

THE PLACE OF THE EUROPEAN AND THE UNITED NATIONS BASED
AGREEMENTS IN PRISON REFORMATION PROCESS IN TURKEY: AN
EVALUATION OF THE EFFECTS OF INTERNAL DYNAMICS VERSUS
EXTERNAL INPUTS ON THE APPLICATION OF F-TYPE PRISONS IN
TURKISH LEGAL SYSTEM

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ABSTRACT

THE PLACE OF THE EUROPEAN AND THE UNITED NATIONS BASED AGREEMENTS IN PRISON REFORMATION PROCESS IN TURKEY: AN EVALUATION OF THE EFFECTS OF INTERNAL DYNAMICS VERSUS EXTERNAL INPUTS ON THE APPLICATION OF F-TYPE PRISONS IN TURKISH LEGAL SYSTEM

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This thesis seeks to evaluate the compatibility of the legal and institutional policies about F-Type Prisons applied by Turkish State with the European and the United Nations Based Agreements and Conventions which stipulate certain standards for the penitentiary system in the high contracting party states. It tries to make two level analysis: On the one hand, the relevant Turkish codes and the institutional settings of the penitentiary system in Turkey, namely internal dynamics, are examined in order to chart the ground for the F-Type Prison reforms. On the other hand, the thesis attempts to depict the European and the United Nations based documents as well as the formal reports of the monitoring bodies of them about F-Type Prisons in Turkey.

Keywords: Prison, F-Type Prison, European Union, United Nations, Turkish Penal System

ÖZ

AVRUPA VE BİRLEŞMİŞ MİLLETLER TEMELİNDEKİ ANLAŞMALARIN TÜRKİYE’DEKİ CEZAEVİ REFORMU SÜRECİNDEKİ YERİ: TÜRK YASAL SİSTEMİNDE F-TİPİ CEZAEVİ UYGULAMASINDA ÜLKE İÇİNDEKİ DİNAMİKLERE KARŞI DIŞSAL GİRDİLERİN ETKİLERİNİN BİR DEĞERLENDİRMESİ

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Bu tez Türkiye’nin F-Tipi Cezaevleri konusunda yaptığı yasal ve kurumsal uygulamaların, taraf ülkelerin cezaevi sistemleri nezdinde belli standartlar öngören Avrupa ve Birleşmiş Milletler menşeli anlaşma ve dökümanlarla ne ölçüde bağdaştığını değerlendirmektedir. Bu anlamda, tezde iki aşamalı bir analiz yapılmıştır: Bir yandan, F-Tipi Cezaevi reformu sürecinin detaylı olarak anlaşılabilmesi için Türk cezaevi sistemine dair ilgili yasal düzenlemeler ve kurumsal yapı, yani iç dinamikler, incelenmiştir. Öte yandan, Avrupa ve Birleşmiş Milletler çıkışlı dökümanlar ve bu kurumların oluşturduğu cezaevi izleme kurullarının F-Tipi Cezaevleri ile ilgili hazırladıkları resmi raporlar mercek altına alınmıştır.

Anahtar Kelimeler: Cezaevi, F-Tipi Cezaevi, Avrupa Birliği, Birleşmiş Milletler, Türk Ceza Sistemi

To My Parents

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LIST OF ABBREVIATIONS

CoE	:	Council of Europe
CPT	:	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment
EC	:	European Commission
ECHR	:	European Convention on Human Rights
EEC	:	European Economic Community
EU	:	European Union
ICCPR	:	International Covenant on Civil and Political Rights
NGO	:	Non-Governmental Organization
OPCAT	:	Optional Protocol of the United Nations Convention Against Torture
TGNA	:	Turkish Grand National Assembly
UN	:	United Nations
UDHR	:	Universal Declaration of Human Rights

INTRODUCTION

On December 19, 2000, the operations conducted by security forces in 20 prisons all over Turkey in order to interfere and to stop the ‘death fast’ of prisoners and inmates as well as to make them transfer from dormitory type prisons to the newly constructed F-Type High Security Prisons by force resulted in the death of totally 30 prisoners and inmates and 2 soldiers. Hundreds of prisoners were transferred to three newly established F-type prisons at the time.

In 2001, three more F-type prisons were opened. Then, on January 18, 2002 the Minister of Justice issued a decree, which allowed groups, each of which consisted up of 10 prisoners, to come together in pre-designated areas but no more than five hours per week. In 2005, the amendment in execution law was put into force, which in some people’s opinion, severed the level of the isolation of prisoners and inmates during their confinement process. As a result 122 people died due to reactionary hunger strikes against F-Type Prisons and more than 600 people were crippled so far.

It is a fact that since the onset of 2000s, the fast pace of the reform process of prisons in Turkey, which has aimed at ultimate transition from dormitory type prisons to cell-type, in particular to F-Type prisons, has brought about serious debates centered around ‘human rights’ among scholars within a multi-disciplinary fashion– the scholars from psychology, law, international relations and even architecture branches have engaged in this debate. On the other hand, because of being one of the very recently introduced problematic issues on the agenda, the literature about F-Type prisons is very limited and unfortunately the majority of the studies on F-Type

Prisons are nothing more than statistical information and numerical data. Therefore, it seems that the literature about this topic has many gaps and spaces which need to be worked on.

In this thesis, that newly initiated form of prison will be analyzed and at the end, the answer to the question of “If this newly initiated form of prisons, namely F-Type prisons, are in line with (or not) the international covenants/agreements of which Turkey is the part” will be given.

In order to find a satisfactory answer to this, the topic ought to be studied by dividing it as the *internal dynamics*, that is to say, the context of domestic legal and political environment which triggered the evolution of prison system in Turkey and resulted in building up of F-Type Prisons and *external influences* over Turkey to make reformation about the penitentiary system. The reason behind this division is to see how the international covenants/agreements played role in the process and to see if F-Type Prisons are the outcome of those external influences.

Therefore, in the first chapter of the thesis, *the internal dynamics- excluding the external influences* (despite the difficulty of differentiating and of drawing a certain borderline between them in this process due to the intertwined nature of both one another), namely Turkish legal and political affairs will be examined within the framework of historical development of penitentiary system and judicial reforms in Turkish Republic. In the light of the domestic legal settings and political background both before and after the initiation of the system of F-Type High Security Prison

regime, the ongoing reform process in Turkish penitentiary system will be understood.

To do this, it is necessary to go back to the last period of Ottoman Empire, namely the Tanzimat era which started in 1839. Therefore, the roots of penitentiary system in today's modern Turkey would be analyzed clearly in case the historical development of the concept of prison, and penitentiary system in general, is examined.

In the second chapter of the thesis, *the internal dynamics* in the reform process of the penitentiary system in Turkey will be viewed under the title of the profile of Turkish penitentiary institutions. By this way, the general appearance of the structure of Turkish legal system about penal execution and its “practical” complementary, which is “execution institutions” would be straightened out more accurately. The details about the structure of F-Type High Security Prisons, their features and how F-Type Prisons work will also be given in this chapter.

In the third chapter, *the external inputs* to Turkey- namely the international agreements and reports written by the formal visitors of the international organizations, the obligations of which Turkey complies with as one of the Contracting Parties, shall be viewed. Thus, the impacts of the external influences over Turkey's penitentiary system in the process of legal reformation will be seen.

In this respect, as a signatory of many international covenants and multilateral agreements including the most significant ones like “The Universal Declaration of Human Rights”, “The European Convention on Human Rights”, “International

Covenant on Civil and Political Rights” and many others signed within the process towards full membership to the European Union, Turkish Republic has undertaken duties and responsibilities in terms of providing sufficient conditions for “humane treatment” of prisoners/inmates during their confinement processes.

Furthermore, the historical struggle of Turkey, namely the full membership to European Union, lies in the fulfillment of obligations and application of, at least, the minimum standards on human rights set forth in various Protocols, Criteria and Treaties accepted as prerequisites to be accepted as a member state to the European Union.

In the fourth chapter, the institutional bridges between Turkish institutions which are in charge of prisons and foreign institutions will be discussed within the scope of responsibilities set by the multilateral agreements and contracts set in the third chapter.

It seems that one of the most critical topics during the process towards full membership to EU is in the field of law and justice and inevitably the penitentiary system in Turkey. Observing the prisons through visits and sending delegations, the international bodies try to understand the compatibility of the obligations which Turkey undertook. In particular, after determining the date for membership negotiations in 2005, this phase of the observations and feedbacks from foreign institutions seem increased. Thus, in this thesis, the great importance is specifically attributed to the reports written after the regular and periodic visits by the Committee

for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the formal reports from the European Union to Turkey.

In relevance to this, it is important to examine the evolution process which started at the very beginning of the new millennium from dormitory type prisons towards High Security F-Type Prisons taking into consideration the international bodies by which Turkey is monitored. Otherwise, any answer solely viewing the internal dynamics or concentrating just on international legal documents with respect to which Turkey carries responsibilities, will fall short of giving a clear picture in this “reform” period.

In conclusion, the evolution process in Turkish prison system, its ongoing practice and the features of F-Type Prisons will be analyzed in the light of both the internal dynamics and regulations and the external influences, and their interactive relations towards each other will be tried to be given. Lastly, the evaluation will be made about whether the new form of prisons initiated in Turkey is compatible with the international agreements of which Turkey is the Contracting Party.

CHAPTER 1

THE LEGAL BASIS OF TURKISH PENITENTIARY SYSTEM

1. 1 Historical Background

1.1.1 The System in Ottoman Empire until the Republican Era

The roots of “modern” penitentiary system could be dated back to 1596¹, the year in which the first modern concept of prison known in the world called “Rasphuis” started running in Amsterdam owing to the decision of the judge in the trial of a sixteen-year-old boy². The judge decided that the boy should not be condemned to corporal punishment, which was the ordinary practice as punishment at the time; rather he should be confined to prison and deprived of his liberty for a definite time. As a result, the concept of punishment got into a changing process from that time onwards and prisons were started to be opened up one after another as a means to punish people who act against law.

When it comes to Ottomans, up until the second half of the 19th century, prisons were accepted as the means for the pre-trial and provisional detention and short-term

¹ The date was given as 1588 by Cinmen, Ergin, *Tecrit Politikası, F tipi Cezaevi ve Tutukevi*, Birikim Dergisi, No. 136, p. 63

In addition, for different dates about this, see:

Dönmezci, Sulhi, Erman, Sahir, *Nazari ve Tatbiki Ceza Hukuku Genel Hükümler*, C. II, Beta Yay., İstanbul 1997, p. 621-622;

Encyclopedia Brintannica V. 14, The University of Chicago, p. 1098;

Koşan, Ümit, *Sessiz Ölüm Tabutluklar, Beyin Yıkama ve Tecrit Hücreleri*, Belge Yay. İnsan Hakları Dizisi. İstanbul 2000. p. 14.

² Foucault, Michel, *Hapishanenin Doğuşu*, Translation by Mehmet Ali Kılıçbay, İmge Kitabevi, 2. Baskı, Ankara 2000, p. 189

punishment places rather than being penal institutions³. In this respect, the criminals of various crimes until that time faced with a wide range of punishment executions such as death penalty, pay-off, retaliation and banishment⁴. Thus, it could be argued that the concept of ‘imprisonment after final judgment’ is relatively a modern phenomenon which is seen with the start of westernization process in Ottoman legislation, namely in the Tanzimat period.

In relation to this, the first formal and legal document in terms of prisons and penitentiary system in Ottomans took place in the Royal Edict of Reform (Islahat Fermanı) which was declared in 1856. In this edict, there was an obvious criterion to be applied about the prisons as following:

Proceedings shall be taken, with as little delay as possible, for the reform of the penitentiary system as applied to houses of detention, punishment, or correction, and other establishments of like nature, so as to reconcile the rights of humanity with those of justice. Corporal punishment shall not be administered, even in the prisons, except in conformity with the disciplinary regulations established by my Sublime Porte, and everything that resembles torture shall be entirely abolished⁵

Indeed, there is no hesitation that the Royal Edict of Reform was, to some degree, the outcome of the pressure from “West” on Ottomans to make modernization attempts. Thus, the fact that there was an “external influence” over Ottoman legislation and regulations about the penitentiary system cannot be underestimated.

³ Yıldız, Gültekin, *Osmanlı Devleti’nde Hapishane Islahatı (1839- 1908)*, (Master’s Thesis, Marmara Üniversitesi Türkiyat Araştırmaları Enstitüsü, 2002), p.107

⁴ Bayındır, Abdülaziz, *Örneklerle Osmanlı’da Ceza Yargılaması*, Türkler, Cilt 10, Ankara 2002, p.73-78

⁵ English translation of Royal Edict of Reform-1856, available at: <http://www.bilkent.edu.tr/~genckaya/documents1.html> (Accessed on 04.03.2012)

In parallel to this, it is not a coincidence that the Royal Edict of Reform was declared right after the observatory reports on Ottoman prisons from British authorities handed to Ottoman rulers. For instance, Stratford Canning who was the ambassador of Great Britain in Istanbul during 1850s, requested from the other ambassadors in Ottoman Empire to prepare observatory reports about the conditions of the prisons throughout the empire. In 1851, he submitted motion to Ottoman authorities for the reformation of prisons in the areas of architectural setting, physical conditions-hygiene, fair treatment, recognizing the submission of formal complaint petitions of prisoners and ethical training of prisoners.⁶ Taking the content of the reports into consideration, it is obvious that the conditions of the prisons were not sufficient and they needed improvements through reforms.

On the other hand, it is unfair to argue that the regulations made concerning the penitentiary system, particularly in terms of prisoners' rights as well as the conditions of penal institutions, were simply a "western export" to Ottomans. Throughout the Tanzimat period, it seems that Ottoman rulers were willing to make ameliorations on their institutions and tried to make legal regulations in order to sustain the continuation of the empire. That is why it leads us to come up with the conclusion that the internal dynamics also played a significant role in the processes of reformations since 1856.

The next important reformation which has "indirect" reflections on penitentiary system is the Ottoman Constitution of 1876 (Kanuni Esasi) despite the fact that the

⁶ Gültekin Yıldız, *Osmanlı Devleti'nde Hapishane Islahatı (1839- 1908)*, (Master's Thesis, Marmara Üniversitesi Türkiyat Araştırmaları Enstitüsü, 2002), p.101.

Constitution was in effect for a short time because of the autocracy of Abdulhamit II until 1908. However, it could be said that in the aftermath of the declaration of the Constitutional Monarchy, the pace of the reforms seemed to increase owing to reflection of the public opinion in the core of the state institutions (though for a short time) and the continuation of the westernization movements in the empire.

After prisons started to become widespread throughout the country, the “Regulation Draft for the Internal Administration of Detention Houses and Prisons in the Memalik-i Mahrûse-i Şahane ⁷(roughly translated as Sultan’s Land of Big Cities, referring to the lands of the Ottoman Empire covering its lands in the Balkans, Europe and some part of Northern Africa and Asia)” which was composed of 6 chapters and 97 articles was published in 1880 to set the physical and administrative conditions necessary to be complied with by these institutions. In this regulation, issues such as the departments to be established in prisons, qualifications, duties and authorities of the personnel to be assigned such as directors, guardians, doctors, gatekeepers, imams, workers, laundrymen, etc., provision of the needs of prisoners and the convict related to accommodation, food and health, the rules to be observed by prisoners, their employment and keeping of ethical registry were involved.⁸

Activities for reforming the negative conditions of prisons which could not be ameliorated at the desired level throughout the 19th Century continued through the

⁷ For the whole text of the Regulation: BOA, (Başbakanlık Osmanlı Arşivi), DH.MB.HPS.M, (Dahiliye Nezareti Mebânî-i Emîriyye Hapishaneler Müdüriyeti Müteferrik Evrakı), Dos.1/2, no.10.

⁸ Temel, Mehmet, *Menteşe Sanjak Prisons in the Early 20th Century*, *Türkiyat Araştırmaları Dergisi*, 2009- Güz, no.26, p. 112

beginning of the 20th Century. In the reformation activities carried out in 1912, 1914 and 1917, issues such as rehabilitation and renewal of all prisons and detention houses within the frame of a uniform architectural plan, construction of prisons with gardens and rearrangement of health conditions according to modern principles were handled. However, the fact that governments could not afford to allocate time and resources to prison reformation during the Balkan and First World War years caused problems to be transferred to the Republican period.⁹

1.1.2 The System in Republican Era: From 1923 to 2000

The westernization movements and the adoption of European values in the legal settings since the last period of Ottoman Empire have increasingly continued in modern Turkey after the proclamation of Republic in 1923. In this respect, the judicial reforms had their own share from it despite the two “coup d’etat” regimes in 1960 and 1980 which blocked democratic progress.

The process of modernizing the penitentiary system in Turkey would be commenced by delegating the administration of prisons from the jurisdiction of the Ministry of Interior Affairs to the Ministry of Justice which took place in 1929. On the other hand, according to the report of Judicial Reform Strategy of Turkish Ministry of Justice published in 2009, the *first step towards modern execution regime* was taken with the Law No. 1721 on Administration of Prisons and Detention Houses which

⁹ Ibid, p. 113

was accepted in 1930.¹⁰ It seems that during the seven years from 1923 to 1930, the penal execution regime was conducted, to some degree, by the independent will of governors and there was no standardization put forward by a legal regulation.

In the same years, the workshops in prisons were put into practice in order to provide training for the employment of convicts after their execution.¹¹ As complementary, the Law on Organization and Duties of General Directorate for Penal and Detention Houses entered into force in 1943. Thus, by 1940s, the idea that prisons are not just institutions to punish the convicts by isolating them and deprive them of their freedom but also they are “training and rehabilitation centers” which supply them with the necessary equipment for the rest of their lives after their imprisonment so that the tendency of committing crime again will be decreased.

