



I N S I D E

- 3 **Criminal Law – carrying out acts designed to bring about secession of part of a country - Human Rights – arrest and detention – disguised extradition – fair hearing – lack of equality of arms in conducting defence – death penalty – conditions of arrest and detention**

Constitutional Law – availability of Habeas corpus and other reliefs to aliens held outside sovereign territory of the United States of America – jurisdiction of US courts to entertain claims – Words and Phrases: “enemy alien”; “sovereignty” & “territorial jurisdiction” – (United States of America)

Several detainees held at the Guantanamo Bay Camps by the United States for alleged involvement in the September 11th terrorist attacks filed applications before US courts for habeas corpus. Their applications were variously dismissed for lack of jurisdiction, the court holding that it did not have jurisdiction to issue writs of habeas corpus for aliens held outside the sovereign territory of the United States. It relied on the authority of *Johnson v. Eisentrager*, 339 U.S. 763 (1950).

The question for the Court's determination was whether the US courts had jurisdiction to hear the applicants' claims of violations of their constitutional rights and to grant habeas corpus relief.

➤ Held:

1. The first issue that the court had to decide was whether the Supreme Court of America in *Johnson v. Eisentrager* was distinguishable from the present cases on the ground that the prisoners involved in that case were “enemy aliens” whereas the Guantanamo Bay prisoners had not been held to be so. Although the government had claimed that the prisoners in Guantanamo Bay were “enemy combatants”, the applicants had vehemently denied this allegation and the District court had decided to assume the truth of those denials.

In *Eisentrager*, the prisoners were German nationals in China who assisted Japanese forces in fighting against the US. Following their capture, they were tried and convicted by an American military commission in Nanking and then sent to prison in Landsberg in Germany. That prison was under the control of the United States army. They filed an action in the US seeking habeas corpus, claiming violations of the US Constitution, other laws of the US, and the Geneva Convention. The matter went up to the Supreme Court which held that the privilege of litigation was not extended to the German prisoners. The court said that the “prisoners at no relevant time were within any territory over which the United States is sovereign, and the scenes of their offence, their capture, their trial and their punishment were all beyond the territorial jurisdiction of any court in the United States”.

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The applicants in this case had argued that, unlike in *Eisentrager* where the Supreme Court had described the German prisoners as “enemy aliens”, they had not been charged with any offence.

In the opinion of the Court of Appeal, the Supreme Court’s description of the German prisoners as “enemy aliens” rested upon their status as nationals of a country at war with the US. In the case of the applicants, despite the government’s argument to the contrary, none of them was within the category of “enemy aliens” in the sense used by the Supreme Court in *Eisentrager*, in that they were not nationals of any country at war with the US. They were citizens of Kuwait, Australia and the United Kingdom. The war waged in response to the September 11th attacks was not against these countries, but against the network of terrorists throughout the world. An “alien friend” may become an “alien enemy” by taking up arms against the US, but these cases were decided on pleadings which denied involvement in hostilities against the US.

2. Nevertheless, the prisoners in Guantanamo Bay had much in common with the German prisoners in *Eisentrager*, in that:

- (a) they were aliens captured during military operations;
- (b) they were in a foreign country when captured;
- (c) they were now abroad;
- (d) they were in the custody of American military; and
- (e) they had never had any presence in the US.

Therefore, the *Eisentrager* decision was applicable authority in the applications.

3. The Supreme Court in *Eisentrager* had rejected the proposition that “the Fifth Amendment confers rights upon all persons, whatever their nationality, wherever they are located and whatever their offences”. It said that if the Fifth Amendment confers its rights to all the world “... [it] would mean that during military occupation irreconcilable enemy elements, guerrilla fighters, and ‘werewolves’ could require the American judiciary to assure them freedom of speech, press, and assembly as in our First Amendment, ...”. This meant that the constitutional rights mentioned are not held by aliens outside the sovereign territory of the United States, regardless of whether they are enemy aliens. Later Supreme Court decisions have viewed the *Eisentrager* decision in this

light: *Verdugo-Urquidez*, 494 U.S. at 269, and *Zadvydas v. Davis*, 533 U.S. 678 (2001) The Court of Appeal in *Pauling v. McElroy*, 278 F.2d 252, said, following *Eisentrager*, that “non-resident aliens ... plainly cannot appeal to the protection of the Constitution or laws of the United States”. The law is now settled that a “foreign entity without property or presence in this country has no constitutional rights, under the due process clause or otherwise”: *Peoples’ Mojahedin Org. v. Dept. of State*, 182 F.3d 17.17 (D.C. Cir. 2002).

