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The Right to Education in Turkish Prisons within the Context of the European Convention on Human Rights

Author: Coşku Yücel İkizoğlu

Supervisor: Prof. Siniša Zrinščak

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After a year full of challenges, learning opportunities, and personal growth, I now approach the end of this adventure. I take a moment to reflect on what this journey has meant for me in terms of healing and self-discovery, just as I mentioned in the last sentence of my thesis about what education adds to its beneficiaries.

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conversations that delve into its intricacies. Having such a special family is a blessing beyond words, and I am deeply aware of the profound impact they have had on my life.

ABSTRACT:

This thesis investigates Türkiye's obligations regarding prisoners' right to education under international law, national law and the European Convention on Human Rights (ECHR), with a focus on the discrepancies between legal frameworks and practical implementation. The study highlights the historical evolution of education as a fundamental human right and examines Türkiye's legislative context, noting significant challenges in funding and educational quality.

The research delves into European influences on Türkiye's penal policies, emphasizing the importance of rehabilitation and education in modern prison systems. Despite Türkiye's legislative efforts, significant restrictions on prisoners' access to education remain.

Practical challenges in implementation include overcrowding, limited access to educational resources, and financial constraints, which hinder prisoners' educational pursuits. The study calls for comprehensive legal reforms to broaden rehabilitative activities, ensure fair evaluation criteria, remove barriers to higher education and Internet access, and enhance financial support for prisoners.

In conclusion, addressing these deficiencies is crucial for Türkiye to align its practices with human rights standards and improve its prison reform approach, emphasizing education as a key tool for rehabilitation and reintegration.

LIST OF ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRT	Constitution of Republic of Türkiye
CoE	Council of Europe
CRC	Convention on the Rights of the Child
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EPR	European Prison Rules
ESC	European Social Charter
EU	European Union
ICCPR	International Covenant on Civil and Political Right
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFLA	International Federation of Library Associations and Institutions
IMF	International Monetary Fund
NGOs	Non-Governmental Organization
SAPs	Structural Adjustment Programs
TCC	Turkish Constitutional Court
TÜİK	Turkish Statistical Institute
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund

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CHAPTER 1 Introduction

1.1 Background

Education has always been the primary focus in assessing the level of development of both individuals and communities. This focus is well-justified, given the significant correlation between the level of education and various developmental aspects, including social, economic, and political dimensions. As the building blocks of communities, individuals require education to fully develop their potential talents and make meaningful contributions to both themselves and the community. When one considers the individual as a seed, education is the indispensable catalyst enabling it to grow into its full potential, flourish, and positively impact its surroundings. This is even evident in the etymological origin of the word 'education' itself, derived from the Latin 'educere,' which means 'to lead out'.[1]

Consequently, to foster a healthy and safe society, discussing the accessibility of education 'for all' is of utmost importance, notwithstanding the prevailing tendency to prioritize attention on individuals whom today's society deems as 'valuable'. The primary focus of this thesis, prisoners, represents one such frequently overlooked demographic. The right to education, recognized as a pivotal fundamental right, is occasionally either unattainable for them or exercised under significantly constrained conditions. Most prisons fail to offer adequate resources that would enable prisoners to engage in or resume their formal educational pursuits.[2]

Türkiye, the focus of this thesis, exemplifies a country where prisons often lack the necessary provisions for educational programs, a situation that stands in contrast to the country's legal framework. The Constitution of the Republic of Türkiye explicitly designates the nation as a 'welfare state' in Article 2. Furthermore, the opening paragraph of Article 42, titled 'Right and Duty of Education,' unequivocally declares that 'No one shall be deprived of the right to education.' Moreover, Türkiye is a member state of the Council of Europe and a signatory to the First

[1] Randall V Bass and JW Good, 'Educare and Educere: Is a Balance Possible in the Educational System?' (2004) 68(2) The Educational Forum 161, 162.
[2] Marc de Maeyer, 'Education in Prisons' (2001) 34 Convergence 117 <https://www.proquest.com/scholarly-journals/education-prisons/docview/1437909398/se-2?accountid=13050> accessed 10 March 2024.

Additional Protocol to the European Convention on Human Rights.[3] Article 2 of the aforesaid Protocol specifies that the right to education is a fundamental individual right for all people without any discrimination.

However, as mentioned above, the actual conditions within prisons in Türkiye do not align with that ideal legislation, a situation not uncommon in many countries. Prisoners often struggle to access even the minimum educational requirements, far from achieving parity with their unimprisoned counterparts. In addition to physical insufficiencies, like the inability to obtain educational materials, structural barriers restricting communication and access to information further compound the issue.[4] This situation in Türkiye has also been brought before the European Court of Human Rights, where the shortcomings have been highlighted in the rulings of violation.

Despite falling short of meeting internationally recognized obligations, the matter of education in prisons remains overlooked and insufficiently acknowledged. This oversight compromises a vital element crucial to the rehabilitation and welfare of individuals in Türkiye. Given these considerations, this thesis aims to shed light on a frequently ignored reality, with a focus on Türkiye.

To achieve this objective, the thesis will first address the right to education as a fundamental human right in Chapter 2, investigating how the right to education is delineated within the international human rights framework, as well as within Türkiye's national legislation. Chapter 3 will build upon this foundation by examining access to education as a fundamental right for prisoners. It will first explore the evolution of prison policies in Europe, as these developments lay the foundation for the prison reforms in Türkiye. Subsequently, the chapter will investigate the standards on prisoner education provided by the Council of Europe, which Türkiye is committed to upholding within its legal structure, including the relevant provisions of Türkiye's national laws. The study will be further enriched by incorporating case studies from the European Court of Human Rights (ECtHR) and the Turkish Constitutional Court (TCC) to provide examples of prisoner education in Türkiye and to illuminate the approaches of these respective courts in Chapter 4.

[3] Hacı Ali Açıkgül, 'Avrupa İnsan Haklar Sözleşmesine Ek Protokoller İle Getirilen Yenilikler' [2021] Türkiye Adalet Akademisi Dergisi 109, 122.
[4] Özge Akyüz, Türkiye'de Öğrenci Mahpus Olmak (TCPS Kitaplığı 2021) 25.

1.2 Methodology

The key research questions addressed in this thesis are:

- What are the international and national legal obligations of Türkiye regarding the right to education in prisons?

- To what extent does the reality within Türkiye align with the legal framework concerning the right to education in prisons?

- What barriers do prisoners encounter in exercising their right to education within the Turkish penal system?

- How do the European Court of Human Rights and the Turkish Constitutional Court address this issue, and what are their respective contributions and limitations in upholding this right for prisoners?

To address the research questions, the methodology of this thesis employs a multidimensional approach to investigate the right to education within the Turkish penal regime, encompassing theoretical legal frameworks and their practical applications.

In this thesis, the methodology commences with a legal analysis of the right to education as a fundamental human right, analyzing how international documents are incorporated into Turkish law. The study then employs a comparative legal analysis, examining the principles established by the European Court of Human Rights, taking into account Türkiye's membership in the Council of Europe and its legal obligations. Subsequently, the methodology includes a detailed exploration of Türkiye's national legal framework governing the right to education. Additionally, the study provides a historical analysis of Türkiye's educational challenges, aiming to contextualize the legal analysis within the country's socio-political context.

This legal analysis is pivotal for several reasons. Firstly, it clarifies Türkiye's obligations concerning educational rights applicable to all individuals under its jurisdiction. Secondly, it underscores the significance of this right in the contemporary global context and outlines its

benefits for those it serves. Thirdly, by initially exploring the right to education broadly, the study establishes a foundational understanding of the topic before delving into its specific implications for prisoners.

After a comprehensive examination of the right to education in general, the thesis shifts its focus to prisoners as the primary beneficiaries of this right. It begins with a historical analysis tracing the evolution of prisoners' rights in Europe and ininfluence on Türkiye. Following this, it conducts a legal analysis specifically on prisoners' educational rights to present the applicable legal framework.

Subsequently, the thesis incorporates a contextual analysis to assess the implementation of these laws in the real-world setting of Türkiye's prison system. This analysis is supported by empirical data sources such as NGO reports, government statistics, firsthand testimonies of prisoners regarding their educational experiences, and journalistic articles investigating the issue. Based on these data sources, the thesis aims to identify the main challenges prisoners face when pursuing their studies, aiming to reveal discrepancies between legal texts and practical outcomes, as well as shortcomings in the legal provisions.

Additionally, the thesis utilizes empirical legal research by integrating case studies from the European Court of Human Rights and the Turkish Constitutional Court. These case studies are essential for examining how theoretical rights are applied in practice, providing a clear understanding of how effectively educational rights are implemented in Türkiye's prisons. This blend of legal, historical, contextual, and empirical methodologies ensures a thorough exploration of the subject, highlighting both the strengths and weaknesses of the current framework and offering insights into potential areas for reform.

CHAPTER 2 Education as a Fundamental Right

2.1 International Acknowledgement of Education's Significance

The fundamental importance of the right to education lies in its ability to unlock individual and societal potential. In today's world, it seems almost impossible for a country to significantly contribute to both its own citizens and the global community without prioritizing education. This

crucial role has led to the universal recognition of the right to education as a fundamental human right, although this acknowledgment came only after WWII.[5]

To fully grasp the essence of this right, it is beneficial to briefly explore the key historical developments that established its position in international human rights law.

As mentioned above, despite its significance, it took considerable time for education to be recognized as an international human right.[6] During the 16th and 17th centuries, some philosophers argued that the right to education is not only as a moral necessity but also a noble personal goal.[7] However, at that time, the primary duty bearers of this right were considered to be parents, not the state.[8]

Beginning in the mid-17th century, the concept of natural rights—rights inherent to all human beings simply because they are human—gained prominence during the Age of Enlightenment in Europe.[9] The natural rights were seen not as dependent on human laws (positive law); but as unchangeable and universally applicable.[10] Education was recognized as one of these natural rights, initially laying the foundation for it to be considered a parental obligation. However, following the French and American Revolutions, education began to be seen as a democratic principle and a fundamental responsibility of the state. It was also during this period that the idea of universal education, accessible to all rather than restricted to a specific class, began to take shape. [11]

Moving into the 19th century, the rise of socialism and liberalism established the foundation for education to be recognized as a 'human right'. These political and economic philosophies reshaped

[5] Savaş Koçyiğit, 'Uluslararası Belgeler ve Türk Hukukunda Eğitim Hakkı' (Master's Thesis, Çankaya Üniversitesi 2014) 15.
[6] Douglas Charles Hodgson, 'The Role and Purposes of Public Schools and Religious Fundamentalism: An International Human Rights Law Perspective' (2012) Forum on Public Policy Online accessed 12 March 2024.
[7] ibid 4.
[8] Nyadzanga Evelyn Netshitahame, 'An Analysis of Learners' Knowledge and Understanding of Human Rights in South Africa' (DPhil thesis, University of Pretoria 2008) 29.
[9] Albert Grande, 'Education as a Natural Right' (2006) 21 John's J. Legal Comment 53.
[10] ibid 54, 55.
[11] Netshitahame (n 8) 29.

the role of the state into an institution committed to securing the socio-economic well-being of its citizens.[12]

As a result of these developments, the latter half of the 19th century witnessed widespread acknowledgment of education as both an individual right and a state responsibility, a recognition reflected in national constitutions and laws.[13] However, the formal recognition of the right to education in universal or regional documents did not occur until after WWII.[14] This period marked a growing consensus that fundamental human rights must be safeguarded under all circumstances. As a result, access to education came to be recognized as a critical prerequisite for realizing many other significant human rights, including the right to health, the right to work, and freedom of expression. In the contemporary legal framework, the right to education is enshrined in numerous international human rights instruments.

Among several key international conventions involving educational rights, Türkiye has ratified the Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1950), the First Additional Protocol to the European Convention on Human Rights (1952), the European Social Charter (1961), the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (1966), and the Convention on the Rights of the Child (CRC) (1989).[15]

Before discussing these conventions, it's crucial to consider Article 90(5) of the Constitution of the Republic of Türkiye, which plays a pivotal role in the implementation of international treaties within Turkish law. This article stipulates that international agreements ratified by Türkiye are granted the same status as national laws and take precedence in case of conflict. Thus, all international agreements related to education, once ratified, are required to be incorporated into Turkish legislation and rigorously enforced. [16]

[12] Hodgson (n 6) 5.
[13] ibid 5.
[14] Netshitahame (n 8) 30.
[15] Pirali Çağrı Şensoy, 'Anayasa ve Uluslararası Sözleşmelerde Eğitim Hakkı: Insan Hakları ve Fırsat Eşitliği Bağlamında Bir Inceleme' [2022] Alanyazın 23, 31-35.
[16] Constitution of the Republic of Turkey 1982, art 90(5).

2.1.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is undoubtedly the most remarkable and well-known human rights document. This document represents such a milestone in history, with its adoption by the UN General Assembly on December 10, 1948. Türkiye was among the first countries to express its support for the Declaration shortly after its adoption by publishing it in the gazette on May 27, 1949.[17]

For the first time in history, a universal document enumerating fundamental human rights was drafted with the objective of preventing potential atrocities against humanity.[18] Even though the Declaration does not possess legally binding force, it has been integrated into international customary law through the practices of the UN. Moreover, it consistently serves as a source of inspiration for the protection of human rights and the formulation of other human rights instruments.[19]

The emphasis placed on the right to education is evident even in the preamble of the Declaration, which states that every individual and every organ of society should strive through teaching and education to promote respect for these human rights and freedoms.[20]

This commitment is further underscored by the individual article devoted to the right to education in Article 26. In this article, education is recognized as a fundamental right 'for everyone,' without any exceptions based on gender, race, or, pertinent to our discussion, prisoner status. Moreover, it declares that elementary and fundamental educational stages are to be provided without cost. 'Fundamental stages' refer to tailored educational opportunities operating outside the regular primary system, for individuals of all ages who cannot complete primary education.[21]

[17] Koçyiğit (n 5) 20.
[18] Universal Declaration on Human Rights (adopted 10 December 1948) 217 A(III) (UNGA), preamble.
[19] Elsa Stamatopoulou, 'The Importance of the Universal Declaration of Human Rights in the Past and Future of the United Nation's Human Rights Efforts' (1998) 5 ILSA J. Int'l & Comp. L. 281, 281.
[20] Universal Declaration on Human Rights (n 18) preamble.
[21] Klaus Dieter Beiter, The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights, (Brill 2005) vol 82, 90-91.

Although the international acknowledgement of the universal right to education indisputably marks a significant advancement, there have been criticisms concerning the article's formulation.

One such criticism is that it grants absolute right status only to primary education. Critics argue that in today's societal context, primary education alone may offer limited practical value, especially given the increasing number of individuals pursuing secondary and higher education degrees. Nevertheless, it is important to recognize the challenges of providing universal secondary education in economically disadvantaged nations and the difficulties that even wealthy countries face in financing universal higher education. These considerations can support the focus on primary education.[22]

Another criticism targets the Article's failure to define what qualifies as 'education.' While it specifies education's objectives, such as full human development and strengthening respect for human rights, critics argue that it lacks a detailed framework for the educational process itself.[23]

2.1.2 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social, and Cultural Rights (ICESCR), was adopted by the UN General Assembly on December 6, 1966, and entered into force on January 3, 1976. Unlike the UDHR, the Covenant possesses a legally binding nature. Türkiye ratified the agreement on August 15, 2000.[24] However, as with many countries, Türkiye has not ratified the Optional Protocol to the ICESCR, which facilitates the procedure for individual complaints and investigations.[25]

In terms of the right to education, the ICESCR represents the most comprehensive international agreement with its Articles 13 and 14.[26]

[22] Tristan McCowan, 'Reframing the Universal Right to Education' (2010) 46 Comparative Education 509, 514.
[23] ibid 515.
[24] Koçyiğit (n 5) 44.
[25] Bilge Bingöl Schrijer, 'COVID-19 Salgını Süresince Eğitim Hakkı, Fırsat Eşitliği ve Sınavlara İlişkin Temel Problemler' (2020) 78 İstanbul Hukuk Mecmuası 837, 843.
[26] Beiter (n 21) 94.

In Article 13(1), the Covenant reaffirms the UDHR's guarantee of the right to education for everyone, without exception. This principle is also stated in Article 2(2) of the Covenant, which mandates non-discriminatory exercise of all specified rights.[27] Subsequently, Article 13(1) expands on the UDHR's educational objectives by adding two goals: promoting human dignity and empowering individuals to actively contribute in a free society. This broadens the role of education beyond mere theoretical instruction to include preparing students for active societal engagement.[28]

The state's obligations regarding education are outlined in Article 13(2). Firstly, Article 13(2)(a) reaffirms the principle of compulsory and free primary education, as outlined in the UDHR. Article13(2)(b) states that secondary education must be *generally accessible*, implying that a sufficient number of secondary educational facilities must be available to all. Article13(2)(c) stipulates that higher education should be made *equally accessible* to all, based on capacity. This suggests that while the state may not be required to guarantee the general availability of higher education, it is obligated to ensure that all individuals have an equal opportunity to be admitted to higher education facilities.[29]

General Comment No. 13, adopted by the UN Committee on Economic, Social, and Cultural Rights, introduces the '4As' formulation to further explain the obligations in Article 13(2). According to this formulation, education should be available, accessible, acceptable, and adaptable.[30] *Availability* entails the state's responsibility to ensure sufficient schools, teachers, and teaching materials are available for all students. *Accessibility* concerns both the affordability and physical approachability of educational institutions, ensuring that education is within reach for everyone.[31] It denotes the state's duty to remove barriers to admission, such as school fees or discrimination.[32] *Acceptability* concerns the pedagogical aspects of education,[33] stipulating that the

[27] ibid 101.
[28] ibid 95.
[29] ibid 97.
[30] UNESCO, *Right to Education Handbook* (*UNESCO*, 2019) <https://unesdoc.unesco.org/in/documentViewer.xhtml?v=2.1.196&id=p::usmarcdef_0000366556&file=/in/rest/annotationSVC/DownloadWatermarkedAttachment/attach_import_2691991b-d5ca-4449-a0c6-0f638a350b19%3F_%3D366556eng.pdf&locale=en&multi=true&ark=/ark:/48223/pf0000366556/PDF/366556eng.pdf#1474_19_ED_handbook_right_to_ED_INT_E.indd%3A.48984%3A499> accessed 12 March 2024.
[31] Simone Emmert and LLM Eur, 'Education in Terms of Human Rights' (2011) 12 Procedia Social and Behavioral Sciences 346, 348.
[32] Beiter (n 21) 96.
[33] Emmert and Eur (n 31) 348.

content must be relevant, culturally appropriate, and of high quality.[34] *Adaptability,* meanwhile, requires that education be flexible enough to meet the evolving needs of society and respond to students' needs across diverse social and cultural environments.[35]

Returning to Article 13(2), clause (e) introduces a novel provision that requires state parties to consistently work towards improving school systems at all levels and the conditions of teaching staff. This provision ties directly to clauses (a) through (d), placing an obligation on states to meet these specified standards.[36]

It is crucial to interpret Article 13(2) in conjunction with Article 2(1) of the Covenant, which requires state parties to use their maximum available resources—both domestically and through international support, particularly economic and technical—to progressively realize the rights outlined in the Covenant. Accordingly, states must allocate the maximum feasible resources, both domestic and international, to ensure the right to education.[37]

Although the Covenant adopts a progressive approach to realizing the right to education, it mandates immediate implementation of free primary education by state parties.[38] Article 14 establishes a specific timeframe for State Parties to realize compulsory and free primary education within two years, with an allowance for an additional reasonable period if needed.[39]

Article 13(3) and Article 13(4) of the Covenant pertain to parents' rights to raise their children according to their religious and moral beliefs and the rights of individuals and institutions to establish educational entities.[40] Türkiye has reserved its right to interpret and apply these paragraphs in line with Articles 3, 14, and 42 of its Constitution.[41] While the importance of these

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[34] Alfred Fernandez, Flavio Leoni, Jennifer Lehe, and Virginie Pache, *Essential Content on the Right to Education* (2017) <https://www.oidel.org/wp-content/uploads/2017/12/Corpus_1_essential-content_web.pdf> accessed 26 March 2024.
[35] ibid.
[36] Beiter (n 21) 98.
[37] ibid 98-99.
[38] ibid 98-99.
[39] ibid 99.
[40] Schrijer (n 25) 842-843.
[41] United Nations, 'International Covenant on Civil and Political Rights' <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4> accessed 2 April 2024.

reservations is acknowledged, further discussion is excluded as it falls outside the scope of this thesis.

2.1.3 Other International Agreements

Additional to the conventions previously mentioned, the right to education is also addressed in significant international agreements such as: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Article 10), the UNESCO Convention Against Discrimination in Education (first six articles), the UN Declaration on the Elimination of Discrimination Against Women (Article 9), the European Social Charter (Articles 7, 9, 10), and the International Covenant on Civil and Political Rights (ICCPR) (Article 10).[42] It should be noted that this list is not exhaustive, as they represent the most prominent examples.

Most of these aforementioned international treaties were ratified by Türkiye: the CEDAW on December 20, 1985;[43] the European Social Charter in 1989; and its Revised version in 2007, with Türkiye lodging reservations on seven of the 98 articles, none of which pertain to the provisions concerning the right to education.[44] Importantly, Article 17 of the Revised European Social Charter, which Türkiye is bound by, requires that both primary and secondary education be free, thus ensuring that secondary education is also free in Türkiye.[45]

Regarding the ICCPR, Türkiye ratified the Covenant on September 23, 2003. Additionally, Türkiye has become a party on November 24, 2006 to the Optional Protocol to the ICCPR, which has introduced the individual complaint procedure. However, Türkiye is not a party to the UNESCO Convention Against Discrimination in Education.[46]

[42] Koçyiğit (n 5) 51.
[43] Office of the United Nations High Commissioner for Human Rights, 'Treaty Bodies Treaties for Türkiye' <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=179&Lang=en> accessed 20 March 2024.
[44] Council of Europe, 'Turkey and the European Social Charter' <https://www.coe.int/en/web/european-social-charter/turkey> accessed 12 April 2024.
[45] Şensoy (n 15) 35.
[46] Office of the United Nations High Commissioner for Human Rights (n 56).