The struggle for upgrading the penitentiary system continued throughout 1950s, in particular with the “external stimuli” due to the official application of Turkey for membership to the EEC in 1959. However, there was a temporary shift in the priorities of Turkey with the military coup d’etat of 1960 which resulted in low level of improvements in terms of penitentiary system until 1965.

In that year, the Law on Execution of Sentences was ratified by Turkish Grand National Assembly and a relevant regulation, called Regulation on Administration of Prisons and Detention Centers and Execution of Sentences followed it in 1967. Both of these documents gave the framework about the issues of the aim, principles and

¹⁰ Judicial Reform Strategy of Turkish Ministry of Justice, available at: <http://www.sgb.adalet.gov.tr/yrs/Judicial%20Reform%20Strategy.pdf>, p.51 (Accessed on 14.02.2012)

¹¹ Ibid.

the scope of the imprisonment, general concepts in execution processes but most importantly, they indicated the concrete procedure to be followed in prison workshops by the personnel.

The second military coup d'etat regime in Turkey in 1980 opened a new chapter for the penitentiary system in spite of the fact that the institutional settings were not changed. The Constitution, prepared by the military regime, which entered into force on 18 October 1982 is the basic source of our today's prison system with its relevant articles setting the general principles for the concepts of "execution", "convict" and "crime". In particular, the Article No. 2, 9, 10, 11, 12, 13, 15, 19, 36, 38 and 40 form basis for the legislation of Turkish penal execution system.¹²

In 1983, the concept of social aid, but most importantly "psychiatry", entered into the arena of prisons and started to be used in order to determine the hidden reasons of criminal behaviors and to decrease the risks of re-commitment of crime by adding new articles into the Regulation on Administration of Prisons and Detention Centers and Execution of Sentences.

When it comes to 90s, the shift in the political agenda from law towards economy due to the intensified relations with the EU after the enforcement of Customs Union caused a little amount of legislation concerning the penitentiary system. In 1997, the new facilities and workshops for the inmates and prisoners were worked up by the

¹² Sađlam, M. Yılmaz, *Ceza İnfaz Kurumları Mimarisi ve Türk İnfaz Sisteminde Mimari Özellikler*, Adalet Dergisi. 2003, Y. 94, No. 14, p.25

enforcement of the Law on the Foundation of Work Houses in the Prisons.¹³ These facilities were provided in order to enable the prisoners and inmates to gain various professional skills.

1.2 Current Legislations: Since 2001 until Today

The year 2001 was an important year not only because of the initiation of F-Type Prisons in the institutional arena of Turkish penitentiary system, but also it was a year in which important legal regulations were made.

First, a change was made in the Law to Fight Terrorism¹⁴ on May 2001 so that the convicts who were imprisoned by the Law to Fight Terrorism were classified in relation to their crime, behaviors, interests and abilities and had the right to be included in professional and educational activities and receive social, cultural and rehabilitative services. The duration of the programs and the numbers of the prisoners who would be included in the program were determined taking the features of each program, security conditions and the physical possibilities of the prisons into consideration.¹⁵ Therefore, this change in the Law provided the convicts of F-Type Prisons (majority of whom were imprisoned due to ‘organized crime’ and the crimes set in “Law to Fight Terrorism”) with the opportunity to be treated and be rehabilitated in the same way as other convicts. However, this provision of

¹³ Ceza İnfaz Kurumları ve Tutukevleri İşyurtları Kurumunun Kuruluş ve İdaresine Dair Kanun, Kanun No: 4301, RG 23075, 09/08/1997

¹⁴ Terörle Mücadele Kanunu, Kanun No: 3713, RG 20843 12/04/1991

¹⁵ Terörle Mücadele Kanununun Bir Maddesinde Değişiklik Yapılmasına Dair Kanun, Kanun No: 4666, RG 24393, 05/05/2001

abovementioned regulation was abrogated by another legal change five years later in 2006.¹⁶ Thus, there is no provision about this in the Law No.3713, so the determination of the frame of this topic was handed to the decree issued by the Ministry of Justice.

Another important regulation, which is the Law on Boards to Monitor Prisons and Detention Centers¹⁷, took place in 2001, as well. There was undoubtedly a “European influence” over Turkish legislation in ratification of this Law due to the Copenhagen Criteria which have to be met by Turkey before being accepted as a candidate state to the EU.

The aim of the Law on Boards to Monitor Prisons and Detention Centers was set in the Article No. 1 as

...setting the principles and the methods of monitoring, data- collecting and examining the administration and applications carried out in the penal executions and detention centers and of reporting them to higher and relevant authorities by the Monitoring Boards¹⁸

According to the Law, after listening the prisoners and the personnel in the execution institutions, the Monitoring Boards submit a report in every three months (In 2007, it became “every four months” due to the change in the Law) to the Ministry of Justice, to the public prosecutor in charge of the prisons in its jurisdiction area and to the Human Rights Commission of Turkish Grand National Assembly by request. The

¹⁶ Terörle Mücadele Kanununda Değişiklik Yapılmasına Dair Kanun, Kanun No: 5532, RG 26232, 29/06/2006

¹⁷ Ceza İnfaz Kurumları ve Tutukevleri İzleme Kurulları Kanunu, Kanun No: 4681, RG 24489, 21/06/2001

¹⁸ Ibid, Article No. 1

reports shall include data about the internal security and living conditions in the prisons, general health and transporting operations of the prisoners to another prison or to a hospital. In addition, the Monitoring Boards are also in charge of reporting the deficiencies, abnormalities and the way that the prisoners are treated in their execution period by the personnel.¹⁹

When it comes to 2003, new provisions were added into the Law on Administration of Prisons and Detention Centers so that the international standards of prisoners took place such as right to reach sufficient nutrition in terms of both quantity and quality taking into account their age, health conditions and the features of their professions, religious belief, cultural standings.²⁰ In the same amendment, additional provisions to Turkish Penal Code were added and the ‘death fast’ was mentioned. The act of the persons who persuade and/or induce the prisoners or inmates to go on a “death fast” shall be considered as “prevention of sufficient nutrition” and be punished.²¹

In 2004, the Law on Execution of Sentences and the Regulation on Administration of Prisons and Detention Centers and Execution of Sentences, which were mentioned above, were abrogated by the Law on Execution of Penalties and Security Measures²². It is a significant legal basis for the authorities in approaching the new foundations, basic rules, principles and criteria for the imprisonment process. As

¹⁹ Ibid, Article No. 6

²⁰ Türk Ceza Kanunu ile Hapishane ve Tevkifevlerinin İdaresi Hakkında Kanunda Değişiklik Yapılmasına Dair Kanun, Kanun No: 4806, RG 25020, 10/0272003, Article No. 4

²¹ Ibid, Article No. 2 (Article No. 307/b of Turkish Penal Code)

²² Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun, Kanun No: 5275, RG 25685, 29/12/2004

being the main document which covers all penal execution institutions and the rules to be obeyed in all of them, it gives the ground for F-Type High Security Prisons and the regime to be traced there, as well. That is why more importance was attributed to the Law on Execution of Penalties and Security Measures in this study than to the rest of the other relevant laws and regulations.

In the very first article of The Law, the purpose and the basic principles of the Law is given. In this sense, the purpose of this Law is to set the procedures and rules about the execution of penalties and security measures.²³ In the execution process, no privilege can be provided to any person and nobody shall be discriminated according to their race, religion, nationality, etc. The Law also has a strict wording against cruel, inhuman, degrading or humiliating treatment.²⁴ Moreover, the execution method shall be designed in a way that not only the convict would not commit crime again but also the society would be protected against crime.²⁵

In addition, the rules for prison sentences and security measures are given in a detailed way. According to the Law, the prisoners shall be kept securely, and precautions shall be taken to prevent escape from the penal execution institutions. The execution of penalties shall be done within the frame of human dignity providing sufficient material and moral conditions. The available rehabilitation shall be provided to prisoners, and individualized programs shall be followed for those who

²³ Ibid, Article no. 1

²⁴ Ibid, Article no. 2

²⁵ Ibid, Article no. 3

do not require rehabilitation. The Law makes attributions to the concepts of principle of justice, right to life and bodily and mental integrity of the prisoners during their execution process.²⁶ Apart from these, it is important to note that the types of penal execution institutions and the manner of the classification of prisoners in these institutions are given in this Law, but these topics will be discussed under Chapter 2 of this study so they were not mentioned here.

The Law also sets the rights and guarantees of the prisoners in the penal execution institutions, and restrictions brought against them. The wide ranges of areas from freedom of expression to library usage, from participation in cultural and artistic activities to feeding of the prisoners are regulated in detail. Even, the rights and obligations of prisoners in daily life such as accommodation, bedding and clothing are also included.²⁷

In 2009, important developments took place concerning the penal execution system in Turkey.

One of them is that the duty of health services in prisons was handed over the Ministry of Health, possibly, with the idea of better organized and well-equipped infrastructures to be put into use, plus, the responsibilities which Turkey has to undertake through international contracts and agreements could be met.

²⁶ Ibid, Article no. 6

²⁷ Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun, Kanun No: 5275, RG 25685, 29/12/2004, Part three

Secondly, the Ministry of Justice published its judicial reform strategy which is considered to be the official policies of judicial system, including the reforms about the penitentiary institutions, for the upcoming period.

In this document, the Ministry of Justice underlined that the two-sided designation of the penitentiary system is the requirement of the modern democracies. That is to say, while punishing the convicts for the crimes they committed, the penitentiary system shall be set in such an effective way that they would be prevented from committing crime again through rehabilitation efforts and using such means to reintegrate them into the society. Besides, it is crucial to create adequate physical environments in the penal execution institutions which are secure and able to meet the rehabilitation needs of the convicts. In parallel to an increasing need, it seems that the physical capacities in the execution institutions should be expanded. In this sense, modern regional penitentiary institutions have been built and being planned to be built which have better rehabilitation activities and higher living standards. Moreover, actions towards shutting down small prisons which are characterized as inappropriate for rehabilitation and insufficient in terms of capacity are seen as imperative. Thus, numbers of prisons were shut down until 2009.²⁸

In addition, the document proposes that the construction of the new penitentiary institutions which meet the criteria set in “the United Nations Standard Minimum Rules for the Treatment of Prisoners” and “the European Prison Rules” both of

²⁸ Judicial Reform Strategy of Turkish Ministry of Justice, available at: <http://www.sgb.adalet.gov.tr/yrs/Judicial%20Reform%20Strategy.pdf>, (Accessed on 14.02.2012)

which oblige the contracting parties to provide penal execution institutions which are healthy, secured, equipped with suitable technology and appropriate for rehabilitation activities, have mostly been accomplished. In relation to the aforesaid steps, the creation of campus type prisons will go on and to this end, the goal is to close down all old-fashion prisons which are not compatible with the modern requirements and replacing them by constructing new regional prisons which are in line with the international codes that Turkey has to obey. Since 2003, 180 prisons, which were located in small towns, ceased their functioning and the total number of prisons has descended to 368. It is planned that this number will be lessened to 250 by the year 2013.²⁹

In the light of the judicial reform strategy, particularly the tendency of the Ministry of Justice towards the reformation of Turkish penitentiary system with higher security prisons and with modern approach for the rehabilitation and life standards of the prisoners in their execution process, it is seen that the recent domestic regulations have been tried to be set compatible with the international norms and standards. In this respect, it could be argued that as newly initiated form of prisons in Turkish penitentiary system, the tendency explained above is also reflected in the F-Type Prisons. Thus, although there is no direct reference to F-Type Prisons in this document, it is implied that the F-Type Prisons are “legitimate”.

²⁹ Ibid.

CHAPTER 2

THE INSTITUTIONAL BASIS OF TURKISH PENITENTIARY SYSTEM

As mentioned above, the administration of prisons and detention centers changed hands in 1929 by being transferred from the scope of jurisdiction of the Ministry of Internal Affairs to the Ministry of Justice. Within this scope, the General Directorate of Prisons and Detention Centers, which is an institution connected to the corporal structure of the Ministry of Justice, fulfills duties related to penal execution step of the Turkish justice system. Also, Penal Execution Boards and Detention Centers Monitoring Boards which were established with a law accepted in 2001, play an effective role in the transference of prisons and detention centers to conditions and standards that are in compliance with modern norms in terms of their corporate structure and operation. In addition to these, the current prison types included in Turkish penal execution system are also utterly important settings which determine the institutional basis of Turkish penitentiary system.

In this respect, the institutional basis of Turkish penitentiary system which will be explained in this chapter with the aim of illuminating the pace of F-type Prisons in the institutional integrity will be handled within the triangle of the General Directorate of Prisons and Detention Centers, Boards to Monitor Prisons and Detention Centers and penal execution institutions. Other institutional settings which have a direct relation with penal execution institutions will be overlooked and will not be touched upon so that the subject can be handled better and correct inferences can be made.

2.1 General Directorate of Prisons and Detention Houses:

With the definition on the institution's own web site, the General Directorate of Penal and Detention Houses is assigned a number of detailed works such as managing, auditing and monitoring the accounting works of penal execution institutions and detention houses. In relation to the subject of this work, it is responsible for preparing, developing, implementing plans and programs related to installation, construction, repair, purchasing and lease works of punishment execution institutions and detention houses according to modern standards, administer these institutions and to carry out the control of protection, maintenance and education works of juveniles taken into these institutions.

Furthermore, the General Directorate, which is also effective in the process after the execution of punishments, has been authorized in extensive subjects including, but not limited to arranging relationships with charity organizations and other institutions after execution for the placement of the convict executed into jobs, arranging execution and rehabilitation works according to provisions of related laws, regulations and legislations, arranging education works of the convict and prisoners at institutions, making proposals to the Ministry by making research on the lack and malfunction of regulations in subjects falling into its area of duty. It also has the tasks such as preparing and following legislation drafts and regulations, stating opinion and preparing notices in subjects which do not fall into the area of use of its jurisdiction, making international research and investigations on subject falling into

its area of duty, organizing information exchange and cooperation and carrying out similar duties indicated in laws and to be given by the Ministry.

Setting out from the task scope of the General Directorate of Prisons and Detention Houses, it is seen that the direct and the most effective authority in terms of prisons and detention houses is the General Directorate of Prisons and Detention Houses.

2.2 Penal Execution Boards and Boards to Monitor Prisons and Detention Centers:

As the responsibilities of Penal Execution Boards and Boards to Monitor Detention Centers were mentioned in the first chapter, they will be touched upon from general aspects in this chapter. In this respect, if it is considered that the main task of the boards is to see and examine on site the transactions and activities regarding execution and rehabilitation applications in penal execution institutions and detention centers, to obtain information from administrators and responsible persons, listen to the convict and prisoners and to share the findings they obtain with authorized bodies in the form of periodic reports, it serves as a bridge between penal execution institutions and senior authorized institutions like the Ministry of Justice and the General Directorate of Prisons and Detention Centers, and establish a kind of “civil supervision” mechanism in Turkish penal execution institutions other than the supervision of official authority.

As for its institutional structure, it has been indicated in article 2 of the Law that a monitoring board is established by every judiciary justice commission which has a

penal execution institution or a detention centre within its jurisdiction. The monitoring board is composed of five members including the president. Members are elected for a period of four years. Members whose terms of Office expire can be re-elected.

The jurisdiction of the monitoring board is limited to the area of jurisdiction in which the judiciary justice commission is located. In cases when there is more than one penal execution institution and detention centre which has a management office within the area of jurisdiction, an appropriate number of monitoring boards can be established. In this case, the jurisdiction of each monitoring board shall be determined by the judiciary justice commission.³⁰

A place shall be allocated to the monitoring board for its activities in the building where the respective judiciary justice commission is located. Secretariat services of the monitoring board are carried out by the office of the same judiciary justice commission.³¹

Other than this, members of the board are elected from among people having fulfilled the age of 35, graduated from at least four-year higher education institutions in the fields of medicine, pharmacy, law, public administration, sociology, psychology, social services, educational sciences and similar fields or from foreign higher education boards that are accepted as equivalent to these and having at least

³⁰ Ceza İnfaz Kurumları ve Tutukevleri İzleme Kurulları Kanunu, Kanun No. 4681, RG. 24439, 21/06/2001

³¹ Ibid.

ten years of experience in public foundations and institutions or in the private sector regarding their profession.

When the reports written by the Boards after their observatory visits to various F-Type Prisons in various times since the last 10 years, it is seen that there is not that much ‘negative’ findings on F-Type Prisons. The Boards suggested only some improvements and arrangements in parallel into what the international bodies, the prisoners and the personnel of the prisons expected.

2.3 Penal Execution Institutions

The new millennium brought about multiple innovations with respect to institutional setting of the penitentiary system in Turkey. The most outstanding among them is inevitably the F-Type Prisons which came into effect in 2001.

However, before going into the details of F-Type regime, it is important to examine the meaning of “type” with respect to prisons. In addition, in order to have a comprehensive approach about F-type Prisons and to understand what makes F-type prisons special, it is necessary to scrutinize the current state and capacities of penal execution boards present in Turkish execution system and to examine their institutional types and varieties, Therefore, in this chapter, detailed institutional information and institutional classifications about penal execution institutions will be sought to be explained by making use of the numerical data acquired from the website of the General Directorate of Prisons and Detention Centers .