4. The consequence is that no court in the US has jurisdiction to grant habeas corpus relief under 28 U.S.C. s.2241, to the Guantanamo Bay detainees, even if they had not been adjudicated enemies of the US. The writ cannot be made available to aliens abroad when basic constitutional protections are not. This was at the heart of *Eisentrager*. If the Constitution does not entitle the detainees to due process, and it does not, they cannot invoke the jurisdiction of the American courts to test the constitutionality or legality of restraints on their liberty.

5. On the issue of whether the Guantanamo Bay detainees were “within any territory over which the US is sovereign”, the detainees submitted that they were in such territory arguing that the US military controls the Bay, and it was in essence US territory over which the US exercises sovereignty. They argued further that in any event *Eisentrager* did not turn on any technical definition of sovereignty. The government on the other hand denies that it had any sovereignty over Guantanamo Bay. In examining the nature of control that the US has over Guantanamo Bay, the Court found that the territory was occupied by the US military as a Naval Base under a lease from Cuba executed in 1903, and subsequently modified over the years.

In the Court’s opinion, the leases show that Cuba had sovereignty over the territory and not the US. The Supreme Court had held that “control and jurisdiction” do not amount to sovereignty: *Vermilya-Brown Co. v. Connell*, 335 U.S. 377 U.S. 377. The court in that case held that the “determination of sovereignty over an area is for the legislative and executive departments”. The Court rejected the argument that control was the test, because *Eisentrager* did not use it as a test; just like in Guantanamo Bay, the US had control over Landsberg prison in Germany.

The Court also rejected the argument that the Court in *Eisentrager* used “territorial jurisdiction” and “sovereignty” interchangeably, without attaching any particular significance to either term. The court used jurisdiction to refer to the jurisdiction of the US courts, whereas sovereignty meant “supreme dominion exercised by a nation.” The United States has sovereignty over the geographic area of the States and, as the *Eisentrager* Court recognized, over insular possessions, *id* at 780. Guantanamo Bay fits “within neither category”. The US courts could not assert habeas corpus jurisdiction at the behest of an alien held at a military base leased from another nation, a military base outside the sovereignty of the United States.

6. In respect of the claims for declaratory judgments under the Alien Tort Act, alleging that their confinement at Guantanamo Bay violated treaties and international law, the court held that the decision in *Eisentrager* that “the privilege of litigation” did not extend to aliens in military custody who have no presence in any “territory over which the United States is sovereign” was also applicable to these causes of action. “[T]he detainees are in all relevant respects in the same position as the prisoners in *Eisentrager*. They cannot seek release based on violations of the Constitution or treaties or federal law; the courts are not open to them. Whatever other relief the detainees seek, their claims necessarily rest on alleged violations of the same category of laws listed in the habeas corpus statute, and are therefore beyond the jurisdiction of the federal courts.

Khaled Al Odah et al. v. United States of America et al. 42 ILM 408 (2003)

Criminal Law – carrying out acts designed to bring about secession of part of a country - Human Rights – arrest and detention – disguised extradition – fair hearing – lack of equality of arms in conducting defence – death penalty – conditions of arrest and detention – Violations of Articles 5, 6, 2 and 3 of the European Convention on Human Rights - (Turkey)

O was tried and convicted in Turkey of acts designed to bring about the secession of part of Turkey’s territory and of training a gang of armed terrorists for that purpose. He was sentenced to death under Article 125 of the Turkish Criminal Code. O was found to be the

leader of the unlawful organisation, the PKK, whose aim was the formation of an independent Kurdish state carved from the territory of Turkey. Under O’s leadership, the organisation had carried out several armed attacks, bomb attacks, acts of sabotage and armed robberies, in the process of which thousands of civilians, soldiers, police officers, village guards and public servants had been killed.

O appealed to the Turkish Court of Cassation which affirmed the trial court’s judgment in every respect.

In the interim, the Turkish government resolved to abolish the death penalty except in time of war or of imminent threat of war. It was also declared that O no longer faced the execution of the death penalty. Certain interest groups in Turkey filed cases in the courts contesting this declaration.

