kind of interpersonal relations. Two examples are provided to explain the imposition of aggravated life imprisonment for those condemned for terrorist acts. For instance, there are cases in which inmates are convicted for hundreds of years. Istanbul 1st Court of Serious Crimes ruled for the punishment of Servet Gocem. He was accused of taking part in a bombing attack on a district police department in Istanbul Sariyer district and wounding a police officer by shooting him. The Court had sentenced the prisoner for aggravated life imprisonment, the total amount of years in prison is 168 and 9 months but in this case being the convict member of the Revolutionary Liberation Party Front (DHKP-C) and being involved in an "attempting to change the constitutional order".[132] Another case is represented by the nine militants of the outlawed Kurdish Workers' Party were sentenced with 26 aggravated life imprisonment, a total of 1500 years in prison. They were accused for the attacks in Iskenderun and Dotryol districts of the southern province of Hatay in 2009-2010. Even in this case, being the convicted members of an outlawed party, they are not entitled to conditional release.[133]

The ECtHR in the last years delivered three important verdict on aggravated life imprisonment in Turkey. The cases law Ocalan vs Turkey, Gurbet vs Turkey and Kaytan vs Turkey[134] have highlighted the breach of the ECHR within the national legislation. Afterwards the judgments of the Court of Strasbourg appeared that in Turkey have been violations of the article 6 (fair trial), article 13 (effective remedies). article 5 § 4 (right to have lawfulness of detention decided speedily by a court) and article 3 (prohibition of ill-treatment)of the ECHR. As denounced by the applicants their initials conditions of detention were unlawful as well as the way that they turn themselves responsible for the crimes accused. The access of lawyers has been denied for days while the length for their judgments in the national tribunals was too long. Indeed, in light of the judgment of the Grand Chamber the irreducibility of the sentence for aggravated life prisoners accused of terrorist acts represent a violation of the article 3 of the ECHR. Contrary to what was established in Vinter vs The United Kingdom, Turkey provides by law no parole for what are considered "terrorist". If the treatment in prison is the same for ordinary and political prisoners , the last one have no hope for a future conditional release . They stay in prison waiting for their death completely deprived of their

132 Hurriyet Daily News http://www.hurriyetdailynews.com/police-department-attacker-gets-life-sentence-and-168-years-of-jail-time-.aspx?pageID=238&nID=85042&NewsCatID=509 (accesed on 10 November 2016)

133 Hurriyet Daily News http://www.hurriyetdailynews.com/nine-pkk-militants-given-26-aggravated-life-sentences.aspx?pageID=238&nID=100768&NewsCatID=509 (accessed on 10 November 2016)

134 Supra Note 121

human dignity. The penal system dehumanise them completely. The vast majority of the prisoners sentenced with aggravated life imprisonment define their sentence worst than the death penalty. To conclude according to the national law the President of the Republic can guarantee the pardon to prisoners but this practice has never been used.

2.4 Penal System and the F- Type Prisons

In 1929 the administration of prisons and detention centres changed hands from the Ministry of Internal Affairs to the Ministry of Justice.[135] The new procedure states that the General Directorate of Prisons and Detention Houses, a corporal structure of the Ministry of Justice, has the prerogative to fulfil the necessary penal execution steps within the Turkish penal system.

The website[136] of the General Directorate of Prisons and Detention Houses establishes the competences of this institution that are divided in two main areas legislative and practical. The General Directorate of Prisons and Detention House provides not only legislative drafts and resolutions that follow into their competences but also international investigations and researches. Moreover, they cooperate with the Ministry of Justice in exchanging information. From a practical point of view it gives execution to the penal sentences and works in managing, auditing and monitoring the detention houses. monitoring the detention houses. Since 2001, the Penal Execution Boards and Detention Centres Monitoring Boards[137] play a significant role in examining on site the prisons situations. They represent both a "civil supervision" and a supervision of official authority.[138] Their duties involve the monitoring of the execution of the penal sentences and the rehabilitation process. The two bodies gather information through interviews with the administration, staffs and convicts. Penitentiaries' internal oversight mechanisms include a special class of judges who oversee the execution of sentences (infaz hakimleri), public prosecutors, prosecutors responsible for penitentiaries, inspectors from the Justice Ministry, and auditors from the General Directorate of Penitentiaries and Detention Facilities. External inspection and control mechanisms include the Human-Rights Commission of the Turkish Grand National Assembly, the Turkey's Human-Rights Institute (Türkiye İnsan Hakları Kurumu), the Human-Rights Directorate reporting to the prime minister, provincial and sub-provincial Human-Rights Institutes, and prison monitoring boards. In addition, an international institution, the European Committee for the Prevention of Torture, serves as an external oversight mechanism.[139]

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135 Oral, T.(2012) The place of the European and the United Nations based agreements in prison reformation process in Turkey an evaluation of the effects of internal dynamics versus external inputs on the application of the F-type prisons in Turkish legal system, p. 20 http://etd.lib.metu.edu.tr/upload/12614628/index.pdf

136 General Directorate and the Detention Houses http://www.cte.adalet.gov.tr/

137 Ceza İnfaz Kurumları ve Tutukevleri İzleme Kurulları Kanunu, Kanun No. 4681, RG. 24439, 21/06/2001

138 Supra Note 128, p.22

139 Supra Note 104, p.10

In Turkey penal execution institutions are divided in "closed penal execution institutions" and "open penal execution institutions". Under the article 14 of Law 5275 on the Execution of Penalties and Security Measures the open prisons are set as "Open penal execution institutions are institutions where priority is given to employment and vocational training of convicts in their rehabilitation, which have no barriers against escape and no external security personnel, and where supervision and control by institution personnel is considered sufficient for security". While the article 8 defined the closed prisons as "Closed penal execution institutions are facilities which have internal and external security personnel, which are equipped with technical, mechanical, electronic or physical barriers against escape, in which the doors of rooms and corridors kept closed, where contact between convicts who are not in the same room and with the outside world is possible only in such cases as are specified in legislation, where the sufficient level of security is provided, and where individual, group or collective rehabilitation methods can be implemented according to the needs of convicts".

Another classification about the prisons in Turkey regards the level of security: high security, normal security and low security prisons. According to the article 9 of Law 5275 high security prisons are: facilities which have internal and external security personnel, which are equipped with technical, mechanical, electronic and physical barriers against escape, in which the doors of rooms and corridors are always kept closed, where contacts between convicts who are not in the same room and with the outside world are possible only in such cases as are specified in legislation, and where convicts subject to a tight security regime are accommodated in single or three-person rooms. The aggravated life prisoners in Turkey are housed in closed and high security penal institutions, most of them in F-type prisons.

Turkish prisons have been subject to intense debate during the last years. Previously, the prisoners have been accommodated in large dormitory that hold 60 prisoners while since 1997 Turkish authorities started to build 11 F-type prisons based on cell type system. These cells type prisons opened in 2000.[140] The F-type prisons are composed by 3 main corridors, 4 blocks for the convicted and prisoners and 1 administrative block. They have 57 rooms for 1 or 2 prisoners and 108 for 3 persons.[141] The indoors and outdoors spaces are controlled by cameras (24 hours per day excluded the areas of living) and there is a central room used to monitor. The F-type prisons has been criticized by the internal and external public opinion.

The Turkish Medical Association affirmed: "in the project prepared (referring to F-type prisons), the problem is only perceived as a security problem by overlooking the element of humans and a total isolation is targeted starting from the prison building. However, it is taught to us by the science of medicine that humans are social beings. It has been demonstrated with scientific data that isolation leads to consequences such as disindentificating people and creating severe psychological and physical

140 The Guardian https://www.theguardian.com/world/2002/jan/19/owenbowcott (accessed on 10 November 2016)
141 Supra Note 135

deformations. With the isolation approach which ignores physical, social and psychological human needs, the convict is deprived of rights such as the feeling of trust, solidarity and sharing".[142]

The F-type prisons can be long-term risk for the health conditions of prisoners. The fact that the toilet are used also a space to take shower or the rubbish are present in that environment can cause infections. The situation get worse if we consider that the cell spaces are used also for eating and sleeping .Indeed, the Lawyer 's Association in 2012 as a result as of interviews with prisoners housed in F-type prisons in Tekirdağ Number 1 and number 1 F-Type Prisons, Edirne F-Type Prison and Kandıra Number 1 and Number 2 F-Type Prisons stated that "F-type penal system represent isolation/treatment model and which is an obstacle against healthy development of individuals physically and psychologically, must be abandoned. The F-type prisons shall not be considered as only a place of "isolation" but also a systematic form of psycho-terror because of the conditions of cells. The administration of F-type prisons are accused to apply the "white terror" damaging the mental health making prisoners alone and physically more weak. A prisoner housed in a F-type prisons witnessed: When an animal is closed down alone, it becomes insane, try to understand also my condition. I have been alone in 10m2 room for 16 years". (B.E. İzmir F-type).[143]

Indeed, "It has been 20 years that I am in prison and 12 years in solitary confinement. I had no chance during this period to talk with someone, to drink tea, to laugh or make jokes. I perceive myself as a lonely point in the space and I can communicate my emotions only through a mirror to myself. Even if I miss someone, I have to forget it because I am in prison. In order to fight this condition I have only my memories but even those are going to die. Is it hard is not it? Yes, it is hard, too hard. I feel myself as a point in the middle of the ocean. It is made by failures, sterilities, daily routines, unmeaning and without value .I have chains made by steal inside me and I have to use all of my energy and the strength of my soul to break them I am losing all of my energy to say that I am here and I exist. Although it is not enough. My voice cannot find its way out in the F type prisons. because they are long, tortuous as dark labyrinths. Basically, I am in the sea of unmeaning and I am the hunter of meaning. (S.K. Buca F type).[144]

2.5 Solitary Confinement

The article 17 of the Turkish Constitution states "No one shall be subject to torture or ill treatment; no one shall be subject to penalties or treatment incompatible with human dignity". The imposition of continued solitary confinement as happens for aggravated life prisoners in Turkey can be considered as discordant with the Constitution. The central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many

142 For the full text see http://www.ttb.org.tr/eweb/rapor/f_tipi.html
143 Sopra Note 114, pp. 35-41
144 Ibid p.25

will experience as insufficient to sustain health and well-being. It has been recognised that "complete sensory isolation coupled with total isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason".[145] The Istanbul Statement on the Use and Effects of Solitary Confinement was annexed to the former Special Rapporteur's 2008 interim report to the General Assembly. The report concluded that "prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture. The use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort. Regardless of the specific circumstances of its use, effort is required to raise the level of social contacts for prisoners: prisoner, prison staff contact, allowing access to social activities with other prisoners, allowing more visits and providing access to mental health services." Solitary confinement is also known as "segregation", "isolation", "separation", "cellular", "lockdown", "Supermax", "the hole" or "Secure Housing Unit (SHU). [146]

The CPT understands the term "solitary confinement" as meaning whenever a prisoner is ordered to be held separately from other prisoners, for example, "as a result of a court decision, as a disciplinary sanction imposed within the prison system, as a preventative administrative measure or for the protection of the prisoner concerned". A prisoner subject to such a measure will usually be held on his/her own; however, in some States he/she may be accommodated together with one or two other prisoners, and this section applies equally to such situations.[147]

The Mandela Rules define the solitary confinement in a cell "confinement of prisoners for 22 hours or more a day without meaningful human contact". According to the UN standards this measure cannot exceed 15 days while within Turkish law it should not exceed 20 days.[148] Under the 45 Mandela Rules: "Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority". Indeed the rule 46 sets: "Health-care personnel shall pay particular attention to the health of prisoner, visiting daily basis and shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons". Similar standards are set also within the European Prison Rules, 43.2, 43.3, 60.5.

The justifications provided by States for the use of solitary confinement fall into five general categories:(a) To punish an individual (as part of the judicially imposed sentence or as part of a

145 Ramirez Sanchez v. France, Application Nr. 59450/00,Grand Chamber, 4. July 2006, para. 123
146 UN Doc Nr: A 66/268, para 22
147 25 General Report 20 http://www.cpt.coe.int/en/annual/CPT-Report-2015.pdf
148 Art.44 of Law nr.5272 on the Execution of sentence and Security measures.

disciplinary regime); (b) To protect vulnerable individuals; (c) To facilitate prison management of certain individuals; (d) To protect or promote national security; (e) To facilitate pre-charge or pre-trial investigations.[149]

For aggravated life prisoners in Turkey, contrary to the international and European standard, emerges that solitary confinement is part of their sentence. By law, prisoners sentenced to aggravated life imprisonment are supposed to be housed in a "room" build for one person.[150]

I was already in prison but when I have been moved in solitary confinement I remember the sense of imprisonment (being under pressure physically and mentally) In that moment, I perceived the cell as a coffin.(C.B Tekirdağ F Type).[151]

In Turkey as in other jurisdiction, the use of prolonged or indefinite solitary confinement has increased in the context of the "war on terror" and "a threat to national security" The prisoners generally use the word "surviving" rather than "living", referring to the room/cell as a coffin. The prisoners have to face not only the lack of human contact in the solitary confinement but also the size of the cells that do not fulfil the international standards causing health and hygiene problems and the hygiene.

Under the CPT standards the dimensions of the cells shall be according to law: 6m² of living space for a single-occupancy cell 4m² of living space per prisoner in a multiple-occupancy cell. The sanitary facilities should be 1or 2 m², these measures should be excluded from the rest of the dimension established for the single room. It would be preferable for a cell of 8 or 9 m² to be an accommodation only for one prisoner while 12 m² m could be sufficient for 2 prisoners.[152]

Cells are approximately 4.5 x 2 m². The room is composed by a chair ,a table, a wardrobe, the garbage and the toilet. We spend 23 hours per day in such a delimited cell everyday. (M:A Rize Kalkandere, L-Type).[153]

We are using the same sink to drink water, washing dishes and clothes etc.(..) The cells are unhygienic and this should be a priority for the prison administration. (Y.Ö Tekirdağ F Type).[154]

The Turkish prisons present severe problems with this types of cells. They are approximately 4.5 x 2 m², there are only 1-2 square meters and it is too small to walk around. Furthermore, there is no direct sunshine or air stream, no place to dry clothes or possibility to have kitchen facilities in the cell. The toilet in the cell is often used to clean the kitchen supplies, washing clothes, showering, as well as fulfilling the lavatory needs, which creates hygienically problems as well as causing humidity

149 European Prison Rules, para 40
150 Ibid, art. 25
151 Supra Note 114, p. 50
152 Supra note 147 p.50
153 Ibid
154 Ibid p.52

in the cell. Aggravated life prisoners live in a place, which was built for a punishment that supposedly lasts for a very short time.[155]

At first, cells are designed just for berth because you cannot find a place to walk when you put the table, chair and wardrobe. Just sit down and stand up that we can do. This sedentary lifestyle is undeniably detrimental for human health in the long run if you think our doors are closed for 20 hours. This sedentary lifestyle caused by lack of space will certainly take the body rot. Already I have blurred vision, calcification and low back pain as health problem. (A.R.A. Bolu, F Type).[156]

We are using the same sink to drink water, washing the dishes and clothes etc.(..) The cells are unhygienic and this shall be a priority for the prison administration. (Y.Ö Tekirdağ, F Type). [157]

According to the letters that CISST/TCPS receive from prisoners sentenced to aggravated life imprisonment, this physical situation is not the first thing that some of the prisoners wish to change. The health risk is a difficult problem, but more often they mention the loneliness. This is the fundamental problem for isolated prisoners with very serious results, from sensory and memory loss, to serious psychological problems such as schizophrenia. They generally use the word "surviving" rather than living, referring to the room/cell as a coffin. Most of the prisoners underline the difference between wards and the isolation they are living. It is not only the loss of abilities they prefer to talk about but the missing of another person while eating, drinking tea or waking up from a dream with no one to explain it. This situation can be more human in a number of ways. For instance increasing contacts between aggravated life prisoners and the rest of the prison's population or staff. Indeed, more visits with the families, social activities or talks with psychologists would help too.

2.5.1 Psychological effects caused by Solitary Confinement

There is unequivocal evidence that solitary confinement has a profound impact on health and wellbeing, particularly for those with pre-existing mental health disorders, and that it may also actively cause mental illness. The extent of psychological damage varies and will depend on individual factors (e.g. personal background and pre-existing health problems), environmental factors (e.g. physical conditions and provisions), regime (e.g. time out of cell, degree of human contact), the context of isolation (e.g. punishment, own protection, voluntary/ non voluntary, political/criminal) and its duration.[158] The lack of social contact and environmental stimulation often results in extreme psychological problems, such as increased violent tendencies and extraordinary malaise.[159]

155 Ibid p.48
156 Ibid p-57
157 Ibid p.52
158 The health effect on solitary confinement http://solitaryconfinement.org/uploads/sourcebook_02.pdf
159 Boyer, H. (2003), Comment, Home Sweet Hell: An Analysis of the Eighth Amendment's 'Cruel and Unusual Punishment' Clause as Applied to Supermax Prisons, 32 Sw. U. L. REv. 317, 327

The psychiatrist Stuart Grassian was one of the first to study the effects of solitary confinement. He determined that prisoners subjected to extensive periods of segregation demonstrated a medical condition that is termed Reduced Environmental Stimulation. Grassian found that the main consequential symptoms of RES were "perpetual distortions, hallucinations, hyper responsivity to external stimuli, aggressive fantasies, overt paranoia, inability to concentrate, and problems with impulse control".[160] Indeed, according to Grassian "the solitary confinement produce acute mental illness in individuals who had previously been free of any such illness".[161]

Moreover, Hans Toch coined the term "Isolation Panic" to describe the experience of isolated prisoners. He conducted a study on the effects of life imprisonment on more than 900 prisoners. The "Isolation Panic" include the following symptoms of this syndromes: "A feeling of abandonment dead-end desperation helplessness, tension. It is a physical reaction, a demand for release or a need to escape at all costs… [Isolated prisoners] feel caged rather than confined, abandoned rather than alone, suffocated rather than isolated. They react to solitary confinement with surges of panic or rage. They lose control, break down, regress".[162]

They do not receive the psychological support that they need. They are left by their own just with prescription of antidepressants.

"I am starting to see the same dreams and this is incredible because how is it possible to have the same one every night. Usually I am in the top of the mountain and around me there is the abyss. From the top I cannot go down. In another dream I am in skyscraper which has thousands of floors and there are no stairs to go down...I saw those dreams frequently and I seat on the abyss for hours...I just stayed there waiting to find a way to escape but it was not possible so I suicided. In the end of these dreams I was falling down the abyss and suddenly I wake up. When I sleep again I saw this dream again. In the past I used to sleep at midnight and wake up at 8 am. Every two hours I repeat the same dream and my suicide. I went to the psychologist but I had no chance to meet him alone. Everyday you see next to you the guards at the meeting room listening to your problems. We are considered as criminal and the psychiatry gave me just anti-depressives medicines. After that I understood that there is not reason to use the medicines because what I needed it was to talk with the psychologist. (B.G Sincan. F-type).[163]

In solitary confinement prisoners are more likely to have also the following symptoms: anxiety, (ranging from feelings of tension to full blown panic attacks), depression (varying from low mood

160 Vasiliadies, E.(2005) Solitary Confinement and International Human Rights : Why the U.S prison system fails global standards, American University International Law Review, Volume 21, Issue 1 , Article 5, pp-71-98, p.77

161 Grassian, S. (2006),Psychiatric Effects on Solitary Confinement ,Washington University Journal of Law and Policy Volume 22 Access to Justice: The Social Responsibility of Lawyers | Prison Reform: Commission on Safety and Abuse in America's Prison, pp 327-380, p.333

162 Shalev, S. (2008), A source Book on Solitary Confinement , Mannheim Center for Criminology, http://solitary-confinement.org/sourcebook

163 Supra Note 114, p.63

to clinical depression), anger, (ranging from irritability to full blown rage), cognitive disturbances, (ranging from lack of concentration to confusional states) perceptual distortions, (ranging from hypersensitivity to hallucinations), paranoia and psychosis, (ranging from obsessional thoughts to full blown psychosis).[164]

Indeed, prisoners have difficulties to distinguish between the reality and their thoughts and because of it, they create their own reality. Moreover, the oversensitivity they develop for the smells and sounds often lead them to episodes of self-harm. As arise from the data and the letters of prisoners that CISST in Turkey there are several episodes of auto-aggression, self-mutilation and suicide. The inmates that are in solitary confinement appear reluctant to accept treatments because they perceive it as an attempt by the authorities to "break them down" psychologically. The solitary confinement seems to be the product of an arbitrary exercise of power, rather than the fair result of an inherently reasonable process.

