TESEV DEMOCRATIZATION PROGRAM
POLICY REPORT SERIES

JUDICIAL REFORM 6

PENAL POLICIES AND INSTITUTIONS IN TURKEY: STRUCTURAL PROBLEMS AND POTENTIAL SOLUTIONS

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TESEV

Penal Policies and Institutions in Turkey: Structural Problems and Potential Solutions

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TESEV PUBLICATIONS

ISBN: 978-605-5332-73-0

The TESEV Democratization Program wishes to thank the Swedish International Development Cooperation Agency (Sida) and the TESEV High Advisory Council for their support during the preparation of this publication.

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Abbreviations

BİSİS - *Bireyleştirilmiş İyileştirme Sistemi* / Individualized Rehabilitation System
ÇETUS - *Çocuk Erken Tanı ve Uyarı Sistemi* / Juvenile Early Detection and Alert System
CGTİHK - *Cezaların ve Güvenlik Tedbirlerinin İnfazı Hakkındaki Kanun* / Law on the Enforcement of Sentences and Security Measures
CİSST - *Ceza İnfaz Sisteminde Sivil Toplum Derneği* / Civil Society Association in the Penal System
ECHR - European Court of Human Rights
EU - European Union
KYB - *Kanun Yararına Bozma* / Overturning for the Benefit of the Law
NGO - Non-Governmental Organization
TBMM - *Türkiye Büyük Millet Meclisi* / Turkish Grand National Assembly
TESEV - *Türkiye Ekonomik ve Sosyal Etüdler Vakfı* / Turkish Economic and Social Studies Foundation
TÜBİTAK - *Türkiye Bilimsel ve Teknolojik Araştırma Kurumu* / Scientific and Technological Research Council of Turkey
TÜİK - *Türkiye İstatistik Kurumu* / Turkish Statistics Institute
UN - United Nations
UYAP - *Ulusal Yargı Ağı Platformu* / National Judiciary Informatics System

Foreword

The Democratization Program of the Turkish Economic and Social Studies Foundation (TESEV DP) has been working on the transformation of the judiciary in Turkey towards a more independent, impartial and pluralistic system that ensures justice for all since 2009. In this framework TESEV DP has published reports on constitutional reform and the reform of higher judicial bodies (e.g. High Council of Judges and Prosecutors – HSYK). These reports included important aspects with regard to the institutional structure of of the judiciary and contributed to ongoing public discussions on the issue.

On the other hand TESEV DP also worked on access to justice of citizens. In this framework a report on access to justice was published in 2012. The last report published on this topic in 2013 is titled *Judicial Reform Packages: Evaluating Their Effect on Rights and Freedoms.* In this report the rounds of amendment packages were evaluated from the points of view of freedom of thought and expression, personal liberty and security, the right to fair trial, and penal policies and laws. These reform packages that have been passed until now have improved the legal system especially for those who have suffered under the shortcomings of it in the past. The present report is a continuation of this policy report series and in more detail evaluates the penal policies topic touched upon in the previous 2013 report.

Penitentiaries and penal policies have been one of the many areas subjected to changes in the context of the judicial reform taking place in Turkey over the last several years. Officials have been inspired to develop new policies in this field by a number of factors: the rise in the number of inmates and the resulting capacity problem; the inefficacy of outdated municipal prisons; and the need to support the resocialization of inmates through new penal policies.

The Democratization Program of the Turkish Economic and Social Studies Foundation (TESEV DP), aiming to support this process by analyzing its extant problems and potential solutions, met several times in May 2014 with experts on the topic.[1]

These meetings helped TESEV DP to set the framework for further activities in this area. These meetings culminated in a roundtable discussion between policymakers, academics, and NGO representatives in June 2014.

In these meetings and in the one-on-one interviews it was understood that discussions on penal policies and institutions usually are based on political prisoners. This has resulted in a disregard towards problems of other prisoners' (who constitute more than 90% of the inmate population) problems due to management structures, physical conditions and security

[1] Names of some of these experts are provided here: Zafer Kıraç of the Civil Society Association in the Penal System (*Ceza İnfaz Sisteminde Sivil Toplum Derneği, CİSST*); Prof. Dr. Zahir Kızmaz at Fırat University; Asst. Prof. Dr. Tuba Topçuoğlu at Istanbul University; Aytekin Yılmaz of the "Place of One's Own" Association (*Mahsus Mahal Derneği*); Prosecutor Ersoy Yüce; Asst. Prof. Dr. İdil Elveriş at Bilgi University; Asst. Prof. Dr. Galma Akdeniz at Bilgi University; lawyer Begüm Yıldız; lawyer Naim Karakaya; lawyer Hazal Algan; Lokman Burak Çetinkaya, law student at Bahçeşehir University; and officials the General Directorate of Penitentiaries and Detention Facilities of the Ministry of Justice.

approaches. Furthermore, it was identified that juvenile justice is a field that needs to be prioritized and taken up separately. In lieu of these insights, in October 2014 TESEV DP organized a roundtable meeting on juvenile justice bringing together policymakers, academics and NGO representatives in Ankara. A field visit on juvenile justice to Berlin, Germany followed this meeting in November 2014. Policymakers, academics and relevant NGO representatives participated in this meeting and important policy proposals were developed.

The present report contains the results of the roundtable meetings, one-on-one interviews and the study visit to Germany and discusses the problems identified and the proposed solutions developed. Thereby the report provides a political, legal, and social analysis of how Turkey's present penal policies and institutions might be improved.

The reports main claim is that the general logic of the penal regime should be based on giving individuals who have been imprisoned the chance to participate in social life again after 'facing' their guilt and after having gone through all stages of the penal process. In that regard the penal reform ambitions of the last years are also being evaluated.

The main topics presented in the report as proposals to improve the penal system towards attaining a more humane character, respectful of human rights and in line with international legal commitments are as follows:

- Authorizing social workers more in the penal system,
- Developing and implementing individualized penal programs for each prisoner,
- Ensuring participation of psyco-social staff in the prision administration,
- Ensuring that the state cooperates with relevant NGOs working on the penal system,
- Opening prisons up for independent monitoring,
- Ensuring that physical conditions and architectural standards meet the needs of prisoners.

Efforts to increase the resocilizing impact of the penal system in Turkey and the mentality transformation aiming at overcoming the historical baggage the penal system carries in Turkey are positive. TESEV DP will continue to follow developments in the penal system reform and will try to further contribute to this transformation process.

We would like to thank Koray Özdil, Begüm Yıldız, Naim Karakaya, Hazal Algan, Lokman Burak Çetinkaya, Tuba Topçuoğlu, İdil Elveriş, Zafer Kıraç, Zahir Kızmaz, Aytekin Yılmaz, Galma Akdeniz and representatives of the Ministry of Justice DG for Prisons and Detention Houses for their contributions.

Introduction

Whether in national and international public opinion, in academic circles, or at the level of the state, most agree that being incarcerated fails to help convicts successfully reintegrate into society. Most, therefore, also believe in the need for an alternative solution to incarceration. Probation, crime-prevention measures, and restorative justice are but a few alternatives that have been developed as solutions, albeit not as a complete replacement for incarceration. Rather, such alternatives aim to reduce the number of inmates, the number of prisons, and crime rates in general.

It has also been possible to observe, in the last several years, a significant transformation in the mentality and practices of NGOs, universities, and state institutions in applying such alternatives to resosialize criminals and help them re-enter society. Nevertheless, the use of such alternatives has not yet become an institutionalized practice, something seen in the fact that the already high number of inmates continues to rise (along with the number of new prisons built to house them). While new prisons are being planned and built in response to capacity pressures, crime-prevention and resozialization-support measures continue to be developed and employed. One must admit, however, that such efforts have not yet reached the desired level.

Especially over the last 30 years, prisons in Turkey have made the news as places where rights are violated, hunger strikes are carried out, and violence or torture are employed. Furthermore, following the 1980 coup, prisons became the space where state power could be most easily observed, a place now connected with a rise in political prisoners. With these in mind, some began to raise the critique that prisons had become a space where the state sought to apply social control against individuals who did not accept the official state ideology or simply held other political beliefs.

This critical approach, however, resulted in the neglect of other topics, including prisons' general administrative structure, their physical conditions, their role in socialization, and the importance of scientific studies in the development of humane prison conditions. By highlighting these issues, this report focuses not on prisons as a space for political struggle or political prisoners, but on the inmates, convicted of normal crimes who comprise more than 95 percent of the prison population in Turkey. (To be sure, the conclusions of this report and the recommendations made are of equal importance for living conditions of political prisoners.) The main aim of this report is to establish how best to achieve resociaization in prisons, particularly for non-political prisoners, and to uncover the problems in the way prisons are currently administered.

Aiming to approach both the positive and negative features of the current system in an informative, critical, and (to the extent possible) objective way, this report seeks to contribute

to the ongoing process of prison restructuring and reform. In addition, four specific goals have also guided the writing of this report:

- To examine the administrative, physical, and personnel infrastructure of prisons and, in so doing, to present recommendations on creating a penal structure that focuses on the inmate and observes human rights. (*Chapters 1 and 2*)
- To consider the notion of "resocialization" and examine the role of prisons in its implementation; to evaluate the positive steps taken by the state in this regard and thereby contribute to the ongoing transformation in mentality and practice of resocialization. (*Chapter 3*)
- To analyze the current law, its implementation, and trial procedure and present recommendations on how to amend the law. (*Chapter 4*)
- To emphasize the importance of statistical data and comprehensive scientific studies in the development of successful penal policies and to encourage universities and social scientists to conduct further research in this field. (*Chapter 5*)

Although this report contains a separate chapter on the legal framework (*Chapter 4*), other chapters also include legal proposals. As noted in the foreword, this report has been written using information collected from secondary sources. As stated in the *Foeward* this report was prepared based on secondary sources. Furthermore, this report has benefitted from previous reports prepared by various institutions on the penal system, as well as international academic literature and the legal codes. As a result, the present work should be regarded as a starting point and should be supported by further field studies, primary sources, and statistical data. The following factors, for example, are not analyzed by this report (or considered in a limited way) and thus require more detailed analysis in the future:

- The problems faced by inmates with special needs during the penal process;
- The role of social services in preventing juvenile crime (touched upon briefly in this report);
- Health in prisons and the right of inmates to access adequate health care.

Aside from all of these, we have to emphasize that the penal system and penitentiaries represent an enormous field in need of more research. The general structural recommendations presented in this report should be evaluated alongside the growing number of studies focused on various aspects of the penal system.

Chapter 1: Penitentiaries' Administrative and Physical Infrastructure[2]

At the root of many problems in penitentiaries lies their administrative and physical infrastructure. The lack of precision in the division of labor and responsibility among prison wardens, prosecutors, correction officers, and social workers within the prison administration, the lack of adequate inspection or monitoring practices, and an inmate-focused, non-participatory mentality are all factors that create a prison environment prone to rights violations. Inmates with special needs are particularly affected by such factors.[3] Proper physical conditions at prisons, closely related to their administrative structure, play an extremely important role in the prevention of rights violations at prisons. The main problems being faced in prisons today might be listed as follows:

- The lack of shared free spaces in penitentiaries that would help inmates re-integrate into society,
- The failure to perform ward transfers following a satisfactory psychological evaluation,
- The inadequacy of the physical conditions at prison personnel's place of work.

