

No Midnight Express Prison Reform of Turkey on the Way to Europe*

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When I am lecturing Criminal Law to my second year students at the Istanbul University Law School and I come to the prison sentence, I tell them a story about the silver wedding party of a couple. The big cake arrives, but the husband is not there. They find him upstairs in the bedroom in tears. “This is a happy day, why are you crying?” asks a friend. The man answers, “If I had killed this woman 25 years ago, today I would be discharged from prison”. I tell my students that this country could not be Turkey, because no one stays in prison that long. First, provisions of conditional release are applied to all prisoners, whereas only prisoners in good conduct should have this privilege. Second, frequent amnesties result the early release of the offenders.

As to harmonise the legal system of Turkey to Europe many recent changes have taken place under the name of Criminal Law reform. The most successful one is the Code of Execution of Punishments and Protective Measures.

I. Introduction

It is universally accepted that criminal process is used as a last resort (*ultima ratio*), when there are no other means of social

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control¹. Similarly, prison sentence should be applied only as a last resort, to offenders dangerous for the society, dangerous for their families or for themselves. Otherwise, there are alternatives to prison sentence². In fact prison is not the only means to achieve peace and order in the society and compliance with the laws. If socialization and deterrence are not obtained, incapacitation is enforced “by separating the offenders from offending opportunities” and blocking their chances of committing crimes and thus isolating them from the society by putting them into the prison³.

Should incapacitation be the only function of prison sentence?

The purpose of the prison sentence is classically defined as rehabilitating the convict so as to enable him to refrain from committing further crimes⁴. Today the aim of imprisonment should go beyond this. The prisoners undergo certain treatments and rehabilitative methods “so that they become entrepreneurs of their personal development, rather than an objectivised or infantilised client upon whom the therapeutic solutions are imposed”⁵. For considering a treatment successful, the convict must acquire new attitudes and skills. The main preliminary condition for this is the will power and willingness of the convict⁶.

To be able to reach to the final aim of prison sentence the following elements are essential: security, order, upkeep, and justice⁷. Justice is humanity and fairness. This is how the inmates ought to be treated. Justice is not leniency and fairness is not “being nice to” prisoners, but respect, trust, humanity and safety⁸.

1 Peter GRABOSKY, “Eco Criminality: Preventing and Controlling Crimes Against the Environment”, *Annales Internationales de Criminologie*, Annee 2003, p. 227.

2 Fusun SOKULLU-AKINCI, “Adalet Reformu ve Alternatif Ceza Yaptırımları” (Justice Reform and Alternative Penal Sanctions), in Prof. Dr. Nurullah Kunter’e Armağan, Istanbul, 1998, p. 327-341

3 Lawrence W. SHEARMAN, “Reducing Incarceration Rates: The Promise of Experimental Criminology”, in *Crime and Delinquency*, Vol. 46, No. 3, July 2000, Pp. 304-306,

4 Nur CENTEL, “Çağdaş Ceza Hukukunda Özgürlüğü Bağlayıcı Cezalar ve Gelişmeler” (Prison Sentence in Contemporary Penology), Prof. Dr. Aydın Aybay’a Armağan, Vedat Kitapçılık, Istanbul, 2004, p. 37; Timur DEMİRBAŞ, *Infaz Hukuku* (Penology), Ankara, 2003, p. 44.

5 Alison LIEBLING, “Prisons in Transition: Assessing Values, Evaluating Practices, and Exploring their Relationship to Outcome”, World Congress of Criminology, Pennsylvania, August 2005, (Copy of the presentation provided by Liebling, to whom I am grateful), p. 1.

6 CENTEL, p. 41.

7 CENTEL, p. 38.

8 LIEBLING, p. 2-3.

The new Law on the Execution of Criminal Punishment states the basic principles of execution in art, 2 as: “ the rules of execution are applied to everyone without any discrimination concerning their race, language, religion, sect, nationality, colour, gender, birth, philosophical commitments, national or social origin, political or other ideas or beliefs, economic powers and other sociological position and without any privilege”.

Execution of punishments has always been a great problem in Turkey where only 1% of the Turkish Budget is reserved for the justice.

A. Principal Legal Texts

Before the enactment of the Law on The Execution of Punishments and the Security Precautions of 2005, there were quite a number of laws, bylaws and regulations governing the prison system and the execution of criminal punishments. The new Law abolished all these. Rules concerning sentences are in different texts:

Constitution article 17 states that, “Everyone has the right to life and the right to protect and develop his material and spiritual entity. The physical integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his/ her consent. No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.

Cases such as the execution of death penalties under court sentences, the act of killing in self-defence, occurrences of death as a result of the use of a weapon permitted by law as a necessary measure during apprehension, the execution of warrants of arrest, the prevention of the escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, or carrying out the orders of authorized bodies during martial law or state of emergency, are outside of the scope of the provision of paragraph 1”.

2. Laws
 - a. Turkish Criminal Code
 - b. Law on Execution of Crimes and Security Precautions (Will be referred as either the Law or the Law of Execution)
 - c. Law on the Protection of Children
3. A new bylaw is enacted in compliance with the new Law of Execution.

B. Number of Incarcerated Convicts

The number of inhabitants is becoming less according to the justice statistics. For example, in 2001 the total number of prison inhabitants was 55609 of which 27541 were convicts and 28068 were arrested, and in 2005, the total is 57930, of which 26010 are convicts and 31 920 are arrested⁹. It can be observed from the justice statistics there is a drastic drop in the number of the total prison population. It is not due to the fall in the rate of criminality, it is due to the general amnesties in Turkey.

The number of the prison population tended to decrease between 1983 and 1992.

II. General Rules Governing the Rights and Obligations of the Prisoners

General rules governing the rights and obligations of the prisoners are in the Law on Execution of Punishments and Security Measures of 2005. This Law abolished the previous Law on Execution of Punishments dated 1965.

A. General Principles Governing The Executon Of Prison Sentences

Execution of prison sentences is realised with the guidance of certain principles that are cited in article 6 of the Law. They can be summarized as such:

1. The convicts are kept in the prisons in security, with precautions to prevent them from running away.
2. The administration enables the convicts lead an orderly life in the institution. The deprivation of liberty shall be effected in material and moral conditions which ensure respect for human dignity. The constitutional rights of the convicts may be restricted with the rules of the Law of Execution, guaranteeing the basic objectives of execution.
3. All the possible means and possibilities for the treatment of the convicts are applied. In the execution of the punishment and treatment efforts, the prisoners' rights are secured by means of laws, bylaws and regulations, with special regard to the rule of law and the principle of legality.