Firstly, it is a fact that the classification of penal institutions is necessary in order to organize appropriate administration models, control mechanisms, allocation of funds, etc. There are varieties of classification methods, but taking the main topic of this study into consideration, three of them, namely the classifications according to execution regime, security standards and architectural types of the penal institutions, will be mentioned here:³²

2.3.1 Classification according to execution regime:

In this classification, prisons are handled as “closed penal execution institutions” and “open penal execution institutions”. In Article No. 8 of the Law on the Execution of Penalties and Security Measures,³³ closed penal execution institutions are defined as following:

Closed penal execution institutions are facilities which have internal and external security personnel, which are equipped with technical, mechanical, electronic or physical barriers against escape, in which the doors of rooms and corridors are kept closed, where contact between convicts who are not in the same room and with the outside world is possible only in such cases as are specified in legislation, where the sufficient level of security is provided, and where individual, group or collective rehabilitation methods can be implemented according to the needs of convicts.³⁴

On the other hand, in Article No. 14 of the same law, open penal execution institutions are given as:

Open penal execution institutions are institutions where priority is given to employment and vocational training of convicts in their rehabilitation, which

³² Sağlam, M. Yılmaz, *Ceza İnfaz Kurumları Mimarisi ve Türk İnfaz Sisteminde Mimari Özellikler*, Adalet Dergisi. 2003, Y. 94, No. 14, p.49-50

³³ Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun, Kanun No: 5275, RG 25685, 29/12/2004

³⁴ Ibid.

have no barriers against escape and no external security personnel, and where supervision and control by institution personnel is considered sufficient for security...³⁵

It is important to note here that until 1998, there were institutions called “half-open penal execution institutions” which seemed like a synthesis of closed penal execution offices and open penal execution offices. These institutions did not have external security personnel due to the presence of artificial or natural protection against escape such as the sea, walls and wire fences. The task of internal security was fulfilled by execution and security officers. With the changes made in 1998, this regime was terminated and present half-open penal execution institutions were transferred to open penal execution institutions.³⁶

2.3.2 Classification according to security standards:

Actually there is no classification as such at all in Turkish legislation codes but considering the security level of prisons, this classification can be made as: High-security, normal security and low security prisons.

In fact, we made a classification as open and close penal execution institutions above and low security prisons are considered to be as the other name of those open penal execution institutions. On the other hand, normal security and high-security prisons are sorts of closed penal institutions.³⁷ In high-security prisons, the execution regime

³⁵ Ibid.

³⁶ Sağlam, M. Yılmaz, *Türk İnfaz Sisteminde Ceza İnfaz Kurumları*, Ankara 2003, p. 52

³⁷ Centel, N., Zafer, H., Çakmut Ö., *Türk Ceza Hukukuna Giriş*, 2005, 3rd Press, Istanbul: Beta Yayınları, p.790

and security level is much stricter than normal security close penal institutions. In addition, the ‘profile’ of the prisoners is an important difference between them.

According to Article No. 9 of the Law on the Execution of Penalties and Security Measures, high- security close penal execution institutions are

...facilities which have internal and external security personnel, which are equipped with technical, mechanical, electronic and physical barriers against escape, in which the doors of rooms and corridors are always kept closed, where contacts between convicts who are not in the same room and with the outside world are possible only in such cases as are specified in legislation, and where convicts subject to a tight security regime are accommodated in single or three-person rooms. In such institutions, individual or group rehabilitation methods shall be implemented.³⁸

In short, the F-Type Prisons which were initiated after 2000s are high-security penal execution institutions, those fully equipped penal executions are normal-security penal executions. Whereas non-fully equipped close penal execution institutions which were established in the districts of the cities, open penal execution institutions and reformatories for minors are classified as low-security penal execution institutions.³⁹

Apart from these, the aforesaid law also draw the definite framework for the prisoners who have to serve their execution in high-security close penal institutions. According to the second provision of the Article No. 9 of the Law on the Execution of Penalties and Security Measures, the persons sentenced to imprisonment or heavy life imprisonment due to establishing or leading a criminal organization for carrying

³⁸ Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun, Kanun No: 5275, RG 25685, 29/12/2004

³⁹ Demirbaş, Timur, 2003, *İnfaz Hukuku, Özellikle Cezaevlerinin Tarihçesi, Uluslararası Belgelerle Karşılaştırmalı Olarak Hürriyeti Bağlayıcı Cezaların İnfazı ve Ceza İnfaz Kurumlarının İdaresi*, Ankara: Seçkin Yayınları, p.324

out activities falling into the scope of crimes against humanity, murder, drug production or trafficking, crimes against the security of the state or crimes against constitutional order and its operation or carrying out the above-mentioned activities within the framework of such an organization shall serve their sentences in these institutions regardless of the length of such sentence.⁴⁰

Moreover, those who are in a dangerous condition due to their actions and attitudes and about whom there is decree to be kept under special control and supervision and those who violate order and discipline at the institutions in which they are kept or who insist on resisting measures, instruments and procedures of rehabilitation shall be sent to these institutions.⁴¹

Likewise, the personal characteristics, mental stances, physical and health conditions of convicts, their lives, social background and professional history before committing crime and also the duration of their sentences, their moral standing and how they view their criminal act are the features which shall be determined in order to assign the most appropriate execution institutions for them and to apply the optimum treatment fitting their profiles.⁴²

⁴⁰ Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun, Kanun No: 5275, RG 25685, 29/12/2004

⁴¹ Ibid.

⁴² Ibid, Article 23

2.3.3 Classification according to architectural types of the penal institutions:

First of all, it has to be mentioned that classification according to architectural types of the penal institutions is done only for close penal execution institutions. The close penal execution institutions are named with the suffix “type” in accordance with their capacities and architectural structures. The ones which were constructed with an architectural project are called “type penal execution institutions” and those which were not constructed with any architectural project but transformed from hospital or school buildings are called “non-typed penal execution institutions”.⁴³

2.3.3.1 Features of A-Type Closed Penal Execution Institutions⁴⁴

These are district type prisons constructed in the 1950s and 1970s. They have 4 wards, bathroom, kitchen, library and a conference hall. These prisons have different sections for woman and juvenile prisoners and have a capacity of 24 people, which can be increased to 30 when necessary. The total number of these institutions in Turkey is 10.

⁴³ Demirbaş, Timur, 2003, *İnfaz Hukuku, Özellikle Cezaevlerinin Tarihçesi, Uluslararası Belgelerle Karşılaştırmalı Olarak Hürriyeti Bağlayıcı Cezaların İnfazı ve Ceza İnfaz Kurumlarının İdaresi*, Ankara: Seçkin Yayınları, p.320

⁴⁴ The official website of General Directorate for Penal and Detention Houses, <http://www.cte.adalet.gov.tr> (Accessed on 11.03.2012)

2.3.3.2 Features of A1-Type Closed Penal Execution Institutions⁴⁵

These prisons are also district type prisons which were constructed in the 1950s and 1970s. They have 4 wards, 2 cells and a space next to each ward which can be used as kitchen when necessary. Just as in A-type institutions, this type also has a library and conference hall, as well as different sections for women and juveniles. A1-type prisons are normally for 24 people but they can accommodate 40 people when necessary. The total number of these institutions in Turkey is 8.

2.3.3.3 Features of A2-Type Closed Penal Execution Institutions⁴⁶

These are also district type prisons which were constructed between the 1950s and 1960s. There are separate sections for women and juveniles, as well as conference halls and libraries in A2-type prisons which have 5 wards and 2 discipline cells. They have a capacity of 40 people. The total number of these institutions in Turkey is 13.

2.3.3.4 Features of A3-Type Closed Penal Execution Institutions⁴⁷

Different from other A-type prisons, there are 6 wards in these prisons which were also constructed as district type prisons in the 1950s and 1960s. These models also have a special section for women and juveniles and a library and conference hall. Their accommodation capacity is 60 people. The total number of these institutions in Turkey is 30.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

2.3.3.5 Features of B-Type Closed Penal Execution Institutions⁴⁸

In this type of prisons which have 7 wards and 2 discipline cells, there are separate sections for women and juveniles just as in A-type prisons. They have a bathroom and an area next to each ward which can be used as kitchen when necessary. Each ward has separate ventilation. The total number of these institutions in Turkey is 16.

2.3.3.6 Features of C-Type Closed Penal Execution Institutions⁴⁹

There are separate sections for women and juveniles, as well as conference halls and libraries in this type prisons which have 8 wards and 4 discipline cells. They have bathroom and a space next to each ward which can be used as kitchen. Although they have a capacity of 164 persons according to C-type prisons project, they have the capacity to accommodate 300 people. The total number of these institutions in Turkey is 7.

2.3.3.7 Features of D-Type High Security Closed Penal Execution Institutions⁵⁰

It is composed of 11 blocks, one of which is the administration block, and 230 rooms. In E-block, there is 1 laundry room, 1 library, 1 classroom and 16 multi-purpose hobby rooms. H and L block lower floors are discipline cells. It has 20 observation rooms as 10 on the g-block ground floor and 10 on the 1st floor. On the

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ The official website of General Directorate for Penal and Detention Houses, available at: <http://www.cte.adalet.gov.tr> (Accessed on 11.03.2012)

G-block administration floor, there are 26 administrative offices, conference hall, 2 infirmaries with 10 beds each and camera system room, while on the ground floor; there is a central, hairdresser, tailor, technician room, sound announcement room, kitchen and cafeteria. Blocks are physically connected to each other. They are constructed according to the basis of single and triple rooms like F-type prisons. The total number of these institutions in Turkey is 2.

2.3.3.8 Features of E-Type Closed Penal Execution Institutions⁵¹

After these prisons, which were constructed with two floor dormitory system, were turned into room system, rooms for 2, 4, 6, 8 and 10 people were obtained and each room has independent ventilation. The upper floor of the first section belongs to the administration and lower floors are used as cafeteria and upper floors as dormitory. It has an observation section for 80 people, a fully-equipped kitchen, cold store, laundry room, hairdresser, common bathroom, special visit areas, small mosque, conference hall and workshops. Amendments were made in the observation sections recently and new small room-type wards were obtained. Normal capacity of E-type prisons is 600 people and this can reach 1000 with additional bunk beds in cases of necessity. E-type prisons have separate sections for women and juveniles and an independent place for gendarme. The institution has central heating and there are three lodgings in the building. The total number of these institutions in Turkey is 45.

⁵¹ Ibid.

2.3.3.9 Features of H-Type Closed Penal Execution Institutions⁵²

The institution which is constructed according to room system has two floors and is composed of two blocks. It has 200 single and 100 triple sections as well as independent dining halls, fully-equipped kitchen, cold storage, hairdresser, dishwashing unit and laundry room, special visitor areas, small mosque, conference hall and common bathroom. H-type prisons have a capacity of 500 people and they are heated with central heating. The total number of these institutions in Turkey is 5.

2.3.3.10 Features of K1-Type Closed Penal Execution Institutions⁵³

They are district type prisons and have 4 wards and 2 discipline cells. There are separate sections for woman and juvenile prisoners and library and conference hall as well. 60 people can be accommodated in the institution, whose project is for 42 people. Each ward has a ventilation garden and a bathroom and a kitchen. The total number of these institutions in Turkey is 76.

2.3.3.11 Features of K2-Type Closed Penal Execution Institutions⁵⁴

The capacity of this prison which is also district type is 60 people, which can increase to 150 with additional bunk beds. The institution has 6 wards and 2 discipline cells. Separate break areas have been allocated to each ward and there are separate sections for women and juvenile and gendarme. There is bathroom and

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

kitchen next to each ward. There is also a conference room and library in the institution. The total number of these institutions in Turkey is 22.

2.3.3.12 Features of L-Type Closed Penal Execution Institutions⁵⁵

These penal execution institutions are closed penal execution institutions constructed according to international standards with the purpose of providing a solution in the place of old penal execution institutions in big cities or for insufficient capacity. They have sufficient physical spaces to respond to the demands of convicts and prisoners such as accommodation, health, education and all kinds of enhancement. In addition to these activities, there are also areas where sportive and cultural services are provided.

Convicts and prisoners in L-type penal execution institutions stay in personal rooms found in units. These rooms are locked after a certain time at night but kept open during the day. Convicts and prisoners can come together in a common living area for 7 people and in the garden during the day. L-type closed penal execution institutions, which are planned according to a system of 61 units for 7 people, 4 rooms for 3 people and 40 items of single rooms, reduce the risks of security arising from the dormitory system to a great extent. In the penal execution institution, there is a main control centre where daily services (count, hospital, visit, hearing, discharge, visitation, etc.) are recorded, movement of personnel between the administrative block and the block for the convicts and prisoners is controlled and all

⁵⁵ The official website of General Directorate for Penal and Detention Houses, available at: <http://www.cte.adalet.gov.tr> (Accessed on 11.03.2012)

circulation is organized and six local control centers. There is optical biometrics and a sensitive door and X-ray device used for electronic searching in all entrances to and exits from the building.

In the common living area of each section, there is a TV antenna inlet, one multi-channel central radio, a small kitchen (for making tea and washing fruit and vegetables which can be eaten without cooking and for washing dishes), one plug for electrical heater and 1 illuminated call button for calling personnel in emergency situations. The total number of these institutions in Turkey is 19.

2.3.3.13 Features of M-Type Closed Penal Execution Institutions⁵⁶

The building was constructed with two floors according to the dormitory system and rooms for 4, 6, 8 and 10 people were obtained by turning into room system. Each room has ventilation. In these types, lower floors are used as dining hall and upper floors as dormitory. There are independent sections for women and juveniles. The institution has a fully-equipped kitchen, cold storage, special visitor area, small mosque, conference hall, common bathroom, hairdresser, dishwashing unit and laundry room and workshops as well as 6 discipline cells. The building has central heating. The total number of these institutions in Turkey is 24.

⁵⁶ Ibid.

2.3.3.14 Features of T-Type Closed Penal Execution Institutions⁵⁷

These are closed penal execution institutions appropriate for international standards which were constructed or will be constructed with the purpose of providing a solution in the place of old penal execution institutions in big cities or for insufficient capacity. They have sufficient physical spaces to respond to the demands of convicts and prisoners such as accommodation, health, education and all kinds of enhancement. In addition to these activities, there are also areas where sportive and cultural services are provided. They are planned with a capacity of 616 people as 72 rooms for 8 people, 8 rooms for 3 people and 16 single rooms; rooms for 3 and 8 people are constructed in duplex form. They have an indoor sports hall, 251 m² of outdoor sports facility and a multi-purpose performance hall. Within the frame of education and enhancement activities, there are workshops, classrooms, libraries, infirmaries and health units in these penal execution institutions.

T-type closed penal execution institutions which are planned in accordance to room system for eight, three and one, decrease security risks arising from the dormitory system to a great extent. In the penal execution institution, there is a main control centre which is planned with the aim of recording daily services (count, hospital, visit, hearing, discharge, visitation, etc.) and controlling the movement of personnel between the administrative block and the block for the convicts and prisoners and where all circulation is organized. There is optical biometrics and a sensitive door

⁵⁷ Ibid.

and X-ray device used for electronic searching in all entrances to and exits from the building.

Standards for administrative and service personnel to serve in T-type closed penal execution institutions have been determined. In these penal execution institutions, institution manager, second manager, administrative officer, accountant and sufficient number of doctors, dentists, psychologists, social service specialists, teachers, secretaries, health officers, execution and protection head officers, technicians, execution and protection officers, nurses, room-keepers, launderers, heating personnel and servants are employed. The total number of these institutions in Turkey is 9.

Apart from those types set above, there also exists *Woman's Closed Penal Execution Institution, Woman's Open Penal Execution Institution, Closed Penal Execution Institution, Juvenile Closed Penal Execution Institution, Juvenile Education Centre, Open Penal Execution Institution under the directorate of Closed Penal Execution Institution, Independent Open Penal Execution Institution*, but these are not necessary to be mentioned in detail in this study.

2.3.4 Features of F-type High Security Closed Penal Execution Institutions.⁵⁸

F-Type Prisons, which were designed in 1997-1998, started to be constructed in 1999 and were put into service at the end of 2000, are penal execution institutions where

⁵⁸ The official website of General Directorate for Penal and Detention Houses, available at: <http://www.cte.adalet.gov.tr> (Accessed on 11.03.2012)

only people in the status of dangerous convicts or prisoners can be accommodated according to the Regulations on High Security F-Type Closed Prisons. In this respect, the factors threatening security in terms of its physical structure, electrical and electronic systems and administrative plan have been minimized and it was constructed according to the room system with preventions against escape with internal and external security personnel. For instance, the ground has been reinforced with sufficient amount of straw reinforced concrete to prevent escape attempts by taking the features and security of the institution into consideration. Sewage pipes have been installed at sufficient sizes for preventing escape. The total number of F-Type Penal Execution Institutions in Turkey is 14.

F-Type Prisons take their legal basis from Article No. 16 of Anti Terror Law numbered 3713 and article 13 of Prevention of Benefit-Oriented Criminal Organizations Law.⁵⁹ In this direction, it is claimed that they were constructed with the purpose of ensuring the rehabilitation of convicts and prisoners, minimizing order and security problems arising from the dormitory system, providing cultural, social and sportive activity facilities for prisoners and presenting more special areas of living to them. Indeed, the Minister of Justice of the time, H. Sami Türk stated in relevance to it that the aim of constructing these prisons is the provision of an appropriate environment for the development of prisoners' personalities by

⁵⁹ Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu, Kanun No.4422, RG.23773, 01/08/1999

saying“My ideal prison is a prison for one person where every convict can find their personality.”⁶⁰

As for its physical conditions, circulation is provided from 3 main corridors and it is composed of 5 blocks as one administrative block and four blocks for convicts and prisoners. F-type prisons, which have 57 rooms for 1 and 2 persons and 103 rooms for 3 persons, have a capacity of 368 people.

