

AN EVALUATION OF THE REFORM PROCESS IN THE TURKISH PRISON
SYSTEM: ROLE OF THE INTERNATIONAL AND EUROPEAN NORMS AND
PRISONERS' COMPLAINTS

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ABSTRACT

AN EVALUATION OF THE REFORM PROCESS IN THE TURKISH PRISON SYSTEM: ROLE OF THE INTERNATIONAL AND EUROPEAN NORMS AND PRISONERS' COMPLAINTS

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This thesis analyzes the reforms in Turkish Prison System in the light of the international standards and accession to the European Union. The standards and Turkey's efforts to comply with the requirements of those standards are handled in historical order. The process, reasons and initiators of the change are evaluated in the thesis. In order to understand if the process is shaped by a top down or a bottom up effect, criticisms of the Council of Europe and the European Union, and petitions of the prisoners sent to Human Rights Investigation Committee of the Turkish Grand National Assembly are examined.

Keywords: Prison, Prisoner Rights in Turkey, European Union.

ÖZ

TÜRK CEZAEVİ SİSTEMİNDEKİ REFORM SÜRECİNİN BİR DEĞERLENDİRMESİ: ULUSLARARASI NORMLAR, AVRUPA NORMLARI VE MAHKUMLARIN ŞİKAYETLERİNİN ROLÜ

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Bu tez Türk Hapishane Sistemi'ndeki reformları, Avrupa Birliği üyeliği ve uluslararası standartların ışığında incelemektedir. Standartlar ve Türkiye'nin bu standartların gereklerine uyma çabaları tarihsel bir süreçte ele alınmıştır. Bu tezde, süreç, değişimin sebepleri ve öncüleri değerlendirilmiştir. Sürecin yukarıdan aşağıya doğru mu, yoksa aşağıdan yukarıya doğru mu şekillendiğini anlamak için Avrupa Konseyi ve Avrupa Birliği'nin eleştirileri ile mahkumların Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu'na gönderdiği dilekçeler incelenmiştir.

Anahtar Kelimeler: Cezaevi, Türkiye'de Mahkum Hakları, Avrupa Birliği.

To My Parents

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LIST OF ABBREVIATIONS

CE	:	Council of Europe
CPT	:	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment
EC	:	European Commission
ECHR	:	European Court of Human Rights
EEC	:	European Economic Community
EU	:	European Union
HRIC	:	Human Rights Investigation Committee
NGO	:	Non Governmental Organization
OPCAT	:	Optional Protocol to the UN Convention against Torture
TGNA	:	Turkish Grand National Assembly
UN	:	United Nations

INTRODUCTION

Turkey's relations with the European Union¹ started with the application to the European Economic Community (EEC) in 1959. The journey with many ups and downs is continuing with the Accession Negotiations. However, the very reason of starting the Accession Negotiations process, with the idea that Turkey fulfilled the obligations of Copenhagen Political Criteria, is a reason that Turkey is criticized for her defaults in applying the rules and regulations.

Stability of institutions guaranteeing democracy, rule of law, human rights and respect for minorities are the prerequisites that should be met to open up the negotiations. Even though Turkey was declared as meeting the criteria, she was criticized for many of her practices, especially in the human rights area.

The period between the application to accede to the EEC in 1959 and start of negotiations in 2005 is disturbed by various reasons such as the coup in Turkey or the Union's inability to absorb a new member. However, the criticisms concerning the political criteria continue to exist even in our day. The reason to start the negotiations is seen as a reason of making no progress for completing the process.

One of the points of criticism under the political criteria is the prison system in Turkey. Unfortunately, Turkish prisons are known for their bad reputation. The

¹ Unless otherwise indicated, European Union (EU) will be used throughout this study regardless of chronological evolution of the community.

‘Midnight Express’ with two Oscar rewards is a good example of this reputation. Even though the film was recorded in 1978, its effects are still debatable in our day.

Arise of debates on the human rights issues in international arena dates back to the Second World War. The prisoner rights started to be handled around the same time. Protection of society from criminals is evolved into rehabilitation of the prisoners with the aims of protecting the society and preparing the prisoners for the life after prison. Other than limiting the right to liberty, the prison system aimed to rehabilitate the prisoner and so to eliminate the reasons of committing crime, or to prevent recidivism.

Deprivation of liberty is seen as a punishment in itself; that is why the conditions of the imprisonment should be organized in line with decreasing burdens or suffrage for the prisoners, according to this understanding. This change is reflected in Turkey through the changes in her laws and amendments; in an intensified way, during the accession process to the European Union. However, it should be remembered that the practice may not coincide with the aim and there might occur deficiencies in application; so that the practices should be asked both to the beneficiaries and the examining bodies. The same logic applies for the initiators of the process. The convergence or divergence among the criticisms might lighten the source of the process, as well.

The aim of this thesis is to analyze the changes in Turkish prison system from the eyes of the European bodies and the beneficiaries as the prisoners. Even though there are many stakeholders in prison system and prisoners’ rights subjects; including the non-governmental organizations such as the “Human Rights Association” or the “Civil Society in Penal System” in Turkey; only the international bodies’ and prisoners’ criticisms are evaluated. It is possible to evaluate the reforms from different aspects with many different actors; however, the thesis is focused on the effects of the

prisoners, the EU and the Council of Europe for comparing top down effect as the requests of the prisoners and bottom up effect as the EU membership. Criticisms and contributions of the NGOs might be the subject of another thesis.

International agreements on prisoners' rights, visits of the Council of Europe via the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), regular reports of the European Union and petitions of the prisoners sent to the Human Rights Committee of Turkish Grand National Assembly have been used for understanding the relation between reasons and impacts of the reforms in the Turkish Prison System.

After understanding the points of the international and the European bodies; through their declarations and or conventions; their criticisms are evaluated. Concerning the views of the Council of Europe, the reports of the visits by the CPT are analyzed covering the years from 1990 to 2010. Reports of the European Commission starting from 1998 are analyzed for understanding the point of view of the European Union. The examined petitions of the prisoners cover the years from 1990 to 2010. Concerning the content of the petitions they are categorized under six titles as torture; arbitrary acts, practice of laws and regulations and ill treatment; health treatment; transfers; physical conditions and finally death in prison. 2297 petitions are analyzed among thousands of others on other subjects; such as complaints about the public bodies, or suspicions on being watched by the government agencies. With regard to the prison system, only the convicted prisoners' petitions have been analyzed. Additionally, only the complaints of the convicted male prisoners are categorized, as there was nearly no petition sent by women and juveniles. The complaints of the prisoners might be handled via the reports of the Turkish Non-Governmental Organizations. Even though the reports of the NGOs are written based on the visits to the prisons or on letters of the prisoners written by themselves or their

relatives; analyzing the petitions of the prisoners written by them would give a much more clear idea.

Turkish citizens and foreigners with the permission of residency in Turkey have the right to write a petition to the Turkish Grand National Assembly about their personal or public requests or problems. This right is recognized and protected under the Article 74 of the Turkish Constitution². Besides this constitutional right, prisoners write petitions based on the founding law of the Human Rights Investigation Committee of the TGNA. According to this law, the Committee is obliged to analyze and, if necessary, to investigate the applications on human rights violations. The law will be evaluated in the coming chapters.

The thesis is organized as follows. In the first chapter, rights of prisoners are defined concerning the international agreements and charters of the United Nations, of the Council of Europe and of the European Union. In the second chapter the prison system of Turkey and reforms are analyzed in a chronological order.

In the third chapter the criticisms of the Council of Europe based on the reports of the visits of the CPT, and of the European Union based on regular reports of the European Commission and Peer Review Report on Policing and Penitentiaries are examined for understanding the deficiencies in laws and in practices.

In the fourth chapter, the petitions of the prisoners are analyzed and compared with the criticisms of the CPT and the European Union. Finally, the convergences and divergences in criticisms and existing problems are evaluated in the conclusion part, together with the determination of the initiator/s of the reforms.

² Türkiye Cumhuriyeti Anayasası, KN: 2709, RG 17844, 20.10.1982, M. 74.

CHAPTER 1

DEFINITION AND SCOPE OF PRISONER RIGHTS

What is expected from a prison system is two sided. At one side it is aimed to protect the society from crime. In this system, the criminals are locked up ignoring the abuse of their rights, their complaints and means to develop their already existing rights. The second side concentrates on the rehabilitation of the prisoner concerning that he/she will turn back to a life within the society after completing his/her sentence.

The second system, the rehabilitation of the prisoner, is dated back to the Second World War, by A. Reynaud. The understanding for prisoners has changed, as the human rights and prisoners' rights became an international issue in the same years. As because many of the survivors of the war experienced an incarceration period, due to being a hostage or a criminal, initiatives to develop the conditions and the rights of prisoners began to be voiced in the international arena.

Susan Easton searches for the definition of prisoner within the concept of citizenship. While discussing the concept of citizenship based on security concerns and virtue, prisoners are excluded from the society. "Most concepts of citizenship have excluded prisoners because of the requirement of virtue."³

³ Easton, Susan, Constructing Citizenship: Making Room for Prisoners' Rights. *Journal of Social Welfare and Family Law*, Vol. 30, No:2, June 2008, pp. 127-146.

Even if the prisoners are excluded from the citizens, initiations on defining the rights of prisoners and the efforts on ameliorating the conditions are seen as the signs of inclusion to the society.

Focusing on prisoners' rights, including social and political rights, reaffirms the status of the prisoner as citizen. Through such means, the offender remains a citizen, that is, a member of society possessing rights to participate in the political processes of a democratic state, and the right to have basic needs met while incarcerated. Citizenship, in this context, means the right to vote, the right to work, the right to welfare support, the right to rehabilitation, the right to be treated with respect, and the right not to be discriminated against.⁴

This chapter analyses the universal, historical, transformative, political and inalienable characters of the human rights concerning prisoners based on international agreements. The declarations, agreements or conventions of the United Nations, Council of Europe, and as the last one, European Union are cited. Women, children or disabled rights are ignored due to the petitions of the prisoners, sent to the TGNA Human Rights Investigation Committee (HRIC), which will be covered in the following chapters. Prisoners' rights are not categorized according to the types; however, they are given under the umbrella of hierarchy of norms in international law.

The reason to analyze the international declarations is related with the international law. The Vienna Convention on the Law of Treaties defines the "international agreement"⁵. According to Convention the treaties are binding in line with the rule of "Pacta Sunt Servanda"⁶. As Turkey ratified the treaty in 1975⁷,

⁴ Ibid.

⁵ Vienna Convention on Law of Treaties, 1969, United Nations Treaty Series, vol. 1155, p. 331, Article 2. available at: http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

⁶ Ibid., Article 26.

international agreements signed and ratified by Turkey became binding. As a member of the UN and Council of Europe, and as a candidate for the EU membership; Turkey is obliged to accept and apply the international agreements concluded by these bodies. Furthermore, according to Article 90 of the 1982 Constitution, the international agreements, ratified as defined in the law, are accepted to be the Turkish law.⁸ However, without causing to clashes Turkey may denounce annotations. In the prisoners' rights case, there is no annotation that should be mentioned in this thesis.

It should be kept in mind that the declarations handled in this chapter are binding for Turkey and she must abide with these rules through her laws and practices.

1.1 United Nations Declarations, Covenants, Conventions ad Principles:

United Nations is an international organization “committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights.”⁹ The Organization set the basics of the human rights in the international arena. Universal Declaration of Human Rights together with its subsequent Covenants on Civil – Political Rights and Economic, Social and Cultural Rights form the International Bill of Rights.

United Nations works in a number of different areas, such as human rights, environment, peace, terrorism and so on. “With its standards-setting work nearly

⁷ 24 Nisan 1963 Tarihinde Viyana’da İmzalanan Konsolosluk İlişkileri Hakkında Viyana Sözleşmesine Katılmamızın Uygun Bulduğuna Dair Kanun, KN: 1901, RG 15249, 20.05.1975.

⁸ For further information on international agreements please take a look at Türkiye Cumhuriyeti Anayasası, KN: 2709, RG 17844, 20.10.1982.