9 Website of the Turkish Ministry of Justice (<http://www.cte.adalet.gov.tr>).

4. If there is no need for treatment for a prisoner, an individualised program, in conformity with his/her personality is arranged.
5. Principle of justice is the main consideration in the execution of the punishment. To that end, the facilities are inspected by qualified and experienced staff.
6. All preventive measures are to be taken so as to protect the convicts' right to live and their mental and physical integrity.
7. The convict must obey the norms of the laws, bylaws and regulations, in relation to the objectives of execution.
8. Those who violate the order the prison are punished with disciplinary punishments in the Law. Defence and objection (recours) can be made to the competent authorities as indicated in the Law.

B. Security of the Prisons

Internal security of the prisons is provided by the execution and protection officers who work under the Ministry of Justice. They co-operate with external security officers if necessary. The external security of the prisons is provided by the gendarmery.

Room and corridor doors of the closed prisons are kept closed. The prisoners can neither have contact with prisoners in other rooms or the prison officials. The doors will be opened only in the following cases:

1. When going to the doctor, the facility's infirmary, the bath, the hairdresser or moving to another room.
2. When going to the hospital, to the hearing or moving to another institution.
3. Acquittal, visits, searches, enumeration, inspection, education, sports and rehabilitation activities, and working within the facility.
4. Summoning to committees,
5. Extra ordinary situations such as death, earthquake, fire.
6. Other situations to be decided by the prison administration.

Personal belongings, food and medical goods that the inmates can have in the prison are to be defined in a special regulation.

C. Obligations of the Prisoners

1. Serving The Punishment, Obeying The Security Precautions And Treatment Programmes (Art.26)

The prisoner has to comply with the programs of the execution of the prison punishment and obey the treatment and rehabilitation programs of the prison. He/she has to obey the rules of security too. Putting his/her life or health in danger on purpose is considered as the violation of the obligation to put up with the execution of the punishment.

2. Discipline

Discipline is very important in the prison. The prisoner has to lead an ordered life and the security and the discipline must be maintained in the facility. To that end, if the convict disregards the prison rules on purpose, he is punished with discipline punishments cited in the Law, suitable with the nature and gravity of his act. If these acts are also crimes, existence of a public suit does not prevent disciplinary investigation and punishment.

- a. Disciplinary punishments and precautions are applied to all the convicts except children and are as follows:
 - i. Condemnation (censure), is telling the convict that his behaviour is not good and is not approved and what the consequences will be if repeated.
 - ii. Banning of participation in some activities, is not permitting the convict to participate in cultural and sportive activities from one to three months.
 - iii. Deprivation from paid work is banning the convict to work in any paid work from one to three months.
 - iv. Deprivation or restriction of the means of communication deprives the convict partially or totally from receiving and sending letters, fax, or telegrams, watching television, listening to the radio, telephoning or using other means of communication from one to three months. Any letter, fax or telegraph that comes for the convict is delivered to him after the execution of this punishment. Even if he/she may be condemned to the same penalty a second time, its execution does not start before handing him his communication.

Cases of a death or grave illness in the family, such as the parents, children, brothers or sisters death or

cases of natural disasters or communications with the counsel is exempt from this restriction.

- v. Deprivation of receiving visitors is not allowing the convict to receive any visitors from one to three months. This does not include the reception of attorneys, legal representatives, officials and authorities.
 - vi. Confinement in a cell is placing the convict in a cell all by himself, day and night, without any contacts, from one to 20 days, in proportion with the gravity of the act he/she committed. The cell is furnished with vital needs of the prisoner. His/her right to go out in the open air daily is still valid during this punishment. The convict can meet his attorney and the authorities while he is in the cell.
- b. Disciplinary acts and behaviours for each punishment are cited and defined in detail in the Law.
- c. Disciplinary Precautions for Convicted Children
- Disciplinary precautions for children are not punishments. They are preventive measures used for eliminating their risk of committing acts that require disciplinary punishments or preventing an eventual harm difficult and of which the compensation is impossible.
- Disciplinary precautions that can be imposed on children are:
- i. Postponing of the encouragement based privileges.
 - ii. Changing his room or dormitory.
 - iii. Transferring to another section of the facility.
 - iv. Changing his workplace in a manner as not to hinder the continuity of his vocational training.
 - v. Prohibiting him/her to go to certain places.
 - vi. Prohibiting him/her of having and using certain articles.
- d. Disciplinary Punishments Convicted Children are warning, condemnation (censure), restitution, reparation or compensation, putting limits on the money that can be spent, banning of participation in some activities, cancelling some encouragement based privileges, postponing of

the leave of absence, sending to a closed facility, keeping in a single room for maximum five days.

Acts to result disciplinary precautions and punishment are defined in the Law in detail (art. 45, 46).

- e. Disciplinary investigation procedure is regulated in the Law in detail (art.47) and is controlled by the execution judge.

3. Protection Of Health (Art. 27)

The prisoner has to protect his /her health. He/she has to obey measures taken for the protection of his/her health and contagious illnesses within the facility. He/she has to obey rules of hygiene and cleanliness in the prison and has to report without delay, any incidents dangerous for health. He/she has to refrain from any acts that put his/her or other prisoners' health into danger, including hunger strikes.

4. Protecting the Prison and the Furniture (Properties) Within (Art.28)

The prisoner is obliged to use properly and with care and protect the room he/she is staying in, the furniture within and other fellow prisoners' property.

D. Rights and Guarantees of the Prisoners

The prisoners have the rights and guarantees concerning the right to defend, participating in artistic and cultural activities, right to express their opinions.

1. The Right to Counsel (Art.59)

According to the 59th article of the Law on Execution of Punishment and Security Measures, the Convict has the right to see his lawyer or the notary if he wants. He can meet his attorney maximum three times, without the existence of a power of attorney. There is no limit if there is the power of attorney. The attorney, even if he/she may have the power of attorney, he/she can meet only one convict at a time.