However, O filed a complaint with the European Court of Human Rights in Strasbourg, France, alleging violation of several rights under the European Convention on Human Rights:

1. Violation of Article 5(4) of the Convention, in that he was not allowed opportunity to take proceedings by which the lawfulness of his detention could be determined. He alleged that he had been kept in incommunicado detention for the first ten days following his arrest and that he had not had access to documents concerning his arrest that would have enabled him to prepare his case.
2. Violation of Article 5(1) of the Convention, in that the conduct of the Turkish authorities in collusion with the Kenyan authorities to get him brought to Turkey, amounted to abduction and disguised extradition. In the result he was deprived of all procedural and substantive protection.
3. Violation of Article 5(3), in that he had not been brought promptly before a tribunal. He complained that he was only taken before a court nine days after his arrest, and the government had not given any plausible reason for this delay.
4. Violation of Article 6(1), in that he did not receive a fair hearing at his trial because one of the members of the court that convicted him was a military judge. Towards the end of the trial, the military judge was replaced by a substitute judge who had sat through all the hearing and had in fact acted in the case and

was the judge who ordered his pre-trial detention.

5. Violation of Article 6 (1), (2) and (3) of the Convention flowing from the restrictions and difficulties he had encountered in: securing assistance from his lawyers; gaining access for him and his lawyers to the case file; calling defence witnesses; and securing access for his lawyers to the full prosecution file. He also alleged that the judges had been influenced against him by a hostile media. He complained that in effect, he had not enjoyed equality of arms with the prosecution in preparing his defence.

6. Violation of Articles 2 because of the imposition of the death penalty, 3 in that the death penalty amounted to inhuman and degrading punishment and 14 in that his execution would be discriminatory against him.

7. Violation of Article 3 of the Convention in that the conditions in which he had been transferred from Kenya to Turkey and detained on the island of Imrah amounted to degrading treatment.

O submitted that he had been abducted in Kenya by Turkish officials, blindfolded, handcuffed and drugged and filmed with the video camera in the aircraft, which video recording was later displayed to the media.

At Imrah, he was the only prisoner on the island and there had been severe restrictions on contact with his lawyers and family, his health had deteriorated and he was allowed very little opportunity for physical exercise and his contact with the media had been restricted.

The Government of Turkey raised a preliminary objection to O's application and had the following responses to O's complaints:

1. In respect of the Article 5 complaint, that O had not exhausted his domestic remedies in that he did not challenge his arrest and detention in the local courts as required by Article 28 of the Turkish Code of Criminal Procedure.

2. That, on the authority of *Bankovic and Others v. Belgium and 16 other Contracting States* (dec.) [GC] no. 52207/99, ECHR 2001-XII), their responsibility was not engaged by O's arrest abroad. O had been arrested and detained according to law following co-operation between two countries, Turkey and Kenya. Kenya was a sovereign state and Turkey had no means of exercising authority there. There was

no disguised extradition and Turkey had accepted Kenya's offer to hand over O, who was in any event an illegal immigrant there.

3. The government denied any violation of Article 5(3) and argued that under Turkish law, it was allowed to detain a person for up to 7 days in cases of terrorism, and that O's extended detention had been sanctioned by court order, and aggravated by bad weather that made it difficult to reach the island in which he was held.

4. In respect of the Article 6(1) complaint, the government replied that the military judge had in fact been replaced following a legislative amendment to the relevant law and the substitute judge had taken over before the end of the hearing of evidence.

5. The government maintained that O had had a fair trial in that he had a public hearing, had been able to participate fully in it, special measures were taken to ensure his safety, he had addressed the court without being interrupted, and had said everything he wanted to say in his defence. With respect to the media impact on the trial, the media was run by private companies which enjoyed freedom of the press in covering the judicial proceedings.

6. The government argued that the death penalty was permissible under Article 2 of the Convention, and that, irrespective of whether capital punishment ought to be abolished, Article 3 could not be interpreted to include a prohibition of that penalty. Furthermore, O's trial had been conducted fairly by an independent and impartial tribunal and there had not been any discrimination against him.

7. Turkey rejected any ill treatment of O by its officials during transit from Kenya to Turkey and explained that in fact O had himself told the State Security Court that he had not been treated badly.