Areas of living for single person are comprised of 10 square meters. Ventilation areas with a size of 42 and 50 squaremeters are used jointly by two or three adjacent rooms. Areas of living for three persons are arranged as 50 square meters as 25 squaremeters on the lower floor and 25 square meters on the upper floor. These rooms have sufficient light during the day without the need for artificial illumination. Convicts and prisoners in the areas of living can gather together in the ventilation garden during the day.

The Figure 1 below showing the layout of F-Type Prisons from İzmir Professional Chambers can be viewed for a better understanding of the areas of living allocated to convicts and prisoners:

⁶⁰ Karayeğen, İbrahim, *Cezaevlerinde Bağımsız Denetim*, Zaman, 23.06.2000, p. 9

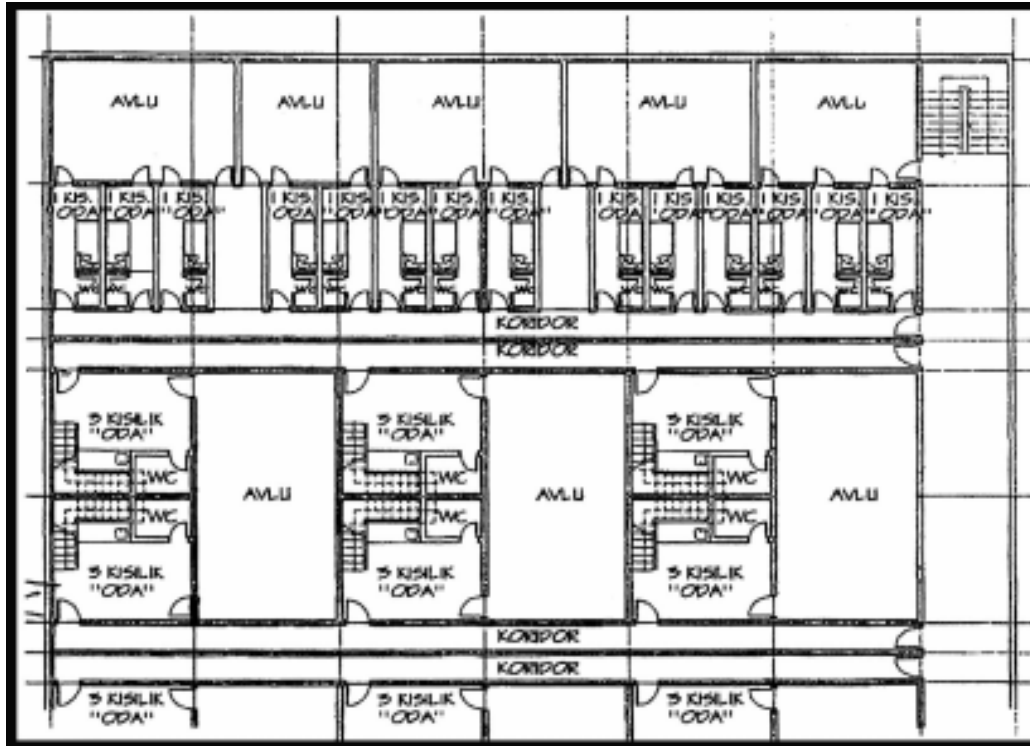


Figure 1.⁶¹ The Layout of F-Type Prisons

Source: İzmir Professional Chambers Platform, *F-Type Prisons Evaluation Reports*, İzmir 2001, p. 76

These penal execution institutions have outdoor and indoor sports fields, pre-visiting room, kindergarten, canteen, hairdresser, announcement and intervention team room, central control room, library, management and service department offices, infirmiary, observation rooms, acceptance, transfer and discharge service offices, duty manager and head officer rooms, administration tea house, personnel dining room, kitchen, cold storerooms, generator, laundry room and shelter. 8 workshops and work dorms with extensive capacity are present to enable convicts and prisoners to spend their free time productively and learn a profession. In addition, there are also rooms which function as observation rooms for those who use drugs on condition of documenting

⁶¹ İzmir Professional Chambers Platform, *F-Type Prisons Evaluation Reports*, İzmir 2001, p. 76

with a medical report and those who have committed disciplinary action and are aggressive towards themselves and their environment.

In terms of security installations, although areas of living of prisoners in these prisons are arranged in such a way that they cannot be spied by prison personnel, indoor and outdoor spaces other than these are continuously monitored vicually and on a computer environment from a centre named central control room.⁶² The control rooms also serves the function of taking daily services such as count,hospital, visit, hearing, discharge, visitation, etc. under control and controlling the movement of personnel between the administrative block and the block containing the convicts and prisoners. This centre has two floors and has 41 monitors and 1 server computer.

With the purpose of ensuring the control of entries and exits and preventing entrance without permission in these prisons, hand biometrics which is an electronic safety system is used and there is a sensitive door and X-ray device which are used in all entries into and exits from the building. There is a sensor wire between the prison building and the surrounding wall with a warning system. In addition, the prison (excluding areas of living) is monitored for 24 hours non-stop with cameras. There are security shields in these prisons to prevent the operation of mobile phones.⁶³

As a result of the amendment made in article 16 of the Anti Terror Law, prisoners staying in F-type prisons were given the opportunity of free visitation once a month with is provided for seeing their spouses and children up to the age of 10 unless they

⁶² Sağlam, M. Yılmaz, *Türk İnfaz Sisteminde Ceza İnfaz Kurumları*, Ankara 2003, p. 60

⁶³ Bal, Ersin, *F Tipinde Anahtar El İzi*, Sabah, 04.12.2000, p. 21

receive disciplinary punishment other than reprimand in addition to the free visitation allowed on national and religious holidays, mother's and father's days and new year in line with the permission given by the Ministry.

In the same article, prisoners who spend at least one third of their punishment on good conduct are given the right to be transferred to other execution institutions.

2.3.5 Domestic Criticisms on F-Type Prisons:

F-type prisons constituted a topic of extensive debate within the national agenda of the country during the period from its project stage to its application and even in the period afterwards. Especially prisoners who fell into the scope of F-type prisons had started death fasts and showed resistance against the opening of these institutions and being transferred to these. In this respect, different and controversial opinions emerged concerning F-type prisons in the Turkish public opinion.

Some defended that these institutions are more like "isolation" centers rather than penal execution institutions, sharing the same opinion with prisoners who started death fast. "Negative" reports published by Turkish Medical Association and Contemporary Lawyers' Association on F-type Prisons, Human Rights Association were especially noteworthy.

In the general evaluation report of Turkish Medical Association⁶⁴, the following statement was made:

⁶⁴ For the whole text, see http://www.ttb.org.tr/eweb/rapor/f_tipi.html (Accessed on 11.02.2012)

...in the project prepared (referring to F-type prisons), the problem is only perceived as a security problem by overlooking the element of humans and a total isolation is targeted starting from the prison building. However, it is taught to us by the science of medicine that humans are social beings. It has been demonstrated with scientific data that isolation leads to consequences such as disidentifying people and creating severe psychological and physical deformations. With the isolation approach which ignores physical, social and psychological human needs, the convict is deprived of rights such as the feeling of trust, solidarity and sharing..⁶⁵

The report also examines F-Type Prisons from the perspective of convict and prisoner health and from a medical perspective and it is stated that these prisons, despite being described as “villas” in the public, contain many problems for health even if they are used for purposes other than isolation. For instance, the fact that toilets will also be used for taking shower, the presence of rubbish in the same environment; therefore, having a bath in an environment with wastes and a pit opening up to the sewage system can cause infections in terms of both personal and cell hygiene. When it is considered that the same environment will be used for eating, sleeping, as a toilet and bathroom, the moist and microbic environment which will occur contains long-term health risks.⁶⁶

In parallel into the report of Turkish Medical Association, Contemporary Lawyers’ Association published “Prison Monitoring Commission 2012 Report” as a result of interviews with convicts staying in Tekirdağ Number 1 and number 1 F-Type Prisons, Edirne F-Type Prison and Kandıra Number 1 and Number 2 F-Type Prisons. After disadvantages of F-Type Prisons are mentioned in the report, it is stated in the “suggestions” section that “F-Type penal execution model, which is an

⁶⁵ Ibid.

⁶⁶ Ibid.

isolation/treatment model and which is an obstacle against healthy development of individuals physically and psychologically, must be abandoned...”⁶⁷

Moreover, the report⁶⁸ released by Istanbul branch of Human Rights Association in 18 December 2008 give mutli-dimensional perspective with respect to the source and the application of F-Type Prisons in Turkey. The report proposed that the initiation of F-Type Prisons are not only the outcome of the necessity to modernize its prisons in the EU harmonization process of Turkey but also the reflection of the preference of Turkish State’s political restructuring. That is to say, while Turkey has been restrecuturing its political settings and legal system in accordance with the necessities of today’s World, it has more disciplinary and oppressive approach to the human rights and freedoms due to the new code of ‘terrorism’ imported from the USA. This eased the States, including Turkey, to pay the attention of public opinion to ‘terrorism’ and has made oppressive face of the States to be ignored.

The report also explained that the evolution towards F-Type Prisons was not solely a sort of an instrument to nullify the “dissenter powers”. It was the project to terrorize people, to punish the opposing views against the upcoming neoliberal policies of Turkey and to create a traumatic memory in opposing views, as well.⁶⁹

⁶⁷ Çağdaş Hukukçular Derneği, *Cezaevi İzleme Komisyonu Ocak 2012 Raporu*, available at: http://www.chd.org.tr/haber_detay.asp?haberID=656 (Accessed on 20.02.2012)

⁶⁸ İnsan Hakları Derneği, *İstanbul Şubesi 18 Aralık 2008 Raporu*, available at: http://www.cezaevindestk.org/stkduyuru-8-insan_haklari_dernegi_insan_haklari_raporu (Accessed on 12.03.2012)

⁶⁹ Ibid.

In the light of the aforementioned reasons, the Association underlined that F-Type Prisons should not only be understood as ‘isolation’ places, but it is also a systematic form of psycho-terror of Turkish State taking into consideration the qualities of the cells and the materials used within the F-Type Prisons. In relevance to this, the aim is not just to cut the social relations of the individuals in F-Type Prisons, but to eliminate perception and cut the stimulus by applying “white terror” so that the mental well-being of the prisoners would be deranged and the psychological torture would be permanently applied to make the prisoner become more alone and physically more weak. In a nutshell, F-Type Prisons were a project to have modern concept of torture and to eliminate human personality in there, in the eyes of the Association.⁷⁰

Lastly, the Association noted in its report that the F-Type model is the product of capitalism to isolate and it is not only a threat to the prisoners but also to the whole community. Although the authorities argue that this model was adopted due to the security concerns, the Association criticised the state authorities by underlining the fact that security concerns must be attributed to the prisoners who are under the arrest of the state authorities given the human rights infringements enjoyed by the prison authorities in Turkish Prisons. Thus, in Association’s opinion, it is impossible to reform the prisons without securing the rights of the prisoners. Towards this end, it is essential to take the will and the ideas of the subject matters of the issue, namely prisoners, and the opinions of their relatives, the views of human rights defenders and the civil society.

⁷⁰ Ibid.

Contrary to the criticisms, for the state authorities including the Ministry of Justice, F-Type Prisons comply with modern requirements both in terms of their physical structure and security standards. In addition, it has a mechanism which disposes of the disadvantages brought about by the dormitory system. Therefore, it is defended that crimes and indiscipline created in an organized way by convicts such as collective escape attempts or collective riots, which are regarded as a result of the dormitory system, will not be encountered in F-Type Prisons.

2.3.6 Current Situation in Penal Execution Institutions in Turkey:

As of 15 December 2011, the total number of penal execution institutions in Turkey is 377 out of which there are 328 close penal execution institutions, 36 open penal execution institutions, 3 reformatories for minors, 5 women close penal execution institutions, 1 women open penal execution institution and 4 close penal execution institutions for juveniles and minors. Their total capacity allows 121.804⁷¹ persons to be accommodated. When it comes to the statistical data released by the General Directorate for Penal and Detention Houses about the numbers of the detainees and convicts staying in Turkish Prisons by October 2011, it is seen that there were 74660 convicts and 34430 detainees, which make totally 109.090⁷² people in Turkish prisons. Apart from these, there were 17952 de jure detainees. In order to receive more information on the distribution of the detainees, de jure detainees and convicts

⁷¹ The official website of General Directorate for Penal and Detention Houses, available at: <http://www.cte.adalet.gov.tr> (Accessed on 11.03.2012)

⁷² Ibid.

in relevance to the categories of male, female and child, the Table No. 1⁷³ given at the end of the thesis would be reviewed.

According to the General Directorate for Penal and Detention Houses, It is necessary to decrease the numbers of the execution institutions and detention houses and the costs of their processing, in return to increase the qualifications of them within the frame of modern perception of execution. To this end, small-sized penal institutions which were located in small districts and were not in line with the international norms due to having limited or no physical conditions and capacities for rehabilitation and education, have been closing down year by year. In 2006, 2007, 2008, 2009, 2010 and 2011, there were 20, 51, 16, 22, 6 and 3 penal institutions were closed due to this, respectively. Thus, totally 118 small-sized penal institutions located in small districts were closed in the last 6 years.⁷⁴

At the same time, the tendency towards the construction of penal execution institutions in Turkey that are appropriate for the contemporary understanding draws attention. In line with this purpose and within the frame of the activities carried out by the General Directorate since 2006, healthy and secure new penal execution institution projects with mechanical and electronic installation and which are suitable for rehabilitation procedures have been developed and a total of 53 penal execution institutions with a total capacity of 42.142 were constructed and taken into service as 7 institutions in 2006, 8 institutions in 2007, 13 institutions in 2008, 8 institutions in

⁷³ The official website of General Directorate for Penal and Detention Houses, available at: http://www.cte.adalet.gov.tr/istatistikler/tutuklu_hukumlu.asp (Accessed on 11.03.2012)

⁷⁴ Ibid.

2009, 7 institutions in 2010, 10 institutions in 2011, primarily in metropolitan cities.⁷⁵

⁷⁵ Ibid.

CHAPTER 3

MULTILATERAL CONVENTIONS & AGREEMENTS: “*External Inputs*” *over Turkey in terms of Penitentiary System*

In this chapter, certain important joint declarations, multilateral agreements and covenants of which Turkey is part will be examined. The reports of the observatory institutional bodies of the United Nations and the Council of Europe, which were given after the observatory visits to F-Type Prisons, contains attributions to certain covenants and agreements, so while choosing the covenants and agreements to be analyzed in this chapter, the reports of the observatory bodies of the UN and the CoE will be the mainstay. With the detailed handling of such documents which legally and politically bind Turkey in the international arena, the effect of their content on the Turkish Penitentiary system, which is named as “external inputs” in this study, and to what degree they shaped the process of transformation to F-type prisons in Turkey will be understood. In this way, whether the current institutional and legal status of F-type prisons are in line with the relevant international documents which Turkey is a part of and bears responsibility for can be analyzed more easily.

Indeed, while in some of those agreements and covenants, the responsibilities set for the Contracting Parties with respect to the physical environment, security conditions and rehabilitation process to be provided in prisons are ‘indirectly’ mentioned through swift and general clauses on trying to form universal understanding for human rights; there are some others which have “direct” clauses for the minimum standards to be traced in the penitentiary system the Contracting parties have to

provide. In this study, the international legal documents which have direct articles and regulations about the prisons and the prisoners' rights will be given place and the rest of other will be ignored.

3.1 UNITED NATIONS BASED DOCUMENTS

3.1.1 Universal Declaration of Human Rights

There were varieties of prison regimes applied all around the World till the end up of the World War 2, when the concept of “human rights” peaked due to its destructive effects to humanity. Since that time up today, the penitentiary system was handled within the concept of “human rights” and it became the matter of “prestige” for the States to act compatible with the UDHR which inevitably had reflections on the penitentiary system of the States, as well.

Indeed, the UDHR sets up general concepts and principles about almost all sphere of life with respect to human rights. The outstanding principles are freedom⁷⁶ and the principle of equality without any discrimination based on race, religion, sex...etc⁷⁷, right to life⁷⁸, right of the security of person⁷⁹. There is no hesitation that those general principles are also supposed to be applied and binding in prisons during the confinement process of the prisoners/inmates. The most relevant and “direct” article

⁷⁶ Universal Declaration of Human Rights, available at: <http://www.un.org/en/documents/udhr/index.shtml>, Article No.1 (Accessed on 18.02.2012)

⁷⁷ Ibid, Article No.2

⁷⁸ Ibid, Article No.3

⁷⁹ Ibid, Article No.3

with respect to prisons could be argued as ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’⁸⁰ Thus, the Contracting States, including Turkey, have to arrange such a penitentiary system that the prisoners/inmates will not be subjected to ill-treatment.

3.1.2 International Covenant on Civil and Political Rights

As one of the most significant document within the body of the United Nations, ICCPR was adopted and opened for signature on 16 December 1966 but entered into force 10 years later, in 1976. Turkey signed the covenant on 15 August 2000. It sets various civil and political rights which have “implications” on prisoners and necessitate the adequate conditions to be provided in prisons such as right to life, right to complaint, right to freedom of thought, religion and conscience, right to work...etc.

In relation to the penitentiary system over the Contracting states, the document foresees that the states shall arrange such a penitentiary system that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁸¹ In addition, ICCPR gives the “modern” purpose of imprisonment which is to rehabilitate the convicts: “The penitentiary system which shall comprise treatment of prisoners the essential aim of which shall

⁸⁰ Ibid., Article No. 5

⁸¹ International Covenant on Civil and Political Rights, available at: <http://www2.ohchr.org/english/law/ccpr.htm>, Article No.10/1 (Accessed on 13.02.2012)

be their reformation and social rehabilitation”⁸² This article also indicates the framework to be followed by the Contracting Parties about what the logic behind the confinement of prisoners ought to be.