The convicts can meet their attorneys or the notaries during working hours, but not during holidays and weekends, in special rooms where they cannot be heard but can be seen for security purposes. The attorneys' documents, files and records concerning his clients are strictly confidential and cannot be examined with any reason whatsoever.

Any Turkish citizen or foreigner who is active or passive side of a case in a foreign country can hire a foreign attorney and can see him/her only in relation to that case, and only if there is the power of attorney. Foreign lawyers who cannot present the power of attorney can see their clients only in the company of a lawyer, registered in one of the Turkish bar associations.

2. Right to Participate in Cultural and Artistic Activities and Right to Freedom of Expression (Art.60)

Prison inhabitants are encouraged to participate in cultural and artistic activities as much as possible. The aim of such programs is to enable the prisoners to acquire knowledge and ability of expressing themselves. These programs are prepared by the prison administrator, within the boundaries of the principles set by the Ministry of Justice. Other departments of arts and culture within the Government support the prison administration. For example State Theatres supply decorations, costumes and appoint directors for the “mise en scene”.

The convict’s freedom of expression includes publishing too. They may publish books and articles, certainly under the control of the prison administration.

3. The Right to Use The Library (Art. 61)

A library is formed in every prison in accordance with the size of the prison. The library includes text books necessary for the education of the prisoners and also books for developing their culture, for example encyclopaedias, poetry, drama and fiction books.

4. Right to Have Access to Books and Periodicals (Art.62)

The prisoners have the right to have access to books and periodicals that they can pay for, as long as these publications are not banned by the courts. Publications that are considered dangerous for the security of the prison or pornographic are not allowed in the prisons.

Publications of foundations and associations of public benefit are distributed to the convicts for free. There is no restriction for the textbooks of the convicts who are trying to go on with their education.

5. Accommodation, Bedding and Clothing of the Convicts and Their Children (Art. 63, 64, 65)

The convicts are lodged in rooms available in that particular type of prison. If the convict is dangerous, he is placed in a room either for one or three convicts. Male and female, convicts and arrested, children and adults are not placed together. Organised crime convicts, terrorist convicts are not allowed to get together and to communicate.

The rooms and dormitories have sufficient space, light, hygiene, heating, air conditioning as is required by the season. Every inhabitant is given a proper bed and sufficient linen.

Convicts, who are in need, if they ask for, are given clothes suitable for the season and the climate. Clothing of the convicts should not resemble those of the prison guards.

Children under 6, who have no one to look after them, besides their convicted mother, can stay with their mothers during the night. But during the day, they are taken to nurseries, day care centres, or kindergartens within the facility. If such places do not exist in the prison, the child is taken to similar state owned day care centres. Food suitable to their age and their needs is supplied to children who are staying with their mothers. Children over 3 may be placed permanently in kindergartens or nursery homes, but they may be allowed to see their mothers within a pre arranged program.

6. Right to Exercise His/Her Religion (Art.70)

The convict can freely do the prayers of his/her religion, without disturbing the peace and order of the facility and without interfering with his/her work. She/he can obtain articles and books necessary for praying and can keep them in his room: for example, The Koran, the Bible, rosary, praying carpet, the holy cross and suitable clothes.

The convict can be visited by the clergy of his religion, with the condition of not disturbing the facility's peace and order.

7. Right to Medical Services (Art. 71)

The convict has the right have his bodily and mental health to be protected and if he has any illnesses, he has the right to be examined and to be treated by a medical expert. If the means of that particular prison is not sufficient, for example the infirmary is not

suitable for his medical treatment, he/she will be treated in state or university hospitals.

8. Right to Be Fed (Art. 72)

The convicts are supplied with food and water, The diets and calories are calculated by the Ministry of Justice and the Ministry of Health together, taking into consideration the convicts' age, health, work, culture and religion. The food must be sufficient, quality and quantity wise, of different varieties and nourishing enough to keep them well, healthy and strong. If because of a certain disease the convict has to follow a particular diet, the prison doctor will prescribe a special diet for him.

If the convict has other needs besides food and utilities, he/she can obtain them from the facility's canteen. If there is no canteen in that facility they can be obtained from the outside but under the control of the prison administration.

Special food is given for children who are staying with their mothers and for breastfeeding mothers.

There is the problem of hunger strikes in the Turkish prisons especially made by prisoners convicted for crimes of terrorism, who are to be kept isolated in separate rooms but oppose to stay in isolation.

9. Right to Education (Art.75)

The convict is educated while he is serving his prison sentence. Education programs include schedules to develop his/her personality, further his/her education, to eradicate his/her tendency for committing crimes and to prepare him/her for the release. The education programs take the convict's age, abilities, culture, prior education, economic status, period of punishment to be executed, into consideration. The education programs include elementary, high school, or university education as well as vocational training, religion education, physical education, and psychosocial service, with the use of library.

The convicts in open prisons and children's education centres can attend both classical and open educational institutions. Prisoners in maximum security facilities can only attend open education institutions.

Convicts are encouraged to participate in physical education, so as to develop him bodily and mentally. They are permitted to participate in sports, physical education and entertainment ac-

tivities. The prison administration provides them with proper place and tools.

Prisoners who are not working outside or are imprisoned in maximum security facilities are allowed to promenade in the open air at least for one hour every day. They can do individual exercises and sports in the meantime. Convicts in open prisons or child education centres may also participate in activities outside the facility.

Outside the working hours, the convict may also take courses and go to the library. The prison administration makes programs concerning these, taking into consideration the requests of the prisoners and the opinions of the experts.

10. Leave of Absence (Art. 92-97)

The prisoner is not allowed to go out of a maximum security prison without the written permission of the competent authority. The cases he can get the written permission are leave of absence, going to the hospital for treatment, to the public prosecutors office, to the hearing at the court house, postponing of the punishment, discharge, transfer from one prison to the other, natural disasters such as earthquakes, education, vocational training. In fact during every exam term we have one or two prisoners taking their law exams with ten gendarmes waiting around them.

All prisoners except those in maximum security prisons can get leave of absence if they have an excuse, or they may get special permissions or leave of absence for searching for employment. Time elapsed during the leave of absence is considered as the execution of the sentence.

a. Leave of absence on excuse

To be able to get a leave of absence, the convict has to serve one fifth of his/her punishment in good conduct. Then he/she may ask for leave of absence under the following circumstances:

- aa. Death of his/her mother, father, wife, husband, bother, sister, child.
- bb. In case the above mentioned relatives are gravely ill or have suffered serious catastrophes because of earth quakes, fires and flood. These convicts can get 10 days of leave of absence, excluding the travel time.