⁹ United Nations at a Glance available at: <http://www.un.org/en/aboutun/index.shtml>

complete, the UN is shifting the emphasis of its human rights efforts to the implementation of human rights laws.”¹⁰ With regard to the human rights High Commissioner for Human Rights organizes the work of the organization. The work is done following these aims, as mentioned in the preamble of the Declaration. With this aim in mind, the standards of the Union are analyzed for prisoners.

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge¹¹

1.1.1 Universal Declaration of Human Rights:

The Declaration was adopted and declared on December 10th, 1948, defining the framework of the human rights. While the 1st article declares the equality of human beings, 2nd article forbids the discrimination based on religion, race or political opinion.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Protection of the right to life and prohibition of torture and inhuman treatment or punishment are other reference points concerning the rights of the

¹⁰ Ibid.

¹¹ Ibid.

prisoners. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹²

The Declaration as a framework, defines the basic rights of human beings; as another example, arbitrary arrest is forbidden under the 9th Article; however arrests or police supervisions are not the subject of this thesis.

1.1.2 Standard Minimum Rules for the Treatment of Prisoners

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955 met the need for defining standards of living conditions and rules for the prisoners with the adoption of UN's Standard Minimum Rules for the Treatment of Prisoners. These rules constitute the most comprehensive document about the prisoners' rights in the international area, as these are the combination of universal human rights concerning civil and political rights and economic and social rights, together with the inhibition of discrimination based on race.

The rules put out the results such as a person's rights cannot be seized even if he or she is a prisoner; that incarceration is enough so that the conditions of imprisonment shall not become a punishment; and that the aim of imprisonment should be rehabilitating more than focusing on limitation of the freedom.

The aim of these rules and their status are explained as that the necessary outcome of the general consensus should be met in the contemporary world. Even though the differences between the states or spaces based on social or economic

¹² Universal Declaration of Human Rights, Article 1, available at: <http://www.un.org/en/documents/udhr/index.shtml>

conditions are remarked, states are expected to show effort for meeting these minimum standards. As well, states are encouraged to develop these standards.

In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.¹³

The minimum standards defined as the separation of the prisoners based on sex, age and criminal activities; the nutrition, lighting and heating for requirements of health; hygienic conditions, and so on. The need for sportive activities, supervision by a doctor and a psychologist, communication with the outside world via their visitors and TVs, books or newspapers, religious activities, and the rules are designed concerning both the physical and mental health of the prisoners.

Even though these rules are the minimum standards, the education, religion, physical and mental health, the right to work and the need to take notice of complaints are expected to be satisfied by the authorities. The purpose of the imprisonment is explained as protecting the society; however in order to protect people; the criminal should be prepared for an economically and socially sustainable life after prison. That is the reason that these standards are so comprehensive.

The purpose and justification of a sentence of imprisonment or a similar measure de-privative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

¹³ Standard Minimum Rules for the Treatment of Prisoners, Preliminary Observations, Article 2, available at: <http://www2.ohchr.org/english/law/treatmentprisoners.htm>

To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.¹⁴

1.1.3 International Convention on the Elimination of All Forms of Racial Discrimination

The convention, entered into force in 1969, forbids the discrimination based on race. In case of the prisoners' rights, this convention is the reference point for racial differences and the inalienable character of the human rights. All prisoners are free to enjoy their rights without discrimination based on race.

1.1.4 International Covenant on Civil and Political Rights

The 1st Article of the Covenant signifies the right of deciding for him/her self. "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."¹⁵

Concerning that a prisoner is a confined person; this Covenant signifies for him/her, the right to work, the impossibility of taking away one's ability to subsist, the right to complaint, and the right of religion, and also the right to choose between different types of cultural or sportive activities.

¹⁴ Ibid., Article 58.

¹⁵ International Covenant on Civil and Political Rights, Article 1/1 available at: <http://www2.ohchr.org/english/law/ccpr.htm>

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹⁶ This article requires the protection of prisoner’s security of life. In the next article torture and forced labour are forbidden. However, there is an exception of forced labour, concerning the type of sanction that the prisoner faces.

No one shall be required to perform forced or compulsory labour;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention.¹⁷

Concerning the right to life, the basic of all rights, Second Optional Protocol to the International Covenant on Civil and Political Rights prohibited death penalty. Turkey signed this protocol in April 2004, and ratified it in March 2006, so that the basic right to life is protected in return for lifetime imprisonment.

1.1.5 International Covenant on Economic, Social and Cultural Rights

The Covenant of Economic, Social and Cultural Rights defines the basic right for the prisoners: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹⁸

¹⁶ Ibid., Article 6/1.

¹⁷ Ibid., Article 8/3.

¹⁸ International Covenant on Economic, Social and Cultural Rights, Article 10/1, available at: <http://www2.ohchr.org/english/law/ccpr.htm>

The right to work, education and attaining in cultural activities are protected under this Covenant aiming to provide the very basic reason of imprisonment. “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”¹⁹ While providing and guaranteeing the rights for sustaining an economic, cultural and social life; social rehabilitation aim is achieved. Even though prisoners are locked up, they are enabled to sustain their lives, through communal and sportive activities and working programmes. Forced labour is forbidden under this Covenant too.

1.1.6 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention aims to prevent torture of any kind. In order to achieve this aim, State Parties are invited to arrange their legal system to punish law officials using force or torturing. Additionally, the States are expected to train their “law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”.²⁰ The control of the mechanism is not left to the States only, international actors are called for making observatory visits.

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where

¹⁹ Ibid., Article 3/10.

²⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 10/1, available at: <http://www2.ohchr.org/english/law/cat.htm>

people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.²¹

1.1.7 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Declaration defines torture as acts causing to pain that is done intentionally “on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons”²².

The physical and mental torture and degrading treatment are prohibited under this Declaration; as well there is a specification for the prisoners: “It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.”²³ The importance of prisoner treatment by the prison staff is mentioned in the Declaration, as well.

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.²⁴

²¹ Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1, available at: <http://www2.ohchr.org/english/law/cat-one.htm>

²² Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1/1, available at: <http://www2.ohchr.org/english/law/declarationcat.htm>

²³ Ibid.

²⁴ Ibid., Article 5.

Additionally the right to complain is guaranteed under this Declaration together with the aim of objective examination of the allegations.

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to and to have his case impartially examined by, the competent authorities of the State concerned.²⁵

1.1.8 Code of Conduct for Law Enforcement Officials

The Code points to the importance of human dignity: “In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.”²⁶ Use of force by law enforcement officials is restricted to necessity and principle of proportionality is applied. Use of force “...is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.”²⁷

1.1.9 Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

These principles put forth the importance of providing the standard health services and medication for prisoners, via opposing any bias against them.

²⁵ Ibid., Article 8.

²⁶ Code of Conduct for Law Enforcement Officials, Article 3(a) available at: <http://www2.ohchr.org/english/law/codeofconduct.htm>

²⁷ Ibid.

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.²⁸

Health service has a paramount importance; concerning the fact that, the health personnel are able to reveal the proofs on torture or ill treatment. Unless approaching to the prisoners without bias, the idea of ‘he/she deserved what he/she got as he/she is criminal’ will be stable; and it will become hard to protect the rights of the prisoners.

1.1.10 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

The principles are formulated for defining the legality of detention and imprisonment, the right to have legal representation, prisoners’ or detainees’ rights of hearing the reason of imprisonment and so on.

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.²⁹

The need to supervise the conditions in the prisons is mentioned among these principles, too. These rights are protected against the national or regional laws and regulations in case that they fail to meet the standards of these principles.

²⁸ Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 1, available at: <http://www2.ohchr.org/english/law/medicalethics.htm>

²⁹ Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, GA Res. A/RES/43/173 at 76th plenary meeting of 09.12.1988, Principle 3 available at: <http://www.un.org/documents/ga/res/43/a43r173.htm>

1.1.11 Basic Principles for the Treatment of Prisoners

These principles are the basics for prisoners concerning their rights to life and to work, to be treated in dignity, to have education, to benefit from health care facilities, to perform a religion and also to be treated impartially while benefiting from these rights.

1.1.12 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Treatment of the prison staff to the prisoners is the key for practising the rights recognized for the prisoners. As bad behaviours or intentions may end in harming the basic rights, there are trainings, for the prisons staff, such as the human rights or stress counselling. The principles ask for respect on Standard Minimum Rules for the Treatment of Prisoners while performing the duty as a law enforcement of prison. “Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties.”³⁰

Concerning the training of the staff, governments are responsible for paying attention to these concerned areas:

In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms.³¹

³⁰ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials available at: <http://www2.ohchr.org/english/law/firearms.htm>

³¹ Ibid., Article 20.

1.2 Council of Europe Conventions and Recommendations:

Founded in 1949 with ten members, the Council reached to forty-seven members. Turkey became the member in 1949³². The Council of Europe defined its primary aim as “to create a common democratic and legal area throughout the whole of the continent, ensuring respect for its fundamental values: human rights, democracy and the rule of law.”³³ To achieve this aim, the Council declared its standards with its conventions and a charter.

1.2.1 Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14 Rome, 4.XI.1950

The right to life, prohibition of torture together with slavery and forced labour are among the fundamental rights that “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.”³⁴ Moreover, this is the founding Convention of European Court of Human Rights.

1.2.2 European Social Charter

The European Social Charter is a Council of Europe treaty which guarantees social and economic human rights. It was adopted in 1961 and revised in 1996.

³² Avrupa Konseyi'nin Kurulması Hakkında İmzalanmış Olan Statünün Onanmasına Dair Kanun, KN 5456, RG 7382, 17.12.1949.

³³ Council of Europe website <http://www.coe.int/aboutCoe/index.asp?page=nosObjectifs&l=en>

³⁴ Convention for the Protection of Human Rights and Fundamental Freedoms as Amended by Protocols No. 11 and No 14 Roma, 4.XI.1950, Article 1, available at: <http://conventions.coe.int/treaty/en/treaties/html/005.htm>

Concerning the prisoners, it covers the rights of health, employment as prohibition of forced labor, legal protection from ill treatment, abuse and non-discrimination.

1.2.3 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The Convention is the founding treaty of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The aim of the Committee is to monitor the allegations on human rights violations.

The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.³⁵

The character of the visits is defined in the treaty. “The Committee shall organise visits to places referred to in Article 2. Apart from periodic visits, the Committee may organise such other visits as appear to it to be required in the circumstances.”³⁶ The governing authorities of the concerned states are supposed to set no limit on the visits. Through this Convention, the CPT had the right to interview the prisoners, detainees, and any person whom is seen as connected to the case concerned. At this point it should be declared that the right of the Committee to interview with the prisoners is prompting for developing the rights and protecting them.

³⁵ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Article 1, available at: <http://www.cpt.coe.int/en/documents/ecpt.htm>

³⁶ Ibid., Article 7.

1.2.4 Recommendation Rec. (2006)2 of the Committee of Ministers to Member States on the European Prison Rules

European Prison Rules are the guiding rules for the prisons. Basically, these rules are formulated following the legacy of UN Standard Minimum Rules for Prisoners. The very need of imprisonment is in line with the standard rules: “All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.”³⁷

The rules emphasize the importance of objective examination of conditions and the training of staff. The material conditions are specified for meeting the standards of daily life as hygiene, ventilation, lightening, and having a bed to sleep. Additionally the need of privacy is mentioned as a condition that has to be met. Nutrition is standardized for three times in a day, while concerning the requirements of the region, age and health.

For achieving socialization and facilitating reintegration to the society, contact with the outside world is given importance. The regime shall allow all prisoners to spend as many hours a day outside their cells as necessary for an adequate level of human and social interaction. Recreational activities, working conditions as a normal worker, including supplying social security if possible, are appreciated. Securing the right to perform a religion, and supplying necessary conditions for religious activities are appreciated.

Health of prisoners requires the attention of the government or the nation so that the involvement of the Ministry of Health or the responsible authority is asked.

³⁷ Recommendation of the Committee of Ministers to Member States on the European Prison Rules, Basic Principle 6, available at: <https://wcd.coe.int/ViewDoc.jsp?id=955747>

“Medical services in prison shall be organised in close relation with the general health administration of the community or nation.”³⁸ Concerning the medical practitioners or doctors, one full time doctor is mentioned as a condition; if there is not another regulation on this issue. “Where prisons do not have a full-time medical practitioner, a part-time medical practitioner shall visit regularly.”³⁹ Medical personnel are responsible for mental health of the prisoners, including their physical health. The practitioners are expected to perform objectively, without bias, in order to perform their tasks concerning the torture, too.