A comprehensive analysis of all the aforementioned articles falls beyond the scope of this thesis. However, Article 10(3) of the ICCPR merits closer examination due to its pertinent relevance to convicted individuals:

> "Article 10
>
> 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."[47]
>
> The initial draft of this paragraph indicated that the penitentiary system should aim primarily at the reformation and social rehabilitation of prisoners 'to the fullest possible extent'. However, the UN General Assembly's Third Committee removed 'to the fullest possible extent' from the provision to establish a more binding regulation for State Parties."[48]

In the General Comment No. 21 of the UN Human Rights Committee, it is articulated on Article 10 that:

> "10. As to article 10, paragraph 3, which concerns convicted persons, the Committee wishes to have detailed information on the operation of the penitentiary system of the State party. No penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner. States parties are invited to specify whether they have a system to provide assistance after release and to give information as to its success.
>
> 11. In a number of cases, the information furnished by the State party contains no specific reference either to legislative or administrative provisions or to practical measures to ensure the re-education of convicted persons. The Committee requests

[47] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 10.
[48] Itaru Fukushima, 'Death Penalty and Rehabilitation Ideal in ICCPR' (2006) 8 Zeitschrift für Internationale Strafrechtsdogmatik (ZIS) 344, 344.

specific information concerning the measures taken to provide teaching, education and re-education, vocational guidance and training and also concerning work programmes for prisoners inside the penitentiary establishment as well as outside."[49]

The General Comment No. 21 of the Human Rights Committee clearly reaffirms the obligation of State Parties to prioritize prisoner reformation and rehabilitation over punitive measures. This commentary addresses the increasing politicization of penal systems marked by 'zero tolerance' and 'law and order' rhetoric, emphasizing that penitentiaries should extend beyond mere punitive purposes.[50] Moreover, it clearly outlines that Article 10 mandates State Parties to facilitate access to teaching, education, vocational guidance, and training for prisoners. In this context, it is fair to argue that Article 10(3) establishes a directive for State Parties concerning the humane treatment of prisoners, aiming to shift from a retribution model to a rehabilitation model, with education being prioritized as one of the primary means to achieve this.[51]

As previously mentioned, among the various international agreements on the right to education ratified by Türkiye, the First Additional Protocol to the ECHR occupies a position of primary importance. Given its significant role, it will be examined separately in the next section.

2.2 Right to Education under the European Convention on Human Rights

2.2.1 The Significance of the European Convention on Human Rights in Upholding Fundamental Rights

The ECHR, drafted by the Council of Europe (CoE) and opened for signature in Rome on November 4, 1950, is undoubtedly one of the most ground-breaking international human rights treaties today. As the first legally binding treaty to enact various rights from the UDHR, it was ratified by CoE member states, including Türkiye.[52]

[49] UN Human Rights Committee, 'General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)' (1992) UN Doc HRI/GEN/1/Rev.1, para 10-11.
[50] Fukushima (n 48) 344.
[51] ibid 345.
[52] European Court of Human Rights, 'European Convention on Human Rights' (*European Court of Human Rights*) <https://www.echr.coe.int/european-convention-on-human-rights> accessed 1 June 2024.

Its importance stems not only from its extensive coverage of essential rights and freedoms but also from its enforceability. Crucially, the establishment of the European Court of Human Rights (ECtHR) as the CoE's judicial arm allows a wide range of applicants—including individuals, groups, companies, NGOs, and states—to bring actions against member states for alleged violations of the ECHR and its protocols, provided they are ratified by the concerned state. This judicial review mechanism underscores the treaty's pivotal role in upholding human rights across Europe.[53]

While the ECHR does not directly address the right to education, this right is clearly established in Article 2 of the First Additional Protocol to the ECHR. This protocol was specifically designed to expand the Convention's coverage by introducing new rights related to property, education, and the conduct of free elections.[54] Türkiye ratified this Protocol in 1954.[55]

2.2.2 The Right to Education in the Protocol No. 1 to the ECHR

Article 2 is composed of two distinct rights: the initial sentence focuses on the individual's right to education, whereas the following sentence pertains to parental rights over their child's education.[56] The first sentence is considered the core provision, while the second serves as an adjunct. [57] The examination of the second sentence will not be pursued herein, as it exceeds the thematic focus of the thesis.

The first sentence of Article 2 states, 'No person shall be denied the right to education.' This clause is phrased negatively, indicating that it does not compel Contracting Parties to establish or subsidize specific types of education, nor does it impose positive obligations on Parties regarding

[53] European Court of Human Rights, *European Convention on Human Rights: A Living Instrument* (September 2022) <https://www.echr.coe.int/documents/d/echr/Convention_Instrument_ENG> accessed 3 April 2024.
[54] Ninni Wahlström, 'The Struggle for the Right to Education in the European Convention on Human Rights' (2009) 8 Journal of Human Rights 150, 155; Sangita Basnet, Protection of Right to Education, and Prohibition on Discrimination within ECHR (Master's Thesis, Åbo Akademi University 2023), 7.
[55] Şensoy (n 15) 31.
[56] ibid 31.
[57] European Court of Human Rights, *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights: Right to Education* (updated 29 February 2024, prepared by the Registry) <https://ks.echr.coe.int/documents/d/echr-ks/guide_art_2_protocol_1_eng> accessed 12 April 2024.

education. Nevertheless, it does hold Parties accountable for ensuring this right is respected and not violated.[58]

Historically, the use of negative phrasing was driven by concerns that positive obligations would overburden states with ensuring every individual access the education they seek.[59] Nonetheless, given the ECHR's core aim to safeguard human dignity, and the critical role of education in this effort, the interpetation that states bear no positive obligations under Article 2 has been criticized for contradicting the spirit of the ECHR.[60]

The ECtHR has supported this critique in its interpretations, notably in the Belgian Linguistic Case, where despite the article's negative formulation, the Court affirmed that Article 2 indeed enshrines a 'right to education'. In Court articulated:

'In spite of its negative formulation, this provision uses the term "right" and speaks of a "right to education". Likewise the preamble to the Protocol specifies that the object of the Protocol lies in the collective enforcement of "rights and freedoms". There is therefore no doubt that Article 2 (P1-2) does enshrine a right.'[61]

There is therefore no doubt that Article 2 inherently carries an implicit positive obligation.[62]

Unlike other articles of Protocol No. 1, such as Article 1, Article 2 does not explicitly require that limitations on the right to education be legislated solely by law, indicating that limitations might also stem from other legal mechanisms, such as regulations. This approach acknowledges the broad impact of education, which affects a vast number of individuals and necessitates detailed guidelines for effective governance. However, this does not permit arbitrary regulations that undermine legal security or lack clear legal boundaries.[63]

[58] ibid.
[59] Wahlström (n 54) 155.
[60] Beiter (n 21) 164.
[61] Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" (Belgian Linguistic Case) (1968) Series A no 6, para 3.
[62] ibid 166.
[63] İbrahim Ülker, Avrupa İnsan Hakları Sözleşmesinde ve Türk Anayasa Hukukunda Eğitim Hakkı ve Özgürlüğü (Master's Thesis, Selçuk Üniversitesi 2010) 37.

Another point to note is that Article 2 regulates the right to education in a constrained manner, leaving its detailed interpretation to the ECtHR.[64] The Court's jurisprudence has thus provided essential guidance to address the article's lack of specificity. A review of these decisions, which is crucial for a comprehensive understanding of Article 2, will be conducted in the next section.[65]

2.2.3 The Right to Education as Interpreted by the European Court of Human Rights

An analysis of ECtHR rulings demonstrates that the Court consistently strives to broaden the protective scope of Article 2 while considering the specific socio-economic contexts of each country. Below are some important cases selected for their significance in revealing the ECtHR's approach to this issue and the principles upon which it bases its decisions. These cases are crucial as they illustrate the Court's interpretation of legal standards, set precedents for future rulings, and highlight the application of human rights principles in varying contexts.

In the Belgian Linguistic Case, the Court ruled that Article 2 encompasses access to nursery, primary, secondary, and even higher education, reflecting Belgium's status as a highly developed country.[66] In the meantime, the Court underlined that this country-specific approach should not be interpreted in a manner that harms the essence of the right.

In a case concerning Türkiye, the Court ruled that Article 2 applies to existing higher education institutions.[67] Similarly, in another case involving Türkiye, the Court stated, 'Although Article 2 of Protocol No. 1 cannot be interpreted as imposing a duty on the Contracting States to set up or subsidise particular educational establishments, any State doing so will be under an obligation to afford effective access to them'.[68] This interpretation, which limits the right to accessing 'existing' educational institutions rather than recognizing it as a comprehensive socio-economic right, has attracted criticism. Critics argue that the Court's negative right approach, which focuses on protecting the status quo and preventing state interference with existing educational institutions,

[64] Sheeba Pillai, 'Right to Education under European Convention for the Protection of Human Rights and Fundamental Freedoms 1950' (2012) 1 Christ ULJ 101, 105.
[65] Şensoy (n 15) 32.
[66] Pillai (n 64) 105-106.
[67] *Mürsel Eren v Turkey* App no 60856/00 (ECtHR, 7 February 2006), para 44.
[68] *Mehmet Reşit Arslan et Orhan Bingöl v. Turkey* App no 47121/06, 13988/07 and 34750/07 (ECtHR, 18 June 2019), para 51.

fails to adequately represent people's educational needs. They suggest a shift towards a positive right approach, where states would ensure both the accessibility and availability of education. This shift is also deemed necessary for the re-integration of prisoners into society, as it would require states to subsidize adequate educational facilities within prisons.[69]

It should also be noted that the Court has repeatedly emphasized the connection between the right to education and Article 14 of the ECHR, which prohibits discrimination. The Court has clarified that for differential treatment in education to be deemed non-discriminatory, it must serve a legitimate aim and be proportionate.[70]

Building on this foundation, the Court interprets the first sentence of Article 2 as guaranteeing not only non-discriminatory access to educational institutions but also the rights to receive education in the national language and to have completed studies officially recognized.[71] This interpretation further elaborates on the essential components of the right to education as envisaged by the ECHR, integrating the principle of non-discrimination as a core element of this right.

The Court has also specified in various cases that the right to education is not absolute and may be subject to certain limitations.[72] This indicates that national authorities have a certain degree of discretion in how they enact and apply this right. However, these limitations must be clearly foreseeable to the rights holders and must serve a legitimate aim, ensuring they do not undermine the essence of the right itself. Furthermore, the means employed to restrict this right cannot be disproportionate to the intended aim.[73]

[69] Laurens Lavrysen, 'Education in Prison: Right to Education Only Protects Access in Case of Existing Educational Facilities – Velyo Velev v Bulgaria' (*Strasbourg Observers,* 13 June 2014) <https://strasbourgobservers.com/2014/06/13/education-in-prison-right-to-education-only-protects-access-in-case-of-existing-educational-facilities-velyo-velev-v-bulgaria/> accessed 14 May 2024.
[70] *Guide on Article 2* (n 57) 6.
[71] Beiter (n 21) 163.
[72] *Golder v United Kingdom* App no 4451/70 (ECtHR, 21 February 1975), para 38; *Fayed v United Kingdom* App no 17101/90 (ECtHR, 21 September 1990), para 65.
[73] *Leyla Şahin v Turkey* App no 44774/98 (ECtHR, 10 November 2005), para 154 et seq.

Additionally, the Court highlighted that the right to education must be read in compliance with other international rules of law, such as the UDHR, the ICESCR, and the CRC.[74]

To avoid potential misunderstandings that might emerge from the second sentence of the article, which is related to parental rights over their child's education, the Court clarified that the right to education extends to both children and adults, as well as any individual seeking educational opportunities.[75]

Finally, the Court has stated that lawful disciplinary measures like expulsion or suspension from educational institutions are not considered violations of the right to education, provided they do not infringe on any rights protected by the Convention.[76]

2.3 Right to Education under the Turkish Law

2.3.1 Legal Framework: Education as a Constitutional Right

2.3.1.1 Historical Background

"If one day, my words are against science, choose science."
Mustafa Kemal Atatürk

Comprehending the role of the education within the historical context of Türkiye requires exploring the nation's foundational principles through the lens of its founder, Mustafa Kemal Atatürk.

To begin with, it is essential in any examination of Türkiye to keep in mind that the country was established as a republic following the dissolution of the Ottoman Empire. It was after World War I that territories of the empire began to experience occupation due to its defeat.[77] In Atatürk's vision, the resistance against this occupation was more than just a fight for liberation from the

[74] *Catan and Others* v Republic of Moldova and Russia App no 43370/04, 8252/05 and 18454/06 (ECtHR, 19 October 2012); *Şahin* (n 86) para 66; *Timishev v Russia* App no 55762/00 and 55974/00 (ECtHR, 13 December 2005).
[75] *Guide on Article 2* (n 57) 7.
[76] ibid 7.
[77] Robert W Olson, Nurhan İnce and Nuhan Ince, 'Turkish Foreign Policy from 1923-1960: Kemalism and Its Legacy, a Review and a Critique' (1977) 57 Oriente Moderno 227, 227.

invaders; it also symbolized a liberation from the Ottoman imperial rule. He aimed to transform the populace from subjects under the Sultan's authority into independent, dignified individuals endowed with the full rights to exercise their fundamental freedoms. His vision aimed to establish a country grounded in secular values, ensuring no involvement of religion in political matters, contrary to the caliphate[78] of the Ottoman Empire. In this respect, the establishment of the Republic of Türkiye on October 29, 1923, following the triumph of the Turkish War of Independence, represented a comprehensive cultural and political revolution. At the heart of this revolution was education, valued for its essential role in driving the nation's journey towards modernization.[79]

To understand how educational policies in Türkiye have developed, it is insightful to briefly examine its constitutional history. Since its founding in 1923, the Republic of Türkiye has been governed by three distinct constitutions: those of 1924, 1961, and 1982.

The 1924 Constitution was the first to outline the legal framework for the newly established republican regime in Türkiye, which replaced the Ottoman Empire's sultanate.[80] This constitution contained the first provision to regulate the right to education in Türkiye, as found in Article 87. This article concisely characterized education as a 'duty of citizens' and declared that primary education would be free in public schools.[81]

After the adoption of this Constitution, the Law of Unification of Instruction was enacted in the same year. This law led to the closure of various educational institutions dating back to the Ottoman Empire era. These institutions ranged from religious to secular. However, because not all were under state control, they exhibited significant differences, which led to disparate perceptions among individuals within the same country. The Law of Unification of Instruction aimed to eliminate these inconsistencies by closing these institutions and consolidating all educational activities under the Ministry of National Education, including those related to religious education.

[78] The Caliphate is a political office derived from the Arabic word for 'successor.' The caliph, who holds this position, presides over religious and worldly affairs as the successor to the Prophet Muhammad in Islam. This role lends a theocratic character to the caliphate, influencing the states governed under it to adopt theocratic governance. For more details, see Adnan Güven, 'Türkiye'de Hilafet ve Tarihi Arka Planı' [2023] Tarih ve Günce 243, 244-245.
[79] H Haluk Erdem, 'Atatürk ve Eğitim Hakkı' (2006) 39 Amme İdaresi Dergisi 151, 151-152.
[80] Fahri Bakırcı, '1924 Anayasası' (*Atatürk Ansiklopedisi*) <https://ataturkansiklopedisi.gov.tr/bilgi/1924-anayasasi/?pdf=3900> accessed 20 March 2024.
[81] Ufuk Coşkun, 'Yeni Anayasa ve Eğitim' [2012] Liberal Düşünce Dergisi 111, 113.

This move, coupled with the adoption of the Latin alphabet and significant steps toward secularization in education during the 1930s and 1940s, marked profound developments in the educational landscape.[82]

Nearly 40 years later, the context surrounding the 1961 Constitution was entirely different, as welfare state practices were on the rise globally during this period. In alignment with these developments, the principles of a welfare state and social justice were incorporated into the 1961 Constitution. The right to education also benefitted from this new approach, being recognized as both a negative (status negativus) and positive right (status positivus) in two distinct articles.[83] A notable aspect of the 1961 Constitution is that education was considered a 'right' of the people, rather than a 'duty' as in the 1924 Constitution. At the same time, it was accepted as one of the 'primary duties' of the state, aligning with the welfare state approach.[84] Due to its status as a 'primary' duty, fulfilling this right was not contingent on the state's economic development or financial resources. Moreover, the Constitution explicitly mandated that the state provide free primary education and offer financial support to academically successful students facing economic hardships.[85]

However, the 1982 Constitution adopted following the 1961 Constitution was shaped by a totally different cunjuncture, namely the mid-1970s economic crises that prompted the replacement of welfare state ideals and the military coup on September 12, 1980.[86] Emerging amidst the economic, social, and political challenges, the new Constitution, designed by members of the military council aimed to stabilize the country by centralizing power within the state. This is also evident from the statement by Kenan Evren, the general who led the 1980 military coup. He criticized the 1961 Constitution as 'too loose' for the country, implying that it granted excessive rights to the people.[87] Consequently, the 1982 Constitution prioritized state authority by

[82] Funda Karapehlivan, 'Constructing a New Turkey through Education' (*Heinrich Böll Stiftung*, 1 October 2019) <https://tr.boell.org/en/2019/10/01/constructing-new-turkey-through-education> accessed 2 May 2024.
[83] Yüksel Çallı, 'Türk Anayasa Hukukunda Eğitim Hakkı' (Master's Thesis, Ankara Üniversitesi 2009) 65.
[84] Koçyiğit (n 5) 69-70, 72.
[85] Ali Tarık Gümüş, 'Eğitim Hakkının Dönüşümü.' (2012) 3 Journal of Social Studies Education Research/Sosyal Bilgiler Eğitimi Araştırmaları Dergisi 119, 125-126.
[86] Ulaş Karan, Right to Education-National Report Turkey (ETHOS Consortium, 2017) < https://www.ethos-europe.eu/sites/default/files/tu_right_to_education.pdf> accessed 1 July 2024.
[87] Niyazi Altunya, 'Eğitim Hakkı' [1997] Türkiye Mühendislik Haberleri 59, 63.

significantly enhancing presidential powers. It lowered parliamentary quorum requirements for meetings and decisions to reduce opposition to the executive, and increased the number of deputies required for political parties to form groups in parliament from 10 to 20.[88] This shift also had a partial impact on the Constitution's approach to educational rights, which will be explored further in the next section.[89]

2.3.1.2 Right to Education as Enshrined in the Current Constitution

The distinct contextual background surrounding the development of the 1982 Constitution resulted in some differences in how it articulates the right to education compared to its predecessor, the 1961 Constitution.

The first sign of this shift is seen in the exclusion of education from the state's duties. Although the 1961 Constitution defined the right to education as a primary duty of the state, this provision—initially included in the draft—was ultimately omitted from the final version of the 1982 Constitution. This change signifies that the state can no longer be compelled to guarantee the fulfillment of this right. This is further supported by the rationale provided for Article 65 of the 1982 Constitution, titled 'The Extent of Social and Economic Duties of the State'. In this rationale, it is explicitly stated that 'Article 65 does not grant anyone the right to demand the realization of social and economic rights from the State.'[90]

Despite these setbacks, the 1982 Constitution (hereafter referred to as 'the CRT') still imposes certain obligations on the state for education in Article 42. This article, located in Chapter Three titled 'Social and Economic Rights and Duties' under the subtitle 'Right and Duty of Education,' explicitly and broadly regulates the right to education.[91]

[88] Mahmut Çekiç, '1982 Anayasası'nın Hükümet Sistemi Açısından Değerlendirilmesi' [2016] Uyuşmazlık Mahkemesi Dergisi 441, 458-459.
[89] Ecem Savcı Yörük, 'Sosyal Devlet Anlayışı ve Türkiye'deki Gelişimi, Social State Concept and Its Development In Turkey' (2021) 6 Van Yüzüncü Yıl Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi 166, 174-175.
[90] Altunya (n 87) 63.
[91] ibid.

An exhaustive analysis of all paragraphs in Article 42 would fall beyond the scope of this work; however, key paragraphs will be highlighted below to to illuminate the Constitution's approach to the right to education.

The first paragraph of Article 42 closely mirrors Article 2 of Protocol No. 1 to the ECHR by stating, 'No one shall be deprived of the right to education.' This articulation underscores the absolute nature of the right, without allowing any exceptions based on religion, gender, or any other distinguishing status.[92] It mandates the state to not only establish the necessary educational infrastructure but also actively remove any obstacles that could prevent equal access to education.[93]

This is also evident in Article 42(7) of the Constitution, which obligates the State to provide scholarships and additional assistance to enable financially disadvantaged yet academically deserving students to pursue their education. Such requirement underscores the State's obligation to actively remove economic barriers for underprivileged students, thereby guaranteeing equitable educational opportunities for all.[94]

Article 42(2) of the Constitution delegates to the legislature the authority to define and regulate the right to education, as stated: 'The scope of the right to education shall be defined and regulated by law.' Pertinent to this mandate, the key laws shaping the framework for education rights in Turkish legal framework include the Law on Unification of Education (discussed in the previous section), the Basic Law of National Education, the Primary Education and Training Law, and the Law Regarding Private Schools.[95]

Article 42(3) of the Constitution stipulates that all educational programs must align with the principles and reforms of Atatürk, endorsing modern scientific and educational standards under state supervision. These principles, also emphasized in the preamble of the Constitution,

[92] Ülker (n 63) 50-51.
[93] Çallı (n 83) 83.
[94] ibid 85.
[95] ibid 77.

underscore a commitment to secularism and science-based education, reflecting the country's historical background.[96]

Article 42(5) upholds a provision from the 1961 Constitution by stating that primary education is compulsory for all and free in state schools.