- cc. The prisoners if he is not dangerous, can attend the funeral of the above cited relatives on the condition that the ceremony is in the vicinity of the prison in which he is serving his sentence and he is accompanied by one of the exterior prison guards.

Leave of absence is granted by the public prosecutor.

b. Special Permission

Special permission is granted to convicts in open prisons or those who have obtained the right to be transferred to an open prison are allowed to have special permission to leave the prison maximum three times in a year. The purpose is to enable them to maintain and strengthen relationship with their families and to adapt them with the outside world.

c. Leave of Absence for Searching for Employment

Prisoners who have served six months of their sentence and there is only one month before their conditional release are allowed to go out to look for work and for the purpose of adoption to the outside world are permitted to leave the prison up to eight hours during work days.

Prisoners who are late in coming back from their leave of absence are punished by disciplinary punishments or imprisonment, according to the duration of the delay. The prisoner who runs away during leave of absence is not granted leave of absence any more.

11. Right to Information

Upon their entrance into the prison the convicts are informed by the administrators, both written and orally what their rights and responsibilities are so that they can adopt themselves to the life in prison. They are also informed as to what their rights are concerning rehabilitation, disciplinary crimes and punishments, their rights to information, where to direct their complaints. They are also informed about the protection and help (patronage) that they can have after their release

If the convict is a foreigner he is informed in his own language if possible; if not either in English, French or German. For the convict with hearing and speaking impairment, the information is given in their special way of communication, and those who are blind are handed booklets written with their special (Braille) alphabet.

When they are placed in prisons or transferred to other prisons or hospitals, information is given to the convicts' families or other people that they specified. If the convict is a foreigner and he does not oppose in writing, his situation is notified to the diplomatic mission or the consulate of his country. If the convicts are doing their military service their situation is notified to the military office he is enrolled to. If the convicts die, their families are informed immediately.

12. Right to Work

The prisoners who are found healthy mentally and physically by the facility's doctor, can work in ateliers or work places within the prison if it is possible. They are paid a certain amount of fee (Art. 29). The fee is paid from the income they acquire from what they produce. These inmates have also the right to exercise their social rights. The prisoners who are already under a social security umbrella can attain all aids and payments that the social security organisation gives to the other members (Art. 32).

The Law does not mention any limits for the working hours or minimum wage limits. Whereas in the European Prison Rules it is mentioned that the prisoners' maximum working hours and the minimum wage should be like the outside world. This is an important deficiency in the Law.

The purpose of the work in prison is to enable the prisoners to acquire a skill or learn a profession, which will enable them to lead a proper life after their acquittal, to develop and strengthen their enthusiasm for work and production. During this work and the training it encompasses, the prisoners' abilities, skills, talents, inclinations, physical and mental capacities are taken into consideration.

Prisoners may also be employed in work within the facility. For this the prisoner must have completed at least one year of his sentence in good behaviour. Prisoners cannot be used in the personal service of the prison guards and prison authorities. Child prisoners cannot be used beyond their living areas and outside educational purposes (Art. 31).

Minor prisoners, i.e. children's work can only aim vocational training. Young prisoners who are educated in classical schools cannot work in ateliers and work places during the academic year.

Working is also possible outside the prison (Art. 30). Work places should be encouraged by incentives to employ prisoners.

Prisoners in open facilities and those who are in closed facility but have already acquired the right to be transferred to an open prison can work in places outside the facility.

Children who are kept in education centers may also work outside the facility and during their work; no supervision or protection is done by the facility's authorities.

13. Civil and Political Rights

According to the Turkish Criminal Code article 53, whoever is convicted to prison sentence for an intentional crime cannot assume any civil and political functions as long as the prison punishment is executed. For example he cannot be elected as a member of the Turkish Parliament, he cannot exercise his electing rights, guardianship rights, cannot become an administrator or auditor in any kind of organization, including foundations, associations, trade unions, cooperatives and political parties. He is also banned to exercise profession specified in the law. This rule is not applied to convicts of whose short term prison sentence is postponed and to convicts under 18.

If the crime is committed by misusing the rights and authorities in the preceding paragraph, the court may also decide that those rights and authorities will not be exercised for a certain period after the execution of the prison sentence.

If the crime is a negligent crime committed in violation of professional codes or traffic rules by inattentiveness and carelessness, the convict is banned to exercise that certain profession or driving for a certain period of time.

If the prison sentence is postponed or the prisoner is conditionally acquitted, the prisoner can exercise his rights of guardianship on his children. For the convict whose punishment is postponed the court may also decide to elevate the ban on exercising his profession.

14. Relations with the Outside

a. Correspondence

Convicts cannot pose and use mobile phones, wirelesses and the like. Prisoners in maximum security prisons can make telephone calls from payphones under the administration's control. The telephone communication is wire tapped and recorded by the

administration. This right may be restricted for dangerous offenders and members of criminal organizations.

Convicts in open facilities and child education centers may use the payphones without any restriction.

All convicts can use the administration's telephones and fax in cases of death, grave illness of the immediate members of the family, or natural disasters.

b. Communication

The convicts can watch the television and listen to the radio if there is a central broadcasting system in the facility. If not, everyone is allowed to use individual antenna with the condition that they are under control.

Visual and auditory tools and supplies as well as the internet may be used in the prisons if it is necessary for education and treatment programs. Inmates cannot have computers in their rooms, but if the Ministry of Justice considers it appropriate, computers may be purchased by the administration. These rights may be restricted for dangerous convicts and members of criminal organizations.

c. Receiving and Sending Letters, Fax and Telegrams

The convicts, paying the postal expenses, can receive letters and send letters. These letters are controlled by the prison authorities. Letters that tend to be harmful for the security and order of the prison, letters that indicate the prison officials as targets, letters written between members of criminal organizations, letters that misinformation that may cause panic are not given to the prisoner and are not posted if they are written by a convict.