In this chapter, we examine in more detail problems facing prisons' administrative and physical infrastructure and touch on potential solutions.

A. Prison Administration

Penitentiary wardens have been given broad decision-making authority. Administrative authority beyond the opinion of the warden is limited, giving rise to problems of low participation in administrative structure, failure of the administration to act as an agent of monitoring, and unclearness in decision-making mechanisms. Under the extant structure, Administrative Oversight Boards, which are responsible for administering prisons together with wardens, fail to fully perform their intended function. One reason for this is that the warden has been made the administrative superior to all members of the board and the resulting structure in which the warden is the only real authority. **The creation of new rules for such boards, making members more impartial, authorized, and independent from the warden, would be an effective step toward making more participatory, decentralized administrative decisions.**[4]

Another problem relates to the background of the wardens, who play such a central role in prison administration. In order to give individuals more capable of administering prisons a more active role, it is necessary to eliminate the barriers to appointing teachers, pedagogues, psychologists, philosophers, sociologists, or social workers as prison wardens. An amendment made by the Justice Ministry in its 7 June 2014 Guidelines on Promotion and Change of Title

[2] This chapter was co-written with legal expert Begüm Yıldız.
[3] This list includes inmates who are ill, mentally or physically disabled, children (or children who live with their mothers in prison), LGBTI individuals, women, foreigners, and the elderly.
[4] For example, ward-transfer decisions.

has now allowed for social workers to be promoted to the rank of prison warden.[5] It is important that these positive changes be implemented in practice. Furthermore, **administering prisons through a board composed of judges, prosecutors, lawyers, and representatives of NGOs and the Ministry, rather than by appointed administrators, would help increase participation in the process and improve oversight efficacy.**

The trial process and the carrying out of sentences are two different steps which must be distinguished clearly. While the participation of Republican prosecutors in both the trial and the sentence-execution process may seem to violate this principle, it appears that the authority given by law to prison prosecutors functions as a countervailing balance against prison administrators in Turkey, who have the power to take decisions on disciplinary actions and security measures in prisons. The problem of principle could be solved through the institutionalization of functional oversight mechanisms, a more participatory understanding of administration, and judges more effective at sentencing during trial. A table showing the administrative and supervisory duties and powers of prosecutors and the office of the chief public prosecutor under the current legal system has been provided below.

Convicts and detainees may not be placed in a penitentiary without the written order of a Republican prosecutor. (Law on the Enforcement of Sentences and Security Measures (*CGTİHK*), Art. 21)[6]
They may not be released from enclosed penitentiaries without written permission given by those authorized to do so in cases expressly stated by law. (*CGTİHK*, Art. 92, I, II).
The approval or consent of a Republican prosecutor is required for a convict to receive furlough, personal leave, or permission to seek employment. (*CGTİHK*, Arts. 94, 95, 96)
The convict shall be given a document arranged by the Republican prosecutor's office stating that s/he has been imprisoned, the date of release and length of sentence, and the exact crime for which the convict has been sentenced. (*CGTİHK*, Art. 20, IV)
The court shall send the law governing the sentence it has approved to the Republican prosecutor's office. The Republican prosecutor shall monitor the sentence and ensure that it is being executed according to this law. (*CGTİHK*, Art. 5)
The Republican prosecutor's office is responsible for handling the postponement of prison sentences for reasons of illness (*CGTİHK*, Art. 16) or the wishes of a convict (*CGTİHK*, Art. 17).
The Law clearly delineates which people are allowed to enter penitentiaries for visitation. (*CGTİHK*, Art. 83, I) Other individuals may be given written permission to visit the penitentiary by the Republican prosecutor's office. (*CGTİHK*, Art. 83, II)

Table 1: Responsibilities and powers related to administration and oversight in the Law on the Enforcement of Sentences and Security Measures (CGTİHK)

B. Prison Oversight

The Oversight Boards inspecting prison conditions can sometimes fall short of fulfilling their monitoring function. Inspection reports are generally written without conducting detailed observations and only rarely focus on rights violations experienced by inmates. Civil society must be included in the process for such oversight to be more effective. One must not forget that penitentiaries, by their very nature closed-off institutions, are places where rights violations may occur frequently. **In order to prevent rights violations and ensure humane**

[5] For the full text of the Order Regarding Changes to the Guidelines on Promotion and Change of Title, see: *http://www.resmigazete.gov.tr/eskiler/2014/06/20140607-3.htm*

[6] For the Law on the Enforcement of Sentences and Security Measures (*Cezaların ve Güvenlik Tedbirlerinin İnfazı Hakkındaki Kanun*), see: *http://www.tbmm.gov.tr/kanunlar/k5275.html*

prison conditions,[7] **there is a need for an independent, impartial observation and oversight mechanism.** This mechanism must also protect prison personnel against false charges made against them. It is also important that monitoring not just remain limited to exposing a prison's negative aspects and deficiencies, but also to identify best practices in Turkey and around the world and ensure the flow of information about these practices to other prisons. **The establishment of an independent and effective monitoring and oversight mechanism is proscribed by international laws in an effort to protect the rights of inmates.**[8] The table below lists regulations on monitoring or oversight boards found in international laws:

United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners[9]
Article 55 of this text, under the heading "Inspection," states: "There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services." This article must be read in conjunction with **Article 36, Clause 2**, under the heading "Information to and complaints by prisoners" in the same document: "It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present."
Council of Europe Committee of Ministers Recommendation (2006) No. 2 of the Committee of Ministers to member states on the European Prison Rules (Part 6)[10]
Under the heading "Governmental inspection," **Article 92** states: "Prisons shall be inspected regularly by a governmental agency in order to assess whether they are administered in accordance with the requirements of national and international law, and the provisions of these rules." Under the heading "Independent monitoring," **Article 93** states: "1) The conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public. 2) Such independent monitoring body or bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit prisons."
UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment [11]

[7] For example: convicts' living spaces, their physical and mental condition, the quality and quantity of food served, the availability of clean drinking water, access to health care, educational opportunities, hygeine, education, sports, leisure, recourse to legal aid, the ease of practicing religion and establishing contact with the outside world, staff working conditions, use of shared public space, etc.

[8] Turkey used the example of the United Kingdom in establishing oversight boards in prisons; thus, a comparison with the United Kingdom in terms of oversight-board practices will be the most apt.

[9] These rules were ratified by Turkey in 2000. For the Standard Minimum Rules on the Rehabilitation of Inmates adopted by the Turkish Parliament's Human-Rights Commission, see: *http://www.ombudsman.gov.tr/contents/files/876b6--Mahpuslarin-Islahi-Icin-Asgari-Standart-Kurallar.pdf* (accessed: 08.10.2014). For the UN Standard Minimum Rules for the Treatment of Prisoners, see: *https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf* (accessed: 15.10.2014).

[10] Turkey has adopted these recommendations, which nevertheless do not carry the force of law. For Recommendation 2006/2, see: *https://wcd.coe.int/ViewDoc.jsp?id=955747* (accessed: 15.10.2014). For a collection of all of the Council of Europe Committee of Ministers' recommendations on penitentiaries in the context of prison reform in Turkey, see: *http://www.cte.adalet.gov.tr/menudekiler/uluslararasi/tavsiye_kararlari.doc* (accessed: 08.10.2014)

[11] Turkey's law No. 6167, passed on 23 February 2011, ratified both the main part of this convention as well as the voluntary annex (see Table 2). The aim of this protocol was the establishment of a system by which international and domestic institutions could conduct regular cisits to places where individuals were being

Article 11, under the heading "Interrogation methods and review of practices," states: "Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture."
United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [12]
Article 20: "In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location; (b) Access to all information referring to the treatment of those persons as well as their conditions of detention; (c) Access to all places of detention and their installations and facilities; (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information; (e) The liberty to choose the places they want to visit and the persons they want to interview; (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it." Furthermore, **Article 19** grants the authority to advise the administration and to present recommendations and observations on current or proposed legal regulations.

Table 2: Regulations on the monitoring and oversight of prisons in international agreements

Focusing now in a more detailed way on how the inspections regime works in Turkey, we can discuss two types of actors that have been given the authority to inspect prisons: an internal and an external mechanism. Penitentiaries' internal oversight mechanisms include a special class of judges who oversee the execution of sentences (*infaz hakimleri*), public prosecutors, prosecutors responsible for penitentiaries, inspectors from the Justice Ministry, and auditors from the General Directorate of Penitentiaries and Detention Facilities. External inspection and control mechanisms include the Human-Rights Commission of the Turkish Grand National Assembly, the Turkey's Human-Rights Institute (*Türkiye İnsan Hakları Kurumu*), the Human-Rights Directorate reporting to the prime minister, provincial and subprovincial Human-Rights Institutes, and prison monitoring boards. In addition, an international institution, the European Committee for the Prevention of Torture, serves as an external oversight mechanism.[13]

Prison monitoring boards were established in line with the recommendations of the European Committee for the Prevention of Torture on 14 June 2001 based on the Law on Penitentiary and Detention Facility Monitoring Boards (No. 4681) along with the Regulations on

deprived of their rights. In the year following signatories' approval of the convention, states were obligated to establish at least one independent mechanism within the country for prevention of rights violations. The convention also include additional obligations regarding several criteria for monitoring rules. For English-language text, see: *https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-9&chapter=4&lang=en* (accessed: 15.10.2014). For Turkish, see: *http://www.unicankara.org.tr/doc_pdf/metin1310.pdf* (accessed: 08.10.2014).

[12] For English version, see: *http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/551/48/PDF/N0255148.pdf?OpenElement* (accessed: 15.10.2014); for Turkish, see: *http://www.resmigazete.gov.tr/eskiler/2011/07/20110705M1-17.htm* (accessed: 08.10.2014)

[13] More information on the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment may be found in English at *http://www.cpt.coe.int/en/default.htm* (accessed 15.10.2014) or in Turkish at *http://www.cpt.coe.int/turkish.htm* (accessed: 08.10.2014).

Penitentiary and Detention Facility Monitoring Boards passed the same year.[14] The goal of these rules is to allow civil society to contribute to prison services; to have the areas of the system which are lagging identified by independent parties and evaluated according to objective criteria; to ensure administrative transparency; and to prevent possible violations of human rights. According to the 14 June 2001 Law on Penitentiary and Detention Facility Monitoring Boards (No. 4681) and the 2001 Regulations on Penitentiary and Detention Facility Monitoring Boards,[15] monitoring boards' general characteristics, responsibilities, and powers are as follows:

General Characteristics of Prison Monitoring Boards:[16]

These boards have been established in order to observe the administration, methods, and operation of penitentiaries and detention facilities *in situ*; to collect information; and to present findings in the form of reports to the relevant authorities.

Monitoring boards have been established for every ordinary criminal justice commission (*adli yargı adalet komisyonu*). Their area of influence is restricted to the jurisdiction of their corresponding ordinary criminal justice commission. Space is to be reserved for the activities the monitoring board in the building used by the ordinary criminal justice commission. Secretarial services for the monitoring board will be carried out by the same ordinary criminal justice commission office.