They took me in solitary confinement in the past days and during this route I saw the grass and flowers. I would like of course isolation to be abolished, but looking at the present approaches and policies, I know this won't be possible soon. Because of this, it should be very possible to look at our conditions from a slightly more humane perspective and to bear in mind our needs etc. even before that date.(S.O Sincan).[165]

Considering it, the "punishment within punishment" is present in the Turkish Law.

2.5.2 Health Problems caused by Solitary Confinement

Grassian and Friedman discovered the co-relation between some health problems and the condition of solitary confinement. According to them who is sentenced with a solitary confinement may have gastro-intestinal, cardiovascular and genito-urinary problems, migraine headaches and profound fatigue.[166] In addition, different studies has found other health problem such as heart palpitations (awareness of strong and/or rapid heartbeat while at rest), diaphoresis (sudden excessive sweating), insomnia, back and other joint pains, deterioration of eyesight, poor appetite, weight loss and sometimes diarrhoea, lethargy, weakness, tremulousness (shaking), feeling cold and aggravation of pre-existing medical problems.[167]

Recently, I had to stay at bed for 15 days because of slipped disc. It has been nights that I could not drink a glass of water. I couldn't go to the toilette. Standing up from the bed was taking 15-20 min-

164 Ibid, p.64
165 Ibid pag.65
166 Grassian, S. and Friedman N., (1986) Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement. International Journal of Law & Psychiatry, 8:49-65.
167 Supra Note 158

utes. I could not go to the sanatorium, they gave me injections in my cell. I had two crises because of my allergy and my body was fighting to resist.. I just began to walk normally after 20 days. My treatment continues. I did not receive help from no one because of my regime of aggravated life prisoner and this increased my health problems. During this period I was not able to clean my cell and I have been in such hard condition that I cannot even tell. (S.Kırıklar /Buca, F Type)

Aggravated life prisoners endure a difficult situation if they have health problems and their sentence cannot be interrupted in any way. Even if prisoners need medical treatment or specific exams they are treated most of the time in their own cell. When is necessary to go to the hospital, they are isolated and accommodated in specific areas. In this case they are controlled by prison guards and even when they have a surgery they are handcuffed .Some prisoners decide to delay the surgery because they do not have anyone to assist them once that they go back to their cells.[168]

2.6 Main related issue related with aggravated life imprisonment

In this section I will analysed in deep the conditions of aggravated life prisoners in the Turkish penal system. Moreover, it will be useful to analyse the main related issue related with aggravated life imprisonment.

2.6.1 Good Behaviour

The prisoner can be eligible for parole after this period of punishment when he /she is a good behaviour statue again. Observation and administration board cannot file good behaviour report for a prisoner if she/he is under disciplinary punishment. The statue of "good behaviour" is an essential element for aggravated life prisoners because influence their parole. The prisoner lost its status of being in "good behaviour" when assumes acts that breaks the disposition that the laws, bylaws and regulations demand him/her. He/she can be subject to disciplinary punishment depending on the nature and the seriousness. The disciplinary penalties are reprimand, prevention from participating in certain activities, deprivation of paid work, deprivation or restriction of access to communication means, deprivation of accepting visitors, and confinement in a cell. Under any circumstances, inhuman, collective, degrading and cruel penalties should be used as disciplinary punishment.[169]

The disciplinary punishment established by law last from 3 months up to one year.[170] According to the law, if the prisoner does not get any disciplinary punishment within 3 months,[171] the prison administration has the authority to provide some improvement on the prisoners conditions, such as

168 Supra Note 114, pp.59-60
169 Art. 37 and 38 of Law 5275
170 Ibid, art.44 and 48
171 Ibid, art.48

allowing longer time in open air, enabling contact with other aggravated life prisoners, permitting attendance to social and cultural activities. However, the law does not set forth an obligation to the administration which also obstructs the prisoner to demand these as her/his right. Another result is that the imposition of this improvements changes in each prison and with every prison director that comes to the prison. While in some prisons, an aggravated life prisoner can visit library, contact with other aggravated life prisoners during longer (three or four hours) open air time, some prisoners do not get these improvements.[172]

From the letters addressed to CISST emerges the different authority between the penal institutions. In the Sincan Prison one chance to meet for those that are in solitary confinement is when the door of the cells are opened until the evening. While in Erzurum I can get out just one hour per day and I was locked up for 23 hours.(H. K Sincan).[173]

The prison authorities over the territory do not apply the same laws. It appears that the aggravated life prisoners may have different treatment not according to the law but to the humanity and mercy that each penal institution has.

2.6.2 Visits and contacts with the outside world

The contact with the outside world and in particular with families and friends is fundamental for the well-being of prisoners. Aggravated life prisoners can receive visits 1 hour in a weekday every 15 days.[174] It is the duty of the Director of the prison to define the day and the hour to make it possible. When visits coincide with festivity often the prisoners lost their opportunity to see their families. The visits are divided in closed and open, the first one means that between the visitors and the convict there is a physical barrier that separate them while there is one open visit in which they can have physical contact with their families or friends. Indeed, contrary to the rest of the prison population the aggravated life prisoners can receive only one person each visit, not all the family together and consequently cannot take photos with them.[175]

Our family is formed by 11 people. In other words, the number of people who comes to the prison to visit me is 10. 90% of aggravated life imprisonment prisoners are in Western region. In the South East the prisons are not suitable to accommodate those sentenced with aggravated life imprisonment. For some families become impossible to have access to visits. To reach the western region is expensive and is considered a luxury. So, I said to my family: "Each of you can come once per month "In this way I can see my one brother/sister mother or father just once per year. It is very

172 Supra Note 114,p.69
173 Ibid, p.68
174 Article 5 https://www.tbmm.gov.tr/komisyon/insanhaklari/belge/um_hukumluziyaret.pdf
175 Ibid, art.11-12

difficult to fill up a year in an hour. Indeed, when you are in solitary confinement your memory become very weak. (D.T Sincan F-type).[176]

As explained in the letter, the geographical distance between the penal institutions where aggravated life prisoners are accommodated and their hometown when families live, is relevant. The communication became difficult and to keep the relationship with friends is even more complicated. The long distance implies also economic expenses for families and some of them cannot afford the costs. Aggravated life prisoners have also some limits about the members of the family they are allowed to see.[177] They can receive the visit of parents, siblings, husband/wife, children and grandparents, while other prisoners can be visited by up to 3rd degree family members and by 3 friends they can choose.

For example, changing our penalty conditions in order to give our families and close ones the permission to see us, to come visit us, just like the other prisoners, will give us a slight relief to our need of talking and sharing. If there is no change regarding the restrictions imposed on our family visitors, the persecutors should know about their authority to give out special permissions to our relatives; this right (special permission by the persecution) that has been given to the other prisoners should also include us. It is a very human need and demand to see and talk to our relatives and close ones, even if it's just from time to time (I have a nephew I haven't seen for 16 years), (H.K Sincan).[178]

It was at the beginning of my life imprisonment. When my sister was pregnant, she couldn't visit me. (…) After X was born, her mother decided to come visit me at once. The question and problem was this: Would I be allowed to see my sweet X, who is a part of my heart? Not according to the law. (…) We put our thinking caps on. (…) Finally, my comrade from the neighbouring room said: Come, write a petition, explain your situation, maybe they will accept it. The answer was, as you can guess, the cold concrete wall of the law. I couldn't meet with my sweet darling . She has grown so much. I think she even started the 4th year of school. (…) Some years later, her mother was pregnant again. This time, she was more experienced, she came to me before the birth without listening to her doctor. And like that, I had the chance to meet with X. I kissed her, smelled her, and hugged her. Yes. She doesn't remember our meeting. By the way, both of them didn't find an answer to the question of why they couldn't meet me. They still can not understand (L.A Gebze Kadın).[179]

Another hardship that the aggravated life prisoners are subject is the impossibility to participate to the funerals to their beloved.

I lost my mother the 29th November2014.We that are sentenced with life aggravated imprison-

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176 Supra Note 114, p.46
177 Art. 5 Hukumlu ve Tutuklularin Ziyaret Edilmeleri hakkinda Yonetmelik
178 Supra Note 114, p.65
179 Ibid, p.73

ment do not have the right to say the last goodbye to our beloved that pass away, mothers, lovers or children Every prisoner can benefit from this right, except us (H.K. Sincan, F type).[180]

For what concern the contact with the outside world they have limited access to TV, radio and books. This practice is widespread for aggravated life prisoners .The prison authority try to maintain them isolated with the outside world.

2.6.3 Economic situation and work in prison

Under the article 18 of the Turkish Constitution "Work required of an individual while serving a sentence or under detention provided that the form and conditions of such labour are prescribed by law; services required from citizens during a state of emergency; and physical or intellectual work necessitated by the needs of the country as a civic obligation shall not be considered as forced labour".

Work in prison can be an important income to sustain oneself but for aggravated life prisoner is forbidden.[181] Turkish prisons provides only three meals per day this means that they have to pay for the electricity for the cell light and everything else that they may need. The economic situation is a problem for every prisoner but for aggravated life prisoners there is another problem; they cannot work within the prison Although wages are ¼ of the minimum wage (max 7tl per hour,2 euro) at most and no social security is provided for a working prisoner, it is still a possibility to earn money. Since aggravated life prisoners are banned from this opportunity they are economically dependent on their families, either to give them money directly or to help them sell the handicrafts they do in prison.[182]

Can you understand what does it mean to miss a cup of tea or coffee, just one tomato and one onion? You can understand something by empathy but there is something that you cannot understand without living it (İzmir F Type Prison).[183]

Ordinary prisoners sentenced with life aggravated imprisonment usually are making bracelets, bags, tespihs, neckless etc.. The prison administration is organising exhibitions to sell them. The prisoners can gain between 50 and 100 Tl per month.

I have to pay for my basic needs and for milk, cheese, yoghurt, vegetables etc.. My family cannot support me economically , they cannot even come to visit me . I have to live with 100 TL per month (30 euro, 1 euro per day) .With this money I have to pay also the electricity bills, postcards or newspaper. (B.E İzmir F T-type).[184]

180 Ibid, p.58
181 Art.13 Gözlem ve Sınıflandırma Merkezleri Yönetmeliği http://www.resmigazete.gov.tr
182 Supra Note 114,pp.88-90
183 Ibid, p.95
184 Ibid, pp.91 and 93

All the other necessities such as drinking water, TV, stamps, phone cards are prerogatives of the prisoners. If the inmates want to consume milk, yoghurt, fruits, vegetables they have to buy it from the canteen of the prison weekly. Moreover, the prisoners cannot use more than 200 TL (60 euro) per month. From a social point of view the absence of work for aggravated life prisoners denied not only economic incomes but reduce considerably the socialization with the other inmates.

2.6.4 Phone calls

Aggravated life prisoners can call once in 15 days and cannot exceed the time of 10 minutes. Moreover, the prisoners have to buy their own card to have the possibility to call. Because of the lack of money and the impossibility to borrow money they cannot benefit from this right.[185]

(answer to the question: "What does it mean for you to have life-aggravated imprisonment") At the same day of the bloodbath in Ankara (October 10th), I heard about what had happened and knew for sure that my family was among the participants of the peace march, but couldn't have contact with them for 13 days. (…) On Wednesday, the 7th October, it had been both my telephone and visiting day. The next telephone and visiting day was going to be on Wednesday, the 21th October. During this time, I spent 18-19 hours per day in front of the TV and media to follow the names of the dead and injured. (…) Those 11 days were like hell. (B.G Sincan F-type).[186]

2.6.5 Fresh air

Aggravated life prisoner spend in average 23 hours per day in their cells. Through the letters addressed to CISST, it is said that often aggravated life prisoners cannot benefit for the one hour of open air because sometimes the hour of fresh air coincide with other basic needs such as the time of hot water or the time to do laundry. It happens often that they have to choose between the fresh air or to have a shower.

If some penal institutions have this practice others may permit the fresh air for 3-4 hours per day. The inmates can also have access to read books during their fresh air time. Ordinary aggravated life prisoners as said before can have contact at maximum with other two inmates of the same category while political prisoners cannot do it. In particular the prisoner authority does not allow the contact between political prisoners belonging to the same or different "terroristic" organization. They are the most marginalized and isolated within the prison.[187]

At the institution where I am staying at the moment, prisoners that are not in -aggravated life im-

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185 Art 4 https://www.tbmm.gov.tr/komisyon/insanhaklari/belge/um_telefon.pdf
186 Supra Note 114, p.83
187 Supra Note 114, pp.63-70

prisonment can do sports for two hours a week and can go outside for three hours and meet with the others. When there are different courses at the institution, they can also go outside. However, the prisoners with aggravated life sentence cannot get outside for more than one hour per week and cannot see anyone except the people in the next door cells. And even if it might be an exception, there are people that don't even get the permission to go outside for that one hour of sports. At the very beginning, we were allowed to get fresh air for only one hour every day. However, as time went by, this could be extended until two, three, at some places even until five, hours. But there are conditions. (…) You need to have good conduct, which means not to get a disciplinary punishment. To start a hunger strike or even to shout slogans could entail a disciplinary punishment. (…) Our good conduct would be removed automatically and the time to go outside would be lowered to one hour. And in this way, you're forced to spend 23 hours of the day on your own in your very small cell with a closed door. Even to shortly take fresh air, to get outside and see the sky for this short period of time depends on conditions. This kind of practices gives the message that "if you conform to the rules you can somehow survive, otherwise even your most human and indispensable needs will be used as a weapon against you".(H.K Sincan).[188]

2.7 Concluding remarks

In this section, I tried to explain the conditions in which aggravated life prisoners live within Turkish prisons and I thought it would have been more efficient making public some of their letters addressed to CISST, the Turkish Ngo where I did my 6 months traineeship. In selecting the letters to use for my thesis I read a lot of them, the number of correspondence that CISST has, it is almost 180 with aggravated life prisoners. What impressed me the most about their condition is that the thing they missed the most was the human contact, to talk with someone or to share their experience.

The conditions that this category endures are really hard far from the International and European standards. It emerges that the debate on aggravated life imprisonment need to develop in a right based approach. The violation of human rights and human dignity of this category are self-evident. If ordinary aggravated life prisoners can have parole the political prisoners will pass the rest of their natural life in prison.

The lack of collaboration of the government in providing specific data to the public opinion or to Ngo that requests it under the act of information as well as the lack of transparency increase some doubts about the legitimacy of this approach.

188 Ibid, p.84

CHAPTER III

AGGRAVATED LIFE IMPRISONMENT: NATION BUILDING AND THREATS TO STATE SECURITY

I have always refused to change my opinion, for which I would be willing to give my life and not just remain in prison. That therefore I can only be tranquil and content with myself.
Antonio Gramsci

3.1 Introduction - 3.2 Nation building and threats to the State Security: From the Kurdish issue to nowadays - 33 Attempts to reform the Constitution - 3.4 Who fill face aggravated life imprisonment after the Coup d'état of 15 July? – 3.5 Concluding remarks

3.1 Introduction

To understand the present is necessary to know the past. Those who are considered "terrorists" under the Turkish criminal code have no possibility of conditional release. This harsh judgment can be explained in the light of nation building and how the threats to State Security are perceived in Turkey by the political elite. The Kurdish issue has signed Turkey in the last decades while the conflict with the Kurdistan Workers' Party (PKK) has caused 35.000 causalities from both sides. Other actors had led to internal instability such as the military intervention in the political sphere and old allies, now enemies members of Fetullah Gülen's organizations.

These events had consequences also in the legislative framework. During these years, new constitutions and amendments have been draft to face the changes of the Turkish political and social situation. Afterwards the failed Coup in July, the AKP has proposed new amendments to create

an executive presidency. This new path that has been taken by the Turkey's ruling party can have important consequences. Since the Coup, human rights violations have involved the Country as well as purge against the military, journalists, lawyers, prosecutors, politicians. One of the research question that I would try to answer in this section concerns who will face aggravated life imprisonment after the failed Coup? What will change in the political system?

3.2 Nation building and threats to the State Security: From the Kurdish issue to nowadays

The problem of the Kurdish population's opposition to the government over the control of the southeast region of Turkey dates back to the Ottoman Empire.[189] Historically, Kurds have never established an independent state. During the entire Ottoman Empire history, Kurds were an essential part of the nation, and had never initiated a revolution against the authority.[190] In 1919 the creation of an independent Kurdish State was first debated by British delegates at the Paris Peace Conference. This Conference was followed by the Treaty of Sèvres that clearly stipulated that the Ottoman Empire should be divided and a Kurdish state established. Despite these considerations the Kurds were actively involved in the Independence War that took place between 1919-1923 under the leadership of General Mustafa Kemal who sustained the national struggle against the Western Countries. When the war ended and the Grand National Assembly of Turkey (GNAT) was created on April 23rd 1920, of the 324 representatives, 74 were Kurds. Since the foundation of the Turkish Republic several uprising over territorial control of south-eastern Anatolia occurred. Some suggested that Kurdishness was an issue that was exploited for political reasons.[191]

After the establishment of the Republic in 1923, the Turkish State under the leadership of Mustafa Kemal Atatürk and his party, the Republican People's Party (RPP), carried out an ambitious program of state centralization and nation-building. He constituted a homogeneous nation, but this attempt went beyond the creation of an official, national history, the dissemination of one common language, and the creation of certain national symbols such as national holidays.[192] The new State was based upon principles of rationalism, secularism, pragmatism and a free market economy. "The cultural togetherness policy" set up a new Turkish identity that had as its central point the Turkish citizenship and no more the Islamic values. From one hand ethnic and religious groups, such as Jews, Greeks and Armenians, were accepted as minorities. From the other when Kurds requested to

189 Laciner, S. and Bal, I. (2004). The ideological and historical roots of the Kurdish movements in Turkey: Ethnicity, demography, and politics. Nationalism and Ethnic Politics, 10(3), 473–504

190 Bor, Y. (2013) The effects of the Kurdish Question on the Kurdish Question on Turkey's foreign and security policy with reference to the western world; Department of Politics and International Relations, University of Leicester

191 ibid

192 Aslan , S.(2015) Nation building in Turkey and Morocco ,Governing Kurdish and Berber dissidents, Cambridge University Press .p-37

maintain local cultural traditions, the central government saw these as threats to territorial integrity and political unity. Subsequently, the Turkish State's engagement with the Kurdish question raised on three pillars: "assimilation, repression and containment".[193]

Sheikh Said's rebellion in 1925 sent a warning signal to the state elite, confirming their fears of the strength of local power centres. To achieve control, the state elite saw it as necessary to emancipate this part of its population from the bondage of tribal and religious loyalties and to assimilate them into Turkishness. Therefore, Kurds became the main targets of the State's transformative project.[194]. The main reason why the State required the complete eradication of minority languages was the constant fear of territorial dissolution, separatism, and disloyalty. A different language within State's borders was the main proof of a different nation that might eventually ask for self-determination. The highly coercive and rigid nation-building policies paradoxically hurt the establishment of state authority in the Kurdish areas. Extensive militarization of the region to bring law and order to the Kurdish areas itself grow into a major source of illegality, to the detriment of government wishes to legitimize the regime among the Kurds.[195]