Letters written by the convict to his attorney or to the officials are not controlled.

d. Receiving Gifts

The inmates in maximum security prisons can receive gifts sent to them for certain occasions, such as his/her birthday, the new year and religious holidays, with the condition that the gift is not dangerous for the facility.

e. Visits

Inmates may be visited by people determined by the law: His wife/her husband, his/her blood relatives or in-laws of the third degree, trustees of his/her property, his/her guardian, may visit

him once a week. He/she may also receive maximum three persons of his/her choice during working hours between half an hour an one hour with the condition of giving their names and addresses in advance and not changing these names beyond unavoidable situations. With the permission of the chief public prosecutor, people besides the above cited may also visit the convicts.

Convicts, who are citizens of a foreign country besides the persons in the above paragraph, may be visited by members of the diplomatic mission or the consulate of their country. If there is no such officials and the convict is either stateless or a refugee, the country or international organization which assumes the protection of such persons may visit them.

With the prior permission of the Ministry of Justice, government institutions and organizations, academics who are doing research or journalists may also visit the convicts in groups or individually. The convicts may also be visited by representatives of international institutions and organizations that have an international treaty with Turkey. These visits may be made by clarifying the reason of the visit and obtaining the permission of the Ministry of Justice and only under the control of prison officials.

Even with a prior permission, visits may be postponed in cases of natural disasters, fire and mutiny.

Collective visits cannot be made to inmates that are not to be brought together because of security purposes.

Private persons or government representatives visiting the prisons cannot perform any behaviour as to endanger the security of the facility. No articles that may put the prison security and order into danger, weapons and communication devices may be brought into the prison. Money, negotiable securities and valuable goods cannot be given to inmates during visits.

Anyone to enter the facility, whatever his duty is, have to pass through electronic doors. They are also searched with metal detectors and their belongings are passed through x ray machines. In suspicious cases, the search is also made by hand. If the facility has no such devices the search is made only by hand. Hand search may not be made on members of parliament, heads of the units in civil service, judges, public prosecutors, attorneys, notaries, inspectors, the chairperson and members of the prison watch com-

mittee, representatives of internationally recognized organizations, commander of the protection guards of the prison and the facility's director, except in cases serious crimes on the act of commitment. If the sensitive electronic door keeps warning, these people can enter the facility only if they accept hand search. Searches are performed with utmost respect to human dignity.

May their possession not constitute a crime, articles that are banned in prisons are taken from the visitor and is kept by the prison administration and are returned when the visitor leaves the facility.

Documents and files in an attorney's possession cannot be searched before he/she visits his client, if he/she declares in writing that they are related to the defense.

The location where the visit takes place is searched before and after the visit.

The visit of persons or committee members who violate visiting rules is stopped immediately. If the behaviour constitutes a crime, it is reported to judicial and administrative authorities. If the persons who have the right to visit disobey visiting rules, their visiting rights are restricted from one month to one year by the institution's highest official. Rules concerning the defense attorney are guaranteed.

f. External Aid to the Prison (Patronage)

To help them get over personal difficulties, to improve them, and to help them to adapt to the life outside the prison, related ministries, government institutions are obliged to give the necessary support and service to the prisoners, before or after their acquittal. Volunteers and non governmental organizations may also help.

g. Co-operation Between the Inmates

Inmates who are skilled in crafts and experienced in certain professions, may co-operate with the prison administration to teach willing inmates some craft or profession as to help them for their lives after their release.

There are two kinds of visits: "open" and "closed". During the open visit, the inmate and his visitors are in the same room, without any obstacle between them. In the closed visit there is a glass barrier or the like between the inmate and the visitor.

E. Different Prison Categories

1. Closed Prisons

There are two kinds of closed prisons, maximum security closed prisons and standard closed prisons.

a. Standard Closed Prisons

Standard closed prisons are fully protected and guarded against fleeing, both from the outside and at the inside with guards, and technical, mechanical, electronic and physical obstructions. The doors of the rooms and the corridors are always closed and locked. There is no contact between with the outside world. Contact between the inmates within the prison is allowed in some cases. Treatment methods are applied to convicts individually or in groups.

There are special closed prisons for women, young adults and children¹⁰.

b. Maximum Security Prisons

Convicts who are to be under maximum security are to be kept in these facilities in single rooms or three in one room. The criterion that qualifies the convicts to be put in maximum security prisons is the crime they have committed, such as organised crimes, crimes against humanity, intentional homicide, crimes of producing and trafficking narcotics, crimes against the security of the state, crimes against the constitutional order. The sentences of convicts of aggravated life sentence are executed in maximum security prisons, whatever their crimes are. Dangerous convicts, convicts who disturb peace and order in the facilities and convicts who insist resisting to treatment are also kept in maximum security prisons.

Convicts who complete one third of their sentence in good behaviour may be transferred to other institutions.

2. Open Prisons

Open prisons have no obstacles for fleeing or guards for outer protection of the institution. Only the internal prison officers are responsible for observation and control. There are special open prisons for women and young adults, first time convicts and convicts who are convicted to prison.

10 See below in section III,

III. Specific Categories of Prisoners

A. Suspects under Arrest

Arrest is one of the protective precautions in the Code of Criminal Procedure. Article 100 indicates the reasons for arrest. No one is admitted in the detention center without a judge's or a court's decision.

Arrested inmates are kept in detention centers, but if this is not possible they are located in special sections of the prisons. They are not placed with convicts. Those who have allegedly committed crimes that the punishments are executed in maximum security prisons are kept in maximum security detention centers. Arrested women, children and young adults are placed in special places as well as the men. All arrested inmates are classified according to the crimes they committed. Defendants who have allegedly committed a crime in conspiracy are kept apart.

Inmates under arrest have rights and obligations. For example they are allowed to work if possible, but they cannot be forced to work. They can receive visitors, can make telephone calls, appoint an attorney, can communicate with his/her attorney without any limitations. On the other hand if he attempts to hide or ruin the evidence, creates danger in the institution or tries to repeat the crime he may be put in isolation, monitored with cameras, if he behaves aggressively he will be handcuffed for a limited time or may be transferred to a maximum security institution. Their rights and obligations are like those of the convicts, but in conformity with their situation.

B. Minors

1. Education Centres for Minors

Children under 12 are not responsible for the crimes they commit¹¹, but security provisions may be applied to them (ÇMK). But there are 2 groups of minors who have diminished responsibility: those between the ages of 12-15 and between 15-18. As a rule they are not put in closed prisons. They serve their sentence in child education centers, which are facilities where the children are educated, taught a profession and integrated with the society. There are no barriers so as to prevent them from fleeing. Security of the institution is obtained by the internal security officers.