As mentioned above, Article 65 of the Constitution specifies that the State's obligation to fulfill social and economic rights, contingent upon its financial capacities, marks a departure from the 1961 Constitution, which recognized the right to education as an unconditional primary duty of the state. This article has faced criticism for potentially creating conditions that may lead to the neglect of the education rights.[97] Remarks from Mümtaz Soysal, a distinguished law professor, signatory of the 1961 Constitution, and former Foreign Affairs Minister of Türkiye, offer valuable insights for accurately interpreting this article. He emphasizes that the core of the article is not whether social and economic rights are implemented based on financial resources, but rather the extent to which they are fulfilled. According to Soysal, the state must ensure the educational needs of its citizens under all circumstances, highlighting that this obligation cannot be neglected unless all available resources has been fully leveraged. [98]

Lastly, Article 17 of the Constitution, titled 'Personal Inviolability, Corporeal and Spiritual Existence of the Individual' is also closely linked to Article 42, which addresses the right to education. This article affirms every person's right to protect and improve their corporeal and spiritual existence. This right further underscores the state's duty to actively ensure education is available and accessible to all. [99]

In summary, within the current constitutional framework in Türkiye, education is recognized as both a positive and negative right, applicable to all individuals without exception. Accordingly, the state's responsibilities include not only providing the necessary infrastructure but also ensuring that every individual has access, regardless of their circumstances or legal status. Additionally, it

[96] Temuçin F Ertan, 'Türkiye Cumhuriyeti Anayasalarında Laiklik' (2007) 10 Atatürk Yolu Dergisi 409, 420.
[97] Şensoy (n 15) 35.
[98] Çallı (n 83) 92.
[99] Meral Sungurtekin Özkan, 'İnsan Hakkı Olarak Eğitim Hakkı ve Ülkemizde Kız Çocuklarının Durumu' (2019) 84 İzmir Barosu Dergisi 119,125.

requires the state to avoid policies that may create discrepancies in the access to quality education and ensure uniform quality educational standards across all regions and institutions. These principles are equally applicable to prisoners, who are the primary focus of this study.[100]

2.3.1.3 Key Legislative Framework Shaping Turkish Education

In Turkish legislation, the Basic Law of National Education of 1973, along with the Constitution, serves as the principal framework establishing the cornerstone of Turkey's education system.[101] In the context of this discussion, only a select number of provisions from this legislation will be addressed, owing to their relevance.

Article 2 of this legislation outlines the three foundational objectives of education: firstly, to foster responsible citizenship; secondly, to cultivate individuals who are globally aware and respect human rights; and thirdly, to advance vocational skills that contribute to both individual and societal development. This framework emphasizes education as a tool for developing healthy, constructive individuals actively participating in society, indicating the importance of educational opportunities also for marginalized groups like prisoners.[102]

The Basic Law of National Education also reiterates certain constitutional principles, including universality and equality in education as stipulated in Article 4, and equal opportunity as outlined in Article 8. It also indicates the state's obligation to guarantee lifelong education and to adopt appropriate measures to facilitate this provision. Importantly, Article 17, entitled 'Education Everywhere,' underscores the state's imperative to fulfill these national educational goals not only within public and private educational institutions but also *everywhere* and at every available opportunity.[103]

In 2012, the Turkish education system underwent a significant transformation with the amendment of Law No. 222 on Primary Education and Training. This amendment restructured educational from an 8-year continuous primary system to a 12-year segmented compulsory model, with four

[100] Çallı (n 83) 83.
[101] Ayşe Şimşek and Sadık Kartal, 'Türkiye Eğitim Sisteminin Amaçlarında Felsefi Akımlar' (2019) 12 Journal of International Social Research 873, 876.
[102] ibid 877-878
[103] The Basic Law of National Education of Turkey 1973.

years each of primary, middle, and high school education.[104] Implemented without pilot testing, this change has sparked widespread debate and criticism.[105] One of the most contentious aspects of this amendment is the segmentation of what was previously continuous primary education. Critics contend that this restructuring may led to a drop in enrollment rates, particularly among female students after the first 4 years, and an increase in child labor, as education beyond primary level can be pursued remotely after age 14.[106]

2.3.1.4 Practical Challenges and Policy Issues in Turkish Education

In Türkiye, while the legal framework incorporates important principles, the education sector encounters numerous practical and policy challenges that hinder the realization of its full potential.

This situation has historical roots, stemming from the mid-1970s economic crises that prompted the replacement of welfare state ideals with neoliberal concepts. This shift exerted pressure on the right to education, resulting in a reduction of the state's responsibilities in this area, with the intent of reallocating financial resources to the market.[107]

Türkiye was not exempt from this prevailing global trend. In line with this global trend, in Türkiye, the Structural Adjustment Programs (SAPs)[108] initiated by the International Monetary Fund (IMF) have also played a role in diminishing the budget allocated for social spending, including education.[109]

In general, IMF-supported programs typically utilize policy instruments designed to reduce domestic demand and increase public revenues, such as restrictions on government expenditures

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[104] Eurydice, 'Fundamental Principles and National Policies' (*European Commission*, 12 July 2023) <https://eurydice.eacea.ec.europa.eu/national-education-systems/turkiye/fundamental-principles-and-national-policies> accessed 3 May 2024.
[105] Feyza Gün and Gülsün Atanur Baskan, 'New Education System in Turkey (4+ 4+ 4): A Critical Outlook' (2014) 131 Procedia-Social and Behavioral Sciences 229, 230.
[106] ibid 233.
[107] ibid 119.
[108] SAPs were designed for low- to middle-income nations, aiming to restructure their economies based on neoliberal growth strategies. For more details, see Michael Thomson, Alexander Kentikelenis and Thomas Stubbs, 'Structural Adjustment Programmes Adversely Affect Vulnerable Populations: A Systematic-Narrative Review of Their Effect on Child and Maternal Health' (2017) 38 Public health reviews 1, 3.
[109] Deniz Kandiyoti and Zühre Emanet, 'Education as Battleground: The Capture of Minds in Turkey' (2017) 14 Globalizations 869, 870.

and wage and salary constraints. Despite some national adaptations, these policies are implemented in a fairly standard manner within their overall framework. Consequently, this standardized approach is consistent with the IMF programs executed in Türkiye.[110] Especially in practices after 1980 within Türkiye, excess demand was identified as the primary cause of internal imbalance, and restricting public expenditures was seen as the solution.[111] This phase was characterized by a significant price shock resulting from price decontrol in the private sector, which denotes the removal of all government controls or interferences in setting prices.[112] Following the price decontrol, subsidies in the public sector were removed, even in crucial areas such as health, agriculture, and education.[113] This is also reflected in statistical data: from 1980 to 1985, the share of the national budget allocated to education decreased from 2.2% to 1.4%, the lowest among all years.[114] Moreover, in 1985, the illiteracy rate was still as high as 29.3%. Additionally, 23.9% of literate individuals had not completed any schooling, indicating a potential discrepancy in functional literacy rates among the literate population.[115]

As a consequence, despite the legal acknowledgement of education's importance, its practical implementation fell short of the established legal framework.

In the present day, looking beyond statutory regulations, the challenges in Türkiye's educational sector are notably pronounced in practice and policy. According to the 2023 report released by the European Commission concerning Turkey, notwithstanding the extension of compulsory education duration to 12 years for children in 2012, notable levels of non-attendance persist at the

[110] Ercan Enç and Gökhan Aykaç, 'Türkiye'nin IMF Deneyimine Bir Bakış' (2003) 5 Gazi Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi 57, 59.
[111] ibid 65.
[112] Fikret Şenses, 'Turkey's Stabilization and Structural Adjustment Program in Retrospect and Prospect' [1991] Developing Economies 210, 216.
[113] ibid 227.
[114] Düriye Toprak, Serpil Ağcakaya and Hüseyin Gül, 'Sosyal Devlet Yaklaşımı Açısından Türkiye'de 1980 Sonrası Eğitim Harcamalarının Analizi' (2016) 31 Dokuz Eylül Üniversitesi İktisadi İdari Bilimler Fakültesi Dergisi 123, 144.
[115] İsmail Bircan, 'Türkiye'de Okuma Alışkanlığının Azalması Sorunu ve Çözüm Yolları' (2019) 22 Ankara University Journal of Faculty of Educational Sciences (JFES) 393, 396.

upper secondary level (grades 9-12).[116] In 2023, around 10% of the population within this age group is not enrolled in secondary education.[117]

One of the primary contributors is inadequate funding for education; according to 2022 OECD statistics, Türkiye ranks third lowest among in per-student expenditure at primary and secondary levels among OECD countries.[118] Moreover, analysis of Ministry of National Education (MEB) data reveals that despite increases in the overall education budget over the past five years, its share of the central government's budget has decreased. This trend suggests a decreasing prioritization of education in the fiscal strategy of the central government.[119] The share of state education expenditures in gross domestic product (GDP) was 4% in 2020, declining to 3.4% in 2021[120] and further to 3.1% in 2022.[121] Official statistics for 2023 have not yet been published.

Another problem is related to the inconsistent quality of education. Although Türkiye adopted the Bologna process (a European standard for higher education systems), there is still significant variation in the quality of its higher education institutions. These discrepancies do not comply with the constitutional provisions regarding equal opportunities in education.[122]

Educational disparities worsened regionally after two major earthquakes (7.7 and 7.6 magnitude) struck southeastern Türkiye on February 6, 2023. According to the UNICEF Annual Report, these earthquakes disrupted education for almost 4 million children, many of whom had not returned to

[116] Directorate-General for Neighbourhood and Enlargement Negotiations, 'European Commission Türkiye Report 2023' (European Commission, 8 November 2023) <https://neighbourhood-enlargement.ec.europa.eu/document/download/eb90aefd-897b-43e9-8373-bf59c239217f_en?filename=SWD_2023_696%20Türkiye%20report.pdf> accessed 3 April 2024.
[117] Mahmut Özer, 'Türkiye'de Eğitim Sisteminde Son 20 Yılda Gerçekleştirilen Dönüşümün Son OECD Raporuna Dayalı Bir Değerlendirmesi' (2023) 13 Yükseköğretim ve Bilim Dergisi 148, 158.
[118] Burcu Meltem Arık and others, *Eğitim İzleme Raporu* (Eğitim Reform Girişimi, 2023) <https://www.egitimreformugirisimi.org/wp-content/uploads/2023/12/EgitimIzlemeRaporu2023.pdf> accessed 6 May 2024.
[119] ibid.
[120] Turkish Statistical Institute (TÜİK), 'Eğitim Harcamaları İstatistikleri 2021' (*TÜİK*, 7 December 2022) <https://data.tuik.gov.tr/Bulten/Index?p=Egitim-Harcamalari-Istatistikleri-2021-45553> accessed 5 March 2024.
[121] Turkish Statistical Institute (TÜİK), 'Eğitim Harcamaları İstatistikleri 2022' (*TÜİK*, 7 December 2023) <https://data.tuik.gov.tr/Bulten/Index?p=Egitim-Harcamalari-Istatistikleri-2022-49574> accessed 5 March 2024.
[122] European Commission Türkiye Report 2023 (n 116) 106.

school by August 2023.[123] Subsequently, in October 2023, Türkiye adopted the 12th Development Plan for the period 2024 to 2028. This plan aims to increase disaster resilience, build a more durable and flexible educational system to cope with emergency situations, enhance the remote education system, and address disparities in school quality.[124] It is hoped that these plans will be realized; however, it is too early to determine their success at this stage.

While numerous additional issues merit discussion, the scope of this thesis necessitates limitations. One final point to add is the centralization of education, which remains a contentious issue in Türkiye. This is particularly problematic regarding the implementation of concepts like localization, democratization, and participation in practice. Critics argue that there has been minimal progress in localization, with only minor powers being delegated to lower levels.[125]

CHAPTER 3 Access to Education as a Fundamental Right for Prisoners

Today is Sunday.
Today, for the first time, they took me out into the sun.
And I was surprised first time in my life,
that the sky is so far away from me,
So blue, so wide.
Nazım Hikmet Ran

3.1 Evolution of Prison Policies

3.1.1 From Punishment to Rehabilitation: Europe Prison Policies

'Out of sight, out of mind' aptly summarizes the prevailing perception of prisoners, highlighting society's tendency to disregard or forget about them when they are removed from public view. However, prisoners continue their lives within prison walls, where daily interactions and facilities

[123] UNICEF, 'Country Office Annual Report 2023 Turkey' (*UNICEF,* 2023) <https://www.unicef.org/media/152076/file/Türkiye-2023-COAR.pdf> accessed 7 March 2024.
[124] Twelfth Development Plan, Official Gazette (1 November 2023) no 32356 <https://www.resmigazete.gov.tr/eskiler/2023/11/20231101M1-1-1.pdf> accessed 20 April 2024.
[125] Esergül Balcı, 'Adalet ve Kalkınma Partisi İktidarı Döneminde Türkiye'de Eğitim Politikaları' (2021) 8 İnsan ve İnsan 117, 128.

persistently shape their behaviors and identities. Although hidden from public view, *human* life within the prison persists, endowed with the inherent fundamental rights and dignity it deserves. Nonetheless, prisons often exemplify environments where the disparity between fundamental rights and actual practices is most evident. For this reason, it is crucial to ask ourselves again: What are the underlying reasons for incarcerating individuals, and what outcomes are intended by this practice?

The responses to these questions have not remained static; they have varied across different historical contexts and continue to evolve alongside changing social and political approaches. Therefore, a brief review of the historical development of prison policies is essential to illuminate the subject more effectively.

Prisons are not a recent invention; though the exact date of their creation is unknown, they even existed in ancient and medieval times.[126] However, the purpose of prisons in that era differed significantly; they were primarily used for detaining suspects awaiting trial or convicted individuals awaiting the implementation of their sentences. Therefore, incarceration itself was not considered the punishment during that time. Instead, forms of corporal punishment such as the death penalty, mutilation, or whipping were more prevalent.[127] Gradually, milder forms of corporal sanctions began to replace those harsher methods. Within European penal systems, this shift occurred over a long period, beginning in the 16th century and continuing into the 20th, with a period of rapid change in the late 18th century.[128] Although the birth of modern confinement began in the 16th century, it predominantly took the form of the 'prison workhouse,' where convicts were compelled to work.[129] These institutions represented the initial stage of non-corporal punishment, although some forms of physical punishment were still implemented.[130]

[126] Rais Gul, 'Our Prisons Punitive or Rehabilitative? An Analysis of Theory and Practice' (2018) 15 Policy Perspectives 67, 67.
[127] Nikolaus Wachsmann, 'Review of *Oxford History of the Prison: the Practice of Punishment in Western Society*' (*Reviews in History*, November 1996) <https://reviews.history.ac.uk/review/14/> accessed 12 June 2024.
[128] David Garland, 'The Prison Experience: Disciplinary Institutions and Their Inmates in Early Modern Europe, by P. Spierenburg' (1994) 66(1) The Journal of Modern History 117, 117.
[129] Falk Bretschneider, 'Pieter Spierenburg's Contribution to the History of Confinement in Early Modern Europe' (2019) 23 Crime, Histoire & Sociétés/Crime, History & Societies 123, 124.
[130] Garland (n 128) 118.

Moving into the 18th century, the latter half witnessed a drastic shift in the prison policy, wherein imprisonment began to be seen as a means of punishment in itself. This change was influenced by Enlightenment-era philanthropists like John Howard [131] and Cesare Beccaria.[132] John Howard is a highly significant figure in the history of prison reform across Europe. While serving as High Sheriff of Bedfordshire, he uncovered the inhumane treatment that prisoners faced throughout Europe. In 1777, he published 'The State of the Prisons' to share his observations.[133] Inspired by a prison in Ghent, he pioneered the concept of 'reformation of the prisoner', a notion that was almost unheard of at that time. Moreover, Howard advocated for proper nutrition, humane treatment, sanitary cells, improved ventilation, and regular inspections by the magistrates. Another significant aspect of his philosophy was his belief that idleness contributed to criminal behavior. However, he opposed forced labor, arguing that it quickly becomes hated labor. Instead, he recommended conducting workshops in prisons to engage inmates productively.[134] His ideas, focused on rehabilitation rather than merely punitive measures, laid the groundwork for future reforms and profoundly influenced prison reform advocates in Europe and beyond.[135]

Another remarkable figure of 18th century was the Italian nobleman Cesare Beccaria. He asserted that imprisonment should not focus on punishment and social revenge, but rather on preventing crime. His ideas had a profound impact and paved the way for the enactment of new laws concerning prison regulations in many European countries.[136]

[131] An English philanthropist, who lived between 1726-1790, and was appointed High Sheriff of Bedfordshire in 1773. He visited many prisons, including those in Scotland, Ireland, France, and many other European countries. The shocking conditions he witnessed made him an advocate of prison reform. For more details, see Robert Alan Cooper, 'Ideas and Their Execution: English Prison Reform' [1976] Eighteenth Century Studies 73, 76.
[132] Dirk van Zyl Smit and Sonja Snacken, Principles of European Prison Law and Policy: Penology and Human Rights (OUP Oxford 2009) 1-2; Dip Jyoti Bez, 'Reformative and Rehabilitative Treatments of Offenders: A General Overview' (2018) 2 MSSV Journal of Humanities and Social Sciences 70, 74.
[133] Cooper (n 131) 77.
[134] ibid 77-80.
[135] ibid 84.
[136] Ronald S Fenton, 'Story of Prisons: Their Evolution as an Agency of Punishment' (1954) VII(10) The UNESCO Courier 11, 14-19, illus <https://unesdoc.unesco.org/ark:/48223/pf0000070070> accessed 3 July 2024.

Elizabeth Fry (1780-1845) also merits attention for her contributions to improving prisoners' mental health through education and occupation,[137] notably introducing these initiatives at London's Newgate Prison in 1817.[138]

Transitioning into the 19th century and building upon earlier efforts, the first International Prison Congress held in London in 1872 declared that, "Moral regeneration-should be the primary aim of prison discipline; hope should be more powerful than fear."[139] Following this congress, the International Penal and Penitentiary Commission was founded to promote global uniformity in prison standards. As a result of its initiatives, numerous European countries began incorporating these standards into their prison policies.[140]

After World War I, efforts by the International Penal and Penitentiary Commission to promote prison reform faced setbacks in Europe with the rise of fascist governments. Rehabilitation and human rights for prisoners were abandoned, and prisons became punitive institutions, often resembling concentration or labor camps, leading to increased incarceration rates.[141]

Despite this deterioration, the Standard Minimum Rules for Prisoners, which was drafted by the International Penal and Penitentiary Commission, was endorsed by the League of Nations in 1934, although WWII made its implementation infeasible.[142] After WWII, the lessons drawn from the atrocities emphasized the importance of human rights protection globally, which also influenced penal policies. Human rights documents reflecting this awareness prohibited torture and inhuman forms of punishment, as stated in the UDHR.[143]

Turning to the present day, it is evident that, due to historical advancements, modern correctional facilities are significantly more humane than their predecessors. However, the punitive and rehabilitative approaches remain subjects of contention, profoundly influenced by socio-economic

[137] Anne Summers, 'In a Few Years We Shall None of Us That Now Take Care of Them Be Here: Philanthropy and the State in the Thinking of Elizabeth Fry' (1994) 67 Historical Research 134.
[138] Cormac Behan, 'Education in Prison: A Literature Review.' [2021] UNESCO Institute for Lifelong Learning, 32; Janet Whitney, 'Elizabeth Fry' (1945) 7 How. J. 14, 16.
[139] Fenton (n 136) 18.
[140] ibid.
[141] Dirk van Zyl Smit (n 132) 4-5.
[142] ibid 5.
[143] ibid 5.

trends and prevailing political discourse. Returning to the initial question, if the rationale behind incarceration is to protect current and potential victims, the rehabilitation of prisoners emerges as the most effective method. This approach not only ensures public safety by reducing recidivism rates and the financial burden of reincarceration, but also aligns with the principles and values upheld by international human rights agreements.[144] As the former Chief Justice of US Supreme Court pointed out, "To put people behind walls or bars and do little or nothing to change them is to win a battle but to lose a war". [145]

3.1.2 Prison Education as an Essential Tool for Rehabilitation

As demonstrated by the aformentioned provisions in Chapter 2, both international regulations and Türkiye's national legal framework affirm the universal right to education without exceptions. Accordingly, it is essential to reaffirm that education is a fundamental human right above all else, thereby confirming that prisoners are also entitled to this right.[146] This clarification underscores that education within correctional facilities is not solely a rehabilitative tool but fundamentally an indispensable obligation. Hence, prison education should consistently place the individual in prison at the center of its focus, rather than yielding to social or political pressures.[147]

Nevertheless, an examination of education's utility within the context of penal policy also merits consideration. Discussions on education as part of penal strategies often emphasize the term 'rehabilitation.' But what exactly is rehabilitation? Exploring its etymology provides a valuable starting point for understanding. The term 'rehabilitation' combines the French prefix 're-,' meaning 'again,' and the Latin 'habilis,' meaning 'able.' Therefore, rehabilitation can be defined as the process of making someone able to readapt to society.[148] This raises a question: Why should education be employed as a tool for rehabilitating prisoners?

[144] Gul (n 126) 69.
[145] Dip Jyoti Bez, 'Reformative and Rehabilitative Treatments of Offenders: A General Overview' (2018) 2 MSSV Journal of Humanities and Social Sciences 70, 70.
[146] John Vorhaus, 'Prisoners' Right to Education: A Philosophical Survey' (2014) 12 London Review of Education 162, 162.
[147] Lorraine Higgins, 'Exploring the Relationship between Education and Rehabilitation in the Prison Context.' (2021) 7 Journal of Prison Education and Reentry 144, 146.
[148] ibid 145.