Afterwards, the high population growth and the deepening of land inequality pushed peasant to the urban centres, first to the Eastern, then to Western Turkey. More Kurds from modest socio-economic backgrounds could find the chance to receive higher education and in this context Kurds started to organize meetings among themselves and established small associations carrying the name of their hometown .In this way, they began to discuss the economic and social problems of their regions as well as the previous policies concerning the Kurds .In the 1950s and 1960s, Kurdish activism was a part of the Turkish left and its largely revolved around cultural rights and democratization The Turkish state authorities did not show much tolerance towards this new Kurdish activism. The majority of the newspapers and journals that the Kurdish activists published were banned on a charge of separatism after only a few issues. The Turkish state's main containment policy was denial of the Kurdish issue and silencing any form of Kurdish activism. In the 1970s, Kurdish activists increasingly separated themselves from the Turkish leftist organizations, which they accused of not being sensitive enough to the Kurdish question. The Kurdish movement in the 1970s went through a process of radicalization as the State excluded the entire Kurdish opposition from the legal sphere of contention. Despite the greater liberties that were brought in by the 1961 Constitution, the Kurdish issue did not have an identifiable locus of policy making within the Turkish political elite.[196]

On March 12, 1971, the military once again interfered in politics and issued an ultimatum that demanded the formation of a government that would end the anarchy and carry out Kemalist

193 Yeğen, M. (2015) The Kurdish Peace Process in Turkey: Genesis, Evolution and Prospects, Working Paper 11 Available from http://www.iai.it/sites/default/files/gte_wp_11.pdf

194 Supra Note 192, p.38

195 Ibid ,pp.63-78

196 Ibid p.120-125

reforms. The revival of intrusive and comprehensive policies pursued by the military government was critical in giving shape to the grievances of the Kurdish masses and raising their political consciousness. In 1974, when the PKK (Kurdistan Workers' Party) was founded, it was a small, marginal organization, which embraced Marxist discourse and aimed at establishing an independent and united Kurdistan through armed struggle. These policies not only changed and politicized the meaning of the cultural representations of Kurdishness but also contributed to the gradual growth of support for the insurgency by the PKK within Kurdish society. The PKK emerged as the saviour of Kurdish identity and the defender of Kurdish honour.[197]

Despite multiple perspectives from different disciplines, there exists, in the literature of terrorism, four common reasons why individuals become terrorists: economic, political, socio-cultural, and educational. In ethnicity-based political violence (ethno-terrorism, ethnic insurgency), ethnicity plays the premium motivational role for individuals who join either terrorist or guerrilla insurgency groups.[198] Most PKK members are from heavily underdeveloped rural segments of the region. For example, only 12 percent of PKK members are found to have university degrees, and only 18 percent of PKK members are found to be high-school graduates.[199] The PKK strategy was to:1) gain people's support by attacking opposing populations-strategic defence to garner new recruits; (2) continue attacks on governmental targets to weaken the government's authority strategic balance to set the authority of the organization; and (3) use conventional warfare tactics to seize cities – strategic offense to set the revolution.[200]

The military coup of September 12, 1980 came as a response to the political chaos and violence that intensified in the last years of the 1970s. The military swiftly restored public order through the use of harsh measures. It banned all political activity; closed down political parties, labour unions, and civil societal associations; prohibited public discussion of political matters; dismissed mayors and municipal councils; and concentrated all state power in the National Security Council, composed in the vast majority by military officers. The military, through its regional and local commanders, took control of all state institutions over the next three years.[201] 11,500 people were arrested immediately and this number increased to 30,000 by the end of 1980. The Coup was the most repressive with regard to its leaders' objectives and policies, out of 15,000 detainees who were charged with being members of left-wing terrorist organizations, 3,177 were accused of separatism, and the PKK suspects numbered 1,790.[202]

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197 Supra Note 190, p.119

198 Durna, T and Goktepe F. (2008). The history of the PKK. In S. Teymur & C. Smith (Eds.), The PKK, a decades-old brutal Marxist–Leninist separatist terrorist organization (1st ed., pp. 9–17). Washington, DC: The Turkish Institute for Security and Democracy

199 Ekici, A. and Phelps, J. (2008). Recruitment strategies of the PKK. In S. Teymur & C. Smith (Eds.), The PKK, a decades-old brutal Marxist–Leninist separatist terrorist organization (1st ed., pp. 39–52). Washington, DC: The Turkish Institute for Security and Democracy

200 Supra Note 198

201 Supra Note 190

202 Gunter, M.M. (1990). The Kurds in Turkey: A Political Dilemma. Boulder, CO: Westview Press

The State progressively increased the number of troops, which greatly deepened its intrusion into the region. Starting from 1985, the government began to recruit “village guards” from the rural population to serve as local militia forces that would help the state forces in military operations against the PKK. Recruitment of peasants largely took place through negotiations with tribal leaders, who could mobilize large numbers of men into state service. The state not only provided arms and salaries to village guards, but also turned a blind eye to the tribes’ past and future crimes, such as homicide, fraud and as long as they took part in the village guard system. According to official figures, there were around 60,000 village guards on the government payroll in 2003. The State’s tolerance of their illegal activities allowed tribal leaders to enrich themselves through drug and arms smuggling and to reinforce their authority in their localities. The state also ignored human rights violations committed by the village guards.[203]

In 1987, the parliament declared a state of emergency in ten provinces in the Southeast. A governor-general was appointed with extensive powers, such as curtailing press freedoms and evacuating villages when deemed necessary. Human rights organizations increasingly revealed village evacuations, torture, mass arrests, forced migration unidentified murders, and the extrajudicial acts of the special counter-insurgency teams in the region. The PKK also did not refrain from using force against civilians and massacred many, justifying it either as unintended consequences of the war or as acts against “collaborators”.[204]

The Gulf War in 1991, the resulting massive influx of Iraqi Kurdish refugees into Turkey, and the power vacuum in the Kurdish region in Northern Iraq worried the Turkish State authorities that the developments in Iraq would increase nationalist aspirations among Turkey’s Kurds. The end of the Cold War and the raise of the human rights discourse attracted not only the Kurds but also many Turkish politicians, who increasingly advocated the necessity of finding a non-military solution to the Kurdish problem. At the domestic level, the growing level of violence in the Southeast and the increase of PKK recruitment also alarmed the state authorities and reinforced the sense among many politicians that a military approach would not be adequate to deal with the PKK. The Kurdish movement also gave signals of a possible transformation with the establishment of the pro-Kurdish People’s Labour Party (HEP) in June 1990. The expression of Kurdish demands from a legal political platform increased hopes for a decline in armed conflict. In the 1991 elections, the HEP had an electoral pact with the SHP and entered. The HEP and its successors the Democracy Party (DEP, 1994) the People’s Democracy Party (HADEP,1994), Democratic Society Party (DTP,2009) encountered significant pressure from public prosecutors, police, military, and various political parties and were closed on charge of separatism by the Constitutional Court. While the Turkish state made it clear that it would be extremely hard for a party with a pro-Kurdish agenda to

203 Balta, E. (2004). Causes and Consequences of the Village Guard System in Turkey.” Unpublished paper. Available at http://web.gc.cuny.edu/dept/rbins/ IUCSHA/fellows/Balta-paper.pdf
204 Supra Note 190, p.136

exist within the political system, the experiences of these parties also showed the difficulty Kurdish activists had in distancing themselves from the PKK.[205]

Between 1991 and 1999 the conflict between the PKK and security forces reached its peak with the highest number of casualties occurring. Weak coalition governments of the 1990s devolved more authority to the military in dealing with the Kurdish conflict. The intensified conflict resulted in the forced evacuation of 3,428 villages and hamlets by security forces and displacement of more than a million Kurds. Various forms of legal and extra-legal repression were used to intimidate and silence Kurdish activists and their supporters. The indiscriminate violence by the state security forces compared to the PKK's more selective repression helped the PKK's popularity among the Kurds in the 1990s.[206] In 1992, President Turgut Özal criticized this policy pursued by the state elites and described the growing issue as the Kurdish question. He advocated addressing the issue by improving conditions in Turkey. He validated the question of a Kurdish Problem assuming that cultural and democratic rights were still restricted. Indeed, he supported the idea of finding a solution to the question by taking cultural, economic, social and political measures. But despite these concerns, the PKK accelerated its attacks and President Özal suddenly passed away.[207] A turning point in the Kurdish issue was represented by the capture of Abdullah Öcalan. After the 2002 general elections, the AKP officials have advocated policies parallel to those of the 1991 Kurdish report prepared by the Welfare Party's Istanbul Provincial Head under the leadership of Recep Tayyip Erdogan. In August of 2005 in his speech in Diyarbakır, Prime Minister Erdogan argued for giving more democratic rights to the Kurdish people.[208]

For Kurds, the acceptance of their identity and culture by the state authorities was much more important than independence "the end of punitive measures upon local people, ensuring regional economic development, the improvement of human rights, development of the Kurdish culture, the establishment of a Kurdish institute, the free publication of Kurdish newspapers and journals, the formation of local parliaments, decreasing the central government's powers and allowing the free use of the mother tongue".[209]

The prospect of becoming a full member of the EU and the decline in the PKK's armed operations created a political context that pushed the government to address the issue of human rights and to undertake reforms that would have important consequences for Kurdish demands. Between 2001 and 2003, the Turkish parliament passed seven sets of reform packages that encompassed

205 International Crisis Group. 2011. Turkey: Ending the PKK Insurgency, Europe Report No. 213. www.crisisgroup.org/en/regions/europe/turkeycyprus/turkey/213-turkey-ending-the-pkk-insurgency.aspx

206 Romano, D. (2006). The Kurdish Nationalist Movement: Opportunity, Mobilization, and Identity. Cambridge University Press, pp.88

207 Efegil, E. (2011), Analysis of the AKP Government's Policy Toward the Kurdish Issue, Turkish Studies Vol. 12, No. 1, 27–40, March 2011, Routledge

208 ibid

209 Dünya Bülteni, December (2007), http://www.dunyabulteni.net/news_detail.php?id=30433

constitutional and legal amendments to meet the EU membership criteria. These amendments also addressed some of the long-awaited Kurdish demands for cultural right. The amendments to the broadcasting law allowed for "broadcasting in different languages and dialects Turkish citizens traditionally use in their daily lives" and stipulated that public and private radio and TV stations could provide such broadcasting, including in Kurdish. Another amendment made to the Law on the Teaching of Foreign Languages in 2002 allowed for the establishment of private courses for teaching "different languages and dialects traditionally used by Turkish citizens in their daily lives". The AKP government's acknowledgment of Turkey's ethnic diversity and Kurdish cultural demands was laden with significant ambiguities and the actual implementation of the reforms encountered serious setbacks. Kurdish activists underlined that the rights that were granted by the parliament could be limited through administrative regulations by those who were opposed to those rights within different state institutions. Initially, local private TV channels encountered many bureaucratic difficulties when they applied to the RTÜK for permission to broadcast programs in Kurdish.[210]

The AKP government did not make a serious attempt to deal with the Kurdish issue until October 21, 2007 when PKK terrorists attacked the Daglıca gendarme station. After this attack, the Government intensified its efforts to solve the Kurdish issue introducing a new policy of negotiation and recognition. Given that it received almost 50 per cent of the total votes in the 2007 elections, the AKP might have felt strong enough to renew its way of engaging with the Kurdish question, as the old policies had proven unsustainable. From September 2008, state officials contacted the PKK and had consecutive meetings (Oslo talks/meetings) in different places in Europe.[211]

The PKK's ceasefire in 2010 was followed by a new set of talks between the state and the PKK and Öcalan. During these new meetings, Öcalan prepared and submitted to the state another road map involving three protocols: "The Draft for the Principles for a Democratic Solution of the Main Social Problems in Turkey", "The Draft for a Fair Peace in Relations between the State and Society" and "The Draft for the Action Plan for the Democratic and Fair Solution of the Kurdish Question". Practically, the protocols suggested the establishment of three commissions composed of individuals from both sides: Commission for the Constitution, Commission for Peace, and Commission for Truth and Justice. It has been revealed that the Öcalan protocols were negotiated during the Oslo Talks and that both the PKK and state officials approved the protocols and promised to take the necessary steps after the 12 June 2011 elections.

Meanwhile Öcalan declared that a new phase could begin after the elections .In the elections, both the Peace and Democracy Party (BDP), the predecessor of today's HDP, and the AKP were successful. While the BDP received almost half the votes in the Kurdish provinces, the AKP received half the votes in Turkey. However, it became evident after the elections that the AKP government

210 Supra Note 190,p.140
211 Supra Note 190, p.161

was not too enthusiastic about continuing the peace process. The PKK leaders argue that the state paused with the Oslo meetings after the elections and refused to sign the protocols approved by the PKK and state officials in the Oslo talks. The PKK responded to this by terminating the ceasefire and resuming the so-called People's Revolutionary War. While the official narrative is that the first round of the peace process ended with the Reşadiye attack and the second round ended with the Silvan attack, PKK circles argue that while the first round ended when the state did not announce Öcalan's road map.[212]

2012 turned to be the most violent year in the fighting between the PKK and the Turkish army since 1999. While the clashes in the following 18 months took hundreds of lives, the police and the judiciary pursued a relentless policy of pressure on Kurdish politicians. Thousands of Kurds, including BDP mayors, politicians, journalists, and trade unionists were arrested in almost two years with the charge that they were working for the KCK (Kurdistan Communities Union). Turkey's fear of Kurdish independence increased with the worsening of the civil war in Syria and the growing autonomy of the Kurdish-populated regions in Northern Syria. The close links between the PKK and the Democratic Union Party (PYD), which is the dominant Kurdish party in Syria, put pressure on the AKP government to address the Kurdish problem. It was in this context that the negotiation between the PKK and the state resumed at the beginning of 2013. The Imralı visit was made public indicating that the new round in the peace process would not be carried out behind the scene. In fact, it soon became evident that the talks with Öcalan would proceed through a complex mechanism: while the State and Öcalan would keep talking, Öcalan would inform the PKK headquarters in Kandil and be informed by them through the BDP deputies visiting Imralı. Even though neither the council of wise persons nor the commission in the parliament met the PKK's expectations, the process went on and the PKK announced the withdrawal of its armed forces on 8 May 2013. During the withdrawal the Turkish army suspended its routine military operations against PKK militants, indicating that the AKP had either convinced or forced the army to abide by the agreement that the PKK's withdrawal had to be achieved in safety. On September 2013, however, the PKK made a second announcement and stated that "the withdrawal had been halted because the government had not taken the steps it promised and had instead built new military installations in and around the places from which the PKK had withdrawn".[213]

Afterwards the elections in 2014, the AKP enacted the "Law to End Terror and Strengthen Social Integration". Practically, the law was broad enough to specify all military, political, and legal steps needed to ensure disarmament and resolve the Kurdish question. The law also authorised officials to contact "terrorists." The Kobani crisis of October 2014 made it clear that one of the strongest alternatives to the resolution process was decline into civil war. the crisis in Syria and the one in Iraq between the Kurdistan Regional Government and the Iran-supported Maliki regime produced

212 Supra Note 193
213 ibid

a situation that could possibly complicate and aggravate the Kurdish question in Turkey on the afternoon of 20 July 2015, an Islamic State (IS) suicide bombing tore through the majority Kurdish town of Suruç in south-eastern Turkey, killing 33 and injuring over 100 people, mostly young activists en route to support reconstruction efforts in the Syrian Kurdish town of Kobani.[214]

Just three hours later in the nearby province of Adıyaman, militants of the PKK accusing Turkey of abetting the IS attack, killed 23-year old Müsellim Ünal, a corporal in the Turkish The two-and-a-half-year ceasefire between Turkey and the PKK had broken down. Since then, the PKK conflict has entered one of the deadliest chapters in its three-decade history. Over the past year, more than 1,700 people have been killed.[215] A fragile ceasefire collapsed as the region was overwhelmed in the unpredictable security operations, resulting in the displacement of more than 350,000 civilians and massive urban destruction in some south-eastern districts. A year later, whole swathes of Turkey's majority Kurdish south-east have been devastated, bombings have struck at the heart of the country's largest metropolitan centres, and the PKK conflict is inextricably linked with conflicts in the Middle East, especially the war in Syria military.[216] Indeed, after the failed Coup pro -Kurdish supporters have been arrested under the charge of terrorism. However, in a high number of cases the accusations lack of evidences.

Another "terrorist organization " was declared after the failed coup by the Government, the Gülenists headed by Fetullah Gülen. The ex-ally became the worst enemy of the State. At the beginning, they helped the government rid the state institutions and the military of the Kemalists and secularists who had run a "deep state" within Turkey for many years "at times resorting to mind-boggling conspiracies and show trials with fabricated evidence".[217] The Gülenists turn into AKP's form of the "deep State". In 2012, they started to fall out with each other. The conservative AKP government and the Gülenists began to engage in a silent "civil war" that burst onto the international scene with the dramatic attempt to overthrow the Turkish government on 15 July 2016.[218]

Despite the secularism imposed by Mustafa Kemal Atatürk in 1925, Fethullah Gülen and other orders of the Nur movement therefore survived over decades by establishing underground networks and trying to get their followers to enter the government service to be able to dismiss reprisals from authorities. Like most religious orders in Turkey, Gülenists valued the Turkish state. In the tradition of religious orders in republican Turkey, "the State" was both the "nemesis and the ultimate obsession". Gülen was inspirational and charismatic, though by no means as moderate as he later became. Although he was born in eastern Turkey, it was in western Turkey in the late 1970s that

214 Supra Note 193

215 International Crisis Group http://blog.crisisgroup.org/europe-central-asia/2016/07/20/turkey-s-pkk-conflict-the-rising-toll/ (accessed on 10 January 2017)

216 ibid

217 Aydıntaşbaş, A. (2016), The Good, the bad and the Gulenist, European Council on Foreign Relation , http://www.ecfr.eu/publications/summary/the_good_the_bad_and_the_gulenists7131

218 Ibid

Gülen worked as an imam (a government job) and built his networks The emergent popularity of the pro-Islam Refah Partisi appeared to offer the threat of 'religious fundamentalism' to laciest circles. Gülen emerged then as a counter-effect to the apparent growth in religious fundamentalism. He started to be visible to the public since 1995 when gave interviews to almost all of the major daily newspapers and television channels in Turkey. The Fethullah Gülen movement is present in Turkey and abroad through many organizations and publications. In Turkey, the movement controls the daily Zaman newspaper and the STV (Samanyolu) television network.[219] Fethullah Gülen has always focused his attentions on education. He started to put his thoughts into practice in the 1970s, when he created his own community (cemaat), delivering public lectures to thousands of listeners, which were recorded and sold throughout the country. Gülen commenced to attract people who sustained his ideas with money and volunteers. Specific community houses, so called 'houses of light' were established utilizing private houses or flats, both international and national opportunities offered to students advanced his goal of training a new elite that he named the 'golden generation' based upon Islamic ethics and modern sciences. Those trained in the summer camps in the 1970s became the teachers of the new generation of teachers, ones who carried the ethical message of Islam all over the world. The movement was first transformed by its educational practices while it was seeking to transform the society. Before the significant increase in dialogue activities in the post-9/11 world, Gulen have established the Journalists and Writers Foundation in 1994 and think tank in related issues The movement tries to bring together scholars and intellectuals regardless of their ethnic, ideological, religious and cultural backgrounds ('The Abant Platform'). This platform is the first of its kind in Turkey, an environment where intellectuals could agree or disagree on sensitive issues such as laicism, secularism, peaceful co-existence, 'faith and reason' relations, and the status of one of Turkey's minority religious groups, the Alevis.[220]

Since he left Turkey in 1998, Gülen has been living in Pennsylvania, to escape an investigation for, among other things, infiltrating state institutions. The beginning of the political alliance with Erdoğan dated back in 2002. They come from two different branches of Islam in Turkey. The Gülenists have never accepted Necmettin Erbakan›s more radical Islamism, followed by Erdoğan. [221]