Monitoring boards consist of five people: one chair and four members. Members are elected to four-year posts. Members whose term has expired may be re-elected. Monitoring board members are to have the qualifications outlined in the Law on Civil Servants No. 657 and be at least 35 years old, practice one of the professions outlined in the law, be known to others for her or his honest, dependable, and morally upstanding personal character, and not be an active member of a political party.

The following individuals may not be elected as chairs or members of prison monitoring boards: individuals who are involved in a legal relationship with a penitentiary, including a purchase, sale, or tender offer; individuals who have been harmed or those whose relatives (up to second-degree) have been harmed by a convict or detainee found in a penitentiary; and individuals who are related up to the second degree with a convict or detainee in a penitentiary, through blood, marriage, or inheritance.

According to Article 5 of the Law, members of the monitoring board are to be elected unanimously by the ordinary criminal justice commission. Members may be elected either *ex officio*, upon the recommendation of board-level professional institutions or with the aid of that institution's highest-ranking civil servant, or from among direct applicants.

Prison Monitoring Boards' Duties and Powers:

While prison monitoring boards' duties are listed in **Article 6** of the relevant law, the only stipulation with regard to its powers can be found in **Article 7, Clause 5**, under the heading "Basic and Operating Principles for Prison Monitoring Boards": "The monitoring board may visit the penitentiary for which it is responsible whenever it deems necessary, but at least once every two months. The number of board members participating in such visits must be at least as many as are required to reach quorum in a normal meeting."

In the guidelines passed for the relevant law, Article 8, entitled "Visitation," regulates the prison visitations carried out by the boards, the conditions for meetings with inmates, and requests for information and documentation. According to the article, "The monitoring board may visit the penitentiary for which it is responsible whenever it deems necessary, but at least once every two months. The number of board members participating in such visits must be at least as many as are required to reach quorum in a normal meeting. Visitations are arranged through the relevant Republican prosecutor. The penitentiary administration is to be given information on topics that could affect the security of the penitentiary while the board carries out its work. The monitoring board may ask to see convicts or detainees alone, or, if requested, may meet with penitentiary officials. The monitoring board may examine case files and documents related to convicts and detainees if they relate to the boards' mandate. Upon written request, a copy of these is to be given to the monitoring board."

[14] For the Guidelines on Penitentiary and Detention-Facility Monitoring Boards, see: *http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5027&MevzuatIliski=0&sourceXmlSearch=* (accessed: 08.10.2014)
[15] *ibid.*
[16] *ibid.*

To observe and examine, *in situ*, practices and activities related to the carrying out of sentences and prisoner reform in penitentiaries and detention facilities, to collect information from administrators and officials, and to listen to convicts and detainees.[17]
To notify relevant authorities about the faults and deficiencies observed in penitentiaries and detention facilities with regard to the carrying out of sentences and prisoner reform, convict and detainee health and living conditions, internal security, and prison transfer operations.[18]
To prepare, at least once every four months, a report based on an evaluation of the observations and information collected from penitentiaries and detention facilities; to send a copy of this report to the Justice Ministry, the chair of the parliamentary Human-Rights Commission, the Republican prosecutor serving the judicial district in which the monitoring board is located, and, if a complaint has been filed in relation to the mandate of the monitoring board, to the office of the judge overseeing the execution of sentences.[19]

Table 3: Prison monitoring boards' general characteristics, duties, and powers according to Turkish law

Comparing these laws, we can see that while regulations in other countries seek to recognize broad powers for external oversight mechanisms, monitoring boards in Turkey are not able to function in an entirely independent, impartial, and transparent way. **The law states that monitoring-board members are not allowed to share the information that they collected during their inspections or the reports they have written without the permission of the relevant authorities.[20] This law is a clear barrier to an independent and objective oversight mechanism.** Furthermore, the reports published by the monitoring boards are rarely shared with the public. Beyond a more independent oversight mechanism, a more transparent approach to the problem is also necessary. It is important that the monitoring boards actually meet regularly once every three months and conduct inspections regularly, as is provided for by the law.

It might be more effective to have oversight of prisons conducted by a new, higher-ranked board composed of both representatives of state institutions and civil society. Having prisons open to inspections by non-state individuals and making the administrative process more transparent are important steps toward improving the conditions faced by inmates and eliminating the problems arising from the strict hierarchical relations found in prisons. Effective mechanisms and methods must be developed in this regard for the Turkey's Human-Rights Institute, which has taken on the task of independent oversight. Authorities should be wary of problems that could arise from giving the responsibility of oversight to an organization with close ties to those in power. **It might be more effective to have oversight conducted by an independent Prison Monitoring Board consisting of members of various NGOs with expertise and considerable field experience.** In order to conduct independent and effective oversight, such a board ought to pay heed to the following principles:

- Operate in accordance with international standards and in the framework of international law outlined above;

[17] For Article 6 of the Law on Penitentiary and Detention-Facility Monitoring Boards, see: *http://www.muglaecik.adalet.gov.tr/mevzuat1sekme.html* (accessed: 08.10.2014)
[18] *ibid.*
[19] *ibid.*
[20] For Article 11 of the Guidelines on Penitentiary and Detention-Facility Monitoring Boards, see: *http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5027&MevzuatIliski=0&sourceXmlSearch=* (accessed: 08.10.2014)

- Become institutionalized as an effective and independent actor in external oversight;
- Recognition of board members' right to meet with inmates upon request;
- Immediate sharing of monitoring reports with the public and thereby the establishment of a more transparent oversight mechanism.

The prison reports put out by the Turkish Grand National Assembly, another external oversight mechanism, almost always remain superficial. The reports are sometimes signed by parliamentarians who did not even participate in the inspections. **Parliament must ensure that the prison-inspection work of the Human-Rights Commission be conducted according to predetermined criteria. Reports should aim to include detailed investigations of rights violations, including information as detailed as inmates' physical conditions, and should serve to strengthen external oversight so that such evaluations avoid partisanship.** The bar association should work more on this issue and should support external review of prisons through the use of expert subcommittees.

C. Civil Society and Social Services in Penitentiaries

Laws around the world have begun to focus on human rights and human dignity, while legal systems have changed from restrictive apparatuses of power into mechanisms that protect individual rights and freedoms. In such legal systems, it is extremely important that society-level organizations participate effectively in the decision-making process. Thus, in other countries, we can observe NGOs taking a more active role in the legal process. Their participation puts the human factor at the heart of the legal process.

If NGOs take on more responsibility in the administration and monitoring of the penal system and penitentiaries, and if this more active role is supported by prison administrations and policymakers, then the humanitarian side of the penal system will be strengthened, the penal process will become more transparent, and the ties between a prison and the outside world or society will be strengthened as well. This will simultaneously help to re-socialize individuals both while imprisoned and after their sentence by helping to remove the negative associations society has with prisons and inmates. As important as it is that penitentiaries and the relevant policymakers work closely together with civil society, the bar association, and professional organizations, it is also important that all actors agree that such cooperation should be an inherent part of a general reform of the penal system.

In order to better understand the potential for cooperation between the penal system administrators and NGOs, it will be helpful to cover the extant legal regulations on the topic:

The topic of cooperation is regulated by **Article 77**, found in Section 2 ("Education") of Part 4 ("Rehabilitation") of Law No. 5275 on the Enforcement of Sentences and Security Measures: "In order for efforts to rehabilitate convicts to be successful, associations, foundations, volunteers, and voluntary organizations may be called for cooperation. Public institutions and organizations are obligated to provide the necessary assistance to this end to the extent allowed by the means available."

Article 101, Clause 5 ("Aim of Rehabilitation and Specification of Rehabilitation Programs") of the Statutes on the Administration of Penitentiaries and the Enforcement of Sentences and Security Measures states: "In order for efforts to rehabilitate convicts to be successful, publically significant professional organizations, foundations and associations which work for the public good, as well as volunteer private and legal persons may be called for cooperation. Public institutions and organizations are obligated to provide the necessary assistance to this end to the extent allowed by the means available."

Table 4: Legal regulations regarding cooperation with NGOs

As can be seen in the table above, the NGOs with whom prison administrators and policymakers may cooperate have been limited to associations, foundations, individual volunteers, and volunteer organizations. The statute stipulates that professional organizations must have the status of "public institution" and makes it a requirement for cooperating foundations and associations to have as their aim to "work for the public good." Thus, both in the law and in the statutes, cooperation with NGOs has been presented not as an obligation, but merely as an alternative method. **This regulation needs to be reworked in a way that encourages cooperation. There needs to be an institutional and legal basis for greater NGO participation in the penal system. In order to secure an active role for NGOs at every step of the penal process and to encourage NGOs' participation, their cooperation should not be presented in the law as a mere alternative; furthermore, official protocols should be signed to ensure cooperation.**

Sufficient numbers of qualified social workers should be employed to develop psycho-social services at prisons. Until now, such services have remained insufficient because they are not carried out by experts who have training in the field of humanitarian services. **It is extremely important that such services, which are charged with providing convicts with sufficient psychological and social support, both organize social activities and develop socialization programs tailored to the individual needs of the convict.**[21] For this to happen, psycho-social experts employed in prisons must have the qualifications to develop and implement such programs and continue to develop their professional skills on a regular basis.

D. Prisons and Coordination

Strengthening the lines of communication between the Justice Ministry and prison administrations would help make the implementation of new policies easier. New feedback mechanisms have to be worked out in this regard. **A more sustainable policy could be developed if Justice Ministry offices shaped their penal policies according to feedback received from prison administrations and inmates.** It is important that NGOs and universities play a more effective role in the development of penal policies. Transforming the understanding of prisons as a "black box" into one more utilitarian and more open to such organizations would aid penitentiaries in their efforts to resocialize inmates.

To ameliorate the deficiencies sometimes seen in coordination between institutions, an advisory board made up of representatives from NGOs, academia, the Justice Ministry, and prison administrations may be established to meet regularly. Such an institution

[21] This topic will be discussed in more detail in Chapters 2 and 3 of the present report.

could support the development of the necessary administrative and institutional policies by taking inmates' demands into account as well. This board could be a means for NGOs to forward inmates' important concerns to policymakers, particularly those which inmates are loathe to share with administrators or official inspectors.

E. Physical Conditions

The closing of outdated municipal prisons with poor conditions has been a positive step. Nevertheless, the transition to campus-style prisons, despite their better-functioning administrations and greater living space for inmates, has not come without several problems. Campus-style prisons, built outside cities, have made it more difficult for inmates' friends and family to come for visitation. Keeping ties strong between inmates and their families is the most important factor in their socialization. Considering that most inmates come from a difficult socio-economic background, transportation costs to campus-style prisons puts a significant financial burden on families. **Campus-style prisons built far away from cities thus present several challenges in terms of socializing inmates.** The same can be said for access to lawyers and sufficient legal counsel. Measures should be taken to eliminate the kind of problems caused by campus-style prisons.