The right to complaint is protected under this set of rules. “Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority.”⁴⁰

Importance of training the prison staff is remarked as one of European Prison Rules. Staffs are expected to act respectfully concerning the human rights and use no force except the necessary conditions that are mentioned in the national laws. According to these rules, gendarmerie forces, in Turkey’s case, should be kept out of the prisons. “Staff of other law enforcement agencies shall only be involved in dealing with prisoners inside prisons in exceptional circumstances.”⁴¹

Furthermore, supervision of staff, management and conditions are expected to be made by a governing authority. “Prisons shall be inspected regularly by a

³⁸ Ibid., Basic Principle 40/1.

³⁹ Ibid., Basic Principle 43/1.

⁴⁰ Ibid., Basic Principle 70/1.

⁴¹ Ibid., 67/1.

governmental agency in order to assess whether they are administered in accordance with the requirements of national and international law, and the provisions of these rules”⁴².

1.3 European Union Charters and Criteria:

The six countries; Belgium, France, Germany, Italy, Luxembourg and the Netherlands united economically and politically in 1950 and founded the European Coal and Steel Community. The Community evolved in time and in our day it is named as the European Union. Six founders enlarged to twenty seven members with four candidates; Croatia, Former Yugoslav Republic of Macedonia, Iceland and Turkey. Members of the Union formed their own standards on human rights and prisoner rights in line with the United Nations and the Council of Europe.

...during the 1980s, the Community’s interest in safeguarding fundamental rights became a major issue along with its evolutionary transformation from an economic organisation to a political entity. As integration deepened, and as the Community came to have more far-reaching effects on the daily lives of its citizens, the need for explicit reference to fundamental rights was recognised. As a result, the Treaty of Maastricht (1992) codified into primary law the general principle of fundamental rights.⁴³

This effect is seen at the Union’s domestic and external policies. Other than firming only the national systems of the members and the candidates, the standards have been used as a precondition for trade agreements, as well. The standards concerning prisoners are explained under three titles.

⁴² Ibid., Basic Principle 92.

⁴³ Kassimeris, Christos and Tsoumpanou, Lina, The Impact of the European Convention on the Protection of Human Rights and Fundamental Freedoms on Turkey’s EU Candidacy, The International Journal of Human Rights, Vol. 12, No: 3, June 2008, pp. 331.

1.3.1 Charter of Fundamental Rights of the European Union

The Charter, specific to the European Union, defines the basic rights for its citizens. Human dignity, right to life, prohibition of torture and slavery are among the rights protected and respected by the Union. The importance of the treaty lies in the fact that it prohibits death penalty:

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.⁴⁴

The Charter became a legal document after that Lisbon Treaty entered into force. “The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.”⁴⁵

1.3.2 Treaty of Lisbon

The so-called constitution of the Union, declares the values of the Union as “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”⁴⁶

⁴⁴ Charter of Fundamental Rights of the European Union, Article 2, available at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁴⁵ Treaty of Lisbon available at: http://europa.eu/lisbon_treaty/full_text/index_en.htm

⁴⁶ Ibid.

Concerning Human Rights, the Union aims to apply the Fundamental Freedoms defined by the Council of Europe, without damaging the power of the Union. “The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.”⁴⁷ At this point, it is possible to say that, the Union accepts to apply all of the rights and freedoms defined in the Charter, which were held in the previous pages.

1.3.3 Copenhagen Criteria

The Copenhagen Criteria are the conditions that need to be met in order to be a member of the Union. These Criteria are defined in Copenhagen European Council, in 1993.

- Political: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- Economic: existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
- Acceptance of the Community Acquis: ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.⁴⁸

Turkey was appraised for starting the negotiations, as she met the Copenhagen Political Criteria, in EU Head of State or Government summit meeting, in 2004. The date of opening the negotiations was defined as 3 October 2005, in the same meeting. However, even if the Criteria of stability in the institutions guaranteeing democracy,

⁴⁷ Ibid.

⁴⁸ Copenhagen Criteria, Copenhagen European Council in 1993, available at: http://europa.eu/scadplus/glossary/accession_criteria_copenhagen_en.htm

human rights and rules of law and also respect for minorities were met; Turkey was criticized for defects in practices.

Concerning the conventions and declarations it is seen that the UN, the EU and the Council of Europe share the same values. Through the years, as new problems are faced, all of these organizations extend the content of the rights' and develop new ways to protect those rights. Prisoners' rights are protected by all of the parties mentioned here.

CHAPTER 2

REFORMS IN THE TURKISH JUDICIAL SYSTEM CONCERNING THE PENITENTIARY SYSTEM

Recent years of Turkish Judicial System is full of amendments and new regulations. Remembering the fact that Turkish Constitution was newly written after every coup d'états, it is expected to face amendments or changes in the laws and the regulations. Ignoring the reason, Turkish penitentiary system does follow the same pattern.

In this chapter, historical background of the Turkish Laws concerning the penitentiary system is analyzed in a chronological order. After the laws, projects of the European Union in Turkey concerning Judiciary system are highlighted. It should be mentioned that even there are many projects conducted by the NGOs only the projects under the auspices of the Ministry of Justice are taken into consideration. As the petitions of the prisoners are sent to a public authority it is considered to be more convenient to ignore non-governmental organizations and keep going with public authorities.

Development of Turkish penitentiary system dates back to 1929, in which year the administration of the prisons was handed from the Ministry of Interior Affairs to the Ministry of Justice. The change in the idea of imprisonment from only protecting the society to rehabilitating and preparing the criminals for life after the prison; took a shape in the same years.

In Turkey, the first step towards modern execution regime was taken with the Law No: 1721 on Administration of Prisons and Detention Houses in 1930. At the same years, workshops were established in prisons in order to regulate employment of convicts; in 1943 the Law on Organization and Duties of General Directorate for Penal and Detention Houses entered into force.⁴⁹

It is important to mention the past of legislations, at this point. Law on Execution of Sentences⁵⁰, and its Regulation on Administration of Prisons and Detention Centres and Execution of Sentences, of 1967 became obsolete due to the Law on Execution of Criminal Sentences and Security Measures⁵¹.

According to this Law and Regulation prisoners are educated under the auspices of director of the prison. Prisoners had the right to work and develop their personal interests. The aim of the educators or teachers is defined as improving morality of the prisoners via the education and trainings. For the prisoners who could not learn to write and read, or who had troubles in writing and reading, the teacher is seen as responsible for those inabilities. The chief of the working houses are responsible for teaching a craft to prisoners who are in prison since more than three years, in order to create a chance of sustaining their life after prison. Even, the prison administration and the chief of workhouse held accountable for the inabilities of the prisoners in learning.

In 1983 new articles are added to the Regulation. Social Aid and psychiatric help services are supplied, for the prisoners, aiming to define the reasons of committing crime and eliminating those reasons. With a change in the regulation, in

⁴⁹ Judicial Reform Strategy of Turkish Ministry of Justice available at: <http://www.sgb.adalet.gov.tr/yrs/Judicial%20Reform%20Strategy.pdf>

⁵⁰ Cezaların İnfazı Hakkında Kanun, KN: 647, RG 12050, 16.07.1965

⁵¹ Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun, KN: 5275, RG 25685, 29.12.2004.

1989, it was decided to denounce the right to complaint, disciplinary rules, program of the trainings verbally and written on a paper.

The reason of explaining previous rules is to point out the fact that the reforms in the legislations and in practices are not a new invention in Turkish history. It would be mistaken to evaluate these developments as only the efforts of joining the European Union.

The Law on the Foundation of Work Houses in the Prisons⁵² aimed to build up working houses for protecting and/or developing the job or art of the prisoners or teaching a new profession. The houses are funded by different sources such as their profits, budget defined by the Ministry of Justice, or donations.

According to the change in the Law to Fight Terrorism⁵³ in 2001, the prisoners; who found guilty under this law, will be able to work in working houses, will achieve education, and participate in sports or cultural activities with the aims of rehabilitation and education.

The need of inspecting the prisons and detention places is met with the Law on Boards to Monitor Prisons and Detention Centres⁵⁴ enforced in 2001. Imprisonment, health and living conditions of prisoners, security, and transfer to other prisons or to hospitals are analyzed by these centres and deficiencies are reported to higher authorities such as TGNA Human Rights Investigation Committee or the Ministry of

⁵² Ceza İnfaz Kurumları ve Tutukevleri İşyurtları Kurumunun Kuruluş ve İdaresine Dair Kanun, KN: 4301, RG 23075, 09.08.1997.

⁵³ Terörle Mücadele Kanununun Bir Maddesinde Değişiklik Yapılmasına Dair Kanun, KN: 4666, RG 24393, 05.05.2001.

⁵⁴ Ceza İnfaz Kurumları ve Tutukevleri İzleme Kurulları Kanunu, KN: 4681, RG 24439, 21.06.2001.

Justice. In 2007, a change is made concerning the higher authorities where the reports would be sent. According to this change, Monitoring Boards are supposed to prepare a report at least every four months and send it to the Ministry of Justice, the TGNA Human Rights Investigation Committee, office of the chief public prosecutor, and in case of a complaint to the executive authority.

In 2002, the Law on the Training Centers for Prison Personnel⁵⁵ was accepted in the Parliament. Through these centres and programmes it is aimed to train qualified personnel. Pre-service, in-service and promotion training are given to the prison staff while imposing the rights of prisoners as humans. There are four training centres in Ankara, İstanbul, Erzurum and Kahramanmaraş. A new centre is going to be built in the Aegean Region.

In 2003, the Law on Administration of Prisons and Detention Centres⁵⁶ has been changed. By this change it was decided that the “nutritious, suitable for health conditions with enough calories”⁵⁷ meals of the prisoners will be prepared according to “their age, the conditions of their work, religious affiliations”⁵⁸. In addition it is mentioned that the doctor of the prison would decide on the meals of sick prisoners.

⁵⁵ Ceza İnfaz Kurumları ve Tutukevleri Personeli Eğitim Merkezleri Kanunu, KN: 4769, RG 24834, 02.08.2002.

⁵⁶ Türk Ceza Kanunu ile Hapishane ve Tevkifevlerinin İdaresi Hakkında Kanunda Değişiklik Yapılmasına Dair Kanun, KN: 4806, RG 25020, 10.02.2003.

⁵⁷ Ibid.

⁵⁸ Ibid.

In the same year, a change in Turkish Penal Code⁵⁹ made it impossible to change the sentence of torture to a fine, or to suspend it.

2004 is an important year for gathering the Laws on Execution of Sentences under a single frame. Under this law, the main aim of execution is defined for preventing recidivism and easing the way for integration of the prisoners to the society.

...empowering the factors that prevent the criminals from perpetrating again, protecting the society from crimes, encouraging socialization of convicted people, and easing the harmonization into a life style that he/she is productive, respectful to laws, regulations and social order.⁶⁰

Law on Execution of Criminal Sentences and Security Measures⁶¹ forbids the torture, cruel, inhuman and degrading treatment. Furthermore, according to this Law, the principle of execution is to avoid privileges based on “language, religion, cult, nation, colour, sex, birth, philosophical belief, national or social origin and political or other ideas or thoughts with economic powers and other social position concerns”⁶². Grouping and accommodation of prisoners based on age, length of sentence and types of crimes, rights of prisoners and types of disciplinary actions with their reasons, personal belongings that might be preserved in the prison, conditions of accommodation are listed in a detailed way.

⁵⁹ Türk Ceza Kanunu, KN: 5237, RG 25611, 12.10.2004.

⁶⁰ Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun, KN:5275, RG 25685, 29.12.2004.

⁶¹ Ibid.

⁶² Ibid.

Right of prisoners to speak on the phone with their relatives, once a week, for ten minutes was regulated, in 2001. It is defined that this right might be restrained due to disciplinary reasons. In 2009, a change is made in the right to telephone, via a regulation. It was decided that if the prisoner or the person he/she calls, cannot speak Turkish, it will be authorized to speak in the language that they know. The call will be recorded and analyzed; if anything dangerous is found, the prisoner will not use that language while talking to that person again. The same applies for the right of visit by the relatives.

