

**Submission of Human Rights Association / İHD [Turkey]
to the Mandate of the Independent Expert on the Enjoyment of All Human Rights by Older Persons
Situation of Older Persons Deprived of Their Liberty**

Introductory Notes

In Turkey, the Law on the Execution of Sentences and Security Measures regulates and determines in details the execution of sentences of persons deprived of their liberty. The main problem in the penal system and execution of sentences in Turkey is that the offences and execution of sentences under the Anti-Terror Law are stated under special articles and foresee aggravated sentences. This is clearly stated in Article 17 of the Anti-Terror Law.

In Article 17 of the Anti-Terror Law, in order to be entitled for the conditional release a prisoner has to serve $\frac{3}{4}$ of the total period of sentence for application. In addition, according to Article 5 of the Anti-Terror Law, the sentences under this Law are increased by 50%. Moreover, there is another provision in the law regulating that those who are sentenced to aggravated life imprisonment will serve their sentences until they die without the right of hope. For this reason, the provisional article 2 -25th article of law- and Article 107/16 of the Law on Execution regulates the situation. A special provision has been made in the paragraph. According to these regulations, it is stated that those who are sentenced to aggravated life imprisonment will not be able to benefit from conditional release in any way, and that those who have been sentenced to prison for crimes within the scope of the Anti-Terror Law cannot benefit from the provisions of probation.

In various articles of the Law on Execution, there are regulations in favour of various individuals including the persons we are considered to be elderly, excluding those convicted of crimes within the scope of the Anti-Terror Law. Accordingly, excluding those convicted of crimes within the scope of the Anti-Terror Law,

1. According to clause 110/2-a of the Law on Execution, those over 60 and having sentence less than 1 year in prison, those over 70 and having sentence less than 2 years and those over 75 and having sentence less than 4 years in prison are entitled to apply to serve the remaining term of the sentence at home with the decision of the Enforcement Judge.
2. Following the amendments in the Law on Execution during the global COVID-19 pandemic, convicts over 65 years, excluding crimes within the scope of Anti-Terror Law and the offences committed before 20 March 2020, are entitled to benefit from probation conditions.

In Article 16 of the Law on Execution, the Forensic Medicine Institute is authorized to postpone the execution of the sentence due to illness. In clause 6 of Article 16, it is regulated that the execution of the sentence may be postponed for a prisoner who cannot maintain his life alone under the conditions of a penitentiary institution due to a serious illness or disability, and who is considered not to pose a serious and concrete danger in terms of public safety. On the other hand, the practices of the Forensic Medicine Institute are very questionable in terms of offences within the scope of the Anti-Terror Law. Seriously ill Mehmet Emin Özkan and Aysel Tuğluk can be given as examples who are suffering from serious illnesses and are not conditionally released for being convicted under Anti-Terror Law.

After the start of the COVID-19 pandemic, a special law was enacted regarding the amendment of the Law on Execution in Turkey. This law numbered 7242 changed many articles of the Law on Execution. In this law, again, those convicted under the Anti-Terror Law are excluded. Although most of the older prisoners benefitted from the amendment and conditionally released, many others convicted under Anti-Terror Law are not entitled for releasing on probation.

Despite the unlawfulness of the decisions and verdicts given in the time of the State Security Courts in Turkey based on the decisions of the ECtHR regarding the retrial in Incal/Turkey, Özel/Turkey, Özdemir/Turkey, these decisions are not implemented as a general principle. Some of the people who were sentenced and imprisoned with the decisions of State Security Courts before the year 2000 are now in the group of older prisoners.

1. What are the key human rights risks and violations affecting older persons deprived of their liberty, taking into account different factors?

According to the official statistics of Ministry of Justice, there are 384 penal institutions / prisons in Turkey. The total capacity of these institutions is 271.823 persons and even this number is an increased capacity with several arrangements. On the other hand, according to the same statistics, there are 309.558 convicted and remanded persons in the prisons in Turkey as of 28 February 2022. 5.251 of those prisoners are over 65 years. One of the most important problems in Turkey is the chronic state of overcapacity of prisons. This situation negatively affects prisoners over the age of 65 at most.