To understand the role of Gulenists within the state bureaucracy and the break up with the AKP Party is necessary to start from the trials of 2009. These trials, and particularly the so-called Ergenekon probe, started out as an investigation into an alleged network of nationalists (from ex-military to journalists) who the police claimed were conspiring to kill minorities, Kurds, Alawites, and religious leaders, and even plan a coup. The case was largely led by Gülenist police officers and prosecutors. By mid-2009, Ergenekon became a witch-hunt for hard-line secularists and Kemalists

219 Gözaydın, I.B. (2010), Fethullah Gülen movement and politics in Turkey: a chance for democratization or a Trojan horse? Democratization, 16: 6, 1214-1236

220 ibid

221 Aljazeera) http://www.aljazeera.com/indepth/opinion/2014/03/gulen-vs-erdogan-struggle-thre-2014311144829299446.html (accessed on 10 January 2017)

within the state apparatus, and even the broader civil society. The trials were considered in Europe as "a Turkish effort to reckon with its dark past", and were defined in successive EU progress reports on Turkey's accession process as investigation into "illegal networks inside Turkey". In 2009, the year that the Ergenekon indictment occurred, (involving many wiretaps being leaked to the media), Turkey's. Minister of Justice, Sadullah Ergin, announced that 113,000 citizens' phones had been tapped by the Directorate of Telecommunications. In 2010, on Erdoğan and President Abdullah Gül's initiative, the Gülen movement was removed from the list of national security threats in the National Security Political Document the paper that regards Turkey's national security doctrine and is approved by the National Security Council.[222]

In 2012, the Gülenists opposed Erdoğan's peace talks with the PKK to the surprise of most observers, the alliance between the AKP and the Gulen movement began to fall apart in 2011; it dramatically collapsed in 2013 and finally evolved into an intense fight in the subsequent years. As both sides attacked each other using the control they had gained over particular state functions in the preceding years, the dispute also brought different components of the Turkish state apparatus against each other. While the Gülenists confronted the AKP through their connections in the bureaucracy, the AKP used its control over the executive and legislative branches to combat the Gülenists, and it seems to have neutralized the Gülenists so far. This was a turning point, as it was the first time that the Gülenists had taken a critical position toward the AKP government since it had come to power in 2002. Six months later, in February 2012, the Ankara Prosecutors' Office called in Hakan Fidan for an interrogation about the National Intelligence Organization's links to the PKK. This was a major event, as it reflected the presence of rival groups within the state apparatus and demonstrated the limits of the government's power. Perceiving the prosecutors' act as a challenge to itself, the government was quick to answer. Prime Minister Erdoğan defended Fidan, clarifying that he sent him to Oslo himself, and then pushed for a speedy legislation change that would immunize Fidan from investigations. Condemning the Prosecutors' Office, he suggested that there were signs of a "parallel state" working illegitimately under the control of non-elected actors. It was not immediately clear to all who these actors were, but it was not long before Fetullah Gülen was named as the leader of this shadow organization.[223]

The wave of opposition of the Arab Spring signed also Turkey in 2013. The Gezi Park Protest, born as an environmental protest by a group of small individuals became a protest against the increasingly centralized role of the government. Following the harsh reaction they received from the police and the government, the protests escalated and spread throughout the nation. The Gülenists reacted carefully to the protest movements. To some of them, this was not "their fight" and not worth risking the further straining of relations with the government. On the other hand, however, they also did not want to be on the wrong side of history. Thus, they attempted to maintain a neu-

222 Supra Note 217

223 Demiralp, S.(2016) Middle East Review of International Affairs, Vol. 20, No. 1

tral position.[224] Indeed, the AKP's reaction to the Gezi movement was a more aggressive effort to fight its opponents, the Gülenists were at the top of this list. In November 2013, the government proclaimed its new education policy, which included the shutting down of all study centres that prepare students for university entrance exams. The conflict finally reached its peak in February 2013, three months before the elections, following a criminal investigation with corruption allegations involving major government actors. Simultaneously, secret tape recordings were released from anonymous accounts, which included phone conversations alleged to be between government officials including the prime minister, their family members, and businessmen-revealing illicit actions and corruption. This was a huge shock to the government, as well as to their opponents. After the initial shock the AKP decided to fight back.[225]

The May 2013 elections were a vote of confidence for the AKP government that maintained its electoral majority, regained its confidence. They claimed that the Gülenists controlled a shadow organization within the police and the judiciary and that it was the government's priority to clean the state bureaucracy from this group. Hundreds of people, including policemen, prosecutors and judges, were removed from their positions or jailed. Bureaucratic cleansing efforts were followed by attacks on business and media owners affiliated with the Gülen movement. The Government and the public opinion consider Gülen and his followers responsible for the coup attempt, although legally speaking, evidence linking Gülen himself to the 15 July remains insufficient. No one in Turkey doubts that there are Gülenist fingerprints on the 15 July coup, even though non-Gülenist generals were also involved. Moreover, according to Turkish government sources, hundreds of officers and judges have been accused to be members of the Gülenist organization because they used the communication program called ByLock. It had 39,000 active members, including state employees and members of the judiciary. Although there is not evidence implicating all 39,000 users in the coup, according to the Turkish government the utilization of ByLock is an indicator of membership of the Fethullah Gülen Terrorist Organization.[226]

Even before the failed Coup, arrests, trials and repression involved journalists, lawyers, human rights defenders, academics and more in general the so called "intellectuals". Turkey has been accused of violating academic freedom by rounding up university teachers who signed a petition denouncing military operations against Kurds in the south-east of the country. Police detained 27 academics over alleged "terror propaganda" after they signed a petition together with more than 1,400 others calling for an end to Turkey's "deliberate massacre and deportation of Kurdish People".

President Recep Tayyip Erdoğan, has severely criticised the signatories, including political scientist Noam Chomsky and the Slovenian philosopher Slavoj Žižek, and called on the judiciary to act against their alleged treachery. Prosecutors launched an investigation into the academics over

224 ibid
225 Supra Note 217
226 Ibid

possible charges of insulting the state and engaging in terrorist propaganda. Staff from 90 Turkish universities calling themselves "Academics for Peace" signed the petition calling for an end to the military campaign against the Kurds and accusing the government of breaching international law. All 1,128 Turkish signatories of the petition are under investigation, according to the Doğan news agency.[227] Over 36,000 people have been arrested and 100,000 discharged, most of them from state jobs. Erdogan has imposed emergency rule and put Turkish politics in a stranglehold. Ten HDP deputies, including its co-chairs Figen Yuksekdag and Selahattin Demirtas, a former candidate for president, have been arrested.[228]

The decrees ordered the dismissal of 2,687 police officers, 1,699 officials from the justice ministry, 838 from the health ministry, more than 630 academics and 135 officials from the religious affairs directorate. They also stated that individuals overseas who are being sought by the Turkish authorities might have their citizenship removed if they fail to return within three months. 120,000 people have been suspended or dismissed since the coup, although thousands of them have since been re-established to their posts. More than 41,000 have been jailed pending trial out of 100,000 who have faced investigation.[229]

Human Rights Watch (HRW) said in a report that Turkey had "sharpened" its "assault" on journalism since the failed coup in July. The report said Turkey has "all but silenced independent media" as part of an ongoing purge on dissident voices in the country, which it says has accelerated since 2014. The watchdog highlighted that journalists are being detained on "bogus charges" including terrorism as part of the crackdown. The Turkish government continues to claim that there is no problem with press freedom in the country. Erdogan in 2014 referred to Turkey as the country with the highest level of press freedom in the world. Instead, the Turkish government claims that it is fighting a host of terrorist organizations. The government has used the term "terrorist," however, to refer to Kurdish militants, the so-called "Islamic State" (IS) group, as well as to backers of the failed coup.[230] Turkish authorities has been accused of silencing the dissident voices afterwards the purges carried out after the failed Coup. The high numbers of dismissal of academics, police officers, soldiers, etc. represent a concern for the Turkish society and for its future.

227 The Guardian https://www.theguardian.com/world/2016/jan/15/turkey-rounds-up-academics-who-signed-petition-denouncing-attacks-on-kurds (accessed 10 January 2017)

228 The Economist http://www.economist.com/news/europe/21709991-president-erdogan-keeps-purging-turkey-locks-up-dissidents (accessed 10 January 2017)

229 Business Insider http://www.businessinsider.com/r-turkey-dismisses-6000-more-workers-in-post-coup-purge-hurriyet-2017-1?IR=T (accessed 10 January 2017)

230 Deutche Welle http://www.dw.com/en/human-rights-watch-turkey-silencing-media-in-post-coup-purge/a-36788601 (accessed on 10 January 2017)

3.3. Attempts to reform the Constitution

The constitution-making process influences not only the mode of transition to democracy but also the prospects for the consolidation of democracy.[231] According to Blanc: "constitution-making is at once the most varied and the most concentrated form of political activity during the transition. In it, political manoeuvring, bargaining and negotiations take place and the political positions, agreements and dis agreements between groups and leaders come to the fore. How the constitution drafters handle these issues may tell us crucial things about the transition and about the regime it leads to. The general character of both the process and its outcome may reveal clues about the new regime's potential for stability or instability".[232]

Turkish constitution-making is "unique" if compared to the other States in Europe. None of the three Republican Constitutions (those of 1924, 1961, and 1982) was made by a freely chosen and broadly representative constituent assembly through inter-party negotiations and compromises. Conversely, state elites played a predominant role in the making of all three constitutions with little input from civil society.[233] Since Turkey became a Republic in 1923, maintaining a secular government has been an ongoing struggle. The military, historically a guardian of secular government, has essentially acted as a self-appointed fourth branch of "checks and balances". Any perceived attempt to reduce secularism in the government led to the 1960 and 1980 military coups, and resulted in the execution of the government officials and the adoption of secular constitutions. Since the AKP, a socially conservative party with Islamist roots came to power in 2002, the question regarding another possible military intervention re-emerged.[234] This fear of a military intervention became reality the 15th of July 2016 with the Coup attempt, subsequently failed.

To understand the attempts to reform the Constitution is necessary to drawn a historical excursus on constitutional process making in Turkey

The beginnings of constitutionalism in the Ottoman Empire can be traced back to the nineteenth century. The Constitution of 1878 was granted by the Sultan Abdülhamit II, who considered it a device for foreseeing the efforts of Powers to force upon him a constitution of their making. This Constitution attempt fell short because in 1878 the Sultan Abdülhamit II returned to the absolute rule. Despite this suspension, Turkey had had its first Parliament which proved a considerable amount of independence, which exposed the universal incompetence and corruption of the Ottoman Empire and which held out high hopes of a future representative parliament.[235]

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231 Ozbudun, E. and .Genckaya O.F. (2009), Democratization and the Politics of Constitution Making in Turkey, Central European University Press

232 Bonime-Blanc, A.(1987) Spain's Transition to Democracy: The Politics of Constitution-Making (Boulder: Westview Press, 1987) p. 13

233 Ozbudun, E. (2012), Turkey's search for a new Constitution, Insight Turkey , http://file.insightturkey.com/Files/Pdf/insight_turkey_vol_14_1_2012_ozbudun.pdf

234 Moore, Z: (2015) Turkish Judicial and Constitutional Reforms , http://fmso.leavenworth.army.mil/Collaboration/international/Turkey/2015_TurkishConstitutionalReforms.pdf

235 Mead Earle, E.(2002)The New Constitution in Turkey, Political Science Quarterly ,Volume 40, Issue I, pp-73-100, p.76

During the revolutionary enthusiasm of 1908-1909, the Young Turks proceed to remove many of the ambiguities of the revived constitution and to institute the sovereign power of parliament. A new Constitution was amended in 1909 after the dethronement of the Sultan Abdülhamit II, the amendments substantially enlarged the powers of the legislature and restricted those of the Sultan. The absolute veto of the Sultan, become a relative one that could be overridden by the 2/3 of the majority of the Parliament. The latter was authorized to meet on November 1 of each year without formal convocation while the special session were established by law through the petition of the majority of the members. That did not lay a substantial foundation of the real self-government in Turkey but signed the beginning of it.[236]

Afterwards, the collapse of the Ottoman Empire during the World War I , Mustafa Kemal called for the election of a new assembly "with extraordinary powers" to convene in Ankara. The Grand National Assembly of Turkey (GNAT), a constituent and revolutionary assembly that enacted a Constitution in 1921 formed by 23 articles. For the first time, it proclaimed the principle of national sovereignty calling itself the "only and true representative of the nation". The Republic was officially proclaimed about a year later, on 29 October 1923. The new Constitution was adopted by the Grand National Assembly elected in 1923. The Assembly was not a constituent assembly, but an ordinary legislature.[237]

The Grand National Assembly was considered, as it was under the 1921 Constitution, "the sole representative of the nation, on whose behalf it exercises the rights of sovereignty" (Art. 4). Theoretically, both legislative and executive powers were concentrated in the Assembly (Art. 5), but the Assembly was to exercise its executive authority through the President of the Republic elected by it and a Council of Ministers appointed by the President (Art. 7). The Assembly could at any time supervise and dismiss the Council of Ministers, while the Council had no power to dissolve the assembly to hold new elections. In practice, however the theoretical supremacy of the assembly is often transformed into the domination of the executive body, since normally the executive is composed of party or faction leaders, while the legislature includes a numerically larger, but politically much weaker, group of backbenchers. This was also the case in Turkey. Both in the single-party (1925–1946) and multi-party (1946–1960) years, the authoritarian leadership of the chief executives and strong party discipline reduced the Assembly to a clearly secondary role. It is highly interesting that even at the height of Atatürk's prestige, the Assembly rejected a proposal to give the President of the Republic the power to dissolve the Assembly.[238] Although the Constitution was democratic in spirit and contained no signs of the approaching authoritarian single party regime (1925-1946), it provided a convenient instrument for this regime, since it established no checks and balances against the absolute power of the parliamentary majorities. If during the single

236 Ibid
237 Supra Note 230
238 Supra Note 234

era party this system was efficient because the reforms of the Kemalist era could hardly have been carried out by a political system in which such authority was divided and dispersed. But, with the transition to a multi-party system in 1946, the problems of the Constitution became obvious. The unrestrained nature of the legislative power, coupled with an electoral system which produced lopsided majorities in the legislature, made it tempting for the leaders of the majority party to use their vast powers to suppress, or at least harass, the opposition. Thus, in the late 1950s, tension increased greatly between the governing Democrats and the opposition Republicans.[239] The military committee (the National Unity Committee, NUC) that took over power was intent on a return to civilian rule, once a new and democratic constitution was adopted. Moreover, Committee charged a group of law professors to prepare a constitutional draft. It deviated from the principle of universal suffrage by proposing to create a second chamber (Senate of the Republic) which would be partly co-optative and partly elected by voters with at least a middle school education. The draft also proposed to establish a large number of autonomous administrative agencies, thus severely restricting the powers of the executive.[240] Law (No.157) adopted by the NUC on 13 December 1960 established a bicameral Constituent Assembly, of which one chamber was the NUC itself. Nor was the other chamber (House of Representatives) directly elected. At that time, political circumstances were not considered suitable for convening an elected Constituent Assembly. The Democrat Party (DP) was dissolved by a court order and no new parties had yet been formed to organize its former supporters. The 1961 Constitution, adopted by the Assembly and ratified by a majority (61.7%) of the popular vote on 9 July 1961 reflected the basic political values and interests of the state elites. Thus, on the one hand, the Constitution greatly expanded civil liberties and granted extensive social rights for citizens; on the other hand, it reflected a distrust of politicians and elective assemblies by creating an effective system of check and balances to limit the power of those elected organs. It concerns judicial review of the constitutionality of laws; strengthening the administrative courts, with review powers over all executive agencies; full independence for the judiciary; creation of a second chamber of the legislative Assembly; improved job security for civil servants, especially judges; and granting substantial administrative autonomy to certain public agencies, such as the universities and the Radio and Television Corporation. It was hoped that the power of the elected assemblies would be effectively balanced by judicial and other bureaucratic agencies and that the newly expanded civil liberties and social rights would ensure the gradual development of a genuinely pluralistic and democratic society. The state was entrusted with economic, social, and cultural planning; land reform; health care and housing; social security organizations; helping to assure full employment; and similar tasks. The state was also empowered to force private enterprises to act “in accordance with the requirements of national economy and with social objectives” (Article 40).[241].

239 Tachau, F and Heper, M (1983) : Comparative Politics, Vol. 16, No. 1 (Oct., 1983), pp. 17-33
240 Öztürk, K. (1966) The Constitution of the Republic of Turkey, (Ankara: Türkiye İş Bankası Kültür Yayınları, 1966), Vol.1, 23–338.
241 Supra Note 230, pp.14-17

Turkey's 1982 Constitution is the product of the military intervention of September12, 1980. It was prepared under the aegis of the NSC, with the help of a wholly appointed civilian Consultative Assembly, and approved by a popular referendum whose democratic legitimacy is open to query. The referendum was combined with the election to presidency of the Republic, so that, this created a plebiscite impact on people. Citizens were obliged to exercise the right to approve the draft constitution as the only alternative. The 1981 constitutive power ,the NSC and the Consultative Assembly, would last for an indefinite period. The Constitution also provided strong exit guarantees for the outgoing NSC regime by providing vaguely defined tutelary powers and reserved domains for the military.[242]

The New Constitution made equally clear, however, that this would not be a return to the status quo ante.[243] The first tutelary institution was the election of the General Kenan Evren (the sole candidate) the possibility of exercising tutelary powers over elected governments for a period of seven years. The idea of the military founders was that also the successor of the President would have been close to the military while they strengthened National Security Council appointing in majority by military members. The decisions of the Council should be given priority attention by the Council of Ministers, in that way rendering such decisions binding if not in theory, at least in practice. A last tutelary institution was the Board on Higher Education (YÖK) that was designed to organize universities and keep them under strict discipline of the military-dominated secular state.[244] Parallel to the social and political developments following the restoration of democracy, the Constitution was amended eight times (in 1987, 1993, 1995, twice in 1999, 2001, 2002, and 2004), sometimes radically. The general directions of these amendments were to improve the protection of fundamental rights, to strengthen the rule of law, and to limit the military's prerogatives in government. In addition, to these constitutional amendments, a large number of ordinary laws were also modified in the same direction. Particularly noteworthy are the so-called "harmonization laws" that were passed between February 2002 and July 2004 in nine reform "packages." Of particular relevance has been the "National Program for the Adoption of the EU Acquis on 19 March 2001". The Program promised to take necessary measures for the effective implementation of the universal norms set by the EU acquis and practices in EU member states, giving priority to constitutional amendments. The most radical and comprehensive one was that of 2001, which involved changes to 34 articles, followed by the 1995 amendment, which amended 15 articles, and 2004 that changed 10. In all these cases, the amendments were adopted through comprehensive inter-party agreements in parliament, since in none of them a single party held the two-thirds majority of the parliamentary seats required for the adoption of a constitutional amendment without a popular referendum.[245]

242 Genckaya, O.F. (2008), Politics in Constitutional making in Turkey , ECPR Joint Workshops 11-16 April 2008 Rennes

243 Ozbudun, E. (2007), Democratization Reforms in Turkey 1993-2004, Turkish Studies Vol. 8, No. 2, 179–196

244 Ozbudun. E. (2012) Turkey's search for a New Constitution http://file.insightturkey.com/Files/Pdf/insight_turkey_vol_14_1_2012_ozbudun.pdf

