

Case No.: ΕΜΠΤ 1/2023

REPORT

COMMISSIONER FOR ADMINISTRATION

AND THE PROTECTION OF HUMAN RIGHTS

AS

NATIONAL PREVENTION MECHANISM

OF TORTURE AND OTHER FORMS OF CRUEL INHUMANITY AND DEGRADING TREATMENT

OR PUNISHMENT

**Report regarding a visit made to the Central Prison on May 5, 2023, on the occasion
of the confinement in the cell of a prisoner who went on a hunger strike**

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Nicosia, May 5, 2023

1. Subject of complaint/investigation

The Cypriot-Kurdish Solidarity Association submitted to our Office on behalf of Mr. Kenan Ayas, who has been detained in the Central Prison since 19 April 2023, until the hearing of the Appeal which he has submitted to the Supreme Court against the European Arrest Warrant.

As per the Association, since the afternoon of 4 May 2023, Mr. Ayas has been placed under confinement in his cell, as he has gone on hunger strike. Therefore, he is not allowed to come into any contact with people from his close relatives and friends who tried to visit him.

In this regard, it is noted that on 26 April 2023, Mr. Ayas' lawyer had submitted a complaint to our Office because he was not allowed to receive visits from his close relatives and friends, with the excuse that the names he had indicated were not entered in the relevant registers or files of the of Central Prison. On the same day following our intervention with the Directorate of Central Prison, the matter in question was settled and Mr. Ayas was receiving visits, for which I express my satisfaction.

However, the Association has informed us that since yesterday evening when Mr. Ayas went on hunger strike, it is not possible to communicate with him, either in person or by phone.

Based on all the information that has been brought to our attention, in addition to the deprivation of Mr. Ayas' right to communication, there is an allegation that the total number of hours that Mr. Ayas is confined without being allowed to leave his cell goes beyond what is prescribed and constitutes essentially a vindictive act against him because he has gone on hunger strike.

2. Unannounced visit to Central Prison

For the purpose of examining the above, Officers of my Office made today an unannounced visit to the Central Prison. As part of the visit, they had a meeting with the Deputy Director of the Central Prison, the Senior Officer, the Prison Doctor, as well as Mr. Ayas himself.

Furthermore, the relevant file of Mr. Ayas was inspected during the visit.

• The position of the Directorate of Central Prison

The Deputy Director informed the Officers of my Office that yesterday morning, 4 May 2023, Mr. Ayas had a meeting with his brother during the visit and handed him a letter, which he signed, informing the Directorate of Central Prison of his intention to go on hunger strike.

The said letter, according to the Deputy Director, was delivered to the Directorate and subsequently at lunch time Mr. Ayas refused to receive food.

Therefore, the procedure was immediately activated as provided for in Regulations 83, 84 and 85 of the Central Prison (General) Regulations concerning prisoners who go on hunger strike.

In particular, Mr. Ayas has been confined to his solitary cell, as provided for in Regulation 83, the entire Central Prison medical team has been notified and Mr. Ayas is under constant medical observation.

Furthermore, Mr. Ayas leaves the cell for his personal needs (toilet/bathroom), as well as for his transition to the Central Prison infirmary, while the Senior Prison Officer has also visited him.

Also, according to the Deputy Director and the prison guards on duty, at breakfast/lunch/dinner time Mr. Ayas is asked if he wishes to be provided, but he refuses.

The doctor of the Central Prison reported to the Officers of my Office that during yesterday's medical examination of Mr. Ayas, he was asked to drink water or at least to rinse his mouth with water. Mr. Ayas was also examined today by the doctor and as he reported to the Officers of my Office, Mr. Ayas is under close medical supervision, both by her and by the rest of the medical staff.

Also, the doctor informed the Officers that she has suggested to Mr. Ayas to have a meeting with a psychologist, but so far, he does not wish to do so.

Further, prison guards reported that whenever Mr. Ayas makes a request to contact his lawyer, it is granted.

Therefore, it is noted that at the time of the visit by the Officers of my Office, Mr. Ayas was also visited by his lawyer, with whom he had a confidential meeting.