A useful starting point for answering this question is to consider the relationship between educational attainment and criminal behavior. Studies indicate that levels of educational attainment are generally low within the incarcerated population, which is a pattern observed in Türkiye as well.[149] Based on data available as of August 2023, the majority of the incarcerated population in Türkiye consists of individuals with only elementary education. Moreover, higher levels of educational attainment are associated with lower incarceration rates.[150] This suggests that a higher level of education correlates with a reduced likelihood of engaging in criminal activities. Therefore, providing education in prison enables inmates to access knowledge previously unavailable to them, potentially reducing their likelihood of reoffending. Research conducted in the United States and England and Wales demonstrates that targeted rehabilitation initiatives for prisoners, such as educational and vocational programs, yield substantial reductions in recidivism rates. Consequently, these programs not only enhance public safety but also lead to cost savings within the criminal justice system for governments.[151]

Further evidence indicates that inmates engaging in educational or vocational activities have a greater likelihood of reintegrating into the labor market compared to those who do not. This engagement is critical for fostering social integration, as individuals who are integrated into the labor market are less likely to re-offend.[152] This correlation is further underscored by studies demonstrating that individuals who maintain steady employment are less inclined to engage in criminal behavior. This phenomenon is attributed to the role of employment in fostering adherence to societal norms and encouraging lawful conduct, thus decreasing the likelihood of criminal behavior. Moreover, interactions with employed peers contribute to the adoption of positive social values, beliefs, and attitudes among individuals with a history of offending.[153]

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[149] Vorhaus (n 146) 165.
[150] Ministry of Justice of Türkiye, *Distribution of Prisoners and Convicts in Penal Institutions According to Their Education Levels as of 02.08.2023* (2 August 2023) <https://cte.adalet.gov.tr/Resimler/Dokuman/30820231138104-CEZA~1.PDF> accessed 17 May 2024.
[151] Giorgia Spolverato, 'The Implementation of the European Prison Rules Regarding Education in Belgium and Ireland' (2021) 29 European Journal of Crime, Criminal Law and Criminal Justice 47, 49.
[152] Hugo Rangel Torrijo and Marc De Maeyer, 'Education in Prison: A Basic Right and an Essential Tool' (Springer, 2019) 671, 672.
[153] Grant Duwe and Valerie Clark, 'The Effects of Prison-Based Educational Programming on Recidivism and Employment' (2014) 94 The Prison Journal 454, 474-476.

The benefits of education for mental and psychological health are also indisputable. Engaging in productive activities is highly beneficial in transforming inmates' self-image as it helps them move away from feelings of worthlessness and redundancy, thereby fostering positive feelings of self-respect and deservingness. This transformation is closely aligned with the principles of rehabilitation.[154] Accordingly, education serves as a tool through which individuals can come to recognize their place in the world, a realization that is often absent among those who find themselves in prison, and it facilitates the development of new identities. The statements from prisoners in Türkiye further affirm the role of education in building a healthy self-perception, as follows:

> "I don't go out just for the sake of going out anyway. This place (the university) helped me find myself and discover my personality. I still have other great things to do. My perception has changed; life is worth living. I was living there in prison too, but I aim to find myself, and this can only happen through studying." [155]

> "Here, at the university, I have rediscovered myself. This feels like my normal life now. People even wonder how someone like me could have committed a crime." [156]

Another significant function of education in prisons is its role as a coping mechanism. It is undeniable that, even at its most basic level, the design of the prison environment is intended to deliberately distress offenders.[157] Exposure to prison environment, characterized by pain and unconventional norms of living and interaction, leads to various negative mental health outcomes, including post-traumatic stress disorder and major depressive disorder.[158] In this environment, education acts as a psychological shield to alleviate the pain by providing an opportunity for self-development.

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[154] Vorhaus (n 146) 165.
[155] Hasan Hüseyin Aygül, Gökçe Çelik and Alara Fulya Şensoy, 'Mahpus Öğrencilerin Benlik Sunumları: Dramaturjik Ilkeler, Damga ve Total Kurum' (2018) 1 Süleyman Demirel Üniversitesi Fen-Edebiyat Fakültesi Sosyal Bilimler Dergisi 186, 197.
[156] ibid 197.
[157] Thom Gehring, 'Call It What It Is: Post-Traumatic Stress Disorder (PTSD) From Life in Prison' (2019) 6 Journal of Prison Education and Reentry (2014-2023) 129, 130.
[158] Clare S Allely and Bob Allely, 'Post Traumatic Stress Disorder in Incarcerated Populations: Current Clinical Considerations and Recommendations' (2020) 10 Journal of Criminal Psychology 30, 31.

Research conducted in Irish prisons indicates that education helps mitigate the trauma associated with imprisonment and strengthens inmates' capacity to endure their time in penal institutions. Additionally, it provides a reprieve from the stressful environment they experience.[159] Similarly, a 2018 study at the University of Georgia suggested that inmates with restricted access to work assignments exhibited higher levels of depression.[160]

These findings align with research demonstrating a correlation between psychological well-being and the sense of life meaning. The same study further indicates a statistically significant relationship between an individual's sense of life's meaning and their engagement in various activities. Data analysis underscores a reliable connection between an individual's perceived life meaningfulness and their participation in activities such as cultural events, sports, or other social engagements.[161] Similarly, a 2003 study conducted in England found that the absence of activity and mental stimulation in prisons correlates with heightened feelings of anger, frustration, and anxiety.[162] Consequently, education plays a crucial role in the psychological health and social functionality of inmates by offering a positive environment for socialization, mutual support, and meaningful activity.[163]

Building on previous studies, recent research conducted in a Dutch remand prison provides additional thought-provoking insights. This study assesses the effects of a deprived prison environment—marked by a lack of physical, social, and mental stimuli—on neurocognitive functioning. The findings indicate that after three months, inmates' brain functions related to self-regulation, including emotional regulation and planning abilities, deteriorated. This deterioration suggests that, while many inmates already struggle with self-regulation, a deficient environment could exacerbate these issues further, thereby increasing the risk of recidivism and hindering the

[159] Cormac Behan, 'Learning to Escape: Prison Education, Rehabilitation and the Potential for Transformation.' (2014) 1 Journal of Prison Education and Reentry 20, 23.
[160] Katie Rose Quandt and Alexi Jones, 'Research roundup: Incarceration can cause lasting damage to mental health' (*Prison Policy Initiative*, 13 May 2021) <https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/> accessed 13 May 2024.
[161] George Kleftaras and Evangelia Psarra, 'Meaning in Life, Psychological Well-Being and Depressive Symptomatology: A Comparative Study' (2012) 3 Psychology 337, 340-341.
[162] Jo Nurse, Paul Woodcock, and Jim Ormsby, 'Influence of Environmental Factors on Mental Health within Prisons: Focus Group Study' (2003) 327(7413) BMJ 480.
[163] Kirstine Szifris, Chris Fox and Andrew Bradbury, 'A Realist Model of Prison Education, Growth, and Desistance: A New Theory.' (2018) 5 Journal of Prison Education and Reentry 41, 42.

rehabilitation process.[164] These results raise a critical question: How can prisoners effectively reintegrate into society if they lack essential cognitive skills such as attention, planning, and impulse control?[165] Furthermore, the study reinforces previous research suggesting that self-regulation, especially impulse control, can be significantly enhanced by enriching environments with more physical, mental, and social activities. These findings are pivotal as they provide neurological evidence that the brain's self-regulation functions are directly influenced by environmental conditions. This underscores the profound role that education plays within prisons, exceeding commonly held assumptions.[166]

Before concluding this section, it is essential to highlight that rehabilitation is a complex concept subject to diverse interpretations. Understanding what rehabilitation entails, particularly in the context of prison education, requires careful consideration. Edgardo Rotman's distinction between authoritarian and anthropocentric rehabilitation provides valuable insight into this issue.[167] According to Rotman, the authoritarian model is a subtler version of the old approach, wherein rehabilitation is used to enforce compliance with a predetermined pattern of behavior through intimidation and compulsion. On the other hand, the anthropocentric approach emphasizes a humanistic perspective, prioritizing human beings over rigid ideologies.[168] As an advocate of the anthropocentric approach, Rotman argues that education in prison should not adopt a top-down approach focused on 'fixing' a 'broken' person. Instead, it should recognize inmates as unique individuals who possess inherent rights, foster critical thinking and freedom of expression, promote interactive learning, and ensure that participation is voluntary rather than coercive.[169] Additionally, it is essential that it has the quality of fostering a sense of academic self-efficacy, defined as the student's confidence in their own skills to meet academic requirements and achieve

[164] Sjors Ligthart and others, 'Prison and the Brain: Neuropsychological Research in the Light of the European Convention on Human Rights' (2019) 10 New Journal of European Criminal Law 287, 288-292.
[165] ibid 292.
[166] ibid 292.
[167] Behan (n 159) 21.
[168] Fergus McNeill, 'Punishment as Rehabilitation' in Gerben Bruinsma and David Weisburd (eds), The Springer Encyclopedia of Criminology and Criminal Justice (Springer 2014) 4195-4206.
[169] Higgins (n 147) 148, 151-152.

high success academically.[170] This approach, which prioritizes the 'individual' over the 'offender', is considered the sole pathway to achieve genuine transformation. [171]

3.2 Prisoners' Right to Education in the Context of Europe

3.2.1 The Council of Europe's Role as a Penal Education Policy Setter

The CoE, recognized as one of the most significant precursors of human rights in this era, plays a pivotal role in promoting social, legislative, and judicial reforms among its Member States, which includes Türkiye. One of its most notable achievements is the European Convention on Human Rights, which serves as the foundation for all subsequent activities of the organization. Alongside this convention, the CoE has actively supported member states in implementing judicial reforms through its recommendations and documents. This support also encompasses initiatives concerning prison education, which will be elaborated upon in the following sections.[172]

3.2.2 Recommendation No. 89(12)

Recommendation No. 89(12), adopted by the Committee of Ministers in 1989, delineates the CoE's policies on prison education. These guidelines exemplify the CoE's core values that are embedded throughout its diverse policy domains.

As the CoE consistently integrates a human rights approach into all its policies, this perspective is reaffirmed in its recommendations regarding the educational needs of prisoners, which are addressed holistically with a focus on the individual. Prisoners are acknowledged by the Council as 'equal members of society' and 'whole persons'. [173] It is also specified in the Recommendation No. 89(12) that prisoner education should embody the typical elements of 'adult education'. [174]

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[170] Beate Buanes Roth, Arve Asbjørnsen and Terje Manger, 'The Relationship between Prisoners' Academic Self-Efficacy and Participation in Education, Previous Convictions, Sentence Length, and Portion of Sentence Served.' (2016) 3 Journal of Prison Education and Reentry 106, 117; İbrahim Dadandı, 'Academic Self-Efficacy, Study Skills and Academic Achievement: A Serial Mediation Model' (2023) 7 Research on Education and Psychology 291, 292.
[171] Higgins (n 147) 153-154.
[172] Kiki Maleika Qiu, 'Exploring Discourses on Prison Education. A Comparative Analysis of Prison Education Policies of the UK, Norway and Ireland' (Master's thesis, Stockholm University 2020) 5.
[173] James King, 'Review of European Prison Education Policy and Council of Europe Recommendation (89) 12 on Education in Prison' [2019] Scotland, United Kingdom: EuroPris, 8.
[174] Qiu (n 172) 8.

But what distinguishes adult education from other practices? Adult education stands apart from initiatives such as offense-focused courses tailored to address the specific needs and circumstances of the prison environment, or training programs primarily focused on enhancing employability.[175] To understand the essence of adult education, it is crucial to distinguish between training and education. Unlike training, which serves as a means to achieve specific ends like employment or rehabilitation, education is an end in itself. It comprehensively addresses the individual, leading to transformations in their awareness and overall worldview. This captures the essence of adult education, which aims to facilitate profound transformations in individuals' lives, enhancing critical abilities that are directed outward at societal structures and inward at personal beliefs and behaviors.[176] This form of education is vital within the prison system, as it has the potential to facilitate profound individual transformations, which in turn, can lead to significant societal changes.

The CoE emphasizes the benefits and objectives of adult education in Recommendation No. 81(17) on Adult Education Policy. This document underscores that adult education plays a fundamental role in promoting equality of educational opportunities and fostering cultural democracy. The crucial role of adult education in the healthy development of individuals is also highlighted, as it equips them to fulfill diverse societal roles such as those of parents, consumers, and citizens within their communities. Furthermore, adult education is recognized as a powerful mechanism for safeguarding democracy and protecting the rights of disadvantaged groups. Ultimately, the Recommendation asserts that adult education empowers individuals to critically evaluate and consciously respond to the ever-increasing flow of information.[177]

As a result of adopting the adult education approach in prisons, the CoE also recommends education be conducted outside the prison whenever feasible and always on a voluntary basis.[178]

[175] Anne Costelloe and Kevin Warner, 'Prison Education across Europe: Policy, Practice, Politics.' (2014) 12 London Review of Education 175, 177.
[176] ibid 177.
[177] ibid 176; Council of Europe Committee of Ministers, 'Recommendation No R (81) 17 of the Committee of Ministers to Member States on Adult Education Policy' (Adopted 6 November 1981 at the 339th Meeting of the Ministers' Deputies).
[178] Qiu (n 172) 8.

As the CoE adopts a 'whole person' approach, it recommends that educational opportunities for prisoners be as comprehensive as those available to individuals outside the prison. A broad curriculum is also effective as it can appeal to a diverse audience with varied interests, thereby enhancing prisoner participation in educational activities.[179]

Recommendation No. 89(12) identifies three benefits of prison education: firstly, mitigating the adverse impacts of penal institutions to minimize the harm inflicted upon inmates[180]; secondly, compensating for the often inadequate educational backgrounds of prisoners; and thirdly, rehabilitating inmates as a preventive measure against future criminal behavior.[181]

In its recommendation, the CoE also advocates for education to be considered equally significant as work activities within the prison environment. It emphasizes that this equality can only be achieved if inmates do not face financial or other disadvantages when choosing education over work.

While the provisions of the Recommendation are significant for adopting a person-centered, adult education approach to address rehabilitation and daily life issues of prisoners, recent technological advancements suggest that updating these recommendations with contemporary educational methodologies could further enhance their effectiveness. These updates could elevate educational facilities in prisons by utilizing advanced technology to offer tailored programs for inmates from diverse backgrounds, addressing barriers such as language and educational levels, and promoting greater participation.

In this respect, the Expert Group on prison education facilitated by the European Organisation of Prison and Correctional Services (EuroPris) recommends revising the Recommendation No. 89(12). Their report includes a proposal to integrate secure access to Internet services, which could

[179] Kevin Warner, 'Every Possible Learning Opportunity: The Capacity of Education in Prison to Challenge Dehumanisation and Liberate "the Whole Person"' [2017] Innovation in Education: Voices from the Front Line 32, 34.
[180] Costelloe and Warner (n 175) 176.
[181] Warner (n 179) 34.

bring prison education in line with modern educational and research opportunities, thereby greatly enhancing the available resources.[182]

3.2.3 The European Prison Rules

The European Prison Rules (EPR), considered the most comprehensive document for standardizing prison regulations, were drafted by Council for Penological Cooperation and adopted by the Committee of Ministers of the CoE in 1973.[183]

The EPR comprise recommendations aimed at establishing standards for various aspects of the prison environment, including the treatment of prisoners, as well as organizational matters such as staffing and management. Thus, the EPR are considered indicative of European consensus on penal policy.[184]

While these rules lack binding force, they carry authoritative weight as they are referenced in numerous political and legislative texts. Notably, the ECtHR frequently cites the EPR both as a rationale and a justification in its judicial decisions concerning penitentiary matters.[185] Although many prison rules are considered soft law and thus non-binding, they acquire a quasi-binding status through court decisions, particularly those of the ECtHR. The ECtHR's endorsement of these standards significantly enhances their authority and influence in the field of penitentiary law.[186]

The rules have undergone four revisions since their inception in 1973, with the most recent update occurring in 2020. These revisions have been informed by scientific research, jurisprudence from

[182] King (n 173) 5, 7, 15, 18; EuroPris, 'About' (Europris) accessed 22 April 2024.
[183] *Guidance Document on the European Prison Rules 2023* (Penal Reform International and the Council of Europe, first published September 2021) <https://cdn.penalreform.org/wp-content/uploads/2022/03/PRI-CoE_Short-guide-to-the-European-Prison-Rules.pdf> accessed 18 May 2024.
[184] *Prisons and Detention Conditions in the EU* (Commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, PE 741.374 - February 2023), <https://www.europarl.europa.eu/RegData/etudes/STUD/2023/741374/IPOL_STU(2023)741374_EN.pdf> accessed 18 June 2024.
[185] ibid 61.
[186] ibid 61.

the ECtHR, and developments in international legal instruments. The EPR provide crucial guidance for all CoE member states, including Türkiye.[187]

In this regard, the drafters of the EPR took into account scientific research indicating that authoritarian and totalitarian prison environments contribute to negative psychological conditions among prisoners, which result in increased aggressive behavior and resistance to institutional authority. Conversely, their psychological development is enhanced when their needs are respected.[188]

Based on these findings, the EPR are founded on two main principles: first, the 'normalization' of the prison environment, which involves efforts to make conditions within the prison as similar as possible to life outside prison; second, the principle of 'responsibilization', aimed at fostering personal responsibility in the daily lives of prisoners.[189] These principles of normalization and responsibilization are fundamental to prison education, as education plays a crucial role in fostering a sense of autonomy. This autonomy is essential to both principles, as it empowers individuals to take responsibility for their actions and integrate more effectively into society. [190]

The key articles on education in the EPR include Article 28, titled 'Education,' which outlines general provisions, and Article 106, titled 'Education of Sentenced Prisoners,' which addresses additional aspects of prisoners' education. Additionally, Article 4 indirectly pertains to education.[191]

According to Article 4, which serves as a general provision applicable to all aspects of prison management, conditions that infringe upon prisoners' human rights cannot be justified by a lack of resources. Since education is also a human right, this rule provides guidance for the provision of educational facilities for prisoners.[192]

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[187] Marie Crétenot, From National Practices to European Guidelines: Interesting Initiatives in Prisons Management (Antigone Edizioni 2013).
[188] ibid 10.
[189] ibid 11.
[190] ibid 11.
[191] European Prison Rules, Recommendation Rec(2006)2 (adopted by the Committee of Ministers of the Council of Europe on 11 January 2006).
[192] ibid.

As concerns Article 28, it introduces general provisions and incorporates principles from Recommendation No. 89(12). This principles emphasize the importance of providing comprehensive educational opportunities to prisoners, ensuring equitable access to education, and advocating that inmates engaged in educational activities should not face disadvantages compared to those in work programs. Article 28 additionally prioritizes inmates in need of literacy, numeracy, and basic or vocational education. It also emphasizes the importance of providing special attention to young prisoners and those with specific educational needs, such as disabilities or foreign origin.[193]

The EPR emphasize the importance of reintegration by advocating for prisoners' inclusion into national educational and vocational systems where feasible. This approach aims to facilitate a smooth continuation of education upon release. Furthermore, the EPR advocates for external educational institutions to oversee prisoners' education, ensuring it meets the quality and standards expected in society at large.[194]

In Article 106, it is stipulated that its provisions should be interpreted in line with the general principles outlined in Article 28.[195] Article 106 highlights the central role of education in prisons, aiming to improve educational attainment and guide inmates towards responsible, crime-free lives. It emphasizes staff responsibility to promote prisoner participation in educational programs and suggests tailoring educational initiatives to fit the duration of inmates' prison sentences.[196]

Before concluding this section, it is important to note that while the EPR are considered a standard for prison operations, their soft law nature means that many CoE Member States do not fully adhere to these recommendations. Even when laws aligned with the EPR have been enacted, their actual application and enforcement can be inconsistent and vary in practice.[197]

[193] ibid.
[194] ibid.
[195] ibid.
[196] ibid.
[197] *Prisons and Detention Conditions in the EU* (n 197) 61.

3.2.4 The ECtHR's Stance on Prison Education

While the ECHR and its Protocol No. 1 concerning the right to education do not explicitly include provisions for prisoners, the jurisprudence and interpretation of the ECtHR play a crucial role in safeguarding prisoners' rights. Below, an attempt will be made to further shed light on the ECtHR's stance on prisoner education, based on cases recognized as pivotal and featured in its guide on Article 2 of Protocol No. 1 to the ECHR.[198]

It is explicitly affirmed by the ECtHR that "the Convention does not stop at the prison gate", extending its protections to prisoners' rights.[199] To further emphasize this stance, the Court has declared that "Prisoners generally continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, except for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5."[200]

A significant advancement in protecting prisoners' educational rights occurred when the Grand Chamber of the ECtHR recognized 'rehabilitation' as a fundamental goal of penal policies, specifically defining it as the 'reintegration of prisoners into society'. By emphasizing this principle, the Court imposed a positive obligation on Member States to structure their penal institutions and policies accordingly.[201]

However, the Court also adjudged that Article 2 of Protocol No. 1 only protects the use of 'existing' educational facilities and does not compel states to establish educational facilities where none exist. In other words, the Court held that Article 2 of Protocol No. 1 does not impose a positive obligation to provide education in all prison circumstances.[202] Hence, the Court finds a violation only when a prisoner cannot access an existing educational facility.[203]

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[198] *Guide on Article 2* (n 57).
[199] ibid 63.
[200] *Hirst v UK* (No 2) App No 74025/01 (ECtHR, 6 October 2005).
[201] *Ligthart and others* (n 177) 293-294.
[202] *Velyo Velev v Bulgaria* App No 16032/07 (ECtHR, 12 July 2016).
[203] European Court of Human Rights, *Guide on the case-law of the European Convention on Human Rights Prisoner's Rights* (updated 31 August 2022, prepared by the Registry) <https://ks.echr.coe.int/documents/d/echr-ks/guide_prisoners_rights_eng> accessed 17 April 2024.