245 Supra Note 230,p.88

The constitutional crisis of Turkey took on an acute form starting from the spring of 2007, caused by the conflict over the election of a new President of the Republic. Article 102 of the Constitution in force at that time had foreseen four parliamentary rounds for the election of the President. The decisional quorum was two-thirds of the full membership of the Assembly on the first two rounds and the absolute majority of the full membership on the third and fourth rounds, a minimum of 367 and 276 votes, respectively. The AKP party was able to elect its own candidate on firth and fourth round. As a result of this deadlock, the parliament decided to call new elections, as required by the Constitution. At the same time, the AKP majority in parliament, with the support of a minor opposition party, ANAP (the Motherland Party), amended certain articles of the Constitution shortening the legislative period from five to four years, and providing for the popular election of the President for a maximum of two five-year terms. The amendment was approved by referendum on October 21 with a 68.95 percent majority with a turnout rate of 67.51 percent.[246] The period starting from the so-called "367 crisis" can indeed be characterized as a series of "constitutional battles". The two other peak points of this battle were the annulment by the Constitutional Court of the constitutional amendment concerning article 10 and 42 of the Constitution. The first amendment aimed to abolish the headscarf ban on female students by changing the article. Article 10 on equality adding the phrase "in the utilization of all kinds of public services", and adding a new paragraph to Article 42 on the right to education that runs as follows: "No one shall be deprived of his/her right to higher education for any reason not explicitly specified by law. The limits on the exercise of this right shall be regulated by law". The amendment was supported not only by the AKP deputies, but also by those of the ultra-nationalist MHP (Nationalist Action Party), the Kurdish Nationalist DTP (Democratic Society Party), and some independents, and adopted by a record-high majority of 411 votes.[247] The amendment was brought to the Constitutional Court by the CHP (Republican People's Party) and DSP (Democratic Left Party) deputies. The CHP pointed, in its submissions, to the explicit reference to the headscarf ban in public debates concerning the amendments; the failure of the AKP and the MHP to seek constitutional conciliation with those in the parliamentary minority opposing the amendments; the conformity of the headscarf ban itself with the requirements of constitutional Kemalism; and sociological claims that the wearing of headscarves in universities would lead to social pressure on non-head scarves women posing a threat to the constitutional values of public order and national solidarity. The CHP's submissions also referred to the decisions of the European Court of Human Rights that upheld headscarf bans in educational institutions.[248] On March 2008, the Chief Public Prosecutor of the Court of Cassation started prohibition proceedings against the AKP. He claimed that the AKP had become a focal point of anti-constitutional activities intended to undermine the secular character of the

246 Supra Note 243

247 ibid

248 Bâli, A.(2013) Courts and constitutional transition: Lessons from the Turkish case, International Journal of Constitutional law, Oxford Academic, Vol. 11 No. 3, 666–701, p.683

state. The chief prosecutor organized his argument in four categories: secularism as separation of religious and political affairs; secularism as individual religious freedom; secularism as a restriction on the exploitation of religion for political purposes; and secularism as a form of state regulatory power to protect religion. In each of these categories, he adduced evidence, through a compilation of public statements, that the AKP was engaging in activities and advocacy that would violate secularism. The use of religious expressions in public speeches, reference to the interests of religiously observant women, and arguments in favour of greater freedom from state regulation for religious institutions were all cited as evidence of anti-secular activities. In its defence, the AKP argued that the activities referenced in the prosecutor's case should be understood not as a threat to secularism, but as an equally valid interpretation of the requirements of secularism.[249] Even though a majority of the judges (six out of eleven) voted in favour of banning the party, the qualified majority (three-fifths or seven members out of eleven) required by the Constitution was not obtained. Therefore, the party was not banned, but ten members concluded that the AKP had become a focus of anti-secular activities, and decided to deprive it partially of state funding (a sanction also provided by the Constitution for less severe cases of violation).[250] The most important provisions of the amendment package in 2010 are those related to the composition of the Constitutional Court and the High Council of Judges and Public Prosecutors (HSYK). With regard to the Constitutional Court, the number of its judges was raised from eleven to seventeen, three of whom are selected by parliament from among candidates nominated by the Court of Accounts (two) and the presidents of the bar associations (one). Four members are directly elected by the President of the Republic from among all judges and public prosecutors, rapporteur judges of the Constitutional Court, practising lawyers, and high-level public administrators. The president also chooses three members from among three candidates nominated for each seat by the YÖK, three members nominated by the Court of Cassation, two nominated by the Council of State (the supreme administrative court) one nominated by the Military Court of Cassation, and one nominated by the High Military Administrative Court, again from among three nominees from each vacant seat. [251]

The novelty introduced by the constitutional amendment involves a limited role for parliament in the selection of the judges and an increase in the number of judges nominated by the YÖK. The First Judicial Reform Package, consisting of 33 articles and 4 provisional articles, was approved on 31 March 2011 as "Law No. 6217 on the Amendment of Several Laws for the Purpose of Accelerating the Provision of Judicial Services." The Second Judicial Reform Package, approved on 26 August 2011 with a government order carrying the force of law, was generally related to the structure of the Justice Ministry and the regulation of administrative judicial bodies. Twelve years since its rise

249 Ibid, p.689

250 Supra Note 243

251 Karakaya, N. and Ozhabes, H. (2013) Judicial Reform packages : evaluating their effect on the rights of freedom http://tesev.org.tr/wpcontent/uploads/2015/11/Judicial_Reform_Packages_Evaluating_Their_Effect_On_Rights_And_Freedoms.pdf

to power, Turkey's ruling Party AKP has focused its attention to the implementation of a "grand project", planned to boost AKP's, its leader's and Recep Tayyip Erdoğan's dominance in Turkish politics. This "grand project" is the adoption of a new constitution, which will establish a presidential system of government. Since his election, as President of the Turkish Republic, Erdoğan continuously seek new political allies in order to gain and gather support for a new constitution. One potential ally could be the Kurds. Alternatively, nationalists could also help Erdoğan re-affirm his own dominant role in Turkish politics.[252]

In Turkey, the president is the head of state, but it remains largely a symbolic position. It includes the power to send legislation back to parliament, to appoint judges to the constitutional court and install university presidents. The president is the commander-in-chief of the armed forces, and can call meetings of parliament. The "grand project" of the AKP's Party is the adoption of a new constitution, which will establish a presidential system of government. AKP's first attempt to amend the Turkish constitution came right after the 2007 parliamentary elections, when AKP won an impressive 46% share of the votes. Erdogan personally tasked a group of academics (liberal in thought) to prepare a draft constitution. Indeed, Erdoğan's team produced a liberal constitutional draft, which cleared Turkey's political turmoil of that period. In 2011 parliamentary elections, AKP won some 50% of the votes but failed to win the necessary three-fifths majority in parliament (or 330 seats), which is the minimum requirement to call a referendum for constitutional amendment. Consequently, AKP joined a parliamentary "constitutional commission" along with three other parties. The commission managed to achieve consensus in some issues, but engaged into bitter discussions and disputes on other issues, like the definition of "Turkish Citizenship". Political tensions have further escalated in response to Prime Minister Erdogan's declared interest in devising a new division of powers between the judiciary, legislature, and executive. Under AKP's plan, a separately elected president rather than prime minister dependent on the confidence of the Parliament would be responsible for running the state on a day-to-day basis. A powerful president, in the government's narrative, signifies a democratic solution to the problem of political instability that will sooner or later return to Turkey. AKP also plans to reshape the institutional structure and jurisdiction of Turkey's judiciary. The changes would centralize different quasi-independent higher courts under a Constitutional Court that will have a more limited power of judicial review. The most contentious element, however, has been AKP's suggestion that the empowered president should appoint nearly half of the justices without any oversight of the Parliament.[253]

After the failed Coup, the Government worked more intensively on the proposal of the Constitution's reforms. Turkey's ruling Party AKP and the Nationalist Movement Party (MHP) have reached agreement on a constitutional amendment that seeks to introduce an executive presidency in Tur-

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252 Ibid
253 Aslan, A. (2013). "Turkey's Growing Constitutional Conondrum, Open Democracy", 22 March 2013, https://www.opendemocracy.net/aslan-amani/turkeys-growing-constitutional-conundrum

key. The AKP lacks a qualitative majority for directly amending the constitution but has the opportunity to take it to referendum if 330 lawmakers vote "yes" on it. The AKP needs an additional 14 votes to reach 330. The MHP has 40 seats in Parliament.[254] New 18 articles have been draft by a parliamentary commission. The parliament has approved every amendments, each passed with more than 340 votes and the whole package of Constitutional Reforms. The referendum after a total of 339 votes will be held in early April.

The reforms concern: (a)The prime minister's office and the cabinet will be abolished; (b)The president will become the head of the executive branch and will be allowed to issue decrees: (c)The president will be allowed to retain ties to a political party;(d)The presidential and parliamentary polls will take place simultaneously, every five years; (e)The parliament will lose its right to interpellation; (f)The president will have criminal liability resident will have criminal liability.[255]

To better understand the changes it is necessary to analyse the most controversial changes in light with the 1982 Constitution.

Article 1 changes from "Judicial power is used by independent courts on behalf of the Turkish nation" to "Judicial power is used by independent and impartial courts on behalf of the Turkish nation" to underline the impartiality of the Courts.

Article 2 changes from "The Turkish Grand National Assembly (Parliament) consists of 550deputies elected in general elections" to "The Turkish Grand National Assembly consists of 600 deputies elected in general elections" The growth in the number of deputies is explained by the AKP as necessary to ensure the representation of the growing population.

Article 4 changes from "General elections for deputies in Parliament are repeated every four years" to "Parliamentary and presidential elections are repeated every five years on the same day. If there is not a sufficient majority for the president to be elected, a second election will be conducted." This new measure will allow holding both parliamentary and presidential elections on the same day and every five years.

Article 5 changes from" The authority and responsibilities of Parliament are listed in the article, including changing and lifting these responsibilities, and the monitoring of Cabinet, ministers in the Cabinet, giving the Cabinet the authority to introduce statutory decrees, and monitoring budget-related drafts." to " Parliament's authority to inspect the executive body and the authority to introduce statutory decrees is lifted. Also, the description "draft" in the budget related sentence is changed to "motion." This amendment removed the monitoring power of the Parliament as well as the authority to pass statutory decrees.

254 Turkish Minute https://www.turkishminute.com/2016/12/08/akp-mhp-agree-constitutional-draft/ (accessed 20 January 2017)

255 Al Jazeera http://www.aljazeera.com/indepth/features/2017/01/turkey-constitutional-reform-170114085009105.html (accessed 20 January 2017)

Article 6 changes from "The article gives authority to Parliament to monitor things through questioning, parliamentary research, motion of censure/confidence-voting and parliamentary inquiry. It also provides information on what should be discussed during general debates in Parliament." to "With the new amendment, Parliament is authorized to do parliamentary research on a specific topic and can hold general debates. It also allows members of Parliaments to ask written questions. It also prohibits any representatives of the executive body joining general debates or parliamentary research". The no-confidence/motion of censure is removed from the article. In addition, general debates and media research will exclude members of the executive body.

Article 7 represent one of the most important proposal of Constitution change because concerns the election of the president under a new system of Government. "The president shall be elected from the members of the Turkish Grand National Assembly or among Turkish citizens who have the qualifications and qualifications to be elected as deputies. The term of office of the president is five years. One person can be elected president no more than twice. The president can be nominated by the written proposal of 20 deputies. In addition, political parties, whose votes together passed the percent threshold in the last parliamentary general elections, may show a common candidate. When the president is elected, his relation with his party is disengaged and his membership in the assembly ends". The new article provides: "The president is directly elected by the public among those who have attained 40 years of age, have completed higher education and have the right to be elected deputies and are born Turkish nationals. The term of office of the president is five years. One person can be elected president no more than twice. At least 1,000,000 voters or political parties that have received at least 5 percent of the total votes alone or together in the most recent general elections can make a nomination for the presidency".

Article 8 changes from "The prime minister is the head executive in the current system. Ministers chosen by him are offered a vote of confidence and approved by the president" to "The president appoints vice presidents and ministers and cease their duties. Also, if he deems it necessary, he makes an opening speech in the Turkish Grand National Assembly. He may give a message about the country's internal and external politics, issue laws and will send laws back to the assembly for review". In the new system, the president becomes both the head of the State and the head of the executive.

Article 9 changes from" Judicial authorities, including the Constitutional Court, cannot be resorted to against decisions and orders personally prescribed by the president. The president can only be sued for treason and can be founded guilty by a three-fourths majority." To "The assembly will discuss the proposal within one month at the latest and may decide to open an inquiry for any crime by secret ballot by a three-fifths majority" It will bring liability to the president

Article 14 changes from "A law regarding the Supreme Board of Judges and Prosecutors. The board consists of 22 original and 12 substitute members. It has three chambers. Members are elected by

judges and prosecutors themselves. Undersecretary of the Justice Ministry is among the original members" to "The new name of the board is the following: Board of Judges and Prosecutors. The number of board members decreases to only 12 members. The number of chambers is down to two. Five members of the board are selected by the president and six of them by Parliament. The remaining member is the Justice Minister. The Undersecretary of the Justice Ministry is not among the original members".[256]

The proposed constitution is expected to lead to the creation of the posts of vice presidents and the abolition of the office of prime minister. There would no longer be a formal cabinet but there would be ministers, whom the president would have the power to appoint and fire.[257] Constitutional Law expert Hikmet Sami Turk spoke about whether the proposal would strengthen the legislative and executive organs, like the AKP and MHP claim. Turk says the proposal "will weaken the parliament" and draws attention to the fact that the parliament will not have any authority to call for a vote of confidence or set up inquiry commissions. The proposed amendment will give the president the power to make legislation as well as the power to veto. Constitutional Law expert Ergun Ozbudun also said that the claim of "legislative and executive organs being strengthened" had no foundation at all. "What we have here is the weakening of legislation while the president, with full executive powers, forms a parliament under his influence".[258]

Levent Korkut, a law professor for Istanbul's Medipol University, said that the proposed constitutional amendments are designed in a way that could "weaken" the system. "Of course it is impossible to say that the proposal is getting rid of the system of checks and balances completely," he said. "But it is also impossible to say that [the system of checks] is as strong in the draft proposal as it would be in a classic parliamentary system or an American-style executive presidency, since it allows the president to also act as the leader of a political party". While Mehmet Ucum, the principal judicial consultant to President Erdogan, told Al Jazeera that the experts' concerns about the system of checks are "completely unfounded".[259]

Experts also pointed out that the proposed amendments abolish the parliament's right to interpellation and any other kind of practical audit power it has over the executive branch. Under the proposed draft, impeachment proceedings against the president can be started by the signatures of 301 deputies in the proposed 600-seat parliament. Following this, the parliament is able to set up a commission of inquiry by secret ballot of 360 deputies .If the inquiry commission decides to send the president to the Supreme Court to face trial, the president could only be tried after another

256 Daily Sabah http://www.dailysabah.com/legislation/2016/12/31/comparison-of-1982-constitution-to-changes-offered-in-new-package (accessed on 20 January 2017)

257 The Guardian https://www.theguardian.com/world/2017/jan/09/turkish-parliament-controversial-new-constitution-recep-tayyip-erdogan (accessed on 20 January 2017)

258 Deutsche Welle http://www.dw.com/en/law-experts-criticize-turkeys-proposed-constitutional-amendment/a-36764121 (accessed on 20 January 2017)

259 Supra Note 254

secret ballot of 400 deputies. "This system makes it practically impossible for the parliament to impeach and unseat the president," Korkut said. "To be able to take action against the president and his ministers, the parliament needs a two thirds majority, and this is practically impossible if the majority in the parliament and the president are from the same party".[260]

While the AKP and MHP claim that the proposed amendments will provide judicial impartiality, Metin Feyzioglu, head of the Turkish Bar Association states that this is not true at all and draws attention to the proposed member selection system for the Supreme Board of Judges and Prosecutors (HSYK). According to the proposal, the president will appoint half of the members, while the parliament will appoint the other half. Feyzioglu says, "This is a system that will finish judicial integrity and sovereignty".[261]

The draft of the Constitution package is the result of a strong internal instability created by the PKK, the Gulenists and the Islamic State and reflects the increasingly authoritarian methods of AKP. The new Constitution package has received critics from the opposition parties, lawyers and also the international community.

3.4 Who will face aggravated life imprisonment?

With the aim to answer this research question some issue need to be taken in consideration: the change of prison system and the industry that has been created during the years behind it. It must be also considered the effects of the state of emergency have not only from a legal point of view but also the consequences that it has on the population. In this section will be analysed who may be sentenced to aggravated life imprisonment after the Coup of 15th of July 2016. In the last decade, another important change characterized also the structure of the prisons. The Turkish government, following the USA system, decided to build several detention facilities, creating prisons "towns" with everything necessary for the life of the guards and their families. Since the 1990s more and more small prisons are closed, from the former 500 to 355 in 2014. This is the outcome of the policy of the Government. During the years it has closed the small prisons and build campus type prisons.[262]

In January 2014 the Ministry of Justice affirmed that goal of the Government is to create enough prisons to have the capacity to accommodate 250.000 prisoners until the end of 2017. Mustafa Eren, a researcher of TCPS stated that "The construction of these amounts of prisons represent a social engineering of the State. In Turkey, there was a schedule. They do not build new prisons to respond to an increase in the number of prisoners, but the opposite". In addition, the building

260 Ibid
261 Supra Note 257
262 Eurostat http://ec.europa.eu/eurostat/statistics-explained/index.php/Crime_trends_in_detail (accessed on 20 January 2017)

of these new prisons enriches those who works in the public construction. In 2013 and 2014 the Government Expenses for the prisons was respectively 2.052.963.466 and 1.863.160.961. Indeed, Tayfun Koc (TCPS), after a research on work in prison, affirmed that "The Turkish prison administration in 2015 has "rented" the services of about two thousand prisoners to private companies. Their work brought 325 millions Euros to the State while the total amount of the salary of the prisoners is 6.8 millions. Ironically, this revenue issued for the building new prisons". Another element to consider in order to have a clear overview of the Turkish prison system is to analyse the type of prisons that have been constructed in the last years. The building of the D, F, L and T-types prisons represent the intention of the Government to increase the number of high security prisons. According to Mehmet Metiner, from the ruling Justice and Development Party (AKP) and President of the parliamentary sub-committee for prisons, "in the last years has been a proliferation of the criminality". Beyond the criminality he affirmed that there is the hand of terrorism.[263]

The Turkish government have begun a major prison reform programme, and as part of this, 10 new prisons were constructed during the period October 2013 to September 2014. It is planned that 194 new prisons which conform to international standards will be in service by 2017.[264] In October 2016 the number of prisoners reached 189.000. It shows how the situation dramatically changed after the failed Coup.[265]

Afterwards, the 20 of July the Council of Ministers assembled under the chairmanship of the President declared a state of emergency with the consultation of the National Security Council. This decision has been ratified a large majority by the Turkish Grand National Parliament. The State of emergency is declared under the article 120 of the Turkish Constitution In the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence. Indeed, according to this article the State of emergency cannot exceed the period of six months.[266]

Indeed, the Article 15 of the Turkish Constitution states: "In times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated. (As amended on May 7, 2004; Act No. 5170).

Similarly, Article 17 states: "Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence" but the "state of emergency does not fall within the scope of

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263 Mediapart https://www.mediapart.fr/biographie/nicolas-cheviron (accessed on 20 January 2017)

264 Country Information and Guidelines: Turkey https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503721/CIG_-_Turkey_-_Prison_Conditions.pdf

265 General Directorate and Detention Houses http://www.cte.adalet.gov.tr/

266 Art. 119-120- 121 https://global.tbmm.gov.tr/docs/constitution_en.pdf

the provision of the first paragraph." Article 18, for instance, prohibits forced work and labour, unless there is a state of emergency. The article clarifies that "during a state of emergency, any physical or intellectual work necessitated". Article 19, which concerns liberty, security, and detention times, states that "the person arrested or detained shall be brought before a judge within forty-eight hours and in case of offences committed collectively within at most four days".