The number of inmates in prisons is constantly rising. Ministry officials are trying to develop solutions to the problem of capacity created by the rise in the number of inmates, including the implementation of probation.[22] Official statistics show that the 368 penitentiaries currently in operation have a total capacity of 157,983 inmates.[23] In addition, new prisons are being built in an attempt to solve the capacity problem. With these new prisons, officials are hoping to raise this capacity to around 215,000 by 2017. The basic reason behind this rise in capacity has been the rise in number of inmates and detainees being held in prison. The following table shows the total number of detainees and convicts being held in prison by year, according to official statistics:[24]

[22] The launch of probation programs has been an important part of the switch to a "rehabilitation" mentality as well.
[23] For the official website of the General Directorate of Prisons and Detention Facilities, see: *http://www.cte.adalet.gov.tr/#*
[24] For the official website of the General Directorate of Prisons and Detention Facilities, see: *http://www.cte.adalet.gov.tr/#*

Year	*Total number of convicts and detainees*
2000	49,512
2001	55,609
2002	59,429
2003	64,296
2004	57,930
2005	55,870
2006	70,277
2007	90,837
2008	103,235
2009	116,340
2010	120,814
2011	128,604
2012	136,020
2013	144,178
2014 (November)	154,197

Table 5: Total number of detainees and convicts being held in penitentiaries in Turkey, by year

This table clearly shows that the attempt to increase capacity by building new prisons arises from an expectation that the prison population will continue to rise in the near future. There are two basic points that should be considered when discussing the issue of capacity:

i. **A prison's bed capacity should be clearly distinguished from its general capacity.**[25] Merely increasing a prison's bed capacity, or calculating capacity based on the number of prison beds, may lead to overestimation of inmates' living space, already quite constricted under prison conditions. **Rather than measuring bed or cot numbers, it is clear that planners need to focus on living-space and shared-space capacity and to design prison architecture with human needs in mind.**

ii. Although it may appear that building new prisons and increasing capacity are necessary responses to rising numbers of detainees and convicts, what is actually necessary are **policies that emphasize crime prevention and aim to reduce the number of repeat offenders.** Programs individually tailored toward the needs of individuals in prison can reduce the rate of repeat offenders. It is important that the response to the rising prison population not remain limited to increasing capacity, but also **develop alternative measures to imprisonment such as probation and focus more heavily on crime-prevention measures.**[26]

Prisons should be built using architectural standards that keep the individual human in the forefront. **Prison architecture should seek to limit isolation, accommodate the disabled, and keep shared living space in mind.** Prisons must have shared living space so that inmates can be socialized and to prepare them for reintegration into society after their release from prison. Time allotted for interaction in shared spaces outside the prison ward should be

[25] Official statistics on general capacity actually represent bed capacity.
[26] This topic will be discussed in more detail in Chapter 3 of the present report.

increased and inmates should be allowed to interact with one another in larger groups. In this regard, while the change to single-person cells has had some advantages, it has also presented some disadvantages. These absolutely must be addressed with preventative measures. In particular, **single-inmate wards, which are important to protect inmates with special needs from discrimination and negative treatment, absolutely ought to be implemented in conjunction with shared spaces and should not turn into a way of punishing inmates by isolation.** Another important topic to consider is the lack of spaces in prison to spend private time alone, as inmates may be constantly surrounded by other people.

Experts need to conduct academic studies, and politicians should maintain communication with the relevant university departments so that penitentiaries can be designed according to architectural standards that keep individual humans in mind. Prison plans should include shared space, open space, well-lit covered areas, and green space with foliage to help penitentiaries fulfill their socialization function. Ending administrative and legal restrictions on the use of shared space, which render these spaces useless, is also important.

The fact that punishment of prisoners, aside from temporary disciplinary segregation, restrict inmates' movement from their cells and their use of shared space and the fact that inmates' participation in cultural, athletic, or social activities is dependent on their "good behavior" [27] makes it clear that socializing in prisons is perceived not as a human right, but as a reward. This mentality is a barrier to inmates' societal reintegration after release from prison, and thus must be reconsidered.

[27] The system of rewards can be interpreted broadly based on the stipulations found in the stipulations of Article 180 of the Statutes on the Administration of Penitentiaries and the Enforcement of Sentences and Security Measures. For the statutes, see: *http://www.tbmm.gov.tr/komisyon/insanhaklari/belge/um_cezatuzuk.pdf* (accessed: 08.10.2014)

Chapter 2: Penitentiaries' Human-Resources Infrastructure

The human-resources infrastructure at penitentiaries is another problematic area. Despite some positive developments in recent years, the competence, capacity, qualifications, and lack of motivation on the part of correction officers, prison wardens, and social workers continue to be the source of frequent complaint by other actors. Major problems include the correction officers' failure to complete formal education, social workers' lack of training for work in prisons, and administrative personnel's lack of say in running prisons. This chapter covers the problems encountered in penitentiaries' human-resources infrastructure and offers potential solutions.

The hiring procedures and training of correction officers represent one of the most problematic areas in prisons' human-resources infrastructure. Those selected to be correction officers are usually high-school graduates, and the criteria used in hiring are not based on qualifications or competence. There is no test to measure potential officers' qualifications. Furthermore, the brief training sessions that are given are not geared toward real-life situations. Therefore, correction officers start work without having gone through sufficient theoretical or applied training. While correction officers' job descriptions have them dealing with security, in reality they often have to fill the gap left by a lack of psycho-social services, acting from time to time as psychologists, sociologists, and even doctors. This gives rise to confusion in the division of labor and authority. To prevent such administrative confusion and to establish a better-functioning and inmate-focused social-service system, personnel duties must be more clearly delineated. **The competence of correction officers should be reinforced after hiring through continuing education and certification programs, and the Justice Ministry should encourage prison staff to follow through on such programs.** There is also some unclearness as to the status of penitentiary personnel. Personnel who are hired under a temporary contract have fewer benefits compared to those on permanent staff, giving rise to discontent and a loss in work motivation.

The problems in correction officers' training might be eliminated by opening departments or programs at universities or professional schools that encompass law, sociology, psychology, and social work. Thanks to such programs, it will be possible to meet the ever-growing demand for correction officers with qualified, educated personnel. Students should be encouraged to enroll in such programs through better employment benefits and work conditions (such as guaranteed long-term employment), and the Justice Ministry and universities should adequately market such programs. It is extremely important that the content of such educational programs also include information on inmates with special needs.

At the same time, scholarly studies should be carried out regarding the problems experienced by correction officers, their place in the administrative hierarchy, and the duties they ought to undertake regarding inmates' socialization. Such educational work should be undertaken in conjunction with sociologists, psychologists, and legal experts. **Most correction officers and psycho-social service staff under the current system are dissatisfied with their duties in prison. It is therefore difficult to force employees who work with little enthusiasm,**

waiting for their first chance to get promoted elsewhere, to take on the extra responsibility of helping socialize inmates.

One possible way of increasing the effectiveness and functionality of the correction-officer system would be to implement a **regional hiring system**. Under the current system, civil servants are hired by appointment and are sent to regions outside of where they reside; thus, most of them simply wait for their two-year appointments to end, and work motivation is low. A regional hiring system could help avoid this problem.

One positive recent step has been the transition to hiring the ever-rising number of social workers (sociologists, psychologists, social-work experts) to permanent prison staff. Nevertheless, to make social services themselves more functional, it is important that social-work experts with special training in inmate socialization be hired to work in prisons and that the number and quality of programs to train such experts be increased. The process of socializing inmates would be made easier by increasing the number of psycho-social service workers per inmate and putting inmates in direct contact with specially trained social workers. It is also necessary to ensure that social workers not be used for security tasks and be reserved only for helping inmates re-enter society.

Psycho-social service workers working in alternative juvenile education centers or juvenile prisons should have pedagogical training. The Justice Ministry has already taken significant steps in this regard; such efforts should be continued.[28]

[28] This topic will be discussed in Chapter 3 of the present report.

Chapter 3: Resocialization and Crime-Prevention Measures During and After Incarceration

The effect penitentiaries have on inmates' resocialization is one of the most hotly debated topics in the field. The penal system is based on the notion that incarceration will have a deterrent effect on crime or illegal activities; when the system fails to deter, it punishes the offending individual through incarceration. In theory, using incarceration as a form of punishment or social control creates three different problems:

1- Incarceration ignores the root cause of the crime, does not allow for the crime to be considered a general sociological and criminological issue, and prevents the development of crime-prevention measures. (*Crime prevention*)
2- This understanding of incarceration also hinders the use of penitentiaries as a socializing space to help inmates re-enter society after their sentence is served. (*Socialization during imprisonment*)
3- Similarly, this understanding reinforces the impression that someone who has committed a crime must be locked up and monitored and is a constant threat to society. Therefore, this approach is also problematic in terms of readjusting to social life after an inmate leaves a penitentiary. (*Social reintegration after imprisonment*)

Several measures have been taken over the last few years in Turkey to improve the resocialization effect of penitentiaries, help inmates socialize in the environment of the penitentiary, to acquire professional skills, and to reintegrate into society after their sentence has been completed. Thanks to such measures, and in part due to the process of adapting to European Union (EU) policies, the understanding of penitentiaries as places of incarceration, punishment, and social control is undergoing a slow transformation. Restorative justice practices, probation, and resocialization activities all play a significant role in this process of change. Despite all of these developments, however, the history of the penal system in Turkey and this system's institutional "memory" pose some challenges to the ongoing process of transformation.

Preparation for social reintegration is known in Turkish law as "rehabilitation" (*iyileştirme*). These are the definitions of resocialization in the current legal codes:

Rehabilitation practices are defined as follows in Article 73 ("Determination of Rehabilitation Programs") of Law No. 5275[29]: "1) Rehabilitation programs are to be implemented in order to ensure that convicts will be able to continue their lives after prison as a law-abiding, productive member of society. Such programs are to be implemented in accordance with the individual needs of the convict and will be developed in light of his or her background, reasons for offense, criminal history, physical capacity and mental state, personal nature, potential dangers, length of prison term, and expectations for life after release. Educational and psycho-social service groups are to be established in prisons for the preparation and implementation of such programs. 2) The convict will be housed in institutions or wards where appropriate rehabilitation measures can be realized."

[29] For the Law on the Enforcement of Sentences and Security Measures, see: *http://www.tbmm.gov.tr/kanunlar/k5275.html* (accessed: 08.10.2014)

Rehabilitation practices are defined as follows in **Article 101** of the Statutes on the Administration of Penitentiaries and the Enforcement of Sentences and Security Measures[30]: "Rehabilitation consists of any and all programs implemented between a convict's entry into and exit from a correctional institution, the goals of which are to take measures to maintain or attain physical and mental health, eliminate feelings of guilt, and secure personal and societal development; and the outcomes of which include professional development through education and instruction, health and psycho-social services, individualization, and development of a way of life in harmony with the rest of society. These programs consist of routines, preventative measures, and other methods designed to instill in the convict a notion and feeling of living in respect of the law, to develop a feeling of responsibility toward one's family and society, to adapt to life in society, and to secure a means of subsistence."

Table 6: Legal regulations regarding 'rehabilitation'

In light of the theoretical framework broadly outlined above, this chapter discusses the penal system in Turkey under three headings, "crime prevention," "socialization during imprisonment," and "social reintegration after imprisonment," specifying problems and proposing potential solutions.