This approach has faced significant criticism, particularly due to the absence of educational facilities in some prisons. Critics argue that the ECtHR should mandate universal access to education in prisons, establish standards for facilities, and invoke the principle of human dignity to justify prison education, as the lack thereof undermines prisoners' human rights protection.[204]

The Court has also faced criticism for its stance on the interruption of full-time education due to lawful detention. In the case *Georgiou v. Greece*, the Court ruled that the applicant's inability to take exams during a 14-month period of legal detention was deemed temporary. The Court adjudged that this situation did not permanently deprive him of access to education or significantly undermine his right to an effective education, and therefore did not constitute a violation of the right to education. Additionally, the Court emphasized that the ECHR does not explicitly require governments to fund or organize education in any specific manner, including handling such interruptions.[205]

Similarly, in the case of *Epistatu v. Romania*, a student's father applied to the Court after his detained son's request to complete his final year of high school through attendance was denied by prison authorities, citing the absence of high school courses within the prison. The Court ruled that the restriction on full-time education, which applied only during the period of detention, and considering the availability of other training and educational programs in the prison, did not constitute a violation of the right to education protected under Article 2 of Protocol No. 1.[206] Critics argue that the Court's swift conclusion overlooked the critical role of education in prisons and failed to consider relevant guidelines. They contend that this approach contradicts the Court's recognition of secondary education's importance for personal and professional development, implying less state discretion in managing it compared to higher education. Consequently, critics

[204] Sam Mottahedan, 'A Right Without Substance: The Right to Education in Prisons in European Human Rights Law' (*Berkeley Journal of International Law,* 8 March 2018) <https://www.berkeleyjournalofinternationallaw.com/post/a-right-without-substance-the-right-to-education-in-prisons-in-european-human-rights-law> accessed 3 July 2024.
[205] Dirk van Zyl Smit (n 132) 200; Georgiou v. Greece App no 45138/98 (ECtHR, 13 January 2000).
[206] Ludo Veny, 'The Right of Education: The Vision of the ECtHR', 7th INTERNATIONAL CONFERENCE on SOCIAL SCIENCES (ICSS) (2017); Epistatu v. Romania App no 29343/10 (ECtHR, 24 September 2013).

suggest that a thorough evaluation of whether the inmate's educational needs were adequately considered would have been warranted.[207]

Another case concerns a common problem encountered in prisons: Internet access. In *Jankovskis v. Lithuania*, the complaint centered on a prisoner's request to access the Ministry of Education and Science's website for information on distance learning opportunities. This request was denied by prison authorities. The Court noted that the sought information was directly related to the applicant's educational pursuits, which are crucial for rehabilitation and social reintegration. Furthermore, the Court emphasized the public-service value of the Internet, as recognized by various CoE and international instruments, highlighting its importance in realizing many human rights. The Court clarified that while the right to receive information *does not impose a general obligation to provide Internet access to prisoners,* Lithuanian law granting access to educational information meant the restriction imposed constituted an interference with the right to receive information.[208]

The Court maintains a 'negative duty' approach to Internet use in prisons, similar to its stance on educational facilities, even when no such facilities exist. As evident in Jankovskis case, the Court first assesses whether the country's domestic law provides prisoners with limited Internet access. In the absence of such legislation, the Court typically concludes that there is no violation.[209]

However, the Internet access has a very critical role, particularly concerning right to education. With the Internet transforming educational delivery—many universities now offer online courses, materials, and classes—Internet access is indispensable and highly beneficial for prisoners' education. Restricted Internet use hampers prisoners' educational engagement and complicates their ability to discover educational opportunities, as corresponding with institutions via traditional letters is cumbersome and inefficient.[210] Moreover, as education becomes increasingly digitalized,

[207] Yousra Benfquih, 'On Epistatu v Romania: A missed opportunity for clarification on young prisoners' education' (*Strasbourg Observers*, 11 October 2013) <https://strasbourgobservers.com/2013/10/11/guest-post-on-epistatu-v-romania-a-missed-opportunity-for-clarification-on-young-prisoners-education/> accessed 21 May 2024.
[208] *Jankovskis v. Lithuania* App no 21575/08 (ECtHR, 17 January 2017).
[209] Felix Blommaert, 'Locked up, logged off: A closer look at protection and provision of Internet access for prisoners within the ECHR framework' (Master's Thesis, Ghent University 2021), 35, 40.
[210] Lisa Harrison, 'Prisoners and Their Access to the Internet in the Pursuit of Education' (2014) 39 Alternative Law Journal 159, 159.

prisoners without Internet access face greater difficulties in completing tasks, such as accessing readings or submitting assignments online.[211]

Furthermore, without Internet access, prisoners cannot utilize the online research tools available to other students. They must rely on the limited resources of prison libraries and materials from outside libraries, making it difficult to find the right sources and submit their assignments on time. This situation also contributes to the 'digital divide' among prisoners, which refers to unequal access to computers, the internet, and online information experienced by individuals, communities, or countries.[212]

This demonstrates that, although Article 106 of the EPR theoretically suggests that prisoners should be encouraged to attend educational programs, the practical reality does not always reflect this ideal. These hurdles can be more discouraging than encouraging, even for the most determined inmates seeking to begin or continue their education.[213]

Considering these points and the Court's acknowledgment of the Internet's critical role in the enjoyment of numerous human rights, it is suggested that the Court adopt a *positive obligation* framework. This change is deemed necessary because the current approach might unintentionally encourage states to enact laws that deny prisoners internet access to avoid judicial scrutiny.[214] Given the varying circumstances across different countries, this positive obligation can be tailored to the each country's specific context. For instance, the Court may require the state to provide Internet access in prisons unless it can demonstrate that doing so is overly burdensome or costly, while still allowing a margin of appreciation for imposing restrictions on specific content.[215]

In summary, an analysis of ECtHR rulings reveals two key points. Firstly, the Court acknowledges that incarceration does not negate an individual's fundamental rights under the Convention. Secondly, the Court supports States in implementing rehabilitative penal policies. However, the

[211] ibid 160.
[212] Mark Warschauer, 'Digital Divide', in *Encyclopedia of Library and Information Sciences*, (3rd Edition, 2010) 1551.
[213] Harrison (n 210) 160.
[214] Blommaert (n 209) 82.
[215] ibid 55.

Court still allows States considerable discretion in limiting prisoners' education.[216] Furthermore, the Court does not mandate States to provide any specific type or level of education in prisons. According to ECtHR jurisprudence, States are only required to refrain from interfering with prisoners' right to education provided that educational facilities are already available within prisons. This oblgiation constitutes a negative obligation under the ECHR framework.[217]

3.3 Access to Education in Turkish Prisons

3.3.1 Historical Background

3.3.1.1 Ottoman Empire Period

3.3.1.1.1 Legal Developments in Prison Law

To fully grasp the historical evolution of prison policies, one must delve into the legacy of the Ottoman Empire, from which modern Türkiye emerged. Considering Türkiye as a sovereign state with a history spanning only about a century, this earlier historical context remains indispensable.

Before the Tanzimat reform era, which will be explained below, there were no predefined lower or upper limits for the the duration of incarceration. The term ‘prison sentence’ was first introduced in the 1838 Military Penal Code.[218]

Prior to the Tanzimat era, the Ottoman Empire adhered strictly to Islamic rules, which were perceived as immutable and underwent minimal change. However, the onset of the industrial revolution, which had a global influence, also left its mark on the Ottoman Empire.[219] Western developments significantly influenced not only the economic and business landscapes but also prompted legislative changes within the Empire.[220]

[216] ibid 61.
[217] Dirk van Zyl Smit (n 132) 200.
[218] ibid 138.
[219] Feyza Erol Gümüşay, ‘Tanzimat Dönemindeki Düzenlemelerde Suçta ve Cezada Kanunilik, Kusur ve Hümanizm İlkeleri’ (Master’s Thesis, Istanbul University 2019), 33-34.
[220] ibid 25.

To keep pace with rapid technological and economic shifts, the Ottoman Empire needed to align itself with the modern world. In response, a reform program was initiated with the Tanzimat Edict in 1839, prepared by Mustafa Reşid Pasha, the Minister of Foreign Affairs, and read on behalf of the Sultan. This marked the first instance where the Sultan's authority, and consequently the state's authority, was limited by such an edict.[221] The edict also led to the delegation of the authority to administer punishment from the Sultan to the courts. Arguably, this edict represents the Ottoman Empire's first constitutional document.[222]

After the Tanzimat Edict of 1839, imprisonment itself became a recognized form of punishment.[223] Western countries began discussing the conditions of these prisons used for punitive purposes. Stratford Canning, the British ambassador, wrote a report in 1851 titled 'Memorandum on Improvment of Prison in Turkey', which highlighted the urgent need for prison reform. The report described prisons as dirty, dark, poorly ventilated, unsterile, and inadequate for religious practices.[224] In response, a penal reform section was included in the 1856 Edict of Reform, proposing a comprehensive program to elevate prison conditions to the standards of a 'civilized' society.[225]

Subsequent regulations focused on reforming prisoner treatment, including the prohibition of torture and mistreatment, ensuring sanitary and adequate living conditions, and guaranteeing prisoners' right to health.[226] The first documented guidelines for daily prison activities were established in 1865.[227] Significant improvements began in earnest after 1876, with the modernization of prison infrastructure and the implementation of educational and vocational programs aimed at equipping prisoners with professional skills.[228] The adoption of 'The

[221] ibid 36.
[222] ibid 36.
[223] Sevcan Öztürk, 'XIX. Yüzyıl Osmanlı Ceza Sisteminde Dönüşüm: Zindandan Hapishaneye Geçiş', (Master's Thesis, Aydın Menderes University 2014), 49.
[224] Melikşah Aydın, 'Tanzimat Sonrası Osmanlı Hukuk Sisteminde Hapishane Koşulları Açısından Mahkum Hakları (1839-1920)' [2022] Adalet Dergisi 175, 179.
[225] Hatice Akın, 'Osmanlı Devleti'nde Hapishane Islahatına Dair 1893 Tarihli Bir Nizamname Önerisi' (2011) 3 History Studies 23, 25.
[226] ibid 25; Özgür Yıldız, 'Osmanlı Hapishaneleri Üzerine Bir Değerlendirme: Karesi Hapishanesi Örneği' (2015) 9 Gazi Akademik Bakış 91, 95.
[227] Aydın (n 224) 179.
[228] Öztürk (n 223) 103.

Regulation for Prisons and Houses of Detention' in 1880 further mandated work for all prisoners, solidifying these reforms.[229]

3.3.1.1.2 Realities of Prisons in the Empire

In the Ottoman Empire period, before the development of modern prison systems found in Western countries, incarceration primarily aimed to prevent detainees from escaping. Detention typically occurred in the cellars of government buildings, designated areas of castles or palaces, or dungeons. Detainees were subject to strict confinement, often deprived of basic privileges such as access to fresh air. For instance, the opportunity to walk around a courtyard was a rare exception rather than a common practice. [230]

Despite a few examples, the ideal objectives for reforming prison conditions largely remained theoretical in the Empire.[231] One notable exception was the Central Prison (Hapishane-i Umumi) established in Istanbul in 1871, which included workshops for prisoners to learn various trades.[232]

Another example occurred after the adoption of 'The Regulation for Prisons and Houses of Detention' in 1880. As a result of this regulation, prisoners in major cities of the empire began to receive vocational education, enabling them to acquire skills in tailoring, carpentry, and shoemaking.[233]

In 1910, a significant rehabilitative program took place in the city of Aydın, where prisoners were allowed to work outside the facility. Despite objections from the Ministry of Justice and Confessions, The governorship staunchly defended the program in its official response, emphasizing its crucial role in enhancing prisoners' mental and moral well-being.[234]

Returning to the Central Prison, during WWI, workshops established within this facility enabled prisoners to acquire a range of skills, including whitesmithing, jewelry making, sock knitting, and

[229] Ufuk Adak, 'Central Prisons (Hapishane-i Umumi) in İstanbul and İzmir in the Late Ottoman Empire: In-between Ideal and Reality' (2017) 4 Journal of the Ottoman and Turkish Studies Association 73, 88.
[230] Aydın (n 224) 178.
[231] Adak (n 229) 75.
[232] Aydın (n 224) 180.
[233] ibid 90.
[234] ibid 89.

watchmaking.[235] In addition to emphasizing technical education, the Central Prison also placed a significant focus on literacy, highlighting its role as a model facility. It featured separate classrooms for adults and children equipped with desks, blackboards, and a diverse selection of books. The goal was to foster an environment conducive to rehabilitation through education and personal development.[236]

Consequently, especially from the mid-19th century onward, numerous initiatives were undertaken within the Empire to enhance the productivity and rehabilitative functions of prisons. These efforts mirrored developments and approaches emerging in the West. Education, particularly vocational skills training, was a central component of this penal reform. However, due to budget constraints and ongoing wars, the implementation of these practices was limited and primarily focused on major cities. As a result, when these prisons were transferred to the control of the new Turkish Republic government, they portrayed an incomplete realization of the intended reforms.[237]

3.3.1.2 After the Foundation of Turkish Republic

The transition from the Ottoman Empire to the Republican period of Türkiye did not represent a break, but rather a continuity in terms of prisons.[238] The practice of repairing and constructing new prisons continued, transforming prison settings from the dungeons of the Ottoman Empire into modern facilities. However, it was after the establishment of the Republic of Türkiye that the aims of educational and rehabilitative practices could be pursued and developed more effectively.[239]

In this context, the Turkish Penal Code No. 765 was enacted in 1926, replacing the legislation inherited from the Ottoman Empire. A significant reform for improved management took place in 1929, when the administration of prisons was transferred from the Ministry of Internal Affairs to the Ministry of Justice.[240]

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[235] ibid 90.
[236] ibid 91.
[237] Mustafa Eren, 'Mahbeslerden Hapishanelere, Hapishanelerden Cezaevlerine… Osmanlı'dan Günümüze Kapatılma' (2014) 119 Bilim ve Gelecek.
[238] ibid.
[239] Cevdet Tekin, 'TÜRKİYE CEZA İNFAZ KURUMLARINDA EĞİTİM VE İYİLEŞTİRME (FAALİYETLER VE YASAL DAYANAKLARI)' (2023) 22 Elektronik Sosyal Bilimler Dergisi 1200, 1201.
[240] Eren (n 237).

To achieve the objectives of employing and reintegrating prisoners, the Ministry of Justice initiated the construction of prisons designed around a work-oriented model. The 'Law on the Administration of Prisons and Detention Houses,' enacted in 1930, mandated the establishment of workshops within prisons. Under this law, prisoners meeting specific criteria could engage in socially beneficial work, with the condition that they return to the prison at night.[241]

Despite these seemingly positive legal measures, a report from prison inspections conducted between September and December 1931 reveals significant problems within the prisons. According to the report, the buildings were deemed unsuitable for modern conditions, with overcrowded populations and severe sanitary problems. These conditions severely hindered the provision of regular education, especially for young prisoners. The report noted that none of the inspected facilities offered any form of education.[242]

After the establishment of Türkiye, the first prison based on the principle of work was opened in 1936. According to the law governing these prisons, inmates who demonstrated good behavior during part of their sentence and met specific criteria regarding age, profession, and ability were eligible for transfer to these facilities.[243]

In 1941, the 'Directory of Prisons and Detention Houses' was adopted, drawing inspiration from the 1902 Belgian Penal Execution Code. This regulation marked the first official endorsement of educational programs in Turkish prisons. It mandated the provision of training services and assigned teachers to deliver literacy and numeracy courses, as well as to support the spiritual development of inmates. The code also established new vocational workshops and appointed managers to oversee them. Specifically, it required progress reports for prisoners serving over three years who were either illiterate or lacked vocational skills, aiming to facilitate their reintegration after release.[244]

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[241] Mehmet Emin Artuk and Mehmet Emin Alşahin, 'Hapis Cezalarının ve Cezaevlerinin Tarihi Gelişimi' (2016) 21 Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi 145, 176.
[242] Volkan Soran, 'CUMHURİYETİN İLK YILLARINA AİT HAPİSHANELER RAPORU ÜZERİNE BİR DEĞERLENDİRME' (2016) 15 Atatürk Yolu Dergisi 111, 123.
[243] Artuk (n 241) 180.
[244] Gülden Akın, 'Correctional Education in Turkey: An Historical Overview from Past to Present and Evaluation of Current Practices' (2021) 10 Bartın University Journal of Faculty of Education 639, 640-641.

However, reality starkly diverged from this framework, as many prisoners were forced to work in locations such as weaving looms, ironworks, and steel factories to address the labor shortage, especially during WWII until the enactment of the General Amnesty Law in 1950.[245]

The 1965 Execution Law No. 647 emphasized rehabilitation over punishment and marked a departure from the traditional approach of Criminal Law, which sought to satisfy societal desires for revenge and used punishment as a deterrent. Its preamble explicitly stated that this outdated understanding has been discarded in favor of a reformatory system focused on rehabilitating criminals through education, work, and character development, with the aim of reintegrating them as productive members of society.[246]

However, another significant event impacted the country and its prisons: the military coup of 1980. The coup led to a large number of incarcerations, resulting in a substantial increase in prison populations and exacerbating issues related to sanitation, physical conditions, and rehabilitation efforts.[247]

This period not only overshadowed the right to education but also violated absolute rights that cannot be restricted ‘under any circumstances’, such as the right outlined in Article 3 of the ECHR, which prohibits torture, inhuman or degrading treatment or punishment. [248]

During a period when even absolute rights were largely disregarded, it would be unreasonable to assume that prisoners’ right to education was safeguarded. It was the 1970s when the shift in the approach toward prisoners began to emerge, characterized by the state labeling prisons as 'punishment houses'. Some authors even refer to this period as the 'punishment house process'.[249] Consequently, in Türkiye, the evolution of penitentiaries has progressed from the dungeons of the Ottoman Empire to efforts aimed at modernizing prisons, eventually leading to the characterization

[245] Eren (n 237) 14.
[246] Tekin (n 239) 1202.
[247] Eren (n 237) 17.
[248] *Alırıza Aksoy* Complaint No. 2013/4836 (Turkish Constitutional Court decision, 9 March 2016).
[249] Eren (n 237).

of prisons as 'punishment houses' starting in the 1970s. This transformation continued throughout the 1990s and 2000s.[250]

In the 2000s, Türkiye intensified its efforts to adopt more rehabilitative practices in corrections, with a renewed emphasis on educational regulations. This initiative included an increase in the number of teachers engaged in correctional educational activities. In areas facing resource constraints, external teachers were authorized, subject to additional lesson fees. Moreover, training sessions were organized to enhance the instructional quality. Collaborative agreements were forged with diverse institutions and organizations, alongside the development of an 'education map' designed to monitor and evaluate educational endeavors.[251]

In summary, Türkiye's penal policy has been profoundly influenced by political and social fluctuations, resulting in shifts between punitive measures and rehabilitation. Despite several legal initiatives to prioritize education in the rehabilitation process, it still remains challenging to assert that these efforts have effectively provided prisoners with educational opportunities comparable to those available to the general population.

3.3.2 Current Framework for Prisoner Education

After examining the general legal framework for the right to education, this section will delve into its interpretation within the context of prisoners, with a specific focus on legislation related to prisoners' education.

3.3.2.1 Constitution and Law No. 5275

In Türkiye, prisoners' access to education is regulated by a range of legal instruments, including laws, circulars, regulations, and protocols. The Constitution of Türkiye, situated at the pinnacle of the normative hierarchy, guarantees the right to education for all individuals without exception, as articulated in Article 42. Accordingly, this fundamental right extends to prisoners as well.[252]

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[250] ibid.
[251] Tekin (n 239) 1203.
[252] Serdar Taptı and others, *Mahpus Hakları El Kitabı* (commissioned by Civil Society Association in the Penal System, TCPS Library, March 2023) 73.

Following the Constitution, the principal legislative framework governing all procedures and regulations concerning the implementation of penalties and security measures is Law No. 5275, enacted in 2004, titled 'The Law on the Execution of Penalties and Security Measures'.[253]

Article 2 of Law No. 5275 establishes the fundamental principle governing the execution of all regulations pertaining to penalties and security measures, including those concerning education. This article mandates the fair and impartial application of regulations, prohibiting discrimination based on factors such as nationality, gender, language, or similar criteria. Furthermore, it prohibits the granting of special privileges to any individual.[254]

According to Article 3 of Law No. 5275, titled 'The Main Purpose of Execution,' the execution of sentences serves two primary purposes. Firstly, it aims to resocialize the perpetrator, facilitating their adaptation to a productive and law-abiding lifestyle that conforms to societal norms. Secondly, it seeks to protect society from future crimes. By focusing on both the rehabilitation of offenders and the prevention of recidivism, the law aims to balance individual reform with the broader goal of public safety.[255]

The second chapter of Law No. 5275, titled 'Education,' consists of three articles. According to Article 75, educational programs encompass basic, secondary, and higher education, as well as vocational training, religious studies, physical education, and access to library and psycho-social services.[256] Article 76, titled 'Utilizing Education,' specifies that convicts in open penal institutions and children in educational institutions can benefit from both formal and informal education, while convicts in closed penal institutions can only receive non-formal education.[257] To clarify the distinction between formal and informal education, Article 18 of the Basic Law of National Education is instructive. It categorizes the Turkish national education system into *formal education*, which includes pre-school, primary, secondary, and higher education, and *non-formal*

[253] Law No. 5275 on the Execution of Penalties and Security Measures of Türkiye 2004.
[254] Tekin (n 239) 1204.
[255] Merve Duysak Özdemir, 'Tutuklu ve Hükümlülerin İnternete Erişim Hakkı', in Bülent Dağsalı (ed), ANKARA BAROSU ULUSLARARASI HUKUK KURULTAYI 2020 (Ankara Barosu Başkanlığı, 2021), 418.
[256] Tekin (n 239) 1204.
[257] Law No. 5275 on the Execution of Penalties and Security Measures of Türkiye 2004.

education, which encompasses educational activities conducted alongside or outside formal education.[258] The critical examination of this provision will be elaborated upon in Chapter 4.

An amendment to Law No. 5275 in 2020 specified that the evaluation and determination of convicts' good behavior would be governed by regulation. Subsequently, the 'Regulation on Observation and Classification Centers and Evaluation of Convicts' was enacted by the end of 2020.[259] According to Article 31 of this regulation, educational activities in which convicts participate are assessed as 'plus points' in their 'development score.' This score forms the basis for assessing good conduct, crucial for determining whether a convict can progress from a closed to an open penal institution, and from open institutions to either supervised or direct conditional release. Thus, this new regulation strongly encourages involvement in educational activities.[260]

However, a significant concern with this regulation is that the evaluation is conducted by prison personnel rather than the public prosecutor for certain prisoner groups. This administrative involvement raises doubts about objectivity and legal basis in decision-making. Furthermore, the criteria for assessing good conduct lack clear definition, creating uncertainty and potentially exposing prisoners' rights to arbitrary decisions by prison authorities.[261]

Article 62 of Law No. 5275 outlines prisoners' rights to access both periodical and non-periodical publications. Periodicals, such as newspapers and magazines, are published at regular intervals, while non-periodical publications encompass books, scientific articles, and symposium compilations. According to this article, prisoners may access these publications upon payment, unless restricted by court orders. Furthermore, the second paragraph of this article guarantees that textbooks necessary for prisoners' educational and training programs are exempt from inspection.[262]

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[258] Law No. 1739 on Basic Law of National Education of Türkiye 1973.
[259] Tekin (n 239) 1204.
[260] Beyza Başer Berkün and Ersan Şen, 'Hükümlülerin İyi Hal Değerlendirmesinde Yeni Kriterler' (*Ersan Şen Law and Consultancy,* 29 May 2021) <https://sen.av.tr/tr/makale/hukumlulerin-iyi-hal-degerlendirmesinde-yeni-kriterler> accessed 13 May 2024.
[261] Ozan Başdinç and Ruken Altun, *İnfaz Mevzuatında Yapılan Değişikliklerin Karşılaştırılması* (TCPS Kitaplığı 2023) 166-167.
[262] Taptı (n 252) 87-89.