In the same year, 2001, F Type Prisons was introduced. The prisons were in line with the standards of the United Nations and the Council of Europe. “The F-Type High Security Prison Project is based on a system in which rooms are planned for either one inmate or for three inmates, and which provides for areas for sports, recreation and training, as well as for workshops.”⁶³

Ministry of Justice published the Judicial Reform Strategy. Closing down the small prisons and building modern institutions for rehabilitative reasons under the auspices of “United Nations Standard Rules for Treatment of Prisoners and European Prison Rules”⁶⁴, increasing the number of training centres for prison staff, improving health services via an agreement with Ministry of Health, increasing working opportunities for prisoners and ending the existence of Gendarmerie forces are ongoing projects of the strategy. Up until December 2008, 86 prisons located in the districts were closed for increasing the quality in material conditions and human rights practices. Concerning the transfer or external security, the mission will be handed to

⁶³ Executive Summary of the Turkish National Programme for the Adoption of Acquis available at: http://ec.europa.eu/enlargement/pdf/turkey/npaa_full_en.pdf

⁶⁴ Ibid.

the Ministry of Justice, which was mentioned in the 2008 Turkish National Programme for the Adoption of Acquis.

Health services in the prisons are delivered to the Ministry of Health with a Protocol signed between the Ministry of Health and Ministry of Justice, in 2009. The aim of the protocol is to conduct the health services through the polyclinic in the prisons and meeting the standards of United Nations.

Besides the national regulations in Turkey, the reform process aiming the Union membership is supported by the Union itself. To achieve standardization and membership aims the Union donates money, and sometimes with joint financing of the Union and the Turkish government the projects are formulated.

The process until the application of the projects implies as definition of project areas by the Delegation of the European Union to Turkey, distribution of the projects among the concerned public authorities by the Secretariat General for European Union Affairs, planning of the projects by the Public Bodies. If the projects are accepted by the Commission and approved in the European Parliament, they become ready for application.

The Ministry of Justice handles the projects on prisoners' rights. Even though there are many projects concerning prisoners' rights, only the Union projects financed by the Union itself or together with the Turkish Government or the CE will be mentioned. Additionally, the projects on women and children prisoners are ignored concerning the fact only the petitions of adult male prisoners are evaluated.

The projects conducted by the Turkish government, the CE and the Union "Training of Judges on Human Rights", "Judicial Modernization and Penal Code Reform Project", and "Training of Judges, Prosecutors and Doctors who are not

Forensic Medicine Specialist, on Istanbul Protocol” have been completed. Through the Judicial Modernization Project, “model” prisons are established in Uşak and Elazığ; prison staffs are educated for human rights; and judges are educated for Union laws; and public servants are educated on information technologies. Training of judges, prosecutors and doctors on Istanbul Protocol on Preventing Torture, other Cruel or Inhuman Degrading Treatment or Punishment is crucial for proving the torture. The education comprises the definition of international standards and ethic rules on torture, judicial investigation of torture, and medical proofs on human body and physiological torture.

“Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey” project is continuing. It is aimed to educate prison staff on European Prison Rules and Turkish laws, to develop new working houses for the prisoners, and increasing the awareness on prison system among the public.

The European Parliament approved the “Improved Efficiency of Turkish Criminal Justice System” project; however still the practices did not start. With this project it is aimed “to improve the Turkish criminal justice system in line with the EU standards”⁶⁵ through improving “the efficiency and confidence in the criminal justice system”⁶⁶. Another approved still not practiced project is “Improving the Physiological Health and Addiction Facilities in Prisons”. With this project prison staff and the prisoners will be evaluated physiologically and addiction problems will be held by the doctors.

⁶⁵ European Commission, Improved Efficiency of Turkish Criminal Justice System Project, CRIS Number: TR2009/0136.04, available at: http://ec.europa.eu/enlargement/pdf/turkey/ipa/2009/tr2009_013604-efficiency_of_turkish_criminal_justice_system_en.pdf

⁶⁶ Ibid.

The different areas of projects and existence of different stakeholders clarify the complexity of the issue. Prisoners' rights and conditions attract the attention of different international, public and civil bodies with from different aspects. The EU spent 128.04 Million Euros⁶⁷ in the area of Justice, Freedom and Security. This figure 7.1% of the total projects implied in Turkey. Such efforts of energy, time and money assert the importance of the issue.

⁶⁷ EU Funded Programmes in Turkey available at:
http://www.avrupa.info.tr/AB_Mali_Destegi/AB_Program_Bilgileri.html

CHAPTER 3

EUROPEAN CRITICISMS ON THE TURKISH PRISON SYSTEM

Turkey's relationship with the Union started with the application to the European Economic Community in 1959. As mentioned in the previous chapter, Turkey's negotiations for membership started in 2005; however supervision of laws and practices started much earlier. The conclusions of the first supervision were published as "Regular Report from the Commission on Turkey's Progress Towards Accession" in 1998.

The Council of Europe and the European Union are conducting joint programmes "in pursuit of common aims with regard to the protection of democracy, respect for human rights and fundamental freedoms and the rule of law in Europe"⁶⁸, since 1993. The joint programme for Turkey started in 2001 and there are still programmes that continue to be conducted. With regard to Turkey's prison system, two projects were designed. The first project is "Judicial Modernization and Prison Reform"⁶⁹, started at the mid of 2004 and ended in 2007. The second one is "Dissemination of Modern Prison Practices and Promotion of Prison Reform in Turkey"⁷⁰ which started in March 2009, and expected to be ended by 2011. The

⁶⁸ Joint Programmes Between The Council of Europe and The European Union, available at: <http://www.jp.coe.int/Default.asp>

⁶⁹ Joint Programmes Activities, available at: <http://www.jp.coe.int/CEAD/IP/default.asp>

⁷⁰ Ibid.

Council declares the benefits of these programmes as easing the way for the Union membership. “Through joint programmes, many countries developed increasingly close links with the European Union, and some have applied for membership.”⁷¹ The programmes contain different regulations and practices in various public bodies and organizations.

Concerning the second programme, “Dissemination of Modern Prison Practices and Promotion of Prison Reform in Turkey”, the aim is to be achieved with different regulations in different public authorities.

The aim of the second module is fourfold: to provide technical support to the Ministry of Justice in the construction of new prisons and the rehabilitation of old ones, to assist prison staff training Schools in providing qualified training in accordance with national law and the Acquis of the European Union, to cooperate with the prison administration in applying European standards and practices in the management of prisons and treatment of inmates and to develop the training of Enforcement Judges.⁷²

NGO reports, CPT reports, judicial records and applications to and decisions of European Court of Human Rights are used as the verification sources of these programmes. However, in order to evaluate the defects in Turkish System from the Europe’s eyes, the reports of the CPT and the European Union will be analyzed through this chapter.

In this chapter, first of all, structure of the European Committee for the Prevention of Torture is analyzed. Then, the visits of the CPT are analyzed in a historical way, in order to see the changes and developments on a yearly basis.

⁷¹ Joint Programmes between The Council of Europe and The European Union, available at: <http://www.jp.coe.int/Default.asp>

⁷² Judicial Modernization and Prison Reform Programme in Turkey, available at: http://www.coe.int/T/E/Legal_Affairs/About_us/Activities/7Prog_Turkey.asp

Following the evaluations of the Council of Europe, the European Union's criticisms are analyzed based on the Progress Reports and the Report on Policing and Penitentiaries prepared by J. J. McManus based on a peer review visit. And finally the common points and differences in evaluations are denoted as a conclusion.

3.1 Council of Europe:

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment mentions the need of visits of a non-judicial body in order to prevent tortures, and to empower the rights of the prisoners and the detainees. With this aim, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, pays visits to the member states via delegations.

Article 1: There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Committee"). The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.⁷³

The Delegations analyze the conditions of the prisons as well the allegations on ill treatment and torture. "...it pays special attention to any allegations of ill-treatment of prisoners by staff. However, all aspects of the conditions of detention in a prison are of relevance to the CPT's mandate."⁷⁴

⁷³ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 26.11.1987 as amended by Protocol No. 1 and No. 2, 04.11.1993, available at: <http://www.cpt.coe.int/en/documents/ecpt.htm>

⁷⁴ 2nd General Report on the CPT's Activities covering the period 1 January to 31 December 1991, available at: <http://www.cpt.coe.int/en/annual/rep-02.htm>

As a member, Turkey has been regularly visited by the delegations of the Committee. Between 1990 and 2010, the Committee paid five periodic visits, “usually once every four years”⁷⁵ and twenty three visits in total with high-level talks visit and ad hoc visits, to Turkey, that took place in case of need.

Below the next title, the criticisms of Turkish prison system based on the reports prepared after the visits are examined. The reason of analysing the Committee’s criticisms is the suitable dates of prisoners’ petitions sent to the Human Rights Investigation Committee and the CPT’s visits, and the analysis methods of the CPT; such as examination of physical conditions, treatment of prison staffs to the prisoners, interviews with the prisoners and the legal framework and applications of the concerned state. Furthermore, Union Membership is seen as connected to the membership of the Council of Europe in the Commission Communication Paper:

The European Communities and the Council of Europe share the same basic values. Membership of the Council of Europe and of the European Convention for the Protection of Human Rights and Fundamental Freedoms has become an implicit condition for accession to the European Union.⁷⁶

3.1.1 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Visits to Turkey (CPT Visits):

The twenty three visits in total took place in different prisons in order to have a general idea; but, sometimes the prisons are visited twice or triple times, in order to see the amelioration in physical conditions and the treatment of the staff. The committee explains the notion of the visits as:

⁷⁵ The CPT in brief available at: <http://www.cpt.coe.int/en/about.htm>

⁷⁶ The External Dimension of the EU’s Human Rights Policy: From Rome to Maastricht and Beyond, Commission Communication COM (95) 567 of 22 November 1995, page 4.

In fulfilling this task the CPT is guided by the following considerations: that the prohibition of ill-treatment is absolute; that ill-treatment is repugnant to the principles of civilised conduct, even if used in milder forms; and that ill-treatment is not only harmful to the victim but also degrading to the person inflicting it and ultimately harmful to the national authorities in general.⁷⁷

Every visit is reported in a detailed way. The legal framework concerning the torture; general conditions of the prisons and specific problems of the visited prisons; comments and recommendations for amelioration are mentioned in these reports. In return, Turkey gives an answer; however, those answers are not taken into consideration in this thesis.

The CPT has visited Turkey every year, except 1993, 1995 and 1998. During the first visit, which took place in 1990, CPT examined Ankara Closed Prison, Diyarbakır and Malatya Prisons. The legal provisions forbidding torture and the practices conflicting with the laws and regulations are criticized. Thus, torture, hygiene, medical incapability and inconvenient transport vehicles are the main areas of criticism. The complaints of the prisoners on health issues are listened, as well. “One common complaint of prisoners in all the prisons was that the prisons' ambulant medical services were inadequate.”⁷⁸

The second visit took place the next year, between the end of September and beginning of October. Ankara and Diyarbakır prisons were visited again; and amelioration in the visiting spaces is mentioned. However, CPT repeats the request of eroding torture.

⁷⁷ Report to the Turkish Government on the Visit to Turkey Carried Out by the CPT, CPT/Inf (2007) 1, available at: <http://www.cpt.coe.int/documents/tur/2007-01-inf-eng.htm>

⁷⁸ Ibid.

The third visit happened in Ankara, Diyarbakır and Adana prisons, during the end of 1992. The allegations of torture were not heard anymore; however degradations in physical conditions compare to the last year's visit were cited. The visiting areas, psychiatric help for prisoners, overcrowding, shortage of water and heat, cold meals were the main areas of criticism. However the good conditions of reaching to television and magazines, and the sportive activities were welcomed.

The fourth visit took place in Ankara, Cizre, Mardin, Şırnak and Diyarbakır prisons, during 1994, October. Torture allegations were not heard; however, there were ill treatment allegations about the gendarmerie forces. The recommendations were counted as that medical care needed to be ameliorated; overcrowding which was increasing from visit to visit should be solved; health care personnel deficiency should be handled; insufficient sportive activities and work opportunities should be organized and that prisoners should be encouraged to take part in those activities.

Change in the Turkish prison system from dormitory to room type, under the Project of a Turkish Model for Prisons, is mentioned as expected to be “complying with UN and European standards”⁷⁹.