¹¹ The act they performed is not even a crime because mens rea, the moral element of the crime does not exist.

Children, who are following an education or vocational training program outside or within the institution, may be allowed to stay there until they become 21, so that they can finish their education or training.

2. Closed Institutions for Children

Children are transferred to closed institutions either because of disciplinary or other reasons or there is an arrest order for them. These too are basically institutions of education and training. Principles of education and training are strictly obeyed.

These convicts are preferably to be kept in institutions just for children. If this is not possible, they may be kept in closed prisons with a special section for children. If there is no special section, the girls are to be taken to women's prisons¹².

Children between 12-18 are kept in different wards, according to their sexes¹³.

3. Closed Institutions For Young Adults

These are closed institutions for young adults between the ages of 18-21. The system is based on education and training. The facility has barriers for preventing fleeing and internal and external security officers.

Young adults who have committed crimes and whose punishment is to be executed in maximum security prisons are placed in maximum security sections of these institutions.

4. Open Institutions For Young Adults

Open institutions for young adults are organized to train, educate and rehabilitate them so that they work and obtain a profession.

C. Women

Women serve their punishments in women's prisons. There are open and closed institutions. Internal security officers in closed institutions are women. If the number of the facilities made just for women is not sufficient they can be located in other facilities. The

12 There are many examples of exploitation of children by older inmates in different ways, so they should be kept in special places.

13 In my opinion this segregation should not be absolute and the children of different sexes should socialize and should do some of the activities together, under the control of prison officers

Law explicitly stresses that they should be kept in separate places with no connection at all¹⁴.

The system in the open prisons for women is based on rehabilitation, work and learning a profession.

Prison sentence of pregnant women is postponed until six months after giving birth. If the child is still born or is adopted, the execution may begin two months after the birth.

D. Dangerous Prisoners and Isolation System

Recidivists, habitual criminals, professional criminals and members of criminal organizations are considered “special dangerous offenders” in the Turkish Criminal Code (art. 58) and special execution of their punishment is allegedly arranged in the Law on Execution of Punishments and Preventive Measures. On the other hand, article 108 of the mentioned Law only states that rules concerning conditional release are heavier for the recidivists. But it does not mention any special way of treatment or rehabilitation.

E. Old and Sick Convicts

1. Old convicts

Article 51 of the Turkish Criminal Code states that prison sentences below two years may be postponed under certain determined conditions. For people above 65 and under 18, this limit is three years. In article 50, short term imprisonment (under one year) may be converted to other alternatives such as fines, compensation, restitutio in rem, attending an education institute for professional or vocational training, banning of going to certain places or doing certain activities or exercising certain professions, doing voluntary community work for a determined period. For children and for the elderly the conversion is compulsory.

There are special modes of execution, some only for women and elderly convicts. Prison sentences under six months of the elderly and women may be executed in their homes.

14 I must point out that sometimes this is not sufficient to keep the two sexes apart. Total segregation between the sexes does not solve problems. A few years ago the newspapers announced that a female inmate became pregnant from a male prisoner who made a hole in the wall. If the prison sentence aims to prepare the convicts for the life outside, and prevent the harassment of women, men and women could be together for certain joint activities, under the control of prison wardens.

2. Mentally Ill Convicts

If the offender is mentally ill when he commits the crime, and his illness is grave, he is not condemned to punishment, but to security precaution, which is executed in a mental hospital as treatment. If the mental illness is not grave, the offender's criminal responsibility is diminished and his punishment is diminished as well. (TCC. Art. 32)

In case the convict becomes mentally sick, after the commission of the crime, the prison punishment is postponed and the convict is taken to the mental hospitals, as prescribed in article 57 of the Turkish Criminal Code. These are maximum security health institutions where appropriate and necessary treatment is applied to the convict. The time elapsed under treatment is considered as the execution of punishment.

The punishment of convicts who are not mentally ill but have psychological problems is executed in special sections of the prisons. Necessary experts and medical doctors are provided by the Ministry of Health.

3. Convicts Suffering Other Illnesses

If the convict is suffering another illness, the execution of his/her punishment is continued in a special ward of a government hospital reserved for convicts. If this puts the convict's life in definite danger, the execution of his punishment is postponed until he gets better. This should be decided by the chief public prosecutor and based on official reports to be renewed every three months. The convict's situation is controlled by the local law enforcement officials and if it is observed that he is not obeying the obligations set by the public prosecutor, the public prosecutor is entitled to cancel his/her decision to postpone the execution of the prison sentence.

The convict has the right to request examination and treatment (71). Ordinary and emergency examination and treatment of the convict is made by the doctor of the facility. Every examination and treatment detail is recorded (78).

Ministry of Health, Ministry of Social Security and the University Hospitals are obliged to perform every help for the treatment of the convicts.

No medical experiment may be made on the convicts, even with their consent.

The institution's doctor performs health inspections at least once a month and writes a report to the administration concerning the precautions to be taken in the institution on health conditions in general and special health problems of the inmates. During the examination if the doctor detects an illness which prevents the execution of the punishment he reports it to the prison administrator. If the situation of a certain inmate necessitates his/her transfer to a hospital he/she also reports this to the administration.

There is a very special problem with the Turkish prisons: The hunger strikes. If a prisoner for whatever reason, refuses eating and drinking continually, the consequences of this and the mental and physical harm it will cause are explained by the institution's doctor. Experts from the psychosocial department try to dissuade him/her. If not he is fed according to the diet arranged by the institutions doctor. If the lives of the convicts who refuse eating and insist on hunger strike are in danger or they have lost conscience they are examined, treated, fed and other necessary precautions are taken either in the institution or in a hospital if necessary. These precautions should not cause any danger for the health and the lives of the convicts and forced precautions for their treatment should not be degrading.

IV. Right to Recourse

A. Internal Recourse

Hierarchic recourse exists in the prison administration. In every prison, there is an execution public prosecutor who is in charge of the execution. The public prosecutors work under the Ministry of Justice and thus are of both judicial and administrative nature. It is possible complain to the public prosecutors for every act and operation of the prison administration. In each district, all the public prosecutors are under the chief public prosecutor, so any complaints against the public prosecutor may be forwarded to the chief public prosecutor, who may cancel, nullify or redo the same operation.