In October, Turkey extended the State of emergency by 90 days, it will last until January 2017. This is the first time that this measure involve all the national territory. In the past it has been already adopted but only in the southeast region with the majority of the Kurdish Population such as Diyarbakir and Sirnak.[267] Turkey has issued a decree paving the way for the conditional release of 38,000 prisoners in an apparent move to make jail space for thousands of people who have been arrested after last month's failed coup. The decree allows the release of inmates who have two years or less to serve of their prison terms and makes convicts who have served half of their term eligible for parole. Some prisoners are excluded: people convicted of murder, domestic violence, sexual abuse or terrorism and other crimes against the stat have been released to make room for alleged coup plotters. The Turkish government declared a state of emergency and launched a massive crackdown on Gülen's supporters.[268] For instance, 3,000 members of the judiciary, including 1,481 judges, have been suspended. These arrests, suspensions, and firings-now dubbed the purge-affected close to 60,000 people across many institutions: from security to education to religion to intelligence.[269] The political and social aftermath of the coup attempt that took place on the 15th of July 2016 in Turkey illustrates how a single event can be the cause of a stark shift in the existing legal regime and in notions of legality. The most important factor is that it gives power to the cabinet, which meets under the president, to issue decrees by the power of law. It cannot be challenged by applying to the Constitutional Court and therefore cannot be annulled. This means they are devoid of judicial control. The only control mechanism over the state of emergency is parliament, but there the government holds a majority. Governors are given extra authority.[270] Turkey experienced in 1960, 1971, 1980, and 1997.The legality of the previous coups most importantly relied on Article 35 of the Armed Forces Internal Service Law that stated. "The duty of the Armed Forces is to protect and safeguard the Turkish homeland and the Turkish Republic as stipulated by the Constitution". The Turkish army saw itself as an overseeing authority that was socially, politically, and economically a vital part of the country. During the 1990s, however, there was a shift in the social perception of the army, which was the result of four important social dynamics: the growth of political Islam,

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267 The Guardian https://www.theguardian.com/world/2016/aug/17/ (accessed on 20 January 2017)

268 A Blank Check: Turkey's Post-Coup Suspension of Safeguards Against Torture, 24 October 2016 https://www.hrw.org/report/2016/10/24/blank-check/turkeys-post-coup-suspension-safeguards-against-torture (accessed on 20 January 2017)

269 BBC http://www.bbc.com/news/world-europe (accessed on 20 January 2017)

270 Hurriyet Daily news http://www.hurriyetdailynews.com/state-of-emergency-enables-turkish-govt-to-rule-by-decree-without-control-mechanisms.aspx?pageID=238&nID=102029&NewsCatID=341 (accessed on 20 January 2017)

the Kurdish insurgency in the south-east, neoliberal reforms to secure ore civilian control of the military and the process of membership within the EU. accession process. However, total civilian control of the military was not possible until the AKP came to power in 2002.[271]

From 2002 until 2007, Erdogan cited the EU talks and the ascension process as reason to introduce reforms that placed the military more firmly under civilian leadership.[272] The most important reform came in 2013, when Article 35 of the Turkish Armed Forces Internal Service Law was amended in the parliament. Until then, the law stated: "The duty of the Armed Forces is to protect and safeguard the Turkish homeland and the Turkish Republic as stipulated by the Constitution".

Moreover, the article defined military service as: "Responsibility to learn and conduct the art of war in order to protect the Turkish homeland, independence and Republic".

After the amendment in 2013, Article 35 became: "The duty of the Armed Forces is to protect the Turkish homeland against threats and dangers to come from abroad, to ensure the preservation and strengthening of military power in a manner that will provide deterrence, to fulfil the duties abroad with the decision of the Parliament and help maintain international peace".

And military service was redefined as: "The responsibility to learn and conduct the art of war". Over the years, thanks to the politic put forward by the AKP, within the society has grown the anti-militarism sentiment. This explains the hostile reaction by the public to the July 15th failed coup attempt and the strong measures applied by the Government. On July 22, the Turkish government notified the Council of Europe that it was "derogating" from that is, temporarily imposing extraordinary limitations on the guarantees under the ECHR, to which Turkey is a party. It did not, however, specify from which provisions of the convention it was derogating.[273] "In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law".[274] The article affirms also "It is not possible to derogate from the prohibition on torture under the European Convention or other human rights treaties." Moreover, with a decision effective from August 2, Turkey also derogated from the ICCPR by invoking an article of the convention which similar to the article included in the European Convention - permits temporary relaxation of the conditions of the convention at times when there is a "threat to the life of the nation. In this process, measures taken may involve derogation from obligations under the International Covenant on Civil and Political Rights regarding Articles 2/3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27, as permissible in Article 4 of the said Covenant.[275]

271 ibid
272 Freedom house, https://freedomhouse.org/report/freedom-world/2005/turkey (accessed 20 January 2016)
273 Notification JJ8187C Tr./005-191, dated July 22, 2016 available at: https://wcd.coe.int/com
274 Art. 15 ECHR http://www.echr.coe.int/Documents/Convention_ENG.pdf
275 Reference: C.N.580.2016.TREATIES-IV.4 (Depositary Notification) https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf

Of particular concern was that Turkey announced it was derogating from the ICCPR articles on the right to a remedy (article 2(3)) humane treatment of detainees (article 10).It must be said that the Human Rights Committee that oversees compliance with the ICCPR has made clear that the two articles cannot be subject to derogation in any circumstance.[276] Two articles in the decree law that was published in 23rd of July, however, need further scrutiny. In the second chapter of the decree law number 667, which regulates the "the precautions regarding the application of state of emergency", Article 9 of the decree law 667 states: "In the scope of this decree law, those individuals who have made decisions and followed orders cannot be managerially, financially, or criminally punished because of their duties." Article 10 states: "In the lawsuits against the procedures and decisions made in the scope of this decree law, [those procedures and decisions] cannot be held from being executed." Moreover, Article 148 of the constitution reads "however, decrees having the force of law issued during a state of emergency, martial law or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance".[277] The emergency decree 668 the public prosecutor can deny a detainee the right to see a lawyer for up to five days. The period of custody without judicial review to a maximum of 30 days, and the period without access to a lawyer to a maximum of five days. Furthermore, the confidentiality of the exchange between inmates suspected of terrorist crimes and their lawyers is denied through systematic monitoring. Indeed, Law 6722 passed by the Turkish Parliament grants counter-terrorism forces immunity from prosecution for acts carried out in the course of their operations, thus rendering investigations into allegations of torture and ill-treatment by the involved security forces more difficult, if not impossible. The situation was further compounded with the adoption of the emergency laws and their application also in the South East.[278]

Moreover, the conditions in police lock ups are not adequate, noting that holding cells, currently keeping individuals for up 30 days without any access to fresh air, are not suitable to detain anyone for more than 48 hours. The extensive legislative measures that have been adopted after the failed Coup reflect also the shock of the state authorities for the events happened and the preservation of the state's integrity and security of the national institution. The sweeping security measures taken by the Government in response to the failed coup of 15 July 2016 seem to have resulted in a general sense of intimidation and distrust in many segments of the population, preventing not only inmates and their families, but also civil society, lawyers, and doctors from initiating or participating in any procedure that may be perceived rightly or wrongly as opposing or criticizing the Government and its officials.[279]

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276 Human Rights Committee, General Comment No. 29, paras 13 (a) and 14, CCPR/C/21/Rev.1/Add.11, August 31, 2001 available at : http://tbinternet.ohchr.org

277 Erol, A. (2016) Legality and Power: the 2016 Turkish Coup Attempt and the State of Emergency, Journal of the Oxford Centre for Socio-Legal Studies, 2016 Issue 1, University of Oxford

278 UN ,Special Rapporteur on Torture and other cruel inhuman and degrading treatment or punishment, Official Visit in Turkey, 27 November-2 December http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20976&LangID=E

279 ibid

Although Turkey has according to law the right to defend the State Authority and the national territorial integrity as well as to protect its citizens from the political overthrown and the acts of violence. If act of terrorisms and military coups can never be justified there is also no justification in the use of torture or inhuman and degrading treatment or punishment for those that are in detention. The violence used against the "plotters" and those considered as culprits represent the deviation from the national law. The legislative measures adopted after the failed Coup and the consequent conditions of detention and allegation cases of torture and ill treatment have worried the international community. In fact, a delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment carried out an ad hoc visit to Turkey from 29 August to 6 September 2016. The purpose of the visit was to examine the treatment and conditions of detention of persons who have been detained in connection with the recent military coup attempt. To this end, the delegation interviewed in private several hundred persons in various prisons and police establishments in the Ankara, Istanbul and Izmir areas.[280]

The CPT's report have been transmitted to the Turkish State's authorities in November 2016 and it will require some time to have the report public. Indeed, also the Special Rapporteur on Torture and other cruel inhuman and degrading treatment or punishment has visited Turkey from the 27th of November until the 2nd of December. Human rights watch also draft a Report concerning the post - Coup in Turkey and the treatment of detainees. Lawyers, medical personnel, recently released detainees and family members of detainees described to Human Rights Watch 13 cases of torture and ill-treatment of detainees to varying degrees of severity. The cases of abuse documented by Human Rights Watch include allegations of the use of methods ranging from stress positions and sleep deprivation to severe beating, sexual abuse and threat of rape. They described how people were brought before prosecutors for interrogation with their shirts covered in blood. Interviewees also said that based on what detainees told them police deprived them of food for up to three days and water for up to two days. Eight of the cases describe abuse that took place in the immediate aftermath of the failed coup attempt before the emergency decrees were published. Some provisions and practices appear designed to deliberately make it more difficult to corroborate allegations of torture. For example, the practice of denying detainees and lawyers access to the reports from medical examinations done during and after detention. It appears to have no legitimate justification, but makes it harder to corroborate allegations of abuse.[281]

In a joint statement, Helsinki Citizens Assembly, the Human Rights Association, the Human Rights Research Association, the Human Rights Agenda Association, and Amnesty International Turkey expressed concern about the suspension of key safeguards against torture and ill-treatment.

280 European Committee for the Prevention of Torture and Inhuman or degrading treatment of treatment or punishment http://www.cpt.coe.int/documents/tur/2016-09-07-eng.htm

281 Human Rights Watch, Turkey's Post-Coup Suspension of Safeguards Against Torture , October 2016 https://www.hrw.org/report/2016/10/24/blank-check/turkeys-post-coup-suspension-safeguards-against-torture

The president of the Adana Bar Association expressed concerns about reports of negative treatment of lawyers by the police as they attempted to discharge their professional duty to offer legal counsel to detainees and reminded the Ministry of Justice of the principle of the right to legal representation for all suspects. The Adana bar association president also criticized some of the provisions of the emergency decrees and said the bar association had received reports of violations. [282]

The information gathered in a contest of torture and ill treatment or arbitrary trial will not help to identify those that have responsibility for the overthrown of the national institutions. The only way to establish the truth is to apply the national law and to fulfil the international standards even in this difficult framework that Turkey is leaving nowadays. As already examined in the Chapter III, those involved in the failed Coup committed the following crimes under the Turkish criminal Code are: Crimes against the security of the State (Articles 302, 303, 304, 307 and 308) and Crimes against constitutional order and its operation (Articles 309 to 315). With 41,000 coup suspects under arrest and the country still in a state of emergency, the trials of the accused are expected to be the most far-reaching legal process in Turkish history. Istanbul prosecutors are seeking three times aggravated life sentences for 90 soldiers who allegedly tried to occupy the Istanbul governor's building during the July 15defeated coup. The Istanbul Chief Prosecutor's Office prepared and sent the indictment for the 90 soldiers, 12 of them already in custody. In the indictment, the soldiers are accused of subverting the constitutional order through violence, being members of an armed terror group, and conducting activities on behalf of the FETÖ terrorist organization without being a member.[283]

In addition, 62 members of the Turkish Military Forces (TSK) face aggravated life terms in the first indictment drafted by prosecutors in Istanbul against military officers involved in the July 15 coup attempt blamed on FETÖ. The indictment, presented to a court following its approval by the chief prosecutor's office Monday, pressed charges against soldiers involved in an attempted takeover of the Sabiha Gökçen Airport on the Asian side of Istanbul. The unidentified defendants from different ranks of the armed forces, include 28 arrested for the putsch attempt. They are charged with "attempt to overthrow constitutional order and replace it with another order by force". The charges, usually brought against terror suspects and those involved in coups, can carry lifetime imprisonment in solitary confinement. Last month, an Istanbul court accepted the first indictment on the coup attempt in which 29 police officers were accused of aiding pro-coup forces. The police officers face lifetime imprisonment for helping the pro-coup soldiers and efforts to break public resistance. Defendants disobeyed orders to stop the coup plotters and some even cheered it, the indictment said.[284] Five months after the coup, small-scale trials of suspects have already begun in the provinces and 60 people went on trial in the south-western city of Denizli.[285]

282 Anadolu Agency http://aa.com.tr/en/todays-headlines/aggravated-life-sentences-sought-for-coup-tied-soldiers/706406 (accessed on 20 January 2017)

283 Ibid

284 Daily Sabah http://www.dailysabah.com/investigations/2016/11/29/officers-linked-to-fetos-july-15-coup-attempt-face-life-imprisonment-1480364299 (accessed on 20 January 2017)

285 Dawn http://www.dawn.c om/news/1304927 (accessed on 20 January 2017)

Two commanders in the eastern province of Erzurum were sentenced to aggravated life sentences on Jan. 5 over the failed July 2016 coup attempt, marking the first conviction in the case. The Erzurum 2nd high criminal court separately sentenced then-Erzurum Gendarmerie Region Command Chief of Staff Col. Murat Koçak and Operations and Public Order Department Chief Staff Maj. Murat Yılmaz to aggravated life sentences on charges of "violating the constitution," an accusation they denied. Meanwhile, in another ByLock operation, an Istanbul court ordered on Jan. 5 the arrest of 44. The ByLock, an encrypted messaging application said to have been used by members of the Gülenist movement by U.S.-based Islamic preacher Fethullah Gülen. soldiers. While in another leg of the Gülenist probes, Ankara prosecutors on Jan. 5 issued detention warrants for 105 wives of military personnel on suspicions that they played a role in the coup attempt and for being members of the movement.[286]

It must be said that the arrests after the failed Coup have involved also those considered members or those that according to the State are making propaganda for the PKK. An indictment prepared by the Istanbul Chief Public Prosecutor's Office has demanded aggravated life sentences for a total of nine suspects, including novelist Aslı Erdoğan and linguist Necmiye Alpay, on terror charges as part of an investigation into columnists and managers of closed daily Özgür Gündem. According to the indictment, Özgür Gündem's editorial policy aimed at "changing the republic's characteristics and its political, judicial, social and economic order, disrupting the unity of the nation, jeopardizing the republic's entity and seizing the authority of the State".[287] An aggravated life sentence in addition to 48 years in prison for two separate crimes is being sought for HDP deputy Tuğba Hezer Öztürk on terrorism charges. The Van Chief Public Prosecutor's Office has completed an indictment against Öztürk in which the deputy faces charges of membership in an armed terrorist organization, disrupting the unity and integrity of the state and disseminating the propaganda of a terrorist organization in speeches she made on various occasions and for attending the funeral ceremony of an outlawed Kurdistan Workers' Party (PKK) militant in 2015.[288]

The trials after the failed Coup has just started and considering the number of detainees it will take time to bring to the Court the culprits for the events that have signed Turkey in the last months. Not only the military or police officers the trials will involve different members of the society such as journalists, lawyers, professors and more in general a variegated composition of the intellectuals accused to be affiliated to the main two outlawed terroristic organisation, the FETO and the PKK. So far it seems that Turkey has started a path that lead to the deviation from the national law and

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286 Hurriyet Daily News http://www.hurriyetdailynews.com/two-commanders-given-aggravated-life-sentences-in-first-coup-conviction-.aspx?pageID=238&nID=108178&NewsCatID=509 (accessed on 20 January 2017)

287 Hurriyet Daily News http://www.hurriyetdailynews.com/indictment-seeks-aggravated-life-terms-for-novelist-asli-erdogan-linguist-necmiye-alpay-in-ozgur-gundem-probe.aspx?pageID=238&nID=106000&NewsCatID=5ssed 20 January 2017=09 (accessed on 20 January 2017)

288 Turkey Purge http://turkeypurge.com/aggravated-life-sentence-sought-for-pro-kurdish-opposition-deputy (accessed on 20 January 2017)

international standards. In an unprecedented response to Turkey's derogation of the convention, 19 UN experts and three UN working groups issued a joint statement reminding the Turkish government.[289]

"Being under the State of Emergency do not allow the government to have a carte blanche to derogate rights and obligations from which there is no derogation. Despite the difficult situation Turkey is living, all measures that should be put into force must apply to the law and above all the treatment of detainees should not be left under the power of prison's authorities. In September a decree also dissolved the prison monitoring boards. Although this mechanism was not effective their dissolution represent the total absence of a functioning national preventative mechanism with authority to inspect all places of detention".

Cases of torture and inhuman and degrading treatments have been denounced by the report of the Human Rights Watch and Amnesty International. The images of soldiers detained held in degrading conditions and some with visible injuries have been shared in the international media and raise the awareness of the public opinion about what was happening in Turkey after the failed Coup. Coup plotters must face justice but it must be kept in mind that they must be judged under the respect of the rule of law. Torture, death penalty in a State are abuse of rights. Afterwards the Coup the Government and the President Erdogan suggested to reinstating the death penalty as punishment for those found responsible for the Coup. "Our government will take this to parliament. I am convinced that parliament will approve it, and when it comes back to me, I will ratify it" Crowds at the ceremony to inaugurate a high-speed train station in the Turkish capital chanted: We want the death penalty!. As the sovereignty unconditionally belongs to the nation and as you request the death penalty [for the coup leaders], the authority which is going to decide on this issue is Turkey's National Assembly. If our parliament takes such a decision, the necessary step will be taken. I am expressing in advance, I will approve such a decision coming from the parliament".[290]

If Turkey reintroduces the death penalty, it will not be joining the European Union, according to EU foreign policy Chief Federica Mogherini. "Let me be very clear on one thing. No country can become an EU member state if it introduces [the] death penalty" Mogherini said. "It is understandable and legitimate for the Government to investigate and punish the responsible; [291] they must abide to the rule of law". Emma Sinclair-Webb, Human Rights Watch's Turkey director said: "Bringing back the death penalty in Turkey would be a shocking backward step at a time when most of the world is on a trajectory towards total abolition of a form of punishment unique in its cruelty

289 Statement from the UN experts http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394&LangID=E

290 The Independent http://www.independent.co.uk/news/world/europe/turkey-death-penalty-erdogan-coup-president-backs-capital-punishment-a7178371.html http://www.independent.co.uk/news/world/europe/turkey-death-penalty-erdogan-reintroduce-debate-consider-turkish-parliament-a7386591.html (accessed on 20 January 2017)

291 Euroactiv https://www.euractiv.com/section/global-europe/video/mogherini-on-turkey-no-country-can-become-an-eu-member-state-if-it-introduces-the-death-penalty/ (accessed on 20 January 2017)

and finality. Human Rights Watch opposes capital punishment in all cases. It is a punishment inevitably and universally plagued with arbitrariness, prejudice, and error. The death penalty is widely rejected by rights-respecting democracies around the world, including all 47 member countries of the Council of Europe".[292]

Austria wants the European Union to freeze membership talks with Turkey over Ankara's massive crackdown following the failed coup. Austrian Foreign Minister Sebastian Kurz said that the EU "must at least freeze the accession negotiations". This initiative is the outcome of the disproportionate repressive measures that has been adopted in Turkey after the failed Coup .The resolution proposed by Austria was approved by 479 votes to 37, with 107 abstentions. The procedure for suspending EU accession negotiations is set out in article 5 of the Negotiating Framework for Turkey. This stipulates that "in the case of a serious and persistent breach in Turkey of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded, the Commission will, on its own initiative or on the request of one. Third of the Member States, recommend the suspension of negotiations and propose the conditions for eventual resumption". The resolution voted by the European Parliament is not legally binding, because Parliament has no formal role in the initial triggering of such mechanisms, but it has to be informed once this has been done.[293]

3.5 Concluding remarks

The Turkish context is complex and difficult to explain in one chapter. The historical and constitutional excursus was necessary to explain what is happening in Turkey nowadays. More comprehensive conclusions on this chapter will be provided in the final conclusions of this MA Thesis.