Two visits took place in 1996. First visit happened in Eskişehir Special Type Prison, with the invitation of the Turkish Government in order to show the changes regarding the project of “A Turkish Model for Prisons”⁸⁰. This was an era of the prisoners' severe reaction against the change in prison system from dormitories to special type, or F type prison, which was followed by the increased torture allegations.

⁷⁹ Report to the Turkish Government on the Visit to Turkey Carried Out by the CPT, CPT/Inf (2007) 7, available at: <http://www.cpt.coe.int/documents/tur/2007-07-inf-eng.htm>

⁸⁰ Ibid.

The delegation, in the report, mentioned the security concerns of the prisoners about their lives due to inter-prison violence, as well.

Even though the prison was assessed as clean enough, the problem of water insufficiency was mentioned by the prisoners. Deficiency of organized creative activities for the prisoners was criticized; and, the health care personnel and medicaments were found insufficient. Additionally, the fear of prisoners to complaint about a staff or the management was mentioned in the report.

The Committee welcomes the introduction of locked complaint boxes designed to allow prisoners to communicate directly and on a confidential basis with the Ministry of Justice. It hopes that this innovation will reassure prisoners that their complaints will be taken seriously and that there will be no adverse repercussions for them.⁸¹

The second visit in 1996 visit took place for examining the police detention places other than the prisons; thus, there was no comment on prison conditions that should be handled under this chapter.

The visit of İzmir, Mersin and Ünye Prisons happened in 1997. This visit is the second period visit at the same time. The physical conditions were generally appreciated; however the overcrowding and insufficient group activities were mentioned as the problems to be fixed. Absence of personal locks for the prisoners; inadequacy of sanitary facilities and problems of hygiene, due to the crowd were other areas of concern.

The material conditions of prisoners in special type prisons were found to be better because of the limited number of prisoners. However this time, the ban to make outdoor exercise for the prisoners guilty of Law to Fight with Terrorism was

⁸¹ Report to the Turkish Government on the Visit to Turkey Carried Out by the CPT, CPT/Inf (2001) 1, available at: <http://www.cpt.coe.int/documents/tur/2001-01-inf-eng.htm#Report>

criticized. With regard to these activities, the Agreement on developing sportive activities under the auspices of the Ministry of Sport was welcomed.

This visit has the first report to mention or to confess for the possibility of ill treatment cases in prison systems. “Unfortunately, instances of ill-treatment of prisoners by staff will occur from time to time in any prison system. However, when allegations are made, it is essential for them to be thoroughly investigated and, if appropriate, adequate sanctions imposed.”⁸²

The CPT has noted with interest that in 1997, the Ministry of Justice drew up an information brochure entitled "Guidelines for Convicted and Remand Prisoners" which contains comprehensive information on the general rules to be followed by prisoners, prisoners' rights, duties and rewards, disciplinary sanctions and procedure, etc. This is a most welcome development.⁸³

1999 visit took place in İmralı Prison that is not the subject of this thesis, due to the special situation of Mr. Abdullah Öcalan.

2000 was the year of accommodation visit. The change from dormitory prison system to room–system approach was appreciated. Room-type accommodation was encouraged by the CPT; because the dangers of dormitory system such as the lack of privacy; risk of intimidation and violence; and deficiency of means of direct supervision from outside, were declared as harmful. Furthermore, the need for socialization and engagement in purposeful activities in smaller living units was reminded, and Turkey’s efforts for developing the activities were welcomed.

⁸² Follow Up Report of the Turkish Government In Response to the Report of the CPT on its Visits to Turkey, CPT/Inf (99) 18, available at: <http://www.cpt.coe.int/documents/tur/1999-18-inf-eng.htm>

⁸³ Ibid.

...the Committee was very pleased to learn that a draft Law to amend Article 16 of the 1991 Law was published in October 2000. The draft Law envisages, in particular, that the prohibition of contacts between prisoners will be replaced by a provision stipulating that prisoners shall participate in training, sport, rehabilitation and workshop activities as well as other social and cultural activities in the common areas of the institutions where they are held.⁸⁴

Overcrowding and the compulsion of sharing the beds due the crowd, and vacant posts in physical and mental health services were pointed out.

Existence of Gendarmerie forces was criticized; in line with the prisoners' complaints that the Delegation interviewed. "Tight handcuffing during transport"⁸⁵ and "verbal abuse"⁸⁶ were among the examples of ill treatment. These actions led to the repetition of the need to monitor the prisons by a neutral authority.

2001 visit comprised Elazığ, Şanlıurfa, Van Prisons, Sincan and Tekirdağ F Type İmralı Prisons. Recommendations on İmralı prison are not taken into consideration. However, this visit was important due to the 2000 prison interventions of Turkish government.

At this point it is necessary to give brief information about the intervention. Turkish government was following a project of building F Type Prisons for prisoners found guilty under Law to Fight Terrorism. However, prisoners protested this project via hunger strikes. There was no consolidation for ending the strikes so that the

⁸⁴ Report to the Turkish Government on the Visits to Turkey Carried Out by the CPT from 16 to 24 July 2000, CPT/Inf (2001) 25, available at: <http://www.cpt.coe.int/documents/tur/2001-25-inf-eng.htm>

⁸⁵ Ibid.

⁸⁶ Ibid.

government decided to intervene to the resistance with the operation 'Return to Life' (Hayata Dönüş). Gendarmerie forces entered into the buildings and intervened to the prisoners, and intervention ended by loss of 32 lives, including 2 gendarmeries. The prisoners of Bayrampaşa Prison survived of the operation sued the gendarmerie forces, which is still an ongoing process.

Concerning the intervention CPT requested information from the government, in order to see the methods and they received the requested recordings.

...at the delegation's request, the Turkish authorities have provided a considerable amount of information concerning the above-mentioned interventions - video recordings, autopsy reports, incident reports, descriptions of the incapacitating devices and other munitions used by the security forces.⁸⁷

More documents were demanded; however there was no severe criticism before the analysis of the new documents. The visits ended with the observations of ill treatment by the prison staffs and the need of less involvement of gendarmerie forces. The Delegation repeated the need of observing the prisons by the NGOs or civil authorities; in line with the same aim, the Law on boards to monitor prisons and detention centres was welcomed.

As another point for criticism, shackling sick prisoners in civil hospitals, to their beds by the handcuffs was mentioned. However, torture by the prison staff was no more mentioned; only some ill treatment incidents were indicated.

The third periodic visit took place in 2001, in the prisons of Elazığ, İmralı, Şanlıurfa, Van, Sincan and Tekirdağ. As the main aim of visiting Elazığ, Şanlıurfa and

⁸⁷ Report to the Turkish Government on the Visits to Turkey Carried Out by the CPT, CPT/Inf (2001) 31, available at: <http://www.cpt.coe.int/documents/tur/2001-31-inf-eng-1.htm>

Van was to examine the conditions of women and juvenile and that İmralı is out of the concern of this thesis, only remarks on Sincan and Tekirdağ F type prisons are taken into account.

Material conditions are observed as satisfactory; however, the delegation repeated the need and importance of socialization in F Type prisons.

The continuing unwillingness to participate in communal activities displayed by prisoners held under the Law to Fight Terrorism is obviously not facilitating the authorities' task. Nevertheless, the delegation was rather disappointed by what it found. In particular, in neither establishment were the libraries open to access by prisoners (as distinct from the possibility to borrow books). Moreover, although some progress had been made in equipping the workshops in Tekirdağ, they were still not ready for use (in contrast, the delegation was pleased to note that those in Sincan were apparently ready for use).⁸⁸

Concerning the ill treatment issue, few allegations were mentioned. At that point, the Delegation welcomed the education of prisoner staff working in F Type prisons. “The CPT is very pleased to learn that 200 staff members selected to work in F-type prisons have now completed their training and taken up their duties, and that training of a further 210 staff members has begun.”⁸⁹

The crowd, health care staff and open visit areas were found to be satisfactory for F Type prisons. However concerning all of the prisons, Delegation asked for more involvement of the Ministry of Health not only in the issues of selecting the doctors and health staff working in the prisons, but in dealing with the all aspects of hygiene

⁸⁸ Report to the Turkish Government on the Visits to Turkey Carried out by the CPT, CPT/Inf (2002) 8, available at: <http://www.cpt.coe.int/documents/tur/2002-08-inf-eng.htm>

⁸⁹ Ibid.

and health issues. “... The CPT believes that the role of the Ministry of Health should also be strengthened in such matters as the evaluation of hygiene, the assessment of the quality of health care and the organisation of health services in prisons.”⁹⁰

The Delegation visited Diyarbakır Prison and Sincan F Type Prison in 2002. Concerning Sincan, the communal activities of the prisoners was closely analyzed. In the previous visits and reports the Delegation insistently mentioned the necessity of sportive and communal activities for socialization of prisoners in small living units. As such, the small group isolation would be ended. Even though there are facilities and programmes for the prisoners to join, as it was mentioned in the previous reports, prisoners under Law to Fight Terrorism were protesting F Type prisons via not taking part in the activities.

In order to prevent the reluctance and nonattendance, Turkish Government formulated a precondition for weekly conversation activity that requires joining into other activities. The Committee objected to this precondition and declared its contentment in the report: “The Committee was very pleased to learn that following those talks, by a Circular issued by the Minister of Justice on 10 October 2002, the precondition was removed.”⁹¹

There were two visits in 2003. The first one took place in detention places and the views of the prisoners on custodial procedure were listened. The second visit was for İmralı Prison. That is why the report will not be taken into consideration.

⁹⁰ Ibid.

⁹¹ Report to the Turkish Government on the Visits to Turkey Carried out by the CPT, CPT/Inf (2003) 28, available at: http://www.cpt.coe.int/documents/tur/2003-28-inf-eng.htm#_Toc43710057

The CPT delegation visited Aydın, Gaziantep and İzmir Prisons, in 2004. In general, ill treatment allegations were not dealt seriously because of its rare existence and the lack of concrete evidence. As well, material conditions were welcomed; but communal activities were criticized due to limits on hours and context. Sign and start of the Project of Judicial Modernization and Penal Reform Programme between Turkey and the European Union was indicated as welcomed.

Adana and Tekirdağ F Type prisons were visited in 2005. The material conditions were not criticized again; however the communal activities and health care services were mentioned as points that need to be held more seriously. There were ill treatment allegations; however the Delegation mentioned for not finding any proof.

There was no prison visit in 2006; and 2007 visit took place in İmralı Prison. The visits of those years are ignored.

Even though Prisons of Erzurum, Kırkkale and Konya were visited in 2009, there was no report during the preparation of this thesis, yet.

2010 visit took place in İmralı Prison that is the reason why the visit is not taken into consideration.

Overall, even though material conditions are found to be satisfactory in these reports, reflecting the situation of the last twenty years; overcrowding, health issues related to overcrowding and personnel shortage, unwillingness of prisoners to attain in group activities persist to remain as the main concerns which require more efforts for amelioration.

3.2 European Union

The Regular Reports that reflect the analysis of the European Commission on progress achieved by the candidate countries, started in 1998 for Turkey. Every year the Commission prepares a report on the political and economic criteria and thirty-three chapters of accession.

As another instrument of analysis, peer review report on the prisons; “Report on Policing and Penitentiaries” prepared by J. J. McManus, in 2008, is analyzed. Another peer review visit will take in January 2011; however it will not be possible to analyze that visit and its forthcoming report, due to the timing.

3.2.1 Regular Reports

The political criteria part of these reports, concerning the analysis on prisons are analysed under this title, in a chronological order.

Developments and defects of prison system are analyzed under the title of Political Criteria. In 1998 report, Turkey’s sign of international agreements was welcomed; however, Union expressed that it is expected for Turkey to sign the International Covenant for Civil and Political Rights, and to forbid the death penalty.

Conditions in the prisons are criticized due to not meeting the “standards laid down by the Council of Europe or the minimum standards of the UN”⁹². First reason of unsatisfied standards is overcrowding. Overcrowding might be interpreted as the main reason of the forthcoming problems. This problem leads to defects in medical care services, as well.