8. Regarding his detention in Imrah, the government submitted that O had been allowed visits from his lawyers and doctors and members of his family. He had been held in a cell of very high standard, and that restriction placed on visits by his lawyers and telephone communications was intended to prevent him from continuing to run the PKK from his prison cell.

Article 1 of Protocol No. 6 of the European Convention on Human Rights provides that "the death penalty shall be abolished. No person

shall be condemned to such penalty or executed". Article 2 provides that: "A state may make provision in its laws for the death penalty in respect of acts committed in time of war or imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. ..."

Turkey ratified the protocol in January 2003.

➤ **Held:**

1. In respect of the Government's preliminary objection to O's Article 5 complaint, the Court ruled that the existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of Article 5 (4). Furthermore, the remedies must be of a judicial nature, which means that "the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation, failing which he will not have been afforded the fundamental guarantees of procedure applied in matter of deprivation of liberty": *Winterwerp v. the Netherlands* 24 October 1979, Series A no. 33. The court found that although the remedy existed in theory, there was not, before it, any evidence of its operation in practice. In any event, the court found that the circumstances of the case made it impossible for O to have effective recourse to the remedy, in that:

- (i) the fact that O was held in total isolation prevented him from reasonably challenging his detention;
- (ii) O's lawyers were obstructed by police from having access to him during this period. Besides, due to the unusual circumstances of his arrest, O was the principal source of direct information on events in Nairobi that would have been relevant to challenge his arrest;
- (iii) the seriousness of the charges and the fact that the period O spent in police custody was permissible under the law meant that any application to the court would have had little prospect of success.

As for the government's assertion that a claim for compensation could have been made, the court said that that remedy could not satisfy the requirements of Article 5(4) in that the right not to be illegally deprived of one's liberty and the right to be brought promptly before a judge after arrest were not the same as the right to

receive compensation for detention. Moreover, the case law required that for compensation to be payable, the detention must have been unlawful, but in O's case, the detention was lawful under Turkish law.

2. An arrest made by the authorities of one state on the territory of another state, without the consent of the latter, affects the person's individual rights to security under Article 5(1): *Stanke v. Germany*, 1989, Series A no.199, opinion of the Commission, p.24. The Convention did not prevent cooperation between states within the framework of extradition treaties or in matters of deportation, so long as it did not interfere with Convention rights.

In this case, O became effectively under Turkish jurisdiction, for the purposes of Article 1 of the Convention, when he was handed over by the Kenyan authorities at the Airport in Nairobi (Kenya). As to whether the arrest complied with Turkish domestic law, the Court noted that the Turkish courts had issued seven warrants for O's arrest and Interpol had circulated a wanted Notice (red notice). It followed that his arrest and detention complied with orders that had been issued by the Turkish courts "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence".

The Court found that at the material time, the Kenyan authorities had decided to hand over O to the Turkish authorities or at least to facilitate such handover. In the light of these circumstances and in the absence of any extradition agreement between the two countries, it could not be said beyond reasonable doubt that the operation amounted to a violation of Kenyan sovereignty and consequently of international law. Moreover, the fact that O was not shown the arrest warrants until he was detained in the aircraft by Turkish authorities did not deprive his subsequent arrest of a legal basis under Turkish law. The court therefore concluded that O's arrest and detention were in accordance with "a procedure prescribed by law" for the purposes of Article 5(1) of the Convention.

3. The court noted that the investigation of terrorist offences posed particular problems to the authorities: *Brogan and Others v. the United Kingdom* 29 November 1988, Series A, no. 145-B, p.33. This did not however, mean that the investigator had *carte blanche* to arrest suspects for questioning, free from effective control by

the courts, both domestic and international. O was held for a total of 7 days in police custody before he was brought before a judge. In *Brogan*, the court held that a period of 4 days and 6 hours was outside the strict constraints of time permitted by Article 5(3). The court did not accept that adverse weather was largely responsible for the extended period for which O was kept in police custody, since the government did not present credible evidence to that effect. It was therefore not proven necessary that O had to be kept in police custody for 7 days. There was therefore a violation of Article 5(3) of the Convention.