292 The Independent http://www.independent.co.uk/news/world/europe/turkey-death-penalty-erdogan-coup-president-backs-capital-punishment-a7178371 (accessed on 20 January 2017)
293 Supra Note 277

CHAPTER IV

THE ROLE OF MONITORING: CEZA INFAZ SISTEMINDE SIVIL TOPLUM DERENGI

"Prisons are not the scandal. The scandal is that we are shocked and do nothing about it"
Nicolò Amato

4.1-Introduction – 4.2 Conditions of Turkish detainees, human rights standards and monitoring: state of the art - 4.3. The mechanisms of monitoring in Turkey – 5.4 Ceza Infaz Sisteminde Sivil Toplum Derengi – 4.5Way forwards – 4.5 Concluding remarks

4.1 Introduction

The role of monitoring represents an essential part in the protection and advocacy of human rights. Monitoring is a long and systematic process that involves the active collection, verification and the use of information to address human rights violations in the national or international mechanism of protection. If from one hand the monitoring help in improving the accountability of duty bearers in respect of the human rights, from the other is also useful to understand if the project that are put forward from the NGOs or international organization are achieving the targets that they previously set.

In this chapter I will focus on the monitoring mechanisms present in Turkey. I will examine the national mechanism set by law and the role of the Detention and Monitoring Board within the Turkish penitentiary system. Afterwards, I will analyse the role of monitoring from the perspective of a national NGO. Ceza Infaz Sisteminde Sivil Toplum Derengi will be my case study to highlight the work and the difficulties that an NGO faces in Turkey to protect prisoners' rights. Moreover, an overview of the conditions of Turkish detainees will be provided to have a clear vision of the main

challenges within the penitentiary system. To conclude will be presented some way forwards with the purpose to improve the monitoring system and raise awareness about prisoners' rights.

4.2 Conditions of Turkish detainees, human rights standards and monitoring: state of the art

Because of its record in poor prison conditions, Turkey attracted much criticism from the international community and has been subject of ad hoc country visits by the CPT. Prison conditions in Turkey vary widely, in some, despite progress, inadequate and serious concerns remain. For example in 2013 in three prisons in Antalya were reported the inhuman conditions faced by prisoners. Some of the shocking conditions included food containing insects, beatings, and full body cavity searches.[294] The main challenges to deal with are the harsh and overcrowded prisons and the access to health care.[295] In 2013, the CPT's delegation observed disturbing levels of overcrowding in some of the establishments visited, in particular at Gaziantep and Şanlıurfa E-type Prisons.[296] In its submission for the 2015 Universal Periodic Review of Turkey, the UN Country Team (UNCT) in Turkey noted that "Improved detention conditions and efforts to prevent overcrowding by enhancing the prison capacity as well as the adoption of a probation system are positive developments with regard to the reform of the prison system in Turkey".[297]

For what regards the health conditions of prisoners, Human rights associations expressed serious concern over the inadequate provision of health care to prisoners, particularly the insufficient number of prison doctors, although the Ministry of Justice and the General Staff emphasized that there were doctors assigned to each prison. The HRA reported that guards and doctors often treated inmates receiving medical care with hostility, particularly if inmates asked guards to leave the examination room or remove their handcuffs.[298]

For paralyzed inmates and those who are in wheelchairs, there is not enough equipment, such as special beds to avoid bruises or exercising materials. They also face difficulties when entering through the security gates.[299] Indeed, the Human Rights Foundation accentuates that the number of prisoners released because of their health problems remains very low. Chief prosecutors have

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294 Hurriyet Daily News, http://www.hurriyetdailynews.com/parliamentary-report-reveals-inhumane-conditions-in-turkish-prisons-.aspx?pageID=238&nID=59339&NewsCatID=339 (accesed on 10 December 2016)

295 Country Information and Guidance, Turkey: Prison Conditions https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503721/CIG_-_Turkey_-_Prison_Conditions.pdf

296 Council of Europe. '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 9 to 21June 2013,' dated 15 January 2015. http://www.cpt.coe.int/documents/tur/2015-06-inf-eng.pdf (Section C, paragraph 45)

297 United Nations. 'Universal Periodic Review of Turkey 2015 - UNCT Submission,' 2015 (paragraph 24). http://www.refworld.org/docid/54c109084.html

298 Supra Note 190

299 Eren, M. "Prisoners with Special Needs. Project Final Report", November 2013, Ceza Infaz Sisteminde Sivil Toplum Derengi(CISST, Civil Society in the Penal System)

discretion, particularly under the wide-reaching anti-terror law, to keep inmates in prison whom they deem dangerous to public security, regardless of medical reports confirming serious illness.[300]

During the years several human rights violations has occurred within the prisons such as arbitrary and ill- treatment, torture, disciplinary punishment and the preventing of meeting with lawyers. Complaints of ill-treatment by prison guards are reported, notwithstanding the fact that the number of such complaints has declined in recent years. However, the CPT also found a number of allegations of recent physical ill-treatment of juveniles by staff at some juvenile prisons.[301] Several episodes have been reported. In May 2013 renewed allegations of systematic ill-treatment and discrimination against children in the İzmir Şakran and Antalya prisons were voiced by civil society and members of Parliament[302]. In 2014, Forty-nine children have been subjected to torture in Turkish prisons while 64 have been tortured in police custody.[303]

Another issue that emerges is the lack of policies and law for prisoners with special needs (elderly prisoners, LGBTI, prisoners with health problems, disabled prisoners). It is also difficult to gather information about the number of these prisoners. Moreover, alternative penitentiary methods are not considered for all prisoners, especially for a prisoner with special needs it should be used as a last resort. This argument become more convincing if we consider that there are many examples in which, elder or disabled prisoners have been imprisoned for reasons such as illegal electricity usage, electricity or water bills.[304]

In fact, the number of Turkish prisoners is worrying if considered the increase of 340% we assisted since 2000. It passed from 49.512 prisoners to 159.396 in 2014, it means 205 prisoners for 100.000 inhabitants[305] while in April 2016 become 238 per 100.000.[306] In ten years Turkey has become the first European country to have the biggest prison population (excluding Russia), while worldwide it is the ninth place exceed only by the most populous countries such as The United States, China, Russia, Brazil, India, Mexico, Iran and Thailand.[307] In April 2016 the number of prisoners was 187. 609 distributed in 364 prisons[308] while the last data of October 2016 the num-

300 US Department of State. 'Country Report on Human Rights Practices 2014,' Turkey, dated 26 June 2015 (Section 1c. Prison and Detention Centre Conditions). http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236586

301 Supra Note 296

302 Supra Note 297

303 Hurriyet Daily News http://www.hurriyetdailynews.com/113-children-tortured-in-turkish-prisons-or-in-custody-in-2014-ngo.aspx?pageID=238&nID=74594&NewsCatID=339 (accessed 10 January 2016)

304 Supra Note 299

305 World Prison Brief http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=14

306 Supra Note 295

307 Internazionale http://www.internazionale.it/reportage/nicolas-cheviron/2016/11/04/turchia-carceri-sistema

308 World Prison Brief http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=14

ber reached 189.000 after the Coup d'état of 15 July 2016.[309] In the last years has changed also the number of crimes reported to the police. Whereas less homicides as well as vehicle thefts have been reported, while violent crimes rose dramatically. They involve violence against the person (such as physical assault, robbery (stealing by force or threat of force), hand sexual offences (including rape and sexual assaults). The drug offences also increased, drug trafficking implicates illegal possession, cultivation, production, supplying, transportation, importing , exporting and financing of drug operations. They are even more than tripled in the last years. The last element to analyse is the support that is given to prisoners during their period of sentence. In 2013 CISST reported that there were 167 psychologists, 281 social workers and 354 teachers working in prisons. This means that there is 1 psychologist for 811 prisoners, 1 social worker for 482 and 1 teacher for 382 students.[310] As emerged from several international reports , even if Turkey has taken some step forward in improving the condition , much more need to be done to fulfil the international standards.

4.3 The mechanisms of monitoring in Turkey

Human Rights Monitoring is the close observation of a situation or individual case. It involves research, investigation/fact-finding, documentation, analysis and reporting. This practice is undertaken to ascertain whether human rights standards are met in the domestic law.

Monitoring is a method of improving the protection of human rights. Its ultimate objective is to reinforce the State's responsibility to respect, protect and fulfil human rights. HROs can also play a preventive role through their presence. Monitoring the conduct of duty bearers reinforces their accountability. This should result in more "human rights-responsible" behaviour. In keeping with the concept of human rights monitoring, HROs actively collect and verify information on alleged human rights violations, engage with State authorities and other stakeholders to solve human rights problems and identify possible solutions to redress human rights situations by following the different steps of the monitoring cycle. The role of monitoring has several aims such as to help people, to have independent data and be reliable source for media, to compel the government to change the law or practice, to compel business to change practices, to show violations to the international community and to prepare reports to international bodies.[311]

In Turkey, in order to have humane prison conditions are needed an impartial and independent oversight mechanism. We need to bear in mind that the monitoring mechanism is not just the mere denounce of the prisons' negative aspects and deficiencies but it is an instrument that may identify the best practices not only in Turkey but also around the world allowing the different prisons to improve the general conditions. Within the Turkish penitentiary system the government plays an

309 General Directorate and Detention Houses http://www.cte.adalet.gov.tr/
310 CISST Source
311Basic Principles of Human Rights Monitoring, United Nations http://www.ohchr.org/Documents/Publications/Chapter02-MHRM.pdf

important role in the monitoring. The outcome of the reports drafted by state authorities generally do not provide detailed observations as well as do not denounce the human rights violations that may occur to inmates. In fact, the inspections carried out by the Parliament appear superficial. New predetermined criteria must be set by law to improve the prison-inspections. Focusing on a more detailed analysis we can affirm that in Turkey there are provided two mechanisms that have been given the authority to inspect prisons, the internal and external one.

Penitentiaries' internal oversight mechanisms include a special class of judges who oversee the execution of sentences (infaz hakimleri), public prosecutors, prosecutors responsible for penitentiaries, inspectors from the Justice Ministry, and auditors from the General Directorate of Penitentiaries and Detention Facilities. While the external mechanism includes Human-Rights Commission of the Turkish Grand National Assembly, the Turkey's Human-Rights Institute (Türkiye İnsan Hakları Kurumu), the Human-Rights Directorate reporting to the prime minister, provincial and sub-provincial Human-Rights Institutes, and prison monitoring boards.[312]

Prison monitoring boards were established in line with the recommendations of the European Committee for the Prevention of Torture on 14 June 2001 based on the Law on Penitentiary Penitentiary and Detention Facility Monitoring Boards passed the same year. The goal of these rules is to allow civil society to contribute to prison services; to have the areas of the system which are lagging identified by independent parties and evaluated according to objective criteria; to ensure administrative transparency; and to prevent possible violations of human rights.[313]

They have been established for every ordinary criminal justice commission (adli yargı adalet komisyonu) in order to observe the administration, methods, and operation of penitentiaries and detention facilities in situ; to collect information; and to present findings in the form of reports to the relevant authorities. The members of the monitoring boards are selected under the Law on Civil Servants No. 657. The monitoring board may visit the penitentiary for which it is responsible once every two months arranged by the Republican prosecutor. They may see convicts or detainees alone but also penitentiary officials and they can examine files and documents related to prisoners. The monitoring board notifies authorities about the faults and deficiencies noted within the penitentiary system. In addition, this body every four months release a report to the Ministry of Justice, the chair of the parliamentary Human Rights Commission and the Republican Prosecutor.[314]

This external mechanism of monitoring present some flaws that does not make it efficient. In fact, the monitoring board cannot make public the information gathered during the inspections. This

312 Mandiraci, B. (2015) Penal Policies and Institutions in Turkey: Structural Problems and Potential Solution http://tesev.org.tr/wcontent/uploads/2015/11/Penal_Policies_And_Institutions_In_Turkey_Structural_Problems_And_Potential_Solutions.pdf

313 Guidelines on Penitentiary and Detention-Facility Monitoring Boards http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5027&MevzuatIliski=0&sourceXmlSearch

314 Sopra Note 312

put a barrier to the independence and impartiality of the oversight mechanism. Indeed, being the reports of the inspection rarely shared it is necessary a more transparent approach to the issue.[315]

It might be more effective to have oversight conducted by an independent Prison Monitoring Board consisting of members of various NGOs with expertise and considerable field experience. In order to conduct independent and effective oversight, such a board ought to pay heed to the following principles: (a) operate in accordance with international standards and in the framework of international law outlined above Become institutionalized as an effective and independent actor in external oversight; (b) recognition of board members' right to meet with inmates upon request; (c) immediate sharing of monitoring reports with the public and thereby the establishment of a more transparent oversight mechanism. If NGOs take on more responsibility in the administration and monitoring of the penal system and penitentiaries, and if this more active role is supported by prison administrations and policymakers, then the humanitarian side of the penal system will be strengthened, the penal process will become more transparent, and the ties between a prison and the outside world or society will be strengthened as well. This will simultaneously help to re-socialize individuals both while imprisoned and after their sentence by helping to remove the negative associations society has with prisons and inmates. International reports has denounced that "the government did not allow NGOs to monitor prisons". Contrary, it allows prison visits by the EU, the Council of Europe's Committee for the Prevention of Torture, and UN bodies as well as provincial and local human rights councils. Indeed, it also permitted visits to individual foreign prisoners by representatives of their embassies and consulates. The European Commission's 2014 progress report noted that domestic monitoring boards could not carry out their inspections effectively due to insufficient resources, training, and expertise.[316] In addition, the UN Country Team (UNCT) in Turkey recommended that 'Further efforts are needed to strengthen standards of prison monitoring, reflecting the international standards promoted by the UN as well as ensuring that the capacity of prison monitoring boards and probation officers are improved.[317]

4.3 Ceza Infaz Sisteminde Sivil Toplum Derengi

As previously affirmed the role of the national NGOs in the penal system is essential. The contribution of NGOs is important not only in the results achieved but also for the optimism that people may feel about the defence of human rights in the world. NGOs are, in a very direct sense, tools that are available to be used by individuals and groups throughout the world. They are managed and co-ordinated, as many organisations are, by private individuals, but they also draw a large part of

315 Article 11 of the Guidelines on Penitentiary and Detention-Facility Monitoring Boards http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5027&MevzuatIliski=0&sourceXmlSearch

316 Supra Note 300

317 United Nations. 'Universal Periodic Review of Turkey 2015,UNCT Submission, 2015' (paragraph24). http://www.refworld.org/docid/54c109084.html

their strength from other members of the community offering voluntary support to their cause. The NGOs denounce the violations of human rights through letters writing campaigns, street actions and demonstrations, shadow reports and the use of social media. In addition to demonstrations of support or public outrage, NGOs may also engage in private meetings or briefings with officials.[318] The Turkish NGOs working in the field of penal justice encounter several barriers in reporting the conditions of prisoners. I will examine Ceza Infaz Sisteminde Sivil Toplum Derengi as an example of the work that can be made by the NGOs. Ceza Infaz Sisteminde Sivil Toplum Derengi (Civil Society Foundation in the Penal System, CISST) is a Turkish Ngo founded in 2006 upon an urgent need for an Ngo dealing specifically with the situation of prisoners. CISST is working together with both state authorities, members of the civil society and universities on different levels and bridging a gap in that matter. During the years CISST achieved considerable success in monitoring and lobbying over the enhancement of prisons.[319] The aim of CISST is to mobilize civil society support to bring Turkish prisons in line with the standards that ensure human dignity. This Ngo aspiration is to make prisons more transparent and to strengthen their links with civil society. Furthermore, they work to reduce the use of prisons by contributing to the implementation of alternatives sanctions and measures. These alternatives are restorative and encourage social reintegration while taking into account the needs of victims and the expansion of crime prevention measures. Prisoners are among the most vulnerable and disadvantaged groups in Turkey. Many of them are stigmatised and discriminated in several phases of their lives: before, during and after imprisonment. The Ngo face several difficulties in their work, from one side there is lack of interest of the Turkish civil society, authorities or universities on the operation of the penal system from the other the difficulty the lack of collaboration with the state authorities.

Despite this CISST continued in defending prisoners' rights creating the Turkey's Prison Information Network (THEA) to create a network of NGOs working on prison issue in Turkey. Furthermore, sub-networks work for prisoner with special needs: children, women, LGBTI, foreigner. Elderly, health problems and prisoner sentenced to life imprisonment. These categories of prisoners have different needs concerning rights, status, health or culture which need to be addressed. In an effort to publicize results from the new information gathered, the network published joint press releases or statements and was visible in the media. During the last years CISST released 24 articles in the national and international newspapers while the Press Release amount to 8.. The frequency of media news on Turkey's penal system increased .Number of news reports increased by 30% compared to 2014 and the number of press releases increased by 20%.The talks that CISST/THEA held in the last year were 29 denouncing the condition of imprisonment.

Indeed, with the purpose to overcome the lack of interest from the public opinion, CISST published

318 Human rights activism and the role of NGOs http://www.coe.int/en/web/compass/human-rights-activism-and-the-role-of-ngos

319 All the information provided in this section are the work of materials collected directly in the NGO where I did my internship from March to September and the interview with the International Project Director Eva Tanz

different books that from one hand informs the civil society about the prisons' conditions from the other explaining to the prisoners their rights. The publications involve: "Prisoner's Rights Handbook", Conference book on "Being Disabled , Foreign and LGBT in Prison" as well as handbooks on "Being an LGBTI Prisoner", "Being a Women in Prison", "Being a Child in Prison", "Being a Foreigner in Prison", "Being an Aggravated Life Prisoner", "Being a Disabled Sick or Elderly Prisoner. Since its foundation CISST put forward several projects such as Right to Education in Prisons(2009-2011), Civil Society and University Contribution to the Prisons in Istanbul(2011-2012), Restorative Justice :Supporting Consensus between Victims and Offenders (2008-2009), Situation of Female Prisoners in Prisons and Civil Society Contribution (2009), Preventing Human Rights Abuses in F-type High Security Prisons in Turkey(2008-2010), Big Games in Small Steps: Women and Children in Prisons (2011-2012).

An important project in which CISST is working since 2014 is the "Letter Project" After the Gezi Park demonstrations, the Government restricted or eliminated the access of NGOs within the prisons. When CISST was founded, even the NGOs could enter the prisons and also have activities usually could not talk with the prisoners they could visit the prisons but also witness themselves the conditions and report to the public. The Letter Project became important because represents the only way to communicate with prisoners and to have direct witnesses about their condition they endure or violation of their human rights or human dignity. The Project started in 2014 when for the first the Board Member of CISST Mustafa Eren started the correspondence with 87 prisoners. In 2016, 7 persons working in CISST write letters with 519 prisoners. At the beginning, the prisoners were reached consulting prisoners' list and afterwards were the same prisoners to spread word within the prisons. The aim of this project is to enhance the contact with prisoners and to reach more prisoners. Thanks to this project CISST accumulated, classified and evaluated letters, used also for their books. However, within this project CISST/THEA faced also some difficulties. The major one concerns the trust issue that affect prisoners. In fact, prisoners are more likely to write letters to CISST/THEA when another prisoner recommend it, otherwise they do not do it. In addition, some prisoners are illiterate while others are not aware of their rights.

Another important project that is going on is the Role of the Civil Society and University in Prison Administration. It involves workshops and meetings held in ten representative cities. The workshops have the aim to involve psychologists, prison guards and prison managers giving them new instruments to improve their work in the penal administration. Each workshop for each profession last two days under the moderation of three academics coming from the universities. In bringing near the civil society, universities and the prison administration a more humane perspective could be gained preventing also the human rights violations. Moreover, this project has the aim to strengthen the link between local NGOs and prisons increasing also the number of scientific researches. To conclude, also the psychosocial service will be empowered and able to administer its own professional. Not only psychologist but also other staff in prisons will be empowered and gain more humanistic perspective towards prisoners.