⁹² 1998 Regular Report From The commission on Turkey’s Progress Towards Accession, p. 16, available at: <http://www.avrupa.info.tr/Files/File/Docs/1998.pdf>

Efforts on adapting new laws and regulations were mentioned while expressing the need to wait and see for effects in 1999 report. Same problems in 1998 report were indicated; as well, these problems were linked to hunger strikes.

In the 2000 report, Visits of the TGNA Human Rights Investigation Committee to prisons were appreciated; and their comments were cited: “Although they note improvements over the period, notably in the attitude of police and prison personnel, these reports strongly criticise the lack of supervision and inspection of the system by governors and chief prosecutors.”⁹³

Overcrowding was mentioned as a problem and the probable negative outcome of change in the prison system was analysed as “...human rights associations including those representing prisoners and their families fear that the new system will isolate prisoners, with no opportunity to socialise.”⁹⁴

Torture allegations during the intervention to mutinies, were based on the report of the TGNA Human Rights Investigation Committee.

Foundation of the “Human Rights Presidency, the High Human Rights Board, the Human Rights Consultation Boards and the Investigation Boards”⁹⁵ were welcomed in 2001 report. However, decrease in the efforts and activities of the TGNA Human Rights Investigation Committee, was criticized.

⁹³ 2000 Regular Report From the Commission on Turkey’s Progress Towards Accession, p. 15, available at: <http://www.avrupa.info.tr/Files/File/Docs/2000.pdf>

⁹⁴ Ibid., p. 16.

⁹⁵ 2001 Regular Report on Turkey’s Progress Towards Accession; p. 21, available at: <http://www.avrupa.info.tr/Files/File/Docs/2001.pdf>

Change in dormitory type prison system, which was mentioned as expected to meet the international standards of physical conditions, was cited as the reason of hunger strikes.

Legislative changes in the rights of terrorism and organized crime prisoners to attain in educative, sportive or cultural activities and establishment of Monitoring Boards were quoted without comments. However, amnesty law was appreciated due to the decrease in overcrowding.

In 2002 report, Establishment of Prison Staff Training Centres was welcomed for education on human rights issues, because the way to protect the rights was seen as linked to develop an understanding.

Even though the concern of isolation in F Type Prisons was solved by a circular of Turkish government; the chance to meet with other prisoners was linked to the condition of attaining in other activities was criticized, this time. As prisoners were protesting F Type Prisons, they were resisting participating in education or cultural activities. This precondition was criticized by the Union.

A circular issued by the Ministry of Justice on 10 January indicated that prisons could allow groups of up to ten prisoners to meet for five hours each week. Certain conditions were attached, namely, participation in communal activities such as education, sport or other socio-cultural activities. The CPT recommended that the conditions concerning the communal activities should be dropped.⁹⁶

Increase in the number of Monitoring Boards was pointed as a positive development. Additionally, initiative of the rehabilitation and preparation of the

⁹⁶ 2002 Regular Report on Turkey Progress Towards Accession {COM (2002) 700 final} p. 30, available at: <http://www.avrupa.info.tr/Files/File/Docs/2002.pdf>

prisoners for life after prison was appreciated. “İŞKUR (the Turkish Labour Institute), part of the Ministry of Labour and Social Security, launched a scheme to facilitate the integration of former inmates into the employment market.”⁹⁷

The Government’s policy of zero tolerance on torture and ill treatment was observed in the training of prison staff on human rights, via the implementation of the joint projects of the European Union and Council of Europe, in 2003 report.

Transition from dormitory prison system was cited with the training centres of prison staff. Hunger strikes were closely watched by the Union. Importance given to security concerns and hunger strikes was welcomed. Change in Penal Code and conviction of “staff preventing prisoners and detainees from meeting a lawyer or friends”⁹⁸ was appreciated.

Efforts of the government to increase the level of attendance in cultural activities were criticized for being the precondition of meeting with other prisoners. The lift of this precondition was encouraged; the insistence of the prisoners for not attaining was cited. “...there are reports that isolation among certain groups of prisoners, whether self-imposed or not, continues in high-security F-type prisons.”⁹⁹

Overall, the conditions and practices were found to be satisfactory and improving.

⁹⁷ Ibid., p. 32.

⁹⁸ 2003 Regular Report on Turkey’s Progress Towards Accession, p. 28, available at: <http://www.avrupa.info.tr/Files/File/Docs/2003.pdf>

⁹⁹ Ibid., p. 29.

Changes in prison system since 2000 were appreciated, in 2004. The improvement was linked to acts upon the advices of the CPT.

Monitoring systems of the prisons were welcomed; however the need to upgrade the system to UN and CPT standards was reminded. As well, problem of non attendance of the F Type prisoners in social activities was repeated. Medical treatment defects and troubles in search of visitors and lawyers were commented as other problematic areas.

In 2005, the changes in general were declared as satisfactory; but, uneven situation between the prisons was criticized. Based on the reports of the TGNA Human Rights Investigation Committee, the need to ameliorate conditions all over the country was expressed: "...there is a need to continue expanding best practice to all prisons throughout the country as some remain overcrowded and under-resourced."¹⁰⁰

Development in legislative acts and ability to apply these laws were reflected as decreasing the level of torture and ill treatment, in 2006. Structural conditions and training of the staff were mentioned. Problems in health services, limited choices on social activities and level of attendance to these activities, and additionally overcrowding were repeated as areas that require more attention.

In 2007, the general situation was evaluated as improving; however problems were mentioned repeatedly. "...overcrowding, lack of consistent implementation of

¹⁰⁰ 2005 Commission's Regular Progress Report, {COM (2005) 561 final}, p. 24, available at: <http://www.avrupa.info.tr/Files/File/Docs/2005.pdf>

provisions regarding communal activities, restrictions on prisoners' correspondence, and inadequate health/psychiatric resources"¹⁰¹ were counted as outstanding problems.

The solitary confinement "for persons sentenced to aggravated life imprisonment"¹⁰² was criticized concerning individual differences of the prisoners. "Individual risk assessment" was asked for the prisoners in order to decrease the impacts of isolation and the idea of existing isolation.

Improving conditions in prisons and training of prisoner staff were welcomed, in 2008. Outstanding problems in the previous reports were repeated. However this time; the reason of the problems was explained as overcrowding and inadequacy of prisoner staff.

With regard to monitoring of the prisons, Turkey was criticized for signing but not ratifying Optional Protocol to the UN Convention against Torture. That is the reason that monitoring standards of Monitoring Boards or Enforcement Judges were evaluated as not meeting the necessary standards of the United Nations.

In 2009 report, Turkey's efforts in developing the penitentiary system were appreciated. However, overcrowding problem due to the pre-trial detainees causes to problems in health services. Even though the training program and increasing the prison staff in number were welcomed, overcrowding was declared as hampering the good efforts. Additionally, the problem of Optional Protocol to the UN Convention

¹⁰¹ 2007 Commission's Regular Progress Report {COM (2007) 663} p. 14, available at: <http://www.avrupa.info.tr/Files/File/Docs/progress-reports-2007-en.pdf>

¹⁰² Ibid.

against Torture (OPCAT), monitoring detention places by an independent national mechanism and thus preventing torture and ill treatment still persisted.

In the latest report of the Commission, prison reform is found to be improving satisfactorily. Usage of another language during visits and telephone conversations are appreciated for increasing the level of freedom of speech.

Overcrowding, health care problems, even after handing over health care management to the Ministry of Health, inadequate number of prison staff and OPCAT are declared as areas of concern.

The main problem leading to other problems is over crowded accommodation in the prisons. The reason of crowding is the prisoners awaiting trial. It is reflected in the reports of the EU that even if Turkey continues to build new prisons and hires new prison staff; the problem will persist to exist.

3.2.2 Report on Policing and Penitentiaries

“Report on Policing and Penitentiaries”¹⁰³ prepared by J. J. McManus gives a detailed picture of Turkish Prisons. As a product of Peer Review Visits, an independent expert McManus was invited to visit Turkey.

As for a preliminary study, the reports of the CPT are analyzed by McManus. Two major problems are mentioned in the report: “small prisons”¹⁰⁴ and “enormous

¹⁰³ McManus, J. J., Peer Review Report on Policing and Penitentiaries, February 2009, available at: <http://www.avrupa.info.tr/Files/McManus-report-prison-system.pdf>

¹⁰⁴ Ibid.

percentages of remands”¹⁰⁵. Small prison’s problem is the idea that not only the imprisonment itself, but the conditions of imprisonment became the sentence. Concerning the remands, Turkey’s average percentage is given as “almost 40 per cent”¹⁰⁶, while it is “between 15 and 25”¹⁰⁷ in the European Countries.

Staff shortage damaging the constructive activities of prisoners, lack of full time doctors in “each prison with more than 250 prisoners”¹⁰⁸, restrictions on family visits due to “not for reasonable security”¹⁰⁹ concerns and problems on speaking other than Turkish when the prisoner or the visitor do not know Turkish are other problems that need to be ameliorated.

Both the CPT and the European Union give big importance to health personnel. Because that torture allegations might be proved by the health personnel. Furthermore, taking care of sick prisons and keeping them safe are among the health personnel’s duties.

Not only is this person responsible for screening prisoners and treating any illnesses, which they present, but s/he also has responsibilities for ensuring the provision of health education, food safety and general health and safety in the establishment.¹¹⁰

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

Right to be visited by the relatives is limited to a contact visit once a month, and non-contact visits for three times in a month. The visits were criticized because of the limits with security concerns. As contact visits are rare and non-contact visits of talking by a phone behind a glass is found to be unhealthy, the security concerns were found to be not unnecessary. “The fact that a contact visit is allowed each month indicates that the non-contact visits are not for security reasons.”¹¹¹

With regard to external monitoring, Monitoring Boards reports were affirmed unsatisfactory. The bulk of the reports were full with complaints about “the quality and quantity of the food, the very short time they are allowed to telephone each week and the limited visit times”¹¹². However allegations of ill treatment or torture did not take place.

Concerning the solitary confinement of the prisoners Turkey’s practices were defined as caused by unnecessary security concerns.

Contemporary thinking in Europe, consistent with the principle of minimum restriction of liberty, is that prison allocation should be done by prison authorities after an assessment of the individual prisoner’s level of risk and needs. This ensures that no prisoner is subject to unnecessary security, and enables Authorities to maximise the productivity of staff and the use of expensive capital resources.¹¹³

In general, other than the problems, enthusiasm of Turkish authorities to comply with European Standards was mentioned in the report. Progress in practices was appreciated; however a further stair to climb was remarked: “A significant step

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

which the Turkish Authorities could now take to demonstrate their on-going commitment to improvement would be the ratification of the OPCAT treaty.”¹¹⁴

Summing up, the EU and the CE are criticizing the same points as the crowd, education of prison staff and in general amelioration of the physical conditions together with health services. They no longer mention the torture as frequently as they were used to in the previous years. Both organizations give big importance to isolation feeling for every prisoner, but especially for F Type prisoners; and they define the conclusion as intensifying the cultural - educational activities. As such, the prisoners would be more easily integrated to the society at the end of their confinement. Additionally they declare the importance of signing OPCAT for observation. And finally both organizations declare and appreciate the developments through the years but continue to criticize mal practices and defects.

¹¹⁴ Ibid.

CHAPTER 4

CRITICISMS OF PRISONERS

People in Turkey, and Turkish nationals in foreign countries are allowed to write petitions to the Human Rights Investigation Committee of the Turkish Grand National Assembly on any subject of human rights, since its formation in 1990. The right to petition is protected under the Constitution¹¹⁵; and the Committee is obliged to respond and if necessary investigate the allegations, as it is defined in its founding law.¹¹⁶ These petitions are analyzed by the staff of the Committee and by the head of the Committee and eligible petitions are responded, then archived.

In this chapter views and criticisms of the prisoners are analyzed. After explaining the structure and working system of the Committee, the petitions are analyzed in a chronological order under six titles of Torture, Arbitrary Acts, Practice of Laws and Regulations, and Ill Treatment, Health Treatment, Transfers, Physical Conditions, Death in Prison. The context of the titles will be evaluated in a detailed way later. Even if the categorization gives a general idea on the existing problems, its details will clarify the importance and problematic situation of the subject.

¹¹⁵ Türkiye Cumhuriyeti Anayasası, KN: 2709, RG 17844, 20.10.1982, M. 74 (Değişik: 3/10/2001-4709/26 md.)