A. Crime-Prevention Efforts[31]

According to international scholarly literature, crime rates in developing countries are rising faster than those of developing countries.[32] To understand whether this qualitative increase arises from an actual increase in the real amount of crime, various factors must first be assessed. For example, the development of advanced surveillance technology, the spread of a crime-prevention mentality, or a rise in the number of victims reporting crime to the police may result in statistics that make it appear as if crime rates are on the rise. Therefore, it would be incorrect to argue that there is a rising crime rates simply by looking at law-enforcement crime reports or the number of inmates in prisons. In order to make a qualitatively sound analysis, one must consider multiple factors simultaneously. **Finding a way to eliminate such statistical unclearness is extremely important for crime-prevention efforts. There is a need for analysis based on comprehensive statistical data on crime rates in order to develop individualized, goal-oriented programs.** More sound analysis could be obtained if the Justice Ministry produced its risk-analysis reports in cooperation with universities, in particular.

The end goal of the field of criminology is the prevention of crime; as such, this discipline attempts to understand the sociological reasons for crime. **In Turkey, there is a need for statistical work of a criminological, scholarly nature and based on data obtained from courts, prisons, and law-enforcement officials.** At the same time, penal policies should definitely be subjected to effect-process analyses and be adapted to meet changing conditions. Many studies conducted in Turkey deal with individuals entering the penitentiary system.

[30] For the Statutes on the Administration of Penitentiaries and the Enforcement of Sentences and Security Measures, see: *http://www.cte.adalet.gov.tr/menudekiler/mevzuat/tuzuk.doc* (accessed: 08.10.2014)
[31] This chapter is closely related to the chapter on "Scholarly Research and Statistical Data on Prisons and Inmates," found later in this report.
[32] S. Harrendorf, M. Heiskanen and S. Malby. *International Statistics on Crime and Justice*. Helsinki: European Institute for Crime Prevention and Control, Affiliated with the United Nations, 2010. For this report, see: *http://www.unodc.org/documents/data-and-analysis/Crime-statistics/International_Statistics_on_Crime_and_Justice.pdf* (accessed: 08.10.2014)

Using data obtained from such studies to determine at-risk groups, supported by data based on a calculation of such groups' potential to commit crimes, is required for crime-prevention efforts. For this to happen, longitudinal studies (using control groups) should be conducted to determine individuals' proneness to commit crimes. If such data can be obtained, at-risk regions can be determined and goal-oriented social policies will thus be able to be developed.

Two different types of crime-prevention efforts must be considered:

i) **Intervention in situational factors**: This method must be evaluated in conjunction with its "responsivity," i.e., the extent to which the individual is personally motivated to benefit from the intervention. On this point, the individual or specific at-risk group's cognitive skills and style of learning are taken into account. In this way, inmates and at-risk groups are evaluated according to their individual needs and intervention methods most applicable to such groups are developed. The aim of implementing such intervention methods is to eliminate the societal cost of and opportunity to commit crimes. The risk-need-responsivity model of offender resocialization, currently being developed and tested in Turkey to such ends, should be more widely implemented.[33]

ii) **Repeat-offender prevention**: Repeat-offender rates around the world range from 30 to 70 percent. This rather high rate demonstrates clearly that penitentiaries are failing in their crime-prevention and resocialization roles.[34] Repeat-offender prevention methods are directly related to the socialization programs implemented during an offender's imprisonment. **For this reason, the causes of repeat offenders should be established by academic research. Data obtained from this kind of academic research can serve as a basis for repeat-offender prevention efforts.**

Further topics to be considered include the creation of alternative solutions to imprisonment in the juvenile justice system and the elimination of juvenile delinquency through the mechanisms of social services. Even though the institutions responsible in this area have implemented various projects, the latest statistics from the Turkish Statistics Institute (*Türkiye İstatistik Kurumu*, TÜİK) show that juvenile delinquency and the number of juveniles brought to law-enforcement offices is on the rise.[35] One should not forget that it is children who are most affected by the lack of sufficient individualized resocialization programs. **Therefore, it is very important that an appropriate physical space, necessary for visitation days, be created in penitentiaries so that children can enjoy a sustained relationship with their**

[33] For the risk-need-responsivity model in resocialization, see: *http://www.ogelk.net/suc/risk_ihtiyac_uygunluk.asp* (accessed: 08.10.2014)

[34] Zahir Kızmaz, *Cezaevinden Çıkan Bazı Suçlular Niçin Yeniden Suç İşlemektedir: Elazığ E Tipi Cezaevi Örneği*. Elazığ: Fırat Üniversitesi Harput Uygulama ve Araştırma Merkezi, Geçmişten Geleceğe Harput Sempozyumu, May 2013. For the text of this conference paper, see: *http://web.firat.edu.tr/harput/sempozyum/2/26.%20Zahir%20K%C4%B1zmaz.pdf* (accessed: 08.10.2014)

[35] For the "Report on Juveniles Appearing Before or Brought to Law-Enforcement Offices," see: *http://www.tuik.gov.tr/PreHaberBultenleri.do?id=16121* (accessed: 08.10.2014)

families. Furthermore, emphasis should be placed on preventative and protective efforts in the effort to reduce juvenile delinquency. The outcomes of the "Juvenile Early Detection and Alert System" (*Çocuk Erken Tanı ve Uyarı Sistemi*, ÇETUS), a project started by the Family and Social Policy Ministry,[36] and the Justice for Children Project, run jointly by the Justice Ministry and the Council of Europe, should be closely evaluated; methods and techniques developed out of such an analysis should be implemented on a wider scale. Beyond these two projects, the Individualized Rehabilitation System (*Bireyleştirilmiş İyileştirme Sistemi*, BİSİS), a pilot project on preventative and protective measures, has been developed with an aim to ameliorate the lack of data regarding juvenile crime-prevention efforts.[37] This system should be supported by reliable data input and training given for the use of this system should continue to be carried out.

Another contentious topic when it comes to preventive efforts is the question of which institutions or actors should implement them. **It should not only be the Justice Ministry's General Directorate of Prisons and Detention Facilities that is responsible for preventative efforts. Such efforts should be taken in cooperation with the Family and Social Policy Ministry, NGOs especially active in social services, Probation Departments, and institutions capable of collecting and processing data (including TÜİK and the Criminal Record Statistics Unit).** Crime-prevention efforts have the potential to significantly reduce crime rates. It should also be remembered that this would also potentially reduce the burden on the Justice Ministry's General Directorate of Prisons and Detention Facilities to expand prison capacity.

B. Socialization During Imprisonment

Two factors ought to be kept in mind when discussing the effect of penitentiaries on prisoners' socialization and the necessary measures to be taken in this regard:

- Penitentiaries are an environment where crime is normalized and a criminal subculture has the potential to emerge. Whether inmates who have entered a cycle of criminal activity can escape from this subculture and succeed at "rehabilitation" is closely related to the services provided and social environment created toward socialization during imprisonment.
- Looking at the history of penitentiaries in Turkey, it should not be forgotten that many legal regulations were adopted with the aim of social control for political prisoners. Although it may appear that the state has begun to abandon such policies in recent years, a penal policy based on this institutional memory and mentality continues to be one of the major barriers to inmates' socialization. This mindset is based on the

[36] Fahri Kocaoğlu. *Çocuk Erken Tanı ve Uyarı Sistemi (ÇETUS) Projesi*. T.C. Aile ve Sosyal Politikalar Bakanlığı, Çocuk Hizmetleri Genel Müdürlüğü. For the complete text of the presentation, see: *http://www.cocuklaricinadalet.org/uploads/symposium_papers/protection/FAHRIKOCAOGLU_CETUS.pdf* (accessed: 08.10.2014)

[37] For the BİSİS system, see: *http://www.cocuklaricinadalet.org/uploads/symposium_papers/execution/VKKAMER.pdf* (accessed: 08.10.2014)

understanding of an incoming inmate as someone who has to be "reformed" and/or someone who must "obey." One of the most significant barriers to the proper implementation of socialization measures is this institutional memory and the habits it has created.

There are for important prongs to socialization in penitentiaries:

1- Preservation of ties to the inmate's social circle and family outside of prison;
2- Sufficient support by social services and social workers in prison and the application of individual socialization programs;
3- Organization of social and artistic activities to distance penitentiary inmates from a criminal subculture;
4- Development of programs for inmates to develop their own professional skills alongside self-help and educational programs; unrestricted access to prison libraries; and sufficient possibility for inmates to take advantage of their right to instruction.

The remainder of this section will discuss more detailed findings and recommendations regarding these four factors.

As discussed above, for an individual entering prison to avoid becoming a part of a criminal subculture which normalizes crime—that is to say, for a penitentiary to fulfill its socializing function—it is extremely important that this individual be able to maintain a strong bond with his or her social circle and, most importantly, family outside of prison. These bonds are effective elements in inmates' re-adaptation to social life after prison and in preventing the emergence of repeat offenders. **Therefore, the role of prison administrations should be to facilitate the maintenance of such bonds. At the same time, it would be helpful to offer charitable associations and families the necessary financial and moral support and to raise awareness about the importance to inmates of sustaining their social relations.** This will also help prepare the individual and shape his or her expectations for life after release from prison.

Another important facet of socialization during imprisonment consists of the socializing services provided to prison inmates and the social activities organized for them. Efforts in this area can be grouped into two categories: 1) sufficient professional social and psychological support, 2) group social activities toward supporting socialization.

As of February 2014, there were 151 social workers, 271 psychologists, and 352 teachers employed in penitentiaries in Turkey. Comparing these numbers with the number of inmates during that month, we see a rate of 986 inmates per social worker, 549 inmates per psychologist, and 423 inmates per teacher.[38] It is impossible for one social worker to develop appropriate socialization programs for this many inmates at the same time. Adding to this the flagging motivation levels and lack of sufficient training mentioned in the section on

[38] These numbers have been taken from Mustafa Eren's 2014 book entitled *Kapatılmanın Patolojisi* (The Pathology of Incarceration). A footnote on page 258 states that the numbers were obtained in a 5 February 2014 Justice Ministry response to a 21 January request for information filed by the author.

penitentiary human-resource infrastructure (Chapter 2), **it is clear that the socializing effect that penitentiary social services have on inmates under the current system is very limited. Sufficiently trained social workers should be hired in proportion to the rising number of inmates in order to solve this problem.** These social workers should also be open to inmates' needs, people who can make inmates feel safe despite the strictly hierarchical, security-oriented environment of the penitentiary and who really strive to help inmates socialize to their new surroundings. Such services can be supported by various NGOs and universities. It is also necessary for social workers to develop individual programs based on offender categories and the latest data, and to evaluate the effect such programs have on inmates. Particularly with regard to the topic of evaluation, universities and scholarly research can be put to good use.

Social and artistic activities organized in penitentiaries comprise another important dimension in inmates' socialization. **Social and artistic activities help to soften the relationships in penitentiaries, which by their very nature are strictly hierarchical and preserve a security-oriented order. In this way, inmates are distances from a psychology of crime.** Such activities can be organized and led in conjunction with people brought in from outside prison. Organizing activities for inmates, including various workshops (like theater) can help psychologically reduce their stress and make it easier for penitentiaries to fulfill their socializing function. Such activities ought to be organized in line with a specific program. As these programs are implemented, prison administrators should consistently adopt a mentality of support for their socialization effects.