The document also prohibits the compulsory or forced labor in Article No.8. However, it adds in the same article that this may not be applied for the persons under detention and/or imprisoned. That is to say, through the lawful order or legal regulation, the compulsory or forced labor would be the part of the penitentiary system and it will not be the infringement of the ICCPR.

At this point, it is important to note a very significant “external input” over Turkish legislation by the ICCPR. There was “death penalty” in Turkey until it signed the Second Optional Protocol of ICCPR in 2004 which prohibits the death penalty application in Contracting State Parties. Thus, the right to life reached to its real meaning after the Turkey’s signature of this document and the death penalty was replaced by life-long imprisonment in Turkish Penal Code.

3.1.3 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

This document sets forth the rules to be followed during the detention and imprisonment processes in detail and covers so many areas including right to complain, legality of detention, right to hear the reasoning of imprisonment...etc.

⁸² Ibid, Article No.10/3

What makes this document unique and special is that the Body of Principles are somewhat put in a higher degree in the hierarchical order of law comparing to the national laws and other international conventions and regulations. It says:

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.⁸³

However, in terms of its content, it could be proposed that it has no big difference from other relevant international covenants and protocols and there is no “original” principle which is unique for just this document. On the other hand, it is found important to give place to this document in this study due to its “wording” of putting itself in a higher legal order than the other legal regulations.

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

Being one of the most relevant international documents for the prisoners, detainees and the people who are under arrest, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted and opened for signature by Resolution No. 39/ 46 of the UN General Assembly on 10 December 1984. The Convention entered into force on 26 June 1987. There are 78 States who

⁸³ Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, accepted by General Assembly of UN at 76th plenary meeting on 09.12.1988, available at: <http://www.un.org/documents/ga/res/43/a43r173.htm>, (Accessed on 15.02.2012)

signed the Convention as 2012. Turkey signed it on 25 January 1988 and ratified in the Turkish Grand National Assembly on 2 August 1988.⁸⁴

The convention has the institutional body to monitor the practical applications of the Contracting State Parties through periodical reports which must be submitted by the contracting States on whether those practices are in line with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This institutional body can have periodic visits and visits in regard to request with petition, but the State concerned needs to sign the Optional Protocol of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The objective of the Optional Protocol was given as:

...to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.⁸⁵

Turkey signed the Protocol on 14 September 2005 and ratified it on 27 September 2011.⁸⁶ That is why monitoring body of the Convention could not perform its observatory visit to Turkish Prisons, yet.

⁸⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en (Accessed on 10.02.2012)

⁸⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment(Optional Protocol- accepted on 18 December 2002), available at: <http://www2.ohchr.org/english/law/cat-one.htm> (Accessed on 10.02.2012)

⁸⁶ United Nations Treaty Collection, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en (Accessed on 10.02.2012)

According to the Convention, States are responsible for preventing all forms of torture, inhuman and degrading treatment or punishment happened in state institutions and also it has to take necessary precautions. Therefore, it is crucial to give adequate training to the law enforcement officials with respect to how they shall treat the prisoners/inmates.

3.1.5 United Nations Standard Minimum Rules for the Treatment of Prisoners⁸⁷

The text which draws the frame of the minimum standards for the treatment of prisoners was adopted in Geneva in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the UN Economic and Social Council by its Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.⁸⁸ 51 governments including Turkey, 43 NGOs and 512 participants took part during the Congress and came up with the final text.⁸⁹

Before giving the details of the content of the text, it is important to note that the Standard Minimum Rules for the Treatment of Prisoners do not intent to propose to form a unique model system for penal institutions taking into account that there are varieties of legal, social, economic, demographic differences in terms of the conditions throughout the world. That is why, it solely aims to draw general

⁸⁷ United Nations Standard Minimum Rules for the Treatment of Prisoners, available at: <http://www2.ohchr.org/english/law/treatmentprisoners.htm> (Accessed on 10.02.2012)

⁸⁸ Ibid.

⁸⁹ United Nations Congresses on Crime Prevention and Criminal Justice 1955–2010, available at: http://www.unis.unvienna.org/pdf/2010-Crime_Congress/English_Poster_Book.pdf (Accessed on 10.02.2012)

framework for the penal institutions and set general principles to be applied. Some principles contained in the document in relation to F-type Prisons are as follows:

The document strongly advises the promotion of the principle of separation of prisoners according to their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment in separate institutions or parts of institutions.⁹⁰

In addition to this, when the wording of the document is examined, it is understood that it is not against cell-type penitentiary institutions. Within the context of accommodation, if the penitentiary institution functions as cell-type or room-type, each prisoner must stay in a cell or room of his/her own by night. However, if the penitentiary institution functions as dormitory-type, prisoners to share the same dorm must be chosen carefully.⁹¹

Besides, the issues about food, medical services and exercise and sport must be handled in certain standards. Accordingly, food with nutritional value prepared in the quality and amount that is suitable for health must be provided for every prisoner by the administration at the usual hours.⁹² As for exercise and sport, every prisoner has the right to suitable exercise in the open air for at least 1 hour a day.⁹³ About medical

⁹⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners, Article No.8, available at: <http://www2.ohchr.org/english/law/treatmentprisoners.htm> (Accessed on 10.02.2012)

⁹¹ Ibid, Article No.9

⁹² Ibid, Article No. 20/1

⁹³ Ibid, Article No. 21/1

service, full-time doctors or doctors performing regular visits under the responsibility of the Ministry of Health must be assigned for the health care of prisoners and prisoners must be able to receive health services as soon as possible when they state that they have health problems.⁹⁴

The standards indicated about the physical conditions of penitentiary institutions are as follows:

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation⁹⁵

However, net numerical or metric standards about these criteria are not indicated.

It is underlined that penitentiary institutions are institutions which should provide adequate means of training and rehabilitation in a spiritual, moral, remedial and educational sense which is necessary for prisoner to lead law-abiding and self-supporting lives after their release, rather than their leading to their suffering. It is especially suggested that individualized training programs must be designed and a separate and special training and rehabilitation process must be provided for every prisoner.⁹⁶

⁹⁴ Ibid, Article No. 22

⁹⁵ Ibid, Article No. 10

⁹⁶ Ibid, Guiding Principles: from Article No.56 to Article No. 69

3.2 EUROPEAN BASED DOCUMENTS

Under this category, the conventions and legal regulations of the Council of Europe and the European Union will be examined taking into consideration that Turkey, since its formation in 1923- even before, has been following the European attempts in the area of legal settings and to match with the norms and standards initiated by 'Europe' to become a 'member' of the team. Being the member in 1949 to Council of Europe and the ongoing negotiations to become a member in EU, European based documents in the sphere of human rights in particular, have great reflections on the legal arena of the Republic of Turkey which tries to comply with them. Thus, the European based documents which foresee standards and norms about prisons and prisoners/inmates to be set in the Contracting State Parties including Turkey, will be analyzed.

3.2.1 Convention for the Protection of Human Rights and Fundamental Freedoms

Being also known as European Convention on Human Rights, the Convention forms the basis for the founding of the European Court of Human Rights which allows the persons, whose rights and freedoms were infringed by Contracting State institutions, to apply to the European Court of Human Rights after exhausting all judiciary ways within the State.

In terms of prisoners, the Convention prohibits torture, inhuman degrading, punishment and treatment.⁹⁷ In addition, the forced labor is also prohibited by the Convention but the relevant article is not applicable for the prisoners-detainees according to the Convention.⁹⁸

3.2.2 Recommendation Rec. of the Committee of Ministers to Member States on the European Prison Rules

Having regard to the European Convention on Human Rights and the case law of its institutional complementary European Court of Human Rights, the Committee of Ministers has decided and published yearly recommendations which constitute the body of principles set in the above-mentioned Convention in order to improve the standards of the conditions in human rights area, including the prisons-prisoners, in member states. In this study, taking the relevance of the theme of the thesis into consideration, two of these recommendations will be given.

3.2.2.1 Recommendation Rec. (2003)23:⁹⁹

The document has actually regulative provisions on the management of the prison administrations of life sentence and other long-term prisoners. According to the

⁹⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, Article No.3, available at: <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm> (Accessed on 10.02.2012)

⁹⁸ Ibid, Article no. 4/a

⁹⁹ Council of Europe, *Recommendation Rec. (2003)23*, available at: <https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%282003%2923&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864> (Accessed on 21.04.2012)

recommendation, the body of principles shall be applied in the penitentiary institutions such as:

Individualization Principle: The principle foresees the individualized plannings in the process of the imprisonment. The personal characteristics of the prisoners shall play significant role in the making up of the imprisonment policy from the very start until it ends.

Normalization Principle: There shall be arranged such prison conditions so that the realities of life out of the prisons and the life in prisons should be as approximate as possible in order prisoners to remain in normalized settings.

Responsibility Principle: Prisoners shall be given responsibilities to fulfill in prisons during their imprisonment process.

Security and Safety Principle: The living places and environments of the various prisoners of various crimes shall be differentiated so as to provide safety and security within the prison.

Non-segregation Principle: There shall be no discrimination among prisoners with respect to their rights within the prisons.

Progression Principle: The planning of the imprisonment process shall be done in such a way that it will secure progressive movement through the prison system.

The recommendation also suggests adequate prison regimes to be applied in a way that the regime allows for flexible reactions to changing security and safety requirements.¹⁰⁰

With due regard to prisoner behavior and security requirements, regimes in maximum security units should aim to have a relaxed atmosphere, allow association between prisoners, freedom of movement within the unit and offer a range of activities.¹⁰¹

Taking into consideration to the F-Type Prisons as penitentiary institutions where the maximum security regime traced, this recommendation is inapplicable due to its shortcomings about relaxed atmosphere, unable conditions for association between prisoners and freedom of movement within the units.

3.2.2.2 Recommendation Rec. (2006)2: ¹⁰²

This document, which imposes the most extensive principles and rules for prisons within the body of the Council of Europe, contains many standards which must be complied with about the institutional infrastructure of prisons and the imprisonment processes from prison staff to prisoners' rights.

In fact, all principles contained in the document were designed for the realization of this main principle: "All persons deprived their liberty shall be treated with respect

¹⁰⁰ Ibid, 19.a

¹⁰¹ Ibid, 20.c

¹⁰² Council of Europe, *Recommendation Rec. (2006)2*, available at: <https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%282006%292&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>, accessed on 21.04.2012)

for their human rights”¹⁰³ In addition to this, the excuse of high contracting parties for the in compliance of penitentiary institutions with the principles present in the document blaming insufficiency of resources is not accepted. The principle of “approximation of prison life and life outside the prison to each other as much as possible”, which is also present in the recommendation which is mentioned above, is repeated in this document.

The document also foresees a more objective supervision of the prisons of high contracting parties by way of independent monitoring by saying “all prisons shall be subject to regular government inspection and independent monitoring”.¹⁰⁴ Through government inspection, whether the prison administration is managed according to relevant national and international law must also be supervised.

The physical conditions and standards which must be present in prisons are more or less the same as the “Standard Minimum Rules for the Treatment of Prisoners”, the content of which we have mentioned above in detail. According to this, it is stated that prison conditions must be suitable for human dignity, enabling privacy with appropriate hygienic and health conditions and especially with floor space, cubic content of air, lighting, heating and ventilation adapted according to different climatic conditions.¹⁰⁵ In addition to this, adequate nutrition must be provided for prisoners according to their age, health, physical condition, religion, culture and the

¹⁰³ Ibid, Principle no.1

¹⁰⁴ Ibid, Principle no.9

¹⁰⁵ Ibid, Principle no. 18.2/a

nature of their work.¹⁰⁶ Full-time doctors or doctors performing regular visits under the responsibility of the Ministry of Health must be assigned for the health care of prisoners and prisoners must be able to receive health services as soon as possible when they state that they have health problems.¹⁰⁷

As another important point contained in the document, such a regime must be established in cell-type prisons (cell-type regime is also present in F-type prisons which is the subject of this study) that all prisoners must be able to spend as many hours a day outside their cells as necessary for an adequate level of human and social interaction.¹⁰⁸ Incentives such as workshop activities and recreational activities are appreciated for this.

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

The Convention was opened for signature to the member states of the Council of Europe as well as to non-European non-member States on 26 November 1987 and the date of its entry into force was determined as 1 January 1989.¹⁰⁹ Turkey signed the document on 11 January 1988 and ratified on 26 February 1988.

¹⁰⁶ Ibid, Principle no. 22.1

¹⁰⁷ Ibid, Principle no. 40

¹⁰⁸ Ibid, Principle no. 25.2

¹⁰⁹ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, available at: <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG> (Accessed on 15.03.2012)

The aim of the Convention is to set up an institutional body called “European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”(hereinafter it will be referred as "CPT") which shall be in charge of inspecting the penitentiary institutions in the member states and preparing observatory reports by collecting the sufficient data through interviews with the prisoners, administration and staff, and also by seeing the conditions provided within the penitentiary institutions through their periodic visits. Therefore, the purpose of CPT is to “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.”¹¹⁰ In this respect, the cooperation of the relevant national authorities in the member states with the CPT is expected.¹¹¹ The national state authorities are responsible for easing the work of the CPT by permitting the Committee representatives to have access every places without restriction, to interview the prisoners in private...etc.

Concerning on the methodology of the visits of the Committee, the Convention cites “The Committee shall organize visits to places referred to in Article 2. Apart from periodic visits, the Committee may organize such other visits as appear to it to be required in the circumstances.” That is to say, the Committee has not only the authority to make periodic visits but also it may carry out visits when it is called on duty. After the visits, the Committee shall publish its report (without publishing the

¹¹⁰ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Article No. 1, available at: <http://www.cpt.coe.int/en/documents/ecpt.htm> (Accessed on 15.03.2012)

¹¹¹ Ibid, Article No. 3

“personally classified” data) and is supposed to give its suggestions to the competent national authorities

To sum up, when all the international and multilateral documents above are considered, it is seen that there are a large number of “external inputs” which The Turkish Republic must fulfill and which have a binding effect. On the whole, it draws attention that international documents dealing with “penitentiary institutions” within the context of human rights are of either the United Nations or Europe-centered.

Of course, the necessity of a mechanism to supervise and to check whether these international documents are applied by member states is indispensable as these international documents are not just series of principles that are accepted ‘on paper’. Therefore, both the CoE and the EU formed monitoring bodies which were established for the supervision of some of these legal documents in high contracting parties. In this respect, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the CoE and annual visits of the Delegation which is authorized by the European Commission to monitor the ongoing situation and practices within the national sphere of the states in accession process, serve as a “bridge” between the contracting state parties and these documents, which will be examined in detail in the next chapter. Accordingly, these monitoring bodies prepare observatory reports and give feedback about the minimum criteria and standards which must be met by the countries signing these documents about prisons and prisoners' rights.

CHAPTER 4

“EXTERNAL INPUTS” OVER TURKEY: *Monitoring Mechanisms*

It is a fact that prisons and the penitentiary system in a country constitute great importance as a “tool” to provide “justice”. In addition, the penitentiary system of a country is seen as one of the determinant with respect to the development level of the country in the eyes of the international institutions. Therefore, it can be argued that it is a sort of a matter of “prestige” for countries to upgrade their penitentiary system to a certain level.

In this respect, the “European Institutions” form the core of the external concerns for Turkey because of its historical struggle to become a member of the European Union. That is why in this chapter, the “external inputs” on Turkish penitentiary system will be explored on the basis of European institutional bodies which have direct influences and may push Turkish authorities to make changes over the policies about the penitentiary system, particularly the regime applied in F-Type Prisons.

These European institutions are the Council of Europe (CoE) and the European Union (EU) which play important role in the shaping up of the wide range of areas within the penitentiary system in Turkey to improve the standards about human rights, democracy, rule of law, the concept of justice...etc. Most importantly, these institutions introduced some multi-lateral covenants which allow them to make observations and give recommendations to the Contracting Party States to arrange the standards complying with the relevant acquit about the prisons.

4.1 COUNCIL of EUROPE

The CoE observes Turkish prisons annually by its sub-branch named “The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”. The Committee publishes its annual observatory report in which it gives recommendations to Turkish authorities to take necessary steps in line with the Convention. These annual reports cover so many issues about the prisons in general, so solely the points raised concerning the F-Type Prisons will be mentioned below. Additionally, in 2003, 2006, 2007 and 2008, CPT did not make observatory visit to any F-Type Prisons, so the reports of these year were not included in this paper. Besides, the reports of 2011 and 2012 are not published during the preparation of this thesis yet, so they will not be able to take place here.

4.1.1 CPT Report (2000):¹¹²

Kartal Special Type Prison, Bursa E-Type Prisons and the construction site of Sincan F-Type Prisons were visited in 2000 by CPT. In its visit to the construction site of Sincan F-Type Prison, the Committee noted that Turkey has given very much significance to the physical conditions of newly established prisons, especially in F-Type model. According to CPT, this new model offers good conditions despite some shortcomings such as cell’s view is solely to high-walled yard which is like 10 meters away from the window. On the other hand, Sincan F-Type Prison was considered as a positive development for Turkish penitentiary system due to its

¹¹² Council of Europe, *CPT Report- 2000*, available at: <http://www.cpt.coe.int/documents/tur/2000-19-inf-eng.htm#Statement> (Accessed on 15.03.2012)

modern facilities for communal activities. Yet these facilities were strongly advised to be utilized in their entire capacities. In this sense, another concern of the CPT which took place in this report was whether all prisoners will have been allowed to join out-of-unit activities in this new F-type prisons or not.