This group of prisoners has various health problems due to their age and inadequate conditions in the prisons. This situation brings with it two problems: First, as we mentioned above, it is not possible to postpone the execution of their sentences or release them on probation due to their health conditions. In addition, in parallel with the general practices in prisons, they are often prevented or restricted from seeing a doctor or being referred to a hospital regularly and when necessary. As İHD, we report many cases in which seriously ill prisoners die due to poor conditions and not receiving adequate medical care, you can follow them from the prison reports on our website.

Only in 2020, at least 7 prisoners over 65 years died in prisons due to medical negligence or misconduct of duty or not being released on probation due to health problems. 2 of these prisoners died due to COVID-19. The prisons report for the year 2021 is not completed yet, but we can assume that the figure for the year 2021 would have decreased after the amendment in the Law on Execution for the probation / supervised release of all the older prisoners over 65 except for the offences under Anti-Terror Law. According to the information gathered by İHD, there are over 50 older prisoners suffering from serious illnesses. [For details: <https://ihd.org.tr/en/ihd-2020-prisoners-rights-monitoring-report/>]

Prisoners Over 65 Died in Prison in 2020

Name	Age
Arif Yıldırım	70
Kemal Polat	68
Ali Boçnak	76
Bahattin Kardaş	76 (80?)
Bedri Bozkurt	76
Erdiç Tülay	64
Takiyettin Özkahraman	75

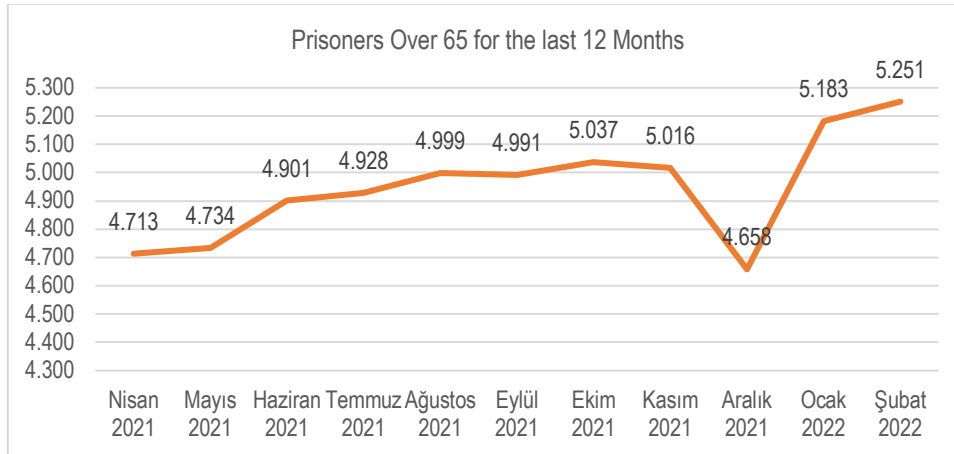
2. Please provide figures and data on older persons deprived of their liberty. Has the number of older persons deprived of their liberty increased or decreased over the past decade?

Regarding the number of prisoners aged 65 and over in the prisons of Turkey, we see that there is a regular increase unless there is a special situation such as amnesty and conditional release. The number of prisoners aged 65 and over in prisons is increasing while the number of people in this age group who are convicted is increasing every year as well.

As of 28 February 2022, there are a total of 5,251 prisoners aged 65 and over in prisons. Of these prisoners, 4,819 people are convicted and 364 people are remanded for trial.