Professional training programs represent perhaps the most important facet of socialization and of inmates' potential to adapt to social life after imprisonment.[39] It is important for inmates to gain the skills necessary for use in professional life after their release from prison, and for them to practice this skills while they are carrying out their prison sentences. **Academic studies have shown that individuals with professional skills constitute a low-risk group for criminal offenses and that such individuals are less likely to be repeat offenders. It is important that the professional training given to penitentiary inmates correspond to a real demand on the market.** Such programs help individuals adapt to social life after their release from prison. In some cases, inmates already work for private companies for daily wages while in prison. The inclusion of inmates in the production process can be a positive thing, but **the daily wages given to inmates should be a fair wage, and inmates' labor should not turn into a source of exploitation**. Furthermore, tying participation in professional development courses or social activities offered in prisons to "good behavior" negatively affects the success of socialization efforts. **Professional development and socialization programs should be offered to all at-risk groups, without respect to their "good-behavior" status.**

[39] For information related to these programs on the website of the Justice Ministry's General Directorate of Penitentiaries and Detention Facilities, see: *http://www.cte.adalet.gov.tr/* (under the tab "*Eğitim servisi faaliyetleri*" [Educational services]) (accessed: 08.10.2014)

Another basic factor affecting inmates' socialization is the extent to which they can take sufficient advantage of their right to education.[40] The state should cover the education fees for inmates who have difficulty covering the costs of education, approaching such inmates with a supportive, social-service mentality. Inmates who wish to spend their free time preparing for various examinations should be offered this possibility. In fact, such individuals should be encouraged by prison administrations and the central government to complete school or university coursework. In this regard, **the Justice Ministry should continue to implement the protocols it has signed with universities and should conduct joint efforts with these universities to ensure that inmates can continue their educational programs.**

Another factor that might be considered together with education and instruction is that of penitentiary libraries and the way they are used. It is important that prison libraries be open to use by inmates for their education and socialization. In the current situation, however, there are several problems associated with prison libraries:

- The only thing inmates can do at penitentiary libraries is to check out books. Libraries, however, should be social spaces where books may be read or various other activities may be organized.
- There are no periodicals at libraries. The number of books that may be brought into prison wards, as well as the exchange of books between prisoners, is restricted.
- Inmates are not given the possibility of working at libraries. Such a possibility, however, has the potential to have a positive effect on inmates' socialization. This would also grant inmates the possibility to participate in an activity in which they can reserve some personal time for themselves.

C. Social Reintegration after Imprisonment

Most of the measures to be taken toward socialization during imprisonment, covered in the previous section, certainly have a positive effect on inmates social reintegration as well. Rather than reiterate these factors, this section focuses on "Post-Prison Supervision Boards" (*Koruma Yardım Kurulları*), established to ease former inmates' adaptation to society, and on the institution of Probation (*Denetimli Serbestlik*), implemented as an alternative form of sentencing.

a. Post-Prison Supervision Boards

One of the most important factors in the re-adaptation of former inmates to society is that they be employed. Former inmates should thus be given the opportunity to use the professional skills inmates gain during imprisonment in income-earning jobs, and their efforts to find and keep such jobs should be supported. The laws on this issue are the following:

[40] One good example of cooperation in this field has been the scholarship program for inmate education, carried out between the Civil Society Association in the Penal System (CİSST) and the office of the prime minister.

a) Law No. 5402 on Probation Services, approved by parliament on 3 July 2005 and published officially on 20 July 2005.[41]
b) Guidelines on Probation Services, passed on 5 March 2013.[42]

The duties of Post-Prison Supervision Boards in this framework are listed in the following laws:

Law on Probation Services, Art. 17
To assist those people whom the Probation Department has specified as having been harmed by an offense in the resolution of their social and economic problems; to assist convicts released from prison in acquiring professional and trade experience, finding work, securing means and credit for those with trade skills or who wish to work in agriculture, assisting those who wish to open businesses, and resolving other problems they face; to ensure that juvenile convicts continue their schooling; and to assist other convicts in this regard.
Guidelines on Probation Services, Art. 115
To guide victims of crime to institutions and organizations who can help them resolve the resulting social and economic problems.
To guide convicts who have been released from prison to institutions and organizations who can help them in acquiring professional and trade experience, finding work, and securing means and credit for those with trade skills or who wish to work in agriculture or open businesses.
To decide on professional training projects prepared by the Probation Department and on applications for freelance projects, to monitor ongoing projects, and to evaluate completed projects.
To take various measures to ensure that victims of crime and inmates released from prison continue their schooling and education, and to discuss and decide on projects related to this goal prepared by the department.
To help resolve potential psycho-social problems that could emerge between inmates released from prison and their families and social circles.
To assist the department in situations where interdepartmental cooperation is required to carry out decisions regarding a probation being monitored and implemented by the department.
To inform those who have been authorized to look for work about possible careers and places of employment.
To report to and advise the department on the preparation and updating of lists of available services and institutional training programs.
To cooperate with public institutions and organizations, professional organizations that have the status of public institutions, foundations and associations that work for the common good, and approved volunteers (real and legal persons) in order to ensure the effectiveness of decisions taken by the department.

Table 7: Duties and powers given to Post-Prison Supervision Boards by law

As can be seen in these legal provisions, these boards have been legally charged with taking active measures to ensure that former inmates adapt to their social environment after their release from prison. Some NGOs in particular have criticized these boards, entirely subordinated to the public prosecutor's office, for the fact that their administrative structure inhibits the development of sufficient activities to ease former inmates' re-entry into society. Three major factors give rise to this problem:

[41] Before the amendment passed in Law No. 6297 on 5 April 2012, this law was known as the Law on Probation, Assistance Centers, and Law Enforcement: *http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5402.pdf* (accessed: 08.10.2014)
[42] For the Guidelines on Probation Services, see: *http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=7.5.17175&sourceXmlSearch=Denetimli%20Serbestlik%20Hizmetleri%20Yonetmeligi&MevzuatIliski=0* (accessed: 08.10.2014)

i. Boards' Lack of Full Implementation

According to the law, board members consist of representatives from the private and public sectors, the judiciary, and civil society. The aim of Post-Prison Supervision Boards, according to the law, is to assist former inmates in the process of reintegrating into society. Therefore, these boards' activities should not remain limited to finding work and employment. Former inmates seeking assistance from the boards should be supported by psycho-social services in their effort to maintain strong ties to their families and social circles (something that is also mentioned in the law; see Table 7). Under the current system, boards are failing to fully perform this role. **While the establishment of Post-Prison Supervision Boards has been an extremely positive development, their contribution to social reintegration after imprisonment has been limited by the fact that the duties ascribed to these boards in the law have been only partially implemented in practice.** This has also resulted in a low number of inmates seeking assistance from the boards. It is extremely important for the functioning of the boards that board members (as well as former inmates' potential employers) not approach former inmates as "potential criminals." This is, of course, directly proportional to the level of success attained by socialization programs during imprisonment and the level by which the number repeat offenders can be reduced. One must therefore approach the resocialization process as a unified whole. **One cannot expect the administrative mechanisms of post-imprisonment social reintegration to achieve complete success as long as efforts toward socialization during imprisonment remain lacking.**

ii. Limited Representation of Non-Governmental Organizations

In the law, the topic of how NGOs are to be represented on Post-Prison Supervision Boards has been left to the discretion of the public prosecutor's office. Since there is no obligation to include them, NGOs working on this topic have only a limited presence on such boards.[43] This negative situation should be reversed by increasing NGOs' impact in both law and in practice. **It is too much to expect inmates, who have lived for years under a state authority institutionalized in the form of penitentiaries, to turn around and seek assistance from a board staffed only by representatives of state institutions. It is important that NGO representatives also serve on such boards, because inmates consider such individuals "impartial" and people with whom they can establish a more trusting relationship and express their demands freely.** One potential solution would be to change the law in order to institutionalize mandatory NGO representation on such boards.

iii. Lifting of Mandatory Private-Sector Employment of Former Inmates

The obligation of the private sector to hire a minimum quota of 2 percent former inmates was lifted on 26 May 2008. NGOs widely criticized this change. While European countries constantly seek new ways of promoting the employment of former inmates in the private sector, in Turkey, any such promotion has been totally eliminated by this amendment to the law. It is true that the former practice was not very successfully implemented by the private sector; many private companies preferred to pay a fine rather than hire inmates and fill their

[43] It must be noted that the number of NGOs operating in this field is very small. This problem might be solved by passing the necessary amendments to related laws and providing financial support for NGOs in the field.

2-percent quota. In practice, therefore, the 2-percent quota in the private sector had a limited effect on former inmates. This is once again likely tied to the lack of a comprehensive approach to offender resocialization. Since sufficient socialization and skill-development programs are not offered to inmates entering prison, it is difficult for them to escape a cycle of criminality after the completion of their sentence. This is a significant cause of a rise in repeat offenders and is the basic reason why the private sector views former inmates with mistrust. **Therefore, while the lifting of a quota for the employment of former inmates in the private sector has been a negative development, it is an understandable demand on the part of the private sector, considering the failures of the present penal system in its resocialization responsibility.** Agents working in the penal system must adopt **a comprehensive approach to resocialization**. This will both help reduce society's negative perceptions and stereotypes toward former inmates and make it easier for inmates to adapt to life in society after imprisonment.

In conclusion, the establishment of Post-Prison Supervision Boards has been an extremely positive development. Nevertheless, both the internal makeup of these boards as well as the general failure of the penal system in its resocialization function have prevented these boards from fully carrying out their roles in the current system.

b. Probation[44]

The basic aim of probation, implemented as an alternative to incarceration, is to offer criminal offenders the opportunity, as part of their sentence, to readjust to society by staying outside prison for a specified "trial period." In this sense, the concept of probation aims to resocialize the individual in society, as an alternative method to incarceration. The main reasons that such institutions are being established around the world is that imprisonment has a negative effect on an individual's personality and character, an increased understanding that it is impossible to re-integrate individuals into society by incarcerating them, and the failure of incarceration as a deterrent against crime (as can be seen the rate of repeat offenders).[45]

The basic goals of a probation system can be grouped into four main categories:

- To monitor and ensure the resolution of psycho-social problems experienced by individuals whose sentences have been postponed, who have been released from prison, or who have been sentenced to something other than imprisonment.
- To ensure adequate protection after release from prison and to re-integrate individuals into society.

[44] This chapter was written with contributions by law student Lokman Burak Çetinkaya.
[45] See the United Nations Office of Drugs and Crime's "Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment" (New York, 2007), available online at *http://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf* (accessed: 15.10.2014). For the Turkish version, translated by CİSST, see: *http://www.unodc.org/documents/justice-and-prison-reform/Alternatives_to_Imprisonment_HB_Turkish.pdf* (accessed: 08.10.2014)

- To contribute to the judicial process by preparing social investigation reports for courts prior to sentencing.
- To assist people who have suffered as the result of a crime, to prevent repeat offenders, and to preserve public order.