- **The position of Mr. Ayas**

According to Mr. Ayas, after he went on hunger strike and informed the Directorate in writing, he was informed that he was going to be confined in his cell, as well as about the prescribed procedure in such cases.

As he reported to the Officers of my Office, the prison guards offer him food however he refuses and he only consumes water and tea.

When asked by an Officer whether he leaves his cell, he confirmed that this is done only to cover his personal needs (toilet/bathroom) and to go to the prison clinic for examination purposes.

Furthermore, Mr. Ayas stated that throughout his confinement, prison guards regularly visit him to check on his condition.

In addition to the visit from the prison doctor, Mr. Ayas stated that he has also been visited twice by the Senior Officer of the Central Prison.

Regarding his requests, Mr. Ayas informed the Officers of my Office that the hunger strike he has embarked on is not related in any way to the conditions of his detention, but he wishes that during his stay in detention he is allowed to have communication with his relatives.

3. Legal Framework

The Central Prison (General) Regulations provide for the procedure to be followed in the event that a prisoner goes on a hunger strike. Particularly:

83. A prisoner who declares that he is going on a hunger strike and refuses to receive food, is isolated in his cell or in a special isolation cell, as the case may be, without the right to have any food in his possession. His statement is entered in the diary of the ward in which he is detained and the Director and the medical officer are immediately informed. Before each meal the prisoner is asked by the head of the ward in which he is staying in the presence of another staff member if he intends to receive food and in the event of his refusal to receive food, this refusal is again entered in the diary of the ward in which he is detained, while the entry is signed by both the ward manager and the staff member present.

84.—(1) In the event of the prisoner's refusal to take the food offered to him for a continuous period of at least forty-eight hours, the medical

officer shall take all necessary measures to monitor him while recording in a special register the date and time of commencement of the hunger strike, the prisoner's justification for refusing to receive food, as well as any developments regarding the continuation of the strike until its end.

(2) The medical officer shall inform the Director daily of the prisoner's physical and mental health and, in the event that, during the hunger strike, the doctor judges that the striker needs special medical attention or treatment, he shall request the Director's approval for his transfer to a government hospital, where he is transferred immediately.

Also, the same Regulations provide when and under what circumstances the Director of Prison may impose restraint or isolation on a prisoner. Specifically:

151.—(1) The Director may, whenever he thinks appropriate, order the confinement or isolation of a prisoner for such period of time as he thinks necessary for the purposes—

(a) To maintain discipline and order;

*(b) **protecting the interests of himself or other prisoners***

[...]

Provided that the isolation of a prisoner in his cell or in a special cell or other isolation area for both preventive and disciplinary purposes is imposed only if the prisoner's health report does not indicate any serious physical or mental illness, due to which the prisoner's isolation will have negative effects on his physical or mental health.

(2) The isolation or confinement of a prisoner may be effected as the case may be—

(a) In his residential ward; or

(b) in his cell; or

[...]

(3) ...

(4) The confinement of a prisoner to his cell for preventive and not disciplinary purposes shall be permitted only upon the order of any officer of the prison and the approval of the officer in charge. In order to extend the confinement of a prisoner in his cell beyond 48 hours, the Director's written approval is necessarily required.

[...]

It is understood that prisoners under confinement or isolation have the right to leave their place of confinement or isolation half an hour in the morning and half an hour in the afternoon.

According to the (Revised) **European Prison Rules**, at least one hour of outdoor exercise should be ensured for every prisoner in solitary confinement.

4. Findings/Conclusions

First of all, it should be emphasized that the subject of the above-mentioned Position does not concern the reasons why Mr. Ayas has gone on hunger strike, that is, the imminent, based on the court decision, his extradition to Germany for the purposes of executing the European arrest warrant. Given that the matter in question has been decided by the court of first instance and an appeal to the Supreme Court against the relevant decision is pending, there is no room for any intervention on my part.

In particular, based on the Commissioner for Administration Laws of 1991 to 2022, the Commissioner does not have the authority to deal with complaints that were or are the subject of any legal proceedings. In particular, based on paragraph (a) of subsection (2) of article 5 of the aforementioned Laws, the Commissioner's powers do not include "...any action in respect of which any procedure is pending before any Court...".