The work made by CISST involves also the creation of a dialogue with the Government. Under the right of information CISST/THEA put forward 160 inquiries addressed to the Ministry of Justice, the Parliament or other Ministries. In questioning the State authorities hoping to have some answers it is important to be careful about the way of phrasing their requests and in trying to contain several questions in one. In the vast majority of the cases the inquiry do not receive an answer or when it happens they do not provided specific information or data. In addition, the lack of statistics data do not permit to drawn a clear picture of the needs and the violations that the inmates may be subject to. In addition, CISST help prisoner to go through the process of Human Rights Applications. These applications made the human rights breaches visible on the official records of the human rights institutions. As a process of adapting to EU norms, the three human rights commissions were established within the Turkish government: il insan haklari kurulu, il cey´zaevleri iy´zleme kurulu and turkiye insan haklari kurumu. The institutions are still not very well known by prisoners. However, Human Rights applications in 2015 were 271 involving three different areas: the transfer from one prison to the other, the defence of their rights in the State's institutions and the health problems. For what concern the transfer in prison some prisoners are not even aware of this possibility but it must be said that it is extremely difficult to obtain it from the prison administration. Moreover, CISST addresses prisoners to the governmental bodies where they can complain about their human rights violations but also severe health problems they are going through. According to law, under the request of prisoners also lawyers that do not defend them are allowed to visit three time per year. CISST/THEA provides also legal consultancy when required through the prisoners' letters or their families. The lawyers Idil Aydinoglu and Ezgi Duman working in CISST/THEA could visit prisoners. Other volunteer lawyers collaborating with CISST /THEA provide this service but the number is still small to cover the needs of prisoners in a large scale. As previously said , one of the main problems that the NGOs working for prisoners' rights is the lack of collaboration with the Government and above all being left outside by visiting the prisons. The absence of communication with the Government has consequences on the protection of prisoners' rights and their human dignity. Another issue may rise if an NGO has good relationship with the Government; the risk is to have a bad one with other NGOs and the civil society. CISST is building an important network not only with the Universities or Turkish civil society but also exchanges information with other 55 NGOs working in the field of the penal justice. The Turkish political situation changed over the years and is becoming more and more difficult to defend prisoners' rights. The aim of the CISST is to be considered by the prisoners as a "friend" outside While the prisoners are usually left alone knowing that they have someone that defend them improve also their psychological condition within the prisons. An added value of this NGO are the employees and the volunteers working with CISST that despite the difficulties raise their voice for assuring the respect of the international standards within the Turkish prisons but above all the respect of the human rights and dignity of each prisoner. Talking about the NGOs we cannot avoid to talk about also the economic issue. As the vast majority of the NGOs worldwide, also CISST is not self-sustainable. In fact, the realisation

of their project is based on the funding that they receive from the European Union, the Turkish Open Civil Society or private donors. It must be said that in the field of the penal justice within the Turkish society is difficult to find donors. Prisons and prisoners rights as in other European countries do not have the sympathy of the public opinion as other issues. For this reason, considering the worldwide violation of human rights in prison, more efforts need to be done in this framework.

4.4 Way forwards

With the aim to understand the importance of the civil society in the monitoring mechanism an historical excursus is necessary. In addition, it is also useful to draw some conclusions for improving the actual system of the penal justice.

The understanding of civil society is based on specific political and socio-economic and historical backgrounds. The early philosophical debates on civil society were grounded in Western Europe, in contexts of state formation (Hobbes, Locke and Ferguson), emerging capitalism and class struggle (Hegel and Marx) and democratization and democracy (Gramsci and Habermas). According to the first perspective deriving from John Locke, popular control of political institutions requires an independent, external actor, and civil society constitutes a fitting functional counterpart to the institutional power. On the opposite side, according to the tradition of cooperation inspired by Montesquieu and Hegel, "civil society is seen in its integrative function either as cooperating with the institutions in terms of inputs or as a subcontractor for facilitating the outputs". From this perspective, the sense of community and solidarity is grounded in the broad societal environment.[320] Within the European Community the civil society was favoured by the creation of the Maastricht Treaty in 1992. Afterwards, there was the shift from the idea of "participation" itself to the concept of participatory democracy.[321]

The White Paper on Governance drew the framework for such cooperation, and the Leaken Conference of 2001 established a qualitative landmark for the recognition of NGO participation in European governance by including for the first time the representation of civil society in the convention working on the Constitutional Treaty. The most recent development in the integration of civil society is constituted by the Lisbon Treaty, which further enhances the European Social Dialogue and institutionalizes citizens' initiatives. Today, "Your Voice in Europe," an online consultation system, offers the opportunity for all recorded groups to express their views during the Commission's policy formation phase.[322]

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320 Kaya, A. and Marchetti, R.(2015) Europeanization, Framing competition and Civil Society in the EU and Turkey, Working Paper 6

321 Economic and Social Committee, Opinion on 'The role and contribution of civil society organisations in the building of Europe' (1999/C 329/10), 22 September 1999

322 Heper ,M. and Yildrim, S. (2010) Revisiting Civil Society in Turkey, Department of Political Science, Bilkent

In this framework the EU's attitude towards the Civil Society created new opportunities to influence the level of the decision making .The prevalent assumption is that the greater the number of actors who share political power (the more the checks and balances), the greater the chance that social movements will emerge and develop.[323] This new approach in the decision-making had also effects on Turkey during the negotiation for its membership in the European Union. Previously, the Ottoman sultans considered themselves responsible for the welfare of the people, when in need of resources and other amenities, had nowhere to turn to but the state. In the Republican period, one has observed a similar situation, particularly following the transition to the multi-party period.[324]

Turkey did not represent the most flourish environment to favour the creation of the civil society. In fact, actors more than horizontal relations from different actors has been characterized by vertical one in which is the state that answer to citizens' necessities.[325] Even if since the 19 century we assisted to the process of Europeanization of Turkey as well as westernization and secularization, the turning point for the relation with the EU was from 1999 to 2005 with the acquisition of the candidacy status. The EU has also contributed to civil society's beginning to play a more significant role in Turkey. By its 1999 Helsinki and 2002 Copenhagen decisions, the EU facilitated Turkey's reforms concerning the freedom of association in the country.[326] From on hand if the civil society perceived the international and European community as an "external allies" able to empower them from the other the state elites actors started to recognise the importance of the civil society within their policies. The first prerequisite for the flourishing of civil society is the presence of countervailing powers to central authority. Turning to the second prerequisite for the development and flourishing of civil society Minorities have now become more vocal in raising their claims to see a more democratic and inclusive constitution, which should be prepared with the inclusion of all the segments of society. In 2013 the Gezi Park Protests for the first time create "the space for a conversation in which all can participate and determine together what the future should look like".[327]

The change in the political atmosphere has made increasingly difficult the participation of the civil society in the political environment. After the coup of July 2016 the situation seems to get worse. During the writing of this MA thesis, Turkey is under the State of emergency and the voice of the civil society and Ngo is more silent .In November 2016 , because of the state of emergency was issued an order of decree that ordered the permanent closure of 375 non-governmental organizations in Turkey. The decision was strongly criticized by Amnesty International, according to which

University, Ankara , http://yoksis.bilkent.edu.tr/pdf/files/10.1080-14683857.2011.558307.pdf

323 Della Porta, D and Caiani, M.(2009) Social Movements and Europeanization, Oxford, Oxford University Press, p. 7

324 Supra Note 320

325 Kalaycıoglu, E. (2001). Turkish democracy: Patronage versus governance. Turkish Studies 2, no. 1: 54–70., page 64

326 Grigoriadis, I.N. (2009). Trails of Europeanization: Turkish political culture and the European Union. New York: Palgrave Macmillan.

327 Supra Note 320

“a closure of nearly 400 NGOs should be seen in the systematic attempt underway by the Turkish authorities to definitely silenced any critical voice.[328]

Considering the raise of awareness that the civil society can bring to the public opinion, the collaboration between the civil society, universities and prison administrations appear to be the only path to take improve the conditions of prisons and defend prisoners’ rights. Functioning internal and external oversight mechanisms, a participatory approach to prison administration, an administrative structure that includes NGOs, good physical infrastructure, well trained personnel and improved coordination among institutions are all factors which can help this approach take root. The development, application, and evaluation of individualized programs and interventions are important elements of this process. The creation of new rules for such boards, making members more impartial, authorized, and independent from the warden, would be an effective step toward making more participatory, decentralized administrative decisions through a quantitative and qualitative approach. Moreover, the number of teachers, pedagogues, psychologists, philosophers, sociologists or social workers shall be appropriate for the number of the prison population.[329]

Indeed, in order to monitor the penal system new researches may be conducted in several fields such as on personal history of inmates, programs in restorative justice and crime prevention, effect of the psycho-social service, but also the effect of the psycho-social service and comparative studies on international crime reporting and victimization surveys. This can be a joint work between NGOs, academia and prison. Moreover, the academia should increase the studies in criminology introducing also computer aided research methods. What is most important is to focus on the sources of criminal acts, trying to define why they are committed. It is thus necessary not only to conduct research on individuals who enter the prison system, but also to determine specific at-risk groups before crime is committed so that they can be the target of crime-prevention measures.[330]

Currently there is no department working under the Ministry responsible for conducting research on the penal system. Thus, there is a need for an increase in cooperation between policymakers and universities and that joint research projects be carried out in an atmosphere of mutual trust. Both sides need to change their perception of one another. On the one hand, policymakers should be more conscious of the fact that researchers’ objective reports can be a helpful guide in developing policies; on the other, researchers should not avoid cooperating with the Ministry, but rather prepare policy-oriented research proposals. initial step to increasing such cooperation would be to open a special section for researchers on the website of the General Directorate of Prisons and Detention Facilities.[331] However, this seem everyday more difficult to achieve after the failed Coup of

328 Osservatorio Balcani e Caucaso http://www.balcanicaucaso.org/aree/Turchia/Turchia-chiuse-375-ong-ridotte-al-silenzio-le-voci-critiche
329 Supra Note 312
330 Ibid
331 Ibid

15 July. In September 1 decree, the government dissolved all the current prison monitoring boards whose members are appointed by justice commissions operating in provincial courthouses. The decree instructs that "the boards be re-established from scratch". These prison monitoring boards have to date not been an effective instrument for examining prison conditions: they lack transparency in appointing their members, independence; and a system of public reporting. Nonetheless, the dissolution of the boards in the present circumstances sends a message that the government is seeking to prevent the monitoring of places of detention rather than to promote it in the face of serious allegations of abuse. It is also noteworthy that the decree announcing the dissolution of the prison oversight boards coincided with an ad hoc visit to Turkey of the Council of Europe's Committee for the Prevention of Torture from August 30 to September 6. Although Turkey in 2012 ratified the Optional Protocol to the UN Convention against Torture, providing for the establishment of a national preventative mechanism to conduct visits to all places of detention, with the government's January 2016 dissolution of the Human Rights Institution of Turkey and the establishment of a Human Rights and Equality Institution, there is currently no such functioning national preventative mechanism in place. The fact that there is neither an official body nor an independent body in Turkey able to conduct regular rather than ad hoc monitoring of any place of detention in Turkey in the present circumstances is a matter of serious concern and should be rectified promptly.[332]

4.6 Concluding remarks

The mechanisms of monitoring in Turkey do not apply to the international and European standards. The collaboration between the NGOs, the academic world and the Turkish penal system is almost absent. When NGOs are allowed to visit prisons they cannot have any kind of interviews with them and cannot report the violations they may endure. The case-study of the Turkish NGO Ceza Infaz Sisteminde Sivil Toplum Derengi shows the necessary commitment in working in the monitoring and advocacy for prisoners' rights. In order to improve the penal system a joint work between the Ministry of Justice, Academia ad NGOs shall be carried out. The creation of an independent and mixed monitoring board is an essential element in studying the penal system from different perspectives. In fact, more space should be given to analyse the type of crimes, the characteristics of the offenders, and the process of rehabilitation and reintegration. Considering the actual political situation in Turkey appears that the possibility to create a dialogue between the different actors in the penal system is every day farther. In this way we will assist to an aggravation of the already serious problems. The consequences will be paid by the prisoners that can assist to the violations of their rights but also by the society that will have back prisoners that did not follow a rehabilitation process, increasing the danger and the recidivism.[333]

332 Human Rights Watch Report https://www.hrw.org/news/2016/10/25/turkey-emergency-decrees-facilitate-torture
333 Supra Note 192

FINAL REMARKS

The current political situation in Turkey is of particular concern not only for its citizens but also for the European and International Community. The failed Coup of 15 July 2016 has brought to light the controversial situation that has characterized Turkey in the last years. The political and social situation aftermath of the coup attempt illustrates "how a single event can be the cause of a stark shift in the existing legal regime and in notions of legality".[334] Afterwards the 20 of July the Council of Ministers assembled under the chairmanship of the President declared the state of emergency with the consultation of the National Security Council. This decision has been ratified a large majority by the Turkish Grand National Parliament. The most important factor is that it gives power to the cabinet, which meets under the president, to issue decrees by the power of law. It cannot be challenged by applying to the Constitutional Court and therefore cannot be annulled. This means they are devoid of judicial control. The only control mechanism over the state of emergency is parliament, but there the government holds a majority. Governors are given extra authority. In addition, Turkey derogated from the ECHR and the ICCPR. However, both organisms have warning Turkey that is not possible to derogate from "the prohibition of torture and inhuman and degrading treatment". The failed Coup had had consequences also on the system of government in Turkey .In fact, Turkey's ruling party AKP had proposed a new constitutional package that will be submitted to referendum in early April 2017.

The new dispositions provide important changes in the government's bodies. The president will become the head of the executive branch and will be allowed to issue decrees, he will have criminal liability and he will have ties with its political party. The president will have broad authority over the high council of judges and prosecutors Indeed, the prime minister's office and the cabinet will be abolished while the parliament will loose it rights of interpellation to the executive. If these amendments will be approved through the referendum, it will sign the beginning of a "hyper-presidentialism". This new system weakness the check and balances between the executive, legislative and the judiciary powers. The executive and the legislative will coincide while the executive will have the control of the judici-

334 Erol, A.(2016) Legality and Power: the 2016 Turkish Coup Attempt and the State of Emergency, Journal of the Oxford Centre for Socio-Legal Studies, 2016 Issue 1, University of Oxford

ary. This shows the grip of authoritarianism that is involving Turkey. After the failed Coup Turkey was signed also by a repressive methods of punishment. If there is no justification for the Coup there is also no justification for the perpetuates violations of human rights. Since the Coup attempt the number of arrests and dismissal from the job is increasing every day. To give an idea of what is happening in Turkey is necessary to provide some numbers that better explain the situation. 46.180 persons have been dismissed from the ministry of education,21,384 from Security General Directorate, 4,235 from the Ministry of Justice4,235 from the Ministry of Justice 7,878 military officers 3,640 judges, prosecutors, 8,779 from the Ministry of the Interior etc. while those detained are 41,000. The dismissed from the profession are provided by Government's decrees no. 668, 669, 670, 672, 675, 677, 679.[335] The purge has also involved the shout down of schools, newspapers, TV and radio on charge of propaganda or affiliation to the terrorist organizations such as PKK and FETO. Turkey Government has been accused of taking advantage of the situation to silence the dissident voices. After the Coup the number of detainees increased dramatically and international organizations such as Human Rights Watch and Amnesty International but also the visit of the Special Rapporteur on Torture of the United Nations denounced the violations of human rights that the detainees are facing. Cases of torture and ill-treatment have involved the State authorities. However, it is difficult to draw an exhaustive picture of the socio-political framework and to foresee the impact that this may have on the prison condition and the violations of prisoners' human rights. The trials against the plotters started and for most of them have been requested the sentence of aggravated life imprisonment. This category of prisoners is already facing poor prison conditions, violations of human rights and human dignity and considering the actual situation it may also degenerate. Aggravated life prisoners can be divided in two categories the "ordinary" and "political or "terrorists" as the State call them. If "ordinary " can have the possibility of release the "political" ones have to spend the rest of their natural life time in prison. Under the Criminal Code the so called terrorist charge regard crimes against the security of the State (Articles 302, 303, 304, 307 and 308); or Crimes against constitutional order and its operation (Articles 309 to 315) while the "ordinary" involves Murder (Articles 81 and 82); production of and trafficking in drugs (Article 188).With the abolition of the death penalty in 2004 with the introduction of 4771 code "punishment until death" entered into Turkish law. To understand while the crimes against the State and the Constitution order are punished with harsh judgments it is necessary to understand the nation-building process that characterized Turkey since the foundation of the Republic in 1923. The fear of separatism has always frighten the political elite causing the adoption of repressive measure against part of its population, the Kurds. The State also have failed to distinguish between the Kurds population that requested the respect of their rights such an ethnic minority and the members of the PKK. The Kurdish Question did not have the right political answer from the state authorities, the peace talks with the PKK have failed and the conflict has caused 35,000 causalities. For what concern Fetullah Gülen the ex-ally become the worst enemy of the AKP party. Their conflict is not based on the different views of Islam but on the control of the State institutions and the accuse of being the

335 Turkey Purge http://turkeypurge.com/purge-in-numbers (accessed on 20 January 2016)

Gülenists the new "deep state" of Turkey. Although evidences linking to the coup attempt lack, no one in Turkey doubts that there are Gülenist fingerprints, even though non-Gülenist generals were also involved. Considering this, it is necessary to examine in what consist aggravated life imprisonment in Turkey. They are accommodated in closed and high security penal institution. The execution of this sentence provide solitary confinement, small and unhygienic cells, prisoners frequently lack adequate access to potable water, proper heating, fresh air and lighting while family visits and phone calls are restricted. The aggravated life prisoners have both psychological and health problems caused by their condition. This practice can be considered as an inhuman and degrading treatment under the article 3 of the European Convention of Human Rights. Despite the case law and the subsequent judgment of the European Court of the Human rights. Turkey did not adopt any legislative or de facto measures to guarantee the possibility for conditional release for "political" prisoners. The words of the Judge Power "The judgment recognises, implicitly, that hope is an important and constitutive aspect of the human person. Those who commit the most abhorrent and egregious of acts and who inflict untold suffering upon others, nevertheless retain their fundamental humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, someday, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and, to do that, would be degrading" seem more far than ever for the Turkish Penal System.

The number of detainees and prisoners in Turkey is increased dramatically since 2000, the prison population rate is 238 (based on an estimated national population of 78.98 million at beginning of April 2016) and after the Coup is increased even more. In Turkey the history seems to repeats itself, as in the 1980s prisons had converted in a space where the state tries to have social control on individuals who did not accept the official state belief or simply held other political ideologies. Since the 1980 it must be underlined that the politic situation of Turkey is changed as well as its commitments in the European and International arena must be fulfilled. Turkey is moving away from the EU and this must be perceived as a warning alarm for the condition of human rights within the State. In fact, it was also thanks to the constitutional reforms packages after the status of candidate member of the EU that Turkey guaranteed human rights in the past. For what concern prisoners in this difficult situation shall be taken in consideration the work done by the NGOs such as CISST that try to denounce the violations in the penal system and remains "the friend outside" of the prisoners.

I would like to conclude this research with these worlds :"While one way to manifest solidarity is to remember that despite the pressures there remains a vivid civil society in Turkey, aspiring to democracy, openness and tolerance, not hatred and divisiveness, and it is showing much courage. The scale of the country's simultaneous and multiple traumas make that spirit of resistance all the more admirable, especially when tragedy strikes. This citizens' courage deserves not just our empathy but our active support".[336]

336 The Guardian https://www.theguardian.com/commentisfree/2017/jan/04/the-guardian-view-on-turkey-multiple-traumas-immense-courage (accessed on 20 January 2017)

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