In each prison there is a permanently stationed public prosecutor. The chief public prosecutor visits the prisons randomly for supervising purposes.

B. Judicial Recourse

In every prison there is the execution judge. The act establishing the judges of execution was passed in May 2001. They do

the control of every act and operation concerning the execution of punishments. Every convict or arrested, himself/herself or their relatives (spouse, parents, children and brothers or legal representative) may complain to the execution judge on the acts concerning acceptance, sheltering, feeding, clothing, health, protection and relations with the outside, disciplinary precautions, leave of absence, release, etc.. The execution judge examines the case and decides on it.

V. Management Execution of the Prison Sentence

A. Reception, Registration And Classification Of The Convicts

After the conviction and the commitment order the convicts are sent to the institution by the public prosecutor and are received in the institution. He is given an official document stating his acceptance and release dates¹⁵ and the article of the code of which he is condemned. After he is searched he is placed in the reception room and he is examined by the doctor. Then he is registered in the convict register with detailed information about him and his identity. His finger prints and the prints of the palms of his hands, his photographs, blood type, physical characteristics, and measurements are taken and are kept in his personal file. These are not given to anyone beside cases specified by the laws.

Then the convicts are put under observation¹⁶ in observation and classification centers and then they are classified and placed in appropriate institutions where suitable training is applied, taking into consideration their personal characteristics, previous lives, social relations and environment, artistic and professional activities, moral inclinations, points of view towards crime, the length of conviction and the crime committed.

In these centers, the administrators must preferably be experts in criminology, penology, behavioral sciences, justice psychology, or criminal law. There also must be a psychiatrist, a medical doctor, a forensic science specialist, a psychologist, a child psychologist, a child development expert, social worker, psychological and guidance counselor, teacher and the like.

15 This date of ultimate release indicates the maximum time to be spent in the prison. Convicts who spend two thirds of their sentence in good behaviour are released conditionally. But the real problem is the frequent amnesties, which ruin all the preventive effects of the criminal punishment

16 Short term prison sentence are not put in observation centers.

Observation is made in single rooms. If there are not enough private rooms, other parts of the institution may be assigned for this purpose.

The observation period cannot be longer than sixty days even for the convict of life sentence.

At the end of the observation the report on the convict is sent to the Ministry of Justice and it is the Ministry that decides on the type of institution that the convict will go to.

The convicts are grouped according to the crimes they committed the length of their sentence their age and also divided into groups, such as:

- i. First time offenders, recidivists, habitual criminals, professional criminals,
- ii. Those that should be subject to special treatment, because of mental, physical and age,
- iii. Dangerous offenders,
- iv. Terror offenders,
- v. Offenders who belong to criminal organizations,

B. Managing and Execution of Different Kinds of Prison Sentences

1. Aggravated Life Sentence

There are special provisions in the law only for the execution of the aggravated life sentence (art. 25) which has replaced death penalty¹⁷. Aggravated life sentence is different from ordinary life sentence and the execution is made in maximum security prisons.

- The convict is allocated in a single room.

17 Death penalty is "officially" abolished in Turkey in August 2002 and is replaced by aggravated life sentence. "Officially" because, no death sentence was executed in Turkey since 1984. Many Turkish academics were against the death penalty. Especially Istanbul University Law Faculty made symposiums and publications for the abolition of death penalty. For example see Semih GEMALMAZ, Türkiye'de Ölüm Cezası (Death Penalty in Turkey), Vol. I, Vol II, Beta Yayınevi, Istanbul, 2001; Fusun SOKULLU-AKINCI, "The Purpose of Punishment and Death Penalty", Annales de la Faculte de Droit d'Istanbul, 1998, p.271; Fusun SOKULLU-AKINCI, "Cezalandırmada Amaç ve Ölüm Cezası" (Purpose of Punishment and Death Penalty), Yeni Türkiye, July-August 1996, p.672; Fusun SOKULLU-AKINCI, "647 Sayılı Kanunda Yer Alan Cezalar ve Yapılması Gereken Değişiklikler" (Punishments in the Law of Execution of Punishments and the Necessary Amendments), Cumhuriyetin 75. Yıl Armağanı, Istanbul, 1999, p. 333.

- The convict has the right to go out in the open air and exercise for one hour every day. Depending on the efforts the convict makes for treatment and education, the convict may be allowed to stay longer in the open air and encounter other convicts for limited periods of time. He cannot participate in any other treatment and sports activities.
- If the allocated place is available, the convict can exercise his art or profession.
- With the permission of the prison administration, the prisoner can make telephone calls to his wife/husband, parents, children, siblings, guardians once every fortnight not more than 10 minutes. The same persons can visit the convict every 15 days for maximum one hour.
- The convict cannot work outside the prison and he cannot take leave of absence.
- No intervals may be made in the execution of the prison sentence except cases of medical necessities.

2. Short Term Prison Sentence

Short term prison sentence is prison sentence under one year and it is executed in separate locations. Treatment programs cannot be fully applied to the convicts in such a short periods of time. On the other hand prisons are generally known as “school(s) for crime”¹⁸, dangerous places for the inmates and the convicts are stigmatized¹⁹ once they enter the prison, however short may the punishment be. Besides it argued that prison punishment is useless, expensive and harmful in various ways²⁰. So, the best solution is not to put the convicts in prison for short periods and convert their prison sentences to alternative penal sanctions²¹. The reason for the frequent amnesties in Turkey is attributed to the immense number of the convicts in the prisons. On the other hand the expenses can be reduced by reducing the number of inmates in the prisons²². In fact art. 50 of the Turkish Criminal Code states

18 Elmer Hubert JOHNSON, p.384.

19 Fusun SOKULLU-AKINCI, *Kriminoloji (Criminology)*, 4th ed., Beta, Istanbul, 2005, p. 202-204.

20 Michel FOUCAULT (Translated by Alan Sheridan), *Discipline and Punish, The Birth of Prison*, Vintage Books, New York, 1979, p.114.

21 Fusun SOKULLU-AKINCI, “Adalet Reformu ve Alternatif Ceza Yaptırımları” (Justice Reform and Alternative Penal Sanctions), in Prof. Dr. Nurullah Kunter’e Armağan, Istanbul, 1998, p. 327-341.