In relation to the confinement of Mr. Ayas to his cell, it should be noted that this appears to have been done, not for disciplinary reasons, but by virtue of the provisions of Regulation 151(1) for preventive reasons and for the protection of his interests.

Subsequently, the procedure provided in Regulations 83 and 84, as mentioned above, was applied.

However, as has been established, Mr. Ayas, apart from his personal needs and going to the doctor's office, does not leave his cell for any other reason, with the result that he is deprived of his right to court, as provided for in Regulation 151.

It is also noted that, as mentioned above, according to the (Revised) European Prison Rules, **at least one hour of outdoor exercise should be ensured for each prisoner in solitary confinement.**

Therefore, although this provision is clear, in the case of Mr. Ayas it does not appear to apply.

In relation to Mr. Ayas's request for communication with his relatives, which is not satisfied, since his only communication is with his lawyer, it should be underlined that **in Regulation 151 there is no clear provision that limits the right of persons to receive visits and to communicate with their relatives is restricted, based on the provisions of Regulation 116.**

In this regard, **the European Court of Human Rights (ECtHR) in the case of Onoufriou v. Cyprus (Decision No. 24407/04, dated 7 January 2010)** has clearly pointed out that Regulation 151 “...does not provide any detail as to what the phrase means “restraint” or “seclusion” or what the degree of intended restraint or intended seclusion entails. It makes no explicit reference to the limitation of the general right provided by Regulation 116 for visits by relatives and friends up to six times a month. It provides no guidance as to how the Director of Prisons might decide whether a full suspension of visitation rights should be imposed in this particular case, and what factors might be relevant to that decision...”.

As the ECtHR continues in the same **decision above**, “...does not consider that the Prison Regulations expressly prohibit visits for those in solitary confinement. In short, the Prison Regulations do not state with reasonable clarity the scope and manner of exercising any discretionary power conferred on competent authorities to restrict visiting rights...”

Therefore, the decision continues, “...**the suspension of visitation rights in the applicant's case is not in accordance with the law. Hence, there was a violation of Article 8 § 1 of the Convention...**”.

In the case of Mr. Ayas, the facts are similar to those of the applicant in terms of his request for contact with his relatives, and the ECtHR had ruled that Article 8 of the ECHR was violated because the applicant was not allowed to receive visits.

Therefore, as Mr. Ayas has not committed any disciplinary offense or caused any trouble during his stay in the Central Prisons to be considered a threat to public safety, the reasons why he is not allowed to to Mr. Ayas to communicate with his relatives, apart from his lawyer.

Besides, as it was pointed out in our systemic report submitted on November 16, 2022 under my mandate **as the National Mechanism for the Prevention of Torture**, regarding the visits carried out in the Central Prisons in the period 2020-2022:

*"... **the consequences of solitary confinement on the prisoner's mental health are extremely adverse** and for this reason it should be **a measure of last resort** and applied **only in exceptional cases and for a minimum period of time.***

[...]

*The **principle of proportionality** should also be taken into account in every case so that **the measures taken**, in this case the confinement of prisoners in a cell, **are consistent and do not exceed what is necessary to achieve the intended purpose...***

5. Recommendations

In light of the above, I recommend the following for the period that Mr. Ayas is under confinement:

- To apply the provisions of the Central Prisons (General) Regulations and on the basis of international standards, that Mr. Ayas be screened for at least one hour a day (half an hour in the morning and half an hour in the afternoon).
- Allow Mr. Ayas to communicate with his relatives and not just with his lawyer.
- To continue the medical monitoring of Mr. Ayas, based on the provisions of the relevant Regulations.

This Report, under my mandate as **the National Mechanism for the Prevention of Torture**, is submitted, based on Article 7 of Law 2(III)/2009, **to the Minister of Justice and Public Order**, as responsible for the specific place of detention and to the **Senior Director of Central Prisons**.

It is expected that both the Minister and the Directorate of Central Prisons **will take the necessary actions for the full implementation of the aforementioned**.

Maria Stylianou Lottides

Commissioner of Administration

and the Protection of Human Rights

National Mechanism for the Prevention of Torture

and Other Forms of Cruel, Inhuman, or Degrading Treatment

National Human Rights Institution