Based on these categories, we can make the following general observations and recommendations regarding the institution of probation:

- Probation deals with cases in which imprisonment is postponed under certain conditions for a specified period and in which this postponement would turn into imprisonment if these conditions are violated. During this "trial period," the convict is monitored and followed by certain actors. Such monitoring should be undertaken in the context of individualized programs and interventions and with an eye to resocialization. In Turkey, such a perspective has only recently begun to take root as probation methods are being institutionalized.[46] It is important that an understanding of social-service intervention take root among probation administrators, who have access to extremely developed technological monitoring systems, so that repeat offenders, in particular, can be prevented. **Thus, rather than approaching probation merely as a way of carrying out sentences or sanctioning individuals, the approach adopted should cover all of the processes and actors involved from the moment the crime is committed to the final completion of the sentence.**

- Probation programs also aim to assist judges to give a sentence personalized for the convict by supporting the pre-sentencing trial period with social investigation reports.[47] These reports are prepared during the investigatory phase of the trial by the prosecutor and during the hearing phase of the trial by the judge. In practice, judges rarely refer to social investigation reports when deciding on sentences. This means that sentences are often passed without paying attention to the psycho-social situation of the defendant, thereby hindering just and personalized court verdicts. **In terms of the impact such social investigation reports have on the trial process, two of the improvements that has to be made is that these reports should be used more frequently during the trial process and social workers employed on probation boards should be authorized to prepare comprehensive, on-site reports.**

- As a result of Law No. 6291, Law No. 5275 on the Enforcement of Sentences and Security Measures was amended, meaning that those convicts sentenced to 18 or fewer months in prison can receive probation through 31 December 2015 and are now able to leave (or never even enter) a penitentiary. In this way, inmates can be released from

[46] One good example of how this mindset has begun to be applied in practice is a project launched by the Antalya Probation Department with the support of TÜBİTAK aimed at the socialization and reintegration of inmates to society. For more information, see: *http://www.antalyagazetesi.com.tr/6394-guncel-denetimli-serbestlikten-toplumsal-entegrasyona.html* (accessed: 08.10.2014)

[47] Social investigation reports are reports prepared by a monitoring official from the probation department or office during the trial's investigation or hearing phase which systematically evaluate a suspect or defendant's own position and environment and contain regommendations on all kinds of services, programs, and resources needed for that suspect or defendant's successful re-integration into society.

prison without being held to a good-behavior standard. In practice, this also eliminates the authority that judges have to employ alternative sanctions.[48] **This amendment to penal policy and probation has been perceived by convicts as a form of pardon. In order to eliminate the problems that this could create, one might consider making probation a right available only to those inmates who demonstrate good behavior.[49]**

In conclusion, it is extremely positive that probation and the assistance regime that this system encompasses have taken their place in the penal system since the penal laws coming into force in 2005 (even if this came late by international standards). At a time when alternative methods to incarceration are being ever more widely employed around the world, Turkey, too, must take steps in this direction. Nevertheless, in order for probation methods to become a completely integral part of the penal system and for them to succeed in their role in resocializing criminal offenders, **changes should be made to both legal norms and practices that turn the focus toward probation as a form of assistance. For this to happen, it is important that NGOs, academics, and policymakers work together on producing needs-analysis reports, defining standards, and developing psycho-social programs that help in prisoners' resocialization.**

[48] Including postponement of sentence, adjournment of verdict declaration, or short-term imprisonment.
[49] Hande Özhabeş and Naim Karakaya. *Yargı Paketleri: Hak ve Özgürlükler Açısından Bir Değerlendirme*, Geniş Kapsamlı Rapor, TESEV Yayınları, 2013. p. 62. *http://tesev.org.tr/assets/publications/file/25122013143836.pdf* (accessed: 08.10.2014). For the English-language abridged version of this report, translated by Alex Balistreri, see: *Judicial Reform Packages: Evaluating Their Effect on Rights and Freedoms* (2013), *http://www.tesev.org.tr/assets/publications/file/06122013161517.pdf* (accessed: 15.10.2014)

Chapter 4: Legal Regulations, Practices, and Judicial Procedures Regarding the Penal System

This chapter provides additional analysis to cover some of the gaps in the legal regulations governing the penal system.[50] While previous chapters have discussed specific legal regulations and their implementation, this chapter provides more comprehensive recommendations for changes to the law and its application. These topics will be discussed in the following three sections: A) Legal regulations, B) Application of the law, C) Judiciary.

A. Regarding Legal Regulations

- The fact that lawyers are unable to meet with more than one detainee or convict at the same time presents several challenges, particularly in trials where multiple suspects wish to prepare a common defense. The law should be amended so as not to restrict the right to defend oneself in court.

- One of the most important issues regarding penal-system legislation is that there are no regulations specifically related to detainees; detainees are treated (by analogy) under the same regulations as convicts. The fact that there are no separate regulations on detainees can result in *ad hoc* practices, leading to unclearness for detainees as to which legal framework will be applied to them and which legal means they can use to seek redress.

- The Law on the Enforcement of Sentences grants prison employees broad discretion in deciding how to implement disciplinary measures. **According to the precedent set by the European Court of Human Rights (ECHR), such discretion should not be so broad that it could lead to arbitrariness on the part of prison employees. Because the section on disciplinary measures in the Law on the Enforcement of Sentences contains vague provisions and recognizes broad discretion, amendments should be passed to the law so as to define terms more concretely and not give rise to arbitrariness.**[51]

B. Regarding Application of the Law

- Education and instruction rights are recognized by law for convicts and detainees. The National Education Ministry, in accordance with the protocols signed, organizes various educational and professional training programs. The rights recognized by law, however, are limited in practice because of mandatory attendance, an inability to take required examinations, and a referral fee to transfer schools or universities alongside

[50] This chapter was written with contributions by legal experts Naim Karakaya and Hazal Algan.
[51] For example, in the section on disciplinary measures in the Sentencing Law, reasons for restricing or prohibiting inmates' means of communication include "unnecessarily reciting a hymn, march, or slogan." Even though the word "unnecessarily" is extremely vague, broad discretions have still been recognized with regard to the application of this regulation.

normal tuition fees. The path to an education should be opened to detainees and convicts by working out some of the difficulties in applying the law.

- The fact that inmates are charged for making telephone calls restricts communication rights, especially for those convicts or detainees in a difficult financial position. Convicts are not allowed to receive phone calls from outside prison. This regulation should be reconsidered in the case of those with financial difficulties. Furthermore, there is currently a requirement that phone conversations must be in Turkish. Inmates should be allowed to use the language in which they are most comfortable expressing themselves. **The disadvantageous situation facing individuals who know Turkish only as a second language should be subject to further review.** Furthermore, staff who speak foreign languages should be employed in prisons where foreign detainees and prisoners are being held.

- Low-income families in particular can experience financial problems when a family member enters prison. Paying attention to such need and **keeping the channels of social assistance open for inmates' families** will help eliminate some of the difficulties they face.

- To ensure a more robust defense for inmates and especially detainees, **online access should be made available to the National Judiciary Informatics System (*Ulusal Yargı Ağı Platformu*, UYAP), the database of legal regulations, and the file of the case under which they are being tried. A legal information stand could also be set up in prisons for the benefit convicts and detainees.**

- Because medical checkups have to be performed while inmates are in handcuffs and because correction officers must be present when an inmate is being examined by a doctor, individuals may be reluctant to go to the doctor. With the initiative to examine inmates left completely up to doctors and security concerns dictating medical practices, **the problems that may arise out of this situation in terms of inmates' right to health care, should be reconsidered.**

- Communication between inmates, lawyers, and state institutions should be held in confidence. Moreover, sending letters should be free of charge for inmates. As much as the law insists that inmates' written documents should remain private,[52] such regulations are not followed in practice. **Therefore, steps should be taken to ensure that this regulation is carried out as written, so that inmates' written documents, which are important for their right to legal defense, are not read by other parties.** Similarly, to secure privacy between the lawyer and the client, prisons should offer a space where it is impossible to listen in on their conversations.

[52] For Article 84 (2)/c of the Statutes on the Administration of Penitentiaries and the Enforcement of Sentences and Security Measures, see: *www.cte.adalet.gov.tr/menudekiler/mevzuat/tuzuk.doc* (accessed: 08.10.2014)

- Places of worship should be opened in prisons for inmates of different religious faiths. **One should not forget that religious beliefs and worship practices, beyond their place in the freedom of expression, also help to strengthen prisoner resocialization.**

C. Regarding the Judiciary

- The restraints and deprivation of rights applied on inmates should be applied in relation to the severity of their crime in order to produce better results. Individuals entering prison are generally deprived of the same rights regardless of the crime they committed. This practice should be ended and restrictions and limitations on rights should be applied according to different crime categories.[53]

- The difficulty caused by extremely long detention times should be considered in relation to the issue of transferring inmates to minimum-security prisons. **Some inmates whose sentences have not yet been confirmed are detained until the sentence begins to be executed, forced to remain in a higher-security prison even as the time for their conditional release from prison draws near. The difficulties causes by this situation should be resolved.** Furthermore, more difficult conditions are applied to some offenders in deciding on whom to transfer to minimum-security prisons. The law should be amended with an understanding that this practice can give rise to violations of equality.

- The most fundamental reason behind mistakes and rights violations committed when taking disciplinary measures in penitentiaries is that these are appealed not through the normal court channels but through an exceptional application on the grounds of "Overturning for the Benefit of the Law" (*Kanun Yararına Bozma*, KYB).[54] KYB is a legal principle that is used when the decisions taken by a judge or a court are appealed directly to the Justice Ministry because they are not subject to the normal appeals process. Administrative decisions taken regarding the enforcement of a sentence may not be appealed for judicial review. KYB is a legal method that is not often used—a sign that sufficient research is not usually done when trying to overturn illegal administrative decisions. While expert offices review cases being appealed to the Yargıtay (Court of Cassation), KYB-based appeals are sent to the Justice Ministry's General Directorate of Penal Affairs, where officials are not well trained in such matters, and ultimately tied to the decision taken there. Moreover, because such officials know that the decisions they take regarding KYB applications—even as rarely as they appear—are not eligible for appeal to the Yargıtay, their decisions are generally taken without a sufficient examination of the situation, something that can result in a loss of rights. If a KYB-based appeal is accepted by the directorate, then the

[53] For example, while it may be correct to restrict a right to guardianship of a child for someone convicted of domestic violence, it would not be correct to do so for someone convicted of bribery.
[54] For Article 309 of the Law on Criminal Procedure (*Ceza Muhakemesi Kanunu*), see: *http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5271.pdf* (accessed: 08.10.2014)

case is sent by the Justice Ministry to the competent Yargıtay district court, because the original court decision regarding the disciplinary measure must still be overturned. This results in a needless extension of the appeals process. **Opening administrative decisions on enforcement of sentences to direct court appeal would thus both ensure that decisions could be taken more quickly and that these decisions would be based on higher-quality investigation, thus preventing a loss of rights.**

- A sounder trial process could be ensured if the judges who oversee the execution of sentences (*infaz hakimleri*) had more expertise and if such expert judges would be responsible only for decisions in these kind of cases. Moreover, decisions in such cases should be made in an actual hearing, not only on paper.[55] **To follow the principle of a fair trial, it is extremely important that decisions taken on sentencing always be taken in actual hearings.** It is also necessary to turn decisions on good behavior and disciplinary measures from administrative ones into judicial ones.