¹¹⁶ İnsan Hakları İnceleme Komisyonu Kanunu, KN:3686, RG 20719, 08.12.1990

4.1 Human Rights Investigation Committee of the Turkish Grand National Assembly:

Human Rights Investigation Committee was founded in order to meet the need of investigating the human rights violation allegations on the Parliamentary base. The need became clear after applying for full membership to the Union in 1987. The importance of the Committee is explained in the TGNA's website as the "first national human rights protection mechanism"¹¹⁷.

The Committee law¹¹⁸ is accepted in December 1990. According to that law, the Committee is assigned for:

- Pursuing the developments in human rights issues in the international area.
- Defining and proposing the required changes for the TGNA's agenda in order to comply the Turkish Constitution, laws and regulations with international agreements that Turkey signs.
- Sharing their knowledge and opinion with other TGNA Committees concerning their agenda.
- Analysing the applications and allegations on human rights violations.
- Analysing human rights violation allegations of Turkish Nationals in foreign countries.
- Preparing a report every year that covers the work done.¹¹⁹

¹¹⁷ General Information on TGNA Human Rights Investigation Committee, available at: <http://www.tbmm.gov.tr/komisyon/insanhaklari/bilgi.htm>

¹¹⁸ İnsan Hakları İnceleme Komisyonu Kanunu, KN:3686, RG 20719, 08.12.1990

The obligations are met through consulting with the authorities or the experts on concerned subjects, creating subcommittees for on-site examination and making fieldwork and finally preparing reports for the visits. The reports or the findings of the sub-committees are accepted as the Commission report in the meetings and then sent to the Presidency of the TGNA. If necessary, the reports are discussed in the TGNA.

The facility of creating or appointing a sub-committee for a fieldwork in its founding law creates a large area to move easily for the Committee.

From the day of its foundation to our day, the Committee made investigations in prisons, in police headquarters, in orphanages, in guesthouses of refugees. Simply, cases are investigated, too. Murder of Hrant Dink or allegations damaging the freedom of communication through listening to telephone conversations are among the subjects that sub-committees are founded for investigation.¹²⁰

The archive of the Committee is filled with petitions and their answers. One difficulty to analyze the petitions is that they were not categorized according to their subjects. Complaints of prisoners were archived with the requests on being retired, complaints about the neighbours, the bureaucracy, or fair hearing, in the same dossier.

4.2 Petitions of the Prisoners

As it is defined in its Law, the Committee is obliged to analyse the applications of Turkish citizens sent to the Committee in the form of petition. Every

¹¹⁹ Functions of the Committee is translated by the author of the thesis from the Law of HRIC: İnsan Hakları İnceleme Komisyonu Kanunu, KN:3686, RG 20719, 08.12.1990

¹²⁰ For more comprehensive information please take a look at HRIC's website, available at: <http://www.tbmm.gov.tr/komisyon/insanhaklari/index.htm>

petition, fulfilling the conditions of a claim, the name, address and sign of the sender, is taken into consideration by the Committee. The petitions written from foreign countries by Turkish citizens are accepted as well.

All petitions are filed in the archive of the Committee on yearly basis. The petitions and the work of the Committee, meaning the requests from other public agencies or the answer given to the petitioner, if answered, are filed together. The first petition concerning the prisons was sent by the end of 1990.

The numbers of the petitions, which are taken into consideration, are compared with the numbers declared in the Committee's Activity Reports. The Activity reports are documents covering the work done by the Committee such as the international and domestic developments in human rights field that need to be issued, applications received, obligations of a sub-committee set up for a specific case and investigations of the sub-committees' investigations on the concerned case. Since there is no activity report for the 22nd Legislation Period of the TGNA, which coincides the years from 2002 to 2007, the numbers of the petitions of those years cannot be compared, only the findings of the author are mentioned. It should be remembered that only the numbers are compared; and in case of differences the author used her own findings.

As it is mentioned in the introduction part, there was nearly no petition from the women and the juveniles. Furthermore, petitions were generally sent from the prisoner him/herself; however in some cases, the relatives of the prisoners wrote petitions on behalf of the prisoner. These petitions were, in general, related to the transferring from a prison to the other one for being closer to the family, or transfer need due to escaping from family enemies¹²¹. Even the petitions of the relatives of the

¹²¹ Due to blood feud, prisoners might come across with their family enemies, and the situation necessitates transfer to other prisons or special attention by the prison administration.

prisoners are analyzed; and only 23 are found as petitions sent in behalf of women and juveniles. It would be difficult to analyze all aspects and to reach a conclusion with this low level of petitions. That is why these 23 petitions are ignored. However, needs and requests of the women and the juveniles might be analyzed in another thesis. According to the requests, the petitions are categorized under six titles as mentioned in the beginning of this chapter.

Even if the contents of the petitions' categories will be examined in a detailed way while analyzing the petitions, it would be better to give a brief explanation. Category of 'torture' contains physical use of force by the prison staff. Hiding the proofs of physical torture by the doctors, verbal torment, restraint of sportive or cultural activities are categorized under the title of 'arbitrary acts, practice of laws and regulations, and ill treatment'.

'Health treatment' category includes physical and mental health services and medical care in hospitals. 'Transfers' cover the move to other prisons and hospitals. 'Physical conditions' category takes into account the conditions of accommodation; heat, hot water, nutrition and etc. 'Death in prisons' are connected to the bad health care or clash between the prisoners.

Below this chapter the petitions of the prisoners and their relatives are analysed according to this categorization.

Table 4.1: Distribution of Prisoners Petitions Based on Years and Subjects

	19 th Period	20 th Period	21 st Period	22 nd Period	23 rd Period
Torture				35	26
Arbitrary Acts and Ill Treatment	134	18	116	455	318
Health Treatment	19	7	52	126	62
Transfers	15	14	66	224	155
Physical Conditions	34	7	65	171	155
Death in Prison	1			6	13

First petitions were sent to the Committee in the 19th Legislation Period, covering the time from November 1991 to December 1995. During this period 201 petitions were taken into consideration, and issued; however not all of the petitions are

responded by the Committee experts; there are still unanswered petitions in the files. Actually as a rule, the Committee has to respond in 60 days; but this rule was adopted in 2003, that might be the reason for the existence of an irregularity at those times.

With regard to the categorization of the TGNA Committee, there are no complaints on torture. However, 70% of the arbitrary acts related petitions contain torture allegations. Furthermore, there are petitions signed by multiple prisoners. Only 10 of the petitions are written by a relative or by one prisoner himself. Other petitions have multiple signs. While there are petitions signed by 4 prisoners, there are petitions signed by 230 prisoners as well.

Concerning the crowded number of multiple signed petitions; as a general conclusion; it is possible to say that multiple prisoners sign nearly 90% of the torture petitions.

Low level of petitions might be related to the newly foundation of the Committee, as well the unconsciousness of the prisoners for the existence of the Committee, and their rights to write petitions about their problems. After 3 months of its foundation, especially the petitions with multiple signs were full of indications on human rights. Prisoners were asking for their rights originating from only being a human. Moreover, the development of the information technologies might be related to better recording and archiving.

Additionally, there were allegations, based on the reports of the CPT; that prisoners do not believe in the possibility of complaining about the practices and receiving a concrete solution for their problems. Some of the prisoners abstained from and feared about complaining, in contemplation of annoying the management or the prison staff.

Complaints of the prisoners are in line with the criticism of the CPT. Torture allegations turned into ill treatment complaints according to the CPT; however hygiene, health problems and overcrowding are criticized in the petitions as well.

The 20th Legislation Period was the period with lowest number of petitions with the total number of 46. Between January 1996 and April 1999, 46 petitions were sent to the Committee concerning the prisons. Even though the Committee worked via using all its power and capabilities, the prisoners abstained from writing to the Committee. However, they asked for visit of the Committee to analyse their situation and see the differences and unevenness among the prisons.

Concerning torture allegations, ill treatment and torture were mentioned together in the petitions. In this case, there are 12 petitions about torture. The reason might be related to the pessimism about covering up and ignoring the allegations. In the same period of legislation, a sub-committee was founded for investigating the clashes, which ended with the death of 10 prisoners, in Diyarbakır prison. After interviewing with prisoners, prison staff, prosecutor of the prison and chief public prosecutor, the sub-committee decided that the issue should be handled by the jurisdiction; in order to create a relief in national and international arena, and to fight with the pessimism about covering up the allegations.

The prisoners appreciate visits of the sub-committees. In Diyarbakır case, there was a big reaction among the society; however sometimes the sub-committees are set up based on the allegations mentioned in the petitions. Concerning such cases, more petitions are written with requests of visits, saying; come and visit our prison and see how bad the conditions are, how badly we are treated by the prison staff and the gendarmerie. During this period, there were petitions on ill treatment by specific names. Sometimes, the prisoners gave the names of the prison staff for complaining.

However, their fear to annoy the prison authorities and being imposed to more ill treatment, even to torture is mentioned in the petitions.

Overcrowded prisons, health problem issues and scarcity of the meals were mentioned as the conditions to be ameliorated. Prisoners were even asking for amnesty with the aim of decreasing the number of prisoners.

Though, decrease in the number of the petitions might be related to the pessimism of the prisoners. This era is known for hunger strikes of the prisoners. The government did not respond torture and bad condition allegations. Overcrowding was causing to problems in physical conditions and health treatments. Health problems, such as inability to see the doctor at night, uneducated practitioner doctors and pressure on doctors to declare the torture proofs on prisoners are generally related to the overcrowding.

Gendarmerie forces are criticized for ill treatment. Prisoners complained about going to hospital or to trial with handcuffs and waiting in the prison vehicles for long times as humiliating. It is reflected as the ill treatment of the gendarmerie.

Dossiers of the HRIC in the 19th and 20th eras of the TGNA were filled with petitions from special type or F type prisons. Prisoners of ordinary crimes in F Type prisons did not complain about the physical conditions or treatment of the staff; however the criminals convicted of terrorist activities wrote petitions. They complained on feeling of isolation, torture and ill treatment of the prison staff. This is a general situation that torture allegations and proofs of torture are found in all types of prisons; however prisoners of special type prisons are the ones complaining with multi signed petitions as a communal activity.

When the petitions with the criticisms of the CPT and the EU are compared; it is seen that reaction to the special type prisons are common. The material conditions of special type prisons are declared as satisfactory; however feeling of isolation that prisoners reacted is criticized. Overcrowding is mentioned by all of the parties. As CPT and the Union evaluate the crowd as main reason of bad conditions, the prisoners prove this situation through their petitions.

During the 21st period of the TGNA, covering the time between April 1999 and November 2002, 299 petitions are recorded as sent to the Committee.

Even though there is an increase in the number of the petitions, the torture complaints on the petitions were ignored again. However, this time there was not much petitions; only 32 petitions on torture were sent.

Even though the pattern of petitions signed by multiple prisoners did not change; the collective petitions were sent mentioning the hunger strikes and amelioration of the material conditions. The reason of increase in the petitions of the physical conditions occurred due to their requests for Abdullah Öcalan. These petitions were sent for taking the attention to İmralı. The reason of mixing the complaints is to put their petitions into practice and mentioning for his case. Complaining for someone else is considered to be a protest. As the Committee issues the petitions with no protest, mixing the complaints was invented as a solution.

While complaining about the inability to take a shower or the ill treatment of the prison staff, the attention was taken to Abdullah Öcalan, his conditions and his isolation from other prisoners. Other than this request, the overcrowding, inability to take a shower with hot water, scarce food with low quality, and problems in visiting areas such as being cold, dirty and dark are declared in the petitions.

Actually, this period is important for the operation of ‘Return to Life’; however, content and numbers of petitions do not reflect the sensitivity of the era. It should be added that the overcrowding, which was severely criticized by the CPT and the Union, caused the requests of transfers.

With regard to requests on the health treatment, difficulties in reaching to the doctor even during the day, having prescriptions and resisting to bad illnesses during the night time were mentioned in the petitions. Inability to talk to the psychologist was ignored, as even the doctors in the hospitals ignored the prisoners as human beings. Prisoners complained about being treated by a doctor even by not seeing one. Serious illnesses were treated only by painkillers. Dentist visits were so rare and expensive; and only tooth extraction was supplied as the dental care.