4. In dealing with Article 6, it is the confidence which the courts in a democratic society must inspire in the public and the accused in criminal proceedings that is at stake. In deciding whether there is a legitimate reason to fear that a particular court lacks independence and impartiality, the standpoint of the accused is important without being decisive. What is decisive is whether his doubts can be held to be objectively justified: see *Incal v. Turkey*. The government argued that O, in accepting the jurisdiction of the State Security Court, must be taken to have waived his right to an independent and impartial tribunal. In the court's opinion, a waiver must be established in an unequivocal manner in order to be effective: *Pfeifer and Plankl v Austria*, 22 April 1998, Series A no. 227, p. 16. O's statement cannot be interpreted as an unequivocal waiver of his right to an independent and impartial tribunal since his lawyers actually challenged the independence and impartiality of the court on account of the presence of a military judge. In addition, accepting that a court has "jurisdiction" to conduct a trial refers to its legal competence to try a person and does not necessarily – if at all – involve an acceptance of the independence and impartiality of that court. The Court did not consider, therefore, that O could be said to have waived his right.

Moreover, the last-minute replacement of the military judge was not capable of curing the defect in the composition of the court. Most of the trial had already taken place before the military judge ceased to be a member of the court. There was no need to speculate on the question whether the military judge had actually influenced the other judges in the court during the course of the trial since it was his very presence prior to replacement which was the source of the problem.

The presence of a military judge – undoubtedly considered necessary because of his competence and experience in military matters – can only have served to raise doubts in the accused's mind as to the independence and impartiality of the court.

The Court concluded that the Ankara State Security Court, which convicted the applicant, was not an independent and impartial tribunal within the meaning of Article 6 (1) of the Convention, and there had been a violation of the Article.

5. In determining whether the rights of the defence were infringed, the court examined what legal assistance was available to O and the extent of the access allowed to his legal team to the case file against him.

(i) In respect of the availability of legal assistance, the court found that the delay in allowing O's lawyers to consult with him during the period in which he made a self-incriminating statement to the police, was detrimental to the rights of the defence to which O was entitled by virtue of Article 6: *Magee*.

The court also found that the first meeting that O had with his lawyers took place under supervision and within sight and hearing of the security forces and was restricted to twenty minutes. Subsequent visits were held in the presence of security personnel. The Court referred to its settled case-law and reiterated that an accused's right to communicate with his legal representative out of hearing of a third person is part of the basic requirements of a fair trial in a democratic society and follows from Article 6 (3)(c) of the Convention. The relevant issue was whether, in the light of the proceedings taken as a whole, that restriction had deprived the accused of a fair hearing. It considered that the inevitable consequence of that restriction, which was imposed during both the preliminary investigation and the trial, was to prevent O from conversing openly with his lawyers and asking them questions that were important to the preparation of his defence. The rights of the defence were thus significantly affected, and amounted to a violation of Article 6(3). Also, the restriction on the number and length of the applicant's meetings with his lawyers was one of the factors which made the preparation of O's defence difficult and infringed Article 6.

(ii) In respect of the accessibility of the case file to the defence, the court considered

that the concept of equality of arms requires that each party be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage vis-à-vis the opponents. In this context, importance is attached to appearance as well as to the increased sensitivity to the fair administration of justice: *Bulut v. Austria* 22 Feb. 1996, Reports 1996-II, pp. 380. The government sought to rely on the case of *Kremzow v. Austria*, 21 September 1993, Series A no. 268-B, that restricting the right to inspect the court file to an accused person's lawyer was not incompatible with the rights of the defence. In the court's opinion, that principle was not applicable in this case because, for that principle to apply, the evidence must be made available to the accused before the hearing and the accused's lawyer must be given an opportunity to comment on it in oral submissions. In O's case, however, he was not allowed the opportunity to inspect the evidence produced by the prosecution personally before the hearings. O's lawyers were not allowed access to the case file (a 17,000 page file) until two weeks before the trial started.

This, coupled with other difficulties encountered by the defence, made it difficult for O to exercise the defence rights to which he was entitled under Article 6 of the Convention.

6. As regards the implementation of the death penalty, the court noted that the death penalty had been abolished in Turkey and O's sentence had been commuted to life imprisonment. As such, the threat of implementation of the death sentence had effectively been removed. In these circumstances O's complaint of violations of Articles 2, 3, and 14 of the Convention, based on the implementation of the death penalty, was rejected.

The court then went on to consider whether the imposition of the sentence in and of itself constituted a violation of the Convention.