Taking these into consideration, CPT came up with the conclusion that there was an observed tendency of the shift from dormitory type units towards smaller units. In this sense, CPT delegates communicated with the General director and high-level official authorities in order to grasp the reasoning of this innovation. After the observation and discussions with the high authorities, CPT noted:

As the CPT has previously stated, there is no objection in principle to this move towards smaller living units, always provided that inmates have the opportunity to spend a reasonable part of each day outside their living units, engaged in purposeful activities.¹¹³

Response of Turkish Government to the Report:¹¹⁴ The government found the comments of the CPT about the construction site of Sincan F-Type Prisons as it had good conditions in terms of both physical environment and facilities provided, as positive. For the concerns raised by CPT about the yards' environment and low visionary distance between the high-wall and the windows of the cells, government proposed that it was the natural outcome of this type of construction. In case it was extended beyond 10 meters, it required to have more areas and the entire plan of the construction must have been altered which was impossible in regard to the budget provided to the Ministry of Justice. Indeed, the government believed that the

¹¹³ Ibid.

¹¹⁴ Ibid, *Government's Response to CPT Report-2000*

facilities and out-of-unit activities, in which prisoners will have spent majority of their daily life times in their imprisonment process, were of greater importance than these and newly constructed F-Type Prison had capacity to provide these well, even better than most of the cell-type prisons in the World.

4.1.2 CPT Report (2001):¹¹⁵

Due to the prison interventions at the very end of the year 2000, during which the arms force was used, CPT visited Turkey four times in 2000 and 2001. The first visit was from 10 to 16 December 2000, the second one was held between 10 and 15 January 2001 and the third visit was from 18 to 21 April and the last one was from 21 to 24 May 2001. The prison interventions in 20 prisons throughout Turkey were done in order to stop ‘hunger strikes’ which evolved into ‘death fasting’ and to transfer the prisoners to newly constructed F-Type Prisons by force. In this process, CPT continued its close observations, even it intensified its visits to see whether the executions of Turkish State comply with the Convention or not.

Indeed, CPT raised doubts in its first observatory report right after the prison interventions on whether the method of force used was proportionate during the interventions although CPT was convinced that the deaths of prisoners during the interventions were the outcome of the act of their self immolation, not due to the actions carried out by the security forces. However, for a satisfactory answer, CPT asked Turkish authorities to provide more video recordings and more concrete

¹¹⁵ Council of Europe, *CPT Report- 2001*, available at: http://www.cpt.coe.int/documents/tur/2001-31-inf-eng-1.htm#_Toc524232721 (Accessed on 15.03.2012)

evidences from the people who had first-hand experiences about the events happened at that day. The Committee also requested information in order to see if there was ill-treatment or inhuman-degrading punishment exercised on prisoners during and after the intervention from the public prosecutors who were in charge of investigating the interventions. In addition, CPT criticized that the interventions were done without the presence of an independent observatory body or institution, so prison monitoring boards should have taken place during interventions so as to impose dissuasive effect against ill-treatment.

Some prisoners who were transferred to F-Type Prisons after the intervention reported that they were ill-treated such as forced hair and moustache-beard cutting, beating and even two of them told that they were raped by truncheon. The CPT argued about it that the counter-reaction against the arm force was a great amount and to some extent, the violent intervention of the security forces could be understood, but “nothing can excuse prisoners’ being battered”. Moreover, the forceful hair and moustache-beard shaving was considered by the CPT as a punitive act itself and this does not comply with the Convention. Therefore, CPT asked for doctor reports to be submitted about the injuries of prisoners who were battered.

Concerning on out-of-unit activity, there was only ‘gymnasium’ in use so there was no alternative communal activity to that, although it was set as varieties of communal activities will have been provided in F-Type Prisons in the previous visit of CPT.

On the other hand, CPT was pleased to observe that the role of gendarmerie within the F-Type Prison and the presence of gendarmerie in direct-contact process with the

prisoners were ‘exception’ rather than the “standard rule”. Thus, this penitentiary institution was relatively ‘civilized’ and it was seen as a good development in the eyes of CPT.

For the solitary confinement, CPT reported that the design of the single-cells had high-qualifications and the physical conditions were in good standards but the prisoners staying in single-cells should have been given adequate means for human contact and they should have been provided with sufficient “stimulus” to keep sustaining their mental health. This shortcoming was still observed in the last visit of CPT which was held 2 to 14 September 2001, almost one year after the F-Type Prison brought into service.

Response of Turkish Government to the Report¹¹⁶: Contrary to what CPT argued in its report, Turkish government defended the procedures applied during the intervention. For instance, the government stated that the gases used in order to enter into the units during the interventions were not harmful for the health of prisoners but they just had temporary influences. Yet most surprisingly, the government claimed in its response paper that the kerosene was poured onto the prisoners by their own terrorist organizations and they tried to indicate the public as if these chemicals were used by the security forces. In return, the prisoners who had to be in line with the decisions of their organizations, “had to” continue their rebellions. This point

¹¹⁶ Government’s Response to CPT Report on the Visits to Turkey from 10 to 16 December 2000, from 10 to 15 January 2001, from 18 to 21 April 2001 and from 21 to 24 May 2001, available at: <http://www.cpt.coe.int/documents/tur/2001-31-inf-eng-2.htm> (Accessed on 15.03.2012)

also took part in the report given by the Chief Public prosecutor who was in charge of this case, as well.

For the visits of independent Monitoring Boards, the government proposed in its response that the CPT's concerns were unnecessary with respect to this, because the Monitoring Boards had and always have the right to visit and observe the prisons whenever they find it necessary and there was no obstacle raised by the authorities against their visits.

The government also made the point about the injuries which were claimed as the outcome of "beating" and "ill-treatment" of the security forces. The response of the government underlined the fact that doctor reports indicated that the majority of the injuries emerged during the interventions were the natural outcome of the prison interventions; rather than the "ill-treating" acts of the security forces. Likewise, Turkish government mentioned that the doctor reports did not confirm the accusation of those two prisoners who proposed that some members of security forces raped them with truncheon.

In addition, the government opposed the view of CPT with respect to hair, moustache-beard cutting to be perceived as an act which had 'punitive character'. In its response paper, government wrote:

Under Article 226 of the Prison Administration and Sentence Enforcement Regulations, prisoners are not allowed to have long hair or beards, in the interests of their own health. This is entirely a matter of institutional

hygiene. The shaving of hair and beards cannot on any account have a punitive character. We do not share the Committee's view in that respect.¹¹⁷

In terms of the CPT report about the insufficiency of communal activities, that only gymnasium was put in-use, the Turkish government defended that this situation derived from that the other communal activity facilities were under-construction during that time but as 30 June 2001, they were completed and were put into use since then.

Lastly, Turkish government gave its ideas about the applications done to European Court of Human Rights from the prisoners who were put in single-cells, claiming that they were discriminated in their detention process and this was an infringement of the European Convention on Human Rights. The government proposed that the Committee's criticisms on solitary confinement procedure in F-Type Prisons had no ground on the basis of ECHR given that the European Court of Human Rights rejected those applications done by the prisoners.

What is more is that the government cited in bold characters that the prisoners in single-cells within F-Type Prisons had each and every means to reach all communal activity areas, yet they refused to take part in these activities and that is why they had limited contact with other prisoners.

¹¹⁷ Ibid.

4.1.3 CPT Report (2002): ¹¹⁸

In the 2002 visit of the CPT, the Committee again focused its attention to communal activities in F-Type Prisons. The theme of the visit was a sort of review of the developments with respect to communal activities at Sincan F-Type Prison.

According to the report, the close observations carried out for 2.5 years, under the title of “communal activities” presented that the F-Type Prisons had good and qualified facilities and they were put into use of the prisoners, but they were not used as they had to be due to the ongoing reluctance of the prisoners. In relation to this, the decree set the rule that the conversation periods of the prisoners among each other were linked to the participation to at least one other communal activity beforehand and those prisoners who did not participate to any communal activities because of the decision of their “organizations” did not benefit from conversation sessions. On the other hand, the CPT observed that the decree, which was putting precondition to benefit from the conversation session, was abrogated and in CPT’s point of view, this was found as a positive development for F-Type Prisons. Even so, the CPT requested detailed information on the numerical data for communal activities in order to draw a clear picture about the ongoing situation.

In this visit, CPT was also pleased with no complaint done by any prisoner on the issue of ill-treatment. Besides, CPT advised Turkish government to provide the environment of peaceful relations between the staffs and the prisoners. Therefore,

¹¹⁸ Council of Europe, *CPT Report- 2002*, available at: <http://www.cpt.coe.int/documents/tur/2003-28-inf-eng.htm> (Accessed on 15.03.2012)

CPT reported that in the encouragement of the prisoners to participate in communal activities and to provide obedience to the rules within the prisons, training of the staffs should have been done in such a way that the staffs form good relations with the prisoners.

Yet, the Committee found out that the rule of ‘doctor-patient confidentiality’ was not applied as it had to be. As the prisoners were in medical service area, it was reported by the prisoners to the CPT that the staffs also stayed in the room. Thus, the CPT recommended the authorities to solve this problem in line with doctor-patient confidentiality principle.

Response of Turkish Government to the Report:¹¹⁹ Turkish government attached all necessary numerical information and statistical data about the types of communal activities and the numbers of the participant prisoners who committed various crimes as 31 January 2003 to its response paper as requested by the CPT. These data which the Turkish authorities provided in return to the CPT’s request could be found in the Table No. 2¹²⁰ and Table no. 3¹²¹ of this thesis.

Moreover, the government proposed that the communal activities were of wide range like copper-work, painting, sculpture, woodwork, carpet making...etc. and all prisoners had the right to access any one of them as they wish.

¹¹⁹ Government’s Response to CPT Report-2002, available at: <http://www.cpt.coe.int/documents/tur/2003-29-inf-eng.htm>, (Accessed on 15.03.2012)

¹²⁰ Ibid.

¹²¹ Ibid.

Turkish authorities also asked the attention of CPT that in its report, CPT only emphasized on the training of staff in order to form good relations with the prisoners and the training process of the staff actually still continued by the government. However, government also asked CPT's approach by various means to invite terrorist offenders staying in F-Type Prisons to form good relations with the staff, too.

In terms of no-proof for the ill-treatment in F-Type prisons and no allegations from any person concerning on this, government's response was as follows:

The necessary provisions on the subject have been introduced in our legislation and in various circulars, including the Ministry of Justice circular of 22 August 2002, and prisoners are placed under statutory protection against all forms of ill-treatment. There can be no question of ill-treatment in a prison system which includes supervisory machinery such as the civil-society prison monitoring boards, the enforcement magistrates' (supervisory judges) offices and the Parliament's Human Rights Enquiry Commission.¹²²

The government reported back to CPT that the principle of doctor-patient confidentiality in prisons was strictly applied in accordance with the provisions of various national laws, regulations, decrees and circulars. Thus, the government noted: "...in accordance with these provisions, it is accepted that unless there are exceptional circumstances, health care staff and the patient are left alone during medical examinations in compliance with the rules."¹²³

¹²² Ibid.

¹²³ Ibid.

4.1.4 CPT Report (2004):¹²⁴

In 2004, CPT visited three prisons only one of which was in F-Type category, namely İzmir F-Type Prison No.1. Apart from observatory visits, CPT also made interviews with the prisoners staying in Adana F-Type Prison.

To begin with İzmir F-Type Prison, CPT appreciated this prison because no prisoner made any allegation about the ill-treatment of the prisoners. Besides, the physical conditions of various F-Type Prisons were observed in detail in the visits carried out in 2000, 2001 and 2002 before and they were found and noted by CPT as good and highly qualified which was also the case in İzmir F-Type Prison No.1.

On the other hand, the content of the communal activities and the hours reserved to prisoners to make use of them were found certainly unsatisfactory. Taking into consideration the criminal past of the prisoners staying in this prison as majority of them were not the offenders of “organized crime”, CPT thought that their disuse of communal activities could not be explained by the stance of the organization that the inmates are involved in. The same situation was also observed in sports area.

CPT clearly underlined in its report that in case the potential of F-Type Prisons was utilized fully, the F-Type Prisons were to be considered as modern penitentiary institutions, but under this circumstance, they have given “small group isolation units”. Therefore, the CPT recommended the national authorities to take necessary

¹²⁴ Council of Europe, *CPT Report- 2004*, available at: <http://www.cpt.coe.int/documents/tur/2005-18-inf-eng.htm> (Accessed on 15.03.2012)

steps in order to increase the hours and the range of communal activities and to encourage participation of prisoners.

Furthermore, few problems in health-care sphere within İzmir F-Type Prison No.1 were observed. The protocol signed between the Ministry of Justice and the Ministry of Health in 2000 led doctors working within the body of Ministry of Health to be in charge of the health-care service in prisons. However, the doctors were not well-trained about the special conditions of prisons despite of the fact that the resources were well enough to provide a standard health-care service. CPT asked the national authorities to upgrade the health-care system in this regard. The other points which CPT mentioned in terms of health-care service in its report were that the psychiatrist was deemed necessary to make periodic visit to the prison and the ongoing problem of doctor-patient confidentiality shall have been solved.

Response of Turkish Government to the Report:¹²⁵ The criticisms brought by CPT report concerning on the ‘communal activities’ in İzmir F-Type Prison No.1, were replied back by the government as follows:

We believe it is necessary to bear in mind that F-type prisons are high-security institutions which therefore accommodate remand and sentenced prisoners who have committed specific offences, and that some prisoners held there for the offence of membership of a terrorist organization are known to refuse to take part in any activity programmes offered to them, of whatever kind, as a protest against the structure and system of this type of prison.¹²⁶

¹²⁵ Government’s Response to CPT Report-2004, available at: <http://www.cpt.coe.int/documents/tur/2005-19-inf-eng.htm> (Accessed on 15.03.2012)

¹²⁶ Ibid.

That is to say, the government strongly defended that the under-use of the capacities in facilities were caused by the factors which could not be related to the administration of the F-Type Prison.

Secondly, the government asserted that there were no psychiatrists on duty during CPT visit, but the administrations of F-Type Prisons cooperated with the local medical centers to make psychiatrists visit the prisons, plus, the adaptation of doctors to the environment of the prison was also dealt carefully by the administration.

4.1.5 CPT Report (2005):¹²⁷

Apart from observing the psychiatric institutions, one of the other objectives of the visit held in 2005 by CPT was to observe the developments in F-type (high security) Prisons. The special attention to the out-of-unit activities and individual confinement of certain categories of prisoners was given during the visit which was held from 7 to 14 December 2005. Three F-type establishments were visited: Adana F-Type Prison and Tekirdağ F-Type Prisons No1 and No.2. In addition, although İmralı Prison was not one of the issues on the agenda of the visit, several points concerning on the conditions of detention of Abdullah Öcalan were raised during the end-of-visit talks. These points were the difficulties of access to İmralı Island so the relatives and lawyers of Abdullah Öcalan had transportation problem. However, the CPT noted that this subject shall be observed separately, through CPT's ongoing contact with the Turkish authorities.

¹²⁷ Council of Europe, *CPT Report- 2005*, available at: http://www.cpt.coe.int/documents/tur/2006-30-inf-eng.htm#_Toc144865131 (Accessed on 15.03.2012)

CPT Report on Adana F-Type Prison: The decree issued by the Ministry of Justice in 2002 allowed groups, each of which consisted up of 10 prisoners, to come together in pre-designated areas five hours per week. Yet, the CPT cited: “However, this already modest amount of association time was far from being offered in Adana (or elsewhere). Prisoners, in groups of up to nine, had five to six times of one-hour-conversation sessions per month.”¹²⁸ The same problem was observed with respect to sport activities, as well. Although the director of prison declared to the Committee that the access to sport activities for prisoners were two hours per week, the activity programmes seen by the Committee indicated that most of the sport activities were held one hour per week. Therefore, adding the times spent in workshops, the prisoners had spent approximately five hours outside of their living units per week in Adana F-Type Prisons.

CPT Report on Tekirdağ F-Type Prison No.1 & No.2: The Committee argued that the circumstances in Tekirdağ F-Type Prison No.1 were almost same comparing to Adana F-Type Prison. When it comes to the Prison No.2, the huge amount of prisoners joined in three activities consisting of sports, association and library sessions each of which were done one-hour per month. The activity groups for the prisoners who were imprisoned due to organized crime were small in size, even some of them consisted merely single person.

In addition to the observation of out-of-unit activities, the Committee also paid attention to “individual confinement of certain categories of prisoners” in all those

¹²⁸ Ibid.

three F-Type Prisons, especially to those who have served their sentence in “aggravated life imprisonment regime”. In this respect, it was observed that two prisoners in Adana, six prisoners in Tekirdağ No.1 and one prisoner in Tekirdağ No.2 prisons were being held in single-cells. The sole out-unit-activity provided for them was the outdoor exercise, for one hour and two hours in Adana and Tekirdağ F-Type Prisons, respectively. The Committee found this restrictive application as shocking and noted this situation in its report:

The application of an isolation-type regime is a step that can have very harmful consequences for the person concerned and can, in certain circumstances, lead to inhuman and degrading treatment. The CPT is of the firm view that the imposition of such a regime should be based on an individual risk assessment, not the automatic result of the type of sentence imposed. Support for this position is also to be found in Committee of Ministers Recommendation Rec. (2003) 23 on the management of life sentence and other long-term prisoners.¹²⁹

Thus, CPT, by also attributing to the Recommendation Rec. (2003) of the Council of Europe, suggested that the decree of the Ministry of Justice which allowed such a restrictive regime to be applied was open to exploitation and should have been re-considered on the basis of prisoners’ individual risk assessment.