[55] The ECHR has already passed a judgement declaring that decisions on sentencing must be made during court hearings (Gülmez v. Turkey, 20 May 2008). It found that a decision to take a disciplinary measure without a hearing and simply on the basis of a case file violated Article 6/1 of the European Convention on Human Rights. For the Convention in English, see: *http://www.echr.coe.int/Documents/Convention_ENG.pdf* (accessed: 15.10.2014); in Turkish, see: *http://www.yargitay.gov.tr/abproje/belge/temelbelge/AIHS_Tr_A6format.pdf* (accessed: 08.10.2014)

Chapter 5: Scholarly Research and Statistical Data on Prisons and Inmates

Scientifically rigorous studies based on data are needed to develop appropriate penal policies and ensure that changes to the system are carried out properly. It is extremely important that such studies use both quantitative and qualitative (survey) methods so that prison conditions can be improved, the effectiveness of the judicial system ensured, and loss of rights prevented. Data-based academic research should form the backbone of future policies, not only to improve the existing conditions, but also to be able to develop effective crime-prevention measures. A reduction in the rate of repeat offenders is possible only with an analysis based on close monitoring and sound data. Under the current system, many complain about the difficulty of accessing data, while those in academia, for their part, have displayed considerable apathy toward conducting research in this field. This chapter covers the relationship that needs to emerge between the penal system and academia, emphasizing the importance of statistical data related to crime and prisons.[56]

In order for us to be able to evaluate the effectiveness of the penal system, **the first thing that is needed are criminological studies that measure criminality using more than one source and investigations into the causes of crime. There are not enough studies being carried out on the causes or levels of crime in Turkey.** Criminology is currently offered as an elective at universities, but law students are not encouraged enough to pursue studies in this field. **Classes that use computer-aided research methods to teach how such studies might be carried out are lacking. Offering courses on sentencing law, legal clinics, and research methods would help support the emergence of academic studies in the field.**

Some of the useful research that could be conducted in cooperation between the Justice Ministry and academia include the following:

- Research on the status of correction officers, particularly female correction officers.
- Research on the profile and personal history of inmates (ethnic and political identities, civil registry, etc.).
- Research into worldwide prison practices, in particular programs in restorative justice and crime prevention.
- Research that analyzes the effect of the psycho-social service models being used in penitentiaries in Turkey.
- International comparative research on crime reporting and crime victimization surveys.
- Comparative analysis of oversight and monitoring mechanisms in different countries' penitentiaries.

Analyses of statistical data on inmates, prisons, and crime that are published by state institutions are extremely important for the development of sound penal policies. However,

[56] This chapter should be considered in conjunction with the section on "Crime-Prevention Efforts" in Chapter 3.

the data currently being published are macro-level data, making them impossible to use to answer micro-level questions. In Europe and the United States, a variety of qualitative studies are written on the basis of surveys conducted in representative sample institutions across the country; studies on crime victims are used to support crime-prevention efforts. In Turkey, meanwhile, there is no nationwide, comprehensive effort at data collection. **A nationwide study on crime victimhood carried out by the joint efforts of the Justice Ministry, the Turkish Statistics Institute, and academics would be a particularly pioneering study for the development of future policies.** Studies that use data on inmates and prison capacity must take into consideration the stock-and-flow ratio of inmates (i.e., the ratio of those who enter and leave prison versus those who have stayed in prison for a longer period of time) and conduct separate analyses on this basis. Sound data can be collected if people competent in data analysis and classification are hired to work in the Justice Ministry's Criminal Record Statistics Unit and can establish close ties with universities. Care should be taken that such data are prepared and shared in such a way as not to violate inmates' privacy. Both policymakers and institutions as well as researchers still have to internalize the importance of statistical data in formulating policies. It is therefore important that the processes of data recording, processing, classification, and publication are well organized and administered. **Experts should examine whether UYAP, a file-management system that exceeds international standards, is also appropriate for collecting data on penitentiaries and determine ways in which researchers can obtain and share the necessary data from UYAP or alternative sources.** It would be helpful if the Effective Convict Administration Project begun by the Justice Ministry focused more on this kind of work.[57]

Such research can help measure criminal activity and determine which kind of crimes are especially frequently committed. Yet this kind of research is not enough. **What is most important is to focus on the sources of criminal acts, seeking to determine why they are committed. It is thus necessary not only to conduct research on individuals who enter the prison system, but also to determine specific at-risk groups before crime is committed so that they can be the target of crime-prevention measures.** A study of criminal potential should be conducted longitudinally through the use of control groups. Since most studies coming out of Turkey are cross-sectional, it is impossible to access information about the risk levels of certain groups. More comprehensive studies will help develop goal-oriented crime-prevention programs.

At the same time, researchers have expressed complaints that it has recently become more difficult to obtain permission from the Justice Ministry to conduct research inside prisons. Difficulties experienced in obtaining permission can be explained by the high numbers of research requests being sent to the Ministry. One possible solution, therefore, is to plan research permits according to a specific calendar and tie them to a more formal application process. Having a board, including experts from universities as members, issue a limited number of research permits to high-quality proposals at regular intervals, according to academic criteria would help eliminate the current obstacles and ensure that future academic

[57] Expanding the implementation of the BİSİS system could also be of help in this regard.

research projects contribute to the policymaking process. Under such a policy, the Justice Ministry could issue calls for research on topics that it knows need urgent attention and scholars will be able to prepare proposals for academic projects that meet this need. **For such research projects to be carried out in an objective way, it is important that they are prepared by university scholars in an environment of academic freedom and that the Justice Ministry not limit in any way the use of the data collected during research.** Otherwise, it will not be possible for scholarly work to reflect reality or to serve as a basis for goal-oriented policies. It would be helpful if the Ministry organized regular joint meetings of related NGOs and scholars to support and evaluate efforts in this regard.

At present, there is no department working under the Ministry responsible for conducting research on the penal system. Thus, there is a need for an increase in cooperation between policymakers and universities and that joint research projects be carried out in an atmosphere of mutual trust. Both sides need to change their perception of one another. On the one hand, policymakers should be more conscious of the fact that researchers' objective reports can be a helpful guide in developing policies; on the other, researchers should not avoid cooperating with the Ministry, but rather prepare policy-oriented research proposals. **An initial step to increasing such cooperation would be to open a special section for researchers on the website of the General Directorate of Prisons and Detention Facilities (*http://www.cte.adalet.gov.tr*).** In this section, the Justice Ministry could regularly announce what kind of research projects are needed, publish various statistical data to be used in research, and develop a standard application form for research proposals. It would also be helpful if the General Directorate employed personnel with academic competence to evaluate research proposals for academic cooperation submitted from outside the Ministry.

Conclusions

As mentioned in the introduction, penitentiaries and the penal system are currently undergoing a process of transformation in Turkey. Actors in this process are looking for alternative solutions to incarceration and have come to agree that an inmate's resocialization is only possible within society and by maintaining bonds with his or her social circle. **There is a need, therefore, to adopt an approach to the penal system that considers all stages of the offender-resocialization process as a comprehensive whole.** The execution of sentences should not simply focus on time spent in prison, but should be considered as a multi-layered process, with each layers requiring the development of specific policies. These layers might be grouped into four sections: i) Pre-trial crime-prevention and protection measures; ii) Trial procedure; iii) Time spent in prison; iv) Post-imprisonment process of reintegration into society. Approaching each of these processes not with a mind to "reform" the prisoner but to support his or her resocialization through socialization will help to develop an approach to penal policies and the penal system that is focused on the individual and observes the individual's right to exist in society.

In evaluating crime-prevention and protection measures, we should realize that the struggle against crime is not simply one to be waged by law enforcement and the courts but should rather be considered a social problem. In establishing crime as a social problem, it is critical that there be a basis in scientific studies based on statistical data. **In the sentencing of convicts during trial, too, it is extremely important for a fair trial that a resocialization approach be adopted, that the decisions made by judges and prosecutors be supported by social investigation reports, and that sentences be tailored to the individual on the basis of such reports.**

There is a need for an inmate-centered penal policy from the time she or he enters prison. Criminal offenders can be supported in their socialization by taking steps to ensure that they can benefit sufficiently from social services. Functioning internal and external oversight mechanisms, a participatory approach to prison administration, an administrative structure that includes NGOs, well trained personnel, good physical infrastructure, and improved coordination among institutions are all factors which can help this approach take root. The development, application, and evaluation of individualized programs and interventions are important elements of this process.

As for the post-imprisonment process, a priority should be the establishment of well-functioning protection mechanisms which NGOs are also authorized to carry out. There is a need for psycho-social support programs and supervision programs that keep track of the individual so that such mechanisms can be used to ensure former inmates' reintegration into social life. The basic reason why supervision boards have had a limited effect in the current system is that individuals reaching the post-imprisonment stage had not been exposed to sufficient socializing interventions during their time in prison and had failed to attain sufficient professional skills. At the same time, a comprehensive-resocialization approach has

to be developed in the context of probation as well, and individual psycho-social programs have to be applied in a more goal- and individual-oriented way.

As actors across the board work ever more to improve the resocialization effect of the penal system in Turkey, we are seeing a positive change in mentality and efforts to overcome the institutional memory inherited from historical prison practices. To ensure that such changes turn into a permanent transformation, these actors will have to adopt a pro-resocialization approach in all of the four layers outlined above.

TESEV's Democratization Program is committed to following the penal system as it takes on a more pro-resocialization role as a part of penal-system reform and will continue to contribute to reforms adopted to this end.

About the Author

Berkay Mandıracı received his undergraduate degree in 2010 from the translation studies department at Boğaziçi University and his master's degree in 2012 from the program "International Relations: Global Governance and Social Theory," organized jointly by Bremen University and Jacobs University in Bremen. He is currently a doctoral candidate at Boğaziçi University's department of political science and international relations. Since joining the staff of TESEV's Democratization Program in March 2014, Berkay Mandıracı has been active in projects on judicial reform and security-sector reform.

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TESEV is continuing its work in the field of judicial reform with the present report titled "Penal Policies and Institutions in Turkey: Structural Problems and Potential Solutions".

Penitentiaries and penal policies have been one of the many areas subjected to changes in the context of the judicial reform taking place in Turkey over the last several years. Officials have been inspired to develop new policies in this field by a number of factors: the rise in the number of inmates and the resulting capacity problem; the inefficacy of outdated municipal prisons; and the need to support the resocialization of inmates through new penal policies.

This report argues that the general aim of the penal regime should be based on 'resocialization'. Therefore, individuals after going through all stages of the penal process and after facing their crime, should be given the opportunity to fully participate in society again. With this aim the report assesses the current penal reform process in Turkey and puts emphasis on the need for a holistic penal regime that focuses on resocialization of offenders in all penal stages and applies international human rights standards.

Aiming to lay bare both the positive and negative aspects to the current penal system in an informative, critical, and (to the extent possible) objective way, this report seeks to contribute to the ongoing penal reform process in Turkey.

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ISBN 978-605-5332-69-3