Article 67 of Law No. 5275 regulates internet usage within prisons, stipulating that in both closed and open penal institutions, as well as children's educational facilities, internet access should be supervised and permitted exclusively for educational and developmental programs. Personal computers are prohibited in prisoners' rooms. [263] However, prison administrations may acquire computers from external sources for educational and cultural purposes, with the costs borne by the prisoners themselves. The fourth paragraph of this article specifies that these rights may be restricted for prisoners deemed ‘dangerous’ or ‘affiliated with a criminal organization’.[264]

Article 53 of Law No. 5275 grants prisoners the right to request a transfer to another prison for educational purposes. For instance, prisoners who gain admission to a university may apply for transfer to a facility within the university's provincial jurisdiction. However, this right is subject to specific conditions. According to Article 54(1), prisoners seeking transfer must submit a petition identifying at least three suitable locations among their preferred institutions. With the exception of child prisoners or those demonstrating financial incapacity, all must cover transportation costs in advance. Furthermore, prisoners must have maintained good behavior without disciplinary sanctions or revocations and have been within the penal system for more than three months. Additionally, the target institution must be suitable in terms of location, facilities, and classification, and not be a detention center.[265]

In the current framework, the ‘Training and Correctional Department’ within the Turkish General Directorate of Prisons and Detention Houses, under the Ministry of Justice, centrally and exclusively oversees all correctional training activities.[266] This department includes several specialized offices, such as adult correctional education, juvenile correctional education, support for vulnerable groups, educational strategies, course and examination procedures. These offices are responsible for managing all training, educational, and correctional activities.[267]

It is important to note that the provisions of Law No. 5275 related to education and rehabilitation specifically pertain to convicts. As of February 1, 2023, there were 42,234 detainees, and

[263] Law No. 5275 on the Execution of Penalties and Security Measures of Türkiye 2004.
[264] Akyüz (n 4) 37.
[265] Law No. 5275 on the Execution of Penalties and Security Measures in Türkiye 2004; Taptı (n 270) 81-82.
[266] Gülden (n 244) 641.
[267] ibid 641.

prolonged detentions are quite common among them. This poses a significant challenge for detainees, as they can be deprived of educational opportunities for extended periods.[268]

3.3.2.2 Higher Education Law No. 2547

Adopted on November 4, 1981, the Higher Education Law No. 2547 establishes the objectives and principles of higher education and comprehensively regulates student-related matters.[269]

Article 54(1)(d) of Law No. 2547, which has been a focal point of debate, regulates disciplinary penalties and offenses warranting expulsion from higher education institutions. It outlines conditions under which students may face expulsion, including establishing, managing, or being a member of an organization intended for criminal activities, subject to a final court decision.[270] These provisions apply only to offenses committed while the individual is enrolled as a student; offenses prior to enrollment are not covered by these regulations. [271]

This suggests that the imposition of a disciplinary penalty results in the termination of the student's enrollment at the higher education institution, thereby infringing upon their right to education.[272] Critics contend that respecting all human rights of a convict, except those explicitly restricted by their sentence is essential for successful reintegration into society. In this regard, disciplinary policies that obstruct prisoners' access to higher education are deemed counterproductive to the objectives of reintegration and rehabilitation. This issue is especially vital for convicts involved in organized crime, as effective reintegration efforts help them rediscover their identities, avoid depersonalization, and resist brainwashing by criminal groups. Consequently, regulations that hinder educational opportunities risk pushing these convicts back into criminal organizations upon release.[273]

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[268] Tekin (n 239) 1217.
[269] Law No 2547 on Higher Education of Türkiye 1981.
[270] ibid.
[271] Namık Kemal Topçu and Neslihan Can, 'Örgüt Suçlarından Mahkum Olan Öğrencilerin Yükseköğretim Kurumundan Çıkarılmasının Cezaların İnfazının Amacı ve Eğitim Hakkı Bağlamında Değerlendirilmesi' (2022) 19 Yeditepe Üniversitesi Hukuk Fakültesi Dergisi 283, 288.
[272] Güneş Okuyucu Ergün and Eylem Baş, 'Yükseköğretim Kurumu Öğrenci Disiplin Suçları, Cezaları ve Soruşturmalarına İlişkin Bazı Değerlendirmeler.' (2021) 27 Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi 26, 27.
[273] Topçu (n 271) 307-308.

Upon examining the historical context of this regulation, its punitive nature becomes clearer. The regulation mandating expulsion from higher education institutions traces back to the post-1980 military coup period. In the 1970s, escalating student unrest was perceived as a significant factor contributing to national instability, prompting calls for greater discipline within higher education. This perspective was institutionalized in legislation immediately following the 1980 coup. The inclusion of such a regulation, contrary to contemporary penal principles, reflects the extraordinary conditions of that era.[274] However, categorizing convicts involved in organized crime as 'irreformable', assuming they will inevitably return to criminal organizations upon release, and denying them opportunities for social reintegration, reflects a prejudiced and hostile attitude lacking empirical basis.[275]

Finally, Article 3(u)(1) of Law No. 2547 defines formal education as requiring students' continuous attendance of courses and practical sessions throughout the academic period. Complementing this provision, as mentioned earlier, Article 75 of Law No. 5275 prohibits inmates in closed penal institutions from accessing formal education. Aligned with these regulations, in November 2023, the Presidency of the Board of Higher Education issued a directive to all universities, stipulating that students detained or convicted in closed penal institutions and enrolled in formal educational programs are ineligible to participate in examinations.[276] This policy significantly disadvantages prisoners in closed penal institutions in their pursuit or continuation of higher education, a subject further explored in Chapter 4 within the context of Ali İşeri's case.

3.3.2.3 Regulation on the Management of Criminal Institutions and the Execution of Penalties and Security Measures

In accordance with the authority granted by Law No. 5275, the Regulation on the Management of Criminal Institutions and the Execution of Penalties and Security Measures (hereinafter referred to as the Execution Regulation) came into force in March 2020.

[274] ibid 308.
[275] ibid 309.
[276] Presidency of the Board of Higher Education, letter to all universities, 'Education of Detainees and Convicts', No E-75850160-104.01.01.01-75250 (17 November 2023) <https://sbe.odu.edu.tr/files/other/Mevzuat/YOK_Yazilari/Tutuklu_ve_Hukumlululerin_Orenimleri_Ilgi_KEP_letisi_Tutuklu_ve_Hukumlulerin_Orenimleri.pdf> accessed 19 April 2024.

As previously mentioned, Article 67(4) of Law No. 5275 addresses the utilization of audiovisual educational tools and equipment, including the internet, while granting the administration the authority to impose restrictions within limits on prisoners considered ‘dangerous’ or ‘affiliated with criminal organizations’.[277]

In line with this authority, Article 90(4) of the Execution Regulation, titled ‘The Convict's Right to Benefit from Radio, Television Broadcasts, and Internet Facilities’ reads:

> "These rights may be restricted for those who are determined to be dangerous convicts or convicts who are members of an organization, by the decision of the administration and observation board."[278]

Additionally, paragraph 5 of the same article reads:

> "Convicts who pose a serious danger to society, considering the nature and manner of committing the crime, who continue to manage an armed organization established for the purpose of committing crimes with their attitudes and behaviors in the institution, and who give instructions or messages to people inside or outside the institution by any means on this subject, are not allowed to watch television broadcasts and use computers and the internet, by the decision of the observation board." [279]

As is seen, Article 90(5) of the Execution Regulation imposes a complete obstruction of the right, rather than a mere limitation. This regulation suggests that the authority to 'limit,' as granted by the Execution Law, is being exceeded by the administration in the form of an obstruction. Such action clearly contradicts the hierarchy of norms, as the regulation imposes stricter restrictions on the right granted by the law than the law allows.[280]

[277] Taptı (n 252) 39.
[278] Regulation on the Management of Criminal Institutions and the Execution of Penalties and Security Measures of Türkiye (Official Gazette No 31083, 29 March 2020).
[279] ibid.
[280] Taptı (n 252) 39-40.

As concerns Article 108, titled 'Course Tools and Equipment,' it specifies that convicts facing financial difficulties and unable to procure their own educational tools and equipment will be furnished with these resources by the institution.[281]

Finally, Article 25 delineates the composition of the Education Board, chaired by the institution director and comprising the second director responsible for education, the prison physician, a psychologist, a member of the psycho-social assistance service, all institution-employed teachers, and the librarian.[282]One of the board's primary responsibilities is to assess whether periodical or non-periodical publications pose a threat to the institution's security or are deemed obscene, thus determining their admissibility within the prison. If a publication is deemed impermissible, the board refers it to the chief public prosecutor for a decision, which must be based on thorough, concrete, and reasonable justification, as underscored in rulings by the Turkish Constitutional Court. [283] Prisoners retain the right to possess periodical or non-periodical publications in their rooms, except when such materials have been prohibited by court order and not approved for entry into the prison by the Education Board.[284]

3.3.3 Challenges and Barriers to Prisoners' Access to Education in Türkiye

Given the overarching legal framework discussed above, despite certain problematic aspects and shortcomings, Turkish law strongly emphasizes the importance of educational activities in correctional facilities. Legislation underscores the pivotal role of education and training programs in Turkish prisons, aimed at preparing and equipping prisoners for successful reintegration into society upon their release. The principle of reintegration is explicitly stated in Law No. 5275 on the Execution of Penalties and Security Measures and is bolstered by supplementary regulations, such as Circular 46/1 issued by the General Directorate of Prisons and Detention Houses. The circular underscores the international consensus on the effectiveness of education and training in rehabilitation, facilitating the social reintegration of prisoners post-release.[285]

[281]Regulation on the Management of Criminal Institutions and the Execution of Penalties and Security Measures of Türkiye (Official Gazette No 31083, 29 March 2020).
[282] ibid.
[283] Taptı (n 252) 89.
[284] ibid 49.
[285] Kadir Selamet, *Türkiye Hapishanelerinde Öğrenci Olmak ve Öğrenim Hakkı* (TCPS Kitaplığı 2015).

While prisoners' right to education is constitutionally, legally, and internationally guaranteed, the practical implementation in Türkiye, as in many regions worldwide, encounters significant challenges in providing access to education.[286]

Based on an extensive review of the literature, it is concluded that these challenges fall into several main categories. The following sections provide a deeper exploration of these challenges under the categories of *access to information*, *financial constraints*, *study conditions*, and *utilization of computers and the Internet*.

3.3.3.1 Access to Information

Access to educational materials is crucial for prisoners not only to attain an education comparable to the general population, but also to support their mental and psychological well-being. This sentiment is echoed in a letter to Turkish journalist Emin Çölaşan by a prisoner, highlighting the significance of literature for those in confinement: “There are two elements that give meaning to this place: family reunions and books."[287]

The primary obstacle to accessing information in Turkish prisons arises from the issue of overcrowding. According to data from the Turkish Statistical Institute and the Ministry of Justice, the number of prisoners in penal institutions surged from 128.000 in 2011 to 341.000 by the close of 2022. With 356 out of every 100,000 people in Turkey being incarcerated, the imprisonment rate is notably higher than the EU average of 106. Consequently, Türkiye has the highest prison population density in Europe, with its prisons being 3.4 times more crowded than those in EU countries[288] The issue of prison density was underscored in the case of *İlerde and Others v. Türkiye*, brought before the ECtHR. In this case, the applicants alleged overcrowding and insufficient living space of less than 3 square meters during their prolonged detention. In its April 2024 ruling, the Court determined that these conditions imposed hardships that exceeded the inherent suffering of detention, thereby constituting a violation of Article 3 of the European

[286] ibid.
[287] Güler Demir, ‘Mahkûmların Bilgi Gereksinimleri ve Bilgi Davranışları: Kuramsal Bir Değerlendirme’ (2020) 34 Türk Kütüphaneciliği 98, 110.
[288] Emre Kongar, ‘Tutuklular ve Mahkumlar da İnsandır’ *Cumhuriyet Gazetesi* (11 February 2024) <https://www.cumhuriyet.com.tr/yazarlar/emre-kongar/tutuklular-ve-mahkumlar-da-insandir-2173999> accessed 7 May 2024.

Convention on Human Rights, which prohibits torture and other forms of inhuman or degrading treatment.[289]

A 2011 survey revealed that prisoners in most correctional facilities in Türkiye reported being unable to physically access prison libraries due to overcrowding and inadequate security measures. As a result, they are allowed to borrow between one and five books at a time for a maximum of 15 days, choosing from alphabetical author lists distributed to their rooms and wards.[290] Additionally, based on 2014 data, prison libraries contained approximately five books per person, which falls significantly below the recommended level of 10 titles per person as suggested by the International Federation of Library Associations and Institutions (IFLA) Guidelines for Library Services to Prisoners. [291] With the prison population nearly tripling from 2011 to 2022, it is plausible to estimate that the current situation has not only remained unchanged but has also worsened.

Furthermore, according to The Ministry of Justice's Directive for Prison Libraries and Bookcases, inmates and detainees demonstrating good conduct may access the library upon approval from the Administration and Observation Board. The board determines the number of users allowed simultaneously to ensure institutional security. However, correctional facility administrators often deny requests for library access, citing security concerns like potential conflicts among inmates. This caution is supported by findings from interviews and prison visits, which indicate that library usage remains largely symbolic, as inmates and detainees are generally prevented from physically entering the libraries. [292]

Another challenge in accessing information concerns prisoners enrolled in the Open Education Faculty who seek to continue their education while incarcerated. Open education faculties offer remote learning opportunities through computer-based courses, eliminating the need for physical attendance on campus. Previously, textbooks were provided free of charge to prisoners by Open Education Faculties, but this practice ceased after 2018 when course materials transitioned to digital platforms. In facilities with limited internet access, prisoners can only rely on their relatives

[289] *İlerde and Others v Turkey* App nos 35614/19 and 10 others (ECtHR, 5 December 2022).
[290] Hülya Dilek-Kayaoğlu and Güler Demir, 'Prison Libraries in Turkey: The Results of a National Survey' (2014) 46 Journal of Librarianship and Information Science 130, 134.
[291] ibid 135.
[292] ibid 134

for printing, which can lead to delays and financial strain. For those without familial support, printing materials at prison education units involves a fee, posing affordability challenges that are heightened by resource limitations in facilities serving multiple students. Therefore, revising the legal framework is essential to ensure that prisoners enrolled in the Open Education Faculty receive their course materials printed and free of charge upon registration.[293]

As previously noted, Article 62(2) of Law No. 5275 mandates that prisoners are entitled to receive essential textbooks for educational and training programs without inspection. Furthermore, according to Article 91 of the Execution Regulation, prisoners experiencing financial difficulties should be provided with necessary educational materials by the institution. However, the practical implementation often diverges from these legal requirements.[294] According to a prisoner who has been incarcerated for 19 years, even though there is no official ban or confiscation order on books provided by family members, the Education-Administration and Observation Boards may choose to withhold these books in practice.[295] Furthermore, the Human Rights Association's Rights Monitoring Report on Turkish Prisons from 2023 indicates that requested books might not be provided for an extended period under the pretext of review.[296]

Another issue regarding access to information concerns university registration. Prisoners who perform well in university examinations during their incarceration can proceed with enrollment only upon authorization from their educational institutions.[297] However, there exists a lack of publicly available information regarding which universities accept prisoners for formal education. As a result, relatives of prisoners try to individually reach out to preferred universities to obtain

[293] Civil Society Association in the Penal System (CİSST) and others, 'Mahpuslara ders materyalleri ücretsiz ve basılı olarak sağlanmalıdır - Prisoners should be provided with free and printed course materials' (*Right to Education in Prison Blog*, 28 September 2023) <https://ogrenimhakki.cisst.org.tr/?p=858> accessed 10 May 2024.
[294] Akyüz (n 4) 24.
[295] Celalettin Can, 'Cezaevinde yaşam: Baskı, çözümsüz sorunlar ve yoksunluklar yumağı' *Independent Turkish* (24 January 2024) < https://www.indyturk.com/node/692741/türkiyeden-sesler/cezaevinde-yaşam-baskı-çözümsüz-sorunlar-ve-yoksunluklar-yumağı-2> accessed 28 April 2024.
[296] Human Rights Association, *Rights Monitoring Report in Turkish Prisons 2023* (2024), <https://www.ihd.org.tr/wp-content/uploads/2024/06/2023-Yılı-Hapishane-Raporu.pdf> accessed 22 May 2024.
[297] Selamet (n 285).

this information. This uncertainty often leads many prisoners to choose non-formal education over formal education to avoid potential rights violations.[298]

3.3.3.2 Financial Constraints

Financial constraints represent a significant barrier for incarcerated individuals pursuing education. This is particularly evident in the state of prison libraries. One critical determinant of prison library quality is the budgetary allocation provided by the state. Ensuring a consistent and ongoing financial allocation is essential for both establishing and enhancing a library collection. In Türkiye, the Ministry of Justice's directive on prison libraries and bookcases does not allocate a separate budget for materials. Instead, the library's resource needs are determined by the general budget, and purchasing decisions are delegated to the institution. As a result, the library's collection heavily relies on donations in practice. [299]

Another significant economic challenge faced by prisoners is their ineligibility for state scholarships available to individuals outside the prison system. According to Article 29 of the Scholarship and Loan Regulation, scholarships are terminated for individuals sentenced to six months or more in prison with a final conviction, except when sentences are postponed. Additionally, Article 27 of the Higher Education Credit and Dormitories Institution Contribution Loan Regulation stipulates that loans for those convicted of any crime, except for negligent offenses, will be terminated in the academic year following the final conviction, even if the sentence is postponed. These regulations clearly violate the constitutional right to education and contradict European Commission Recommendation No. 89(12), which mandates that prisoners should have access to education facilities equivalent to those available to the general population.[300]

Prisoners also encounter challenges in covering their school fees. Until 2017, these fees were covered by the Ministry of Family and Social Policies under a protocol with the Ministry of Justice. However, since 2017, these scholarships have been linked to the Social Assistance and Solidarity Foundations in the provinces where the prisons are located. The boards of trustees of these

[298] Civil Society Association in the Penal System (CİSST) and others, *2022 Yılı Hapishaneler Raporu (2022 Prisons Report)* (2023) <https://cisst.org.tr/raporlar/hapishaneler-raporu-2022/> accessed 27 May 2024.
[299] Dilek-Kayaoglu and Demir (n 290) 135-136.
[300] Akyüz (n 4) 29-30.

foundations now decide which students' fees will be paid, leading to increased difficulties for prisoners.[301] The exact number of successful applications to these foundations remains unclear, as the General Directorate of Prisons and Detention Houses has not disclosed relevant statistical data. Additionally, data collected by Civil Society in the Penal System indicates that applications submitted by political prisoners consistently receive negative responses.[302]

Attending exams also imposes a significant financial burden on incarcerated students. Upon receiving approval from the Ministry of Justice, arrangements are made with the Gendarmerie General Command to provide escort services for the student. Typically, eight gendarmes accompany each student, and expenses such as transportation fees, gendarmes' remuneration, and the cost of a day's stay at nearby prison for out-of-city university exams must be borne by the student. Moreover, according to firsthand accounts from prisoners, the transport vehicle also serves to convey individuals to court or alternative prison facilities, significantly extending the duration of the journey.[303]

Based on accounts from prisoners, having to cover educational expenses such as travel and meals can compel those with limited financial means to discontinue their studies. For example, while meals are provided free of charge in prison, prisoners are required to pay for their own lunches when attending classes outside the facility. Even this alone sometimes compels financially struggling prisoners to abandon their educational pursuits.[304]

3.3.3.3 Study Conditions

One of the primary challenges affecting prisoners' education is the lack of appropriate study environments. Due to the absence of dedicated study areas within prisons, incarcerated individuals

[301] Elif Akgül, 'Koronavirüs pandemisinde eğitime en uzak olanlar yine mahpus öğrenciler' *Friedrich Naumann Foundation* (26 January 2021) <https://www.freiheit.org/tr/turkiye/koronavirus-pandemisinde-egitime-en-uzak-olanlar-yine-mahpus-ogrenciler> accessed 26 April 2024.
[302] Civil Society Association in the Penal System (CİSST) and others, *2021 Yılı Hapishaneler Raporu (2021 Prisons Report)* (2022) <https://cisst.org.tr/wp-content/uploads/2022/12/CISST_2021_Hapishaneler_Raporu_TR.pdf> accessed 25 May 2024.
[303] Akgül (n 301).
[304] Aygül, Çelik and Şensoy (n 155) 120.

encounter significant difficulties in finding suitable spaces for academic pursuits and exam preparation.

Although Article 5 of the Regulation on Criminal Institutions and Detention House Libraries and Bookcases mandates the creation of independent rooms or suitable areas for libraries within prisons, accessing these facilities remains severely limited in practice. As discussed in the 'Access to Information' section above, prisoners' use of library resources is predominantly restricted to selecting and requesting books from predetermined lists, rather than having direct access to library itself. Consequently, they are often left with overcrowded and noisy wards as their only option for studying.[305] Furthermore, these challenges are compounded by inadequate lighting, insufficient desks for group study, and a lack of independent study areas. According to reports from prisoners, repeated requests for additional desks have gone unanswered by the prison administrations.[306]

Given these circumstances, as indicated by firsthand testimonies from prisoners, many find themselves compelled to study within their sleeping quarters or, on occasion, within dedicated prayer areas situated within the correctional facility as these places offer a quieter atmosphere.[307]

Moreover, the scarcity of resources confines prisoners to solely reading course materials, depriving them of opportunities to develop listening, speaking, and practical application skills. Consequently, they lack alternative methods to grasp complex subjects or clarify confusing concepts.[308]

Another significant issue arises when prisoners are required to undertake internships as part of their respective departments' requirements. A notable example of this challenge is illustrated by a prisoner who successfully completed the examinations to become a freelance accountant and financial advisor. Despite the mandatory three-year internship, authorities denied his request to commence, citing the lack of legal provisions for such internships within the official regulations of the Ministry of Justice. Considering that prisoners who meet the requirements have the right to attend university classes, the absence of provisions for internships presents a significant barrier to

[305] Akyüz (n 4) 27.
[306] CİSST (n 302) 77.
[307] Aygül, Çelik and Şensoy (n 155) 117-118.
[308] Akyüz (n 4) 28.

their ability to acquire a profession. This situation also underscores an inconsistency within the legal framework.[309]

3.3.3.4 Utilization of Computers and Internet Access

Examining the availability of Internet and computer access within prisons is warranted, as these tools are indispensable in contemporary society for achieving educational success. They facilitate access to educational materials, participation in online classes, submission of assignments, and research for essays and theses.