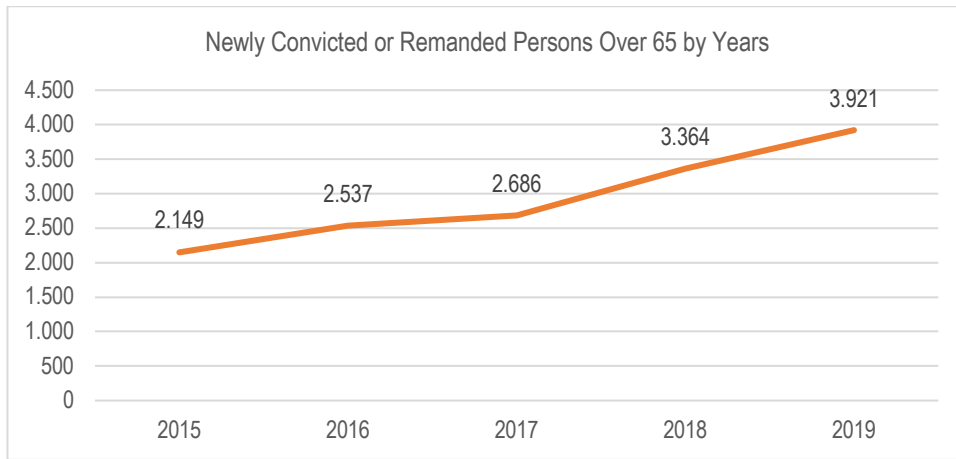
Prisoners Over 65 as of 28 February 2022								
Convicted			Remanded			Total		
Male	Female	Total	Male	Female	Total	Male	Female	Total
4.717	185	4.902	339	10	349	5.056	195	5.251

Unfortunately, the Ministry of Justice does not keep published the statistics they release on a regular basis. Therefore, it is not possible to determine the tendencies over the years. Nevertheless, we see that the numbers are increasing according to the statistics of last 12 months.



If we look at the statistics of newly convicted or remanded prisoners for the last 6-7 years, we can observe a similar tendency over the years. Although the figures for the years 2020 and 2021 are not published yet, there is a consistent increase in the numbers of newly convicted or remanded prisoners over 65 years. While the number of newly convicted or remanded prisoners in 2015 was 2.149, the number increased almost 50% and reached 3.921 in the year 2019.

Convicted Persons Over 65 by Years						
2015	2016	2017	2018	2019	2020	2021
2.149	2.537	2.686	3.364	3.921	No Data	No Data



3. What kind of specific measures have been taken and implemented concerning older persons deprived of their liberty in the context of the COVID-19 pandemic?

Following the global COVID-19 pandemic, Clause 2 of temporary Article 6 of the Law on Execution is amended. With the amendment, for the crimes committed before 30 March 2020 except for the offences under Anti-Terror Law all the older prisoners over 65 are released on probation / supervised release.

4. Could you give us an overview on the national and local legal frameworks which prevent and protect older persons deprived of their liberty from human rights violations? Are there effective and available national monitoring and accountability mechanisms? Please provide a detailed answer with supporting information/documents.

In Turkey, there is no institution or legal regulation that specifically protects the older people deprived of their liberty from human rights violations and prevents the occurrence of such violations. In addition to the general legal regulations on prison administration, there is the national human rights institution TİHEK, which is expected to fulfil the function of the National Prevention Mechanism. Since TİHEK is not established in line with the Paris Principles and does not have the capacity and authority to operate independently and impartially, TİHEK is insufficient to take measures to improve the conditions of prisons and accordingly older prisoners.

5. Please share examples of good practices on how to ensure that older persons deprived of their liberty can exercise their human rights.

There are no specific protection measures for older people in Turkey. Prisoners in Turkey - without any discriminatory restrictions or precondition- have the right to object and/or appeal against disciplinary punishments and decisions regarding execution of their sentences. However, in such a case, the state or the authorities are not obliged to appoint a lawyer upon request of the prisoner.

Under the Article 69 of Law on Execution of Sentences, older people over 65 years are allowed to accept gifts and presents while serving their sentences.