Covering all those three F-Type Prisons cited above, the CPT report of 2005 indicated in short that the material conditions of detention in F-Type Prisons had high standards. The Committee actually underlined the need to develop communal activities for prisoners outside of living units in its visit in 2004; but it was seen that the situation still remained highly unsatisfactory in 2005. Indeed, CPT criticized the prison authorities that they failed to eliminate the obstacles playing active roles in

¹²⁹ Ibid.

developing activities. In addition, CPT proposed that prison authorities' failure of taking proactive approach would have made F- Type Prisons open to accusation that they perpetuate isolation, despite having the capacity and positive aspects to be the model form of penitentiary establishment.

Moreover, in CPT's opinion, these three F-type prisons had considerable capacities in their facilities for activities yet these facilities were not used as they had to. Apart from these, CPT also exhibited an interesting approach: "However, the very limited possibilities for association (conversation) periods and sport - activities in which an increasing number of prisoners wished to engage - must have another explanation."¹³⁰ It seems that CPT implied Turkish authorities, in particular the prison staffs, are one of the most important factors which perpetuate isolation. In this respect, CPT suggested Turkish authorities to develop communal activities and the time to spend in these activities to be expanded up to the time determined in the decree of the Ministry of Justice.

CPT also recommended that the staff should have been encouraged to have interactive relations with prisoners and the health care system should have been reviewed on the basis that each prisoner could enjoy receiving full-time and qualified health care service.

¹³⁰ Ibid.

Response of Turkish Government to the Report:¹³¹ Accepting majority of the criticisms of the CPT, government responded that the limitations of the out-of-unit activities derive from low numbers of staffs hired in prisons and it is due to the low-budget of the Ministry of Justice to afford these expenditures. The government also argued that another factor which resulted in the low-level participation of out-of-unit educational, social and cultural activities were due to the prisoners' being the member of criminal organizations and their organizations do not "allow" them to participate into any sort of state-led activity. However, the government stated that affords will continue to be made with the existing staff and possibilities.

In terms of staff's encouragement for interaction with the prisoners, the government argued that the majority of staff has high-level education and was trained for this purpose but further encouragement will be made.

Lastly, the government responded in relation to the individual confinement of few numbers of prisoners in Adana and Tekirdağ that this was the compulsory method to be followed because these prisoners have potential to harm both themselves and other prisoners and make disturbing behaviors for the other prisoners. That is why they are visited by the doctors and psychiatrists regularly.

¹³¹ Government's Response to CPT Report- 2005, available at: <http://www.cpt.coe.int/documents/tur/2006-31-inf-eng.htm> (Accessed on 15.03.2012)

4.1.6 CPT Report (2009):¹³²

In 2009, the Committee visited wide range of institutions, including the ones other than prisons, to observe the ongoing situation. In this regard, only F-Type prison which was visited was Kırıkale F-Type Prison.

The CPT saw that as a prison which was brought into service in 2007, Kırıkale Prison is an institution with the capacity of 368 but holding 285 prisoners most of whom were the convicts of organized crime and terrorist activities.

CPT noted that since its last visit to an F-Type Prison in Turkey which was held in 2005, the Ministry of Justice issued a decree in order to increase the intensity of communal activities and this was welcomed by the Committee. The decree stipulated that the prisoners may be brought together in pre-designated areas for association not more than ten hours per week. It was “five hours per week” before the decree. Particularly, in Kırıkale F-Type Prison, the Committee observed that the administration has spent huge effort so as to enhance out-of-unit activities. Yet, other factors prevented the prisoners from fulfilling their right to have out-of-unit activities 10 hours per week.

Furthermore, the numbers of the prisoners who were included in communal activities were still not satisfactory although there was an observed increase in numbers with respect to participation comparing to previous visits. In this regard, the CPT recommended that the factors causing low engagement in communal activities like

¹³² Council of Europe, *CPT Report-2009*, available at: <http://www.cpt.coe.int/documents/tur/2011-13-inf-eng.htm> (Accessed on 15.03.2012)

reluctance of prisoners not to participate should have been reduced and even eliminated by more proactive and strategic approach of the prison administration. Moreover, CPT noted that in accordance with the provision of the decree of Ministry of Justice, the administration should have provided the prisoners in terms of association sessions with the “maximum duration” which was ten hours per week, as well.

Another issue raised by CPT was the seemingly isolation-type regime applied to prisoners who were sentenced to aggravated life imprisonment. In its report, the Committee reminded Turkish government that Recommendation Rec. (2003) bans the discrimination between life-sentenced prisoners and other prisoners with respect to the regime applied to them solely on the basis of their sentence. Therefore, CPT asked Turkish authorities to make necessary regulation.

In terms of ill-treatment, the majority of the prisoners interviewed by the Committee said that there is no ill-treatment towards them by the prison staff. Thus, the Committee did not raise any point under ‘ill-treatment’ in the report.

Response of Turkish Government to the Report:¹³³ The government replied that the range of activities has been increasing day-by-day with the support of the other ministries so prisoners have had the chance to choose and participate into communal activities in a huge scale of alternatives. Besides, it assured that psycho-social service was put into force and individual-group workshops were organized.

¹³³ Government’s Response to CPT Report- 2009, available at: <http://www.cpt.coe.int/documents/tur/2011-14-inf-eng.pdf> (Accessed on 15.03.2012)

In accordance with the decree by the Ministry of Justice, the government also believed that the duration of communal activities should have been increased to the extent as possible that the maximum duration of which is ten hours per week. Yet, the government proposed that the prisoners and their criminal backgrounds together with their interaction among each other were also taken into consideration by the prison administration in order to maintain the order, preventing the potential outbreaks and clashes among prisoners while attempting to increase the duration of communal activities.

When it comes to the criticisms brought by the CPT regarding the convicts who were sentenced to aggravated life imprisonment, the government strongly defended that European Prison Rules were strictly applied and the relevant provisions of the national law in terms of the prisoners who were sentenced to aggravated life imprisonment were designed taking into account of the examples of the existing laws and practices in Europe.

4.1.7 CPT Report (2010):¹³⁴

The main purpose of the visit of CPT in 2010 was set as to check and monitor whether the recommendations made in 2007 and the high-level talks held in 2008 concerning the regime being applied to Abdullah Öcalan in İmralı F-Type Prison were taken into consideration by Turkish authorities. In particular, the Committee concentrated its observation in this observatory visit on whether necessary measures

¹³⁴ Council of Europe, *CPT Report-2010*, available at: <http://www.cpt.coe.int/documents/tur/2010-20-inf-eng.htm> (Accessed on 15.03.2012)

were taken, specifically, in terms of providing Abdullah Öcalan to have contact with the newcomer prisoners to İmralı F-Type Prison and whether the range of communal activities were increased.

The Committee made interviews with each prisoner in İmralı F-Type Prison and communicated with the doctors of Öcalan, the senior officials of İmralı F-Type Prison, public prosecutor who was in charge of observing and investigating complaints made by the prisoners in İmralı F-Type Prison to receive more detailed information about the ongoing situation in İmralı.

After the visit and interviews, the Committee concluded that Turkish government should have made further progress with respect to providing interaction among the prisoners staying in İmralı and the communal activities provided for these prisoners should have been increased.

The CPT observed that the architectural structure and the physical conditions of İmralı F-Type Prison was almost same as the other F-Type Prisons observed previously. On the other hand, CPT again found it as mistake that the new facility in İmralı F-Type Prison does not allow enough sun light into the cells and the prisoners could not make readings without using artificial lighting unit. Even though a part of the gate of the cell of Abdullah Öcalan was covered with window, it does not allow sufficient light. The main reason for the problem with the light which could not sufficiently access into cells was proposed by the CPT as the long walls of the cell-yard which have 7 meters height. Therefore, considering the health of the prisoners,

CPT recommended Turkish government to solve the problem of lighting and to make necessary change in terms of the walls of the yard.

Lastly and most importantly, the Committee came up with the decision that there was no ill-treatment or degrading behaviors by the prison staffs exercised on the prisoners in İmralı unlike what the prisoners claimed.

Response of Turkish Government to the Report:¹³⁵ The government refused the criticism of the CPT report about the insufficiency of the lighting in cells by defending that the building of İmralı F-Type Prison was constructed by being taken into consideration the Article 18 of the Recommendation Rec.(2006) of the Council of Europe which states:

In all buildings where prisoners are required to live, work or congregate, the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system.

In addition, the government affirmed that there was no complaint made by the prisoners concerning on the insufficiency of the lights and Abdullah Öcalan made a complaint about over-lighting in his cell. In relation to the recommendation made for the walls, the government proposed that the heights of the walls were standardized in all F-Type Prisons in Turkey, but it will have been reviewed again in line with the recommendation of the CPT.

¹³⁵ Government's response to the CPT Report-2010, available at: <http://www.cpt.coe.int/documents/tur/2010-21-inf-eng.pdf> (Accessed on 15.03.2012)

When it comes to the recommendations made by CPT on rearrangement of communal activities and increasing the duration of association among prisoners in İmralı, the government replied that prisoners had the right to come together for association 3 hours per week and for communal activities like basketball, volleyball, chess...etc. However, the government specified that the prisoners did not participate some of those activities by their own will.

Besides, the government noted that the prisoners except Abdullah Öcalan had the right to benefit from sunlight 4 hours per week, while Abdullah Öcalan had the same right 2 hours per week due to the specific regime applied to him of his sentence.

4.2 EUROPEAN UNION

The EU also has been conducting organizational check-control visits through the Delegation of the European Union to Turkey which is authorized by the European Commission. The delegation formed a “Commission” from its own delegates who make observatory visits to Prisons very much like CPT. After the visits, the Commission gives its stance about the necessary arrangements to be done by Turkish authorities on the way towards accession to the EU. In this regard, the Commission also prepares and publishes annual Progress Reports on Turkey. In this thesis, only the parts of these reports which mention F-Type Prisons will be analyzed and the rest of the other issues raised in the reports will be dismissed. In order to see the effectiveness of the “external influence” on Turkish penitentiary system of F-Type Prison, the response of Turkish government to the reports concerned will also be given below.

The European Commission has published progress reports of the candidate countries annually and it has been doing so, for Turkey since 1998. The reports cover a wide range of areas like economy, politics, law-justice, human rights...etc. of the candidate country concerned. The reports on Turkey also give place to prison settings and the penitentiary system in Turkey. In this study, the regular reports of the EU about Turkey since 2000, the year in which F-Type Prisons started running, will be analyzed.

In the Report given in the year of 2000, the most outstanding problem about the prisons in Turkey was proposed as “overcrowding” within the prisons by saying “The number of prisoners in Turkey has reached the record figure of 72,500, leading to serious overcrowding.”¹³⁶

The report concentrated its content on F-Type Prisons which were in construction process at the time and planned to be opened up at the end of 2000. In this sense, Commission considered that F-Type Prisons would have been the solution to solve the problem of ‘overcrowding’ within the prisons.

Apart from this, it can be understood from the Commission’s report that Turkish government stretches so much care and sensitivity to the international agreements and covenants in terms of F-Type Prisons. In the report, this sensitivity was cited as:

While the authorities have indicated that the new-type prisons will respect the basic international requirements (i.e. European Prison Rules of the Council of Europe and UN minimum prison standards) notably regarding physical

¹³⁶ European Commission, *Commission’s Regular Report-2000*, available at: <http://www.avrupa.info.tr/fileadmin/Content/Files/File/Docs/2000.pdf>, p.16 (Accessed on 24.04.2012)

characteristics, human rights associations including those representing prisoners and their families fear that the new system will isolate prisoners, with no opportunity to socialize¹³⁷

That is why in Commission's report, Turkish government was recommended to take preventive measures like conducting more transparent administration regime and clarifying the rights of the prisoners in F-Type Prisons and most importantly to cooperate with the CPT by taking into consideration the recommendations set in its reports. Moreover, the Commission asked particular attention to be attached, as recommended also by the CPT, to measures ensuring that prisoners are provided with out-of-unit activities in a considerable duration within the daytime.¹³⁸

When it comes to 2001 Progress Report¹³⁹, the main theme of it was the prison interventions against hunger strikers who resisted to be transferred to F-Type Prisons at the end of 2000. The details of the events were given almost in parallel into the details given by the CPT Report. The EU also asked Turkish government to take necessary measures in line with the recommendations given by the CPT.

The report did not deny that Turkey has adopted reformation in the sphere of penal execution system yet it must have ensured that the reforms put into force on documents would also have been fully implemented in practice. The Commission stipulated that there was disproportionate use of force by the security officials during the prison interventions, and the government was called by the Commission to accept

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ European Commission, *Commission's Regular Report-2001*, available at: <http://www.avrupa.info.tr/fileadmin/Content/Files/File/Docs/2001.pdf> (Accessed on 24.04.2012)

this. In addition, the Commission reported that the state should have paid further efforts in order to prevent deaths out of hunger strikes which were still continuing. Additionally, the Commission expected Turkish authorities to abolish the prohibition introduced in 2001 of the discussions on these issues on mass media and broadcasting institutions concerning news circulating the F-Type Prisons.¹⁴⁰

The Commission, in its 2002 Progress Report,¹⁴¹ was pleased with the ongoing reforms in penitentiary system and improvements with respect to physical conditions in F-Type Prisons. It was welcomed by the Commission that the independent bodies of monitoring boards were on duty and periodically observed the prisons and the government was appreciated to apply the recommendations of CPT, as well. Another positive development in 2002 in the eyes of the EU was the lift of the ban of broadcasting and media publications about the F-type prisons in parallel into the recommendations of the EU Progress Report of 2001.

However, the criticisms in the report were generally on the ground of the condition of “isolation” in F-Type Prisons. Not only European Union, but also the CPT and many civil society representatives raised their concerns about this during the preparation of the report of 2002. However, in government’s point of view, the seemingly “isolation” conditions in F-Type Prisons derived from the reluctance of the prisoners who were the convicts of organized crime or terrorist activities to participate in “out-of-unit activities”.

¹⁴⁰ Ibid, p.23-32

¹⁴¹ European Commission, *Commission’s Regular Report-2002*, available at: <http://www.avrupa.info.tr/fileadmin/Content/Files/File/Docs/2002.pdf> (Accessed on 24.04.2012)

In short, in EU's point of view, despite the positive improvements and progresses regarding the F-Type Prisons were obvious, there were still problems which should have been worked on in order to be solved in the best possible way and method.

The 2003 Regular Report on Turkey's Progress towards Accession¹⁴² gave more positive picture than the previous year's report. For example, the application of the conditional participation to communal activities was eliminated by Turkish authorities in accordance with the recommendations of the CPT. Yet, there were still prisoners who did not participate (whether self-imposed or not) out-of-unit activities so the Commission observed that the isolation among some prisoners in F-Type Prisons remained as a fact.

Moreover, the report mentioned the difficulties which lawyers and the visitors of the prisoners faced with when they wanted to meet prisoners and also the criticism was pointed out regarding the inappropriate medical service settings in F-Type Prisons.

Apart from these, the EU closely observed the reformation of prisons in Turkey and came up with the conclusion that the plan of the Turkish government is to leave dormitory type prisons and to complete ultimate transition to cell-type prisons. The physical conditions in newly constructed F-Type Prisons were appreciated by the report so the ongoing constructions of four more F-Type Prisons were welcomed.

Although there were no more prisoners who were in 'death fast' according to official reports of Turkish state, the EU Report indicated that there were still 5 prisoners who

¹⁴² European Commission, *Commission's Regular Report-2003*, available at: <http://www.avrupa.info.tr/fileadmin/Content/Files/File/Docs/2003.pdf> (Accessed on 24.04.2012)

were in death fast. The Commission recommended the Turkish authorities to inform the prisoners about the consequences of their actions and if necessary, to take the prisoners on death fast to hospital despite their will.

In 2004 Progress Report¹⁴³, it was observed by the Commission that major changes have occurred in the prison system in Turkey since 1999. Particularly, it was argued by it that the existing conditions provided in F-Type Prisons were of high-standard. The Commission appreciated Turkish authorities to comply with the CPT's recommendations which added these improvements in this process as well as the independent monitoring boards which were also set up and started observations in prisons to give feedback and control the compatibility of the practices enjoyed in prisons with the national and international law. However, the Commission again raised its criticism about the isolation of the prisoners in F-Type Prisons in this year's report.

In addition, the Commission paid very much attention to the cases seen in the courts about the events happened during the prison interventions in 2000. The court found Turkish State guilty of using disproportionate force and is responsible for the death of a prisoner during the excessively violent and insufficiently planned intervention.

In 2005 Progress Report¹⁴⁴ of the Commission, Turkey was appreciated by the Commission due to signing the Optional Protocol of the UN Convention against

¹⁴³ European Commission, *Commission's Regular Report-2004*, available at: <http://www.avrupa.info.tr/fileadmin/Content/Files/File/Docs/2004.pdf> (Accessed on 24.04.2012)

¹⁴⁴ European Commission, *Commission's Regular Report-2005*, available at: <http://www.avrupa.info.tr/fileadmin/Content/Files/File/Docs/2005.pdf> (Accessed on 24.04.2012)

Torture (OPCAT) in September 2005. Through OPCAT, Turkey would allow periodic visits of international and national independent boards to detention houses and prisons after its ratification in September 2011. This would also decrease the tension about the F-Type Prisons and the regime applied there by letting the monitoring bodies to observe from an objective perspective.