22 Fusun SOKULLU-AKINCI, “Hürriyeti Bağlayıcı Cezalar ve Bunlara Alternatif

alternative sanctions for short term prison sentence, such as fines, compensation, restitutio in rem, attending an education institute for professional or vocational training, banning of going to certain places or doing certain activities or exercising certain professions, doing voluntary community work for a determined period. Article 110 of the Law of Executions regulates the special methods of execution of some short term punishments, for example execution during the week end, at night or at the convict's home only for women and elderly. This is not an improvement, because according to the abolished law young men's short term prison punishments could also be executed in their homes. For years I have been proposing a variety of alternatives²³, but the new law accepted only a limited number of alternatives and for only very short terms such as six months.

C. Conditional Release

The main purpose of the criminal punishments is the individual and general prevention of criminality. Especially prison punishment aims the treatment of the offenders, socialising them and enabling them to adapt to the life outside the prison. If the prisoners respond to measures of treatment and are in good conduct for a certain period of time, they should be rewarded with conditional release. The inmates must know that the key of the prison door is in their hands. In Turkey conditional release never served to this end. Prisoners have been released into the society without any treatment and evaluation²⁴. Disregarding his/her behaviour every prisoner is conditionally released automatically, after the period indicated in the law. The governments attribute it to the great numbers of the prison inhabitants²⁵. It is well known for many centuries that the best prevention is not obtained with the harshness of the punishment, but with its certainty and infallibility²⁶. I think only those who deserve it should be released conditionally otherwise punish-

Tedbirler" (Prison Sentence and Alternatives), in 21. Yüzyıla Girerken Cezaların İnfazı Sempozyumu (Symposium on the Execution of Punishments), TC. Adalet Bakanlığı, Ankara, 2001, p. 47.

23 supra 14 and 15.

24 Yener ÜNVER, "Şartla Salıverme ve Erteleme" (Conditional Release and Postponing of Punishments), in "21. Yüzyıla Girerken Cezaların İnfazı Sempozyumu" (Symposium on the Execution of Punishments), TC. Adalet Bakanlığı, Ankara 2001, p. 41.

25 SOKULLU-AKINCI, "647 Sayılı....", p. 345.

26 Cesare BECCARIA, *Dei delitti e delle pene*, Giuffrè, Milano 1973, p. 73-74.

ments will never be preventive and good conduct will never be encouraged²⁷.

The new Law of Execution indicates the time to be spent in the prison in good conduct, as two thirds of the total punishment²⁸. There are also specific time limits for specific crimes for example if the prisoner is convicted to two aggravated life sentences he is conditionally released after thirty six years. If these are for two organised crimes the period is 40 years.

The most important deficiency of the conditional release system in Turkey is that the only condition to be considered after the release is not committing a new crime. The judge may decide on probation or some obligation, but the Law does not state what kind of obligations. I think electronic monitoring must be introduced to the system for the released at least for a short period of time.

VI. Control of the Prisons

A. National Control

The Turkish National Assembly (The Parliament) has the right and authority to investigate and control every issue by forming special "investigation commissions". Such a commission can control prisons by occasional visits, collects documents and listens to witnesses. There is also a permanent "Human Rights Commission" in the Turkish National Assembly, that can examine human rights issues spontaneously or on recourse and the results of their visits are later discussed in the Parliament or at the Council of Ministers in search of the solutions for human rights violations.

The Law on Execution of Punishments and Security Precautions of 2005, in art. 23, arranges the composition of observation and classification centres, which consist of experts in criminology, penology, behavioural sciences, judicial psychology, criminal law, psychology, and doctors, etc. This centre observes and controls every inmate from their first day in prison noting the developments in his/her behaviour.

B. International Control

The same Law (art. 85) regulates the procedure through which officials institutions and organisations, can visit the prisons. The visits are possible with the permission of the Ministry of Justice.

27 In Turkey amnesties are also quite frequent, and this too encourages the offenders.

28 It was ½ in the abolished law.

The same applies for the academics and the journalists. According to the international treaties that Turkey has signed, foreign representatives may also visit convicts for controlling purposes, with prior permission of the Ministry of Justice.

Conclusion

Numerous new laws have been made by the Turkish legislator in 2005 claiming to have made justice reform. Among these are Criminal Code, Code of Criminal Procedure, Law of Misdemeanors, Law on the Execution of Punishments and Preventive Measures. The provisions of the last one seem to be the best, and in conformity European Prison Rules. But problems are not solved by changing the laws. Certainly the laws have to be improved, but it must be followed by a radical change of the infra structure such as architecture of the prisons, experts in treatment of prisoners and prison administration.

The purpose of the prison sentence is classically defined as rehabilitating the convict so as to enable him to refrain from committing further crimes. Today the aim of imprisonment should go beyond this. The convicts must acquire the ability to develop themselves, acquire new attitudes and skills. The preliminary condition for this is the will power and willingness of the convict.

The new Turkish Code of Crimes and Security Precautions cannot perform miracles but has provisions in compliance with the European Prison Rules. The prisoners have rights and guarantees such as the right to proper accommodation, bedding and clothing, to counsel, to right to participate in cultural and artistic activities, to education, to use the library, to have access to books and periodicals, to medical services, to be fed, to be informed on their rights and obligations, right to work, they have the rights to have relations with the outside world such as sending and receiving letters, gifts and visiting rights. There provisions for specific prisoner categories such as children, women, dangerous prisoners. Special execution provisions also exist for sick, mentally ill and aged prisoners. No medical experiment may be performed on the convicts, even with their consent.

There is the problem of hunger strikes in the Turkish prisons especially made by prisoners convicted for crimes of terrorism, who are to be kept isolated in separate rooms.

There are also special provisions for short term prison sentences. Such sentences are to be executed in different locations.

Criminal Code of 2005 also has detailed provisions as to alternatives to short term prison sentence. But all these alternatives are not as good as we expected.

The provisions of the Law of Execution of Punishments are in conformity with European Prison Rules, but problems are not solved by changing the laws. Improving the laws is the first step, but it must be followed by a radical change of the infra structure such as architecture of the prisons, experts in treatment of prisoners and prison administration.

It certainly is necessary to reform the prisons and treat the prisoners in a humane way. But this is still retributive justice. We must think more about restorative justice, about which Turkey still has to learn a lot.