While the Execution Law enshrines a qualified right for prisoners to access the Internet within training and improvement programs and under supervision, prison authorities frequently reject inmate requests for computer use. This denial is often attributed to a lack of necessary infrastructure and security concerns, particularly for political prisoners. Specifically, for political prisoners, Article 67(4) of the Execution Law is invoked, allowing for limitations on internet access for convicts deemed 'dangerous' or affiliated with specific organizations.[310]

Furthermore, despite the presence of at least one computer with Internet access in every prison's education unit, some prison administrations do not allow inmates to take online-administered exams due to inadequate infrastructure. These prisons request universities to provide written exam questions; however, when universities do not comply with these requests, prisoners' rights to participate in exams are compromised. Additionally, in prisons where computer use is permitted, physical issues such as poor ventilation and inadequate lighting in designated areas create uncomfortable environments that hinder effective studying and exam-taking. While prisoners with computer access can watch lectures via an online portal during specific hours, challenges like limited Internet connectivity and technical issues with the portal system frequently impede their ability to effectively follow courses and take exams. These obstacles underscore significant

[309] Eskişehir Haber 26, 'Cezaevini engel tanımayan Sırrı'ya staj engeli' *Eskişehir Haber 26* (7 March 2018) <https://www.eskisehirhaber26.com/cezaevini-engel-tanimayan-sirriya-staj-engeli> accessed 7 May 2024.
[310] Akyüz (n 4) 37-38.

barriers to the educational opportunities of prisoners, emphasizing the imperative for enhanced infrastructure and better support systems within prison education units.[311]

Access to education became even more challenging during the Covid-19 pandemic, especially with the transition to online classes for all educational programs. During this period, the decision regarding the provision of Internet access and participation in online classes for prisoners was left to the discretion of prison administrations. According to firsthand testimonies from inmates, it was observed that nearly all prisoners in Turkish prisons were deprived of distance education amid this crisis.[312]

Considering the broader context, education encompasses acquiring skills necessary for employment, thereby promoting self-sufficiency upon release. Computers and internet access are pivotal in facilitating this process. The absence of these resources confines prisoners to developing skills oriented towards manual labor, significantly impacting their future prospects. This restriction can be interpreted as a form of social exclusion. Türkiye Prison Report by Civil Society in the Penal System highlights that, due to these shortcomings, prisoners are primarily offered jobs involving manual labor and textile-related tasks in the low-technology sector. Therefore, many prisoners perceive their restricted access to computer.[313] technologies as a form of censorship, effectively relegating them to a lower societal status in the Information Age.[314]

[311] ibid.
[312] Dilan Esen, 'Mahkûmların eğitim hakkı yok mu?' *Bir Gün Gazetesi* (25 September 2020) <https://www.birgun.net/haber/mahkumlarin-egitim-hakki-yok-mu-316834#google_vignette> accessed 8 April 2024.
[313] Özdemir (n 255) 444.
[314] Yvonne Jewkes and Helen Johnston, '"Cavemen in an Era of Speed-of-light Technology": Historical and Contemporary Perspectives on Communication within Prisons' (2009) 48 The Howard Journal of Criminal Justice 132.

CHAPTER 4 The Jurisprudence of Turkish Constitutional Court and ECtHR on Prisoner's Education in Türkiye

4.1 Individual Application Procedure to Turkish Constitutional Court

The TCC is the highest judicial authority on constitutional matters in Türkiye. While the TCC and the ECtHR have distinct jurisdictions, the introduction of the individual application process to the TCC marked a development where the TCC began to address cases that might potentially be brought before the ECtHR. Below, the emergence of this domestic remedy will be explored from a historical perspective.

Türkiye was invited to the CoE approximately three months after its establishment, and became one of its founding members on 8 August 1949.[315] As a member state of the CoE, Türkiye acceded to the ECHR in 1954. Subsequently, in 1987, Türkiye embraced the right of individual application to the ECtHR and acknowledged its compulsory jurisdiction in 1990.[316]

Nevertheless, Türkiye's extensive caseload before the ECtHR has prompted considerations for establishing an additional judicial stage prior to ECtHR applications. According to 2023 statistics, Türkiye had the highest number of applications assigned to the ECtHR, with a total of 8,341 cases.[317]

With this consideration, the implementation of the individual application procedure to the TCC was initiated through constitutional amendments on 12 September 2011. This measure aimed to diminish the number of cases lodged against Türkiye in the Strasbourg court.[318] Following this constitutional amendment, as of September 2012, individuals gained the ability to petition the TCC, alleging violations of fundamental rights and freedoms at the intersection of the Turkish Constitution and the ECHR and its additional protocols, to which Türkiye is a signatory.[319]

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[315] Ali Servet Öncü and Erkan Cevizliler, 'Avrupa Bütünleşmesi İçin Önemli Bir Adım:'Avrupa Konseyi ve Türkiye'nin Konseye Üyeliği Meselesi' (2013) 7 Gazi Akademik Bakış 15, 15.
[316] Anayasa Mahkemesi, 'Bireysel Başvuru-Individual Application' *(Anayasa Mahkemesi-Constitutional Court)* <https://www.anayasa.gov.tr/tr/mahkeme/gorev-ve-yetkileri/bireysel-basvuru/> accessed 17 April 2024.
[317] Hamdi Fırat Büyük, 'Turkey Again Has Highest Number of Applications Before ECHR: Report' *Balkan Insight* (25 January 2024) < https://balkaninsight.com/2024/01/25/turkey-again-has-highest-number-of-applications-before-echr-report/> accessed 22 May 2024.
[318] Aydın (n 224) 122.
[319] Anayasa Mahkemesi (n 316).

Therefore, the jurisdictional scope of the individual complaint mechanism includes cases eligible for adjudication by the ECtHR.

In this regard, the individual complaint mechanisms to the TCC and ECtHR share similarities, including their specialized jurisdiction over the implementation of the ECHR. Since the individual complaint mechanism before the TCC represents the final domestic avenue before proceedings at the ECtHR, it is essential to analyze TCC rulings on cases involving prisoners' right to education prior to those of the ECtHR. Furthermore, a comparative analysis of the interpretations by these two courts provides valuable insights.

Therefore, in the following section, cases regarding prisoners' right to education in Türkiye, brought before the TCC and ECtHR, will be analyzed to illuminate their respective perspectives on this issue.

4.2 Cases Involving Prisoners' Right to Education Before the TCC and ECtHR

There have been few cases brought before the ECtHR and the TCC concerning the issue of prisoner education in Türkiye. Below, these cases will be examined to provide a deeper insight into the practical circumstances surrounding this issue in Türkiye, as well as the respective judicial positions taken by the ECtHR and the TCC.

4.2.1 Mehmet Reşit Arslan et Organ Bingöl vs. Türkiye

4.2.1.1 Merits of the Case

Mr. Mehmet Reşit Arslan and Mr. Orhan Bingöl are Turkish nationals who were convicted of membership in an illegal armed organization and are serving life prison sentences. Since the events forming the basis of their application occurred between 2006 and 2008, there are no individual complaint rulings from the TCC for this case, as this procedure was not in effect at that time.[320]

[320] Mehmet Reşit Arslan et Orhan Bingöl v. Turkey App no 47121/06, 13988/07 and 34750/07 (ECtHR, 18 June 2019).

Mr. Mehmet Reşit Arslan's application pertains to three distinct incidents concerning the right to education in prison.[321]

In the first incident, after learning he could re-register with the Istanbul University Faculty of Medicine, he requested access to a computer and the Internet from Izmir prison authoritie, citing Article 67(3) of Law No. 5275. However, the Prison Governing Board objected, referring to his alleged affiliation with other prisoners involved in an illegal organization and his lack of current registration with any educational institution. The prison administration followed this opinion and rejected his request, invoking Article 67(4) of Law No. 5275, which permits restrictions on computer access for individuals convicted of membership in an illegal organization.[322]

Mr. Arslan appealed against this decision to the Izmir sentence enforcement judge, arguing that prior to his conviction, he was a final-year student at the medical faculty and wished to continue his studies using audiovisual materials and that he also proposed to provide his own equipment, which the prison administration rejected. However, his case was dismissed by the İzmir Sentence Enforcement Judge.[323]

In the second incident, Mr. Arslan's device, which he was using in his room and had computing and translation functions, was confiscated during a prison transfer. Subsequently, the device was not given back on the grounds that it was not listed among the permitted items regulated by the June 2005 Decree concerning prison belongings. As a result, he filed a complaint with the Izmir Sentence Enforcement Judge, claiming a breach of his right to education. The Izmir sentence enforcement judge's ruling specified that while the law prohibits the use of such devices in individual rooms, Mr. Arslan may utilize it in designated areas for educational purposes under supervision. Mr. Arslan appealed against this decision to the Izmir Assize Court, arguing that his access to the library, limited to only one hour every two weeks, was insufficient to prepare for courses that required more intensive use of the device. However, the Izmir Assize Court dismissed his appeal.[324]

[321] ibid.
[322] ibid.
[323] ibid.
[324] ibid.

In the third incident, following his transfer to another prison in Bolu, Mr. Arslan requested permission from the prison administration to purchase a computer for his mandatory distance learning course in economics and management. The prison authorities denied his request, invoking Article 67(4) of Law No. 5275, which permits restricting computer access for individuals considered dangerous, such as Mr. Arslan, who was convicted of belonging to an illegal organization. He appealed this decision to the Bolu Sentence Enforcement Judge, arguing that the law grants authorities discretion for such restrictions, and thus the decision must be justified based on the specific circumstances. The Bolu Sentence Enforcement Judge, however, ruled that despite acknowledging the inadequacy of the justification provided by the prison administration, the restriction on computer use did not require further justification because Mr. Arslan was incarcerated in a high-security closed prison. Based on this reasoning, the Court dismissed his appeal.[325]

Moving on to Mr. Orhan Bingöl, he took the university admission exam in 2006 while in prison to enroll in a distance learning program. Despite achieving a sufficient grade, his request to use a computer and Internet for attending online courses before his registration was rejected by prison authorities. This decision cited Article 67(4) of Law No. 5275, which permits computer access restrictions for individuals deemed dangerous, such as Mr. Bingöl, who was convicted of belonging to an illegal organization. His appeals to the sentence enforcement judge and then the Kocaeli Assize Court were dismissed on the same grounds as Mr. Arslan's.[326]

4.2.1.2 Ruling of the ECtHR

Before ruling on the merits, the Court emphasized that this particular case revolves around the specific use of a computer and access to the Internet for continuing higher education, unlike cases such as Kalda or Jankovskis, which did not concern a specific mode of internet access for information. Taking this into account, the Court decided to evaluate the case not under the right to receive information protected by Article 10 of the ECHR, but under the first sentence of Article 2 of Protocol No. 1, which guarantees *"No person shall be denied the right to education."*[327]

In its assessment, the Court initially clarified that Article 2 of Protocol No. 1 does not mandate states to establish or subsidize educational institutions, but rather requires them to ensure access

[325] ibid.
[326] ibid.
[327] Blommaert (n 209) 62.

to existing facilities. This reflects the Strasbourg Court's negative rights approach, which focuses solely on maintaining the status quo and safeguarding the right to use 'existing' educational facilities. Subsequently, the Court underscored that the applicant's enrollment status in an educational institution is not relevant to the case; since the crucial point is the applicant's aspiration to pursue his education through technical means.[328]

The Court emphasized that incarceration does not exempt individuals from the rights stipulated in the Convention—except for the right to liberty—affirming that prisoners retain entitlement to their fundamental rights as delineated in the ECHR. It is noted that while the right to education is not absolute, any limitations must be foreseeable, pursue a legitimate aim, and be proportionate. The Court also stressed that education constitutes a distinct type of public service, benefiting not only its immediate users but also society at large.[329]

In applying these principles to the case, the Court noted that Turkish law permits prisoners to use computers and access the Internet with specified restrictions. Additionally, it emphasized that Turkish law does not impose a *complete ban* on such access, even within high-security prison settings.[330]

Regarding Mr. Arslan's request to utilize a computing and translation device, the Court observed that while it concurred with the government's contention that such devices should only be used under surveillance and in designated areas, it highlighted the inconsistent implementation across various prison authorities that had not been adequately addressed by the domestic judiciary.[331]

Regarding Mr. Bingöl's case, the Court adjudged that despite his conviction for membership in a terrorist organization and imposition of disciplinary measures, the domestic court did not adequately strike a fair balance between his right to education and the maintenance of public order, nor did it provide sufficient justification for dismissing his claim. [332]

[328] Mehmet Reşit Arslan et Orhan Bingöl v. Turkey App no 47121/06, 13988/07 and 34750/07 (ECtHR, 18 June 2019).
[329] ibid.
[330] ibid.
[331] ibid.
[332] ibid.

Consequently, the Court ruled that the restriction imposed was disproportionate to the aim of maintaining public order and concluded that Article 2 of Protocol No. 1 had been violated for both applicants.[333]

4.2.1.3 Case Analysis and Evaluation

The decision highlights the central role of domestic law in cases involving the use of the Internet in prisons. Given the existence of a legal provision in Turkish law granting prisoners the right to access the Internet, the ECtHR approached the case from a negative rights perspective, emphasizing the state's obligation not to unduly interfere with this right. As previously discussed, the ECtHR adopts a negative rights approach under Article 2 of Protocol No. 1, focusing on the protection of *already available* possibilities. Accordingly, the specific legislation in Turkish law governing Internet access for prisoners enabled the ECtHR to conduct a thorough proportionality assessment in its analysis.[334]

However, approached from the opposite perspective, it implies that in cases where domestic law completely prohibits Internet access or where educational facilities within prisons are entirely absent, the ECtHR would abstain from evaluating the legality of these restrictions. In such instances, the Court would forego conducting a proportionality test and automatically conclude that there is no violation of Article 2 of Protocol No. 1. Conversely, when domestic law permits Internet access, the Court subjects the State to heightened scrutiny through a rigorous proportionality assessment. Critics contend that this judicial approach may dissuade states from allowing Internet access to prisoners, potentially encouraging them to opt for blanket prohibitions.[335]

In addressing this matter, it is helpful to consider the ECtHR's approach in interpreting the ECHR:

> "What gives the Convention its strength and makes it extremely modern is the way the Court interprets it: dynamically, in the light of present-day conditions. By its case-law the Court has extended the rights set out in the Convention, such that its

[333] ibid.
[334] Blommaert (n 209) 63.
[335] ibid 64-65.

> provisions apply today to situations that were totally unforeseeable and unimaginable at the time it was first adopted, including issues related to new technologies, bioethics or the environment."[336]

It is evident that the Court adopts a *living interpretation* approach in its implementation of the ECHR, transforming it into a modern instrument in response to the ever-evolving needs and values of the present day. In light of this, critics argue that given the importance of Internet access in today's world for enjoying the right to education, combating inequalities faced by vulnerable groups such as prisoners, and ensuring their reintegration, the ECHR should be interpreted as imposing positive obligations to ensure prisoners have effective access to the Internet.[337]

However, in the case of Mehmet Reşit Arslan and Orhan Bingöl v. Türkiye, the Court confines its three-step proportionality test to cases where domestic law allows for Internet access and where there are already available educational facilities, as seen in the Velyo Velev case. Scholars argue that the Court should conduct a proportionality analysis not only in cases where states already provide Internet access but also in instances where states completely prohibit Internet access for prisoners.[338]

Lastly, it is noteworthy that Mr. Arslan's claim, stating that he can only access the device for calculations in the library once every two weeks for a mere one-hour period, remains unaddressed in the decision. Instead, the decision simply acknowledges the Government's argument, which permits its use solely under supervision and in designated areas. If such usage is constrained to such brief periods, how can it be justified as not violating the right to education? The decision, however, fails to address this question.

[336] A Living Instrument (n 53) 7.
[337] Blommaert (n 209) 66.
[338] Blommaert (n 209) 66.

4.2.2 Hüseyin Uzun v. Türkiye

4.2.2.1 Merits of the Case

Before discussing Mr. Uzun's case, it is pertinent to provide contextual background information. On 15 July 2016, a coup d'état attempt was carried out by a faction within the military associated with a group called 'FETÖ'. The attempt was thwarted by the populace and security forces. Subsequently, the government declared a state of emergency initially for three months starting on 20 July 2016, which was later extended until 17 July 2018. [339]

With the declaration of the state of emergency, the government implemented various measures targeting individuals allegedly associated with the FETÖ congregation, both within and outside the military. Over the two-year period of the state of emergency, numerous Emergency Decrees were issued, affecting various sectors, including education.[340] As a result, numerous individuals suspected of ties to FETÖ underwent judicial investigations, resulting in the arrest and detention of many civil servants, especially from the armed forces, police, and judiciary, alongside civilians. Moreover, a significant number of prison officers, gendarmerie personnel responsible for prisoner safety, and police officers involved in detainee protection were dismissed or suspended due to suspected terrorist affiliations. [341]

One of the Decrees issued during this period, Legislative Decree no. 677, pertains directly to the case at hand. Article 4 of the Decree, titled 'Precautions Regarding Exams,' stipulates that individuals detained or convicted in a penal institution due to membership in a terrorist organization, including FETÖ, are prohibited from taking exams held inside or outside the institution for the duration of the state of emergency and their imprisonment period.[342]

The Turkish national applicant, Hüseyin Uzun, was detained pending trial on August 2, 2016, on suspicion of affiliation with the organization FETÖ. Since 2013, he had been enrolled in a distance-learning program for a Bachelor's degree in Public Administration at a university. His detention

[339] Gökhan Tuncel and Yılmaz Demirhan, '15 Temmuz Kanun Hükmünde Kararnamelerinin Kamu Yönetimine Etkisi' 8 Birey ve Toplum Sosyal Bilimler Dergisi 5, 17.
[340] ibid 17.
[341] ibid 18.
[342] Decree Law No 677 of Türkiye (Official Gazette No 29896, 22 November 2016).

prevented him from participating in the examination necessary to complete his degree. Consequently, he lodged an individual complaint with the TCC, arguing that Article 4 of Legislative Decree no. 677 violates his right to education.[343]

4.2.2.2 Ruling of the TCC

The TCC dismissed the case as manifestly ill-founded. The Court reasoned that, in the aftermath of the coup d'état attempt, a substantial number of individuals accused of terrorist offenses had been detained or convicted. Concurrently, there was a significant reduction in the number of prison officers responsible for maintaining security. For this reason, the Decree Law, which forms the basis of the restriction, was designed to ensure discipline and security within the prison. Consequently, the TCC concluded that the limitation in question is both justified and necessary in a democratic society.[344]

Given these justifications and the fact that the restriction applied only during the state of emergency and the applicant's imprisonment, the TCC concluded that a fair balance had been achieved between the objectives of the restriction and the applicant's right to continue his studies. The Court affirmed that this ensured both security concerns and individual rights were appropriately addressed, leading to its conclusion that there was no violation of the right to education.[345]

4.2.2.3 Ruling of the ECtHR

The ECtHR first specified that the Turkish Government's defense, suggesting that the applicant could renew his university enrollment, resume his studies, and sit for examinations after the state of emergency was lifted, does not constitute a remedy for his deprivation of education during the emergency period and does not negate his victim status.[346]

Subsequently, the ECtHR clarified that the case concerning the applicant's right to access existing educational institutions falls within the scope of Article 2 of Protocol No. 1 to the ECHR. Thus,

[343] *Uzun v Turkey* App no 37866/18 (ECtHR, 10 November 2020) para 5-7.
[344] ibid.
[345] ibid para 8.
[346] ibid para 24.

the Court stated that it must first assess whether there is enough justification for the restriction under Article 2 of Protocol No. 1, which requires a legal basis, the pursuit of a legitimate aim, and proportionality. If such justification exists, determining the validity of the derogation becomes unnecessary.[347]

In regards to the *legal basis*, the Court found that Article 4 of Legislative Decree no. 677 provided the necessary foundation. Pertaining to the *legitimate aim*, the Court concurred with the TCC's ruling, affirming that maintaining discipline and security within the penal institution constitutes a legitimate aim. The Court found no reason to deviate from the TCC's findings in this respect.[348]

As to the *necessity* of the restriction, the Court observed that it was temporary, lasting only for the duration of the state of emergency period, which was less than two years. Furthermore, it noted that the law applies specifically to a defined category of prisoners, namely those accused of affiliation with a terrorist organization, distinguishing this case from situations involving broad restrictions affecting all prisoners indiscriminately based solely on their status. Unlike such cases, the legislation underlying the restriction specifies that measures apply only in cases of alleged or proven specific crimes.[349] Moreover, the Court highlighted that the TCC's reasoning was detailed and plausible, taking into account the significant increase in detainees and the concurrent decrease in prison staff responsible for overseeing educational activities, which impacted prisoners' access to their enrolled educational programs.[350]

The Court further emphasized, aligning with the TCC's analysis, that this case concerns higher education, where member states possess broader discretion. Moreover, it noted that the applicant faced no obstacles in resuming his studies, re-enrolling, or taking exams after the specified period.[351]

[347] ibid para 26-27.
[348] ibid para 28.
[349] ibid para 29-32.
[350] ibid para 33.
[351] ibid para 35-36.