The report, in short, pointed out that Turkish State has made considerable progress with respect to the prison system and conditions provided in prisons the recent years, yet there were still prisons which were overcrowded and under-resourced. At this point, the report paid so much attention by attribution to report published by The Parliamentary Human Rights Investigation Committee on Tekirdağ F-type prison in March 2005. The Human Rights Committee of TGNA concluded that there were structural and administrative matters which still continued in Tekirdağ F-Type Prison. In addition, the Commission underlined that the problem of ‘isolation’ was seen as a serious problem to be coped with in F-Type Prison.¹⁴⁵

When we examine the Progress Report of 2006¹⁴⁶, it is seen that the Commission gave “positive” remarks about the physical infrastructure and the training of the prison staffs.

However, in Commission’s idea, the limited range of communal activities, insufficient interaction between the prisoners and the staffs, inadequate health-care

¹⁴⁵ Ibid, p. 139

¹⁴⁶ European Commission, *Commission’s Regular Report-2006*, available at: http://www.avrupa.info.tr/fileadmin/Content/Files/File/Docs/tr_sec_1390_en.pdf (Accessed on 24.04.2012)

and psychiatric resources as well as cases of overcrowded prison cells continued as problems waiting to be solved. The report also noted that there were cases of ill-treatment by prison staff.

Moreover, the Committee criticized that although Turkey signed OPCAT last year, the prisons, including the F-Type Prisons, were not opened to international independent monitoring bodies because OPCAT was not ratified by the Parliament during the report's publication date yet. Another point of criticism was about the extensive application of the solitary confinement regime to prisoners sentenced to aggravated life imprisonment in F-Type Prisons. Therefore, the Commission recommended Turkey to apply the solitary confinement regime for as short time as possible and to base this regime on an individual risk assessment of the prisoners.

The Committee continued giving its Progress Report on Turkey in 2007¹⁴⁷ and in that year, it concluded that the aforementioned points in prisons, including the F-Type Prisons, still remained as problems. For instance, the OPCAT awaited ratification by TGNA in 2007, as well. Yet, the Committee was pleased to note that a decree by the Ministry of Justice was issued so prisons became opened to periodic visits of the Penal Institutions and Detention Houses Monitoring Boards, and visits of the UN bodies and the Council of Europe Committee for the Prevention of Torture. The same decree also addressed some solutions to known problems about the communal activities provided for inmates.

¹⁴⁷ European Commission, *Commission's Regular Report-2007*, available at: <http://www.avrupa.info.tr/fileadmin/Content/Files/File/Docs/progress-reports-2007-en.pdf> (Accessed on 24.04.2012)

In the Progress Report of 2008¹⁴⁸, the physical infrastructure and the training of the staffs of the prisons were again illustrated as improving. The transparency to the conducts of Penal Institutions and Detention Houses Monitoring Boards was observed especially in regard to publicly accessibility of the reports of them. On the other hand, the Committee found that the national regulations for prison monitoring system have parts which are incompatible with the requirements of OPCAT which is still not ratified.

The report cited that following the failure of the decree issued on F-type prisons, the shortcomings in relation to communal activities in F-Type Prisons could not be solved. Thus, the Commission recommended in its report that Turkish authorities should increase the numbers and training of staff and more activity places should be provided for prisoners.

Apart from these, the Commission criticized that the solitary confinement regime being applied for prisoners who were sentenced to aggravated life imprisonment in F-Type Prisons is still in force, although in 2006 Progress Report it was mentioned and request made to Turkish authorities to take necessary actions in order to provide a regime based on individual risk assessment of the prisoners.

¹⁴⁸ European Commission, *Commission's Regular Report-2008*, available at: http://www.avrupa.info.tr/fileadmin/Content/Files/File/Docs/turkey_progress_report_en.pdf (Accessed on 24.04.2012)

The 2009 Regular Report on Turkey's Progress towards Accession¹⁴⁹ raised only one point concerning on F-Type Prisons. It stated that the major shortcoming in prisons which prevented the organization of communal activities and implementation of rehabilitation programs was the insufficient numbers of staffs employed in F-Type Prisons. That is why the communal activities in F-Type Prisons could not reach to the expected level yet.

In Progress Report 2010¹⁵⁰, the Commission focused on the attempts of Turkish authorities to increase the capability of the communal activities in line with the criticism made in previous year's report. In this regard, the architectural changes carried-out in some F-Type Prisons which allowed more communal activities to be implemented. Yet, the Report criticized that the standards of monitoring of national prisons in Turkey were still not upgraded to the UN standards.

In its last Report which was prepared for 2011¹⁵¹, the Commission noted the ongoing architectural changes in F-Type Prisons in order to have places for more communal activities. As previous year, the most significant problem in terms of the resources in F-Type Prisons was still seen as understaffing and the qualifications of the staffs

¹⁴⁹ European Commission, *Commission's Regular Report-2009*, available at: <http://www.avrupa.info.tr/fileadmin/Content/Files/File/Docs/2009-progressreport-en.pdf> (Accessed on 24.04.2012)

¹⁵⁰ European Commission, *Commission's Regular Report-2010*, available at: http://www.avrupa.info.tr/fileadmin/Content/Files/File/key_documents-Turkish/tr_rapport_2010_en.pdf (Accessed on 24.04.2012)

¹⁵¹ European Commission, *Commission's Regular Report-2011*, available at: http://www.avrupa.info.tr/fileadmin/Content/Files/File/key_documents-Turkish/tr_rapport_2011_en.pdf (Accessed on 24.04.2012)

employed, although according to 2011 Progress Report, there were 4,929 more staffs employed comparing to previous year, and four training centers for the prison staffs.

Another issue raised by the Commission in 2011 was the ongoing cases against the security forces who were accused of using disproportionate and excessive force during the prison interventions in December 2000 at Bayrampaşa Prison. The twelve prisoners who protested to be transferred to F-Type Prisons and went on hunger strikes during the events died. The Progress Report criticized that these cases were still pending for more than 10 years and reminded Turkish authorities that the European Court of Human Rights accepted cases about this operation without expecting the applicants to fulfill the prerequisite of exhausting all judicial remedies at national level.

All in all, both the Progress Reports of the EU and the annual CPT Reports of the CoE indicate that the new model introduced to Turkish prison system, namely the “F-Type Prison”, is, in general, seen as a positive development for Turkey which necessitated the modernization of its penitentiary institutions. The physical conditions of the F-Type Prisons and the activity facilities offered for the prisoners were found good in both reports and the will of continuing improvements in F-Type Prisons by the Turkish authorities taking into account of the reports of both CPT and the EU were observed and appreciated by these international institutions.

On the other hand, almost each year, the same criticisms about certain issues, which revolved around the possibility of the “isolation type regime” danger in F-Type Prisons, were repeatedly submitted to Turkish authorities. For instance, the lack of or

limitations with respect to the association and communal activities that prisoners can spend out of their units, the deficiencies in medical services provided for the prisoners, which lead these criticisms to be brought by the CoE and the EU. It is sure that Turkey attributes very much importance to the content of the reports submitted by these international institutions. It can be understood from the replies of the Turkish government to the annual reports of the CoE and the EU and its struggle to comply with the recommendations given by both. Thus, it is a fact that “external inputs” over Turkish penitentiary institutions, specifically over F-Type Prisons, have considerable influences on Turkish State in making up of this recent prison model.

CONCLUSION

Examining the historical development of the legal and institutional reforms on penitentiary system in Turkey, it is seen that shift towards modern conception of prison was deeply rooted with the idea of “westernization” since the last period of Ottoman Empire; despite of the fact that the pace and the scope of legal reforms and institutional modernization were relatively restricted due to the intensified political and economic matters Ottoman Empire facing at the time. That is to say, although there were some improvements concerning the prison system in the country aftermath of the Tanzimat era, “Turkey’s leaders did not focus on prison reform until the creation of the Turkish Republic in 1923 under Kemal Atatürk.”¹⁵²

During the first years of the Republican era, the West-oriented penal codes and institutions were flowed into the country, yet posing problems deriving from organizational and practical insufficiencies with respect to penitentiary system. One aspect of the deficiencies was depicted by Mitchel P. Roth as:

Compared to most prisons in the western world in the 1930s, Turkish prisoners enjoyed a wide range of freedom. Without organized programs or constructive regimes, prisoners spent a good part of the day mingling with each other, smoking, talking, eating, or playing games of chance.¹⁵³

The change in the understanding of prisons in time in the West, especially after the World War II, as not only a punishment form of pure imprisonment to make the prisoners suffer from the crime that they committed; but also a sort of center to

¹⁵² Roth, Mitchel P., *Prison and Prison Systems: A Global Encyclopedia*, Westport, Conn.: Greenwood Press, 2006 01/01/2006 xxxv, p. 274

¹⁵³ Ibid, p. 275

rehabilitate the prisoners in order to make them integrated into society as well-behaved, law-abiding individuals after their sentences, also made Turkey to review the shortcomings of its ongoing penal execution institutions. Having the “will” to achieve the standards of the West, the interactive channels were established.

...the credibility of the Western European Centre of influence is high owing to Turkey’s self-identification with the west through the history of Westernization. As a result, a cooperative and communicative influence framework (relationship) has been developed.¹⁵⁴

Taking part in the Western Camp during the Cold War era due to security concerns and the application to EEC for a stronger integration with Western Europe, are the most outstanding factors which made Turkey to continue enforcing European values in legal and institutional sphere.

...the prospect of full membership has restored the European dimension of Turkish politics with a positive impact on the reform process at home. It has been widely accepted that if Turkey really wants to be a member it must reform its domestic political architecture along European standards.¹⁵⁵

In addition, the contribution of universally accepted human rights has led the states to apply policies which are in line with those universal norms.

The internationalization of human rights in political and normative fields has established a constraint on national governments, and as such has the potential to contribute to the promotion and protection of human rights worldwide. This has been the case for Turkey.¹⁵⁶

In this respect, as a state which has been trying to take part in “Western team” and become a member of the European Union, Turkey signed many international

¹⁵⁴ Dağı, İhsan, *Human Rights and Democratization: Turkish Politics in the European Context*, Journal of Southeast European&Black Sea Studies, Sep2001, Vol.1 Issue 3, p. 66

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

covenants and documents which oblige Turkey to make necessary arrangements in terms of its penal execution institutions. Even, some of these covenants sourcing both from the UN and the Council of Europe have institutional bodies in order to inspect the compatibility of the practices conveyed in signatory states regularly. Analyzing the reports given by these institutions through their regular observatory visits and the replies of Turkish government to each report indicate that external influences over Turkish penitentiary system and penal execution institutions can not be underestimated.

When it comes to F-Type Prisons, it is not wrong to propose that the F-Type Prisons, which were introduced in Turkish penitentiary system at the beginning of 2000s, are the outcome of the aforesaid “will” of modernizing the institutions and catching up the standards of the “West”.

It was a need, for Turkey, to modernize the laws and institutions and take another approach in terms of prisons and prisoners; leaving the idea of “purely punishing” the crime and handling the prisons as a kind of “rehabilitation and education” centers which provide prisoners with discipline. Thus, the cellular system has been replaced as a criterion of progress.¹⁵⁷ This progressiveness is reflected in the principle that “discipline should be maintained by constructive rather than merely repressive measures, by encouraging the prisoner to maintain a standard rather than by holding out physical punishments in *terrorem*.”¹⁵⁸

¹⁵⁷ Rusche, Georg and Kirchheimer, Otto; with a new introduction by Dario Melossi, *Punishment and Social Structure*, New Brunswick, NJ: Transaction Publishers, c2003, p.154

¹⁵⁸ Fox, Lionel Wray, *Modern English Prison*, G. Routledge&Son: 1934, p.78

As a new model of prison, F-Type Prisons are the prisons which resulted in many debates and criticisms both within and from outside onto Turkey, centered around especially its physical conditions, legal settings and healthcare shortcomings.

There are still debates and discussions among theorists, journalists and academicians. However, the criticisms from the nationals of Turkey and the criticisms from the foreign actors very much differ from each other. While the domestic reactions are around the idea that “F-type Prisons are cell-type prisons and this is anti-humanitarian”; the foreign criticisms do not stuck on this, because of the “trend” of cell-type prisons all over the World. Rushe and Kirchheimer stated this as: “Prison administrators have gone their own way, however, building and rebuilding their institutions on the cellular plan, and today the majority of prisons are constructed in that form.”¹⁵⁹

That is to say, there is no criticism made by international institutions and actors about the existence of F-Type Prisons in Turkey, even they give “supportive” feedbacks on them. Yet these institutions request Turkish authorities to take necessary actions in relation to some minor issues like procedural arrangement in F-Type Prisons. Turkey, in return, tries to reply the criticisms by the enforcement of the necessary actions in parallel into the contents of the reports.

Indeed, various documents which were analyzed above, verify that F-Type Prisons, with its physical conditions and educational programs which were set up in general

¹⁵⁹ Rusche, Georg and Kirchheimer, Otto; with a new introduction by Dario Melossi, *Punishment and Social Structure*, New Brunswick, NJ: Transaction Publishers, c2003, p.154

as “workshops” are well enough to provide these to that end, despite some restrictions and limitations on the duration and of the use of them.

Therefore, it could be argued that the aforementioned covenants and reports put it clear that the F-Type Prisons are in line with the obligations of these documents. Yet, in finding the optimum way of practicing the F-Type Prisons, these reports and covenants, in a sense, have the mission to direct Turkey in setting up the procedures in these prisons and eliminating its shortcomings as much as possible.

It is observed that monitoring bodies, which have been doing observatory visits to F-Type Prisons regularly, having the authority through those covenants, seem to conduct objective investigation over F-Type Prisons. In fact, those bodies also serve for the need of the society to know what is going on in the prisons:

By their nature prisons are closed institutions, where men and women are deprived of their liberty, largely out of public view. Yet they are managed on behalf of society as a whole and society has a right and an obligation to be aware of what is done in its name behind the walls or fences of its prisons.¹⁶⁰

Moreover, those monitoring bodies do not only investigate the prisons but also interview the prisoners to decrease the risk of viewing the whole prisoners as homogeneous group of people staying in a vacuum. Coyle put this as:

¹⁶⁰ Coyle, Andrew, *Understanding Prisons: Key Issues in Policy and Practice*, Maidenhead: Open University Press, 2005, 01/01/2005 vii, p. 54

“If one wishes to understand prisons, one also has to understand something about those for whom they exist, the prisoners. There is a tendency to consider prisoners as a homogeneous group, defined primarily by the fact of their imprisonment.”¹⁶¹

All in all, both the *internal dynamics* and the *external inputs* are active in shaping the penitentiary regime and the frame of F-Type Prisons in Turkey.

On the one hand, there is a state which tries to take part as a member of the “Western” team, thus necessitated to modernize its institutions and to reach certain standards.

On the other hand, the international and multilateral agreements, which put pressure on Turkish state to set its legal codes and penal execution institutions in accordance with them, have undeniable influences over the procedure and the settings applied in F-Type Prisons.

Lastly, it is seen that the existence of F-Type prisons are in line with the international covenants and agreements of which Turkey is the part by observing the F-Type Prisons through the eyes of the international monitoring bodies. Yet, some procedural applications within F-type prisons have been incompatible with the standards adopted by these international covenants and agreements. That is what Turkey received and it seems that it will continue receiving criticisms around.

¹⁶¹ Coyle, Andrew, *Understanding Prisons: Key Issues in Policy and Practice*, Maidenhead: Open University Press, 2005, 01/01/2005 vii, p. 5

Table 1: Statistics on the Numbers of Detainees – De Jure Detainees –Convicts
Source: The official website of General Directorate for Penal and Detention Houses, available at: http://www.cte.adalet.gov.tr/istatistikler/tutuklu_hukumlu.asp (Accessed on 11.03.2012)

Statistics on the Numbers of Detainees – De Jure Detainees - Convicts (October 2011)

	Detainee			De Jure Detainee			Convict			General Total		
	C	A	T	C	A	T	C	A	T	C	A	T
Female	46	1474	1520	6	648	654	7	2335	2342	59	4457	4516
Male	1577	31333	32910	185	17113	17298	200	72118	72318	1962	120564	122526
Total	1623	32807	34430	191	17761	17952	207	74453	74660	2021	125021	127042

C=Child, A=Adult, T=Total

Table 2: Number of prisoners in six F-Type Prisons according to their crime
Source: Government's Response to CPT Report-2002, available at: <http://www.cpt.coe.int/documents/tur/2003-29-inf-eng.htm>, (Accessed on 15.03.2012)

Name of prison	Number of remand and sentenced prisoners (terrorist offences)	Number of remand and sentenced prisoners (organized crime)
Ankara F	11	132
Bolu F	31	56
Edirne F	5	35
Izmir F	17	66
Kocaeli F	59	81
Tekirdağ F	34	34

Table 3: Number of prisoners who took part in each communal activity in the last week of January 2012

Source: Government's Response to CPT Report-2002, available at:

<http://www.cpt.coe.int/documents/tur/2003-29-inf-eng.htm>, (Accessed on 15.03.2012)

Name of prison	Library		Sport		Workshops	
	Terrorist offences	Organized crime	Terrorist offences	Organized crime	Terrorist offences	Organized crime
Ankara F	10	10	-	22	2	38
Bolu F	13	22	88	10	5	12
Edirne F	1	4	-	5	4	18
Izmir F	10	54	8	33	7	10
Kocaeli F	37	47	37	47	37	47
Tekirdağ F	21	9	16	15	11	14

Name of prison	Conversation	
	Terrorist offences	Organised crime
Ankara F	-	102
Bolu F	5	14
Edirne F	-	8
Izmir F	7	34
Kocaeli F	1	35
Tekirdağ F	9	30

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Adı : Tolga
Bölümü : Uluslararası İlişkiler

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