The fact that the territories of the Council of Europe have effectively become a zone free of capital punishment and that nearly all of them have signed Protocol No. 6, signals an agreement of the Contracting States to the Convention, to abrogate, or at least modify, Article 2(1). It can be said that capital punishment in peacetime has come to be regarded as an unacceptable, if not inhuman, form of punishment which is no longer permissible under Article 2.

Since the right to life protected by Article 2 ranks as one of the most fundamental provisions of the Convention, from which there can be no derogation in peacetime under Article 15, and enshrines one of the basic values of the democratic societies making up the Council of Europe, its provisions must be strictly construed. Even if the death penalty were permissible under Article 2, the Court considered that an arbitrary deprivation of life pursuant to capital punishment is prohibited. It also follows from the requirement in Article 2(1) that the deprivation of life should be pursuant to the "execution of a sentence of a court", that the court which imposed the penalty be an independent and impartial tribunal within the meaning of the case-law of the European Human Rights Court: *Incal v. Turkey*. Therefore the implementation of the death penalty in respect of a person who had not had a fair trial was not permissible. This must inform the court when it considers the question of the imposition of the death penalty in circumstances where there had not been a fair trial. In the court's view, to impose the death penalty on such a person amounts to subjecting him/her wrongfully to the fear that he will be executed. The fear and uncertainty as to the future generated by a sentence of death, in circumstances where there exists a real possibility that the sentence will be enforced, must give rise to a significant degree of human anguish, which cannot be dissociated from the fairness of the proceedings underlying the sentence, which is in any event unlawful under the Convention.

The Court held that the death penalty had been imposed on O following an unfair procedure which could not be considered compatible with the strict standards of fairness required in cases involving capital punishment. It concluded that the imposition of the death sentence on O amounted to inhuman treatment and violated Article 3 of the Convention.

7. The Court observed that O was handcuffed throughout the journey from Kenya to Turkey. It also recognised that O was suspected of being the leader of an armed separatist movement that was engaged in an armed struggle against the Turkish security forces and that he was considered dangerous. It accepted the Turkish government's submission that the sole purpose of requiring O to wear handcuffs as a security measure was to prevent him from attempting to escape or cause damage or injury to himself or others.

In respect of the blindfolds, the court accepted the government's contention that this was to prevent O from identifying the members of the security forces who were with him on the plane. The fact that O was photographed while wearing the blindfold did not affect the court's finding on this issue. This complaint was therefore not established.

Moreover, since O's arrest was lawful under Turkish law, the Court could not accept his submission that his "abduction" overseas on account of his political opinions constituted inhuman or degrading treatment within the meaning of Article 3. It concluded that O's arrest and transfer from Kenya to Turkey exceeded the usual degree of humiliation that is inherent in every arrest and detention or attained the minimum level of severity required for Article 3 to apply.

In respect of O's detention in Imrah, the Court noted that complete sensory and social isolation can destroy the personality and constitutes a form of inhuman and degrading treatment which cannot be justified by the requirements of security or other reason. On the other hand the prohibition of contacts with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment: *Messina v. Italy* NO. 25498/94, ECHR 1999-V.

The Court recognised that the detention of O posed particular difficulties for the government of Turkey, in that whereas particular segments of society hated him for the atrocities associated with the PKK and wanted him dead, there was

another segment that saw him as the main leader of the pro-Kurdish movement and would want to help him escape from prison. Under these circumstances, it was understandable that the Turkish authorities found it necessary to take extraordinary security measures to detain O, in the manner they did.

The standard of O's prison cell was undisputably beyond criticism.

As regards O's isolation, the court held that he could not be said to have been held in sensory or solitary confinement. He had books, newspapers and radio at his disposal. He also received twice weekly visits from his doctors and once weekly visits from his lawyers. Moreover, apart from the fact that access to Imrah is difficult, visits from his relatives were not restricted. The court was mindful of the government's concern that contact with the outside world would present O with the opportunity to renew contact with members of the armed wing of the PKK. These fears were well founded.

The Court concluded that the general conditions in which O was detained at Imrah Prison had not reached the minimum level of severity necessary to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention, and there had therefore not been any violation of the Convention on that point.

Öcalan v Turkey, No. 000462221/99, Judgment delivered by the European Court of Human Rights on 12 March 2003