Overcrowding, health care services, existence of gendarmerie forces, involvement of Ministry of Health for health and hygiene issues; de-socialization are the main areas of criticisms between the examining bodies and the petitioners. As a difference, even if the decreasing activities of the HRIC of the TGNA is mentioned by the EU, prisoners complained about the visits of the committees as being a reason of suppression by the staff and the administration. Even if the torture allegations decrease according to the examining bodies, the decrease in the ill treatment petitions is related to the fear of the prisoners to annoy the authorities.

Surprisingly, all of the parties asked for amnesty; with the intention of decreasing the crowd. However, the problem persisted to lead many other problems as reflected both in the reports and in the petitions.

22nd Period of the TGNA, between November 2002 and July 2007, quadrupled the number of petitions of the previous period. The Commission issued 1201 petitions.

Importance of the period lies in the fact that petitions with torture claims were mentioned in the Working Reports of the Committee for the first time. The existence of torture complaints does not indicate that torture actions increased; however, comparing the big number of petitions to the number of petitions on torture, it is possible to say that the complaints decreased. Even if the education of the prisoner staff started in the previous years, ill treatment complaints continued to exist.

With regard to complaints on arbitrary acts, 115 petitions were sent. The difference is that these complaints are based on limits to the right of attaining in sportive or cultural - social activities. Reason of complaint is the differences in applying the laws and regulations among the prisons. Prisoners blamed the prison administration for applying the rules as they wish. Low level of social activities or decreasing the number of beneficiaries, even punishing for unnecessary or 'imaginary' reasons are mentioned as ways of arbitrary acts. Handcuffing by the Gendarmerie forces during the transports is used as the example of ill treatment.

Additionally, the reason of increase in the ill treatment, arbitrary acts and practice of laws and regulations is related to the efforts of the Committee for answering the petitions. Starting from the 21st period, the language used in the petitions evolved. Torture allegations were not declared as it was used to be in the previous years. In earlier examples of petitions, torture meant physical intervention such as beating or denuding for searching. Though, starting from 21st period, torture is used to for psychological pressure, such as verbal abuse.

Concerning quadrupling of the previous year's petitions; it is possible to say that complaints on the amelioration of physical conditions decreased. However, reform in the dormitory system of the prisons, is reflected as a request for all prisoners around the country. There is nearly no petition from the prisoners of the newly built prisons. This situation might be interpreted as the satisfaction of the prisoners for the

accommodation conditions. Big prisons are more satisfactory for different types of social activities, work types and accommodation conditions. In Sincan closed prison, prisoners might work in agriculture, shoemaking, jewellery production, and ornamental flowers and sportive activities as volleyball and football, drama plays, concerts and so on.

Overcrowding and the need of being close to their families cause transfer requests. Other than requesting for transfer, money demands of the prison administration for transfers, even when a vehicle is supposed to go to the concerned prison were mentioned in the petitions. However, one of the reasons of increase is the success of the Committee to solve these problems of the prisoners. Prisoners were encouraged by the efforts of the Committee.

The criticisms of the CPT and the EU are common concerning overcrowding, health care services, and small group isolation. Both bodies paid a huge attention to the isolation of the prisoners due to the non-communication with other prisoners in F Type prisons. Additionally, it was known that prisoners of F Type Prisons were protesting the existence of such prisons and were not attaining in cultural activities. Turkey's solution was to apply socialization meetings for the prisoners; however it was obligatory to attain in sportive or cultural activities, for meeting 1 hour in a week with other prisoners.

Other than prisoners of F Type, there were complaints on limited hours and scarcity of the cultural activities. Administrations of the prisons were criticized for not applying the rules evenly. Differences among the prisons were mentioned; with the explanation of the administrations as scarcity of prison staff.

Appreciation of Turkish governments' efforts for establishing zero tolerance understanding through the education of prison staff is reflected in the petitions of

prisoners. Even there are complaints on torture; it is used for psychological pressure by the staff.

Overcrowding, health services and problems in socialization programmes are criticized by all of the parties; with different aspects.

Coming to our day, during the 23rd Period, analyzed petitions are covering the period from July 2007 to October 2010. 721 petitions were significant for increased level of complaints on arbitrary acts and ill treatment. Arbitrary acts and practice of laws and regulations are generally melted together and mentioned in the same petitions. The rights given to prisoners became the reasons of complaints. Limits and prohibitions on social activities and problems in speaking a language other than Turkish in telephone conversations and during the visits are the main reasons of complaints. There are petitions with objections on the attitude of the prison staff to prevent the right to speak other than Turkish during the visit.

The period is the second one to have complaints about the deaths in prison. The deaths are connected to problems in the health services. Persistent overcrowding in the prisons is reflected as the reason of health problems. Even though there is a protocol for handing over the health services to the management of Ministry of Health, the period is not completed, thus, the practice is not done. As well, the overcrowding is still the main reason for low quality of the service or inability to see the doctors without delay.

Arbitrary acts are seen in limits on social programs, prevention of visits due to disciplinary acts and limits on books and newspapers. However, ill treatment by the prison staff nearly disappeared.

There are still complaints on the foods. Even though the physical conditions got ameliorated as the rooms of the prisoners became enlightened, airy and spacious, the quality of the food is still criticized by the prisoners. Concerning the social or sportive activities, there are complaints on limitations by the administrations. It is claimed that these activities are limited due to personnel insufficiency.

Comparing prisoners' complaints and criticisms of normal and F Type prisoners it became clear that the complaints are in line with one another. Only difference is the reason of criticisms. For example, F Type prisoners do not criticize material conditions; however, they mention the feeling of isolation due to physical conditions. With regard to ordinary prisons, prisoners are unsatisfied with the uneven conditions among the prisons. Other than proximity to family members, this is a general reason of requesting for being transported to bigger prisons with better physical conditions.

Health conditions persist to remain as a huge problem observed even during the existence of the Ministry of Health as the responsible authority. Still, there are problems on seeing a doctor and being treated as free human beings. It should be remembered that even free people are complaining about health services. So, it is not surprising for people in prison to face such problems. Though, the problem of health care service at nights and weekends should be solved as soon as possible; as because complaints on deaths in prisons are related to inability to reach a doctor especially in times of crises.

Isolation of prisoners in room types prisons, even if the dormitory type prisons lead bigger problems, should be handled according to both the prisoners and the European bodies.

Ill-treatment is related to limits on socio-cultural activities or handcuffing by gendarmerie forces during transports. These problems are not observed only in F Type prisons. It is observed that ill treatment and torture allegations are generally coming from special type prisons with multi signed petitions. However, even if the language differentiates, the complaints are the same in all types of the prisons.

The pattern that is mentioned earlier is the same. As long as there are criticisms, there are ameliorations. As long as there are ameliorations, there are more requests from the prisoners for better conditions and more rights to achieve. Development of rights and ways of achieving those rights are reflected in more demand and ability to confront and compare with other places both in Turkey and in abroad.

Taking the discussion to another platform and comparing the change in the number of petitions with important dates in Turkey – EU relations would be interesting. At first sight it is easily seen that there has been an increase in the petitions after the recognition of candidacy status in Helsinki European Council Summit in 1999. As another important date, after the start of Accession Negotiations in 2005 with the Luxembourg decision, the petitions even boosted. However it is not possible to make such assumptions based only on dates. Even if the turning points are mentioned; it should be remembered that relations triggered with Cyprus issue through all this time; as well, the process contains ups and downs.

CONCLUSIONS

Turkey made changes in her laws and regulations in order to meet the international standards concerning the conditions and rights of the prisoners, especially during the last decade. Through these reforms and joint projects of the Council of Europe and the European Union, the dormitory system of Turkish Prisons transformed into room type prisons. This transformation involved reforms in material conditions, cultural activities, working conditions and health facilities.

With regard to accommodation conditions of the current system, prisoners share the sleeping rooms with 3 or 4 prisoners and the living area with other 15 or 20 prisoners. Nonetheless, together with its benefits concerning security guarantees and personal space, or facility to control the prisoners; there is the danger of isolation. The problem required a solution. Thus social and cultural activities are invented and intensified especially for the long-term or life-term prisoners, in order to prevent the feeling of isolation.

The effects of the reforms are reflected in the petitions of the prisoners sent to the Human Rights Investigation Committee, and in the criticisms of the CPT and the Union. Concerning torture during the last two decades; even though the number of petitions on torture did not decrease; the wording of the prisoners changed and the methods mentioned in the petitions have evolved. The prisoners are not complaining about being beaten up any more, as it was the case for 19th and 20th periods of the TGNA. The wording has changed as such that the torture complaints turned into the complaints on limited number of social activities. The foods are not qualified as 'awful'; however there are complaints on 'being served cold' or being insufficient due to the crowd. Behaviours of the prison staff are not mentioned as torturing any more.

Even the complaints on psychological torture, such as verbal abuses, decreased through the years. It is observed that the petitions with multiple signs generally complaint on torture; however the word 'torture' is actually used together with ill treatment. The change is observed in the criticisms of the CPT and the EU, as well. There are no severe criticisms on torture; even it is not mentioned any more. As well, the criticism on ill treatment decreased through time.

It is observed in this study that the material conditions have been ameliorated with the changes in the laws. The changes are reflected positively in the changing wording of the petitions. The pleasing result is that the prisoners are aware of their rights and ways to defend those rights.

Concerning the health care issues; as consulting a doctor especially at nights and at weekends, hygiene, medication and being treated concerning severity of the sickness; standardization and attention are needed. There are still prisons without a full time doctor, which was criticized in 1990s as well. Moreover, involvement of the Ministry of Health in prisons' health services requires mobility in the practices.

Isolation from the community and isolation in the prisons are treated with socio-cultural activities and job opportunities. However succeeding the rehabilitation of the prisoners and preparing them for life after imprisonment necessitate more concrete job opportunities other than making jewellery with beads. Additionally, limitation on defined hours of activities should be ended.

The criticisms of the European bodies and the complaints of the prisoners converge in all aspects; however, the reasoning changes. With regard to material conditions, the unsatisfying situations are explained as the crowd by the European bodies. However, prisoners evaluate the situation as the ill treatment or the arbitrary acts of the administration. Even though the language of prisoners evolved from harsh

physical torture as being beaten up to psychological torture and ill treatment through verbal abuse; it is examined that the tendency of the prison staff requires more education and amelioration. All in all, prisons as one way of showing the civilization level of a society need more attention in Turkey.

Concerning the initiator of the changing process in the prison system, the evolution of Turkish prison system is a both top down and bottom up process. It is observed that the top as the international and European bodies and the bottom as the prisoners act in convergence. They criticize the same points. The only difference is the binding effect of the international agreements. At this point it is possible to say that organizations are mentoring the prisoners on their rights. As such, prisoners become aware of their rights and ways to defend those rights. As a means to defend their rights they write petitions to the HRIC of the TGNA and express their ideas during the visits of the CPT and the Union. In return, they affect the process from the bottom through intensified visits. Furthermore, evaluations of the European bodies affect the process from the top to imply the laws and regulations.

Diversity of the projects co-funded by the Union, Council of Europe and the Turkish government indicates the fact that “prisoners’ rights” is a complicated issue, with many problems and many stakeholders. The effects of the NGOs are ignored in order to compare international organizations’ and prisoners’ power on the government. ‘Effects of the NGOs’ on the process might be the subject of another research.

Concerning the EU membership current situation in the Accession Negotiations is enlightening the problems. So far, 13 of 33 chapters are opened and only Science and Research Chapter is temporarily closed. Concerning the subject of this thesis; Judiciary and Fundamental Rights and Justice, Freedom and Security chapters are still being discussed in the Council. In the light of this information it is

possible to say that prison issue continues to be problematic in terms of membership as well.

As the last point, it should be remembered that it is much more complicated when the rights of the prisoners are concerned. In case of free individuals, the aim is to prevent the breaches by the government agencies or other individuals; however, for the prisoners, the rights that can be enjoyed under the prevention of the freedom to liberty should be defined. Following this definition, the means to achieve those rights should be settled through laws, and educated staff without any bias should serve the regulations. This is the way to conduct and guarantee the rights of the prisoners. Turkish case will evolve as prisoners continue to write petitions and international bodies continue to supervise the situation.

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