Taking these factors into account, the ECtHR concluded that the restriction on the right to education was proportionate, necessary, and justified under Article 2 of Protocol No. 1. Consequently, the application was unanimously deemed inadmissible.[352]

4.2.2.4 Case Analysis and Evaluation

The case Uzun v. Türkiye holds significance as one of the first to assess the impact of state of emergency measures on prisoners' right to education. [353]

According to the ECtHR, for a restriction on education to be considered legitimate, it "must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim."[354] Some scholars argue that despite the ECtHR finding the decree law imposing restrictions on the right to education to be 'foreseeable,' the condition tying the restriction to the 'continuation of the state of emergency'—which has been extended seven times—renders it challenging to assert that this restriction is genuinely foreseeable for those affected. Particularly for detainees like Mr. Uzun, it implies being deterred from resuming their studies for years *without a final court decision.*[355]

Another criticism posits that the ECtHR's approach appears to deliberately avoid issuing rulings of violations, which could potentially trigger a flood of applications and overwhelm the court with a substantial caseload, particularly in light of the numerous individuals affected by the Decree Laws during the state of emergency. This approach has led some scholars to perceive the ECtHR as less effective during times of crisis. [356] This observation gains credence considering that the number of applications against Turkey rose from 2,212 in 2015 to 8,308 in 2016. Moreover, nearly

[352] ibid para 37.
[353] Turkey Litigation Support Project, 'Hüseyin Uzun v Turkey - The impact of State of Emergency Measures on the Right to Education' (Turkey Litigation Support Project, 28 March 2019) <https://www.turkeylitigationsupport.com/blog/2019/3/28/hseyin-uzunnbspv-turkey-the-impact-of-state-of-emergency-measures-on-the-right-to-education> accessed 26 May 2024.
[354] *Uzun v Turkey* App no 37866/18 (ECtHR, 10 November 2020) para 32.
[355] Benan Molu, 'Tutuklu ve hükümlü öğrencilerin KHK ile engellenen eğitim hakları' (*Sosyalhukuk.org,* May 2017) <https://www.sosyalhukuk.org/2017/05/benan-molu-yazdi-tutuklu-ve-hukumlu-ogrencilerin-khk-ile-engellenen-egitim-haklari/#:~:text=22%20Kasım%202016%20tarihinde%20Resmi,sınava%20girme%20hakları%20ellerinden%20alındı> accessed 24 April 2024.
[356] Zehra Yıldız, '7 Kez Uzatıldı, 2 Yıl Sürdü' *Euro News* (18 July 2018) < https://tr.euronews.com/2018/07/18/7-kez-uzatildi-2-yil-surdu-ohal-in-bilancosu> accessed 19 May 2024.

2,000 new applications were filed in the first month of 2017 alone, nearly matching the total for the entire year of 2015.[357]

Finally, it is also subject to debate whether the application of the Decree Law exclusively to a specific category of prisoners provides a valid basis for determining the absence of a violation. Does restricting the right to education to a specific group of prisoners, rather than applying it to all prisoners, enhance the legality of this restriction? This question warrants further debate.

4.2.3 Özgür Solak v. Türkiye

4.2.3.1 Merits of the Case

The applicant, Mr. Solak, was detained in a penal institution in Burhaniye/Türkiye on suspicion of membership in a terrorist organization (FETÖ) while pursuing his degree. In February 2018, he petitioned the penal institution, asserting that as a master's student, he lacked necessary resources to complete his thesis and was denied access to a computer.[358]

In response, the Education Board of the penal institution stated it had decided against permitting educational and rehabilitation activities for detainees involved in FETÖ investigations. The board cited reasons such as the state of emergency, prison overcapacity, personnel shortages, and workload density. It claimed that permitting such activities could compromise security within the penal institution.[359]

Mr. Solak pursued an appeal against the decision to the Burhaniye Judge of Execution; however, the Court dismissed his appeal, asserting that the decision did not entail any breach of the law.[360]

Furthermore, when Mr. Solak's family sent him a copy of the book 'Law on Criminal Execution', the penal institution refused to deliver it to him. Mr. Solak again filed a case with the Burhaniye

[357] Kerem Altıparmak, 'Ölü Doğan Çoçuk: 685 Sayılı KHK Ile Kurulan OHAL Komisyonu' (2017) 1 Ankara Barosu Dergisi 69, 72.
[358] *Özgür Solak* Complaint No. 2018/24539 (Turkish Constitutional Court decision, 23 February 2023).
[359] ibid.
[360] ibid.

Judge of Execution to obtain formal notification from the institution regarding the refusal and sought a court order for the book's delivery to him.[361]

The Burhaniye Judge of Execution ruled that the penal institution should first evaluate the request for the book, and if denied, advised Mr. Solak to pursue legal recourse. Mr. Solak appealed against this decision to the Assize Court, arguing that the institution's refusal to deliver the book, accompanied by a verbal statement from a public servant indicating it would not be provided, constituted a definitive denial. His appeal was dismissed by the Court.

Following the dismissals by the lower courts, Mr. Solak submitted an individual application to the TCC in July 2018.[362]

4.2.3.2 Ruling of the TCC

The TCC noted that while the Turkish Constitution guarantees the right to education, including higher education, it does not impose a positive obligation on the State to provide educational opportunities for individuals in penal institutions, as demonstrated in the Mehmet Reşit Arslan v. Turkey case. Furthermore, the TCC emphasized that despite prisoners and detainees retaining fundamental rights, the nature of incarceration inherently imposes constraints on their exercise, including the right to education.[363]

The TCC further remarked that prohibiting prisoners in closed penal institutions from pursuing full-time education does not constitute a deprivation of the right to education under Article 42 of the Turkish Constitution. [364]

Based on these considerations, and without further exploration of the issue, the TCC concluded that the applicant's complaint regarding the right to education is manifestly ill-founded and therefore inadmissible.[365]

[361] ibid.
[362] ibid.
[363] ibid.
[364] ibid.
[365] ibid.

4.2.3.3 Ruling of the ECtHR

The TCC's ruling was published in the official gazette on February 23, 2023. The applicant's representative lodged an application with the ECtHR on April 10, 2023, and the application is currently awaiting the first judicial decision.[366]

4.2.3.4 Case Analysis and Evaluation

Another illustrative case from the state of emergency period underscores the TCC's consistent consideration of conditions within penal institutions, such as prison overcrowding, staff shortages, and security issues— similar to those encountered in the case Uzun v. Türkiye. As evidenced in the Uzun case, this rationale has garnered credibility from the ECtHR, indicating a probable consistency in its judicial evaluation in this case.

However, it is noteworthy that the TCC completely disregarded the applicant's arguments concerning the prison authorities' refusal to deliver a book provided by his family. This omission appears to represent an imprecise assessment, depriving the applicant of a reasoned decision.

Furthermore, it is evident that the TCC confined its examination to a general observation of the emergency period, without evaluating the specific conditions of the penal institution where the applicant was housed, and whether it was indeed necessary for this institution to deny the applicant access to educational facilities.

4.2.4 Ali İşeri v. Türkiye

4.2.4.1 Merits of the Case

The applicant was convicted of drug smuggling/supplying and initially incarcerated in a closed penal institution. Due to Covid-19 measures, he was transferred to an open penal institution on February 6, 2020. At the time of filing his application, he continued serving his sentence in the

[366] ECHR.app, 'ECHR Applications: Uzun v Turkey' (*ECHR.app*) <https://echr.app/applications/745498> accessed 14 June 2024.

open penal institution. Following his transfer, the applicant commenced studies at a university in the Department of Tourism and Hotel Management on April 9, 2020.[367]

After enrolling in the university he applied to the Prison Administration for permission to use a computer and access the Internet, as his lectures were conducted online. His request was denied on the grounds that, despite his relocation to an open penal institution, he retained the legal status of a closed penal institution convict and thus was ineligible for formal education.[368]

Upon challenging this denial to the Bartın Judge of Execution, his case was dismissed on the premise that his classification as a convict of a closed penal institution barred him from pursuing formal education under current legislation. His appeal of this decision to the Bartın Assize Court was dismissed on the grounds that the lower court's reasoning complied with legal procedures and regulations.[369]

As a result, he filed an individual complaint with the TCC, asserting that the denial of access to online lectures and the opportunity to continue his higher education violated his right to education.[370]

4.2.4.2 Ruling of the TCC

The TCC first noted hat the application must be assessed under the right to education, which is protected both in Article 42 of the Turkish Constitution and Protocol No. 1 of the ECHR. Furthermore, it emphasized that the right to education includes higher education and imposes a negative obligation on public authorities not to interfere with individuals' access to education.[371]

Moreover, the Court stated that while neither Protocol No. 1 of the ECHR nor the Turkish Constitution imposes a positive obligation on the state, Law No. 5275 and related legal regulations underscore the significance of education in facilitating the social reintegration of prisoners, thereby signifying the state's responsibility to provide education within feasible limits. This implies that

[367] *Ali İşeri* Complaint No. 2021/4607 (Turkish Constitutional Court decision, 20 December 2023).
[368] ibid.
[369] ibid.
[370] ibid.
[371] ibid.

the absence of a positive obligation should not be construed as granting unlimited discretion to the administration.[372]

After outlining the general principles, the Court delved into the specifics of the case, identifying that it revolves around the educational facilities available in closed and open penal institutions. The Court noted that, according to the legal framework, transfer to open penal institutions provides certain advantages and a more lenient execution regime. This arrangement incentivizes good behavior among prisoners and encourages them to strive for transfer to open institutions.[373]

Accordingly, the Court noted that restrictions on educational opportunities are eased in open penal institutions. Unlike those in closed institutions, convicts in open facilities have the right to access formal education. With regard to the present case, the Court found no justification for denying the applicant's request for internet access, even considering his recent transfer to an open institution due to Covid-19 measures. The Court further clarified, referencing an information letter issued by the Directorate General of Prisons and Detention Houses, that there is no distinction in terms of educational entitlements for convicts transferred from closed to open penal institutions, and their educational requests cannot be refused based on their status alone.[374]

Based on this reasoning, the TCC concluded that the justification for restricting the applicant's Internet access for educational purposes lacked specific, case-related details. Consequently, it determined that the administrative and lower courts had failed to provide sufficient justification for the restriction, thereby violating the right to education, and deemed the case admissible.[375]

4.2.4.3 Case Analysis and Evaluation

This is the only case examined under this chapter in which the TCC found the case admissible, and consequently, has not been brought before the ECtHR. This ruling is significant as it extends the opportunity for convicts to access education beyond mere status considerations. Depriving a convict transferred to an open penal institution of the right to education, even if the transfer is due to COVID-19 measures, is unjustifiable. If an individual shows a genuine interest in pursuing

[372] ibid.
[373] ibid.
[374] ibid.
[375] ibid.

academic opportunities, efforts should be made to facilitate, rather than obstruct their educational aspirations.

It is pertinent to underscore the contentious nature of the rule prohibiting prisoners in closed penal institutions from engaging in formal education, justified by the aim of incentivizing good behavior for potential transfer to open institutions. Scholars contend that restricting convicts in closed prisons to non-formal education warrants reconsideration, particularly given the widespread availability of distance education programs offered by numerous universities. This prompts the question: why deprive them of this educational opportunity?[376]

It is noteworthy that following the TCC's ruling on the case, a potential for positive development has emerged. The upcoming 9th judicial package, anticipated for submission to the parliament speaker, proposes substantial revisions to Türkiye's criminal and civil laws. A key amendment includes Article 76 of the Execution Law, which seeks to broaden educational opportunities for well-behaved convicts in closed penal institutions. Currently limited to non-formal education, these individuals may gain access to formal education programs within the institution, contingent upon demonstrating exemplary conduct, should the ninth package be enacted by parliament.

According to the amendment, the implementation of this policy will also hinge on the institution's capacity and resources, thereby ensuring the maintenance of discipline, order, and security. Additionally, priority for formal education will be given to convicts based on age, educational level, social and economic status, and similar criteria.[377]

While this potential change represents a positive development for prisoners' right to education, it is essential to note that in Türkiye, as elsewhere, even laws perceived as ideal in purpose and provisions can be undermined by inadequate knowledge and intentions in their implementation.[378] For this reason, ensuring effective implementation of the amendment law, should it be passed, is essential. This entails utilizing all available resources, providing comprehensive training for prison staff to ensure proper application, and fostering their understanding of the significance of

[376] Civil Society Association in the Penal System (CİSST) and Açık Toplum Vakfı, *Mahpusun Öğrenim Hakkı* (2011) <https://cisst.org.tr/wp-content/uploads/2020/07/mahpusunogrenimhakki.pdf/> accessed 27 May 2024.
[377] Ersan Şen (n 260).
[378] Feyzi Necemeddin Feyzioğlu, 'Hayalimizdeki Türkiye' [1983] Erciyes Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi 23, 27.

education for the social integration and psychological well-being of convicts. Otherwise, the administrations of closed prisons may persist in their previous practices and impede inmates from fully benefiting from formal education.

4.3 Conclusions and Recommendations

The aim of this thesis was to identify the obligations of Türkiye regarding prisoners' right to education under both national law and within the ECHR. This framework includes the case law of the ECtHR and the relevant rulings of the TCC, which address rights at the intersection of the Turkish Constitution and the ECHR. In addition to defining these obligations, the study aimed to investigate whether the country's reality aligns with this legal framework by illuminating the obstacles prisoners face in pursuing their studies.

Initially, to grasp the importance of the right to education and its relevance in the prison context, it was essential to delve into education as a fundamental human right. An examination of the historical evolution of the right to education revealed that it has long been recognized as a fundamental and universally applicable right. This recognition particularly gained prominence following the Age of Enlightenment and was further solidified through democratic revolutions such as those in France and America. This evolution has significantly influenced the contemporary international human rights framework. At present, key international documents, such as the ICESCR, UDHR, and Article 2 of Protocol No. 1 to the ECHR underscore the importance of education and uphold the principle of non-discrimination in educational access.

Following an examination of international principles, this study delved into Türkiye's legal framework on education within its historical context. Legislatively, it is evident that Türkiye upholds the principle of non-discrimination and recognizes education as encompassing both positive and negative rights. However, practical and policy challenges, such as insufficient state funding and inconsistent education quality, undermine the effectiveness of this framework.

When the focus of the study was narrowed to investigate the state of education specifically for prisoners, it was found that European policies in this field, which serve as a model for Turkey, have evolved significantly over time. Influenced by Enlightenment philosophers, modern penal systems have become increasingly humane, with a greater emphasis on rehabilitation in penal

policies. Consequently, educational activities in penal institutions have gained prominence due to their crucial role in the rehabilitation and reintegration of prisoners. This emphasis is reflected in the Council of Europe guidelines, such as Articles 28 and 106 of the European Prison Rules (1973), and in Recommendation No. 89(12) (1989) on education in prisons.

Building upon this historical context, the evolution of Türkiye's prison policies can be traced back to the final stages of the Ottoman Empire, where the nation began to be influenced by Europe's shift from punitive to rehabilitative prison policies. Türkiye aimed to build upon the Ottoman Empire's early attempts, driven also by the desire to align with the Council of Europe's legal framework. Consequently, policies and legislative activities were adopted to facilitate the rehabilitation and reintegration of prisoners. However, challenges such as World War II and the 1980 coup d'état significantly impacted the country's progress in this area.

Currently, Law No. 5275 on the Execution of Penalties and Security Measures specifies the primary goal of incarceration as *rehabilitation and preventing recidivism*. In line with this objective, educational activities are emphasized in correctional facilities. Nevertheless, Türkiye faces evident challenges in prisoner education, both within its legal framework and in its implementation.

In terms of legislative deficiencies, Law No. 5275 presents several concerns. Firstly, it overlooks detainees by focusing exclusively on rehabilitative activities for convicts. This oversight is particularly critical given that detention periods can extend up to two years, notably for offenses falling under the jurisdiction of high criminal courts. Secondly, the law restricts educational opportunities to non-formal education within closed institutions for convicts, thereby limiting their employment prospects compared to those with access to formal education. Thirdly, Law No. 5275 permits the restriction of audiovisual educational resources and internet access for convicts categorized as 'dangerous' or 'affiliated with criminal organizations'. The lack of precise criteria for identifying 'dangerous prisoners' raises significant concerns regarding potential infringements of educational rights. Furthermore, denying Internet access to convicts affiliated with criminal organizations exacerbates their vulnerability to these groups by erecting a barrier to education.

In addition to Law No. 5275, which restricts Internet access for individuals convicted of affiliating with criminal organizations, Higher Education Law No. 2547 further amplifies these limitations by authorizing their expulsion from higher education institutions. This blanket denial of access to higher education fundamentally undermines these convicts' crucial pathway to disengaging from criminal organizations.

Another regulatory concern pertains to the assessment of good conduct, which governs transfers from closed to open institutions. According to the Regulation on Observation and Classification Centers and Evaluation of Convicts, educational participation is encouraged due to its positive effect on prisoners' records. However, the subjective nature of evaluations conducted by prison personnel, along with ambiguous criteria, undermines objectivity and heightens the potential for arbitrary decisions.

In regard to implementation issues in prisoner education, research indicates that challenges span across access to information, financial constraints, study conditions, and utilization of computer and Internet resources. Of particular concern is the impact of overcrowding in Turkish prisons, which maintain the highest population density in Europe. This overcrowding severely curtails prisoners' access to prison libraries and other educational facilities. Reports from inmates suggest that despite existing legal regulations governing the establishment and use of these spaces, enforcement is often inadequate. Consequently, many prisoners face difficulties accessing library resources due to security concerns and are confined to studying within their own beds. This limitation poses a substantial obstacle to their educational progress, as independent study and reading are crucial components of academic development.

Furthermore, the content of prison libraries is insufficient, with the number of books per person falling significantly below the recommended standards set by the IFLA. Additionally, while there is no official ban or confiscation order on books provided by family members, in practice, the Education-Administration and Observation Boards may choose to withhold these books.

Another notable concern arises from financial constraints. Requiring prisoners, who frequently confront economic hardships, to bear expenses such as school fees, examination fees, books, and transportation significantly impedes their pursuit of education. Many prisoners are compelled to

abandon their studies due to these financial burdens. Furthermore, the exclusion of prisoners from eligibility for state scholarships constitutes a clear violation of their constitutional right to non-discriminatory education and conflicts with European Commission Recommendation No. 89(12), which stipulates that prisoners should have access to educational opportunities on par with those available to the general population.

In relation to computer and Internet utilization, while the law allows supervised Internet access for educational purposes, this opportunity is often neglected in practice. Prison authorities frequently deny this right citing insufficient infrastructure and security concerns, especially for politically convicted individuals. These practices contradict Article 4 of the European Prison Rules, which prohibits the use of inadequate resources as justification for violating prisoners' human rights. Moreover, such justifications frequently do not align with reality, as each prison's education unit is equipped with at least one computer connected to the Internet.

Upon analyzing the stance of the ECtHR and the TCC concerning prisoners' education in Türkiye, it is evident that while they have made some strides in upholding educational rights, there remains room for improvement.

In cases involving restrictions on Internet access, both the TCC (Ali İşeri v. Turkey) and the ECtHR (Mehmet Reşit Arslan and Orhan Bingöl v. Turkey) have identified violations of the right to education under Turkish law, which guarantees prisoners this right. However, as demonstrated in the judgment of Mehmet Reşit Arslan and Orhan Bingöl v. Turkey, the ECtHR adopts a negative rights approach, obliging the state to refrain from unjustifiably interfering with this right rather than requiring the provision of facilities to enable such access.

In regards to state emergency measures implemented following the July 15, 2016 coup attempt, both the TCC and the ECtHR were unable to safeguard the right to education for individuals detained, citing reasons of maintaining discipline and security. As a result, detainees such as Mr. Uzun and Mr. Solak (Özgür Solak v. Turkey, Hüseyin Uzun v. Turkey) were barred from resuming their studies throughout the two-year state of emergency period, without a final court decision.

Considering all these factors, what measures can be taken to enhance access to education in Türkiye's prisons?

Firstly, the legal framework requires amendments. Law No. 5275, which currently confines rehabilitative activities to convicts, should be revised to include detainees, given their prolonged detention periods. Additionally, the evaluation of good conduct, which determines transfers from closed to open institutions, needs to involve the public prosecutor in assessing all convicts and establish clear criteria to ensure objectivity and accountability.

Regarding challenges with Internet access, addressing both the legal framework and its implementation is crucial. As educational activities increasingly transition to online platforms, digital methods offer significant advantages in educating prisoners and improving rehabilitation outcomes. Therefore, laws imposing broad Internet access restrictions on individuals classified as 'dangerous' or 'affiliated with a criminal organization' should be repealed. Similarly, the provision in Law No. 2547, which permits the expulsion of convicts linked to criminal organizations from universities, should be abolished. Failure to do so may perpetuate their involvement in criminal activities post-release, as they would lack the skills and self-sufficiency gained through education.

In addressing financial constraints, it is essential to explore comprehensive solutions encompassing registration fees, examination expenses, transportation, and educational materials. Collaborating with NGOs could be instrumental in achieving these objectives. Additionally, regulations that currently prevent prisoners from accessing state scholarships need urgent revision. Efforts should prioritize facilitating prisoners' access to educational scholarships offered by both public and private institutions.

Regarding study conditions, it is crucial to recognize that conducive study environments not only promote educational advancement but also alleviate the mental and physical challenges of prison life. Therefore, it is imperative to establish well-lit, ventilated, and adequately equipped study areas where prisoners can engage in meaningful educational activities. Moreover, access to these facilities should be substantial rather than symbolic, ensuring that all prisoners have regular and effective use to support their rehabilitation efforts. Strict legislative reforms should be implemented to specify the regulation of these areas, thereby ensuring consistent and equitable access, rather than leaving it subject to the discretion of prison authorities.

In conclusion, while there are deficiencies in the legal framework, the actual practice of prisoner education in Türkiye falls even behind these regulatory standards. It is thought-provoking that, despite recognizing the importance of prisoner rehabilitation, Türkiye has yet to implement a comprehensive reform for prisoner education. This highlights the limited impact of the legal framework unless it is effectively enforced.

A society committed to human rights places primary importance on protecting and promoting the well-being of all individuals under any circumstances. Just as individuals are assessed by their treatment of dependents, whether materially or morally, societies are similarly judged by their treatment of incarcerated individuals. Therefore, it is imperative for Türkiye to take genuine steps to improve its approach to prison reform, starting with enhancing rehabilitative and reformative strategies within the penitentiary system. Education, as a cornerstone of rehabilitation, should be given particular emphasis, serving as a vital tool in the journey of healing and self-discovery.

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